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Thursday, 28 June 2001

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

PETITIONS

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

International Covenant on Civil Rights
To the Honourable, The President and members of the Senate in Parliament assembled:
The petitioner Leonard Joseph Faure is representing his daughter M/S Bernadette Mary Faure of 33 Norman Avenue Hammondville N.S.W. Australia on a human rights issue. The respondent, Centrelink, is compelling her to undertake the Work for The Dole programme. This matter has been forwarded to the Human Rights & Equal Opportunity Commission for the purposes of remedy on the basis of an alleged violation of Article Eight paragraph three (a) of the International Covenant on Civil Rights. On previous occasions on matters relating to the same applicant the HREOC delayed its decision for a number of months. The petitioner therefore is requesting the Australian Parliament, to require said HREOC to enact a decision re; this matter as quickly as possible.

by Senator Bourne (from one citizen)
Petition received.

NOTICES

Presentation

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

That the Senate—

(a) notes, on the occasion of its 69th anniversary, that the Australian Broadcasting Corporation (ABC) has traditionally produced outstanding results, despite the fact that its operational budget has declined dramatically in recent years and remains well below its highest level of funding following corporatisation in 1983;

(b) expresses its concern that the restructuring of the ABC is at the expense of high-quality programming, the dismissal of a large number of committed and dedicated staff, the result of which will be felt in the television and radio schedule over the next 2 to 3 years and longer;

(c) notes the concerns of the independent production sector, and the radio, television and film industries generally, about the loss of high quality productions being commissioned at the ABC at the present time;

(d) expresses its concern that ratings are used as a measure of success, to the detriment of other measures, including audience reach, or the other provisions of the Australian Broadcasting Corporation Act 1983, which details the programs and services the ABC should deliver, which have both general and specific appeal;

(e) acknowledges the role of independent, investigative news and current affairs programs as central to the role of the ABC in educating Australians, no matter whey they live, or their levels or sources of income;

(f) notes the finding of the 1995 select committee inquiry into the role and operations of the ABC which found ‘that the need for a quality national broadcaster is greater today than it was a decade ago’, reflecting the importance the majority of Australians place on this most important national and cultural icon;

(g) calls on the Government to immediately restore the operational funding of the ABC untied, and not inclusive of special grants, capital or infrastructure costs or transmission funding, to a level commensurate with the levels achieved in 1985, in real terms; and

(h) calls on the ABC board:

(i) to take immediate action to arrest the disruption currently at the ABC, and

(ii) to ensure that the ABC’s relationship with its audiences is immediately restored.

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

That the Legal and Constitutional References Committee be authorised to hold a public meeting during the sitting of the Senate on 6 August 2001, from 7.30 pm, to take evidence for the committee’s inquiry into the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000.

Senator MURRAY (Western Australia) (9.30 a.m.)—At the request of Senator Stott
Despoja, I give notice that, three sitting days after today, she will move:

That the following bill be introduced: A Bill for an Act to provide for the electors to be consulted, at the same time as the general election for the House of Representatives, on whether Australia should become a republic and on whether they should vote again to choose from different republic models. Republic (Consultation of the People) Bill 2001.

Madam President, I seek leave to table a draft of the bill for public comment.

Leave granted.

COMMITTEES

Selection of Bills Committee

Extension of Time

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

That the presentation of the report of the Selection of Bills Committee be postponed till a later hour.

Report

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

That the order of the Senate of 20 June 2001 adopting the Selection of Bills Committee report no. 8 of 2001, be varied to provide that the provisions of the Space Activities Amendment (Bilateral Agreement) Bill 2001 not be referred to the Economics Legislation Committee.

Senator O'BRIEN (Tasmania) (9.32 a.m.)—I did not know this was happening. It may be that it is all right for this to occur, but I would like to delay this until I get some advice. I move:

That the debate be adjourned.

Question resolved in the affirmative.

Ordered that the resumption of the debate be made an order of the day for a later hour.

Intelligence Services Committee

Appointment

The PRESIDENT—A message has been received from the House of Representatives transmitting for concurrence a resolution proposing the formation of a joint select committee. Copies of the message have been circulated in the chamber.

The resolution read as follows—

(1) a Joint Select Committee to be known as the Joint Select Committee on the Intelligence Services be appointed to inquire into and report on the proposed legislative reforms in:

(a) the Intelligence Services Bill 2001 and the Intelligence Services (Consequential Provisions) Bill 2001; and

(b) the provision in the Cybercrime Bill 2001 relating to the Australian Secret Intelligence Service (ASIS) and the Defence Signals Directorate (DSD) - Liability for Certain Acts.

(2) the committee consist of 15 members: 5 members of the House of Representatives to be nominated by the Government Whip or Whips, 4 members of the House of Representatives to be nominated by the Opposition Whip or Whips, 3 senators to be nominated by the Leader of the Government in the Senate, 2 senators to be nominated by the Leader of the Opposition in the Senate and 1 senator to be nominated by any minority party.

(3) every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) the members of the committee hold office as a joint select committee until presentation of the committee's report or until the House of Representatives is dissolved, whichever is the earlier.

(5) the committee report no later than 20 August 2001.

(6) the committee elect a Government member as its chair.

(7) the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee.

(8) at any time when the chair and deputy chair are not present at a meeting of the committee, the members present shall elect another member to act as chair at that meeting.

(9) the chair, or the deputy chair when acting as chair, shall have a deliberative vote and, in the event of an equality of voting, a casting vote.

(10) 5 members of the committee constitute a quorum of the committee, provided that in a deliberative meeting the quorum shall include 3 members of either House of the Government parties and 2 members of either House of the non-government parties.
(11) the committee have power to:
   (a) send for persons, papers and records;
   (b) move from place to place;
   (c) adjourn from time to time and to sit during any adjournment of the Senate
       and the House of Representatives.

(12) the committee may determine the manner of
        conduct of its proceedings and in so doing
        shall consider whether the procedures pre-
        scribed in s.92F(2) and (3) of the Australian
        Security Intelligence Organisation Act 1979
        (‘the ASIO Act’) should be followed.

(13) the committee shall ensure that any docu-
        ments having a national security classifica-
        tion provided to the committee are, while in
        the custody of the committee, kept at a place
        under such terms and conditions as are
        agreed between the committee and the Di-
        rector-General of ASIS, the Director of
        DSD, or the Inspector-General of Intelli-
        gence and Security, as appropriate.

(14) the committee shall ensure that the identity
        of staff of ASIS is appropriately protected in
        accordance with the provisions of the Intel-

(15) the committee has leave to report from time
        to time its proceedings and the evidence
        taken and any recommendations as it may
        deem fit.

(16) a message be sent to the Senate acquainting
        it with this resolution and requesting that it
        concur and take action accordingly.

Senator IAN CAMPBELL, (Western
        Australia—Parliamentary Secretary to the
        Minister for Communications, Information
        Technology and the Arts) (9.33 a.m.)—I seek
        leave to have the message considered immedi-
        ately.

Leave not granted.

BUSINESS

Government Business

Motion (by Senator Ian Campbell) pro-
posed:

That the following government bills be consid-
ered from 12.45 p.m. till not later than 2.00 p.m.
this day:

the order of the day relating to the Broad-
casting Legislation Amendment Bill
(No. 2) 2001,

No. 11 New Business Tax System (Simpli-
ified Tax System) Bill 2000 and 2 re-
lated bills,

No. 12 Taxation Laws Amendment Bill
(No. 2) 2001, and

No. 14 Higher Education Funding

Senator BROWN (Tasmania) (9.34
a.m.)—I do not agree to the Broadcasting
Legislation Amendment Bill (No. 2) 2001
and the Higher Education Funding Amend-
ment Bill 2001 being on that list.

Question resolved in the affirmative.

COMMITTEES

Scrutiny of Bills Committee
Reference

Motion (by Senator O'Brien, at the re-
quest of Senator Cooney) agreed to:

That the following matter be referred to the
Standing Committee for the Scrutiny of Bills for
inquiry and report by 28 February 2002:

The application of absolute and strict li-
ability offences in Commonwealth legis-
lation, with particular reference to:

(a) the merit of making certain offences
ones of absolute or strict liability;

(b) the criteria used to characterise an
offence, or an element of an offence, as
appropriate for absolute or strict liability;

(c) whether these criteria are applied
consistently to all existing and proposed
Commonwealth offences; and

(d) how these criteria relate to the practice in
other Australian jurisdictions, and
internationally.

PRESIDENT WAHID: VISIT

Motion (by Senator Brown) agreed to:

That the Senate congratulates President Wahid
of Indonesia on the success of his visit to
Australia and the friendly and positive impression
he has left, which enhances relationships between
our nations.

AUSTRALIAN BROADCASTING
CORPORATION: 69TH BIRTHDAY

Motion (by Senator Bourne) agreed to:

That the Senate—

(a) notes that:

(i) 1 July 2001 marks the 69th birthday
of the Australian Broadcasting
Corporation (ABC), which commen-
ced its first broadcast at 8 pm on 1
July 1932,
(ii) the then Prime Minister, Joseph Lyons, proclaimed that the ABC was committed to ‘serve all sections and to satisfy the diversified tastes of the public’;

(iii) the Australian Broadcasting Corporation Act, proclaimed in 1983, embodied that statement in section 6 of the Act, the ABC Charter, which is equally relevant today as it was then, and continues to enable the ABC to provide a range of quality programs and services, which meet the diverse range of interests of Australian audiences, and

(iv) the ABC’s role and functions have been expanded and extended over the years to include: a national classic music network (Classic FM); a national youth network (Triple J); a national specialist radio network (Radio National); a parliamentary and news network (PNN); a local radio service in 48 regional centres and in each capital city throughout Australia; an international shortwave service (Radio Australia); an online, multimedia Internet service; ABC shops and centres; and the national television network; and

(b) congratulates the ABC, and its dedicated staff over many years of continued service, for reaching this milestone.

COMMITTEES

Rural and Regional Affairs and Transport Legislation Committee

Extension of Time

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

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the import risk assessment on New Zealand apples be extended to 23 July 2001.

PAPUA NEW GUINEA: STUDENT PROTESTS

Senator BROWN (Tasmania) (9.38 a.m.)—I ask that general business notice of motion No. 963, standing in my name for today, relating to the death of three students in Papua New Guinea after student protests, be taken as a formal motion.

The PRESIDENT—Is there any objection to this motion being taken as formal?

Senator O’Brien—Yes.

The PRESIDENT—There is objection.

Suspension of Standing Orders

Senator BROWN (Tasmania) (9.38 a.m.)—Pursuant to contingent notice, I move:

That so much of the standing orders be suspended as would prevent Senator Brown moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 963.

I do that because I do not think anyone in this place could say that this is not an urgent matter. Port Moresby has been paralysed by the protests over the last six days. There has been a curfew and three students have been shot dead. We need to be aware of what is happening in the capital city of this neighbouring country which very much depends on Australia for its wellbeing and which is now racked by the imposition by international monetary authorities of a program that includes broadscale privatisation of assets in Papua New Guinea. It is quite different to the democratic system in Australia where there is redress for this sort of thing. It has to be understood that in Papua New Guinea, as in so many poorer countries, the imposition is from outside and it rolls over the top of the democratic system of that country.

You will note, Madam President, that my motion, besides expressing deep sadness and concern at the death of the students—and I understand from news reports that students will be bringing forward evidence today about the police involvement in the death of those students—and while recognising the right of Papua New Guinea to plan its future without selling its major assets, also puts forward a positive alternative. Part (c) of the motion calls on the international funding and banking agencies to aid PNG’s debt repayments by requiring foreign logging, mining, fishing and tourism companies, including BHP, for example, to pay a fair and adequate royalty for their exploitation of this small, but beautiful, nation’s resources. This is the classic case of a poor country having its resources extracted and the management of its
affairs being taken over basically by multinational forces, including private corporations, beyond its control.

What is happening in the logging of Papua New Guinea forests and mangroves by huge corporations, including Chevron from the United States, is totally reprehensible. The return to the Papua New Guinea people is not commensurate with the damage being done to their environment. Just two days ago we had a delegation, including an elected MP from the Fly River district, talking about the extraordinary environmental damage caused by the Ok Tedi mine which, through cyanide and taling spillage into that river system, has caused the death of that system for tens, if not hundreds, of kilometres. Because of the silting of the river, there is flooding of the riverside areas where the crops are grown by the indigenous people, the loss of those crop lands and the forced migration of those people. They did not ask for that. They are not being compensated for that. They have not become rich over that. It is deplorable behaviour by BHP and other corporations from outside. They would not be allowed to practise that sort of environmental and social dislocation in this country. But they go to a Third World country and become a law unto themselves—and this motion draws attention to that.

The motion should be debated. Papua New Guinea is in uproar. The students are representing a different point of view. The young people of Papua New Guinea are saying, 'We don't want everything going into foreign hands, out of our control, under this international capital system.' I urge the Senate to vote for this debate, seeing formality has been blocked by the Labor Party. Change the motion, if you will, but take notice of the fact that there are horrific events occurring in Papua New Guinea, and we should not ignore them.

Question put:
That the motion (Senator Brown's) be agreed to.

The Senate divided. [9.48 a.m.]
(The President—Senator the Hon. Margaret Reid)
Ayes………… 12
Noes………… 43
Majority……… 31

AYES
Allison, L.F.  Bourne, V.W. *  Greig, B.  Harris, L.  Murray, A.J.M.  Stott Despoja, N.
Bartlett, A.J.J.  Brown, B.J.  Harradine, B.  Lees, M.H.  Ridgeway, A.D.  Woodley, J.

NOES

* denotes teller

Question so resolved in the negative.

NOTICES
Postponement
Motion (by Senator Carr, at the request of Senator Faulkner)—by leave—agreed to:
That general business notice of motion no. 871 standing in the name of Senator Faulkner for today, relating to the benchmark for pension levels, be postponed till the next day of sitting.

PARLIAMENTARY ZONE
Approval of Works
Motion (by Senator Ian Campbell, at the request of Senator Tambling) agreed to:
That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone,
being the construction of Reconciliation Place in
the Parliamentary Zone.

Senator BROWN (Tasmania) (9.52 a.m.)—by leave—Madam President, this is a
monument to reconciliation, and I do not
know of such a monument being built before
the event has actually taken place.

ENVIRONMENTAL LEGISLATION
AMENDMENT BILL (No. 2) 2001

First Reading

Motion (by Senator Ian Campbell) agreed to:

That the following bill be introduced: A Bill
for an Act to amend legislation relating to the
environment, and for related purposes.

Motion (by Senator Ian Campbell) agreed to:

That the 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) (9.52 a.m.)—I table
the explanatory memorandum and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The principal purpose of the Environmental Leg-
islation Amendment Bill (No. 2) 2001 is to make
amendments to the Hazardous Waste (Regulation
of Exports and Imports) Act 1989. The Bill also
contains amendments of a minor machinery na-
ture to other portfolio legislation including the
Fuel Quality Standards Act 2000, the Environ-
ment Protection (Sea Dumping) Act 1981, and the
Ozone Protection Act 1989. These amendments
are of a technical nature, and are intended to rec-
tify a small number of operational anomalies and
unintended consequences of drafting.

The main purpose of the amendments to the Haz-
ardous Waste (Regulation of Exports and Im-
ports) Act 1989 is to ensure that Australian com-
panies cannot avoid the Act’s requirements by
selling hazardous wastes to foreign companies.

In September 1997, an Australian company sold
hazardous waste to a foreign company and the
foreign company then arranged for the waste to
be exported. This breached Australia’s obligation
under the Basel Convention not to allow the ex-
port of hazardous waste to another country unless
that country has given its consent. As required by
the Basel Convention, the Commonwealth was
obliged to bring the wastes back and dispose of
them in Australia.

The police investigation into the export led to the
conclusion that the foreign company was in
breach of the Act but was beyond the reach of
Australian Courts.

The Commonwealth was unable to prosecute the
Australian company because the sale of the waste
was not an offence under the Act. These amend-
ments are intended to prevent this situation aris-
ing again, by making it an offence to sell hazard-
ous waste to a foreign company unless an export
permit is in force.

Other amendments to the Act will allow ministe-
rial orders to be made in a more effective and
appropriate manner in incidents of this kind.
They will also deal with administrative matters
such as clarifying the definition of hazardous
wastes.

Ordered that further consideration of the
second reading of this bill be adjourned until
the first day of the 2001 spring sittings, in
accordance with standing order 111.

BUSINESS

Consideration of Legislation

Motion (by Senator Ian Campbell) agreed to:

That the provisions of paragraphs (5) to (7) of
standing order 111 not apply to the Broadcasting
Legislation Amendment Bill (No. 2) 2001, allowing it to be considered during this period of
sittings.

Senator Brown—I would like to record
my no vote on that.

ENVIRONMENT: SHARK FISHING

Senator GREIG (Western Australia) (9.53 a.m.)—I ask that general business no-
tice of motion No. 881, standing in my name
for today and relating to shark finning and
unsustainable shark fishing, be taken as a
formal motion.

Leave not granted.

Suspension of Standing Orders

Senator GREIG (Western Australia) (9.54 a.m.)—Pursuant to contingent notice
and at the request of the Leader of the Aus-
tralian Democrats, Senator Stott Despoja, I move:

That so much of the standing orders be sus- pended as would prevent Senator Stott Despoja moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion no. 881.

In doing so, I—

Senator Hill—Madam President, on a point of order: I want to say that we agree to the suspension. From our point of view, there is no need to debate the suspension.

Question resolved in the affirmative.

Procedural Motion

Motion (by Senator Greig, at the request of Senator Stott Despoja) agreed to:

That general business notice of motion no. 881 may be moved immediately and have precedence over all other business today till determined.

Motion

Senator GREIG (Western Australia) (9.56 a.m.)—I move:

That the Senate—

(a) notes that:

(i) whilst Australia has banned the practice of shark finning in many Australian states, it is still permitted in the Northern Territory, Tasmania, Queensland and South Australia, and

(ii) Australia is a world leader in shark management, but despite an interim ban on shark finning in tuna fisheries, there are still a number of shark species targeted for their highly-valued fin, and at risk in Australia from over-fishing and bycatch; and

(b) calls on the Government to make the ban permanent, and for the Australian federal, state and territory governments to cooperate in the development of a strong national plan of action that will end unsustainable shark finning and high levels of shark catching in Australian fisheries.

In doing so, I would argue that it deserves the support of the Senate on the basis that the practice of shark finning is abhorrent. It is repugnant, and I think most Australians find it as abhorrent as practices such as removing the paws from bears. Additionally, while Australia has a reasonably commendable record in the management of shark fisheries, there is no question to my mind that there is some doubt over the sustainability of some species. While I acknowledge that there is an interim ban on shark fishing in some waters—namely, in tuna fishing areas—I think the time for procrastination on this issue is long overdue and we should bring an end to the interim ban and implement a permanent ban.

Australia has one of the largest and most diverse populations of sharks in the world. This motion notes that, while Australia has banned the practice of shark finning in many states, it is still happening in the Northern Territory, Tasmania, Queensland and South Australia. Today we call upon both the government and the opposition to agree to make that ban permanent and upon the Australian federal and state and territory governments to cooperate in the development of a strong national plan of action that will end unsustainable shark finning and high levels of shark fishing in Australian fisheries.

I note, for example, that most of these fins are appearing in shark fin soup. It is one of the dishes of the Chinese elite, but it has now become very common and a much preferred dish within some Asian communities. As a consequence, shark fins are much more highly sought after. There was a time when fins were taken only from the carcasses of sharks caught for their meat. That is no longer the case. They are now being caught specifically and deliberately for their fins only. Sharks are at the top of the food chain in the ocean world, and it is estimated that some shark populations have declined by an alarming 90 per cent through overfishing. They are highly vulnerable to exploitation due to their longevity, late maturity and slow reproduction rates.

Sharks often equate to about 50 per cent of unintended by-catch—that is, fish not necessarily intended to be caught when fisherfolk are catching other forms of marine life. Where some turtle excluder devices, TEDs, have become mandatory, there have
been significant drops in the number of sharks caught, but smaller sharks are still being caught in prawn fishing nets. In the past, it was a common practice to utilise the fins and teeth of sharks caught as by-catch rather than live sharks so that there was no waste of shark carcasses but, with the ever increasing value of shark fins, sharks have become a targeted species in their own right. I would argue it is the Australian government’s duty to take an active and strong stance on this issue, and I call upon the Senate to support the motion.

Senator FORSHAW (New South Wales) (9.59 a.m.)—I move the amendment that has been circulated:

Omit subparagraph (a)(ii) and paragraph (b), substitute:

(ii) that Australia is a world leader in shark management, but despite an interim ban on shark finning in tuna fisheries, there are still a number of shark species, targeted for its highly valued fin, and that may be at risk in Australia from over-fishing and bycatch; and

(b) calls on the Government to cooperate with industry in the development of a strong National Plan of Action that will end unsustainable shark fishing.

The amendment is self-explanatory. It amends the motion by removing the call to make the ban permanent, because we believe that move is premature at this stage. We understand that the industry in this country is developing a code of conduct, addressing concerns such as those raised by Senator Greig. We believe the appropriate approach at this stage is to support our amendment, which calls on the government—and we understand the government agree with this—to cooperate with industry in developing a strong national plan of action that will end unsustainable shark fishing.

Senator GREIG (Western Australia) (10.00 a.m.)—That is the position of the government. If the opposition had not moved this amendment, I would have moved an amendment in similar terms. It is not inconsistent with the sentiment of the Australian Democrats’ argument. The difference rather refers to the methodology to get to the same objective. This government has put in place an interim ban in relation to tuna. In the interim, our objective is to negotiate what is described in this amendment as a strong national plan of action that will end unsustainable shark fishing. I therefore support the amendment.

Senator BROWN (Tasmania) (10.01 a.m.)—Here we have the government and the opposition again calling for a plan of inaction, not a plan of action. That is what this amendment is about. Senator Greig’s motion says, ‘Let’s make the ban permanent.’ If good evidence comes forward that there is an alternative then let it be brought forward and we can change that. But this is simply a move to prevent any action being taken on this wasteful and destructive industry, as described by Senator Greig. So I oppose the amendment and I support the motion.

Senator GREIG (Western Australia) (10.02 a.m.)—I would oppose the amendment, specifically for the reason that Senator Brown articulated—that is, it is advocating a process of inaction. The amendment would seek to do two things. It changes the wording of the first part of my motion, introducing the word ‘may’, suggesting that there may be some risk to Australia from overfishing and by-catch. For goodness sake, we know well enough already that there is a strong risk, and to now suggest that there may be a risk is, at best, disingenuous.

I take the strongest objection to the notion in point 3 of the amendment, calling on the government to cooperate with industry in the development of a strong national plan of action that will end unsustainable shark fishing. There is no notion or suggestion that the ban should be introduced and maintained, and that is what I believe most strongly should happen. I note with some bemusement and confusion that, while Senator Hill began his discussion in the debate on this issue by saying that if Labor had not moved this amendment then he and the government would have, that certainly has not been the government’s position over the last approximately five weeks while my motion has been on the Notice Paper. Until yesterday, my motion had unqualified government support.
Thursday, 28 June 2001

Question put:

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

The Senate divided. [10.07 a.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes........... 47

Noes...........  9

Majority........ 38

AYES

Abetz, E. Alston, R.K.R.
Bishop, T.M. Boswell, R.L.D.
Brandis, G.H. Buckland, G.
Calvert, P.H. * Campbell, G.
Carr, K.J. Chapman, H.G.P.
Collins, J.M.A. Cooman, H.L.
Cooney, B.C. Crane, A.W.
Crossin, P.M. Crowley, R.A.
Denman, K.J. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. Forshaw, M.G.
Gibbs, B. Gibson, B.F.
Harris, L. Herron, J.J.
Hill, R.M. Hogg, J.J.
Hutchins, S.P. Kemp, C.R.
Knowles, S.C. Ludwig, J.W.
Macdonald, J.A.L. Mackay, J.J.
Mason, B.J. McGauran, J.J.
McKierman, J.P. McLucas, J.E.
Murphy, S.M. Newman, J.M.
O’Brien, K.W.K. Reid, M.E.
Sherry, N.J. Tambling, G.E.
Tchen, T. Troeth, J.M.
Watson, J.O.W.

NOES

Allison, L.F. Bartlett, A.J.J.
Bourne, V.W. * Brown, B.I.
Greig, B. Lees, M.H.
Murray, A.J.M. Ridgeway, A.D.
Woodley, J.

* denotes teller

Question so resolved in the affirmative.

Original question, as amended, resolved in the affirmative.

COMMITTEES

Intelligence Services Committee

Appointment

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

That the Senate concurs with the resolution of the House of Representatives contained in message No. 739 relating to the appointment of the Joint Select Committee on the Intelligence Services.

Senator Brown—Obviously, the opposition and government have been talking about this matter, but I think the haste with which this is being put through is not proper, and the matter should have been properly debated.

Selection of Bills Committee

Report

Debate resumed, on motion by Senator Calvert:

That the order of the Senate of 20 June 2001 adopting Selection of Bills Committee report no. 8 of 2001, be varied to provide that the provisions of the Space Activities Amendment (Bilateral Agreement) Bill 2001 not be referred to the Economics Legislation Committee.

Question resolved in the affirmative.

LEONIE GREEN AND ASSOCIATES: INVESTIGATION

Motion (by Senator Jacinta Collins) agreed to:

That there be laid on the table, by the Minister representing the Minister for Employment Services, no later than immediately after motions to take note of answers on 28 June 2001, a copy of the following documents:

(a) a full copy of the interim report of the investigation undertaken by the Department of Employment, Workplace Relations and Small Business into allegations of impropriety by Leonie Green and Associates, as raised in the Employment, Workplace Relations, Small Business and Education Committee’s hearing of 4 June 2001, which the Minister for Employment Services has undertaken to provide to the Parliament;

(b) all documents provided to the Minister for Employment Services on his visit to the offices of Leonie Green and Associates on 10 April 2001; and

(c) all notes, diary entries or file notes in relation to the visit by the Minister for Employment Services to the offices of Leonie Green and Associates on 10 April 2001.
NUCLEAR WEAPONS: MURUROA ATOLL
Motion (by Senator Allison) agreed to:
That the Senate—
(a) notes that:
(i) 2 July 2001 is the 35th anniversary of French nuclear weapons testing at the Mururoa Atoll, and
(ii) 5 years ago all members and senators from all parties joined in condemning the French tests at Mururoa; and
(b) urges the Government to:
(i) renew its opposition to nuclear weapons testing and proliferation in the international arena, and
(ii) exercise the greatest diligence in repairing the damage to land and people caused by exposure to the British nuclear weapons testing in Australia in the 1950’s.

COMMITTEES
Publications Committee
Report
Senator CAL VERT (Tasmania) (10.14 a.m.)—On behalf of Senator Lightfoot, I present the 26th report of the Standing Committee on Publications.
Ordered that the report be adopted.

INNOVATION AND EDUCATION LEGISLATION AMENDMENT BILL 2001
Report of Employment, Workplace Relations, Small Business and Education Legislation Committee
Senator CAL VERT (Tasmania) (10.14 a.m.)—On behalf of Senator Tierney and the Employment, Workplace Relations, Small Business and Education Legislation Committee, I present the report of the committee on the provisions of the Innovation and Education Legislation Amendment Bill 2001, together with the Hansard record of the committee’s proceedings, and documents received by the committee.
Ordered that the report be printed.

BUDGET 2001-02
Consideration by Legislation Committees
Senator CAL VERT (Tasmania) (10.15 a.m.)—On behalf of Senator Crane and the Rural and Regional Affairs and Transport Legislation Committee, I present the report of the committee in respect of the 2001-02 budget estimates, together with the Hansard record of the committee’s proceedings.
Ordered that the report be printed.

Senator CAL VERT—I move:
That the Senate take note of the report.
I seek leave to continue my remarks later.
Leave granted; debate adjourned.

COMMITTEES
Regulations and Ordinances Committee
Report
Senator COONAN (New South Wales) (10.16 a.m.)—I present the report of the Standing Committee on Regulations and Ordinances on ministerial correspondence relating to the scrutiny of delegated legislation. I move:
That the Senate take note of the document.

Senators will be aware that the Regulations and Ordinances Committee has been reviewing its practices and procedures with the objectives of increasing awareness of its work, making delegated legislation more accessible and adopting procedures that are open and transparent. In relation to this third objective, the committee agreed in March this year, and informed all ministers and parliamentary secretaries, that it will table in the Senate correspondence with ministers relating to the scrutiny of delegated legislation. For 69 years, this has not been the usual practice of the committee. However, it should be recognised that most ministerial responses to concerns raised by the committee are informative and instructive, providing detailed advice on committee concerns. The committee is of the view that these responses should be placed on the public record unless a request is made and the committee agrees that the response should be treated confidentially. Today, I have tabled the first volume of this correspondence.

Senators will be aware that correspondence relating to instruments on which the committee gives a notice of motion to disallow is incorporated in Hansard. The committee intends to continue this practice. I thank the Senate.
Thursday, 28 June 2001

Question resolved in the affirmative.

Senators’ Interests Committee

Report

Senator DENMAN (Tasmania) (10.17 a.m.)—In accordance with the Senate resolution of 17 March 1994 on the declaration of senators’ interests, I present declarations of interests and notifications of alterations of interests in the Register of Senators’ Interests lodged between 5 December 2000 and 25 June 2001.

Finance and Public Administration

References Committee

Report

Senator GEORGE CAMPBELL (New South Wales) (10.18 a.m.)—I present the report of the Finance and Public Administration References Committee on the inquiry into the government’s information technology outsourcing initiative, entitled Accountability issues: two case studies.

Ordered that the report be printed.

Senator GEORGE CAMPBELL—I move:

That the Senate take note of the report.

On 29 November 2000, the Senate referred the matter of the government’s information technology outsourcing initiative to the Finance and Public Administration References Committee. The committee tabled an interim report last April which detailed a number of instances where it had experienced difficulties in obtaining relevant documents.

The committee continues to experience difficulties in obtaining full, clear and accurate information on matters associated with the government’s IT outsourcing initiative. In light of these continuing problems, the committee agreed to produce a second report that further underlines the difficulties it has had, and continues to have, in gaining access to material it considers necessary to fulfil its reporting obligations to the parliament. This report comprises two case studies that highlight these problems.

One of the first significant obstacles to the inquiry started with a simple request from the committee for access to the submissions to the Humphry review. Mr Richard Humphry informed the committee at the first hearing on 7 February this year that all submissions received by the review had been returned to submitters and that no copies had been taken of the originals for retention as records. Based on legal advice, Mr Humphry was under the impression that submissions did not form part of the Commonwealth’s records and therefore were not covered by the Archives Act and that they remained the property of those who had prepared them. At this stage, however, the committee assumed that submissions made to a Commonwealth funded review would be Commonwealth records so it sought information on the status of the submissions. The committee wanted to satisfy itself that indeed Mr Humphry was correct in assuming that the submissions should be returned to their authors.

Since pursuing this line of inquiry, the committee has received nothing but conflicting and broken evidence about the submissions. After all the questioning and probing, the committee believes that it still has not got a full and accurate account of the matter. Apparently, Mr Humphry and his secretariat of DOFA staff sought legal advice on a number of occasions to establish the status of the submissions. The initial legal opinion upon which Mr Humphry acted suggested that the submissions were not Commonwealth records because they would be regarded as owned by the persons who prepared them. In seeking three pieces of legal advice on this matter, however, it would appear that none provided key documents, such as Mr Humphry’s contract or letter of acceptance, to those giving the advice.

Over a period of three months, the committee tried to establish exactly what documents formed the basis for the legal opinion that the submissions were not Commonwealth records. Eventually, DOFA provided the committee with a copy of Mr Humphry’s letter of acceptance. It seems as though this copy had gone missing in the secretariat and in DOFA for a period of six months. An important provision in this letter states:

All material created, derived or provided to you for the purpose of your review shall be and remain the property of the Commonwealth.

On obtaining this letter, which contains this very clear statement on the status of the...
submissions, the committee sought further clarification on who actually sought the legal advice, who had access to information about the terms of Mr Humphry’s appointment and whether the letter of acceptance was taken into consideration when formulating the advice.

In essence, the committee was seeking information that would reconcile the terms of Mr Humphry’s appointment with the disposal of the submissions. But despite repeated attempts, the committee still cannot obtain a straight answer from the department. The committee therefore calls on the Department of Finance and Administration to provide all the relevant information by Friday, 13 July 2001 so that this matter can be settled once and for all.

The second part of the report looks at the Health Group tendering process. Again, the committee found itself thwarted in its attempts to piece together an accurate picture of this process, particularly the events surrounding an unauthorised disclosure and the receipt of a late tender. The interim report detailed the sequence of events which eventually led to two Senate orders for the production of documents, one passed on 26 March and the other on 3 April 2001. The evaluation reports for the Health Group were among documents included in the order. Although the documents were provided to the committee, they had substantial sections blanked out, which meant they were of limited value to the committee.

By this time, however, the committee had become aware of an unauthorised disclosure of information during the tendering process for the Health Group and believed that access to the evaluation reports would be necessary for the committee to effectively conduct its inquiry. On 24 May, under standing order 25(15) the committee ordered OASITO to provide the full and complete evaluation reports for the Health Group. But on the direction of the Minister for Finance and Administration, it provided the committee with a set of incomplete documents identical to those already provided under the Senate’s order for the production of documents.

Despite the minister’s refusal to produce the requested documents in full, the committee, because of the utmost importance of this matter, believed that it should persist with its request for the evaluation reports without deletions. The committee did not ask for these documents lightly and believes that this issue goes to the very heart of government accountability. It carefully considered the government’s obligation to protect confidentiality with the committee’s responsibility to scrutinise government activities. After weighing up the merits of both arguments the committee was convinced that the public interest would be best served by clarifying what happened during the tendering process.

Accordingly, the committee wrote to the minister on 8 June outlining its reasons for the request. It explained that during the course of inquiry serious questions had been raised about the integrity of the Health Group tendering process which it had been unable to resolve. It explained further that the information contained in the evaluation reports could be fundamental to its investigation. The committee stated clearly that it was aware of the need to protect the confidentiality of this material, that it would receive the documents in camera and that it had no intention to release information that would disadvantage the tenderers. On 15 June the minister advised the committee that he was awaiting further advice and would respond as soon as he was in a position to do so. More than one month has passed since the order was issued.

The committee reports to the Senate the minister’s failure to comply with its order to produce the evaluation reports for the Health Group tender process. However, the committee has taken a decision not to pursue the documents through the Senate due to the extreme sensitivity of some of the information they contain. It is hoping that the minister’s last letter informing the committee that he is seeking further advice will result in some effort being made to meet the committee’s needs.

The report also deals with the irregularities that occurred during the tendering process. On 28 July 2000 one of the three tenderers received a disk which contained information relating to the other two bidders. Mr Smith, CEO of OASITO, has acknowledged
that this unauthorised disclosure of information was a ‘very serious issue’. The committee shares his view but became even more concerned when it learned that the tenderer that had received the unauthorised information had failed to submit its bid by the closing time for tenders and had been accepted as a late tender. The committee wanted to clarify the events surrounding these two irregularities and to establish whether they had been managed properly. The committee believed that it was important to establish whether the integrity of the process had been compromised.

Again the committee encountered difficulties in accessing documents relevant to this matter. Not only has it been denied access to the legal advice obtained by OASITO and to the complete correspondence associated with the probity auditor’s advice about the unauthorised disclosure but in evidence before the committee OASITO officers have had trouble recalling accurately and in detail the events that took place on the day the tenders closed.

The committee is concerned that the limited or incomplete documentation made available to it and the fragmented and sometimes vague information given by officers from both the Department of Finance and Administration and OASITO during public hearings may mislead it and thus undermine the accountability process. The committee has no way of knowing whether it is in possession of all the necessary facts. It has therefore agreed to, and has requested, the Auditor-General to consider examining these matters.

Based on its experiences so far in this inquiry, the committee believes that it has not had adequate access to key documents and has not received clear, full and accurate information during its hearings that would enable it to come to an informed conclusion on these numerous important issues. The committee is now preparing a final report to present to the Senate later this year. On the difficult matters such as obtaining access to material including evaluation reports and related legal and probity advice, the committee hopes that the minister and his departments will endeavour to meet the committee’s needs. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

CORPORATE CODE OF CONDUCT BILL 2000

Report of Corporations and Securities Committee

Senator CHAPMAN (South Australia) (10.28 a.m.)—I present the report of the Parliamentary Joint Committee on Corporations and Securities on the provisions of the Corporate Code of Conduct Bill 2000, together with the Hansard record of the committee’s proceedings and documents presented to the committee. I move:

That the Senate take note of the report.

In moving the motion, I briefly state that, while the committee in no way endorses inappropriate behaviour on the part of Australian corporations, the evidence before the committee in relation to alleged inappropriate corporate behaviour invariably concerned only a couple of incidents and there was no evidence of systemic failure. Therefore, the committee concludes that there is no demonstrated need for the bill and, indeed, the bill could well do more harm than good. On that basis, we have recommended that the bill not be passed. I thank my committee staff, David Creed and his staff, for their work on this inquiry and in relation to our report on the bill, and I seek leave to incorporate my tabling statement.

Leave granted.

The tabling statement read as follows—

On 6 September 2000 Senator Vicki Bourne introduced the Corporate Code of Conduct Bill 2000 into the Senate. On 5 October 2000 the Senate referred the provisions of the Bill to the Parliamentary Joint Statutory Committee on Corporations and Securities for inquiry and report by 31 March 2001. The Committee resolved that the reporting date be extended so that the Committee could have additional public hearings and thus as many persons as possible would have the opportunity of testifying before the Committee. The Senate agreed to this course of action, and therefore it is today that I am tabling the Committee’s report.

The Committee received 43 submissions in relation to the inquiry, many from major stakeholders.
Industry bodies that made submissions included the Australian Chamber of Commerce and Industry, the Chamber of Minerals and Energy of Western Australia and the Victorian Chamber of Mines. Individual companies, such as BHP Limited, also made submissions. Submitters, whose primary concern was human rights, included Amnesty International Australia, the FairWear Campaign, the Minerals Policy Institute and World Vision Australia. Submitters whose focus was primarily on the rights of employees included the Australian Council of Trade Unions.

In addition to these submissions, submissions were also received from other key organisations and individuals. The Committee is very grateful to those who took the time and trouble to make very detailed and helpful submissions. The Committee, without detracting from other submissions, endorses a comment made by Senator Murray during the public hearings on the Bill, to the effect that the submissions from the Australian Chamber of Commerce and Industry, and Community Aid Abroad were of particular assistance to the Committee because they contained “detailed commentary” on shortcomings in the Bill.

The Committee also endorses Senator Murray’s statement regarding the usefulness of the “positive” criticisms of a submitter such as Mr Sean Cooney. Positive criticisms are always helpful in devising ways to remedy deficiencies in proposed legislation.

The Committee held three day of public hearings. Forty individuals representing a wide variety of groups and organisations appeared before the Committee during these hearings. The Committee is very grateful to these persons who so generously made themselves available to testify before the Committee. These witnesses represented a wide variety of views and I therefore believe that the hearings were not only very comprehensive, but they also presented to the Committee a range of views on the Bill which the Committee found most useful in drafting its report.

The first issue on which the Report makes a conclusion is the 100 employee threshold. The Bill would apply only to “Australian corporations or related corporations which employ more than 100 persons in a foreign country”. Several submitters and witnesses suggested lowering this 100 employee threshold, thus increasing the number of corporate entities that would be subject to regulation by the Bill.

The Committee disagrees with those who suggested lowering the employee threshold. Indeed the Committee found that even the 100 employee threshold would result in so many companies being subject to the provisions of the Bill that, given our scepticism about the benefits of the Bill, it would constitute an unacceptable “burden” for regulators. The Committee therefore concludes that the regulatory regime the Bill would create would be unworkable.

With regard to the Bill’s requirement that corporations “take all reasonable measures to prevent any serious threat to public health”, the Committee noted that the Bill does not apply to all Australian corporations operating overseas, but only to those with more than 100 employees. The Committee finds it unacceptable that any legislation should imply that only certain corporations should refrain from threatening public health.

Moreover, the Committee believes that this part of the Bill is unnecessary as Common Law rights relating to negligence would already allow foreign litigants in most circumstances to sue in Australian courts for damage suffered from negligent behaviour. The Committee considers it unwise to interfere with these Common Law rights.

The Bill, as has been said, would regulate Australian corporations with over 100 employees overseas. It would also seek to regulate a holding company of such a corporation even though such a holding company may not be an Australian corporate entity. The Bill would therefore seek to regulate, for example, as one witness noted, America’s General Motors. This would simply be unworkable.

The Bill would impose “environmental, employment, health and safety and human rights standards” on Australian corporations with 100 employees overseas. The Committee notes that the Parliament has enacted legislation with extraterritorial application but the Committee also notes that such legislation was very focused while the current Bill is general and extremely broad.

The Committee concludes that the Bill is so generic as to be vague to the point of being unenforceable. One example is the requirement that corporations provide their employees with, and I quote from subclause 8(2) of the Bill, “satisfactory sanitary conditions”. The Committee is aware that regulations may be made under clause 18 of the Bill, which may define what is meant by “satisfactory”. Nevertheless, the Committee finds itself unable to recommend a Bill, the provisions of which are so vague as to cause considerable uncertainty to industry.

The Bill would require an Australian corporation to pay its workers a “living wage”. The difficulties in determining what constitutes a “living wage” in all the countries in which an Australian may operate would involve that corporation in
considerable expense and there would be no certainty, despite a corporation’s best efforts, that, in the event of litigation, an Australian court would find that it had been paying its workers a “living wage”. Australian corporations would therefore always operate under the threat of litigation.

The Committee therefore concludes that the Bill’s requirement that a corporation determine a “living wage” in all of the jurisdictions in which it operates is unreasonable and impractical.

The Bill, at clause 10, would require Australian corporations operating overseas to avoid discriminating in its employment practices on the basis of race, colour, sex, sexuality, religion, political opinion, national extraction or social origin.

The Committee in no way endorses discrimination, but clearly this section of the Bill could force Australian corporations to choose between hiring persons belonging to organisations deemed illegal in the jurisdictions in which they operate, or else face litigation in Australian courts. The Committee finds itself unable to recommend a Bill that would force such an unenviable choice on Australian companies.

Clause 11 of the Bill requires Australian corporations to obey the tax laws of the jurisdictions in which they operate. The Committee in no way condones tax evasion. However, the Committee considers it inappropriate for the Australian Parliament to enact laws requiring Australian corporations to obey the laws of foreign jurisdictions.

Clause 12 of the Bill requires Australian corporations, producing goods and services overseas, to simultaneously satisfy both Australian health and safety standards, and the health and safety standards of the jurisdiction in which they operate. In practice, the standards of Australian and the foreign jurisdiction may be mutually exclusive and thus this section may be unworkable.

Subclause 13 of the Bill requires that Australian corporations operating overseas refrain from “misleading or deceptive” conduct. Considering the vast amount of litigation that a similar section in the Trade Practices Act 1974 (Cth) has inspired in Australia, the Committee is concerned that Australian courts may be swamped by corporations bringing actions against each other. The Committee is not convinced that such litigation would be productive.

With regard to the Bill’s reporting requirements, the Committee acknowledges that reporting may be an essential part of ensuring compliance with some laws. The Committee notes advice from the Australian Institute of Corporate Citizenship that reports produced by corporations should be publicised, since publicity “encourages continuous improvement”. The Committee concludes, however, that the reporting requirements required by the Bill would be both onerous and expensive.

The Committee concludes that the reporting requirements of the Bill are unwieldy to the point of being impossible to implement without significant costs being incurred by both corporations and the regulator. The Committee finds that any benefits to be derived from the reporting regime would not compensate for the loss suffered due to the imposition of associated costs.

The Bill would allow civil penalties to be imposed for non-compliance with the Bill. These penalties differ from those specified in the Environment Protection and Biodiversity Conservation Act 1999 (Cth), even where the offences are similar. The Committee is unable to discern any rationale for this and concludes that enacting the Bill would lead to unwarranted confusion in the corporate world.

Various submitters and witnesses stated that the status quo was unacceptable because it was tantamount to allowing Australian corporations overseas to degrade the environment and abuse the rights of foreign workers.

The Committee in no way endorses inappropriate behaviour on the part on Australian corporations. The Committee notes, however, that the evidence of inappropriate corporate behaviour that was presented to it almost invariably concerned the same couple of incidents. No evidence was presented of systemic failure and thus the Committee concludes that there is no demonstrated need for the current Bill. Indeed, the Committee concludes that enacting the current Bill may be seen abroad as a suggestion that the laws of other nations are deficient. Any such suggestion may harm Australia’s reputation.

The Committee therefore concludes that the Bill is not only largely superfluous from the viewpoint of protecting the environment and enhancing the conditions of foreign workers, but also has a very real potential for offending foreign nations. The Committee therefore recommends that the Bill not be passed because it is unnecessary and unworkable.

I commend the Report to all honourable Senators.

Senator MURRAY (Western Australia) (10.30 a.m.)—I have some brief remarks to make on this report. However, if the Senate so wished, I would seek to incorporate my remarks and save time.

Leave granted.

The speech read as follows—
Evidence gathered during the Committee’s inquiry into the Corporate Code of Conduct Bill 2000 indicated that there were both strong supporters and strong opponents of the Bill.

While some rejected the Bill outright others suggested improvements to the Bill.

This Bill was always going to be controversial because it introduces a concept that is not universally accepted as requiring legislation. In her second reading speech Senator Vicki Bourne referred to other instances of similar attempts to introduce such legislation, which while seen as inevitable by some, is still being developed. In that respect this Bill was novel and technical difficulties could be expected.

The inquiry into the Bill allowed valuable discussion of these issues.

The majority of the Committee concluded that the Bill was unwarranted and unworkable. I agree that amendments are needed, however I reject the notion of abandoning the Bill altogether.

This Bill is about balancing the drive by Australian Corporations to support globalisation in other economic areas such as copyright laws, capital movements and international tax harmonisation with human rights, environmental safeguards and other measures.

The majority of the Committee also found that this Bill may be perceived as being paternalistic or arrogant, certainly many presented that point of view in evidence, however I disagree with this judgement as a sweeping generalisation and predating a uniform viewpoint by foreigners.

As is the case here in Australia where opinions vary widely, foreigners have as many differing opinions, and many can be expected to view the Bill positively based on its pursuit of universal values.

Indeed evidence from PNG indicated that some Australian companies are perceived to operate with double standards. They employ techniques overseas that they would never use in Australia.

Ms Koma from the NGO Environment Watch Group in PNG told the committee that “It would be very good if a corporate code of conduct was encouraged so that Australian companies working in Papua New Guinea were able to do what they practice overseas in their own country if our legislation is weaker than theirs.”

Greater clarity is required to define the scope of the Bill to ensure that only Australian companies are affected. There are some instances where changes are required to ensure consistency with existing domestic requirements. There are also some definitional problems where the effect could have unforeseen impacts.

However the overall aim of the Bill should not be lost in technical difficulties. This legislation is setting a standard of governance that all Australian companies should be expected to incorporate into their activities. The presence of drafting problems does not detract from its value.

As my minority report sets out in detail I disagree with the conclusion of the majority of the Committee and I think there is a demonstrated need for this Bill.

Senator MURRAY—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COPYRIGHT AMENDMENT (PARALLEL IMPORTATION) BILL 2001
PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT BILL 2001
First Reading

Bills received from the House of Representatives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.31 a.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

That these bills may proceed without formalities, may be taken together and be now read a first time.

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.32 a.m.)—I move:

That these bills be now read a second time.

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

Leave granted.
The speeches read as follows—

PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT BILL 2001

This Bill amends the Parliamentary Contributory Superannuation Act 1948 which provides superannuation pensions for former Senators and Members.

The Prime Minister promised changes to the parliamentary superannuation scheme to bring it more into line with community standards. The Bill proposes these changes and they are being put into effect before the next election.

This Bill will defer the payment of parliamentary pensions for new MPs who join the Parliament at or after the next general election until they reach age 55, become invalids or die.

In doing this, the Bill imposes a higher standard of preservation on MPs than applies to other Australians who receive pensions. However, it will closely align the superannuation for MPs with the majority of Australians who receive lump sum benefits, which must be preserved until at least age 55 in most circumstances.

MPs whose pensions are deferred will receive no superannuation payments between leaving Parliament and age 55. This loss of superannuation will mean that the cost to the taxpayer of their benefits will reduce.

There will be provision for the payment of part of the deferred benefit in circumstances where the retired MP finds themselves in financial hardship.

COPYRIGHT AMENDMENT (PARALLEL IMPORTATION) BILL 2001

The Copyright Amendment (Parallel Importation) Bill 2001 is another demonstration of the Coalition Government’s willingness to act in the best interests of consumers, the education sector and business.

In 1998 the Copyright Act was amended to allow the lawful parallel importation and sale of sound recordings (CDs). There has been strong consumer support for this move as it has resulted in lower prices, particularly for top 40 CDs.

This Bill will extend the application of that policy to key sectors of the information economy, and will enhance competition in price, availability and choice.

Australia is a net importer of copyright material. It is therefore in Australia’s interest that printed material and software products are widely available on a competitive basis.

The term ‘parallel importation’ refers to the importation for commercial purposes of copyright material lawfully produced overseas, without the authority of the Australian rights holder. Local rights holders currently have the ability under the Copyright Act to limit access to the Australian market for commercial distribution of software products, books, periodical publications and printed music.

The price and availability of much of this material is therefore not subject to open and genuine competition.

And unlike some other products, there is not necessarily a natural substitute for these goods.

The central aim of the Bill is to improve access to a wide range of software products, books, periodical publications and printed music on a fair, competitive basis.

The Bill does this by allowing the importation for commercial purposes of non-pirate copyright goods without the permission of the Australian rightsholder.

The Bill offers the prospect of cheaper prices and increased availability of products for all Australians, but especially for small businesses, parents and the education sector.

Retailers, particularly large retailers, are likely to support the reforms due to the beneficial impact the changes will have for them in competing and potentially extracting better terms of trade.

Small businesses will benefit from increased access to popular applications for word processing, database management, accounting, desktop publishing and graphical analysis.

The Government has carefully assessed the impact of parallel importation provisions in the Copyright Act by examining each affected industry separately.

The introduction of this Bill follows a rigorous assessment of the potential impacts of parallel importation on the Australian book publishing and printing industry, and on the local software industry.

Despite claims to the contrary from the Labor Party and large multinational publishing and software interests, only the complete removal of copyright importation restrictions for printed material and software products will enable competitive access to these products, provide consumer benefit and promote the overall effective functioning of the economy.

Unlike the Labor party’s ‘Use it or Lose it’ policy, the Government’s policy is not about benefiting foreign rights holders by reimposing restrictions on CDs, and maintaining import restrictions and
monopoly distributions on books, software, computer games at the expense of Australian businesses and consumers.

As with the CD reforms, no doubt we will see spirited resistance to this Bill from opponents of liberalisation.

This time around, however we have the benefit of experience to date, as well as developments in foreign markets, such as New Zealand, to address many of the concerns and debunk many of the claims.

Many argued in 1998 that the relaxation of parallel importation restrictions for sound recordings would devastate the Australian music industry.

Dire predictions made during the CD debate that 50,000 jobs would be lost, and that the Australian record industry would have to close up shop have proved groundless.

The industry is in good shape and no evidence of job losses has materialised.

Indeed the recording industry has grown since the 1998 reforms with recent reports of around 2.9% growth in 1999 alone.

In the Australian Record Industry Association End of Year charts in 1997 (prior to the Government’s reforms) there were 23 Australian albums in the top 100 albums sold; in 2000, by contrast, there were 28 Australian albums in the end of year top 100.

The ARIA singles charts tell a similar story: in 1997, there were 14 Australian singles in the end of year top 100; by 2000, that number had climbed to 19.

These figures hardly paint a picture of an industry in decline, where the production of local talent has been stymied or destroyed.

In fact, the Australian music industry appears to be in better shape now than prior to parallel importation.

The parallel importation restrictions in the Copyright Act are of course not the only factors that affect the retail price of products.

Nevertheless, in 1998, prior to parallel importation of music, CD prices were around $31.00 for new releases and rising.

In January this year, Big W and Target were selling top 30 CDs for around $21.43.

Clearly it is now possible for consumers to access top selling CDs that are over 30 percent cheaper than prior to parallel importation.

And this is despite the impact of the GST and unfavourable exchange rates relative to the US, a major source of popular music.

Claims were also made that piracy rates would soar as a result of the CD reforms, and no doubt similar claims will be made in relation to books and particularly software. Whilst copyright piracy is a serious and real problem in many countries it is primarily a problem in countries where the enforcement of intellectual property laws is weak, and there are large informal retail sectors.

By contrast, Australia provides a strong intellectual property regime backed by an effective court and general legal system, and has a very strong formal retail sector comprising large retailers, chains and independent outlets.

The Australian Institute of Criminology recently reported that since the 1998 amendments there is “little or no evidence of the increase in CD piracy predicted by opponents of liberalisation”.

Australia is also recognised by the International Intellectual Property Alliance as having one of the lowest piracy rates in the world.

Evidence on the impact of the CD reforms proves the Government’s position that this is not an attack on copyright as an appropriate means of compensating, rewarding and encouraging creators and owners.

Copyright owners will continue to be remunerated through their contractual arrangements regardless of where their product is published or manufactured, or how it is imported.

Books

Turning specifically to the reforms as they apply to books, a 1999 review by the Australian Competition and Consumer Commission found that for best selling paperback fiction, the price difference with the USA had exceeded 30% on average over the previous 4 years.

Five reports to Government have dealt with the book industry: those by the Copyright Law Review Committee (CLRC), the Prices Surveillance Authority, the Industry Commission (now the Productivity Commission), the ACCC, and most recently, the Intellectual Property and Competition Review Committee, or “Ergas Committee”.

The earliest report, by the CLRC, recommended a relaxation of some of the importation controls exercisable by copyright owners in relation to books.

All subsequent reports have recommended the complete removal of copyright owners’ control over book importation on the basis that current restrictions are inappropriate and their removal would deliver lower prices and a more efficient industry. Importantly, the majority in the Ergas Committee concluded that the removal of importation restrictions in the publishing industry was
unlikely to lead to any wider losses in the Australian economy.

To enable maximum community access to competitively priced products, the Bill provides that parallel importation is to encompass all major forms of printed material.

In accordance with the June 2000 recommendation of a majority of the Ergas Committee, the implementation of the printed material provisions in Schedule 2 to the Bill will be delayed for 12 months to allow for contractual adjustments.

This recognises the fact that the book industry is more reliant on contract than other copyright-based industries.

The Government is confident that the extra time will allow the industry to adjust effectively and positively to the changes.

The Government is well aware of concerns, particularly in the printing industry, that a change from the current law, to remove the so-called ‘30 day rule’, might reduce growth in the printing industry in areas such as Maryborough in Victoria and Netley in South Australia.

Under the 30 day rule the right to control importation of books is lost if the book is not published in Australia within 30 days of publication anywhere. However, such concerns are misplaced and largely unsubstantiated.

The Ergas Committee noted that it had not been provided with any evidence to substantiate claims in relation to the beneficial effects of keeping the 30/90 day rule restrictions. The Committee queried whether changes in the level of printing activity in Australia in recent years were due to the ‘30 day rule’ or to changes in competitiveness, including as a result of exchange rate movements. Further, the removal of restrictions should be seen within the context of special Commonwealth adjustment assistance through the Book Industry Assistance Plan (BIAP).

This program, which also provides assistance for indirect tax reform, will provide up to $240 million over 4 years, including up to $48 million specifically for the printing industry.

Software products

In January 1999 the Australian Consumers’ Association published the results of a survey of current retail prices of a range of overseas manufactured packaged software products across six countries. It found that while Australian household consumers and businesses were paying competitive prices for home/office crossover software like Microsoft Windows 98 and Word 97, this was not the case for cutting edge products, such as publishing products QuarkXPress and Adobe PageMill 3.0.

A report to Government by the ACCC showed that over the past ten years, Australian businesses have had to pay an average of 27% more for packaged business software than their US counterparts.

The Ergas Committee recognised that the benefits from these higher prices flow primarily to foreign rightsholders while the corresponding costs are borne in Australia, by Australian consumers and by industries – such as the domestic software industry – that use protected imports as inputs.

Of the top selling computer games analysed, Australian purchasers of popular PC computer games paid on average 33% more during 1998 than those in the US.

Other reports to Government dealing with the software industry have been made by the same bodies that considered the issue of book importation, namely, the Copyright Law Review Committee, the Prices Surveillance Authority, and the Ergas Committee.

To enable maximum community access to competitively priced products, all types of software products are included within the coverage of the Bill, whether used in business, education or the home, or in home computer games and pay-per-play video arcade machines.

Removing parallel importation restrictions will enable local distributors to choose suppliers on the basis of price, availability, service and reliability and to pass these benefits on to consumers.

The parallel importation of software will not interfere with the rights of copyright owners to be compensated according to their contracts. As the Ergas Committee indicated, “supporters of retaining restrictions assert that prices in Australia are as low as they are elsewhere, so there is no basis for opposing a change which will make it clearer and more certain that market forces are at work.”

The removal of these parallel importation restrictions is expected to reduce some prices and remove the potential for price discrimination against Australian consumers.

Coverage

Technology convergence allows different types of works and subject matter to be included on the same article.

Multimedia CD ROMs are one example.

By their very nature such products contain a mixture of copyright materials, and each may have a different status in relation to parallel importation.
In many cases, such materials are secondary to the product. However, some Australian rights holders have attempted to prevent parallel importation of sound recordings by relying on the copyright in material used to ‘enhance’ CDs.

Provisions in this Bill will close this loophole resulting from the CD reforms by allowing the parallel importation of these ‘secondary’ materials which will be defined as ‘accessories’. An accessory, in this limited context, includes any copyright work or subject matter other than ‘feature’ films irrespective of how it is incorporated into the product.

The Government has not fully assessed the impacts of allowing the full parallel importation of ‘cinematograph film’ on the Australian film and television industry. For this reason, feature films, as defined by the Bill, are excluded from this extended operation.

The Government considers that it would not be appropriate to alter the arrangements for imported film products without a cost benefit analysis specific to the industry, along with careful analysis of the likely effects on consumers.

The Bill therefore does not lift restrictions on the importation of that class of film that is the industry’s most economically significant product, namely entire movies intended for cinema release, film intended for broadcast on television in commercial half hour format or longer (for the mass market including free-to-air or pay television). Importation of the main products derived from these types of film, such as DVDs, will also remain restricted.

**Enforcement Provisions**

Allowing parallel importation does not mean that it will be legal to import pirate product.

On the contrary, this Bill gives very substantial procedural assistance to copyright owners in civil actions by shifting to the defendant the onus of establishing that a parallel imported copy is not an infringing copy.

In addition, where a criminal action is brought for copyright piracy, the penalties for infringement of copyright are severe: the maximum liability for importation and sale of pirate goods is $60,500 and/or imprisonment of five years for each offence, while the maximum liability for a corporation is $302,500.

Any infringing articles are also subject to forfeiture and destruction.

**Conclusion**

This Bill will remove an impediment to accessing competitively priced non-pirate printed material and software products.
• High Definition Television (HDTV) programming;
• the allocation of additional commercial television licences in underserved remote or regional markets; and
• anti-siphoning arrangements to facilitate the coverage of certain sporting events on pay television.

There are also some technical amendments to certain provisions relating to datacasting services. Currently the Broadcasting Services Act requires that any HDTV programming must be exactly the same as Standard Definition Television (SDTV) programming. There is no flexibility to allow some limited differences between HDTV and SDTV programs, as there is between SDTV and analog programs.

The bill will enable the Australian Broadcasting Authority (the ABA) to grant an exemption authorising broadcasters to transmit HDTV demonstration programs produced solely for the purpose of allowing the benefits of HDTV to be demonstrated on the HDTV version of a television service. Those programs can be up to 60 minutes in duration, and can be repeated. This amendment will enable HDTV demonstration material to be demonstrated during the day. Retailers can use this material to show consumers the benefits of HDTV receivers at point of purchase.

The exemption will be able to be provided for up to one year with the ability to apply for renewal. The ABA will be able to specify the period and the broadcasters to which the exemption applies and specify conditions, such as the hours in which the demonstration programs may be shown or the number of times the program can be repeated in a given period.

The bill will also allow broadcasters to provide different advertising in the HDTV version of a television service in the first two years of digital television broadcasting. This will provide time for broadcasters to make the necessary investment and put in place the necessary equipment to provide the same range of HDTV local advertising as they provide in SDTV.

These changes increase the flexibility of the digital television framework with respect to HDTV without undermining the integrity of the simulcast and HDTV quota rules.

Section 38B of the Broadcasting Services Act provides a mechanism for the incumbent broadcasters in licence areas where there are only two commercial services, to seek a licence to provide a third service in digital mode. The Act currently provides that the broadcasters may, within a specified period:
• jointly seek the licence;
• apply alone if the other declines to seek the licence; or
• in the absence of an agreement, bid for the licence at auction.

The current provisions require both broadcasters to indicate their intention in a joint statement to the ABA. If either broadcaster refuses to respond, the other is unable to proceed to allocation of the licence. This means that individual broadcasters are in a position to prevent the allocation of a licence for a third service in these underserved areas through non-participation in the joint election process for a third licence.

The bill amends the Act to ensure that a third licence can be allocated under section 38B, by enabling the existing licensees to apply either jointly or separately.

In addition, section 73A provides an exemption from the normal control provisions, which limit a broadcaster to owning only one licence in a licence area, where the broadcaster has been allocated a section 38B licence to provide a third digital service in the same licence area. However, in a limited number of cases involving overlapping licence areas, section 73A does not provide an exemption from the control provisions for all licensees.

The bill amends section 73A of the Act to ensure that an incumbent broadcaster allocated an additional licence under section 38B would not be in breach of the control provisions in these situations.

The bill also provides for the introduction of automatic 6 week de-listing of events under the anti-siphoning regime. The objective of the Parliament in establishing the anti-siphoning regime was to prevent subscription broadcasting licensees from acquiring the exclusive rights to broadcast important events that should be freely available to the public.

The Broadcasting Services Act does, however, give the Minister discretion to remove an event from the anti-siphoning list. The Minister is able to ‘de-list’ events where, for example, where free-to-air broadcasters have had an opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time.

In practice, events on the anti-siphoning list are unlikely to be de-listed until it can be demonstrated that free-to-air broadcasters have declined offers to obtain the rights. It follows that pay TV
operators cannot finalise their own program arrangements until the outcome of negotiations for free-to-air rights is known and the subsequent de-listing has been authorised. This can limit the ability of pay TV operators to schedule and promote forthcoming events.

Under the current anti-siphoning provisions, events are automatically de-listed one week after the event has been held. This ensures that pay TV operators may provide secondary coverage of listed events without restriction.

The Government’s public policy objective of making available certain major sporting events free to the general public would not be served by removal of the anti-siphoning provisions of the Act at this time. Currently, there are a total of 1.2 million subscribers to Australia’s major pay TV services. This compares with 6 million homes that are reached by free-to-air television.

However, there is scope for amendment to the existing anti-siphoning regime to assist pay TV operators to gain prompt access to broadcasting rights, where free-to-air broadcasters have had a reasonable opportunity to acquire rights. This is not intended to affect the availability of major sporting events to the general public.

The bill, therefore, provides for listed events to be automatically de-listed 6 weeks before commencement. Automatic de-listing 6 weeks before the event will maximise the time free-to-air broadcasters have to negotiate rights, while providing an adequate time prior to the event for subscription services to acquire and promote the event.

If free-to-air broadcasters oppose the de-listing of an event, and can successfully demonstrate to the Minister that they have not had a reasonable opportunity to acquire the free-to-air broadcasting rights before that date, the Minister may override the automatic de-listing by publishing a declaration that the event continues to be listed.

This bill provides for enhancements to the simulcast regime for HDTV in Australia in the light of experience, for improvements to the arrangements for the provision of a third commercial television service in currently underserved regional and remote areas, and for the introduction of more streamlined de-listing procedures under the anti-siphoning regime.

The Government remains committed to ensuring the transition from analog to digital broadcasting is as smooth as possible for viewers. This bill allows broadcasters sufficient scope to demonstrate the appeal of HDTV, and allows viewers to make informed choices about digital television products during the simulcast period.

The implementation of automatic de-listing of events 6 weeks before they are to occur will streamline the administration of the anti-siphoning regime. It directly addresses the problems identified by pay TV operators with the current de-listing scheme, while protecting access by free-to-air broadcasters to broadcasting rights for listed events and, thus, does not diminish opportunities for the public to enjoy free-to-air coverage of listed events.

Debate (on motion by Senator Ludwig) adjourned.

Motion (by Senator Ian Campbell) proposed:

That the resumption of the debate be made an order of the day for a later hour.

Senator BROWN (Tasmania) (10.33 a.m.)—I oppose the motion. I believe that this is quite important legislation. We should not be debating it later today. We should be debating it after further consideration and, on this occasion, that means when we return after the winter sittings. The bill has quite important ramifications. I want to look more carefully at them and I want them debated more carefully, including the provision about sporting events. I would like a list from the government of sporting events that it thinks should be able to go to pay TV and taken off the general screens and into the pay TV domain without the possibility of public discussion about that. I am concerned about that and that is why I raised the objection.

Question resolved in the affirmative.

BUSINESS

Hours of Meeting and Routine of Business

Motion (by Senator Ian Campbell) agreed to:

That government business notice of motion No. 3 standing in the name of Senator Ian Campbell for today, relating to the hours of meeting and routine of business, be postponed to a later hour.
INTERACTIVE GAMBLING BILL 2001
Second Reading

Debate resumed from 27 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

upon which Senator Mark Bishop had moved by way of an 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 safe-
guards 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”.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (10.35 a.m.)—I rise to conclude the second reading debate on a very important piece of legislation. With the Interactive Gambling Bill 2001, the government is taking a stand to prevent the escalation of the harmful effects of gambling on the Australian community. Australia is already a world leader in the problem gambling stakes and, of course, among the number of serious problem gamblers are many of the states of Australia. In 1999, the Productivity Commission found that there were some 290,000 problem gamblers in Australia with 130,000 classified as severe and the likelihood of the introduction of interactive services was regarded as constituting a quantum increase in accessibility.

Other statistics suggest that interactive gambling is the fastest growing web based business in the world. US investment firm Beare-Stern reports in March 2001 that the number of Internet gambling web sites has doubled in the past year from 600 to 700 sites operating last year, to 1,200 to 1,400 in March. This represents two new sites coming online every day. They also estimate that online gambling revenue could grow from $US1.5 billion to $US5 billion over the next two to three years. In fact, I have seen statistics that suggest that 4.5 million Americans have already gambled online and, on any day, over one million Americans already have the habit.

The government is very concerned about the potential for interactive gambling services to increase problem gambling in Australia. While it is a matter for individual countries to decide how they will approach interactive gambling, Australia’s status as one of the world’s leading problem gambling nations demands that we take decisive action to protect the most vulnerable in the community. It is fair to say that over recent weeks and months there has been enormous public discussion about the ramifications of the government’s approach and about precisely what constitutes serious forms of gambling, to what extent they are repetitive and addictive, and to what extent they will exacerbate social misery. We already know from the Productivity Commission that, on average, problem gamblers lose about $12,000 a year. Anyone who saw the 7.30 Report would have seen the devastating tale told by two homeless men who estimated that they had both lost hundreds of thousand of dollars from gambling activities, and they had lost their families as well. There is no doubt that we are looking at not just a quantum increase in accessibility but also a quantum increase in social misery.

We have made some modifications that have recognised that there are degrees of social seriousness in what can occur through interactive technology. Certainly, sports betting or wagering comes into the category of activities in which a lot of people might kid themselves that they have more skill than is demonstrated in the real world—nonetheless, we all live in hope. Many sporting activities do not fall into the mindlessly repetitive category. Similarly, one can draw a significant distinction between products like instant scratchies and keno type activities in which there is a very high turnover and in which you are able sometimes to win but, more often, lose a lot of money in a very short time. Accordingly, the government is prepared to draw those distinctions and to focus on the serious area of social misery, where there are very few redeeming features and where people are almost certain to lose their money. They might win in the short term—I suppose that everyone has had the experience of cracking a jackpot—but, if you stay around for a bit longer, you will normally give it all back. There is no doubt at all that the billions of dollars that are lost from that sort of activity are lost because of the proliferation of mindless and repetitive activity.

That highlights the deathly silence on the part of the Labor Party. We know that Mr Beazley has been soft on drugs. We know that he has not been willing to do anything about pornography and paedophilia on the
Internet. And now we have this extraordinary and callous indifference to what is a very serious social problem. In other words, we have weak leadership from the leader of the major opposition party in this country—a pusillanimous performance, one might say. It is because he is too lazy, because the IT nerds have rolled him in the caucus, because basically he does not bother, or because he is simply being opportunistic and he thinks that there might be a few votes out there from standing up for technology. But in the process he is totally ignoring the misery of ordinary Australian families.

I looked at what might be the most appropriate way of characterising Mr Beazley’s behaviour, and I agonised long and hard over whether it really constituted sophistry or casuistry. ‘Sophistry’ is the use of false arguments intended to deceive. When we hear Mr Beazley interviewed on this matter, he always avoids the central issue, which is: why on earth do you want to simply sit back and allow an electronic poker machine in every home and every lounge room in the country? He skates around all that and says, ‘There are inconsistencies, because you are not treating Australians the same way as you are treating the rest of the world,’ or, ‘You are drawing distinctions between this and that.’ But he always avoids the central issue: what redeeming features are there in allowing electronic gaming activities, given what we have seen from the enormous explosion of activity in poker machines in some of the states? The states are now very embarrassed by that and I hope that they start to do something about it, either through a uniform national code or through some of the proposals that they are talking about. But Mr Beazley uses these things as an excuse for not addressing the real issue.

The proper term is probably ‘casuistry’, because that involves resolving problems of conscience or duty with clever but false reasoning. In other words, Mr Beazley pretends that he is concerned. We get a bit of hand-wringing—‘Yeah, it’s a big social problem, but we are concerned about this, that and the other; we think that the states should do more harm minimisation; and we would like to see this, that and the other.’ We never see an alternative blueprint, let alone policy, because we do not get policy from the Labor Party. That is a classic example of dereliction of duty. People can talk about Mr Beazley being prolix, which is really just a euphemism for ‘waffle’. In many ways, the more appropriate term is ‘euphuisim’, which involves the use of high-flown language, in this case to disguise the policy vacuum—the simple refusal to tackle issues that are of concern to the Australian public.

Mr Beazley needs to understand that good government is about values and doing what you can to address serious social problems, not just finding cute technical, peripheral reasons why you will not address the main game. That is what the debate is about. Everyone in the chamber understands that things need to be done and that there may need to be compromises, but the central issue is: why on earth do you want to allow an explosion of social misery in the homes of ordinary Australians? That is the issue that the Labor Party has consistently ducked from the outset.

We acknowledge that the states and territories have been dragging the chain for a long time. They have not been able to produce a nationally accepted code for regulating online gambling. The AUS model promoted by the Northern Territory has not been endorsed by all states—in fact, we had great difficulty in even getting a copy of certain material—so it is necessary for the Commonwealth to provide strong leadership on the issue.

There have been a number of people on our side who have made very sensible contributions and refinements, and I pay tribute to Senator Tambling for his willingness to address this issue in a way that I think does achieve the central outcomes. We are not in the business of simply protecting people because of the pressure that is brought to bear; we are in the business of trying to identify what the social problems are and what governments can do about them. I would also say that people like Senator Boswell and Cameron Thompson, the member for Blair, have also been very active in taking a very close look at the difference between general lottery activities and things like scratch-its.
Whilst there might be a benefit to some from the decision to exempt those products from the exemption, the fact remains that there is a very significant qualitative difference.

The bill will make it an offence for gambling operators to provide their services to persons located in Australia, and fines of over $1 million a day will apply to bodies corporate. The bill will also establish a complaints scheme for interactive gambling services hosted offshore. Australians will be able to make complaints to the Broadcasting Authority about offshore gambling services on the Internet and have these services added to approved Internet content filtering devices. The ban will apply to online casino gaming and similar services, and these include current and future services such as Internet casinos, Internet poker machines, ball by ball wagering on sporting events via a digital broadcast and online instant lotteries. All of these services have repetitive and potentially addictive qualities which are associated with problem gambling. Interactive betting after a sporting event has commenced will be within the prohibition. This means, for example, that customers will not be able to place bets on a football, tennis or cricket match after the match has commenced. We are all familiar with spread betting and ball by ball activities, which I think are just a manifestation of antisocial behaviour.

Senator Tambling has also mentioned state and territory activities in relation to developing a national uniform set of regulatory standards. The only initiative of which I am aware in this respect is the AUS model being sponsored by the Northern Territory but, given that it does not have the support of all the states and territories, it is simply not a viable alternative to the government’s bill. In any case, the regulatory approach only serves to provide a stimulus to interactive gambling. There is no reason to think the AUS model could control the growth of interactive gambling any more than the states have been able to control the growth of poker machines. In fact, it might simply provide an incentive for people to bypass those regimes altogether because they judge them to be too tight in not meeting their addictive needs, so this bill focuses on the providers of gambling services rather than the users. An approach that applies an offence to gamblers themselves may force problem gamblers underground, which would lessen the likelihood of them or their families seeking assistance.

The bill also has a low impact on third parties such as financial institutions and Internet service providers. It does not mandate any blocking by ISPs or banks to prevent access to interactive gambling services. The government considers that these measures impose too great a regulatory burden and would be very likely to be subject to circumvention. The bill applies only to the provision of interactive gambling services to people in Australia. It is designed to address the specific problem gambling issues that exist in Australia. Other countries must legislate to address problem gambling as it exists in their own jurisdictions.

I am aware of criticisms that the bill will force Australians to use offshore Internet gambling services. The government has addressed these concerns in the following manner. An amendment will be moved to ban the advertising of interactive gambling services, which will limit the access of offshore providers to the Australian market. An amendment will be moved to extend the offence in the bill to offshore operators, which will deter them from signing up Australian customers. Australian customers will be cautious
about using offshore services, in any case, because these services are often unregulated and there is no guarantee of payouts being honoured. If the local industry is not allowed to develop, it is unlikely there will be a significant uptake of interactive gambling by Australians in any case. A survey on attitudes to a ban commissioned by the Department of Family and Community Services found that only one per cent of people would play a gambling site on the Internet if they knew a ban was in place.

The government does not support an approach that seeks uniform national regulation of interactive gambling. The regulatory approach provides, in effect, a stimulus to the growth of this form of activity. Efforts by states and territories to reach agreement on new national standards for regulating Internet gambling have not succeeded, despite the Prime Minister’s announcement of the Commonwealth’s concerns in December 1999, and there is no reason to think that the states and territories can restrict the growth of new forms of gambling any more than they have been able to do with poker machines.

I simply conclude by saying that this debate provides the last opportunity for the Labor Party—Mr Beazley, no doubt, will be hiding under a desk somewhere, but Senator Bishop has the opportunity to get up now—to explain, once and for all, why it is not prepared to do what can be done to stop the proliferation of electronic poker machines into the homes of ordinary Australians. And don’t just give us all the other reasons that there are inconsistencies, there might be a few problems and technology keeps moving—we know all of those. In fact, the bill has a number of discretions contained within it which will enable us to at least keep up with new technological developments. But the central issue is: why won’t you take a stand on principle? Why won’t you come out and say that you do regard this as a social evil—a social issue and not an IT issue? Don’t be hijacked by the Senator Lundys of this world who have been running around for years saying, ‘The Internet’s sacrosanct. You can’t touch it. Don’t do anything about it.’ That is not the approach adopted around the world these days. People know there are excesses from any new technology and that governments have an obligation to do what they can. We are not in the business of closing down the Internet. We are not in the business of stifling legitimate activities.

Our ban on pornography and paedophilia on the Internet, to the extent that it applies to Australian web sites, has been totally effective. Where complaints have been made, take-down notices have been issued. I have forgotten the precise number, but it is well over 100. The sites have been largely on paedophilia, not just on pornography, and we have been able to take those down. Surely that is a major social advance. Who wants to stand up and argue in favour of allowing that sort of activity to go unchecked? There is only one party that does, and that is the Labor Party. Having made that horrific mistake on Internet content regulation, why compound the felony this time around? At least get up and tell us where you stand, and why on earth you cannot support that part of the bill that attempts to do something about stopping the spread of interactive gaming activities into the homes of ordinary Australians. The answer is that it is all too hard.

This will be the major problem the Labor Party will have in the lead-up to the next election. They are not prepared to take a stance on issues because it might offend someone. They would much prefer to roll themselves up into a little ball and let the government take the flak. They might be behind the scenes, quietly cheering and saying that in their heart of hearts they agree and, when they go to church on Sunday and are told how bad this is, they say, ‘Don’t worry; the government is going to fix it up.’ But, of course, they will not say anything. They will just sit on their hands and look at all the flak the government will cop from various interest groups, whether it be the gambling proprietors, whether it be the horseracing industry or whether it be newsagents. Every time there is a bit of a breakout, they will say, ‘Isn’t that good. This government is getting problems of its own.’ And what will they do? They will just keep quiet. They do not have the gumption to stand up
and say why they do not think this is a major social issue for Australians.

The Labor Party are a value-free zone. They are not in the business of trying to control activities, irrespective of whether they think they are socially deleterious and irrespective of whether they think some technological solutions can be applied. What will really concern Australians in six months time is Labor’s abdication of responsibility—this leadership from the rear, and this willingness to sit on the fence whenever possible. That is why I say that Mr Beazley deserves an award for world’s best practice in pusillanimous performance. I suspect that today will simply reinforce that position. But I am confident that, despite the Labor Party’s craven capitulation, we will be able to achieve some real progress to protect the families of Australia.

Question put:
That the amendment (Senator Mark Bishop’s) be agreed to.

The Senate divided. [10.59 a.m.]
(The President—Senator the Hon. Margaret Reid)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>19</th>
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<td>Noes</td>
<td>36</td>
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<tr>
<td>Majority</td>
<td>17</td>
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AYES
Bishop, T.M.  
Campbell, G.  
Crossin, P.M.  
Denman, K.J.  
Gibbs, B.  
Hutchins, S.P.  
Mackay, S.M.  
Mclucas, J.E.  
Ray, R.F.  
Sherry, N.J.

NOES
Abetz, E.  
Alston, R.K.R.  
Boswell, R.L.D.  
Brandis, G.H.  
Calvert, P.H.  
Cooman, H.L. *  
Ellison, C.M.  
Ferris, J.M.  
Greig, B.  
Harris, L.  
Kemp, C.R.  
Lees, M.H.  
Macdonald, J.A.L.  
Murray, A.J.M.  
Payne, M.A.  
Ridgeway, A.D.  
Tchen, T.  
Troeth, J.M.

Harradine, B.  
Herron, J.J.  
Knowles, S.C.  
Lightfoot, P.R.  
Mason, B.J.  
Newman, J.M.  
Reid, M.E.  
Tambling, G.E.  
Tierney, J.W.  
Woodley, J.

PAIRS
Bolkus, N.  
Carr, K.J.  
Conroy, S.M.  
Cook, P.F.S.  
Cooney, B.C.  
Evans, C.V.  
Faulkner, J.P.  
Lundy, K.A.  
Murphy, S.M.  
West, S.M.  
Hill, R.M.  
Macdonald, I.  
Watson, J.O.W.  
Minchin, N.H.  
Chapman, H.G.P.  
Eggleslon, A.  
McGauan, J.J.J.  
Patterson, K.C.  
Vanstone, A.E.  
Stott Despoja, N.

* denotes teller

Question so resolved in the negative.

Senator GREIG (Western Australia) (11.02 a.m.)—I move the second reading amendment standing in my name on behalf of all Democrat senators and which I foreshadowed in my second reading contribution:

At the end of the motion, add:

“but the Senate:
(a) calls on the Government to use all means available to it, including Commonwealth constitutional powers, to reverse the proliferation of electronic gaming machines (EGMs) or “pokies” by:
(i) significantly reducing the number of EGMs in Australia; and
(ii) placing caps on EGM numbers for all establishments licensed to carry them; and
(b) congratulates the Western Australian and Tasmanian governments on having the lowest number of EGMs per capita; and
(c) urges Western Australia not to relax its present restrictive policy on the availability of EGMs”.

Question resolved in the negative.

The PRESIDENT—The question is that the bill be now read a second time.
The Senate divided. [11.04 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes........... 36
Noes........... 19
Majority........ 17

AYES
Abetz, E.  Allison, L.F.
Alston, R.K.R.  Bartlett, A.J.J.
Boswell, R.L.D.  Bourne, V.W.
Brandis, G.H.  Brown, B.I.
Calvert, P.H.  Campbell, I.G.
Coonan, H.L. *  Crane, A.W.
Ellison, C.M.  Ferguson, A.B.
Ferris, J.M.  Gibson, B.F.
Greig, B.  Harradine, B.
Harris, L.  Heffernan, W.
Herron, J.J.  Kemp, C.R.
Knowles, S.C.  Lees, M.H.
Lightfoot, P.R.  Macdonald, J.A.L.
Mason, B.J.  Murray, A.J.M.
Newman, J.M.  Payne, M.A.
Reid, M.E.  Tierney, J.W.
Tambling, G.E.  Woodley, J.
Troeth, J.M.

NOES
Bishop, T.M.  Buckland, G.
Campbell, G.  Collins, J.M.A.
Crossin, P.M.  Crowley, R.A.
Denman, K.J.  Forshaw, M.G.
Gibbs, B.  Hogg, J.I.
Hutchins, S.P.  Ludwig, J.W. *
Mackay, S.M.  McKieran, J.P.
McLucas, J.E.  O’Brien, K.W.K.
Ray, R.F.  Schacht, C.C.
Sherry, N.J.

PAIRS
Chapman, H.G.P.  Cooney, B.C.
Eggleston, A.  Evans, C.V.
Hill, R.M.  Bolkus, N.
Macdonald, I.  Carr, K.J.
McGauran, J.J.J.  Faulkner, J.P.
Minchin, N.H.  Cook, P.F.S.
Patterson, K.C.  Lundy, K.A.
Stott Despoja, N.  West, S.M.
Vanstone, A.E.  Murphy, S.M.
Watson, J.O.W.  Conroy, S.M.

* denotes teller

Question so resolved in the affirmative.
Bill read a second time.

In Committee

The bill.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.08 a.m.)—by leave—I move government amendments (2), (4), (5), (11) to (15), (17), (28) to (31) on sheet ER279:

(2) Clause 3, page 2 (line 18), omit “Australian-based”.

(4) Clause 4, page 3 (lines 25 to 27), omit the definition of Australian-based interactive gambling service.

(5) Clause 4, page 4 (line 4), omit the definition of Australian-provider link.

(11) Clause 4, page 5 (after line 32), after the definition of industry standard, insert:

interactive gambling service has the meaning given by section 5.

Note: This definition relates to the offences created by section 15 and Part 7A.

(12) Heading to clause 5, page 7 (line 15), omit “Australian-based interactive”, substitute “Interactive”.

(13) Clause 5, page 7 (line 16), omit “Australian-based”.

(14) Clause 5, page 7 (line 26), omit “service; and”, substitute “service.”.

(15) Clause 5, page 7 (line 27), omit paragraph (c).

(17) Clause 5, page 8 (line 3), omit “Australian-based”.

(28) Heading to Part 2, page 11 (line 2), omit “Australian-based”.

(29) Heading to clause 15, page 11 (line 6), omit “Australian-based”.

(30) Clause 15, page 11 (line 9), omit “Australian-based”.

(31) Clause 15, page 11 (after line 22), at the end of the clause, add:

(4) For the purposes of subsection (3), in determining whether the person could, with reasonable diligence, have ascertained that the service had an Australian-customer link, the following matters are to be taken into account:

(a) whether prospective customers were informed that Australian law prohibits the provision of the service to customers who are physically present in Australia;
(b) whether customers were required to enter into contracts that were subject to an express condition that the customer was not to use the service if the customer was physically present in Australia;

(c) whether the person required customers to provide personal details and, if so, whether those details suggested that the customer was not physically present in Australia;

(d) whether the person has network data that indicates that customers were physically present outside Australia:
   (i) when the relevant customer account was opened; and
   (ii) throughout the period when the service was provided to the customer;

(e) any other relevant matters.

(5) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

These amendments relate to the offence of providing an interactive gambling service and remove the words ‘Australian-provider link’ from the original bill. This has the effect of extending the offence to offshore operators who are providing an interactive gambling service to persons in Australia, in recognition of the fact that it is technically very difficult and jurisdictionally very difficult to try to regulate the conduct of those who are beyond our shores. Nonetheless, if they set foot in Australia, they can be prosecuted, as has occurred in the US under the Wire Act, where persons have provided gambling services from the Caribbean into the United States. In one particularly famous case, a person went to jail as a result of a prosecution. It seems to us that that is a sensible way of not only punishing any person in particular but also drawing attention to the fact that these sorts of activities are profoundly discouraged at the very least and is a sensible way of minimising the impact of those persons who might be tempted to gamble offshore.

I table a supplementary explanatory memorandum relating to the government’s amendments to be moved to this bill. The memorandum was circulated in the chamber on 26 June 2001.

The TEMPORARY CHAIRMAN (Senator Calvert)—I believe Senator Brown has an amendment to move to those amendments.

Senator BROWN (Tasmania) (11.11 a.m.)—I move amendment (1) on sheet 2281:

(1) Government amendment (31), after paragraph 15(4)(d), insert:
   (da) whether the person has a system in place to block credit or debit cards issued by:
   (i) an Australian bank; or
   (ii) a person otherwise authorised to issue credit or debit cards in Australia.

This amendment amends government amendment (31) by inserting after paragraph 15(4)(d):
   (da) whether the person has a system in place to block credit or debit cards issued by:
   (i) an Australian bank; or
   (ii) a person otherwise authorised to issue credit or debit cards in Australia.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.12 a.m.)—The government opposes this amendment. I have not had a chance to absorb the detail—I think it was foreshadowed only this morning—but I suspect it is quite similar to the bunch of amendments to be moved by Senator Harradine, which we will also be opposing on the grounds of impracticality as much as anything. I will go into detail on that later. Sufficient to say at this stage that the government does not accept Senator Brown’s amendment.

Senator MARK BISHOP (Western Australia) (11.13 a.m.)—I thought it might be appropriate at the commencement of the committee stage to make some comments of a relatively brief nature as to the position of the opposition on this issue and how we will be conducting our business as this debate progresses so that all senators are aware of what the opposition will be doing and also, in part, to accept the invitation extended by the minister in his concluding remarks in his second reading speech when he invited the
opposition to take a stand on principle and address the interactive gambling debate as a social issue, not as an issue that might be characterised by some as an IT issue or something of that nature. The opposition is more than pleased to accept that invitation from the government.

At the outset, I would like to make several points. Firstly, we are of the view that the flaws in this bill are persuasive—so persuasive that the government is having to substantially amend its own bill. We believe the government’s entire policy approach, the entire premise for its legislation, is fundamentally and irreparably flawed. It is irreparably flawed because the government’s amendments to the original bill do not make the legislation any more effective today than it might have been a week ago.

I will go through the various reasons why the opposition opposes the bill and its various flaws. I will also outline the opposition’s planned approach to the committee stage debate on this bill in the Senate, which is based upon our fundamental opposition to this bill’s approach, the futility of amending the bill and the unpragmatic consideration given to time for this debate. I will outline again, for the record, the opposition’s approach to interactive gambling, which we profoundly believe is the only policy that will protect Australians from the harms of problem gambling—our primary concern. Finally, I will make a few comments on the government’s conduct during the debate to date on this issue.

We have publicly stated for some time that we are opposed to this bill. We say that the flaws in this bill are so persuasive that the government is having to substantially amend its own bill. This is evidenced by the government’s undue haste, lack of proper consideration, foresight and consultation on this issue. We say that the bill is ineffective in its present form. It is obvious from the extent of the government’s amendments to its bill that the government, too, has accepted the criticism made in the Labor senators’ report to the legislation committee that its original bill was flawed. Unfortunately, however, the government’s amendments just tinker around the edges of the real issue, which is that the government’s entire policy approach—the entire premise for its legislation—is flawed.

During the Senate inquiry into the bill, Labor senators pointed out the fundamental flaws in the bill. We showed that not only was the government’s policy approach flawed but also the bill contained a host of inconsistencies, specific flaws and oversights. The range of amendments before us today suggests that the government has taken that advice on board. With this bill, we believe that the government is intent on making a mockery of Australia’s capacity to sensibly deal with the challenges that new technologies present, and a great deal of the world will be watching this legislation and perhaps will move to replicate some parts of it in due course. In fact, a number of progressive countries are seriously looking into Australia’s existing regulatory arrangements with a view to adopting them in their own countries.

There are a number of reasons why the opposition considers the position taken in this bill to be inappropriate. I made a number of points in my second reading contribution. I will not discuss them in detail but I will again put several points on the record as to why the bill is flawed. Firstly, Australians will still be able to access Internet gambling services. The bill does not achieve, prevent or discourage access, which surely is a critical step in achieving a ban. In fact, the bill does not even prohibit Australians from accessing domestic or foreign Internet gambling sites. Secondly, the easiest sites for Australians to access will be overseas sites—some of dubious probity. It is nearly impossible to distinguish reputable sites from those of dubious probity. So Australians will still be able to access some of the most dangerous gambling sites on the Internet. Finally, I will make a few comments on the government’s conduct during the debate to date on this issue.

Fourthly, Australia is looking backwards while the rest of the world is trying to come
up with constructive solutions. A number of countries are looking to adopt Australia’s regulatory model for Internet gambling. Meanwhile, the Australian government is looking to copy a 1961 US act which has clearly failed to prevent Americans from gambling on the Internet. Australia is seeking to adopt an approach that has proven futile in preventing interactive gambling access in the United States, as evidenced by the minister’s comments that a million persons a day in the United States access and use interactive gambling services in that country.

Fifthly, we repeat our criticism that it is hypocritical to allow Australian Internet gambling service providers to receive revenue from services they offer to overseas countries when those countries will be left with the attendant social problems and no funds to deal with them. That criticism stands, notwithstanding the agreement that has been reached between the government and Senator Brown with respect to overseas countries. Sixthly, the bill will have a negative impact on the Australian Internet 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. Seventhly, the bill still permits Australians access to Internet wagering—and, clearly, wagering is hardly immune from gambling problems. On the contrary, wagering contributes considerably to the gambling problems of Australians. The Productivity Commission made this point clearly in its report on Australian gambling industries.

In addition, the minority report by Labor senators to the Senate committee inquiry said that this bill identified a number of specific concerns about the drafting of certain provisions in the bill which would render the bill’s impact uncertain and unjust. The government has taken a number of those concerns on board. The critical point is that the opposition will not oppose the government’s amendments to its own bill. Our position is that the government has introduced a deficient bill and is now trying to fix it up in an ad hoc way, without addressing the underlying policy flaws. We say that it does not matter how the government tries to fix up the problems with this bill; it is the underlying rationale that is flawed: it is still not technically feasible to ban interactive gambling. The government can make any number of amendments to this bill, and it still will not achieve that purpose. The bill is beyond being rescued.

The opposition moved a second reading amendment a few months ago. We did not receive the support of the Senate. We opposed the second reading of the bill. We will oppose the bill on its third reading when we have the opportunity. If the Senate finds this bill acceptable, in spite of our warnings that it will not work, the opposition are not in a position to do anything more than to offer constructive criticism of the bill and the policy it implements and to point out the many flaws and reasons that it will not succeed. I wanted to make these comments at the outset of the committee stage because those principles will guide the opposition’s conduct during the debate.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.21 a.m.)—I will respond briefly to that because I think it goes to the heart of the debate that we are having. What we have done is recognise that in an imperfect world and a fast moving technology environment you cannot cover the field; you cannot actually stop everything that you want to stop any more than passing a law against murder will magically eliminate murders in the community—sadly. You can pass a law against drugs, but people still traffic in drugs. You can pass a law against road traffic conduct that is out of order, but people still infringe. It is no excuse to say that because something will not be 100 per cent effective we will therefore do nothing about it.

I want to highlight the fact that I invited Senator Bishop to explain the opposition’s alternative approach—in other words, to do the hard yards and tell us what he would do to address a serious social issue. There was not even one word of sympathy about problem gambling for the families that suffer from it or one word about what might be done about it. At one stage, he said something in passing about a regulated regime,
but do the opposition in the federal parliament have any alternative to a regulated regime? Of course they do not. They mean, ‘We want to wash our hands of all of this. We’ll do nothing; we’ll leave it to others.’

The states have actually been playing around with a draft interactive gambling code since 1996. It still has not gone anywhere. It is a bit like Internet content regulation. The industry were playing around with it for years. The Internet Industry Association were again wringing their hands and saying, ‘Yes, we’re on the case. Leave it to us.’ It will take forever. Nothing ever happens. Similarly, you now find that the states and territories are, reluctantly and eventually, upping the ante a bit, but they still have not got anywhere. They still have not agreed. New South Wales and, to a lesser extent, WA want to go a lot further than the rest of the states, and of course some territories are quite feral on the subject.

Leaving it to others is an absolute policy cop-out. We have had criticisms from Senator Bishop. His speech in the second reading debate was all carping and criticisms. We had ‘flaws are persuasive’, ‘undue haste’ and ‘lack of foresight’. These are mantras. You just press button A and you throw these things in every debate. If you do not like something, you say, ‘We have not had enough time to consult,’ as if to say, ‘If you had just given us a bit more time, we might have come on board.’ That is where I want to highlight the hypocrisy of this. One of the things Senator Bishop said is:

... the bill still permits Australians access to Internet wagering, and wagering is hardly immune from gambling problems.

Why not try to do something about it? But, no, they will not.

Senator Mark Bishop interjecting—

Senator ALSTON—You could pose it. You could get up there and say, ‘We demand that you do something about sports betting on the Internet.’ But you are not going to do that. Similarly, you wring your hands and say that problem gamblers can circumvent this approach. You say that it does not prohibit Australians from accessing overseas sites, as though it should. We do not hear you say, ‘We would support that; this is our policy.’ You do not get any of that; you just get these opportunistic criticisms. You say, ‘We could point to a few logical inconsistencies.’ In other words, if we were having the ultimate dialectic, you would be able to demonstrate in a logical fashion that somehow we should have covered each and every aspect, no matter how difficult it might have been, and that to be absolutely perfect you would have tried to cover all the bases. That is the implication, but that is not the opposition’s approach. Their approach is, ‘We’re going to do nothing.’

That is why I say there is weakness of leadership at the very top. It is not Senator Bishop—he is just the messenger boy in here. The fact is that it is all Mr Beazley. The buck stops there. This guy does not have the intestinal fortitude to take a policy position and give Senator Bishop some decent riding instructions to come in here and wring his hands for five minutes and say, ‘Isn’t this shocking? We’ve really got to do something about it. We don’t like your approach, but what we will do is the following.’ We did not get any of that. Senator Lundy would not have a bar of it for a moment. She does not want to do anything that will in any way interfere with the spread of technology, irrespective of the social consequences. I can understand you are under a bit of pressure from the far Left. But, if Mr Beazley regarded himself as a moderate with some concerns about the impact on families, you would think he would at least say something.

Ignore Senator Lundy, but look at Mr Smith. Instead of just sitting in his room, rehearsing those one-liners, polishing the fake microphone, getting it all right and getting the hair in shape, Mr Smith should actually do the hard yards, work out an alternative strategy and tell us what approach he would adopt. If you were in government, what would you do? What do you propose in six months time if you happen to fall over the line? What would you do about this major social problem? We do not hear any of that. We just get told, ‘The flaws are persuasive. The government’s entire policy approach is flawed. It makes a mockery of technology challenges. Problem gamblers
might be able to circumvent a negative impact on interactive service providers. It is not technologically feasible to ban Internet gambling.' Then there is the ultimate cop-out. Senator Bishop says that, if this bill passes, the opposition will not be in a position to do anything other than offer criticism.

This is what we are going to have in the lead-up to the next election. The Labor Party’s position will be: ‘I’m terribly sorry. It’s a major social policy challenge, but unfortunately we’re not in a position to do anything other than offer criticism.’ That will not get you there; it is just not good enough. The punters will not wear that. They know what has happened in the states. They know the states have done nothing for years and years. It is policy lazy. This is terminal stuff. You cannot just lie there on a life support system, hoping that enough people are going to keep you alive for the election and hoping that you can surf in on the criticisms that might be made of any government from time to time. No government is perfect. We all make mistakes, but we would perhaps all like to go further than we could.

Senator Ian Campbell—If you do not have a ticker, you cannot have life support.

Senator ALSTON—That is true. We could probably save a bit of money there at least. There is no point in offering the service, is there? At the end of the day, Senator Bishop has done us a service, in a sense, because it means we will not have to engage in long and protracted debates. It is basically our policy position against no policy position. That is the stark choice leading up to the election. For the next six months, we will have Labor saying, ‘Sorry, it’s all too hard. Unfortunately, we are not in a position to do anything other than offer criticism.’ I hope, and I am sure Senator Kemp hopes, that we will get similar policy responses in a whole range of other areas. All we have had to date is the Labor Party saying, ‘We’ve got some policy directions. We’ve got some statements of intent.’

Senator Kemp—Why don’t they propose an inquiry after the election?
porting Senator Brown’s amendment to those amendments.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.31 a.m.)—Because of the importance of time today, I did not make a speech in the second reading debate on this bill. But Senator Bishop’s response provokes me to stand up. Of course this is a hard issue. It is a desperate issue. It is an issue that affects 290,000 people who are problem gamblers. It is probably one of the greatest social issues affecting Australia. It results in divorce and it results in bankruptcies and broken homes and all the other social values that we hold very dear.

I am proud of the government for taking on a hard issue like this. It is something that you are never going to get your hands right around. To take it on and to send a message out that gambling is a social problem that affects very many Australians is something the government deserves credit for. I also want to consider some of the things that have been brought up and to which the government has responded. I am thinking of a particular country horseracing centre, just out of Richmond. I went to a horseracing meeting there. There were six events. They get about $3,000 each from the TAB. If the TAB were not allowed to collect some revenue that way then we would lose country horseracing. Rural Australians are missing many facilities, but they like to go and have a social Saturday afternoon out at Richmond or other little country centres. The government did respond to that.

Some forms of gambling have been the province of small businesses, such as newsagents and chemists. When it was pointed out to the minister that the changes could have detrimental effects on small business, it was responded to by keeping scratchie lotteries—which are really interactive gambling—off the Internet. The government will receive welcome thanks from small business for including that. I understand the minister is going to make some catch-all amendment where he will have the right to continue to investigate any new product that comes onto the market. He has given me that assurance and I see him nodding his head now. If any new product is developed through state government lotteries to go on the Internet, the minister will have the right of veto on it.

Keno games, for example, come up every five minutes, so you do not have to wait long for a result. They are available on the Internet in some states. I would argue that that is interactive: a result is continually coming up and people can sit in front of their television sets with their bankcards and can punt on this interactive gambling. It is totally wrong and I am appalled by the decision by the Labor Party that it is all too hard. Everything is too hard in this place. It is a very hard place to work in. You always encounter unintended consequences, but it does not stop us trying to do something. Apparently, it stops the ALP trying to do anything, because it is too hard.

I congratulate the minister. He took on an area that has a lot of consequences and a lot of social issues. We have done our best to remove a casino from every lounge room in Australia. I am glad that we do have the support of some Democrats and some Independents.

Senator BROWN (Tasmania) (11.36 a.m.)—I support what Senator Boswell just had to say. There is a very important point about the way in which this legislation has been amended. I want to explain my Greens amendment. It adds to the government list of provisions for gaming houses in Australia which are providing Internet services. As we all know, they are not allowed to provide those to Australians, but they can provide them overseas. There is a concern that some Australians nevertheless will find ways of placing bets on these gaming houses set up here. The government provisions say, if the gaming house is not going to be prosecuted on that, it has to show that it went to some length to ascertain that the better was not geographically here—that is, they were not geographically here. The Greens amendment adds to that that you should also make sure that an Australian credit card was not used. It is a very simple but important strengthening of the government’s provisions, and I commend it to the committee.
Senator MARK BISHOP (Western Australia) (11.37 a.m.)—I want to respond to some of the comments made by the minister on behalf of the opposition. I had been under the impression that time was fairly scarce in this debate, and all matters were going to be treated with some expedition. The minister having engaged in 10 or 12 minutes of ritualistic abuse for no apparent purpose, they are apparently not the rules that have been agreed to and accepted in this debate, and time is not of the essence. On that basis, it is probably appropriate to address in some detail the problems or the issues raised by the minister and the position of the opposition in this debate.

In this debate there is both a real problem and a straw man being erected. Every person in this chamber knows what the real problem is. The figures are banded about of 200,000 or 300,000 Australians who have significant gambling addiction problems. The multiplier effect is that that applies to about another one in eight or one in 10, so the real problems affect something in the order of three million Australians. Senator Allison yesterday in her speech in the second reading debate referred to those persons in terms of their enterprises, their businesses, their family relationships, their friends and the consequent social problems that attach to those 3 million Australians. Senator Alston yesterday in her speech in the second reading debate referred to those persons in terms of their enterprises, their businesses, their family relationships, their friends and the consequent social problems that attach to those 3 million Australians. I do not think anyone in this chamber does not say that that is not an existing problem, a real problem and a growing problem. If the trend line related to land based facilities continues on its current dynamic, that problem is going to get larger and larger.

The straw man erected in this debate is not to attend to the social problems in the four eastern states and South Australia, not to show Commonwealth leadership, not to show Commonwealth coordination, not to sit the states down and say, ‘Listen, you blokes are dependent on gambling revenue from the working class, social welfare recipients and low income areas to the tune of something in the order of $11 billion a year, and all of the social programs, all the welfare benefits you pay and all the incentives you offer to businesses to come to your states are based upon the income you receive from these people who lose $10 billion or $11 billion a year.’ The solution of the government is not to sit the four or five states down through the Ministerial Council on Gambling and offer to come up with some sort of alternative to needing these funds, and to come up with some sort of constructive regulations.

The straw man that is being played out in this debate—articulated clearly by Senator Alston on behalf of the government—is to manufacture a real concern in the netherworld, in Internet gambling, in cyberspace, where there are no apparent or real problems at this stage. If there are such problems, they are of such magnitude that they are incapable of being statistically recorded in this country or in any other country, yet down the street you have hundreds of thousands of Australians, if not millions, affected. So the opposition say—based on the hundreds and thousands of letters we have received, our discussions at various committees and lobbying by the social welfare groups—what is the problem here? Is the problem Internet gambling per se? Is the problem land based gambling per se? The answer is that the problems are the social problems attached to land based gambling. That is what we say it is appropriate to address, diagnose, analyse and come up with solutions for.

All of the states for the last 10 years, whether they be conservative or Labor states—conservative states in the late eighties and early nineties and now Labor states—have chosen to abdicate their responsibilities to attend to the social problems in their communities, based almost solely on land based gambling. The states have chosen to abdicate that responsibility, so we say it is appropriate for the Commonwealth to be involved. It is a necessity for the Commonwealth to show leadership. The Commonwealth should be coordinating an approach that tries to address the social problems attached to gambling. They should be pulled into line. We say that is the responsibility of the Commonwealth government, represented in this chamber by Senator Alston. Yet we have in exchange a series of cliches: ‘a gambling room in every home’ and ‘problems on the Internet’. None of those issues are being addressed. The solution to that is to support
federal coordination of consistent state based regulatory regimes. That is the only way the opposition believes those social problems attached to gambling are going to be solved.

Not only does the government not acknowledge the problem or any significant role for the Commonwealth and not only does it erect a straw man; it also makes it worse. It tries to distinguish between those unfortunate souls who might be addicted to casino type gambling and those unfortunate souls who have been addicted for many years to gambling on wagering, sports betting or racetracks. For God’s sake, what is the difference? It is like saying an alcoholic who is addicted to gin is different from an alcoholic who is addicted to whisky. There is no difference at all.

Senator McGauran—Whisky tastes better.

Senator MARK BISHOP—‘Whisky tastes better’—that is the level of comment you would expect. There is no difference at all. Gambling problems are persuasive and pervasive in this society. We have the argument put by Senator Brown, the government and Senator Boswell on behalf of their parties that, because there is social utility in the maintenance of the racing industry in regional Australia, we should not attend to gambling problems.

Frankly, that just puts the whole lie to this debate. We are not going to do anything about land based gambling problems; we are not going to do anything about casinos; we are not going to do anything about sports betting; we are not going to do anything about wagering—so there are 17 ways to hell you can gamble—and we manufacture this nonsense that out there in the Internet there is a real problem and we are going to do something about it. Frankly, Minister, that is just a disgrace. That is the ‘no solution’ option. That is what you have paraded here today—no solution to existing problems; a potential solution to a potential problem.

We have had now something in the order of three Senate inquiries—which I have sat through and written most of the reports for—numerous debates and much discussion in the community. Everyone in this chamber understands the issues: the social issues, the technology issues and the feasibility issues. It is pointless to continue engaging in ritualistic debate setting out positions. Our position is on the record. It has been detailed in a policy sense for at least two or three years through numerous committee reports. It has been out there in the public domain. For the government to erect this straw man and say that the opposition does not have a position or is ignoring the reality of the problems really is a nonsense.

The problem is out there in land based gambling; it is out there in casinos; it is out there in the many forms of gambling that are part and parcel of our society. And the government for its own reasons, which are still not clear to me, chooses to do nothing about it. It is completely inappropriate, verging on the improper, to try and shift responsibility or allocate blame to the opposition. You are the government of the day, you are elected, you can show Commonwealth leadership, you can show Commonwealth coordination and you can pull the states into line—or at least offer them some incentive or ability to achieve what should be a common purpose.

Senator HARRADINE (Tasmania) (11.47 a.m.)—Can the minister explain to the committee how the amendments that are currently before us will work? There is a provision in those amendments which makes it an offence for an overseas site to offer gaming to Australian customers. It is one thing to make it an offence: how is that going to be enforced? There is no point having an offence unless there is a stricture applied. How are those international operators to be (a) identified and (b) brought to justice?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.48 a.m.)—Under the proposed amendments, gaming operators, either within or outside Australia, who provide gaming services to customers within Australia will be liable for the offence for an overseas site to offer gaming service. While the amendment will not impose technological blocking measures on the Internet industry, we anticipate that the wider impact of the offence provision will serve as a deterrent to foreign operators, especially
those within the region, such as those from New Zealand and Vanuatu.

I am not sure whether Senate Harradine was here but I did give the example of the Interstate Wire Act in the US, which would apply with particular force here because there are many people offering services from New Zealand and Vanuatu who would be regular visitors to Australia and who would therefore be at risk if they were to set foot on our shores. The impact of the Interstate Wire Act in the US has been quite profound. You can talk to Australian proprietors, for example, who tell you they are very worried about even going to the US for fear that they might have transgressed by providing services to the US. I think Ladbrokes have a statement on their web site that says that they will not accept bets from residents of the United States.

In other words, the gambling service providers in whom people would be most likely to have confidence because of their international reputation are the ones who are most concerned to protect that reputation by doing what they can to avoid taking bets from those people. We think it will have a significant deterrent effect and, in conjunction with the ban on advertising—which I think will make it a lot less of an option for people—we are doing what we can. We do not have full extraterritorial powers: we cannot go off and try and prosecute them in other jurisdictions or have them extradited to Australia. But the reality is that they are on notice that if they come here they are liable to prosecution. In those circumstances, we think that will provide a significant deterrent.

Senator HARRADINE (Tasmania) (11.51 a.m.)—I know we all have to be loyal to our country and think that this is the best place in the whole world and that the only thing that these international interactive gambling outfits want is to come to Australia. For crying out loud! It is unbelievable that the minister should say that the only method of enforcing this particular provision is the threat that these people might be arrested when they set foot on Australian soil, when 99.9 per cent could not care less about Australia except to get money out of the poor people who are going to bet on these particular outfits when this legislation goes through.

This legislation is seriously defective unless there are very firm provisions which ensure that access to overseas sites is, in effect, prohibited. The government is not going to do that—and I will just tone down and ask the minister a couple of questions. Does the minister know about the site in Canada run by the Canadian indigenous people which is able to be accessed now from Australia? That is a reputable organisation. Could the minister tell the committee how many interactive gaming sites there are overseas that are accessible to Australians? Could the minister advise how many of those will be accessible after this legislation is carried—that is, if it is carried? Is the minister aware of the membership of the IGC, the Interactive Gaming Council, an international body which has the seal of approval? Is the minister suggesting that those who have those international gaming sites that have that seal of approval are, in fact, going to take any notice of this legislation?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.54 a.m.)—As I said earlier, there are some technological limitations. We do not think it is feasible—

Senator Mark Bishop—You have said that once or twice already.

Senator ALSTON—It is a fact. You could close down the Internet if you wanted to, and some countries have tried to do that. It would involve draconian legislation. You could have a policeman in every home if you wanted to and, if you wanted to stop all the accidents on the road, you could ban the use of motor vehicles. You have to have a practical approach, and it is our judgment that it simply is not feasible to require the blocking—on the latest statistics I have—of something like 1,400 Internet gambling web sites as of March this year.

I have seen studies which show that Australians are much less inclined to gamble or invest offshore. They would much prefer to deal with local organisations in whom they have confidence. If you have a ban on gambling, I think that does make a very signifi-
cant difference to people who might otherwise see a billboard and be inclined to think, Well, I'll give it a go.' They have actually got to actively search and for the vast majority of the population that simply will not result in them accessing offshore sites. In fact, I think there was a study conducted by the Department of Family and Community Services which showed that, if a ban were in place, only one per cent of people would play on a gambling site on the Internet. That is about as much as you can do to try to judge in advance what people's reactions might be.

I know that Senator Harradine would say that some people will never come to Australia. But if they are in the business of trying to cater for Australian citizens and trying to build a business in Australia, the likelihood is that they will need to come to Australia at some stage, particularly if they are offering those services in places like Vanuatu where, I suspect, a number of those operators are of Australian origin. They certainly have extensive Australian connections and they need to come here, as the nearest port of call, to acquire equipment and the like. It could result in a very significant disincentive.

But there is also the other good corporate citizenship aspect, which I mentioned, that is, you do find that even the world's largest gaming houses like Ladbrokes have a disclaimer—and I think that William Hill has some disclaimer as well—which shows that they will not want to be caught up in bans of this sort and be seen to be flouting them. We are doing what we think is feasible. We acknowledge that it is still possible for people to go offshore but we think we can very significantly reduce the opportunities and the incentives by putting in place measures such as these.

Senator HARRADINE (Tasmania) (11.57 a.m.)—I would ask the minister to respond to the question I asked him. Which organisation is going to identify these interactive overseas gambling sites offering their services to Australian customers? Who is going to identify these?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (11.58 a.m.)—A situation where you have a significant number of offshore gambling providers—a number, nonetheless, in the low thousands as compared to millions of web sites these days offering pornography in all shapes and sizes, some of it free of charge—does make it more feasible to monitor what occurs offshore. To the extent that there are services catering for Australians, one would expect that to be subject to surveillance both within the department and by the Broadcasting Authority.

Senator HARRADINE (Tasmania) (11.59 a.m.)—You mentioned the ABA and the department—and I will leave the comment I was going to make about the ABA for a later stage. Who is to be in charge of identifying the potential 1,400 sites that are coming into Australia? Who is identifying their executive or boards, if they have boards? And are you then going to advise the Department of Foreign Affairs and Trade that those persons will not be able to enter Australia? If they do so, will they be arrested? What is the machinery? It is very important that we know what the machinery is. It is no good passing this without knowing what the machinery is to achieve the objective of the amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (Midday)—The Australian Broadcasting Authority will have a general monitoring role, but it will also act on complaints. Where something of concern is brought to its attention, it will be able to investigate the matter and provide information to the police, who would then be in a position to launch a prosecution. In the way that most activities progress through a chain, people normally bring certain matters to the attention of the police, but they do not provide them with a hand up brief; they provide them with a basis on which they then put together the necessary ingredients of a prosecution. Presumably, that would involve identifying the persons involved in a particular gambling activity. It may involve cooperation with other police organisations and generally they will have a responsibility to do what they can to ensure the successful prosecution of persons who might be involved in those activities. As I say, the numbers are relatively finite. If there is community con-
cern and complaints are made, and that would include the ability for Senator Harradine to draw matters to the attention of the Australian Broadcasting Authority, there will be a chain of events that could certainly lead to prosecutions if those people visit Australia.

Senator HARRADINE (Tasmania) (12.02 p.m.)—Frankly, Minister, I have more things to do with my time. To be quite frank, through Senator Brown, you have been given an opportunity to tighten up your amendment. I have not heard your reason for rejecting that amendment which is currently before us.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.02 p.m.)—Perhaps I can clarify the situation. Senator Brown has an amendment that relates to credit card transactions which is quite different from my amendment which deals, in certain circumstances, with making people liable for offences that have been committed offshore. I said in respect of Senator Brown’s amendment, which we received only a very short time ago and which has some consequences that need to be more carefully thought through, that I would address the issue in more detail when we came to Senator Harradine’s amendments, of which we did have more notice and to which we have been able to devote a bit more attention. I can deal with those now, if you like, but in responding to them, I will talk about the role of the Ministerial Council on Gambling and the approach being adopted by the Department of Family and Community Services. I am not sure whether Senator Harradine has a copy of the letter that Senator Vanstone provided in the chamber yesterday to Senator Woodley, but in a number of respects it addresses issues of concern to the Commonwealth that we would like to see further explored in the Ministerial Council on Gambling. All I can say in respect of Senator Brown’s amendment is that we have not had the time to consider it carefully and it seems to be quite similar to Senator Harradine’s amendment, about which I will talk in detail. Insofar as the chamber is also now dealing with our amendment, I have dealt with that as far as I can.

Senator BROWN (Tasmania) (12.04 p.m.)—Would the government like me to suspend the amendment until later in the proceedings so they have time to look at it?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.04 p.m.)—It would have to be considered at the same time that Senator Harradine’s amendment is dealt with and we could have that global discussion.

Senator HARRADINE (Tasmania) (12.04 p.m.)—I just want to follow this up. Am I to understand from what the minister is saying that, in obtaining a visa to enter Australia, the visa would require that gambling merchants must be licensed to operate legally in Australia? In future, would the visa requirements of the Department of Foreign Affairs and Trade mean that an applicant would not get a visa if the applicant has been engaged in providing services to Australia? Obviously, if there is a law in this country that it is an offence, as this legislation proposes, for an offshore interactive gambling organisation to provide services to Australia, surely anyone who has been engaging in that illegal activity would not be provided with a visa.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.06 p.m.)—This raises fairly complex issues. It is one thing for persons applying for a visa to be required to disclose whether they have criminal convictions. As we know, even that can be much more complicated than it appears to be at face value when you have spent convictions which you are not obliged to disclose, while certain authorities, like the US, take the view that you have to disclose even situations where a charge has been adjourned and then subsequently dismissed, as that can be regarded as a conviction.

Even at that level, complex issues can arise. But to require applicants for visas to disclose the nature of activities that may or may not be subject to prosecution in Australia seems to me to put the cart before the horse. I would be very surprised if you could
draft it in such a way that would even begin to provide helpful information. It would involve enormous complexity. People talk about red tape. It would mean that every applicant for a visa would presumably have to go to great lengths to explain the nature of their business activities. What would you do? Would you say, ‘Are you involved in any activity that might infringe the law of Australia in relation to interactive gambling activities?’ Would an applicant say, ‘I have no idea; I have never seen the bill; I do not know what the consequences are’? Even though it might affect a minuscule proportion, every applicant for a visa would somehow have to identify the nature of his activities. Even then, he would be asked to make a self-assessment of whether he was likely to have committed an offence. It is not something that we can address on the run in this way.

Clearly, as the legislation is proposed to be reviewed on an ongoing basis, one can look at some of those possible additional approaches when people have had the opportunity to think them through. It seems to me at first glance that you would impose enormous bureaucratic obligations on those who apply for visas and those who process them, with probably very little reason to think that you would throw up any useful information. You would be much better off to look at web sites that offer services to Australia and then try to track down those people. As I have said, the numbers are not in the millions. It therefore should be a matter of reasonable possibility.

As we have said before, you cannot hope to close down every form of illegal activity, no matter how insignificant it might be, but if there are mainstream offerings, you will probably find that there are only half a dozen or so really heavy hitters in this business worldwide. If that is the case, it will not take too long to track them down, see whether they are offering services to Australia and do something about it. Given the experience of the wire act, they are the very ones who would least want to get around our legislation or turn a blind eye to it. They would be the ones who were most likely to cooperate, and in those circumstances the 80-20 rule would apply, and you would protect as many people as you could reasonably hope to protect.

**Senator MARK BISHOP** (Western Australia) (12.10 p.m.)—This discussion goes to the heart of whether, in practice, the amendment will be effective. I have been given a document that was downloaded today. It makes the point that combined revenues from both the US and Europe are predicted to grow from an estimated $US6.7 billion in 2001 to $US21 billion in 2005 and that the number of online gamblers in Europe and the US will increase from 2.9 million this year to 7.5 million in 2005.

My understanding of what the government seeks to achieve with this amendment is that offshore IGSPs who provide Australians with their services will be liable to prosecution if they land in this country. The root source of the government’s amendment is the United States federal wire communications act of 1961, which the Americans have attempted to use to regulate and, possibly, to make illegal interactive gambling in that country. On 2 April, the minister put out a press headed ‘Devastating impact of Internet gambling revealed’, and he quoted American studies and made the point that every day about one million Americans use Internet gambling and that up to 4.5 million Americans have from time to time gambled on the Internet, that the wire act applies in the United States, and that it has patently failed in the United States to have any impact at all on gambling.

**Senator ALSTON** (Victoria—Minister for Communications, Information Technology and the Arts) (12.13 p.m.)—The short answer is that the wire act applies only to services provided from offshore. Given that there is no ban on these sorts of activities in the US, those people would overwhelmingly be accessing domestic sites.
Senator MARK BISHOP (Western Australia) (12.13 p.m.)—That is not correct. The wire act applies to domestic activity. It was passed in 1961 by the Kennedy administration as one of the tools to restrict the growth of Mafia and criminal activity in illegal gambling in the various states and cities of the United States. It was intended to have a domestic purpose, by making illegal the use of communications facilities—hence the name ‘wire act’—for the passing of bets between cities and states. It was directed at the heart of organised criminal activity in the United States. Its purpose was to restrict domestic gambling activity. That being the case in the United States, your own press release says that there are 4.5 million regular users and a million users every day. Again: what is the utility of importing that principle in the wire act into this bill?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.14 p.m.)—The wire act, as you quite rightly say, is 40 years old. It has simply been invoked because of, I think, the inability of legislators in that country to have an approach that results in effective legislation. It applies only across state borders, so one assumes that it would not be all that difficult for a national operator to effectively operate out of each state and cater for the residents of each state. In that very simple way, you circumvent the problem—you are not offering services across state borders.

That being the case, we are not trying to address the problem simply by using the wire act; we have a comprehensive body of measures, one of which is based on a very high profile experience of a prosecution under the wire act which did see a Caribbean service provider go to jail for this type of offence. If it can be used in that way to deal with people providing services from offshore in the US, it can be used here. So don’t worry yourself too much about whether the Americans are being derelict in their duty in not having a comprehensive approach to Internet gambling; there is one measure there we can use as part of our armoury which we think can go some way. We accept the technological limitations of trying to have a fortress Australia approach to block everything coming into the country. You cannot do that, but you can up the ante in a way that I think will make it very difficult for a number of people to take those risks.

Senator HARRIS (Queensland) (12.16 p.m.)—I seek some clarification from the minister regarding the purpose of the government’s amendments being to prosecute any person who enters Australia for having provided a service. The minister’s comments to this point in the debate have only been directed at the actual provider. But if that provider were a public company, would the offence travel to the directors and also the shareholders of the company?

If that is the case, then there is a way for the government to make that reasonably effective, because each publicly listed company has a shareholders list and it would not be too difficult, if a provider were providing a service in Australia and if the government wished to bring pressure on them to remove that service, to do that by excluding every shareholder of that company. That would really have some effect. I can understand that, if the targeting was just of the directors or the individuals providing the service, it may have a limited effect. But if it is the intention of the government’s bill to have that effect actually register on not only the directors of the company but the shareholders—because the shareholders would derive a profit—then the government would have a quite effective way of bringing pressure on that public company not to provide those services. I seek a comment from the minister.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.18 p.m.)—I do not think anyone would ever argue that shareholders are responsible for the running of the company. They do not make the investment decisions. If you do not want to be involved in the activities of the company, you do not buy shares in it. It is a fundamental tenet of the Corporations Law that those responsible for the running of a company are the directors and management, and they would be the only ones that you could realistically target. To the extent that they incurred a substantial penalty and the company ended up paying
that, I suppose that has an adverse effect on the shareholders in the sense that it impacts on their bottom line. But I really think it would be an absolute nightmare to try to impose an obligation on every shareholder for activities that are clearly beyond their control and responsibility and overwhelmingly, I would have thought, probably beyond their knowledge.

Senator GREIG (Western Australia) (12.19 p.m.)—Some of what I would argue is the nonsensical debate that we have heard thus far reinforces for me what I firmly believe is the nonsense of the bill itself. For that reason I am opposed to this collection of amendments—and I am not sure whether at this point in time Senator Brown has officially removed his amendment from the government. He has indicated that he might be prepared to do that.

Senator Brown—No, I am not.

Senator GREIG—So he is not prepared to do that. In essence, where I am coming from personally, in terms of my philosophical approach to the bill, and from a technological point of view, is that, even if I were to support the notion that online gambling ought to be banned—and I do not support that—then I could not argue in any credible way that it was technologically possible. Senator Harradine has been arguing this afternoon about the possibilities and probabilities of physically arresting somebody who might be coming to Australia if they were involved in providing an online gaming service to Australians here within our shores. But the point is: they need not set foot in the country to do any of this. The Internet challenges, probably for the first time in any real sense, our notion of geography, in that cyberspace does not have a physical location. You cannot pin it down.

One of the fundamental flaws in the bill for me is the notion that, whereas the government is arguing that we ought to censor—we ought to prohibit—online gambling, that fundamentally misses the first in-principle question which is: can you do it? The most damning indictment of the proposed legislation, as argued by Mr Josh Gliddon, an IT writer with the Bulletin magazine and to whom I referred in my speech in the second reading debate, is that there is evidence that it cannot work. He says:

The IIA’s—

the Internet Industry of Australia’s—

position is that using internet protocol addresses (the addresses used to identify a computer’s physical and virtual location in cyberspace) as the key to blocking access is flawed. Why? Because IP addresses aren’t passports, and can’t be relied on to locate someone in cyberspace. Some ISPs—

Internet service providers—

will issue IP addresses that indicate the computer is located in the US when in fact it’s in Australia, while some corporations find it expedient, particularly if they’re a multinational, to do the same. There’s nothing sinister about it. The Internet just works that way.

Encapsulated there in part is an argument to which I would adhere: the conflict between trying to pin something firmly on cyberspace and trying to pin something firmly on geography is a nonsense. Senator Harradine raised another good point, and there has been some media on this: American indigenous peoples, in a zone colloquially known as Mohawk Nation, provide an enormous range of online services, including online gambling. They are perfectly entitled and empowered to do that. Nothing can prevent those people from providing that service anywhere in cyberspace. Therefore, it can be accessed anywhere from within cyberspace, including here in Australia. So, even if we were to succeed in prohibiting and banning online gaming services being produced from within Australia, we cannot ban them from being produced within Mohawk Nation. Any problem gambler—and the theory is that this bill is targeted at problem gamblers—can get online and find those services readily.

There has been an unspoken agenda here that somehow online gaming services are being foisted or advocated or promoted to Australians, and there is certainly truth in that. But, even if you were able to completely prevent that, and I do not believe it is technically possible, anyone with a computer—including Senator Allison, sitting next to me with her laptop—could go into Yahoo, Google, Dogpile or any other agents that can be accessed to surf the net and simply type in ‘online gaming’. A vast range of
addresses would appear, and the gambler, simply with the click of a mouse, could access that site and be whisked off to cyberspace to play to their heart’s content. You cannot prevent a search engine from listing—much like a library—an online gaming service. That is not advertising.

It is also a fact that there is an unspoken agenda in part of this debate which suggests that you can readily identify an online casino and that, once you have identified it, you can attempt to prohibit it or to frustrate it. The reality is that online casinos can easily change their banking identity; in fact, many already use third-party online financial settlement services. I would argue, therefore, that online casinos can and will open up seemingly unconnected financial identities to process the financial transactions of gamblers if that idea were to gain momentum in Australia or elsewhere. The process is known as brown paper bagging, where you simply launder your processes through a third party. I am speaking hypothetically, but you may have an online gambling service in Vanuatu. If, in the very unlikely event the Vanuatu government banned online gaming from within its jurisdiction, the online gaming service would simply remain in Vanuatu, calling itself, say, Acme Consulting Services. It could process its administrative and financial arrangements through Acme Consulting Services, and we in Australia would be none the wiser.

It has been suggested by some people that the catch in that would be that the banks that administer credit cards would be able to acknowledge or in some way monitor credit card transactions to gaming services regardless of what their name might be. I sought clarification on that point from the Australian Banking Association. They confirmed unreservedly that that is not possible, and that it is not done. Everybody with whom I have sought consultation on the technical possibilities of this bill—whether it be the Internet Industry Association, Electronic Frontiers, some colleagues who work in Internet service providing agencies, Reynolds Technology or Harvest Road—have all said to me that the bill is fundamentally flawed on technical grounds, if not other grounds. The minister raised the suggestion earlier in his contribution that the online services bill had been a success but went on to say, in complete contradiction to that claim, that of the millions of pornography sites available on the world wide web, only a tiny percentage—I think he named 10 of many hundreds of thousands, if not millions—have been frustrated by the online services ban.

Interestingly, the American Express company—the credit card firm—tried recently to ban payments to online pornography sites in America. Again, that was frustrated and completely overridden by the brown paper bag account process, which could be and would be used for online gaming. There is a serious problem gambling issue here in Australia—I acknowledge that; I have been aware of it for some years and I do have a very real concern with it—but, as Senator Bishop has articulated, the problem is overwhelmingly related to poker machines at situ sites and at casinos. How we can address that is unclear, but clearly the government is unwilling to even think about it. At the same time it purports to have a sophisticated way of addressing the issue of online gaming, which I accept at this stage is played by very few people. It is something which may grow exponentially, but I believe strongly that the only way you can address that is through education and regulation, not prohibition.

Principally and philosophically, I am saying that, while I oppose the notion of prohibiting online gambling per se, I also strongly believe that technically it is impossible. It could only work as suggested by the government and some other senators if it were to operate similarly to extradition treaty proposals. For example, following the recent case of Mr Konrad Kalejs, we now have an extradition treaty with Latvia such that, if Latvia should seek extradition treaty from somebody in Australia for a criminal matter, we can extradite them, and vice versa. We cannot do that with Cambodia. We have no extradition treaty with Cambodia.

So it is with online gaming. Theoretically, if Australia were to ban online gaming and, theoretically, if Canada were to ban online gaming, then there might be an opportunity to prohibit online gaming between those two
places. There would be a spirit of cooperation. Having said that, Canada have made it very clear that they will do no such thing; they have a much more sensible approach to the Internet. But, under that theory, it still means that if it were possible for an Australian gambler to be prevented from gambling online in Canada, they could still do so in Vanuatu, in the Canary Islands, in any number of the states in the USA—name the country. To that end, the bill itself is fundamentally shallow and tokenistic.

So these two amendments that have popped up early in the debate in this committee stage—one that purports to prohibit online gambling, in essence, and, subsequent to that, one that proposes a method of doing that through credit card facilities and banking arrangements—are both, in my view, fundamentally flawed for technical reasons. That will be my consistent argument throughout this debate as a whole, so I do not propose to repeatedly go over that as each amendment is raised. Having put my position on record, I indicate and state strongly that that is my position on the bill as a whole. Later on I will be supportive of further amendments that do aim to seriously address the issue of poker machines in Australia which, I argue, is the key fundamental issue of problem gaming in the nation.

Progress reported.

**BUSINESS**

**Hours of Meeting and Routine of Business**

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.31 p.m.)—I move:

That government business notice of motion No. 3 have precedence over all government business orders of the day from 12.45 p.m. till not later than 2 p.m. today.

Senator Brown—Would the Clerk be so good as to read out that notice of motion, please?

Senator IAN CAMPBELL—Senator Brown, I will give you a short explanation. The motion is that government business notice of motion No. 3, which is the motion that refers to the government’s proposal for sitting hours tonight, take precedence. This was discussed at the leaders and whips meeting yesterday—that is, that the Senate sit tonight to finish this list of programs. This motion is to give it precedence so that, if the clock gets to 12.45 p.m. and we have not finished dealing with government business notice of motion No. 3, we will continue to do so until it is resolved.

Question resolved in the affirmative.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.33 p.m.)—I move government business notice of motion No. 3:

That on Thursday, 28 June 2001:

(a) the hours of meeting shall be 9.30 a.m. to 6 p.m. and 7.30 p.m. to adjournment;

(b) consideration of general business and consideration of committee reports, government responses and Auditor-General’s reports under standing order 62(1) and (2) not be proceeded with;

(c) the routine of business from 7.30 p.m. till the adjournment shall be government business only;

(d) divisions may take place after 7.30 p.m.; and

(e) the question for the adjournment of the Senate shall not be proposed till a motion for the adjournment is moved by a minister.

I would like to very briefly address this motion and make some undertakings in relation to it. The government has a number of bills that it wants to complete prior to the adjournment of the Senate for the winter recess. They are: the bill that is currently before the Senate in the committee of the whole—that is, the Interactive Gambling Bill 2001; the new business tax system package of bills, upon which there has been agreement among all senators that it will be dealt with at the 12.45 p.m. timeslot; the migration legislation amendment bill; the Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001; the Passenger Movement Charge Amendment Bill 2001; the Taxation Laws Amendment Bill (No. 2) 2001; the Broadcasting Legislation Amendment Bill (No. 2) 2001, which I believe is now supported by all senators as a non-controversial piece of legislation to be dealt with at 12.45 p.m; the Innovation and Education Legislation Amendment Bill
2001; the Higher Education Funding Amendment Bill 2001; the Taxation Laws Amendment Bill (No. 5) 1999; and there are some messages from the House of Representatives in relation to child support, dairy produce, the ANZFA Amendment Bill, the environment protection bill, and superannuation contributions. We are also looking for agreement in relation to the Alcohol Education and Rehabilitation Account Bill 2001. Has that one gone to a committee?

Senator O'Brien—It is going to a committee.

Senator IAN CAMPBELL—Right, so we will not be seeking to deal with that today. That sounds like a long list of bills, but a number of them are non-controversial and there has been agreement, particularly in relation to some of the messages, to handle them in an expeditious fashion. For example, I have it from Senator Robert Hill, the Minister for the Environment and Heritage, that the environment bill, in particular—which I understand Senator Brown has an interest in—would be brought on only if there were broad agreement that it would be dealt with in a non-controversial style. Senator Brown is indicating that that is highly unlikely which is, of course, a huge surprise.

Therefore, the situation is that the government would like to see these bills completed by no later than midnight tonight. However, government business notice of motion No. 3 standing in my name ensures that the Senate would only come to adjournment on the motion of a minister. Our undertaking to the Senate, and the commitment we have given to all honourable senators in discussions on this issue, is that if we complete the list of bills I have just read out we would adjourn at that time. If that is prior to midnight, it would make everybody in the chamber and everyone else happy, I am sure. But if, for example, we were near to the conclusion of the final piece of business as the clock neared midnight, we would seek discussions with leaders and whips of all the parties and the Independent senators to look at extending the sitting of the Senate to a reasonable hour beyond midnight. If it were clear that the program is such that it simply would not be concluded at a reasonable hour this evening, we indicate that we would suspend the sittings and resume tomorrow afternoon after the Senate has completed its role in the swearing in of Australia’s new Governor-General. I indicate and commit to that being the way the government would like to proceed with its program between now and the adjournment of these sittings. I commend this motion to the Senate.

Senator CARR (Victoria) (12.37 p.m.)—I move:

Omit paragraph (e), substitute:

(e) the question for the adjournment of the Senate shall be proposed at 12 midnight.

The government has just outlined its view as to what the legislative program shall be for the day. From my reading of the government’s motion, the government has effectively suggested to us that we need to consider 16 bills today.

I suppose you could argue that this inevitably happens on the last day of a parliamentary session; that is, that we are asked to consider a very heavy workload in so far as the legislative program—in this case, 16 separate pieces of legislation to be considered in one day. But, on top of that, we have a situation where a considerable amount of the day’s business is to be allocated to consideration of the government’s legislation on broadcasting and the proposition that was before the Senate chamber with regard to Internet gaming. We have to ask ourselves why it is that we find ourselves in this situation. This is in the context whereby this opposition has agreed to an additional 150 hours of government business time over the course of the parliament. I again draw to your attention that, if we assume that is 15 hours a week, that it is the equivalent of 10 parliamentary sitting weeks to consider government business. That is an extraordinary amount of time in anyone’s language.

This matter comes up every time we come to this period, and it was addressed by the opposition in discussions with the government earlier this week. We actually asked how we were going with the legislative program and, in particular, what was happening to the money bills and other bills that have start-up dates at the beginning of the finan-
cial year. The opposition has been mindful of the responsibilities of an opposition and we have been particularly mindful of the responsibilities of the government to ensure that there is reasonable consideration of the legislative program in such a way that money bills with this particular starting date are not held up. I think the opposition has been extraordinarily generous in the way in which it has approached this. It has been very reasonable and very responsible. But now we are asked to agree to a proposition to essentially sit, as the government suggests, to all hours tonight. We are told that the government understands this to mean that, come 12 o'clock tonight, we will have a bit of a discussion about whether or not we extend, and it was then said that, if that does not meet the agreement of the chamber, we will sit again tomorrow and presumably next week.

One presumes that, at some point, there has to be consideration of when we finish, but the point I am trying to raise is: is it not appropriate that the disciplines of the chamber be applied to all senators? Is it not reasonable that all senators be mindful of their responsibilities with regard to consideration of government business and opportunities being made available to express your views on pieces of legislation? I take the view that it is a principle that applies on both sides of the chamber. That is why I am suggesting that there needs to be a definite cut-off point for consideration of the legislative program, and that 12 o'clock tonight is not an unreasonable point at which to say that enough is enough. We all understand that, within that context, if a majority is available on the floor of this chamber, then of course the hours can be extended. No-one is denying that basic fact of legislative life.

What I am suggesting is that, if Senator Alston feels it necessary to attack opposition senators and, in the most provocative manner, seeks to ridicule and abuse members of the opposition, those disciplines that apply to me or any other senator should apply to Senator Alston. We have seen a quite extraordinary lack of discipline by this government when it comes to consideration of its own legislation. I think there are double standards here. We have been told that the opposition has to give and give in terms of additional hours, but the government does not seem to be able to discipline its own members as to their responsibilities in being mindful of the limited hours that are available. We in this place know that there is a capacity for the Senate to fill whatever time is available if discipline is not imposed. And year after year we see this government get worse in its capacity to manage the program—that the more time you give the government the more time it takes.

We put to the Democrats—and I understand that they may well be committed to support the government on this issue—that there has to be consideration at some point about how much time is actually given to the government. My view is that if at 12 o'clock the government still needs more time, then it is reasonable to consider it at that stage. But there has to be a limit. I think you will find that there is a great deal more attention paid to the clock if there is a limit imposed now. The problem we have is that the government says, ‘Trust us’—

Senator O’Brien—What did they do last time?

Senator CARR—In the last parliamentary session we sat around until 4 o’clock in the morning cooling our heels because the government was wanting to get messages backwards and forwards between the chambers and did not have the wit and wisdom to organise its program in such a manner that the legislative program was dealt with in a reasonable way. My proposition to the Senate is this: the opposition has bent over backwards to facilitate a reasonable consideration of government business. What we are now saying is that there has to be a measure put on this government to enforce discipline on both sides of the chamber. To date, that has been lacking.

Senator BOURNE (New South Wales) (12.44 p.m.)—The Democrats have considered the proposal put forward by the government and that put forward by the opposition. While we are in agreement that we would like to see as much of the government’s program go through in the time allowed—as possibly the Innovation and Education Legislation Amendment Bill
2001, but we understand that that will not go very far—we also take the point of the opposition that Senator Alston—certainly from every comment I have heard from the Democrats sitting in the chamber—has not been particularly helpful. We would recommend to him that he becomes helpful. While we will be supporting the government, I think I am right in pointing out that contingent notice of motion No. 3 would actually allow us to consider the adjournment at any point. I would be interested in hearing whether or not that is correct. If Senator Alston takes notice of the advice that he is getting from senators around the chamber and if we start this off after lunch in a very cooperative manner, we ought to get through it an awful lot faster. As it stands, we will be agreeing with the government.

Senator HARRADINE (Tasmania) (12.46 p.m.)—In that cooperative mood, I look forward to Senator Alston supporting my amendments. I raise the point that, if we adjourn at midnight but further legislation still needs to be dealt with tomorrow, why can’t the Senate utilise the hour and a half before the swearing-in takes place tomorrow morning?

Senator Robert Ray—We have to set the chamber up. It is going to take three or four hours, apparently.

Senator Faulkner—We thought about it.

Senator HARRADINE—So the Senate has to be set up?

Senator Robert Ray—Apparently.

Senator Faulkner—We are always being set up in here.

Senator HARRADINE—I think we are being set up.

Amendment not agreed to.

Original question resolved in the affirmative.

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 today:

No. 11 New Business Tax System (Simplified Tax System) Bill 2000 and 2 related bills,

the order of the day relating to the Broadcasting Legislation Amendment Bill (No. 2) 2001, and second reading speeches only on the following bills:

No. 4 Migration Legislation Amendment (Immigration Detainees) Bill 2001,

No. 3 Passenger Movement Charge Amendment Bill 2001, and

No. 5 Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001, and

No. 12 Taxation Laws Amendment Bill (No. 2) 2001.

NEW BUSINESS TAX SYSTEM (CAPITAL ALLOWANCES) BILL 2001

NEW BUSINESS TAX SYSTEM (CAPITAL ALLOWANCES—TRANSITIONAL AND CONSEQUENTIAL) BILL 2001

NEW BUSINESS TAX SYSTEM (SIMPLIFIED TAX SYSTEM) BILL 2001

Second Reading

Consideration resumed from 26 June, on motion by Senator Ian Macdonald:

That these bills be now read a second time.

Question resolved in the affirmative.

Bills read a second time.

In Committee

The bills.

Senator MURRAY (Western Australia) (12.49 p.m.)—The Australian Democrats support these bills.

Bills agreed to.

Bills reported without amendment; report adopted.

Third Reading

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

BROADCASTING LEGISLATION AMENDMENT BILL (No. 2) 2001

Second Reading

Debate resumed.

Senator MARK BISHOP (Western Australia) (12.51 p.m.)—The Broadcasting Legislation Amendment Bill (No. 2) 2001 amends the Broadcasting Services Act 1992 and the Radiocommunications Act 1992. The opposition does not oppose the bill, although
I would like to make a few comments with respect to various parts of the bill. The bill was referred to the Senate Environment, Communications, Information Technology and the Arts Legislation Committee last month. The Labor senators’ report to the committee noted one area of deficiency in the bill that we thought required amendment, and so recommended. It is satisfying that the minister has circulated an amendment to that effect and that it has been picked up in the House. There are four different areas that the bill amends in the Broadcasting Services Act: firstly, time shifting, high definition TV broadcasts; secondly, the content of HDTV advertising; thirdly, allocation of additional commercial television licences in underserviced remote or regional markets; and, fourthly, antisiphoning arrangements.

The bill also corrects some anomalies created by amendments made by the Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000 and amends the Radiocommunications Act 1992 in relation to the issue of apparatus licences. The main area of contention that we identified in our minority report to the inquiry is the time shifting arrangements. The proposed amendments are intended to allow the broadcast of suitable demonstration HDTV content during the trading hours of HDTV retail outlets. As discussed in our minority report, these amendments do not meet the needs of their principal intended beneficiaries, the commercial free-to-air television networks.

The act presently allows the networks to engage in limited time shifted programming in relation to promotional SDTV content, but there is no similar provision for HDTV. All HDTV material is required to be simultaneously broadcast in both the SDTV and analog formats. The commercial television networks sought an amendment from the government to allow the broadcast of a 30- to 60-minute demonstration loop tape. The bill only allows the broadcast of a HDTV demo loop tape if the commercial free-to-air networks rebroadcast that tape in full in the SDTV and analog formats within seven days. The reason for requiring the rebroadcast is to prevent the commercial free-to-air stations from effectively multichannelling.

The pay television industry had no objections to the use of demonstration loop tapes in these circumstances, and they have a vested interest in preventing multichannelling. The industry, however, did express concerns about the existing provisions of the bill. In our minority report, Labor senators indicated that the opposition would support amendment of the bill to allow the free-to-air commercial networks to seek an exemption from the HDTV simulcast provisions to allow the broadcast of a 30- to 60-minute demonstration loop tape only. The government has decided to move an amendment to remedy that deficiency, and it went through the House last night with opposition support.

One final point I would like to raise is the government’s failure to take the opportunity of including in this bill an amendment to the Broadcasting Services Act to remedy the datacasting regime. The government’s cancellation of the datacasting spectrum auction last month was a humiliating admission that no-one wants to buy spectrum to offer the datacasting services that the government created and defined in last year’s Broadcasting Services Amendment (Digital Television and Datacasting) Act. The government’s regime was so restrictive that it was unworkable, and no-one in the industry wanted to offer datacasting.

I have a couple of questions for Senator Alston on this point, which my colleague Mr Smith foreshadowed in the House. Firstly, does the government still regard datacasting as being part of the 1998 digital TV framework, and is the government still committed to the 1998 parliamentary framework? Secondly, if so, what does the government propose to do in terms of amending the datacasting regime to make datacasting viable? If the government is no longer committed to the parliamentary framework then the opposition seeks the government’s assurance that it will immediately undertake a public process to ascertain industry views on the future of digital television and datacasting. The implications of these questions are important. Rumours abound that the government has plans for datacasting to become a subscrip-
tion based industry. The opposition says that the parliament is entitled to know what the government’s plans are for the framework that the parliament agreed to in 1998. I ask the minister to respond to those questions.

Senator BOURNE (New South Wales) (12.55 p.m.)—In the interests of speed—and while I am sure that if I spoke to the chamber I would immediately sway everybody’s opinion—I seek leave to incorporate my second reading remarks.

Leave granted.

The speech read as follows—

As we have heard, the Broadcasting Services Amendment Bill is a bill to amend several sections of the Broadcasting Services Act. There is no central theme to the bill, and so I will discuss the Democrats position with respect to the various measures within the bill.

The bill amends the BSA to

- firstly, allow the allocation of additional commercial television licences in two-station markets;
- secondly, to permit the automatic de-listing of events from the anti-siphoning list;
- thirdly, to amend the simulcast provision for high definition television broadcasts, under certain circumstances, and
- lastly, to make minor changes to datacasting.

Commercial Television Licences

The Australian Broadcasting Authority allocates commercial television broadcasting licences. Each licence is allocated in a given licence area and no more than three licences are allocated for any given area. Licences are also allocated in accordance with the rules relating to cross media and foreign ownership.

No one licensee is permitted to own more than one licence in a single licence area. In remote or regional licence areas, the rules may be relaxed in order that people in these areas may receive additional service, in order that they may at least be similar to the services receive in metropolitan areas.

In solus markets - areas where there is only one commercial television licence, the licensee may apply for an additional licence. In areas where there are two commercial television licences, the existing licensees must submit a joint application in order for the ABA to grant an additional licence.

While we understand that there has not been a situation where one licensee wants an additional licence and the second does not, it is considered necessary to remove the anomaly to prevent this situation arising in the future. Perhaps licences will be considered more valuable when full digital conversion takes place. The amendment, removing the requirement for a joint application for a second licence, will allow a sole service provider to apply for a licence in their own right.

In supporting this amendment, the Democrats certainly hope the outcome contributes to additional services being provide to regional, and remote or solus market, and contribute to the diversity of content currently experienced by audiences in these areas.

Anti-Siphoning Provisions

The purpose of the anti-siphoning list is to ensure that the rights to broadcast major and significant sporting events, which have traditionally been broadcast on free-to-air television, are not acquired exclusively by the pay television sector.

At the time the anti-siphoning list came into force, the parliament was of the view that audiences should continue to receive the programming for free that they had always had access to. I am sure the parliament is still unified in this position today. Following the debate which led to the list’s construction in 1994, the list ended up being comprised exclusively of sporting events and are those deemed to be the most important and most significant, to audiences.

Certainly to the free-to-air broadcasters, the rights to broadcast these events also means to ensure a loyal following of audiences (and that means high ratings) and therefore higher advertising revenue.

The anti-siphoning list is attached as a schedule to the BSA and includes events such as the Melbourne Cup, selected Australian Rules Football, Rugby League, Rugby Union, Cricket, Soccer, Tennis, Netball, Basketball, Golf and Motor Sports.

A pay television operator wishing to televise an event on the antisiphoning list must wait until a free-to-air network acquires the rights. As there is no dual rights system, the pay television sector cannot broadcast that event live, unless the free-to-air network gives its permission.

A pay television operator may acquire the rights to an event if the event is removed from the anti-siphoning list.

However, events are automatically de-listed one week after the event has occurred.

It should also be noted that there is no obligation on the free-to-air television sector to broadcast
events that they acquire the rights to. There are also provisions within the Act which relate to antihoarding.

The Australian Broadcasting Authority is currently undertaking a review of the anti-siphoning list and is due to report to the Minister on 30 June. The Democrats understand that the ABA's review does not impact on the amendments to this bill, as the ABA's inquiry relates to the composition of the list, rather than the process of acquiring the rights, as these amendments do.

While the list currently contains only sporting events - and most of these male sporting events - it would be nice to see recommendations to include a greater number of women's sporting events, and even events of national significance - like the opening of parliament, for example. I'm sure that is an event everyone in this chamber would think suitably significant. It would even be encouraging to think that theatrical or cultural events were deemed important enough drawcards by the commercial free-to-air broadcasters to have these included on the list too.

The Productivity Commission's inquiry into Broadcasting, tabled last year, also discusses the anti-siphoning list and related issues. The Productivity Commission's report - to which we are entitled material more clearly defined, so I - states that several submissions to it about the operation of the anti-siphoning regime found it cumbersome and lengthy.

The Productivity Commission found that the anti-siphoning provisions were anti-competitive and that there were costs across the industry which outweighed the benefits of the list. I’m not sure I necessarily agree with this assessment, so I am pleased to see that at the end of its assessment, the Productivity Commission agreed that at least some form of regulation is required.

The Democrats certainly agree with this assessment. We do not think this is something the industry can, at this point in time, self regulate. We are strongly of the view that regulation is required.

I think it is fair to sat in this instance that the amendments to the BSA in this bill are the Government’s response to at least this section of the Productivity Commission report.

We should further note, however, that the amendments presented in this Bill relate to only to the de-listing, or removal, of events from the anti-siphoning list. The amendments do not challenge the existence of the list itself, nor do they propose any change to the composition of the list. Rightfully, these matters are subject to inquiry in 2003.

The amendments before the Senate will mean that events can be removed from the list 6 weeks before the start of an event, unless the minister declares otherwise. Naturally, at least one of the free-to-air broadcasters will have to have been offered the rights to the events before the process of delisting commences.

The Democrats believe this provides enough of a safety measure for the free-to-airs networks. As was pointed out during the Senate committee inquiry into the Bill a couple of weeks ago, that commercial realities would dictate that the rights to all these events would be negotiated far in advance of the six week cut off period. From the rights-holders point of view, they too would want the certainty that their event was to be broadcast and that a commercial return would be maximised.

Certainly from the evidence provided to the committee, I am firmly of the view that no right holders would hold out negotiations, but would want their event scheduled well in advance, and, as I say, to have their commercial returns maximised.

Finally, I wish to turn my attention to the amendments dealing with high definition television simulcasts. The bill allows the free-to-air broadcasters to broadcast high definition programming, which is on a 30 to 60 minutes loop tape to be exempt from the simulcast provisions.

The idea behind this motion is to encourage consumer take-up of digital television by allowing the broadcast of segments of high definition programs compiled into a loop-tape in order that consumers can see and compare high definition television with standard digital or analogue television. Obviously, such material would not be suited to broadcast for ordinary programming and therefore the simulcast exemption is required.

We have assurances as I will be asking the minister additional questions about this in the committee stage, that these amendments will not permit de-facto multichannelling. The Democrats sought clarification of this issue in our additional comments to the Senate Committee report. The changes the Government has made to the bill in this regard, making the broadcast of the demonstration material more clearly defined, so I'm pretty sure that they will not result in any de-facto multichannelling.

Perhaps this is something the reviews into digital television will examine when the time comes in three years time.

Finally, there is a small amendment changing the definition of foreign language news services in the datacasting regime to include foreign news
and current affairs programming. This means that datacasting service providers, when they eventually begin services in Australia, will be able to provide news and current affairs bulletins in foreign languages. I think this amendment will most obviously suit the SBS in the immediate term, and possibly other service providers in the longer term, and therefore the Democrats will support this small change.

In closing, the Democrats view these amendments as being favourable to Australian audiences and will monitor closely, the changes to both the antisiphoning list and the HDTV amendments to ensure that Australian audiences truly benefit.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.55 p.m.)—It is a very powerful example set by Senator Bourne, and I find it irresistibly attractive. I will go one step further. I will not respond in detail other than to say that I adopt what Senator Bishop said in relation to the amendments for the demonstration loop tapes. I think all the other provisions are well understood, and we have obviously considered the Senate committee report. As far as Senator Bishop’s questions are concerned, the government still regard datacasting as part of the 1999 legislative framework. We are considering options that might be available in the light of the cancellation of the datacasting option, which of course was based on a legislative framework supported by the Labor Party. We will make an announcement in due course, once we have fully considered the way ahead.

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

In Committee

Senator BOURNE (New South Wales) (12.57 p.m.)—I have one question for the minister: could he let us know about any review processes? He will have noted that, when the committee considered this bill, I was particularly interested in possible scenarios where the new antisiphoning provisions might fall down. I hope they never would, but they might. If that were to be the case, could the minister let us know what review processes could be undertaken?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.58 p.m.)—A statutory review of the automatic delisting provisions is unnecessary because there are several avenues by which any problems with the new provisions can be brought to the attention of the ABA or the minister and be fully assessed. The clear advantage of these avenues is that they may be employed at any time rather than be determined by a statutory framework that may not be useful or appropriate.

There are two avenues which might be called self-help options for affected parties to bring their concerns regarding the operation of automatic delisting promptly to the attention of the minister. Firstly, provisions within the government’s current bill provide for the free-to-air broadcasters to alert the minister to any instance where they have not had a reasonable opportunity to obtain broadcasting rights to a listed event. Proposed subsections 115(1AA) and 115(1AB) of the new provisions allow the minister to override automatic delisting if satisfied that one or more free-to-air broadcasters have been denied this reasonable opportunity. Affected parties can also bring any concerns regarding the operation of the antisiphoning regime to the Australian Broadcasting Authority, which is required to monitor and report to the minister on the operation of the BSA under section 158(n) of the act.

However, the ABA’s functions in relation to the antisiphoning provisions go further. The ABA is charged specifically with monitoring the operation of the antisiphoning provisions under a ministerial direction issued in 1996 under section 162 of the act. This direction requires the ABA to report to the minister in a timely and comprehensive manner if it considers that the minister should be made aware of matters pertaining to the operation of the antisiphoning rules. This can include advising the minister of any problems arising with the new automatic delisting provisions, including matters brought to the attention of the ABA by the affected parties.

In addition to these self-help avenues, the ABA’s reporting functions in respect of the
anti-siphoning provisions mean that the ABA itself may initiate a report for the minister where it identifies a problem. It should be noted that the ABA is well placed to monitor the provisions in the course of enforcing compliance with the anti-siphoning regime. Of course, the minister has discretion to order a review of the anti-siphoning provisions at any time if it is considered that there may be problems with their operation. For example, recently I responded to concerns that some events on the anti-siphoning list were not being shown consistently by free-to-air broadcasters by directing the ABA under section 171 of the act to conduct a review of the events on the anti-siphoning list. That report is due by 30 June this year.

As I have said, the advantages of these approaches is that their timing is flexible so we can respond to any problems as they arise. A statutory review of the automatic delisting provisions within two years would be inflexible and unlikely to prove helpful. The broadcasting rights for many of the popular events on the anti-siphoning list are held by broadcasters on long-term deals over many years. For example, broadcasting rights for the AFL were recently sold on a five-year deal. It is also notable that these rights were negotiated more than a year before they actually became available. The rights to major sporting events are offered for sale infrequently, and it is unlikely that a review within the short span of two years could adequately assess the operation of the provisions or make useful conclusions about their effectiveness.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

MIGRATION LEGISLATION AMENDMENT (IMMIGRATION DETAINERS) BILL 2001

Second Reading

Debate resumed from 27 June, on motion by Senator Minchin:

That this bill be now read a second time.
able to strip search detainees, and that at least is a welcome thing. It removes probably the most objectionable part of the legislation.

Nonetheless, the legislation as it stands is still unacceptable to the Democrats for two key reasons. Firstly, as most Australians are now clearly aware, the operation and running of our detention centres and the level of scrutiny and accountability for what happens in our detention centres are clearly inadequate, and to pass any legislation which increases the powers in any way of people running detention centres or increases penalties for detainees is completely inappropriate at a time when our whole system of mandatory detention, in the Democrats’ view, is being shown to be clearly not functioning.

The second reason why the Democrats are opposed to the bill is that it reinforces the fiction, and unfortunately the widespread perception, that people who are in immigration detention are criminals. By bringing in offences and bringing them into line with offences in the criminal code, in the Crimes Act, it reinforces and equates detainees with convicted criminals. They are not only not convicted criminals; they are not even people charged with a crime. Unfortunately, a number of people in the community—indeed, a number of politicians—are now willing to use the false label of ‘criminals’ to apply to asylum seekers who are in detention.

Some asylum seekers are not in detention and some are. Those who arrive on an authorised visa—perhaps on a student visa, a visitor visa or any other type of visa—and then seek asylum are able to have their claim assessed while they are in the general community, even after the time frame of their original visa has expired. That occurs frequently with many people on a day-to-day basis without any threat to the community and without any general problem. Yet, if people arrive without authorisation, they are detained indefinitely—sometimes for extremely long periods, stretching into years—in part because, supposedly, they are a threat to the community and will abscond and disappear into the general community if they are not locked away. The falsehood of that is shown by the fact that many asylum seekers who are in the community do not disappear and are able to be located, and the system functions well. Clearly, detaining asylum seekers who arrive unauthorised is a punitive approach. It is deliberately punitive and the minister has said many times that it is a punitive measure to detain people indefinitely, despite the fact that they are not convicted of or charged with anything and that many of them are seeking asylum and protection from persecution. Many of them are recognised as such by our legal system and then released.

The Democrats oppose the practice of compulsory, mandatory, indefinite, ongoing detention of unauthorised arrivals. Therefore, we oppose any measures that seek to extend those offences with which people are charged. Despite the Democrats’ opposition to detention centres, they exist and will continue to exist in the foreseeable future because the policy of mandatory, indefinite, compulsory detention is supported not just by the coalition but by the Labor opposition. Unfortunately, we will have detention centres in their current form until sufficient community pressure can be built to change that policy. In that circumstance, people who are in detention should be charged with offences if they break the law, in the same way as everyone else in the community should be charged, but they should not be equivalent to criminals, as the Migration Legislation Amendment (Immigration Detainees) Bill 2001 seeks to do. We think that is a poor principle which compounds the poor principle of mandatory detention.

We believe that asylum seekers are not a threat to be held at bay. They are a group of people who should be assessed properly and in many cases should not be in detention, and the criminal code type provisions should not be applied to people who have not been convicted of anything. It is worth reminding the Senate that the Human Rights and Equal Opportunity Commission found in reviewing a previous case that a detainee had been held in a remand centre or prison without trial, after attempting an escape. That has occurred in the past and it is on the record and documented by the Human Rights and Equal Opportunity Commission. Again, that is an example of how the overall approach to detainees is already overly harsh and punitive. We
should not be extending penalties even further when the adequacy of our system is clearly not up to scratch.

There have been any number of allegations of inappropriate treatment of detainees by centre staff and guards. Indeed, there are allegations of physical abuse at Villawood Detention Centre in April, which are currently under investigation by the New South Wales police. The government and the opposition say that there is adequate opportunity for complaints to be investigated by the Ombudsman or the Human Rights and Equal Opportunity Commission. The Democrats believe that there is not an adequate opportunity, that it is not sufficiently transparent and that they are not sufficiently empowered or resourced to perform that type of role.

In the specific case of people who have made allegations of assault at Villawood, despite the fact that police investigations are ongoing, there has been application by the government to deport a couple of those people before police investigations are complete and the allegations have been fully tested. The government is saying that, if the police need the people to stay, they can apply for criminal justice visas, but they are not the only ones. My advice is that the Attorney-General can also apply for those visas. The Democrats believe that the Attorney-General should do that to ensure that people are in the country until the investigation is complete. It is not a matter of judging the adequacy of their asylum claims; it is a matter of ensuring that people who allege they have been assaulted have the opportunity to have their allegations properly investigated and not be involved in some sort of lottery where it depends on whether or not they are able to remain in the country while those investigations are under way, particularly where such assaults are alleged to have happened when people are being deprived of their liberty.

The Democrats do not support the general principle of the bill. I note the amendments moved in the House of Representatives by Mr Theophanous, an Independent. Those amendments were supported by the Democrats. I could have moved similar amendments in this chamber and was of a mind to do so but, as in the House of Representatives, the bill has been put through the Senate reasonably quickly. While we are opposed to the bill, we recognise that both Labor and the coalition support it. We are not seeking to frustrate the will of the parliament by holding up debate on the bill but, on behalf of the Democrats, I indicate our support for amendments such as those moved by Mr Theophanous and that, if there had been longer debate and the bill had lain on the table a bit longer, I probably would have circulated similar amendments.

The Democrats oppose the bill for the reasons I have outlined. We welcome the fact that the government has taken out the specific provisions to do with empowering delegates to strip search detainees, although, as I said earlier, those provisions are now the subject of a separate bill in the House of Representatives. If it does come to the Senate, the Democrats will oppose that as well at a time when we have people across the political spectrum in Australia from human rights groups, refugee groups and people such as Malcolm Fraser, the Democrats and even the Labor opposition calling for an independent inquiry into what happens in our detention centres. It seems incongruous to the Democrats that on the one hand there is call for an inquiry into detention centres in recognition of the fact that they are not being run adequately and that there is not adequate transparency, yet on the other hand we are passing legislation to increase penalties against detainees. That seems incongruous to me and is not a desirable approach. In the circumstances, I will leave it at that and put on the record again our opposition to the bill.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.15 p.m.)—At the outset, I thank all senators who have contributed to the debate on this matter. The Migration Legislation Amendment (Immigration Detainees) Bill 2001 is an integral part of a range of strategies being introduced by the government to promote safety and security at immigration detention centres. The measures in this bill will introduce new offences and penalties relating to the behaviour of immigration detainees in immigration detention centres. It also will provide for additional security measures for visitors
seeking to enter immigration detention centres. The new offence of ‘manufacturing, possessing, using or distributing a weapon’ will address the increasing problem of detainees fashioning weapons from materials obtained within immigration detention centres. These objects represent a serious danger to detainees, staff and other persons in detention centres—and some recent examples of this have given rise to these measures. The increased penalty for escaping from immigration detention seeks to provide a more effective deterrent against escape. Finally, the security measures for visitors entering immigration detention centres will seek to ensure that items that could disrupt the good order, safety and security of those facilities are not brought in.

I would also like to comment briefly on several matters raised by senators during the debate. Firstly, there has been some aspect of mandatory detention of unlawful non-citizens being raised in this debate—and, although this is a tough measure, it is a fair one. It has bipartisan support and was first introduced by the Labor government in 1992. Opposition senators have called for a judicial inquiry into immigration detention and disturbances that have been occurring recently. Australia’s immigration detention facilities are already subject to high levels of scrutiny and have been the subject of numerous reports. In fact, these reports and inquiries have included parliamentary committees, the Commonwealth Ombudsman and the Human Rights and Equal Opportunity Commission. Also, there is the Immigration Detention Advisory Group, which was established in February this year and which has unfettered access to all detention centres in monitoring the adequacy and appropriateness of facilities, services and accommodation. Given this high level of scrutiny, the government believes that there is no need for a judicial inquiry.

Senator Schacht, during the debate, made some remarks implying that not all persons were treated equally by immigration law and policy. He claimed that the only reason the Kosovars were granted temporary safe haven in Australia was that they were white, Caucasian and from Europe. This is not the case, and the government emphatically rejects this argument. The Migration Act and migration regulations are applied fairly and without discrimination as to race or national origin. The Kosovars were brought to Australia in response to a call by the United Nations High Commissioner for Refugees to help alleviate the humanitarian crisis in Kosovo. Australia also responded in a similar way for persons who were in a similar situation in East Timor in late 1999.

Senator Schacht also referred to the unanimous report of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. A great deal has been said about this report and I will not repeat it here. But what I will say is that the Senate should remember that there has been criticism of aspects of this report from a wide sector, including members of the opposition. In fact, I think it was Senator McKiernan, who has had a longstanding interest in immigration matters, who expressed concerns about some elements of that report. I believe that what we have in relation to that report is certainly not a unanimous view across the community.

This is a bill that is needed. It is a fair bill. It deals with people who are held in detention for necessary reasons. As I have said, this has been a longstanding policy and has had bipartisan support. It is not possible to equate this sort of detention with the criminal jurisdiction, and I appreciate the comments that Senator Cooney made during the course of this debate. But here we have a situation where people are alleged to have entered Australia unlawfully and it is necessary for them to be detained until their status can be determined—and that is something, as I say, which has been the policy of the Australian government for some time. I commend this bill to the Senate, and I seek leave to continue my remarks later.

Leave granted; debate adjourned.

PASSENGER MOVEMENT CHARGE AMENDMENT BILL 2001
Second Reading

Debate resumed from 27 June, on motion by Senator Tambling:

That this bill be now read a second time.
Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (1.23 p.m.)—I will be tabling a number of amendments to the Passenger Movement Charge Amendment Bill 2001 which we believe are in the best interests of the Australian tourism industry. The Australian Democrats have worked closely with the tourism industry, especially the export side of the industry, for a number of years. We appreciate that tourism is our fourth largest export earning industry, contributing 4½ per cent of GDP annually. I think what is often forgotten in this debate is that the tourism industry directly employs about six per cent of the Australian workforce. In that sense, it provides many jobs for young people and particularly for people living in regional areas. It delivers nearly $13 billion in foreign exchange earnings each year, and of course that sum is still growing. In fact, the industry’s current five million visitors annually is set to increase to 10 million by the year 2010, and 20 million by the year 2020.

This is a phenomenal growth, and it has come about with modest amounts of government investment—which is why I want to talk about this legislation. In fact, the government has been winding back the amount of money it allocates to the international promotional and marketing side of the industry, particularly that which is undertaken by the Australian Tourist Commission. Whilst the ATC’s budget was boosted in the lead-up to the Olympics last year in Sydney, the commission saw its funding base decline as a result of funding cutbacks and, of course, the steep decline in the buying power of the Australian dollar overseas.

Whilst the government has continued to claim that the ATC is currently receiving record funding, in actual fact when you look at inflation and the value of the Australian dollar, the buying power itself is actually $22 million lower than it was five years ago. In effect, it means that the Australian Tourist Commission finds itself in a position of having to look at which overseas markets it will cease to run promotional campaigns in. It has had to determine what its absolute core markets are and where it simply cannot afford to stop advertising Australia as a holiday destination. The handful of countries, mostly in Europe and North America, will essentially be the backbone of the tourism industry market over the next few years. We will all just have to pray that other emerging and fledgling markets will continue to grow of their own accord or as a result of the very hard work of individual operators in the tourism industry who continue to promote themselves overseas.

I see this as a simply massive opportunity that was missed. In September last year, the eyes of three billion people were on Australia for two weeks during the Sydney Olympic Games; the value of that international attention is virtually incalculable. It was a once in a lifetime opportunity to build on the momentum brought about by good planning leading up to the Olympics and what has happened since that time. Yet only a matter of weeks ago in the 2001-02 budget, the Tourist Commission lost $3 million in supplementary funding and is due to lose a further $10 million per annum in the 2002-03 budget, according to the Tourism Task Force. Perhaps this is something that the minister may consider responding to.

On top of this, the tourism industry learnt that it would single-handedly generate the pool of funds to prevent the entry of foot-and-mouth disease into Australia and that this would be achieved by the government increasing the cost of the passenger movement charge by nearly 30 per cent to $38 per person. The initiative as proposed by the government fails to reflect the impact that would have on the tourism industry itself. The rise will reduce Australia’s price competitiveness, add additional recovery costs for airlines and cruise companies and provide no assistance for the industry to promote Australia’s clean and green image on the back of the initiative.

Whilst the tourism industry is the first to acknowledge that it would suffer enormously if Australia’s clean and green image were smeared or indeed destroyed by an outbreak of foot-and-mouth disease, it does not believe it should be the only industry tackling what is essentially an agricultural issue as much as it is a potential tourism issue. Perhaps if the government had softened the
blow of this tax hike on the industry and allocated a portion of the funds generated from the foot-and-mouth prevention scheme to the ATC, the Australian Democrats would not be seeking to move any amendment, nor would we have difficulties in supporting what the government proposes.

However, we know that the Tourist Commission currently receives no direct benefit from the passenger movement charge. In fact, a report from the Australian National Audit Office states on page 13 that the passenger movement charge is now applied partly as a general revenue raising source and is no longer solely linked to cost recovery or Customs, immigration and quarantine services. This has been confirmed by the Attorney-General in his answer to a question on notice, and indeed the Attorney-General stated that he is not considering any proposal to change these arrangements. Furthermore, the Board of Airline Representatives recently went on the public record with the accusation that about $20 million in revenue from the PMC is not being spent on border control services. This is an accusation that does warrant further detailed investigation and is a matter that the Australian Democrats want to see resolved to the satisfaction of the tourism industry itself.

As I stated earlier, the Australian Democrats have been working closely with the peak organisations of the Australian tourism industry, and it is their advice to us that underpins the amendments that we seek to move today. So we call on the Senate to support our amendment to schedule 1, section 6 of the bill, which in essence proposes an increase in the cost of the PMC from $38 to $40. We are advocating this because it will generate an estimated annual revenue of $16 million which would enable some direct financial returns to flow back to the tourism industry and the ATC.

I am well aware that this is a matter that has to be dealt with as a request from the Senate to the House of Representatives, but it is an amendment that would ensure there was no watering down of the government’s proposed foot-and-mouth program, as the tourism industry appreciates the importance of being able to retain the integrity of the measure. I think it would also, in the opinion of the industry, offset the disadvantages to the industry as a result of an increase in the passenger movement charge. The Australian Democrats appreciate that we are not able to amend a bill imposing a tax, as provided by section 53 of the Constitution, but we are not prevented from seeking to move some of our amendments to this bill as a request of the government. Perhaps it is something that the minister may wish to consider. This is wholly in accordance with precedents of the Senate, and our other amendments are therefore in the form of a second reading amendment.

The Tourism Task Force and the Australian Tourism Export Council have both called on the Democrats to recommend to the government that $15 million of the passenger movement charge be allocated to the Tourist Commission to fund its promotional and marketing budget. That would allow the estimated $72 million generated by the government’s $8 increase in the PMC to be allocated to the Australian Customs Service, the Department of Immigration and Multicultural Affairs and the Australian Quarantine and Inspection Service to increase their inspections of passengers and their luggage, mail and cargo at airports as part of the government’s foot-and-mouth disease prevention measures.

The Australian Democrats will move a second reading amendment calling on the Senate to make the collection of the passenger movement charge commissionable to travel agents. The Australian Federation of Travel Agents, the Tourism Task Force and the Tourism Export Council have all advocated this reform measure on the basis that the current regime is overly complex and costly. Some overseas travel agents do not always apply the charge to tickets sold, and we believe that efficiency improvements are possible in other areas. Faced with a similar situation, the Singaporean government recently made the collection of their departure tax commissionable to travel agents. They are already seeing the benefits in a much more efficient and effective system. They have also noted an improvement in compliance figures.
The measures that are addressed in the amendments that the Australian Democrats will move today should have all been addressed by the government as part of a long-term strategy to ensure that we have the most efficient and competitive tourism industry possible. Instead, the government has made a half-hearted attempt to address one issue—foot-and-mouth disease—in isolation of the needs of the tourism industry itself. Furthermore, the government has sought to address it a matter of weeks out from the budget being handed down, missing the opportunity to deal with what I regard as a range of outstanding matters concerning the Australian tourism industry, let alone the question of jobs and particularly jobs in regional Australia. This kind of policy making on the run is not in the best interests of our tourism industry and therefore not in the best interests of our economy, let alone the country itself.

In tabling these amendments, I put the government and the opposition on notice that we will be using every opportunity in future to ensure that these outstanding matters are addressed. The levels of government funding to the ATC must be significantly increased in the immediate future to ensure that we take full advantage of the amazing opportunity that our tourism industry has before it. The type of coverage that we got during the Olympic Games is the type of advertising and marketing that you cannot pay for and yet we are missing an opportunity to capitalise on the way that the image of Australia has been projected abroad.

Similarly, the issue of how the government spends moneys in relation to the passenger movement charge has been raised again today for that very reason. Transparency and accountability as to how these funds are spent must be assured. We believe that the Australian tourism industry, which generates the money, should reap a significant portion of the rewards. These funds should not be disappearing into consolidated revenue. The tourism industry should be given some kind of idea about how long the government intends to collect tax to fund a foot-and-mouth prevention strategy as well as some indication of how these funds will be allocated once the possibility of a foot-and-mouth outbreak passes. The minister may wish also to respond to that. The Australian Democrats will continue to call for a solution that will make the collection of the passenger movement charge commissionable to Australian travel agents and will deal with the current inefficiencies in this area. I commend the Democrats amendments to the Senate. I move:

At the end of the motion, add:

“but the Senate calls on the Government:

(a) to make the charge commissionable and thereby encourage overseas travel agents to comply with the charge regime; and

(b) to introduce legislation allocating a further M$15 per year to the Australian Tourist Commission over the life of the foot and mouth disease prevention program for the purpose of marketing measures designed to boost Australia’s image as a “clean and green destination”.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.36 p.m.)—I thank senators for their contribution to this debate and also remind the Senate that the purpose of this Passenger Movement Charge Amendment Bill 2001 is to amend the Passenger Movement Charge Act 1978 to increase the rate of passenger movement charge by $8 to $38 with effect from 1 July this year. This increase was announced by the Treasurer in this year’s budget. It will fund increased passenger processing costs as part of Australia’s response to the increased threat of the introduction of exotic pests and diseases, particularly foot-and-mouth disease.

The passenger movement charge, which is imposed on the departure of a person from Australia, is collected by airlines and shipping companies at the time of ticket sales and then remitted to the Commonwealth in accordance with arrangements entered into under section 10 of the Passenger Movement Charge Collection Act 1978. It is worth while remembering that this fee is collected by the airlines and shipping companies. Because of the nature of the airline industry, where tickets for travel are sold up to 12
months in advance the increase will only apply to tickets sold on or after 1 July 2001.

Senators Schacht and McLucas raised questions about whether all of the $8 increase in the passenger movement charge will be spent on increased screening for foot-and-mouth disease and other exotic pests and diseases. The $8 increase is expected to raise $279 million over four years. Over that period, the costs of Customs and the Australian Quarantine and Inspection Service increasing quarantine inspections for air passengers only will be $283 million. So the money raised from this will fall some $4 million short of matching the cost of quarantine for airline passengers. All of the increased revenue will be used to offset the costs of Customs and AQIS for increased inspections for these airline passengers. It will not be used for mail and cargo inspections—I make that clear.

Senator Ridgeway on behalf of the Democrats raised a number of issues. He raised the question: what will we do with this when the threat of foot-and-mouth has passed? We have a program in place for four years and I believe that is an appropriate period of time to look at this. We will make a decision as to what to do with this measure. The government, from the information we have from the overseas experience and the great threat that foot-and-mouth poses to Australia, believe that the course of action that has been taken is entirely appropriate. We would reject any assertion that this is a half-hearted attempt at dealing with foot-and-mouth. It is the most comprehensive action taken by any government in relation to quarantine at the border. As a result of that increased inspection and scrutiny there will of course be other effects, including increased rate of detection of illicit drugs and other prohibited substances.

I now turn to the second reading amendment proposed by Senator Ridgeway on behalf of the Democrats. Paragraph (a) of that amendment calls for the charge to be commissionable, thereby encouraging overseas travel agents to comply with the charge regime. The issue of commission is a matter between the airline and the agent who sells the ticket. There are international agreements through the International Air Transport Association that cover the rules for the sale of airline tickets. Under the IATA rules, charges and taxes are not commissionable. The Australian government does not have the jurisdiction to require a foreign airline to pay commission to a foreign travel agent. We would have to rely on the foreign airline’s cooperation to achieve that and, as has been said earlier, that is a matter between the airline and the travel agent. As an example, in a transaction between a travel agent in Italy who is selling a ticket on Lauda Air, a company based in Austria, for travel to and from Australia we would not have the jurisdiction but would have to rely on the cooperation of the travel agent and the airline. That is the reason why there are international agreements covering the sale of tickets. No single jurisdiction would be able to cover the details of these transactions.

There is a high level of compliance by travel agents under the charge regime. A recent report by the Australian National Audit Office indicated the Australian Customs Service collected 98 per cent of the expected revenue from the passenger movement charge. There is no evidence that any extra encouragement is required to increase compliance. At that level, you would have to agree that there is no reason for this. A commission rate of, say, 10 per cent would cost the Australian community around $30 million a year. That is $30 million that could not be spent on fighting foot-and-mouth disease. Why would the Australian taxpayer want to pay a commission to foreign travel agents when they do no additional work to collect the charge, which is just built into the price of the ticket? We would be forgoing that 10 per cent which could equate to $30 million that could be spent in Australia on fighting foot-and-mouth.

With respect to point (b) of the second reading amendment, I make the point that foot-and-mouth measures will also benefit the tourism industry. One only has to look at the examples overseas, particularly the United Kingdom. Tourism has suffered greatly as a result of the crisis with foot-and-mouth in that country. The tourism industry in Australia has more than a vested interest in Australia remaining clean and green, and
in particular free from foot-and-mouth disease. Foot-and-mouth disease would be absolutely catastrophic for a country like Australia. One can only imagine the nightmare that would develop if foot-and-mouth gained a hold in Australia. In this particular instance, these measures are entirely appropriate.

In bringing about these measures, the government does not want to make any increase any greater than is needed. What was assessed as needed was what we have put in place. It was worked out that an $8 increase was appropriate. I believe that there is no reason to increase the amount of $8. That increase in the passenger movement charge will be sufficient for us to maintain an appropriate—

Senator Sherry—Can’t you incorporate this? We’ve got two bills to go and we want to get home tonight.

Senator Ellison—If the Democrats are agreeable to incorporation, I will seek leave to incorporate the rest of my speech, but I thought Senator Ridgeway wanted to hear from the government on the reasons for opposing the amendment. I will abide by the chamber’s wishes. I seek leave to have the rest of my speech incorporated in Hansard.

Leave granted.

The speech read as follows—

An outbreak of FMD would be an unprecedented tragedy for the tourism industry. British Tourism Authorities estimate foreign tourism revenue losses as high as $3 billion pounds.

It is only fair that the tourism industry, along with other sectors, contributes to funding FMD measures which will help keep Australia’s position in the international market.

The Government is very conscious of maintaining Australia’s image and reputation as a welcoming and healthy destination for tourists to visit, and this funding measure will contribute to that.

Let me also say that the Government is funding the Australian Tourist Commission at record levels.

The Government has just delivered the fourth installment of $91.9 million of the record ATC allocation of $361 million over four years, to bolster Australia’s position in the international market place.

These record levels of Government funding and the ATC marketing performance have delivered unprecedented inbound tourism growth.

A record 4.9 million overseas visitors arrived in Australia in 2000. This is an increase of 11% over 1999.

The ATC’s global 2001 strategy includes the launch of over 90 tactical advertising campaigns, worth more than $45 million involving 200 industry partners, promoting holiday packages to potential visitors and an aggressive $6 million direct marketing campaign.

With the appointment of Mr Ken Boundy as the new Managing Director of the ATC, the organisation is very well placed to convert the unprecedented interest in Australia, after the Olympics, into visitor arrivals and expenditure.

As I said before, and for all of these reasons, the Government will oppose the Democrats second reading amendment.

I commend the Bill to the Senate.

Senator Ellison—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

HEALTH LEGISLATION AMENDMENT (MEDICAL PRACTITIONERS’ QUALIFICATIONS AND OTHER MEASURES) BILL 2001

Second Reading

Debate resumed from 27 June, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Senator Lees (South Australia) (1.45 p.m.)—Given the short time remaining and the need to finish the second reading of this bill, I will be brief, but I want to make some points, particularly about the first item in the Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001. It is really the main item dealt with in this legislation, and that is the sunset clause. I can deal more fully with pathology collection centres in the committee stage.

I put the sunset clause into this legislation in 1996 to make sure that we could monitor the impact of the new requirement, which was for general practitioners to train as gen-
eral practitioners. All other medical special-

ities have a period of training after basic

medical school requirements have been met.

In 1996 the government’s wish was to bring

GP training in line with that, and we sup-

ported that. Now I would argue it is time to

ensure that general practice stays in line with

that requirement. It is time to ensure that

general practice will be in the future treated

as a specialty in its own right—treated as a

specific and important area of medical prac-

tice that does need dedicated training.

From the ALP speech in the second read-

ing debate last night and from their amend-

ments, I understand that the Labor Party

want to avoid fully debating this issue at this
time. Their proposed amendments would see

the sunset clause extended for yet another

year. Basically, they would delay all of this

and keep everybody happy—keep the AMA

happy—until a convenient time after the next

election. But I am not quite sure, looking at

what they plan to do, whether people will be
terribly happy. As I will say in a minute, we

have been through the various organisations

interested in this legislation, and most of

them do want us to make a decision, and

make a decision now.

Let us go back for a moment to 1996 and

the doomsday predictions that were about

then on the legislative changes. They really
did scare many of the young medical stu-
dents who were at that stage studying. It was

a scare campaign run by the AMA, and it

very much involved the Labor Party. They
talked of hundreds of unemployed student
doctors, of student doctors and doctors hav-
ing to work as taxidrivers and of a shortage

of training places. Fortunately, the scare

campaign did not work, because the legisla-
tion got through, but also very fortunately it

was proved to be nothing more than that—a

scare campaign. None of that has come to

fruition. Those scare campaigns were com-

pletely unfounded.

Even more important now is that many of

those who lobbied us and said to us, ‘Don’t

pass this legislation’ now have come back to

us and said, ‘We don’t want to go back to the

pre-1996 days. We actually want general

practice to be treated as a specialty in its own

right.’ These organisations include the AMA,

although, as I will say later, and certainly at

the committee stage, they are not completely

happy with removing the sunset clause. The

Australian Medical Students Association

have lined up with them. The Royal Austra-

lian College of General Practitioners, the

Australian Divisions of General Practice, the

Confederation of Postgraduate Medical Edu-

cation Councils, the GP Registrars Associa-
tion and the General Practice Partnership

Advisory Council basically want us to have

it over and done with and make our decision

now.

The Democrats’ 1996 amendments en-
sured that today’s debate could actually take
place—and take place on the basis of an in-
formed level of decision making, on the basis

of real information being provided. What I

put in that legislation was a medical training
review panel. We are very pleased to say that

the government has now changed its original
intent in this new bill and is going to fully

support the retention of the Medical Training
Review Panel. From my years as Democrat

health spokesperson, I think this is one of my

key achievements. It is essential that we

know who is being trained, which colleges

they are being trained in, how many women

are getting opportunities and how many peo-

ple are training part time. I am not saying it

is all solved, by any means: there are still

problems, and I will deal with those in the

committee stage. Who is training, or who is

going into the colleges, and who is actually

passing are issues we still have to deal with.

But I am very pleased to see the way in

which the Medical Training Review Panel

has worked.

In stark contrast to Labor’s opposition

back then, and now their delaying tactics, the

Democrats have spent the past three years

working with government and industry to

encourage proposals which would assist in

alleviating problems related to medical work

force issues.

In terms of opportunities for medical

trainees and new graduates to experience

general practice before they make the deci-
sion as to whether or not they are going to

train in that area, there are opportunities now.

This is the major stumbling block for the

AMA. I understand their concerns. We are
not walking away from this issue; it stays alive under our amendments. But there is a range of opportunities now for new doctors to experience this. They can go out into the Rural and Remote Area Placement Program. That now has 100 places and provides an avenue through which they can have three months and get GP experience while on rotation from hospitals. This program got $3 million for its implementation and over three years will involve 20 pilot sites across Australia. It is a link to either rural general practice or rural hospitals.

Secondly, there is the Rural Locum Relief and the Approved Medical Deputising Services programs. These also provide avenues through which experience can be gained by new doctors in a rural environment. While not specifically focusing on providing a substitute for postgraduate training, these programs do allow junior doctors to gain a better understanding of general practice. Concerns have been raised regarding the level of supervision in these programs, and we can address that in the committee stage later.

General work experience placements are also available, as they are for teachers and for nurses. There are some issues relating to this, and again we can go through this in the committee stage, to look at how voluntary work can be linked in with the clinics and the doctors’ practices that are prepared to provide that. Indeed, I am confident that many community health services, small general practices and community general practices will be keen to share their knowledge and experience with young, or indeed older, graduates—any new graduates. There is a need to better coordinate this.

I am also very pleased to see the government’s commitment to the AMWAC longitudinal study of medical graduates’ attitudes to training and career choices, and that work has also been undertaken on the shortage of doctors in 24-hour clinics and deputising services. The government has provided $20 million for reforming general practice with a view to encouraging practice amalgamations, and we must see this funding continue.

Some flexibility has also been provided in the recruitment by deputising services of doctors who are subject to provider number restrictions. These services must already provide close supervision of these doctors; they must offer them support. That is another area we will need to come back to in the committee stage. There has also been significant progress on addressing the staffing pressures experienced by private hospitals’ accident and emergency units. In negotiations with the College of Accident and Emergency Medicine and the Australian Private Hospitals Association, the government has developed guidelines for an approved private emergency department program, and that will hopefully be released very shortly.

All of these initiatives contribute significantly to improving the quality of GP training and reducing doctor shortages. We have tried at all times to work cooperatively with government, while keeping a very close eye on what they are doing and the outcomes. We have had some discussions with the government regarding this particular piece of legislation and we will be moving a batch of amendments. In particular, I am keen to see that the Medical Training Review Panel is formally retained and, with this in mind, that is one of the key amendments we propose.

We want to continue a two-year independent review of the provider number restrictions and require the holding of a junior doctors summit within three months of the tabling of the independent review in parliament. This is to be hosted by the panel, and I have amendments dealing with that—presumably later this afternoon or tonight we will get to those. The Democrats believe that it is important to retain oversight mechanisms relating to the provider number restrictions so as to ensure that there is continual improvement in the system. We also believe quite strongly that students need to be more actively involved in the actual process of planning their futures as fully qualified doctors. I believe that a junior doctors summit will alleviate some of the pressure and the problems that junior doctors are experiencing, particularly as many of them feel at the moment that they are unheard. That will be an opportunity for them to have their voices heard.

We have also gained from the government a commitment to actively monitor some of
the concerns raised by those in the medical industry during the course of the debate over the provider number legislation. These include better monitoring of the demand for places in the rural and remote area placement program. I think there could well be an opportunity to expand this. I understand that it is already facing some vacancies that are unfilled, but there needs to be better monitoring. As well, we are keen for the government to be actively monitoring the adequacy of the supervision arrangements in the Rural Locum Relief and Approved Medical Deputising Services programs and we will need to discuss in detail the Labor amendments in this area. We believe, in brief, that a strict legislative regime could actually see fewer—indeed, in some cases no—doctors available and we believe an oversight approach would achieve a lot more. We are very keen to facilitate better work experience outcomes for junior doctors, as I said, and this will again be dealt with later.

The government has agreed to examine with state and territory governments the feasibility of establishing formal structures which would link those general practices offering to support voluntary work experience placements with the junior doctors wanting to undertake them. We also would support further investigation of the possibility of direct grants to supervising GP practices to compensate them for the costs of taking on a junior trainee as part of a hospital rotation. Also I think we need to look at some funding for the hospitals to ensure that they can release junior doctors—in other words, some compensation—but this will need to be negotiated with the states and territories.

In summary, we will be supporting the full removal of the sunset clause—not delaying this debate again, but making it clear that we do not want to risk at all going back to the pre-1996 days of general practice basically being a situation where you could go and hang up a shingle without any specialist training. Given the timing of a potential election, to see this legislation not dealt with in this sitting was also a considerable risk—a risk that we may never have got to the sunset clause before we actually had it lapsing. As for the pathology sections of this bill, I will deal with all of that in the committee stage of the debate.

I just finish my comments by saying that we are very pleased to have been vindicated in relation to our initial decision to support this legislation. We are not saying, however, that there are not some problems. We still have some way to go before we have anything like sufficient doctors in rural areas and, indeed, quite a way to go before we have sufficient doctors in many of our outer metropolitan general practices. I think we should be having a debate as to how the minister’s figures are arrived at in terms of actually how many doctors we need in this country. I suspect the way in which the government is counting doctors leaves a lot to be desired, and I will continue my remarks as we get into the committee stage.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.58 p.m.)—I seek leave to incorporate my response to Senator Evans and Senator Lees and I will circulate it to them.

Leave granted.

The response read as follows—Qualification requirements and the sunset clause
This bill has two main parts and I will address the sunset clause to begin with.
In debating this bill in the House of Representatives the member for Jagajaga said: “it is not appropriate for young doctors who are not fully registered to have unrestricted Medicare provider numbers, as they are still going through paid training to acquire the full range of skills that they need as a specialist or general practitioner.
I take this to mean that the opposition agrees that the provider number restrictions have improved the quality of general practice in Australia. The removal of the sunset clause will support this improvement.

The negative impacts that were anticipated to arise from the provider number restrictions have not been realised. However, this government will continue to rely upon the medical training review panel to monitor and report on postgraduate training. The panel’s operation will continue to be funded and it will continue to publish its reports.

One of the most significant fears that doctors had at the time that legislation was introduced was
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that they would not be able to get access to postgraduate training places.

The reports of the Medical Training Review Panel and the independent midterm review of the legislation have provided much needed data about the structure of the medical workforce and have shown that for the past few years, growth in the number of available training places has meant that more places than ever are available.

In 2000 a number of specialties, including rehabilitation medicine, geriatric medicine and intensive care, were unable to fill all available training positions. These figures undoubtedly demonstrate that there are more postgraduate training places than there are medical graduates.

The reality is that some specialties are more attractive than others but the Australian community needs access to appropriate numbers of graduates from all specialties.

Long term projects such as the bonded scholarships, new clinical schools and the rural and remote general practice program will give doctors incentives to become familiar with rural practice. The qualification requirements are a key part of this package. This incentive to new graduates to seek postgraduate general practice or specialist training will encourage them to acquire the skills to work independently. The government believes that this package of incentives creates the environment for more Australian doctors to voluntarily take up the challenge of rural general practice.

Pathology

To sum up the amendments relating to pathology in this bill, the new arrangements will introduce a national system of approvals of specimen collection centres under the MBS arrangements that applies to both the public and private sectors and:

- is fair and open and encourages competition;
- allows for controlled growth;
- introduces requirements around quality collection services and facilities that have been developed by the pathology profession and will be overseen by the health insurance commission;
- offers a three for one incentive to APAS that choose to set up collection centres in rural and remote areas; and
- does not affect collection services operated by recognised hospitals on their premises. Nor does it affect community based collection centres for public pathology services.

I commend this bill to the Senate.

Senator TAMBLING—I also seek leave to continue my remarks later.

Leave granted; debate adjourned.

QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Rulings

Senator MURPHY (2.00 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Can the minister inform the Senate when vital GST rulings on long-term leases, exporting services and the importation of intangibles will be made public by the tax office?

Senator KEMP—I thank Senator Murphy for this question. Senator Murphy always shows a great interest in tax office matters. Sometimes he gets it right and sometimes he gets it wrong.

Senator Robert Ray—You’ll be able to say when you find your brief.

Senator KEMP—I have now found my brief, Senator Ray.

Senator Robert Ray—I was trying to help you.

Senator KEMP—Thank you very much. That would be the first time you have ever tried to help, Senator Ray. That is certainly welcome. I do not know whether one can interpret from that that goodwill is breaking out all over. I rather doubt that, to be quite frank.

Senator Murphy’s question touches on a number of articles which have appeared in the newspaper. There seem to be four areas of concern: sale of businesses, long-term leases, importation of intangibles and exporting services. The commissioner has issued private binding rulings to entities who have sought clarification on how the GST law applies to arrangements in this area. Senator Murphy, you are looking puzzled. It is all right. The commission has issued a number of major rulings clarifying issues in this area. I want you to listen very carefully, Senator, because I am worried about your supplementary question. It may be covered in this answer.

After extensive consultation with industry, the final version of draft ruling GSTR 2001/D2, issued on 28 February 2001, concerning when supply of a going concern is GST free, will be issued in July 2001. Another ruling, GSTR 2000/16, issued on 7 June 2000, addressing transitional arrange-
ments for GST-free supplies under existing arrangements, included leases. GSTR 2000/31, issued on 30 June 2000, dealt with supplies connected with Australia and addressed issues related to imports and exports.

Honourable senators interjecting—

Senator KEMP—Madam President, I thought the question from Senator Murphy was an important question. I would appreciate a bit of silence so that I can provide that answer to him.

The PRESIDENT—There is a lot of background noise in the chamber.

Senator KEMP—Thank you, Madam President. I am not surprised that the Labor Party does not show much interest in Senator Murphy’s question, but I get a bit worried when my own side loses interest! The ATO has established a number of industry partnerships to address priority issues identified by peak bodies. In particular, the work through the property and import-export industries has identified a number of complex issues to be addressed. The ATO is currently working on a draft ruling, expected to be issued in August, on the export of goods. The commissioner also proposes to issue a draft ruling in September which will address a number of issues related to ‘supply of things other than goods or real property for consumption outside Australia’.

This government is very conscious, as is the tax office, of the need to provide certainty. The transition to a new tax system always poses particular challenges. I hope that the answer I have provided to Senator Murphy assists him. I am not sure it does, because he looks a bit confused.

Senator MURPHY—Madam President, I ask a supplementary question. I note the minister’s response. Minister, can you confirm that many business tax changes, including the simplified tax system, the unified capital allowances system, the thin capitalisation rules and a new test to distinguish debt from equity are due to commence in a few days? Why is it that, with the GST about to celebrate its first birthday, consumers and businesses are still having to cope with complex administrative changes and delayed rulings from the tax office?

Senator KEMP—I was worried that Senator Murphy would not listen to the polite, courteous and very detailed response I gave to his question. Let me make it clear. The tax office and the government wish to make sure that, in every possible circumstance, we provide certainty to business. Where there are particular issues, the ATO is addressing these as a matter of priority.

Taxation: Government Policy

Senator GIBSON (2.06 p.m.)—My question is to the Assistant Treasurer, Senator Rod Kemp. Will the minister inform the Senate of the taxes that the government has reduced or abolished? Is the minister aware of any alternative policies?

Senator KEMP—I thank my colleague Senator Gibson for that very important question. Senator Gibson has established a reputation in this chamber, and quite correctly, as one of the harder working senators and one who takes a particular interest in these matters. I appreciate the question from him. To go through the full list would take up much of question time. As there are two parts to this question, I will highlight a number of issues and then return to alternative policies. One of the more important measures that I would highlight is the largest income tax cuts in Australian history.

Senator Hill—$12 billion.

Senator KEMP—Some $12 billion.

Opposition senators interjecting—

Senator KEMP—The Labor Party of course jeers and carries on. We would like a guarantee from the Labor Party that those tax cuts will be protected if, by some mischance of history, the Labor Party gets elected at the next election. Of course, we are all aware of the very big assistance that has been given to self-funded retirees, particularly the measures in the last budget, such as the aged persons bonuses. Another area of great importance has been the cutting of the tax rate on companies, which would be particularly welcomed by small business. The cut was from the 36 per cent we inherited from Labor to 30 per cent under this government.

We would like, and small business would like, assurances from the Labor Party—again, if by some mischance of history they are elected to government—that those tax
elected to government—that those tax cuts would be protected. The abolition of the financial institutions duty is also particularly welcomed. The tax cuts that have been delivered by this government mean more money in the pockets of Australian workers and pensioners. In fact, since 1996 Australia’s lowest paid workers have enjoyed an 8.8 per cent increase in real wages. Contrast that with the previous government! This is a great achievement.

Recently, Mr Chris Murphy, the producer of the famous Murphy model, has produced some very interesting data on this issue. He has shown that, taking the GST into account, the consumer price index has increased by six per cent since July 2000, but people’s average take-home pay has increased by 8.2 per cent. So it is 8.2 per cent in contrast to six per cent. Unfortunately for the Australian public, there is a mixed bag of alternative policies that are putting at risk these gains for Australian taxpayers. As the time is running out, I wonder whether I could have a supplementary to deal with some of these issues, Senator Gibson.

Senator Gibson—Minister, I would be pleased if you would keep elaborating on the taxes that have been reduced or abolished, and the alternative policies which I referred to in my original question.

Senator Kemp—I am very pleased to announce to the Senate that there is a new member of the smallest faction, the truth in policy faction, of the Labor Party. We were very interested to hear last night Senator Schacht’s speech where he described the demise of death duties—Senator Schacht, you might be interested in this—as ‘a dreadful outcome’ for all governments, who ‘deserve to be condemned.’ Hello, the Labor Party has raised the issue of death duties. Senator Schacht, a frontbencher, is now a fully paid-up member of the truth in policy faction of the Labor Party. It is a small faction but nonetheless an important faction. There are other members of the faction: Mr Joel Fitzgibbon has flagged a Labor attack on small business by promising a shake-up of the unfair dismissal laws and refusing to rule out increases in super contributions. (Time expired)
out and so-called navigational aspects of TaxPack, and the improvements made in the previous years are continued in TaxPack 2001. The ATO, as a result of its surveys and as a result of the information it sends out with the TaxPack, is confident that users will be able to understand their entitlements, but in cases of residual doubt—

Senator Faulkner—What a joke!

Senator Kemp—Senator Faulkner’s behaviour right through this session has been appalling, and it continues to be appalling.

Senator Faulkner—Really? Answer the question.

Senator Kemp—Well, I am. I am actually trying to answer the question, but you are talking all the time. Although I am one who is slow to anger—I think that is well known in this place—it does make it difficult. As I was saying to Senator Hogg, in cases of residual doubt there are telephone help lines listed on the inside back cover of TaxPack, and they will also be of important assistance to taxpayers who may have further questions and who may not be sure how to fill out various pages of the TaxPack.

Senator Hogg—Madam President, I ask a supplementary question. The minister failed to answer any of my questions. In particular, can the minister responsible for tax administration guarantee that there are no further mistakes in the 2001 TaxPack? Given that the minister will not give the guarantee I seek, am I entitled to assume that there are yet more mistakes in the TaxPack this year?

Senator Kemp—That is an absolutely dripping question, you would have to say. I am not advised that there are any further errors in the TaxPack. Frankly, if I am so advised, I will ask the tax office to give you a personal phone call, Senator, so that you are informed, because of your interest in this matter. I have always regarded you as one of the more polite senators and therefore my well-known restraint has kept me from attacking you but, if you continue to behave in that manner, do not count on it in the future.

Budget 2000-01: Surplus

Senator Sandy Macdonald (2.16 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Minister, will you inform the Senate why the Howard government has placed such a high priority on maintaining the federal budget surplus? What benefits have been delivered to Australian families in this regard?

Senator Hill—I am happy to remind the Senate of the contrast between the Labor Party and the Howard government on this particular issue. Labor left us with $80 billion of debt from its last five years in office. By contrast, the Howard government has produced budget surpluses for five years in a row.

It is important to again underline why we have chosen to make sure that we only spend within our means. Under this government, home loan interest rates are at their lowest levels for almost 30 years. Families with a home loan of $150,000 are paying $1,000 less each month under the Howard government compared to what they were paying when interest rates hit their peak under Labor. This is the contrast: big budget deficits under Labor meant high interest rates and bigger monthly repayments for Australian families; budget surpluses under the Howard government mean lower interest rates, lower repayments and more money in the pockets of Australian families. We have shown that you can run an economy responsibly and still be able to make the investments needed in areas like health, housing, education, the environment, defence and so on. But as soon as you go back into debt, up go interest rates again.

You would have thought that by now Labor would have learnt its lesson. Next week is the test: next week—finally—we are going to see Labor’s first policy, called Knowledge Nation. Labor has been saying that our fully funded $2.9 billion innovation package is not enough. What we will learn next week from Mr Beazley is how much more money he intends that Labor will spend on Knowledge Nation and, just as importantly, where that money will come from. Mr Beazley says he is not going to spend less; he is going to spend more. Where is the money going to come from?

We know from Senator Conroy that Labor is leaving open the door to bumping up taxes in the old Labor way—a rare moment of
honesty. We now know that Senator Schacht, a frontbencher on the Labor Party side, wants to bring back death duties. We know that Dr Carmen Lawrence is prepared to see the country go into debt again through savings bonds to fund education—Labor’s latest ‘funny money’ solution. Unless Mr Beazley comes up with some straight answers next week, there is only one alternative the Australian people can assume, and that is the old way of Labor: higher debt and higher taxes.

What does that mean for the Australian family? It means higher home loan interest rates, higher monthly repayments, increased unemployment—

Honourable senators interjecting—

The President—Order! The level of conversation in the chamber is making it very hard to hear.

Senator Hill—I was saying that the age-old recipe of Labor—high debt and high taxes—leads to higher home loan interest rates, higher monthly repayments and increased unemployment. We will see it all again. After nearly six years in opposition, all Labor can offer as an alternative to the coalition is a return to the sort of economic management that gave Australia 17 per cent home loan interest rates, one million unemployed and more broken promises on taxation.

Senator Schacht interjecting—

The President—You do not have the call, Senator.

Senator Schacht interjecting—

The President—You are out of order, and you know it.

Canberra Airport: Runway

Senator Forshaw (2.20 p.m.)—My question is directed to Senator Ian Macdonald, representing the Minister for Transport and Regional Services.

Senator Ian Macdonald interjecting—

Senator Forshaw—Listen to the question, Minister. You might actually identify with it. Can the minister confirm that the Howard government is undertaking an $8.8 million project to widen the runway at the privately operated Canberra airport to enable four-engine wide-bodied aircraft to use this facility? Has this project been undertaken without proper environmental or noise assessments, without any cost-benefit analysis at all, without any financial input from the airport operators or the ACT government, on a strict 10-week timeframe to complete the job and in the knowledge that only four or five four-engine wide-bodied aircraft a year will use Canberra airport? Can the minister confirm that the reason for this work being fast-tracked without proper assessment—the reason that the Howard government has laid out $8.8 million of taxpayers’ money—is so the aircraft for the Queen’s royal flight can land in Canberra during her visit to Australia for the CHOGM meeting in October? (Time expired)

Senator Ian Macdonald—Madam President, I am very pleased to be able to confirm that the airport at the national capital, the capital of our nation, is being extended to allow for larger aircraft to land and use it. It is an extension which, in the fullness of time, will be of very great benefit to Canberra, the national capital, and to tourism in this area. It will enhance the standing of Canberra, as you would proudly know, Madam President, as our nation’s capital. The reason for it being done now is that for a long time—I think when President Clinton came here and when other leaders have been here—it has been a little embarrassing that we have not been able to have the heads of state from other governments land at our national capital.

Opposition senators interjecting—

The President—Order! Senators on my left are being disorderly.

Senator Ian Macdonald—It is a plan that has been around for some time and I am pleased that the government is proceeding with it. As I say, it will enhance Canberra’s standing as the national capital and allow foreign heads of state to fly in. In the future it will be of great benefit in bringing leaders from other countries directly into our national capital.

Senator Forshaw, you have asked some technical questions. As I recall, either you or Senator O’Brien raised these questions at estimates two weeks ago. I am sure that this
was gone into in some detail. I suspect that at
the time you were told that there would be
some questions taken on notice and that the
answers would be given to you. I will follow
them up for you and if there is anything else
that I can add or that Mr Anderson, the
transport minister, can add, we will happily
do that. But, Senator, I am sure that you will
be aware that CHOGM is being held in the
capital of my state of Queensland and, of
course, the Queen and other leaders will be
converging on Brisbane for CHOGM.

Senator FORSHA—Madam President,
I ask a supplementary question. Can the
minister also confirm that during her most
recent visit to Australia, the Queen’s aircraft
landed at Sydney airport and the Queen trav-
elled to Canberra in a RAAF VIP aircraft
which can use the Canberra airport without
any widening works being required at all? If
these travel arrangements were suitable for
the Queen in March last year, why have they
suddenly been deemed unsuitable by the
government for the Queen’s visit later this
year? You point out, Minister, that she is ac-
tually coming for CHOGM in Brisbane. Why
couldn’t the taxpayer had been saved the
$8.8 million of wasted expenditure, Minis-
ter?

Senator IAN MACDONALD—If we are
talking about wasting money, as my col-
leagues point out, you should look at Cen-
tenary House and give back some of the
money that the Labor Party is stealing from
the Australian taxpayer.

Senator Forshaw will know as well as I
what the Queen’s travel arrangements were
last time she visited here and I do not know
that that is particularly relevant to the future
of Canberra airport. For the future Canberra
does need a better airport. It is the nation’s
capital and we need to get those bigger air-

Pensioners: Centrelink Questionnaire

Senator BARTLETT (2.27 p.m.)—My
question is to the Minister for Family and
Community Services. Is it the case that over
140,000 lengthy Centrelink questionnaires
were sent to pensioners three months ago
requiring them to disclose their interests in
trusts and private companies? Is it also the
case that between 40,000 and 50,000 of those
forms are still to be returned, a nonreturn rate
of more than one-third of all forms issued?
Did your department include a reply paid
envelope for people to send those forms
back? Is it true that people are finding it sim-
ply too complex and difficult a task to an-
swer the up to 90 questions on the forms? Is
it the case that up to 50,000 Australian pen-
sioners now face having their pensions can-
celled because difficulty in completing these
forms has prevented them from completing
them correctly and on time?

Senator VANSTONE—I thank the sena-
tor for his question. It is true that Centrelink
sent out a significant number of question-
naires asking people who were receiving
benefits about the control and influence they
might have in the distribution of assets from
trusts and companies. It is a very sad reflec-
tion on the Australian community that some
people—not most, but some—will take ad-
vice from very good lawyers and accountants
and will so arrange their affairs in trusts and
companies as to maximise the opportunities
for their family to get welfare benefits,
money that should be going to people who
really need it, not to people who can afford
lawyers and accountants to rearrange their
assets in such a way as to get welfare bene-
fits. So, yes, we did send out the question-
naires.

I have had numerous points raised with
me about the questionnaires, including the
complexity of them. But the nature of trusts
and companies is that you do not walk into a
delicatessen, as you might when you buy a
Kit Kat, and say, ‘I will have a trust or a
company that will allow me to hide my as-
sets so that I can get welfare.’ Necessarily
you need some complex advice, and neces-
sarily to find out whether that is the case
there is a series of questions that some peo-
ple might not find easy. Many of these peo-
ple were able to find the money to go to a
lawyer or an accountant to set up the trust or company in order to maximise their welfare payments.

There would be some people who are beneficiaries under a trust—perhaps because of a will or something like that—and the advice that I have is that, for people in that position, the forms were relatively simple to fill in. But as in any other area of life, when you find people who are prepared to cheat—and there is no point pretending that there are not some; there are—everyone else who is innocent, somewhere along the line, has to pay a price. That is what compliance is about—making sure that there is not someone who is cheating. If we lived in an ideal world where no-one cheated, it would be a lot nicer place and a lot easier to administer welfare benefits. But we spend billions of dollars of hard-earned taxpayers’ money and they want us to make sure that that money is not going to people who should not be entitled to it.

I do not think there is a senator or member in this place who has not been approached by someone with a story about a family which has some sort of welfare, but they know that family is really well off. I can guarantee you that that situation will involve the situation of a trust or a company. We are determined to crack down on this. It means that some people will have to fill in forms that they might otherwise not have had to fill in. I will take the rest of the question on notice and get answers with respect to the reply paid envelope, how many replies we have had and the consequences of that. However, if anybody has been cut off from a pension because they had access to funds through a trust or company, then I am not worried about that. If someone has been improperly cut off, then of course I would be worried.

Senator BARTLETT—Madam President, I ask a supplementary question. Is the minister implying that if the nonreturn rate is close to one in three, the majority of those people are people who are cheating the system? If not, when she gets the figures, can she reconfirm that those many thousands of pensioners face having their pensions cancelled because the forms have not been returned? Can the minister also say what the department is doing to protect the privacy rights of those non-Centrelink trustees and private company directors whose full trust or private company asset details will now be held by Centrelink, and with regard to the information on the forms, in respect of those trusts and companies, that relates to other people who are not Centrelink clients?

Senator VANSTONE—As I said, Senator, I will take the rest of your question on notice. As for the additional part of your question about privacy, this government has an excellent record in terms of the protection of the information that it holds, in stark contrast to the situation under the previous government. I hope you are not raising the spectre of saying that people on welfare should not have to fill out these forms because they will invade the privacy of someone else and thereby they will get welfare to which they would otherwise not be entitled. You surely cannot be saying that the principle of protecting someone’s privacy should be used for people to get more welfare. I only made that proposition because you did put out a press release saying that the Liberal-National government was going to require children to be left at home unattended.

Commercial Nominees Australia Ltd

Senator SHERRY (2.33 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. When will the Assistant Treasurer respond to requests for assistance under section 229 of the Superannuation Industry (Supervision) Act 1993 by superannuation fund members who have lost retirement monies in the Commercial Nominees superannuation fund scandal which has hurt hundreds of Australian retirees, with estimated losses of over $20 million?

Senator KEMP—Let me make it clear that this government follows the arrangements which I think are very similar to the arrangements followed by the previous government.

Senator Conroy—You are undermining it.

Senator KEMP—No. You will be aware, Madam President, that the policy we follow in this regard is, as I said, similar to what has happened under previous governments. Where it is clear that superannuation funds
have not been paid into accounts or have been lost, this government takes that extremely seriously. In the light of Senator Sherry’s question, I do not know whether I will be able to provide him with a detailed update today. If I can, I certainly will.

Senator SHERRY—Madam President, a supplementary question: given that the minister is directly responsible for superannuation and he says he takes the request so seriously, can he confirm that requests were made in March and April for him to act under his statutory powers? Why has he taken no action to give assistance provided for under the SI(S) Act, and is this not just a further example of a dithering and incompetent government failing to act decisively to protect investors and pandering to the top end of town?

Senator KEMP—With regard to pandering to the top end of town, Senator Sherry has conducted—

Senator Sherry—The letters have been sitting on your desk for two months.

Senator KEMP—If you stand up and start shouting at me, Senator Sherry, you must expect to get something back.

The PRESIDENT—Order! Senator Kemp and Senator Sherry!

Senator KEMP—I do not think Senator Sherry would expect us to just sit here and be attacked and abused by him without responding. Senator Sherry asked a question and I courteously took it on notice and said that I would get back to the chamber as soon as possible to advise him on it. Senator Sherry stands up and, as he does, he loses his temper. He gets abusive. Senator Sherry, despite your lack of courtesy, I will still get back to the chamber, but I would certainly watch it if I were you. You want to lower that blood pressure a bit.

Centenary House

Senator BRANDIS (2.35 p.m.)—My question is to Senator Abetz representing the Minister for Finance and Administration. Given the findings of the ANAO report on Commonwealth leasing arrangements, what further actions could be taken to ensure that the Commonwealth receives value for money from the premises it leases?

Senator ABETZ—I thank Senator Brandis for his ongoing interest in ensuring that taxpayers’ money is appropriately used. The first thing that struck me about the Australian National Audit Office report was the ANAO’s failure to investigate the single most outrageous leasing rort in either the private or public sector of this nation. I refer, of course, to the Labor owned Centenary House, which is currently being leased to the Commonwealth, courtesy of the previous Labor government, for between two and three times—

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy, cease interjecting.

Senator ABETZ—It is being leased for between two and three times the market rates in Canberra. The irony, which I am sure is not lost on Senator Brandis, is that the Audit Office is the hapless tenant. Undoubtedly, due to random selection, that particular lease escaped the audit. If it had been audited, the following things would have been revealed: firstly, taxpayers are currently paying $693 per square metre, when average market rates in that area of Canberra are less than half that amount—about $320 per square metre. That means that, for this year alone, the taxpayers of Australia are paying $2.2 million more than they should. Over the life of the lease, an extra $36 million will be ripped out of taxpayers’ pockets and put straight into the coffers of the Australian Labor Party. Secondly, as honourable senators will know, the Centenary House contract was for 15 years—far longer than the normal contract for a government lease. Thirdly, the worst part of this Labor rort was the nine per cent ratchet clause. A ratchet clause is one which ensures that, irrespective of the market, the rental increases by a fixed rate each year. In the ANAO report, at page 71, the Auditor-General said this about ratchet clauses:

Agencies should seek to avoid ratchet clauses ... to ensure that they are only exposed to normal market rentals. If agencies are paying in excess of market rentals due to the existence of ratchet clauses, this may indicate inefficient use of Commonwealth funds.

That is fancy language by the Auditor-General for saying that the Australian tax-
payer is being ripped off. At page 72, the Auditor-General is particularly critical of the use of ratchet clauses in Canberra, which is exactly where the Australian Labor Party used the ratchet clauses.

My challenge to Mr Beazley and Labor is this: do you agree with the Auditor-General that agencies should avoid rental ratchet clauses in their lease agreements? Our friends in the media need to apply the blowtorch and ask Mr Beazley: what is Labor’s response to the report? Does Labor agree with the report’s conclusions? Above all, what will Labor do about this scandalous Labor rip-off? Would a Beazley Labor government commit itself to not allowing ratchet clauses?

Mr Beazley constantly professes concern for justice, equity and fairness when it does not cost himself. He has an opportunity now to show that he believes in justice, fairness and equality when it is going to cost the Labor Party, by telling the Labor Party that the ratchet clause in the Centenary House lease is unacceptable and immoral. It is time for Mr Beazley to show some leadership and some moral courage and tell the Labor Party to give the money back to the Australian taxpayers.

Western Australian Women’s Legal Service

Senator McLUCAS (2.40 p.m.)—My question is to Senator Ellison, representing the Attorney-General. Why has the Howard government threatened to remove the ongoing funding of the Western Australian Women’s Legal Service when the Attorney-General’s Department has acknowledged that the organisation is meeting its obligations under the service agreement with the Commonwealth? Why was the service notified of the Commonwealth’s intention to withdraw its funding only three weeks prior to the end of the financial year? When will the service be given the opportunity to respond to all the information on which the Commonwealth is relying as a basis for closing the service?

Senator ELLISON—The funding of community legal services, which was a great initiative by the Attorney-General, was on the basis that you would not guarantee funding for any particular legal service without an end. In fact, we were looking at funding a range of legal service groups across the community and assessing on an ongoing basis whether funding would continue. Of course, it is only appropriate that all those legal services come under review, and, like all others, this one has come under review and been assessed by the Attorney-General’s Department in relation to the services it provides. As I understand it from the estimates hearing, which was only a short while ago, questions were asked about this and some questions were taken on notice. I will pursue them with the Attorney-General.

Funding for these legal service groups was never done on the basis that ‘here is the funding; you have it for life’—it was on the basis of ongoing assessment. It is an excellent initiative by the Attorney-General to make sure that government funding is spread as far as possible to meet the needs of the community in relation to diverse interests, whether they be women’s legal services, environmental services or ethnic groups who are seeking funding for legal services. I will take it up with the Attorney-General and see where we are at.

Senator McLUCAS—I would appreciate that, Senator. It would be useful to the service to at least get some information about why they are going to be defunded. Madam President, I ask a supplementary question. What confidence does the government’s action in this case give other community legal centres and other service providers, when the government does not honour the terms of its service agreements and does not observe the principles of natural justice?

Senator ELLISON—As I understood it, there were discussions in relation to this. I do not accept the question of denial of natural justice. I reiterate what I said earlier: the funding of these legal service groups is not on the basis that they get the funding forever. It has always been on the basis that the funding would be assessed and reviewed. Of course, the legal service groups across the community have to have the outcomes that are expected of them. It would be inappropriate for the government to give funding willy-nilly in this area, as it would be in any
other area. Community legal service groups do a great job, but that does not mean that funding is given on the basis that it is unlimited.

Indigenous Australians: Services and Programs

Senator RIDGEWAY (2.43 p.m.)—My question is to the Minister representing the Minister for Finance and Administration, Senator Ellison. Minister, you may recall that, in September 1999, the Commonwealth Grants Commission Amendment Bill 1999 was passed to enable the commission to undertake an ‘independent’ assessment of indigeneous people’s needs for services and programs, and to deliver on the government’s 1998 election promise of ensuring that indigeneous spending would be on a strictly needs basis. Minister, the inquiry provided the Acting Minister for Finance and Administration and the minister for indigenous affairs with a draft report on 28 March. It is my understanding from the commission that the report is still in the finance minister’s office. Can the minister tell me when the final report is likely to be released and why the government has been sitting on the draft for some three months?

Senator Ellison—Madam President, I no longer represent the minister for finance. Senator Abetz does, and I think it is appropriate that Senator Abetz answer that question.

Senator ABETZ—I thank Senator Ridgeway for the question. I do not have the details that he seeks, and I will take that on notice. But just in case there is any suggestion that this government is not committing itself to increased expenditure for our indigeneous community, I would simply draw Senator Ridgeway’s attention to the budget papers, which show our absolute commitment in that area. I would also draw his attention to the wonderful work of Senator John Herron whilst he was the custodian of that ministry and also to the ongoing work of Minister Ruddock following on from Senator Herron’s excellent work. But as to the details that you seek, I will take that on notice and pass it on to Minister Fahey and when I have the details I will respond.

Senator RIDGEWAY—Madam President, I ask a supplementary question. I thank Senator Abetz. I was wondering whether the minister might also consider making a commitment to release that report publicly as soon as possible so that everyone has the opportunity to respond to its recommendations.

Senator ABETZ—When governments get reports of this nature they like to consider them. I will take your request to the minister, but you can be assured that this government’s record financially has been an exceptional one in relation to the indigenous community. It just goes to show what can be done when you have good, sound economic management—that benefits in fact do flow to the less privileged within our community.

Goward, Ms Pru

Senator CARR (2.46 p.m.)—My question is directed to Senator Hill, representing the Prime Minister. When will the Howard government announce its decision to appoint Ms Pru Goward as the next Sex Discrimination Commissioner with a contract of five years? Was there any selection process put in place for this appointment? Can the minister confirm that this appointment has been trenchantly opposed by senior public servants, the human rights commission and numerous ministers? Can the minister further confirm that the announcement of this appointment has been deliberately delayed until after parliament rises tonight?

Senator HILL—Consistent with what I have said in relation to similar questions in the past, the government will make announcements of appointments at a time that suits itself. I have to say, however, if it were to be Ms Pru Goward, I would—

Senator O’Brien—So it’s true?

Senator HILL—If it was, I would just like to say personally that I think she has been a fine officer when she served the people of Australia in other positions and would be a well-qualified candidate for this particular position.

Senator CARR—Madam President, I ask a supplementary question. Given that evidence before the Senate estimates committee confirmed that it was Mr Max Moore-Wilton
who intervened to secure Ms Goward’s last sinecure, can we be assured that he did not intervene in this case?

Senator HILL—I do not recall that evidence, and I would be confident it certainly would not have been the case. As I said in relation to her last appointment, I thought she did an excellent job, and she would be well qualified to serve the Australian people in another capacity.

Centrelink: Payments

Senator FERRIS (2.48 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister please inform the Senate of the measures that the government has taken to cut red tape for Centrelink customers? How will the government’s measures to streamline administrative processes for unemployed people encourage more people to take up work?

Senator VANSTONE—I thank Senator Ferris for the question. Yesterday we had the opposition spokesperson on this matter continuing his form, making some inaccurate statements about the design of our family tax benefits system, and of course we had some questions in here on that. As usual, Mr Swan is wrong. The system that we have introduced in relation to welfare is much simpler than the one we inherited from the Labor Party, and we intend to continue to make it simpler. It is a fairer system in relation to families because families get paid exactly what they are entitled to on the basis of their actual income.

When you look at how complex the system was when Labor came to power, you understand why Mr Swan is so upset. When Labor first came to power in 1983, there were 13 different income support payments. After a few years of a Labor government, when they were finally removed in 1996, there were 22 separate income support payments. There had been a 69 per cent increase in the number of payments. That is a 69 per cent increase in the complexity of the system, making it 69 per cent harder for people who need welfare. You shift from 13 different income support payments to 22 separate payments, a 69 per cent increase that is frankly just typical—more complexity for ordinary Australians who need help and more complexity for the public servants who have the difficulty of administering these changes.

Since we have come to government, we have managed to reduce those 22 down to 19, and we will continue with that. On top of that simplification, as a part of tax reform, as I mentioned yesterday, we reduced 12 separate family payments or tax benefits down to three, and we are committed to still further simplification. Patrick McClure, in his report on welfare reform, emphasised the need for simpler income support, and we have followed that advice. Just to remind you: when Labor came to power in 1983, there were 13 different payments; when they left government, there were 22. So they were all about making things more complex.

Today I had the opportunity to announce the first change to come out of a task force I set up to cut red tape in the welfare sector for Centrelink customers. This initiative will cut red tape and simplify processes for about 300,000 unemployed customers who go off payment and then come back on. And that happens: there are people out there looking for work, they get offered a three-month job or a six-month job, they go back to Centrelink and, under the old system, they had to complete the same old form again in full, which was a waste of their time, frustrating for them and, frankly, a waste of time from Centrelink’s perspective. So by streamlining the process for repeat customers—that is, people who come back on benefits within 12 months—we will be able to cut something like five or 10 minutes from the time taken to fill out each of these forms. That might not sound much but 10 fewer minutes in front of a counter answering questions makes it a lot easier for welfare beneficiaries.

When you consider there are 300,000 of them, you get to three million minutes, which is actually a 50,000-hour saving in time for the Centrelink bureaucracy. What does that mean? It means they can give better service, be more friendly at the counter—although I have had no complaints about them not being friendly—or they can do other work and give other customers better service. So a simple change—10 minutes per
So a simple change—10 minutes per application for 300,000 people—gives you 50,000 hours of simplification. This measure will take place from 1 September. Unemployed people who reclaim payment within 52 weeks will have a simpler opportunity. (Time expired)

Senator FERRIS—Madam President, I ask a supplementary question. I am delighted to hear that further simplification for Centrelink customers has been proposed, as recommended by the McClure report. Are there any further details the minister can offer?

Senator VANSTONE—I thank Senator Ferris. There are a few extra details that I can provide. This saving will come about because people will not have to fill in the same form. Centrelink will simply go through with them the information it already holds. Customers will not have to provide three forms of identity; this time they will have to provide only one. After all, we have already verified who they are in the past, and all we need to do this time is to confirm that. Because it will take less time, and because it will be easier for Centrelink customers—putting aside the saving to Centrelink of, say, 50,000 hours—this will make it easier for people to take up a job offer and then shift back to benefits. That will be a simpler system. We are putting forward simpler opportunities for people to get a job and to be more inclined to take a job, knowing that it will be easier to go back onto benefit if they lose the job. I believe it is the case that people who are offered a job for two or three months sometimes do not take it because it is all too much of a fuss to reapply. The simplification will change that. (Time expired)

Howard Government: Advertising Expenditure

Senator CROWLEY (2.55 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Can the minister explain why the government has seen fit to spend $5 million of taxpayers’ money advertising the fact that the financial institutions duty—a state tax—has been abolished, yet it is not spending a single dollar to explain to more than 700,000 Australians why they are about to be slugged with a family tax benefit debt and a child care benefit debt?

Senator HILL—I am sure that the Australian people would wish to know the tremendous taxation advantages that have occurred under the Howard government. One that was mentioned by Minister Kemp in answer to a question earlier today is a $12 billion reduction in the income tax bill for Australian taxpayers—the largest single reduction in income tax in the history of our country. They would also wish to be reminded of the significant reductions in corporate taxation that came about with the tax reform package. They may well wish to be reminded of the range of other taxes, including the FID, which have been abolished as part of the total tax reform package.

This reform package was long overdue, but no previous Australian government had the political courage to enact it. This government has done so, and the benefits should be apparent to all Australians. The economy continues to be in strong economic growth. Interest rates continue to be at record low levels. Inflation remains low, and the prospects of unemployment reducing further are good. These are the benefits that flow from courageous but sound economic policies. I would expect that the Australian people would want to be reminded of the detail of that. It helps them to plan not only their tax affairs but also their business affairs in general.

In relation to the second part of Senator Crowley’s question, I think she is referring to situations where the financial circumstances of particular individuals have changed and their benefits have been affected, in which case they would expect to be corresponded with on a one-on-one basis, because the circumstances of every individual will vary. That seems to me to be the appropriate way in which that matter should be approached.

Senator CROWLEY—Madam President, I ask a supplementary question. Isn’t it the case that Senator Hill said in his answer that we should know the facts, and that the government is keen for us to know the facts of their tax package? Isn’t it also a fact that, to know the facts, you need to know the good news and the bad news? Isn’t it the case that,
if we get the good news only, this is nothing more than a political advertising campaign? Isn’t it the case that the Howard government advertising, as just explained by Senator Hill, is nothing to do with public interest and everything to do with the coalition’s political interests?

Senator HILL—As I understood the second part of Senator Crowley’s question, it related to the personal interests of individuals, not to the interests of the whole. If we talk about the interests of the whole, I remind Senator Crowley that more than 2.2 million families with more than four million children have benefited from increased benefits under the new family payment system. This is over 90 per cent of all Australian families with dependent children. So it is another demonstration of how all Australians benefit from the Howard government’s package of taxation reforms. I remind Senator Crowley and others on the other side, who tend to forget it, that we have been advised by the ANAO that access and equity are very important elements in the administration of Commonwealth programs. This means that departments must be proactive in the promotion of Commonwealth programs to ensure that the integrity of Commonwealth access and equity objectives are consistently achieved over time. (Time expired)

Rural and Regional Australia:
Government Initiatives

Senator CRANE (2.59 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government. Will the minister advise the Senate of the recent Howard government initiatives that will significantly reduce the impact of flooding on communities? Is he aware of any alternative policies?

Senator IAN MACDONALD—I thank Senator Crane for that very important question on natural disaster relief. Senator Crane, coming from Western Australia, would be familiar with that. I am delighted to repeat that the federal government has provided $40 million over four years in the last budget for flood mitigation works to reduce the risk and damage caused by floods. The program has now been extended to outer metropolitan areas of our capital cities. Some $10 million will be spent in the next financial year on this program, and together the three spheres of government are expected to commit a total of $120 million over four years to flood mitigation projects.

In November last year flooding devastated Central and Northern New South Wales and Southern Queensland, and flooding in January this year affected the North Coast of New South Wales. So the government has, in addition to that other flood mitigation program, provided $120 million in special assistance to farmers and small business. We are also providing some $10 million in a flood recovery fund to provide extra support over and above the natural disaster relief arrangements—59 grants have been approved and the process is continuing.

Senator Crane inquired as well about any alternative proposals for natural disaster relief. I am very worried about that because the shadow spokesman for flood matters is so uninterested in these major calamities that attack parts of Australia that she had to ask why the flood recovery fund was being targeted at Central and Northern New South Wales and Southern Queensland. That is how much she knew about it. I was embarrassed to have to say to Senator Mackay, ‘Senator, it’s being targeted there because that’s where the floods are.’ I just despair for natural disaster relief in Australia when the alternative manager for these areas does not even know why we are spending flood money in a particular area.

I am also concerned because we know from the Zimmerman extraction that the Labor Party are going to not only up taxes but also cut programs. Which programs will they be? As the regional services minister, I am in despair that those programs might be to country areas. I have challenged Mr Beazley to confirm that our existing programs in rural and regional Australia will remain, but I have had no response. So that fills me and all country people with despair, that Senator Conroy’s cuts in programs will be cuts in programs to rural and regional Australia.

Opposition senators interjecting—

The PRESIDENT—Order! The level of noise in the chamber is unacceptable.
Senator IAN MACDONALD—When you have an opposition spokesman on flood mitigation programs who does not even know why we spend flood money in flood areas, then this is obviously the sort of program that Senator Conroy is talking about. It is these programs that are going to be attacked. Senator Conroy, in honesty, can you confirm to me that these programs will not be—

Honourable senators interjecting—

The PRESIDENT—Order! There is so much noise I can scarcely hear what is being said; there are people shouting all round the chamber.

Senator IAN MACDONALD—I know the Labor Party are very embarrassed about this, but I do give them the opportunity to confirm that this flood mitigation program will not be cut. You only have to do that, Senator Conroy. I know you are going to cut other programs but—

The PRESIDENT—Senator, address your remarks to the chair.

Senator IAN MACDONALD—Madam President, I ask the opposition to confirm for me that it will not be these very worthwhile flood mitigation programs that are in line for Senator Conroy’s axe.

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Medicare: Prenatal Genetic Screening

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)—On 25 June, Senator Harradine asked me a question about IVF and Medicare payments. I seek leave to incorporate the answer in Hansard.

Leave granted.

The answer read as follows—

SENIOR BRIAN HARRADINE – 25 June 2001

SYDNEY IVF AND MEDICARE PAYMENTS

Senator HARRADINE - My question is directed to the Minister for Health and Aged Care. The Bulletin says that Sydney IVF is offering to couples pre-implantation genetic testing for sex selection for personal reasons. What is the government going to do about that? I also draw the minister’s attention to the Compass program last night which documented the concerns of people with disability about genetic screening and abortion, and highlighted the importance of understanding disability as different, rather than inherent tragedy. I ask the minister: what is the government’s policy of prenatal screening and abortion on the grounds of disability? How are people with disabilities involved in the formulation of government policy on this matter?

Senator HARRADINE – Madam President, I ask a supplementary question. I asked specifically in an area of competence of the federal government – on Medicare. Will the minister representing the minister give an absolute guarantee to this chamber that for those procedures of sex selection for personal reasons – have a look at their website – Sydney IVF will not be paid by the taxpayer? I ask the minister also: why has it been so long in filling the vacancy in the Health Ethics Committee of a person with an understanding of the concerns of people with a disability? When will that position be filled? I ask the minister to assure the Senate that the Australian Health Ethics Committee position will be filled quickly and that an evidence based approach, bearing in mind the experience, credentials and standing of the nominees for this position, be taken. I ask the minister to assure the Senate on those two points, please.

Senator VANSTONE – The Minister for Health and Aged Care has provided the following answers to the Honourable Senator’s questions:

Responsibility for enacting legislation relating to the use of pre-implantation genetic testing lies with each State and Territory Governments. The NHMRC has recommended that all States and Territories implement consistent legislation to regulate assisted reproductive technologies (ART). This will avoid the situation where the laws relating to these issues may vary from State to State. In relation to IVF, three states (Victoria, South Australian and Western Australia) have legislation and the others have stated their intention of enacting legislation in the area of assisted reproductive technology (ART). At the 8 June 2001, meeting of the Council of Australian Governments, the Council agreed that jurisdictions will work towards nationally consistent approaches to regulate assisted reproductive technology and related emerging human technologies. In reaching agreement on this latter
issue, Heads of Government were acutely aware of the need to engage the community on these very important matters and to ensure that all sectors of the community benefit fully from advances in medical science while prohibiting unacceptable practices.

The matter of whether Medicare benefits are payable for genetic testing associated with assisted reproductive technologies, is also a very important, but separate matter.

Medicare benefits are only payable for clinically relevant services provided within the laws of the State/Territory in which the service is provided. A clinically relevant service means a service rendered by a medical practitioner that is accepted in the medical profession as being clinically necessary for the appropriate treatment of the patient to whom it is rendered.

**MRI Scanners: Funding**

**Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)**—On 26 June Senator Faulkner asked me a question about magnetic resonance imaging machines. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

*The answer read as follows—*

**SENATOR FAULKNER – 26 June 2001**

**MAGNETIC RESONANCE IMAGING**

Senator FAULKNER - My question is directed to Senator Vanstone, representing the Minister for Health and Aged Care. Does the flawed 1998 funding agreement covering MRI scanners expire at the end of this week? Has a two year extension been negotiated? If not, what action does the government plan to take to ensure the continued availability of MRI scanners?

Senator FAULKNER – Madam President, I ask a supplementary question. Given the information that the minister has provided in that question time brief, can the minister confirm that no new licenses have been issued for the seven additional MRI scanners to service underresourced regions that the Blandford report recommended should have been operational 12 months ago? Can the minister confirm that the number of additional scanners has been cut to six and that the tenders only close this week? Finally, can the minister confirm that that will mean that the first of the additional scanners will not be operational until around Christmas?

Senator VANSTONE - The Minister for Health and Aged Care has provided the following answer to the honourable senator's question:

Australians’ access to MRI does not expire at the end of this week. The 1998 Diagnostic Imaging (DI) Agreement was extended for two years in the 2000-2001 Budget and now expires at the end of 2002-2003. Negotiations are currently underway between the Government and the profession regarding the inclusion of MRI expenditure in the DI Agreement for the final two years.

This will not affect patient access to Medicare rebates for MRI services. The current Medicare arrangements will continue despite the negotiations.

No new MRI units have yet been granted Medicare eligibility through the tender process for additional MRI units, as this process is ongoing. The Blandford Review of MRI Services, which reported in March 2000, recommended “that up to an additional seven MRI units are required in the next year, to ensure access to MRI services.” This was on the basis of improving geographic access to MRI and not because there was insufficient capacity at existing units for Australia’s population.

The tender process covers six MRI units, as the Health Insurance Commission has now recognised an additional eligible unit in Western Australia.

Tenders closed on 26 June 2001, and will be assessed shortly. The date when these units will become eligible for Medicare will depend on the time needed to select successful tenders and conclude negotiations with them.

**Minister for Health and Aged Care: Interview**

**Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)**—On 26 June Senator Forshaw asked me a question about funding for the business essentials audiotape program. I seek leave to incorporate the answer in *Hansard*.

Leave granted.

*The answer read as follows—*

**SENATOR FORSHAW – 26 June 2001**

**“BUSINESS ESSENTIALS” AUDIOTAPE PROGRAM FUNDING**

Senator FORSHAW - My question is directed to Senator Vanstone, representing the Minister for Health and Aged Care. How much was paid by each of Mayne Health and Minister Wooldridge’s
department to jointly fund the tape of Dr Wooldridge being interviewed by Michael Shildberger about the 2001 budget which has been mailed to every doctor in Australia? Minister, why should the department be required to pay for both Dr Wooldridge’s membership of the AMA and distributing his taped attacks on the same organisation?

Senator FORSHAW – I ask a supplementary question. I remind the Minister that the question I asked was: how much was paid by each of Mayne Health, a private health company, and the Department? You have not answered that Minister. Maybe you could have a go at it in your answer to the supplementary question or take it on notice. Also, hasn’t this deal between Mayne Health and the Department of Health to fund the distribution of Dr Wooldridge’s attacks on the AMA got more to do with commercial and political interests than it has to do with the public interest?

Senator VANSTONE - The Minister for Health and Aged Care has provided the following answer to the honourable senator’s question:

The Department’s sponsorship of the Business Essentials audiotape programs commenced in June 1999 and was renewed in August 2000. The sponsorship is for a series of audiotape programs on which the Department is entitled to three segments to convey the Government’s general health policy and progress on general practice incentives.

The contract has, from the outset, allowed Business Essentials to seek up to four additional sponsors for the program. These sponsors are entitled to have their logo on the sleeve of the audiotape. The Department is not aware of the financial contributions of other sponsors. The commercial arrangements between these sponsors and Business Essentials do not involve the Department. Annual sponsorship for the Department has remained at $300,000 since 1999 plus a GST component since 2000.

**General Practitioner Training**

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)—On 26 June Senator West asked me a question about GPs in the rural sector. I seek leave to incorporate the answer in Hansard.

Leave granted.

*The answer read as follows—*

SENATOR WEST – 26 June 2001

GP RURAL SECTOR

Senator WEST: My question is to Senator Vanstone representing the Minister for Health and Aged Care. Is the minister aware that the number of people applying to undertake training to become a general practitioner has dropped by more than 125 doctors, or 20 per cent? Does this mean that, for the first time, there will be a shortfall in the number of applicants for rural places, with only 225 applicants for 250 rural places? What are the reasons for this shortfall and what action does the government propose to take to remedy the situation?

Senator WEST: - Madam President, I ask a supplementary question. Is it true that the Rural Locum Relief Program has been almost entirely filled by temporary resident and overseas trained doctors? How does this meet the scheme’s objective of giving newly trained Australian doctors short-term experience in rural areas?

Senator VANSTONE – The Minister for Health and Aged Care has provided the following answer to the honourable senator’s question.

Applications for the 2002 General Practice Vocational Training Program closed on 22 June 2001 and the application assessment process is currently being finalised. To date, a total of 661 applications have been received for the 450 available training places. Although at this stage the number of applications has decreased by 115 (15 percent) from last year, the current response represents considerably more applications than the available training places.

Of the total applications received, an estimated 478 applicants have indicated a first preference for the 250 places available in the General Training Pathway and an estimated 183 applicants have nominated their first preference for the 200 places available in the Rural Training Pathway. It is expected that all places will be filled from second preferences.

The number of applications compares very favourably with previous years.

All Australian permanent resident and citizen medical practitioners, who have not yet obtained postgraduate qualifications in a speciality or general practice are able to participate in the Rural Locum Relief Program. The Program therefore does not include temporary resident doctors, but does include overseas trained doctors. There is no set quota to discriminate between Australian trained and overseas trained Australian doctors on this Program. It is administered by State-based Rural Workforce Agencies who arrange the appropriate placement of locums in locations of need. The Program provides a supported envi-
vironment in which medical practitioners can experience rural general practice before committing to a formal training program.

The objectives of the Program are to provide:

- an avenue through which doctors who are otherwise unable to provide services which attract a Medicare benefit, to have temporary access to Medicare benefits to render general practice services in approved placements as rural locums; and

- to ensure that practices seeking doctors placed through this arrangement are aware that locums need to be appropriately selected, supervised and supported in their placement.

The inclusion of overseas trained doctors is in line with these objectives.

**Australian Hearing Services: Board Appointment**

_Senator VANSTONE_ (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.04 p.m.)—Yesterday, I had a question from Senator Evans about appointments to the board of Australian Hearing Services. I seek leave to incorporate the answer in _Hansard_.

Leave granted.

_The answer read as follows—_

**SENATOR EVANS - 27 JUNE 2001**

**APPOINTMENTS TO THE BOARD OF AUSTRALIAN HEARING SERVICES**

Senator EVANS - My question is directed to Senator Vanstone, in her capacity representing the Minister for Aged Care. Can the minister confirm that Ms Jennifer Harris was appointed to the Board of Australian Hearing Services late last year? Is that appointment by Minister Bishop the same Jennifer Harris who was president of the Avalon branch of the Liberal Party, state electorate council president and close friend of Minister Bishop? Can the minister explain what skills another North Shore lawyer, Liberal and close friend of the minister brings to this $18,000 a year honorary job?

Senator EVANS - Madam President, I ask a supplementary question. While the minister is working on her memory, could she perhaps find out from the minister why this appointment was never publicly announced and why the information was not publicly available anywhere, until today's answer to my question? It is not on the website, there is no press release and you cannot get the information from Australian Hearing Services. Can the minister also ask Minister Bishop what other appointments she has made to the hearing services board and whether she would do us the courtesy of making public those appointments, given they are taxpayer funded paid positions?

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

It is not general practice to announce through a media release, appointments of Directors to the Boards of statutory authorities, or Commonwealth companies. Such appointments are made public by their inclusion in the annual report of a relevant entity or where required their financial statements filed with the Australian Securities and Investment Commission. In the case of Australian Hearing Services (AHS) the composition of the board is detailed each year in its annual report. Ms Harris was appointed to the Board on 29 November 2000. As is normal procedure, her appointment will be reflected in the 2000-2001 Annual Report.

Appointments and re-appointments made by Mrs Bishop to the AHS Board are:

- Ms Mary Archibald
- Dr Jeanette Rosen
- Mr Michael Shepherd
- Mr Thomas O’Brien; and
- Ms Jennifer Harris

**Commercial Nominees Australia Ltd**

_Senator KEMP_ (Victoria—Assistant Treasurer) (3.05 p.m.)—Today in question time Senator Sherry asked me a question about CNAL and the Superannuation Industry (Supervision) Act 1993. I have some advice from Mr Joe Hockey, who has the carriage of this. Mr Hockey has advised me that an application for assistance has been received and is being processed but that he cannot comment further at this time. I also seek leave to incorporate in _Hansard_ a time line of this issue, which may be of particular interest to Senator Sherry.

Leave granted.

_The document read as follows—_

**SUPERANNUATION INDUSTRY (SUPERVISION) ACT 1993**

**SECT 229**

Application for assistance

(1) if
(a) a fund suffers an eligible loss after the commencement of this Part; and
(b) the loss has caused substantial diminution of the fund leading to difficulties in the payment of benefits;
the trustee may apply to the Minister for a grant of financial assistance for the fund.

(2) The application must be in writing and be accompanied by such information as the Minister determines.

CNA (Commercial Nominees)
An application has been received – is in the course of being processed, cannot comment further at this time.

- Until recently, CNA was the trustee of approximately 500 Small APRA funds (SAFs), a master trust known as the Confidens Investment Trust (Confidens), two trusts known as Enhanced Equity Fund (EEF) and the Enhanced Cash Management Trust (ECMT), and a number of public-offer superannuation funds.
- APRA commenced investigations of CNA in March 2000 in relation to the prospect that three public-offer superannuation funds (of which CNA was the trustee) may suffer substantial losses as a result of investments by those funds in the ECMT.
- In April 2000, APRA required CNA to engage an investigator (PricewaterhouseCoopers) to undertake an independent review of the financial affairs of the three funds.
- The Board of CNA froze all withdrawals from the ECMT on 7 November 2000.
- In December 2000, after receiving the independent review, APRA removed CNA as the trustee of those three funds, with my consent.
- ASIC has been working closely with APRA in relation to this matter.
- On 13 February 2001, ASIC obtained orders to appoint a receiver to control the assets of Confidens, who has since indicated that he is confident he will recover at least 80 cents in the dollar on behalf of the trust’s investors.
- ASIC also facilitated the appointment of a new trustee for the ECMT and the EEF, which will work closely with ASIC to maximise the recovery of assets to both funds.
- On 14 February 2001, APRA revoked CNA’s approval as an approved trustee and removed CNA as the trustee of the 500 or so SAFs.
- On 20 March 2001, APRA appointed KPMG to investigate the SAFs that had invested with the ECMT, in order to gather evidence to assist APRA in any recovery action that APRA may undertake on behalf of fund members.
- On 29 March 2001, APRA removed CNA as trustee of two closed public offer superannuation funds.
- On 10 May 2001, CNA was placed into liquidation.

Australian Taxation Office: Form

Senator KEMP (Victoria—Assistant Treasurer) (3.06 p.m.)—On Wednesday, Senator Natasha Stott Despoja asked me a question about red tape, the personal services determination and the form that was involved. I want to make a couple of brief comments on that. Senator Stott Despoja clearly discussed this with the Courier-Mail, resulting in an article that I regret contains a number of errors. I will not have time to correct them all. Firstly, the personal services determination form is not a GST form; I think Senator Stott Despoja should be aware of that. This is a form that is used only by taxpayers who earn 80 per cent or more of their personal services income from one source and who want to be excluded from the new alienation of personal services income rules.

Second, while Senator Stott Despoja has not provided me with a copy of the form she has in her possession, from her description it would appear to be a draft form circulated to a consultative group. It is not a final document, but a working document which may be subject to further change. The consultative group has been formed by the Australian Taxation Office, which is working with the tax profession, relevant industry groups—and this touches on a matter that I raised yesterday—and individual taxpayers on the design of the form. Why? Because this government is a consultative government. I have said that many times. Third, this draft form is not a secret document, so it has not been leaked.

Fourth, Senator Stott Despoja emphasised a number of questions and sections on the form. She emphasised that there are 10 sec-
tions. On the top of page 1, under the heading ‘Important’, it states that applicants do not need to fill in all sections. In fact, they may need to fill in only three sections—that is, the three out of the 10 sections. I am also pleased to advise the Senate that the ATO has advised me that they embarked last year on an extensive education and communication program to inform people affected by the alienation measures.

Finally, I must confess that I am somewhat surprised at this question coming from the Democrats. In a minority report of the Senate Economics Legislation Committee on the alienation of personal services income, Senator Andrew Murray apparently claimed that the Ralph report called for a very comprehensive test on this issue, but they felt that the legislation applied only very simple tests. Further, they recommended that instead of one test being required to be satisfied under self-assessment, it should be increased to two. Further, the Democrat report said that the test is loosely drafted and it would be easy for a tax avoider to produce a set of circumstances at very low cost which resulted in them meeting that test. In other words, the Democrats seemed to be arguing at that time that the form would be too easy to fill out. I think it would be a help if the Leader of the Australian Democrats made herself aware of what the Democrats had said previously on this particular issue. I hope that my answer will provide some assistance in that regard.

Australian Taxation Office: Rulings

Senator KEMP (Victoria—Assistant Treasurer) (3.09 p.m.)—On Wednesday, Senator Murphy asked me a question about Australian Taxation Office rulings, and I seek leave to incorporate my answer in Hansard.

Leave granted.

The answer read as follows—

On Wednesday 27 June 2001, (Hansard page: 24977) Senator Murphy asked me:

(i) Can the minister confirm that the ATO’S taxpayers’ charter requires the ATO to give a taxpayer who requests a ruling a decision within 28 days or at an agreed time?

(ii) Can the minister confirm that figures were provided to the National Tax Liaison Group on 6 June showing that the tax office has been unable to meet this standard in 28 per cent of cases since the introduction of its new provisions in the advice process?

(iii) Why doesn’t the government ensure that the ATO dedicates sufficient resources to ensuring that taxpayers who seek rulings get them in a timely way, as required by the taxpayers’ charter?

I now seek leave to have this incorporated in Hansard.

The ATO’s Taxpayer Charter provides that the ATO will give a ruling within 28 days of receiving all the necessary information from the applicant. If the 28 day standard cannot be met, for example, because of the complexity of the matter, the ATO will discuss an alternative arrangement with the applicant and agree on a reply date.

On 6 June 2001, the National Tax Liaison Group was provided with figures indicating a small decrease in the percentage of rulings which met the standards in the first seven weeks after the introduction of the new Provision of Advice processes on 1 April 2001.

Following an independent review of the ATO’s private rulings system, new processes are being introduced to provide greater transparency, integrity and accuracy to the system. The new processes include tighter controls on the preparation and authorisation of rulings, the giving of a unique authorisation number to each ruling, the editing of the ruling to remove identifying or confidential information before publishing, and formal accreditation of authorising officers.

As with any major change, the ATO anticipates that there will be a period of time needed to bed down these externally recommended improvements to the community’s tax system. However, the ATO will continue to monitor and report its performance.

PERSONAL EXPLANATIONS

Senator SCHACHT (South Australia) (3.09 p.m.)—I seek leave to make a short statement. I claim that I have been misrepresented.

Leave granted.

Senator SCHACHT—In the Senate today in question time, Senator Kemp and Senator Hill both purported to quote from remarks I made in the Senate last night in debate on the Internet gambling bill and said that I was supporting the reintroduction of death duties. I invite any senator or member of the public to read my full speech. What I said was that, when state governments got rid...
of death duties in the late 1970s and early 1980s, led by Bjelke-Petersen, the then Premier, they rotted their own tax base and, as a consequence, when they ran short of money, they became addicted to gambling taxes instead and that the states now rely on gambling taxes to find revenue to provide their services rather than other taxes. I made it clear that, if you wanted to look at the adverse social impact in the community, you would find that the introduction of a range of gambling taxes and the spread of poker machines have done immeasurably more damage to the community than the modest range of death duties that states had until the late 1970s and early 1980s. I pointed out the hypocrisy of state governments.

The PRESIDENT—Senator, that is not—

Senator SCHACHT—I also point out in my personal explanation that I am not the only one who has made some comment along these lines.

The PRESIDENT—Senator, that is not relevant to your personal explanation.

Senator SCHACHT—I will just conclude my personal explanation. Senator Hill, who criticised me, said in his first speech: Thus those whose wealth is increased by capital gains rather than by income do not share in the taxation burden.

The PRESIDENT—Senator, that is not related to the matter you have leave to speak on.

Senator SCHACHT—Senator Hill said: No other highly developed country has our almost complete absence from some form of taxation of capital gains, net wealth taxes or death duties. Hilly is in favour of death duties.

The PRESIDENT—Order! You are debating the issue. You have abused the leave that was given by extending the debate.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Rulings

Taxation: Government Policy

Senator CONROY (Victoria) (3.12 p.m.)—I move:

That the Senate take note of the answers given by the Assistant Treasurer (Senator Kemp) to questions without notice asked today.

There could have been no sadder indictment today than what we witnessed after question time, when Senator Kemp had to give written answers to questions asked over the last week which related to matters within his own portfolio. We saw it yet again today. We asked him a simple question about tax administration and the GST. It may come as a surprise to many people in this chamber, but Senator Kemp is in actual fact the minister in charge of tax administration. But time and time again we see Senator Kemp pleading the fifth, saying that he does not know the answer and asking to take the question on notice. Today we have seen three more answers taken on notice and three more demonstrations of the minister’s incompetence and refusal to do the hard yards to get over his briefs.

But this is not surprising, because this is the 12-month anniversary, the first birthday, of the GST, and this government has still not managed to issue rulings in a variety of very important areas and this government wants to hide from that fact. This government wants to take half a billion dollars and advertise its way through to the next election—$20 million a month to try to distract the Australian community from the fact that the GST has king-hit the economy. It is time to remember all the promises that were made before the GST was introduced. We had John Howard, in the House of Representatives on 10 April 2000, saying:

But the great bulk of people are going to be significantly better off. Australians all will be better off ...

And what is the verdict one year on from that statement? A recent AC Nielsen survey shows that 10 per cent of Australians consider themselves better off. That leaves 90 per cent who think they are worse off under the GST. But the Prime Minister said that all Australians would be better off. What was the next promise? All older Australians would get a $1,000 savings bonus. John Howard promised that on radio. He said that you get a $1,000 savings bonus—

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Conroy, use the correct name for the Prime Minister, please—Mr Howard.
Senator CONROY—Sorry. Mr Howard said on radio in the middle of the 1998 election campaign:

You get the $1,000 savings bonus if you are 60 years or over.

That is what he told a Perth radio station in the middle of the 1998 election campaign. So what happened? Forty per cent of Australians over the age of 60 were paid nothing, and a further 10 per cent were paid less than $50. Is it not wonder that Shane Stone wrote to the Prime Minister and said, ‘Prime Minister, ordinary Australians think this government is mean and tricky’? You always have to watch the fine print, just like in the last budget when they said, ‘Self-funded retirees are all going to get these increases.’ What did we find? Thousands upon thousands of self-funded retirees had to read the budget papers, read the fine print, to find that they got nothing.

What about promise No. 3, that pensioners will get a four per cent rise? That is right, and the government did deliver it. But, again, you had to read the fine print to discover that within six months they were going to claw back two per cent. Shane Stone was dead right about the Prime Minister being mean and tricky. Remember the big promise: ‘The GST will be good for the economy.’ What a whopper that was!

Senator Sherry—Beer and petrol.

Senator CONROY—I will come to beer and petrol, Senator Sherry. Don’t you worry about that! What has the GST done to this economy? It has king-hit it; it has mugged it. It has halved the growth in this economy. We were travelling at four per cent. Now we are struggling to stick at two per cent. Why? Because the GST destroyed jobs in this economy; it destroyed economic growth.

What about the next promise, that the GST will replace 10 taxes? The government promised that in their pre-election, full advertising campaign—just like they are trying to do to us now. They are trying to con us with glossy ads and brochures. They said in full-page ads, ‘We will get rid of 10 taxes.’ What has happened? In fact, only four taxes have been abolished: the wholesale sales tax, a minor bed tax that applied to only some hotels in New South Wales and the Northern Territory, and from 1 July 2001 stamp duties on shares and financial institutions duty. Where are the other six taxes that were promised to be abolished? Mean and tricky—that is the hallmark of this government. *(Time expired)*

Senator EGGLESTON (Western Australia) (3.17 p.m.)—I think it is quite courageous of Senator Conroy to get up and criticise the economic management of the Howard government, given the dismal record of the Labor Party in the 13 years that it was in office. Senator Conroy, economic management is not something that I think any Labor Party politician should dare talk about. The Labor Party during its years in office, if one compares it with the coalition government, fails on almost every criterion. I think interest rates under the Labor government hit a high of 21 per cent around the end of the 1980s. Under the coalition, they sit at around six per cent. Inflation rates under Labor were very high indeed compared with inflation rates around the rest of the world. Under the Howard government’s economic management, inflation sits at two per cent or three per cent in Australia, which is the lowest rate heard of—

Senator George Campbell—Or four, or five, or six, or seven.

Senator EGGLESTON—Seven per cent, Senator Campbell, is something that you would remember well, because that is the sort of low inflation rate that the Labor Party had hoped they might achieve one day but never got anywhere near. Under the Labor government, inflation was high and money was worth nothing. If you waited a week, your savings were eroded by inflation. Under the Howard government, under the coalition’s economic management policies, inflation rates have been very low.

When Labor left office, the Commonwealth had a debt of $96 billion. That is something that I think Labor must feel very ashamed of to this very day. Under the coalition government, more than $50 billion of that debt has been paid off, because we have had no less than five consecutive budget surpluses. Under Labor—guess what?—most of the budgets were in great deficit. Senator
Conroy said recently in his famous Zimmer-man performance that he saw nothing intrinsically wrong with deficit budgeting. In other words, he saw nothing intrinsically wrong in going back to the great deficits which characterised the Hawke and Keating Labor governments and which led Australia down the pathway of record national debts, record interest rates, record inflation, record high unemployment rates and generally very poor economic management.

Let us look at unemployment rates. The unemployment rate under the last ALP government hit nearly 11 per cent. Senator Campbell, that is something that you in particular must be have been very embarrassed about. There you were, along with your colleagues—leaders of the trade union movement—and your government had unemployment rates at 11 per cent. What are the rates now? They are right down to six and seven per cent—in fact, 6.9 per cent. The coalition government has created something like 800,000 new jobs. Under the Labor administration, jobs were being lost day by day, week by week, year by year, because the economy was failing under your leadership.

What about real wages? Under Labor, real wages fell. Under the coalition, they have grown by five per cent, which is something I am sure Senator Campbell would applaud, because his trade unionists are better off under the coalition government. Senator Conroy talked about the GST being a failure. Let us face the facts: the GST was supported by Hawke and Keating, but they were just not brave enough to introduce it. Everybody has known and understood for a very long time that this country had to go from a direct to an indirect taxation model, and the Howard government were brave enough to introduce it. They need to be applauded for that great initiative. They were brave enough to go to the people with a proposal to reform the tax system. They were returned on that basis, and they have carried out that reform. (Time expired)

Senator SHERRY (Tasmania) (3.22 p.m.)—One of the questions put to Senator Kemp, the Assistant Treasurer, in question time related to section 229 of the Superannuation Industry (Supervision) Act. For those who are not aware of it, this section provides for compensation in the event of suspected theft and fraud and possible legal and financial assistance where this occurs in respect of a superannuation fund. It is a very important provision, because I do not believe any government would want to see people who are heading towards retirement age or are already retired having money stolen without compensation being provided. Under the act, individuals who are hurt in this way can write to the minister and request assistance. It is a very important provision and, I might say, it is a provision that provides for 100 per cent compensation in those eventualities. Contrast that with the attitude of the Liberal government and Senator Kemp, in particular, who have sought to reduce the level of protection from 100 per cent compensation to some 80 per cent compensation. Fortunately, that provision was defeated in the Senate by the Labor Party when it was presented last year.

Commercial Nominees Australia Ltd is a superannuation fund where some hundreds of Australians have clearly lost money as a result of some theft and fraud. The extent of the loss of money is not clear yet, but it is certain that some theft and fraud has occurred and that there are probably losses of over $20 million. Some of the individuals concerned have written to the responsible minister. Under the SI(S) Act, the Treasurer and, as we understand it, the Assistant Treasurer, Senator Kemp, are responsible for the supervision of superannuation matters in Australia and would be required to respond, hopefully granting the assistance. Some months have passed. The requests were made in March and April—I have seen copies of some of those requests—and still no responses have come from the minister’s office. It particularly concerned me that, in his response after question time, the Assistant Treasurer, Senator Kemp, notified us that Minister Hockey is responsible for superannuation. But, under his duty statement, Senator Kemp, the Assistant Treasurer, is responsible for superannuation matters. It is he who should be responding.

We have a situation where a number of Australian retirees who have put aside
money in the lead-up to their retirement cannot access their money. This is a great worry and concern to individual Australians, particularly when they reach retirement age. It is particularly concerning to me. We have to wonder what Senator Kemp does. If he claims he is not responsible in this area when it is clearly a superannuation matter, what is Senator Kemp doing? He rarely, if ever, can answer a question in his own portfolio areas of responsibility. Here is another issue clearly in his own area of portfolio responsibility, superannuation, and he cannot give us a response. What is even worse is that we have now found out that Mr Hockey, the Minister for Financial Services and Regulation, is supposedly responsible. I might remind the Senate that Minister Hockey was the minister responsible for the day-to-day supervision of Australia’s prudential regulatory authorities, and of course we have the issues relating to the HIH collapse. I am very worried that the individuals who have made applications for assistance have to rely on Minister Hockey.

The provision for assistance is vital to maintain certainty, security and peace of mind for elderly Australians. These provisions should be activated quickly. They should not be sitting on Minister Kemp’s desk or on Minister Hockey’s desk or travelling between the two. This is not helping retired Australians. It is not providing the assistance which is required under the act. Individuals who have been hurt by this collapse should be given appropriate reassurance and appropriate compensation as soon as possible.

Senator TCHEN (Victoria) (3.27 p.m.)—Senator Sherry has a peculiar way of taking note of answers. He has posed a question to the Assistant Treasurer, but today he received the answer from the Assistant Treasurer that another minister is responsible for that aspect of the portfolio. Instead of directing his question to the responsible minister, Senator Sherry has chosen to come into this chamber, using a time which appropriately should be used for discussing the answer provided to a question posed in the Senate earlier, and waste the Senate’s time unfairly criticising Minister Kemp and then going beyond that to denigrate another minister in the other place, saying that he could not trust the minister to do the right thing. On what basis does he have the right to make that sort of statement? It is totally scandalous. It is a waste of the Senate’s time and a waste of his position.

Senator Hill—He has run away, too.

Senator TCHEN—Yes. As Senator Hill pointed out, the moment Senator Sherry finished speaking he made a run for it. That is about all one needs to say about Senator Sherry’s contribution today—it was a total waste of everyone’s time.

Perhaps I can go back to Senator Conroy’s contribution. It is not very often that I will offer a different opinion from that of my good colleague Senator Eggleston of Western Australia, but today I am afraid I have to take very strong exception to what he said earlier. Referring to Labor’s economic performance when they were in government five short years ago, he said that Labor must be very ashamed of the $80 billion debt they left behind. I am sorry, Senator Eggleston, but I do not think the Labor Party are at all ashamed of any debt they left behind. In fact, I do not think the Labor Party can understand the difference between a plus sign and a minus sign, and they think $80 billion of debt is something to be proud of.

I am not saying that without a basis for it. Senator Conroy got up today and read from a survey. We have no idea what sort of quality control applies to that. Senator Conroy said that, in that survey, only 10 per cent of respondents said that they were better off under the GST. Senator Conroy then drew the marvellous conclusion that 90 per cent of people are therefore worse off under the GST. Let me point out to Senator Conroy that, firstly, this is what people think, not what they actually experience. Secondly, just because 10 per cent say that they are better off does not mean that 90 per cent say that they are worse off. The 90 per cent could have had no change, in which case we have a net gain in people’s conditions.

Senator Conroy, in his marvellous logic—which is perhaps typical of a Labor Party frontbencher—can make this jump from 10
per cent saying that they think they are better off to 90 per cent being worse off. Senator Conroy is also extremely loose with his facts, as is also typical of Labor frontbenchers. The facts he mentioned are often talked about in this chamber. Senator Conroy talked about the pension clawback. The simple history of this issue clearly establishes that this government paid GST compensation up front. It is not a case of clawback. Four per cent was paid in July 2000, when the CPI increase was two per cent. The four per cent paid then was not all to do with the CPI.

Senator Conroy persists in saying that the GST has king-hit the economy. This has been a Labor Party mantra. Yet every economic indicator shows that the Australian economy is booming. In my state of Victoria, which is also Senator Conroy’s state, the state Labor government has taken out a full-page advertisement to tell everyone that Victoria’s export is booming, Victoria’s retail trade is booming and Victoria’s building construction is booming. Is that an indication of a king hit? (Time expired)

Senator GEORGE CAMPBELL (New South Wales) (3.32 p.m.)—I also wish to take note of the answers given by Senator Kemp, the Assistant Treasurer. It is very difficult to take note of answers given by Senator Kemp because, while they are long on rhetoric and waffle, they are very short on substance. Today, he did not dispel that analysis of the way in which he treats questions in question time.

Senator Kemp was asked whether the tax office had been forced to pulp flyers associated with the 2001 TaxPack and what the cost of pulping those flyers had been. He deliberately avoided answering that question. He talked about the 2000 TaxPack. He talked about surveys conducted by the ATO on the usage of the TaxPack. He talked about how people find it so easy to use in terms of filling in their taxation returns. He talked about the ATO continuing to make improvements to the TaxPack. But at no time did he acknowledge the fact that leaflets or flyers associated with this TaxPack this year have been pulped, and the cost to the taxpayer for the privilege of pulping those two flyers is something like $143,000.

Those flyers were pulped because of a change in government direction that was taken in this year’s budget. That essentially went to the issue of pensioners and self-funded retirees, in particular. We could be cynical and call those the Stone amendments, the Stone changes or the Stone variations to the budget. There is no doubt that those changes were made to government policy in the budget this year as a direct result of the letter from Shane Stone to the Prime Minister after the Ryan by-election, pointing out how much this government was on the nose with ordinary battlers, with pensioners and with self-funded retirees because of the mean, miserable policies this government has introduced. The most prominent of those policies is the GST and the way in which the government treats compensation for those various groups as a result of the introduction of that tax.

Taxpayers have been forced to pay for the pulping of the flyers that were printed to go out with this year’s TaxPack because of the observations—quite accurate observations, I might add—of the President of the Liberal Party, Mr Shane Stone. Let us have a look at the TaxPack. Let us have a look at what Senator Kemp said today in question time about how the ATO is continually improving the TaxPack to make it easier, how taxpayers find it easier to use and how it simplifies the process for taxpayers getting their returns into the tax office. Let us compare that with an independent analysis of this year’s TaxPack which appeared in an article in the Money section of the Sydney Morning Herald under the name Anne Lampe. The headline is ‘TaxPack’s a knock-out punch’, and it says:

The TaxPack is winging its way into taxpayers’ letterboxes. ‘Ho-hum’ is a common response. They don’t seem to get any smaller or simpler and, according to Ray Regan, president of the National Tax & Accountants’ Association, this year’s is a monster.

The article goes on to set out all the reasons for the changes. It refers specifically to the Stone amendments, to the reasons those changes have been made and to the reason for the flyers being pulled. (Time expired)

Question resolved in the affirmative.
Committees
Legal and Constitutional References Committee

Report: Government Response

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.38 p.m.)—I present the government’s response to the report of the Legal and Constitutional References Committee entitled Healing: a legacy of generations, a report of the inquiry into the federal government’s implementation of recommendations made by the Human Rights and Equal Opportunity Commission in Bringing them home. I seek leave to incorporate the document in Hansard.

Leave granted.

The response read as follows—

FEDERAL GOVERNMENT RESPONSE TO HEALING: A LEGACY OF GENERATIONS


The federal government is committed to addressing the traumatic legacy of past practices of indigenous child separation. There is no doubt that these practices represent a tragic part of Australia’s history. The government has recognised that, viewed from a present day perspective, these practices were misguided and caused great suffering, and has established programmes to assist those affected to move forward.

In responding to the Bringing Them Home report, the government noted that the Human Rights and Equal Opportunity Commission identified family reunion as “the most significant and urgent need of separated families”. This is central to the government’s response announced in December 1997, which included a $63 million package of measures designed to assist families with the provision of counselling and parenting programmes and family tracing and reunion services. Other elements of the package included an oral history project, improved access to Commonwealth records for those tracing their past, and language and culture maintenance programmes. Building on this initial package of initiatives, the government will provide ongoing funding of $44 million over a further four years for its parenting programmes, counselling services and support and training for mental health counsellors. It will also provide an additional $9.9 million over an extra four years for Link Up services.

The federal government has considered the Senate Legal and Constitutional References Committee’s report on its Inquiry into the government’s implementation of the Bringing Them Home report’s recommendations. The Committee did not produce a consensus report. The Majority Report of the non-government members of the Committee contains ten recommendations, of which nine are relevant to the Commonwealth. The government supports, either in full or in part, five of these nine recommendations. We agree with the Committee’s first majority recommendation that it is timely to evaluate the original response to Bringing Them Home by all relevant parties. We agree that it is vital that programmes and services be monitored and coordinated to ensure that the needs of those still suffering the effects of family separations are being met, and we can point to relevant policies already agreed or in place. We agree that it is important that the events of the past and their legacy be acknowledged. In addition, therefore, we are pleased to advise that in the 2001-02 Budget the government allocated funding beyond 30 June 2002 for key family reunion and health services at a further cost of $53.9 million over four years to 30 June 2006.

The government’s response to each of the Senate Committee’s individual recommendations follows.

Response to Majority (non-government Senators) Report recommendations

Recommendation 1 – The Committee recommends that the federal government, in conjunction with state and territory governments, commission an independent evaluation of the progress of initiatives implemented by governments in response to the Bringing Them Home report. The independent evaluator should present its report within six months of the federal government’s response to the report of this inquiry.

Supported, although the timeframe proposed may be insufficient to allow detailed consultation.

The Ministerial Council for Aboriginal and Torres Strait Islander Affairs (MCATSIA) currently monitors progress of all jurisdictions in implementing their responses to the Bringing Them Home report. Although it produces an annual cross-jurisdictional progress report, MCATSIA has not commissioned a formal, independent evaluation of progress.

The government will propose to MCATSIA that it sponsor an independent evaluation of all government and non-government responses to Bringing
Them Home, to be coordinated by the Department of Reconciliation and Aboriginal and Torres Strait Islander Affairs. This will be undertaken in consultation with the Aboriginal and Torres Strait Islander Commission (ATSIC), as the government’s principal source of advice from an indigenous perspective.

Recommendation 2 – The Committee recommends that the Commonwealth convene a Summit meeting twelve months from the date of the federal government’s response to this inquiry, to coordinate and address the issues and recommendations identified in this report.

Supported in part.

The government agrees that it is important that there be a forum for discussion of issues related to indigenous family separations. There are existing forums for this, however.

ATSIC already holds annual national workshops for Link Up staff to discuss common issues. In addition, the second National Stolen Generations Conference was held in March 2001 to discuss a range of issues relevant to those affected by indigenous child separation. Conference delegates included a number of stakeholders such as the Secretariat of National Aboriginal and Islander Child Care, the National Aboriginal Community Controlled Health Organisation, the National Aboriginal and Islander Legal Services Secretariat, and individuals with direct experience of family separation. These conferences, hosted by indigenous organisations, are planned to be held approximately every two years.

There is also already a number of other mechanisms in place which serve to coordinate government responses to the Bringing Them Home report and provide opportunities for those affected by child separation practices to have a voice. For example, MCA TSIA has the separated children issue as a standing agenda item for consideration at its meetings. It also publishes an annual progress report on Commonwealth and state and territory government responses to the Bringing Them Home report. A study of best practice models in relation to contemporary child separation practices is also being undertaken in that context.

The government has implemented its health initiatives in partnership with indigenous communities and the states and territories. The counselling, counselling support, and parenting initiatives in response to Bringing Them Home have been implemented under State/Territory Partnership Forums which include representation from ATSIC and the National Aboriginal Community Controlled Health Organisation, as well as the relevant state/territory governments.

Community consultation regarding the archives project to improve access to Commonwealth records continues through an Aboriginal Advisory Group made up of community representatives in Darwin. A similar group is being established in Melbourne. (The relevant Commonwealth records are largely confined to the Northern Territory and Victoria, for historical reasons).

Recommendation 3 – The Committee recommends that recommendation 5a of Bringing Them Home be fulfilled by the Australian Parliament, and that a ‘Motion of National Apology and Reconciliation’ be settled following wide consultation with individual members of the Stolen Generation and representatives of stolen generation organisations.

Supported in principle.

Both Houses of Federal Parliament passed the government’s Motion of Reconciliation on 26 August 1999. The motion acknowledged that the “mistreatment of many indigenous Australians over a significant period represents the most blemished chapter in our international history” and expressed the Federal Parliament’s “deep and sincere regret that indigenous Australians suffered injustices under the practices of past generations, and for the hurt and trauma that many indigenous people continue to feel as a consequence of these practices.”

The motion also reaffirmed a whole-hearted commitment to the cause of reconciliation between indigenous and non-indigenous Australians as an important national priority for all Australians.

The period when indigenous family separations took place represents a lasting and tragic phase in our nation’s history. The government is very aware of the continuing hurt suffered by those affected by these past practices, and is committed to addressing its consequences.

Recommendation 4 – The Committee recommends, as a gesture of good faith, as in the case of the Parliament of the Australian Capital Territory, that the Northern Territory Parliament make a formal apology to members of the Stolen Generation. The form of words for such an apology should be decided in consultation with representative members of the stolen generation in the Northern Territory.

This is a matter for the Northern Territory government.

Recommendation 5 – The Committee recommends the Commonwealth Government consult
with the Aboriginal and Torres Strait Islander Commission, Reconciliation Australia, members of the Stolen Generation and their representative organisations with a view to establishing a national memorial.

Supported in principle.

In May 2000, the Prime Minister announced plans to construct Reconciliation Place in the national capital’s Parliamentary Triangle thereby demonstrating the government’s commitment to the ongoing process of reconciliation. It is to be an interpretative pathway linking the National Library with the High Court and National Gallery.

As noted by the Prime Minister, Reconciliation Place will acknowledge the history and significant achievements of Aboriginal and Torres Strait Islander peoples, and incorporate an acknowledgment of the separation of indigenous children from their families.

The design for the project was determined through an open competition in the first half of 2001. The winning design has been chosen and the project is scheduled to be completed by the end of the year. The Steering Committee for the project is co-chaired by Dr Evelyn Scott and Mr Ian Spicer AM, and includes a majority of indigenous members. ATSIC, the Torres Strait Regional Authority (TSRA), other relevant organisations and the local Ngunnawal community are being consulted regarding the project.

Recommendation 6 – The Committee recommends that the Government take steps to implement an effective and independent coordination and monitoring process for all programs which address the needs of members of the Stolen Generation. This process should take into account the recommendations of Bringing Them Home and the recommendations and conclusions of this report.

Supported in part.

The government acknowledges the importance of monitoring and coordinating efforts to address the legacy of past policies and practices of indigenous family separation, and of ensuring that these programs and services are more effective in meeting the needs of indigenous people affected by those policies and practices.

The Ministerial Council for Aboriginal and Torres Strait Islander Affairs already undertakes this coordination and monitoring role. The Council comprises Commonwealth, State and Territory Aboriginal Affairs Ministers, along with the Chairs of ATSIC and TSRA, and the Head of the Australian Local Government Association. The issue of government responses to the Bringing Them Home report is a standing agenda item for MCATSIA meetings. MCATSIA publishes an annual report on the progress of government initiatives in response to Bringing Them Home. In 2000 it also published a compilation of all jurisdictions’ responses.

Furthermore, the Council of Australian Governments (COAG) has undertaken to monitor outcomes of all indigenous-specific programmes and services, and government responses to the Bringing Them Home report will therefore be incorporated in this process. (See response below to recommendation 2.5 of the Australian Democrats’ Minority Report).

Recommendation 7 – The Committee recommends the establishment of a ‘Reparations Tribunal’ to address the need for an effective process of reparation, including the provision of individual monetary compensation.

Not supported.

The government’s position on this matter has been clearly stated in its original submission to the HREOC Inquiry and in its submission to this Inquiry. The government’s $63 million package of initiatives (increasing to $117 million after 30 June 2002) to assist those affected by past practices of removal to, among other things, be reunited with their families and receive counselling and support for the pain they have suffered, represents a more practical way to assist in healing the suffering caused by past practices of family separation. The Bringing Them Home report itself asserted that family reunion, not financial compensation, is “the most significant and urgent need of separated families”.

The government considers that establishing a tribunal with the comprehensive jurisdiction and extensive powers suggested would neither guarantee a less stressful consideration of matters nor less expense for either party than court proceedings. The same complex and costly legal and factual issues would need to be addressed in order to assess individual claims and such decisions would still be open to further judicial review. The experience of other administrative tribunals, including in the field of immigration and refugees, illustrates that it is not possible to insulate such deliberations from legal challenges and procedures. The Dissenting Report of the Government Senators on the Committee also highlights the fundamental practical problems associated with the operation of a compensation tribunal in this context. This includes the basic question of defining what circumstances and which affected individuals would or would not qualify for compensation.
Additionally, State governments are responsible for the laws which were in place in their jurisdictions during the period that indigenous child removals took place. No state government has offered to pay monetary compensation or establish such a tribunal. It is a matter for the non-government organisations involved in the removal and care of children to respond to compensation claims addressed to their actions.

**Recommendation 8** – The Committee recommends that the Tribunal model put forward by the Public Interest Advocacy Centre of NSW be used as a general template for the recommended tribunal. The model should consider the most effective ways to deal with issues of reparation.

See response to recommendation 7.

**Recommendation 9** – The Committee recommends that details of the form and operations of the tribunal be finalised following consultation at the proposed National Summit.

See responses to recommendations 7 and 2.

**Recommendation 10** – The Committee recommends that as soon as practicable after the tabling of this report, appropriate consultations should be held with representatives of the Stolen Generation and their organisations, including ATSIC, with a view to finalising an agenda for the proposed National Summit.

See response to recommendation 2.

**Response to Minority Report recommendations by the Australian Democrats**

**Recommendation 1.1** – The Australian Democrats recommend that all of the recommendations contained in the Majority Report on the Stolen Generations be implemented as a matter of urgency.

See responses to the Majority Report recommendations.

**Recommendation 2.1** – The Australian Democrats recommend that the federal government, in consultation with the stolen generations and their representative organisations, significantly increase the funding package to implement the government’s response to the recommendations of the BTH Report to ensure that the needs of the stolen generations are fully addressed. These negotiations should be a key element of the National Summit on the Stolen Generations, as proposed in the Majority Report.

Supported in relation to funding.

The government will provide ongoing funding of $44 million over a further four years for its parenting programmes, counselling services, and support and training for mental health counsellors. It will also provide an additional $9.9 million over an extra four years for Link Up services. This is a significant boost to the government’s original response to Bringing Them Home, bringing the government’s total contribution to $117 million.

The government does not support a national summit, although it does recognise that there should be a forum for people to discuss issues related to indigenous child separation. The government believes such fora already exist - see response to Majority Report recommendation 2.

**Recommendation 2.2** – The Australian Democrats recommend that the federal government’s funding package to implement the recommendations of the BTH Report should be ongoing and subject to review in terms of its adequacy by the independent auditing body referred to in Recommendation 2.6 below.

Supported. See response to 2.1 above, and note that some of the government’s original initiatives such as the oral history and archiving projects do not require further funding as they are finite projects. See also response to recommendation 1 of the Majority Report.

**Recommendation 2.3** – The Australian Democrats recommend the establishment of a mediation process and/or series of conferences by ATSIC to resolve a range of outstanding issues between the stolen generations communities, their representative organisations and Indigenous community organisations in the Northern Territory. This should occur in advance of the Indigenous consultations referred to in Recommendation 10 of the Majority Report.

Supported.

Mediation between the competing interests for Link Up funding in the Northern Territory occurred in July and August 1999 and continued during 2000. ATSIC staff have undertaken mediation sessions between the interested parties on a number of occasions and have used an independent facilitator to assist. The government understands that ATSIC was unable to gain representation of all interested parties at the mediation sessions.

ATSIC has continued to attempt to resolve differences between the representative organisations and will continue the mediation process until a satisfactory resolution has been reached.

**Recommendation 2.4** – The Australian Democrats recommend that the Churches proceed with their plans to establish their own compensation fund to facilitate the delivery of reparations, including compensation, to the stolen generations, their families and communities, in accordance with the recommendations of the BTH Report.
This is a matter for the Churches to consider.

Recommendation 2.5 – The Australian Democrats recommend, in acknowledgment of the enormity of the problems faced by the stolen generations throughout Australia, that COAG take up the responsibility of ensuring the delivery of a coordinated, effective whole-of-government response to the recommendations contained in the BTH Report.

Supported in part.

On 3 November 2000, COAG agreed to commit to a new approach to addressing indigenous disadvantage, based on partnerships and shared responsibilities, programme flexibility and coordination amongst agencies. The focus is to be at the community level, to increase community capacity. The Prime Minister has written to Chairs of Ministerial Councils and to relevant Commonwealth Ministers asking them to implement COAG’s decisions. Ministerial Councils will develop action plans and performance monitoring strategies, and report to COAG on progress in late 2001. MCATSIA will coordinate the work of Ministerial Councils in implementing the COAG decision.

However, the government does not see a role for COAG specifically in relation to the response to Bringing Them Home. MCATSIA is composed of Aboriginal Affairs Ministers in each state and territory, and the ATSIC and TSRA Chairs. It is a forum in which members can consider relevant government activities and discuss issues of mutual interest. The Council aims to achieve a co-ordinated approach to the planning, funding and provision of services to Aboriginal and Torres Strait Islander peoples. It is therefore logical that MCATSIA should continue to coordinate and monitor the responses of all jurisdictions to the Bringing Them Home report, as it has been doing since August 1997. The MCATSIA officials’ working party is convened and chaired by ATSIC.

Recommendation 2.6 – The Australian Democrats support Recommendation 1 of the Majority Report, relating to the need for the federal government, in conjunction with state and territory governments, to commission an independent evaluation of the progress of initiatives implemented by governments in response to the BTH Report.

Supported.

See response to Recommendation 1 of the Majority Report.

Recommendation 2.7 – We further add that periodic independent audits of governments’ initiatives are required no less than every three years to ensure that the needs and aspirations of the stolen generations are being satisfactorily addressed.

Supported in part.

The government acknowledges the need to ensure that programmes and services targeted to people separated as children are delivered appropriately and effectively. It is important that the government be accountable for its initiatives.

Government programmes are already subject to ongoing review and evaluation. Commonwealth and state and territory government programmes are subject to internal review. In addition, the Australian National Audit Office regularly undertakes performance audits of Commonwealth government programmes, just as state and territory Auditors-General audit programmes in their jurisdictions.

These ongoing audits of government programmes, in conjunction with MCATSIA’s monitoring and reporting role, provide adequate assessment of the efficiency and effectiveness of government initiatives in response to Bringing Them Home. In addition, the government has reported on the progress of its Bringing Them Home initiatives on a six-monthly basis, and, in line with Recommendation 1 of the Majority Report, will be arranging for an evaluation of its programmes established in response to Bringing Them Home.

Recommendation 2.8 – The Australian Democrats recommend that Recommendations 44-54 of the BTH Report be actioned as a matter of urgency to ensure that adequate national legislation is implemented which establishes minimum standards of treatment and protection of all Indigenous children and other children as appropriate (national standards legislation).

Not supported in relation to national legislation, but the adoption of consistent best practice standards by state and territory governments is encouraged.

In 1997, the Commonwealth/State/Territory Ministerial Council on Aboriginal and Torres Strait Islander Affairs agreed that jurisdictions would implement their own standards as they see fit. In the interests of consistency however, MCATSIA has established a working group to identify best practice models in the juvenile justice and child welfare systems for jurisdictions to use as benchmarks. ATSIC is managing this project.

Recommendation 2.9 – The Australian Democrats recommend that the Commonwealth provide full and just reparations to the stolen generations, their families and communities as soon as is practicable. This recommendation should be carried out in conjunction with all other recom-
mendations contained in this Minority Report. Collectively, these recommendations constitute the minimum acceptable response required to heal the legacy borne by the stolen generations, their families and communities.

The government does not support a reparations tribunal. See response to recommendation 7 of the Majority Report.

The government considers it most important to allow those affected by past practices to be assisted in finding their families, and to receive counselling and support for the trauma they have experienced. It has therefore focused its response on addressing these needs.

Apart from the provision of family reunion and counselling services, the government has implemented parenting programmes, language and culture maintenance programmes, improved access to Commonwealth records, and an oral history project through which people can tell their stories.

The Prime Minister proposed, and the Federal Parliament passed, the Motion of Reconciliation which acknowledged the suffering and trauma experienced by indigenous Australians caused by the practices of past generations.

**Recommendation 3.1** – The Australian Democrats recommend that all parties involved in negotiations for the establishment of a Stolen Generations Tribunal examine the Veterans’ Entitlement Act 1986 as a successful legal precedent for the relaxation of the normal requirements for establishing liability.

Not supported.

See response to recommendation 7 of the Majority Report.

**Recommendation 3.2** – The Australian Democrats recommend that all parties involved in negotiations for the establishment of a Stolen Generations Tribunal consider the inclusion of a mediation process in the operations of such a Tribunal.

See response to recommendation 7 of the Majority Report.

**Recommendation 3.3** – The Australian Democrats recommend that all parties involved in the negotiations for the establishment of a Stolen Generations Tribunal consider the inclusion of an alternative dispute resolution mechanism in the operation of such a Tribunal.

See response to recommendation 7 of the Majority Report.

**Recommendation 3.4** – The Australian Democrats recommend that the Administrative Review Council (or an equivalent body) prepare a report for tabling in the Australian Parliament on the appropriate model for a Stolen Generations Reparations Tribunal. This report should draw extensively on the views of the stolen generations, their representative organisations, and the outcomes of the National Summit on the Stolen Generations.

See responses to recommendations 7 and 2 of the Majority Report.

**Response to Government Senators’ Dissenting Report recommendations**

**Recommendation 1** – That family reunion and associated support services continue to be the primary focus of government and non-government responses to the separated children experience; that those services be targeted specifically to those separated children.

Supported.

The government is continuing to focus its response to Bringing Them Home on family reunion and support services, by extending funding for the Link Up and health initiatives. This means the government will have contributed $117 million towards programmes to address the continuing trauma of past policies of indigenous child separation.

It is understandable that some separated children organisations feel they can provide the most appropriate services for those they represent, and that it would be better if the funds were distributed directly to them. However, the government considers that this would unnecessarily limit the assistance available to those who require it. The current organisations which provide Link Up and counselling services have access to an existing infrastructure and network which enables them to support their workers and provide related services to their clients.

It is important that the government’s initiatives are directed towards those who have been affected by family separation practices. However, it is very difficult to differentiate between those who are accessing services because they were forcibly separated from their families as children, and those who are accessing services who may have been separated from their families for some other reason, but with nevertheless a very real need for assistance. In the same way, it is difficult to identify the emotional and social issues which may cause someone to need mental health counselling, and to distinguish issues caused by past practices of indigenous child separation from other life affecting issues.

The government considers that, even if such a distinction were clinically possible and appropriate, it cannot adequately or reasonably make these
distinctions in providing its family reunion and counselling services. However, this does not mean that these services are not available to those affected by past practices of indigenous child separation. The services are targeted to the broader group, that is all of those affected by past practices of removal, not necessarily only those who were removed as children. The Human Rights and Equal Opportunity Commission itself stated in Bringing Them Home that separation affected whole families and communities.

Recommendation 2 – That State governments and responsible non-government organisations, including the churches, be encouraged to give tangible as well as symbolic recognition to the needs of separated children.

Supported.

It is very important that the state and territory governments and non-government organisations, including churches, which were involved in past practices of indigenous child separation, acknowledge the part they played in this tragic part of our history, in substantial ways as well as through symbolic gestures. As revealed in evidence to the Committee, while many governments and churches have made apologies, they have provided only modest tangible resources towards providing reparations.

As Chair of MCATSIA, the federal Minister for Aboriginal and Torres Strait Islander Affairs wrote to the heads of the Anglican, Catholic, Uniting and Lutheran churches on 20 July 2000, asking them to provide reports on their responses to relevant recommendations of Bringing Them Home, for inclusion in the MCATSIA report on progress for 1999-2000. In asking for this information, the Minister encouraged churches to develop relationships between themselves and Link Up services to facilitate access to church records by indigenous people trying to trace their families. All of the church leaders have provided information for the report.

Moreover, the Commonwealth can work with the states and territories through MCATSIA to encourage them to respond in a more material way to the needs of those separated under their past laws.

Senator McKIERNAN (Western Australia) (3.38 p.m.)—by leave—I move:

That the Senate take note of the document.

It is good to see some acknowledgment by the federal government of the recommendations made by the Human Rights and Equal Opportunity Commission in the Bringing them home report. However, this response is indicative of a government who believes that these issues will go away. They clearly will not. All Australians need to be able to honestly and openly own our shared history. Our sense of who we are and what we hope to be can never be securely held if it is based on a false and incomplete history. There are things that must be done and said if we are to be able to move on.

Those who are today still suffering from the direct and indirect consequences of past policies that saw indigenous families torn apart have particular rights and needs that have yet to be met. We must do so for their own good and for the good of all of us. We should never lose sight of the fact that the abuse and mistreatment of indigenous Australians has been the subject of ongoing contemporary debate and informed criticism since European settlement. There is no one true history; there is no one truth in these matters. We can no more say that all policy was motivated by racism and malice than we can say that all the motives were benign. What we can agree on is that the results of policies of governments and agencies over time were shameful and overwhelmingly to the great disadvantage of most indigenous Australians subject to them.

Every Australian legislator should be aware that every aspect of past policies, for which so many now express sorrow and regret, was framed in the context of contemporary criticism and debate. Legislators of those days were content, relaxed and comfortable in moving from majority public opinion rather than accepting informed and probably less popular advice. But we must move on. We must acknowledge past wrongs, guarantee against their repetition and express genuine sorrow both for these acts and for the consequences of these acts. I have moved in these terms in the parliament every year since the tabling of the Bringing them home report in 1997.

The government say in their response that they support in principle recommendation 3,
... ‘Motion of National Apology and Reconciliation’ be settled following wide consultation with individual members of the stolen generation and representatives of stolen generation organisations. However, they quite clearly do not. The government say their motion of reconciliation fits this requirement. It quite clearly does not. Ultimately, for an apology to have an effect it must be made in terms acceptable to the parties affected. The government’s motion of reconciliation does not do this, therefore it is not effective. This is unfinished business. The government also refuse to consider recommendation 7, to establish a reparations tribunal, on the grounds that it is just as complex and as costly as litigation presently proceeding through the courts. This is untrue. It is possible to address these matters in non-litigious ways, just as many present statutory schemes do. It is possible to come to agreed facts through a non-adversarial process which is designed to heal rather than to blame.

We cannot write or interpret our history in the courts. No finding of a contemporary court can either vindicate or punish legislators and administrators of the past. Litigation is a poor interpreter of history and an imprecise instrument of public policy. History deals with general patterns, big pictures, causes and consequences. Litigation moves slowly along, case by case, constrained by rules of evidence that restrict admissibility, that focus on the particular facts relevant to the specific action being pleaded and place all onus of proof on the plaintiff. Rules of evidence and other court rules have an honourable intent and an honourable purpose. They seek to protect the weak, usually an individual, from the strong, usually the state. When the roles are reversed, and the state as Goliath enjoys all the protections really intended for David, courts work not nearly as well as they should.

Governments are aware of this, and commit themselves to a code of practice that compels them to act in an exemplary manner. This code is referred to, in the case of the Commonwealth government, in the document *The Commonwealth as a model litigant*. It is instructive to look at some of the things that code requires of a government, so I will quote from it in part. It says:

The Commonwealth must act honestly and fairly in handling claims by:

- paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid;
- endeavouring to avoid litigation, wherever possible;
- where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:
  - not requiring the other party to prove a matter which the Commonwealth knows to be true; and
  - not contesting liability if the Commonwealth knows that the dispute is really about quantum;
- not taking advantage of a claimant who lacks the resources to litigate a legitimate claim;
- apologising where the Commonwealth is aware that it or its lawyers have acted wrongfully or improperly.

These words have a hollow and ironic ring to anyone in any way familiar with the Commonwealth’s conduct in the Cubillo-Gunner case, currently under appeal in the Federal Court. This is a case where the Commonwealth has already spent in the order of $11.5 million. One lawyer alone has been paid $1 million. Private investigators have been paid $770,000.

This is a case where the singular lack of compassion or cultural sensitivity of the Commonwealth has astounded those who have studied it. The court has found that Lorna Cubillo and Peter Gunner suffered systematic abuse and trauma over a long period when removed from their families and placed in institutions. It also found that there is a causative relationship between their experiences in these institutions and their continued mental and physical suffering. Despite this, they have been subjected to humiliation and harrowing treatment in the court.

There is no doubt that the Commonwealth has set out to make an example of them. Any person making a complaint or any legal service thinking of supporting them is to be
left in no doubt as to the consequences: the matter will be fought out in court; these processes will be long and expensive; no secret, no private matter and no youthful indiscretion will go untouched; the Commonwealth will set out to humiliate, discredit and defeat every claimant; and the highest paid legal pit bulls will cross examine each claimant and use all the experience and guile at their disposal to intimidate and confuse the claimant into inconsistent or uncertain testimony.

Currently, there is a total of 742 writs served on the Commonwealth in relation to claims by 2,104 people seeking damages in connection with forced family separations in the Northern Territory. There are cases under way around Australia against state governments. The Cubillo-Gunner case makes it clear that the greatest likelihood of success in these cases rests with going beyond governments and joining churches, agencies and individuals in these actions—more people and more pain.

We cannot afford—not in monetary terms nor in terms of the cost to our national reputation and sense of decency—to deal with these cases in the way the Howard government would have us proceed. Although there is acceptance in part of some of the recommendations of the report of the Senate Legal and Constitutional Committee, it is clearly not enough. This response is indicative of a government that will not acknowledge the full extent of the problem and hopes that it can shut its eyes and make the issue go away. It will not go away.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (3.48 p.m.)—It has taken the government seven months to respond to this report and, given that it has taken that time, I hope that perhaps in another month’s time there might also be a response to the final report of the Council for Aboriginal Reconciliation—after 10 years.

As the Australian Democrats stated in our minority report in Healing: a legacy of generations, the recommendations of the Bringing them home report are not a collection of options for governments to choose from. What we were essentially saying, and what the human rights commission said at the time, during the Senate inquiry, was that the recommendations are a package of complementary measures that need to be implemented as a whole. Collectively, it is about those recommendations constituting the minimum acceptable response required to heal the legacy that is borne by members of the stolen generations, their families and their communities.

This government has done exactly the opposite. It has picked out the recommendations of the Bringing them home report relating to family reunions and the need for the provision of Link Up services and then determined, in defiance of all of the recommendations and evidence put forward in both the Bringing them home report and the recent inquiry, that that alone is going to address the ongoing suffering of the stolen generations, their families and their communities.

This is pertinent when you consider the debate that has raged—and is raging now—in the media in the past two weeks about how to address the issues of dysfunctionality within indigenous communities. Much of what can be seen there can be attributed to institutional policies that were designed to remove people and that left scars on people’s hearts and on their souls. Now the challenge to government is how it can help to restore and repair the damage that has been done.

The Australian Democrats want to restate at the outset some observations that were made by the human rights commission in its submission to the Senate committee. One of the observations was that the adequacy of the Commonwealth response is best measured by assessing the redress provided against the harm done, rather than trying to highlight the paucity of redress from other sources or by attempting to transfer the responsibility to other groups, such as states and churches.

The government did hear the message of those members of the stolen generations who appeared before the Senate committee, explained the difficulty in accessing family Link Up services and gave their stories of how overwhelmed and underresourced those services are. It has therefore decided to increase funds to parenting programs, counselling services, mental health counsellors and Link Up services. Whilst that is a welcome
step in the right direction, I think that we can, at best, describe it as being good but not necessarily great.

The Australian Democrats do not want to respond in detail on the financial commitments that the government have made today; rather, we want to revisit that matter in the future after we have had an opportunity to examine the adequacy of the measures, speak to members of the stolen generations and look at the question of whether there is in fact the provision of sufficient resources to address the problems that exist.

In particular, we would like to look into the matter of whether this really is new funding or, as was the case with most of the funding in the government’s initial $63 million response to the Bringing them home report, whether it is simply old money that has been retagged. I do not think there is any clear indication about whether we are looking at the same process having been gone through again or whether in fact it is new money. But what all of the reports, inquiries, conferences and international laws have advised this government to do is to deliver a comprehensive package of measures. Instead, this government has ignored the best advice and results coming forward in those contexts.

In its response report, the Australian government decided, against all other advice, that the stolen generations do not need reparation or guarantees against repetition or a formal apology or a reparations tribunal or compensation. In the eyes of the government and from my reading of the response, all the measures that the stolen generations have asked for are seen as unnecessary and unhelpful. Clearly, the government is convinced that it is humane and compassionate because it has not removed the ability of the stolen generations to take their human rights violations to the courts. But it has not acknowledged that the process is prohibitively costly. Each of the handful of cases that has been heard during the last decade has dragged on for years. Each has cost the stolen generations and taxpayers millions of dollars each time one of these high profile cases does not succeed because the claimants cannot deliver the necessary paper trail of evidence that is required by the courts, and the stolen generations, having had their stories put on public display and under scrutiny, have to suffer collectively again.

If the government were genuine and sincere in its statement in today’s response that it wants to acknowledge the events of the past and their legacy, we would expect as a very minimum to be adopting the main recommendation of the Senate committee report, that is, committing to the establishment of a reparations tribunal to provide an alternative to the courts. The stolen generations community is meeting again in a couple of months to flesh out the details of how this tribunal would work in practice as there is already community support for the tribunal model developed by the Public Interest Advocacy Centre in New South Wales.

Similarly, the government would not be intentionally misunderstanding the intent of the Senate committee’s second recommendation and suggesting that we already have sufficient forums to discuss issues of concern to the members of the stolen generations. The Senate committee recommended a national summit to progress recommendations of its own report. Suggesting, as the government has today, that this be done by the Ministerial Council on Aboriginal and Torres Strait Islander Affairs, as one such forum, after the stinging criticism that it received in the committee’s report, is nothing short of an insult to the stolen generations.

It is simply unrealistic to expect the annual link-up meetings to deal with all of the business that they already have on their plate while additionally now taking on this additional responsibility of fleshing out a reparations tribunal or making recommendations on appropriate regimes to look at the monitoring and assessment of the adequacy of the government’s response. These are enormous demands to place on these groups, which are already underresourced.

One of the other things that also needs to be mentioned is the somewhat fatigued question of a formal parliamentary apology to the stolen generations. I have to wonder whether the government read the transcripts of the hearings and heard the unanimous voice of the stolen generations that the mo-
tion for the national apology and reconciliation back in 1999 did not go far enough. Everyone agreed that, whilst it was a good first step, for the government to suggest in its response today that this was a misrepresentation of the facts. Any fence mending that the government might have achieved through the motion back then was destroyed by the then minister for indigenous affairs in his comments that there never was a stolen generation.

One of the key issues is about being able to monitor and report on these issues. With respect to the government’s response to the committee’s recommendation regarding monitoring and reporting and all of the mechanisms required to look at how to overcome problems of disfunctionality in communities, as I stated earlier, the Senate committee found the ministerial council to be extremely remiss in meeting its own responsibilities and the junior ministerial council with no power or influence. As Sir Ronald Wilson said in his address to the committee, ‘What does it take? What does it do?’ It waits for a year and then assigns the task to the Victorian committee, and the Victorian working party meets the best part of 12 months later and it has an understanding of what these states chose to have done. So I think the obligation to report in any way that would seek a coordinated response has again been disregarded by the government. There is simply no meaningful or inspiring response coming forward.

Again, the Democrats repeat our recommendation in the minority committee report that the appropriate procedure for implementation is a four-tiered procedure coordinated at the highest level of government, namely, the Council of Australian Governments. The Australian Democrats believe that the enormity of the problems faced by the stolen generations throughout Australia is such that the highest level of government must step in to ensure a coordinated, effective and whole-of-government response. The government’s persistence in relegating this to a junior council, quite frankly, does not instil confidence in members of the stolen generations that things will substantially change.

Senator COONEY (Victoria) (3.57 p.m.)—I endorse what has been said by Senator McKiernan and Senator Ridgeway, but there are a couple of things I would like to talk about. Firstly, recommendation 7—and Senator Ridgeway and Senator McKiernan both turned their minds to this—dealt with the committee’s recommendation for the establishment of a reparations tribunal to address the need to provide an effective process of redress, including the provision of individual monetary compensation. The thinking behind this was that there ought to be some formal instrument set up by the state, which represents the community, to do justice to citizens of this country—in this case those with indigenous ancestry—who have been badly dealt with. The idea of the tribunal is for decision makers to make an assessment of what has gone on in individual cases and to do justice to them by way of compensation or some other relief. That is a normal part of the society we live in, that is, we have people making assessments, judging between two parties, as it were, and coming down with a decision to do justice between those two entities. The reason the government has used to reject that suggestion is as follows—and I quote from the government’s reply:

The experience of other administrative tribunals including in the field of immigration and refugees illustrates that it is not possible to insulate such deliberations from legal challenges and procedures.

What is used in this context to reject a recommendation of the committee is that which has happened in the area of immigration. The area of unauthorised arrivals is used to put this present proposition down. In respect of the Refugee Review Tribunal and the Immigration Review Tribunal, the courts simply
decide whether those tribunals have done their jobs. The courts are not there to decide the facts. The courts are there to see whether the tribunals do their jobs. That is a reasonable process. However, a culture is developing in this society and in the government which, more and more, impugns the courts and the legal system in this country. Indeed, it tends to go beyond the legal system. The most recent example of where the government does that is the allegations made under parliamentary privilege here the other night against an Aboriginal leader, Mr Terry O’Shane.

The problem with what happened the other night is that there is a legal process which has been set up by the community and which has been with us for centuries—and if we consider England as our predecessor in this regard, that process has been in operation for many centuries—to ensure that people are dealt with fairly when accusations of a most serious nature are made against them. However, in this chamber the other night a senator chose to ignore those legal processes and instruments of the rule of law to try to obtain a result which, if it was going to be obtained, should have been obtained through the legal system. The same sort of thing can be said with regard to matters outside this chamber in respect of the approach the media took to Mr Geoff Clark when it used a process other than the legal system to deny Mr Clark his right to have the allegations made against him processed through the proper institutions of this country.

It is a matter of concern that we are increasingly trying to deal with issues that should be dealt with through the processes of the institutions I have referred to, to try to nail a person through allegation and repetition of allegation so that the allegation becomes the issue and not the resolution of that allegation so that a fair result is obtained. In the reply to the committee report, there is a furtherance of that attitude and culture which is developing, and a furthering of that climate which says, ‘Let’s see what we can get away with. Let’s not have a process of decision making which is done fairly according to law. Let’s see if we can so create an atmosphere in which people lose a case, lose their reputation or their standing in the community’—through what, in effect, is a very nasty, vicious and unrestrained process. Given that context, it is a tragedy to see the reply to the committee’s recommendation about the setting up of a tribunal.

It is time that we, as a community, started to think very seriously about how we determine the great issues that arise in the community. We seem to want to abandon those very instruments of democracy that make us safe. Democracy requires taking a risk. As I said last night, some people are going to escape their just desserts because the allegations against them cannot be proven. Even though those allegations might be true, they cannot be proven. However, we are not a society that would do anything to obtain its objectives. We are not a society that goes in for torture. We are not a society which would write out untrue confessions simply to obtain a result. We are not a society that believes in noble corruption. We ought to be a society that says, ‘There’s due process to be gone through.’ In many cases, due process means that people escape the consequences of the wrongs that they have done. However, we say that we want to be the sort of society that would prefer that to happen than to become a society where a more fearsome injustice is done because proper process is not undertaken. On this occasion, the government has chosen not to use one of those instruments suggested by the committee, which would accommodate the demands that there ought to be proper process to reach justice. I think that is quite a tragedy. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

LEONIE GREEN AND ASSOCIATES: INVESTIGATION

G & K O’CONNOR MEATWORKS: DEPARTMENTAL FILES

Returns to Order

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.06 p.m.)—by leave—I have two responses to returns to order to table and two statements to make. In response to Senator Collins’s request for the Minister representing the Minister for Employment
Services to table certain documents, I advise the Senate: first, there is no interim report of the investigations by the Department of Employment, Workplace Relations and Small Business into Leonie Green and Associates. It is my understanding that the minister advised on this issue in the other place earlier today. Secondly, I table documents provided to the minister at the offices of Leonie Green and Associates on 10 April this year. Thirdly, I table the diary entry in relation to the visit to Leonie Green and Associates on 10 April 2001. I am informed that this was an informal visit, which included a tour of the LGA premises and a brief discussion with key personnel in the boardroom over a cup of coffee. No notes of the meeting were taken.

Honourable senators interjecting—

Senator IAN CAMPBELL—And they are not going to auction the coffeepot! I table those documents.

Further, in relation to the return to order made in relation to the G & K O’Connor Pty Ltd issues, I respond further to an order made by the Senate on 24 May 2001. It follows a motion moved by Senator Carr that the Minister representing the Minister for Employment, Workplace Relations and Small Business table certain documents, and it follows a statement made in the Senate by me on behalf of the minister earlier this month. The documents sought are held by the Department of Employment, Workplace Relations and Small Business and they relate to an industrial dispute in the meat processing industry involving G & K O’Connor Pty Ltd, the operator of an abattoir, and the Australasian Meat Industry Employees Union. On 18 June, the Senate was advised that the minister was unable to respond fully to the Senate’s order until the government had received and considered advice on correspondence received on 15 June from the employer party to this dispute.

I table certain of the documents subject to the order. The remainder of the documents identified in the order are not tabled, as it would be contrary to the public interest to do so. Broadly speaking, the documents that are being tabled are those for which no public interest argument exists for their non-disclosure. Conversely, the documents that are not being tabled are of a kind that have long been recognised by governments, irrespective of political persuasion, as contrary to the public interest to disclose.

The documents not tabled include confidential advice prepared by departmental officers and provided to ministers on sensitive matters to assist the deliberative processes of government. Disclosure of such documents would discourage the proper provision of advice to ministers. Were the government to disclose such information, it may prejudice the future supply of information from third parties to the Commonwealth. Such a prejudice would clearly be detrimental to effective government and contrary to the public interest. Further, some of the documents sought are drafts prepared for the internal evaluation and assessment processes within the department. Disclosure of such drafts may discourage the future discussion of such issues within departments.

In making its decision on this matter, the government is aware of the importance of the principles of transparency and accountability, and has balanced those considerations against those other factors—as have previous governments. I note, for instance, the comments made to the Senate on 3 June 1992 by the former Senator Gareth Evans, while a minister in the previous Labor government, when commenting on ministers’ responsibilities when responding to orders such as this and why, in similar circumstances, he was precluded from acting upon such an order. Former Senator Evans spoke of ‘wrestling with the very difficult and sensitive responsibilities’ he had, on the one hand, to the Senate and to the public interest to disclose as much material as he reasonably could but, on the other hand, the ‘responsibility to the country and to other individuals and interests that might be prejudiced by unreasonable disclosure’.

I should also add that this return to order moved by Senator Carr is not made in a vacuum. Freedom of information requests on the same subject were made of the relevant department back in 1999 by the Australasian Meat Industry Employees Union and they were responded to according to the principles laid down by legislation passed by this par-
liament. After an internal review of those decisions, it is noteworthy that the applicant union did not exercise its further statutory rights of appeal to access documents now sought by Senator Carr. I mention this because it is important that the Senate not allow itself to become an appeal forum for documents lawfully withheld through the freedom of information process.

There has been and continues to be substantial litigation in the courts and industrial tribunals between G & K O'Connor and the union. It is also noteworthy that, for a number of years, departmental officials have responded to questions from Senator Carr and others through the Senate committee process and other forums of this parliament on the role adopted by the department in its advice on and monitoring of this dispute.

In considering this matter, it is apparent that Senator Carr is on a fishing expedition for political and industrial purposes. For over two years, he and officials of the AMIEU have been speculating and alleging publicly that the government has been improperly or unlawfully involving itself in this dispute. This is despite the responses that have been provided on the record by officials and ministers outlining the government's position in this dispute. Inconveniently for Senator Carr, there is no wrongdoing by the government, and there never has been. Senator Carr will no doubt continue to perceive a conspiracy.

The government's reasons for tabling some of the requested documents, but not the remainder, go to matters of good public administration and the public interest, as well as precedent.

Finally, I inform the Senate that in making this decision to table some but not all of the relevant documents, the government has not provided the assurance sought by G & K O'Connor Pty Ltd in their correspondence of 15 June, nor provided the company with advance notice of this statement.

Senator CARR (Victoria) (4.13 p.m.)—by leave—I move:

That the Senate take note of the statement.

Senator Harradine—For how long?

Senator CARR—It is normally 10 minutes or so for these sorts of responses. Given that we have no time limits on debate today, Senator Harradine, I would not have thought that the question of time would arise. The government seems to feel that we have plenty of time. I moved a motion earlier this day to conclude the proceedings at 12 o'clock. I do not recall many senators from the crossbenches supporting that motion. Senator Brown did, I believe, but I do not recall that many others did. The issue of time will perhaps be more carefully considered sometime tomorrow.

Quite clearly, the government's response to the return to order is totally inadequate. It is of course a response that one would expect. It said that some of these documents are available. Presumably, the various newspaper clippings that are in the government's file will be provided. Presumably, the copies of the Senate Hansard that are in the government's files will be provided. But I do not anticipate that a great deal more than that will be. What I am concerned about is that the government claims that these matters should not be put on the public record because there is no demonstrable public interest served by doing so. There is no explanation given as to what that grand statement means. It is said that these are matters that should remain private. No serious explanation is provided on that basis, other than it being suggested that people who would come to the government will not necessarily do so if there is a fear that the information provided to government would at a subsequent point be made public.

We have a number of propositions prepared within the government about the government's response to a quite serious situation. We are told that we are not to be provided with documents concerning the government's evaluation of what has been the longest lockout in Australian history since the 1920s—an action whereby the minister for industrial relations through his solicitors, in common with the company, has clearly acted to coerce a group of 250 of the constituents that I seek to serve into accepting wage cuts of 20 per cent. This same company has engaged a group of industrial thugs who have been involved in Queensland on previous occasions and in the waterfront dis-
pute last year. The notorious scab herder, Townsend, has been employed by this company and, it is my allegation, has been working in concert with this government to destroy the wages and conditions of 250 people at O’Connors in Victoria.

This is of course a deliberate strategy by the company working in concert with the government in contravention of the law to de-unionise a plant. I would regard that as a serious matter that ought to concern this Senate. That is a matter that clearly raises quite profound issues in public policy terms. So when the government says that it is not in the public interest that we know about these matters, I think what we have been asked to accept is the government’s proposition that it is not in our interests to know about actions it has taken which seem to me, on a prima facie basis, to involve breaches of the law.

In recent times a Channel 9 program, for instance, has demonstrated that this group supplied by Mr Townsend has been engaged in actions which are clearly outside the law. We have seen the employment of spies within the plant to illegally tape-record and coerce other workers into breaches of the law so that they would be sacked. People that have chosen to change their view as to the rights and wrongs of this dispute have been harassed at their homes. Their families have been harassed and violently intimidated. People who have come across from Tasmania to participate in this dispute have been set upon at their houses, and their families have been set upon by these paid thugs.

It is my contention that this government and this department, through its so-called workplace reform unit, have been directly involved in this dispute from the very beginning. I have been asking questions in Senate estimates for two years and I think we can demonstrate conclusively the government’s complicity in these breaches of the law. That is why it is important that these questions are raised here and that is why they will continue to be raised. We will hear more, because further questions have been placed on notice whereby the government will be obliged to respond to inquiries as to the involvement of a number of officials who have been identified directly and their cooperation with a certain law firm, which just so happens to be the same law firm—the same personal solicitor—as that of the former minister, Mr Reith. So there is no doubt in my mind about the connections between the owners and operators of the O’Connors plant and members of the Senior Executive Service and other members of the Australian Public Service.

My concern is whether or not this Senate has a right to pursue these issues. I will argue that it has and that it has responsibility to do so, because there are fundamental rights in this country which I would have thought each and every one of us ought to be defending. The right to be in a union just happens to be one of those. The right to actually engage in reasonable negotiations about your wages and conditions is another. Given that these workers did not engage in one day of industrial action, one stop-work meeting in company time or one strike—not one of those things occurred—but were locked out for nearly nine months (as I said, the longest lockout since the 1920s) one would have thought we would be entitled to ask what sorts of actions are being pursued by this company. We are also entitled to pursue this when it can be demonstrated that the government has been directly involved in using the resources of government against Australian citizens in this way. For the government to say, ‘You’re not entitled to know about this because there is no demonstrable public interest in you knowing about the detail’ is complete nonsense.

If the government wishes to maintain that it is not guilty of any offence, it should produce the documents. The documents are all quite clearly listed in the FOI application. It cost the union $1,000 to make that application and was told for its trouble that, in document after document, the majority of the folios fell within the provisions of subsections 36(1) and 45(1) of the act. That is the sole explanation given to the union as to why these documents will not be provided. Of course, you are advised that you can appeal against it, but what good would that do?

There are some documents that are so extraordinarily inoffensive that one has to ask on what possible basis a government would refuse them. Clearly such things as copies of
Senate Hansards fall outside the sections of the Freedom of Information Act that I have just cited. Newspaper clippings fall outside the provisions of subsections 36(1) and 45(1) of the act and are marked ‘not to be provided’. You pay your $1,000, and you are told that there is a whole series of files within the department but you cannot have them because they fall outside the Freedom of Information Act. Of course, that was not all that the files contained, and it would be nonsense for me to suggest to you that those were the only documents that were being sought. Folios 33 to 36 contain newspaper clippings re the G & K O’Connor dispute and are ‘outside the scope, under subparagraph 22(a)(ii)’. That is the government’s explanation.

There are others. Extracts from Hansard—folios 38 to 41—are ‘outside the scope of the request’ and marked ‘not to be provided’. An independent weekly newsletter on industrial relations—issue 1212, July 1999—is ‘outside the scope of the request’. Senate questions cannot be provided under FOI. They are ‘outside the scope of the request’.

There are other documents that I am more interested in than the questions that were asked in the parliament. They go to the evaluations of this government. They go to the actions of public servants spending public money to prosecute a case of this particular employer, at the behest of Minister Reith, in such a way that it does serious injury to that group of workers at Pakenham. I say that in the context that there were a series of meetings, prior to the actions being taken by the company, with officials from the department. Ms Leslie Riggs, who has been involved in discussions about Leonie Green, said to a Senate estimates committee:

In advance of taking that action, the proprietor of that company sought to brief the minister’s office. A member of my group was present at that briefing. Since that time we have, on one or two occasions, had contact with the proprietor simply for him to confirm that he is maintaining contact with the office or with ourselves and to let us know he is remaining firm at this stage.

The inference from that statement by the officer to the estimates committee is that the government was seeking to assure itself that the employer was going to remain firm in his assault upon those particular workers. We discovered in further estimates committees that the contact between the firm and the government has been quite extensive. In that context, it is reasonable for us to ask, given the importance of this particular matter, that this parliament be advised as to what actions the government has actually taken—acting on our behalf—to assault the living standards of these particular Australians.

It seems to me that this is what this government is trying to hide from us. This is deliberate policy by this government to hide the truth. If the claims I have made are wrong, let it be demonstrated that I am wrong by putting the documents forward. As I said the other day, there are many issues here that I wish to pursue, and I expect that I will pursue them at length. I anticipate that, when those answers come back in, other issues will need to be examined as well. There may well be a need for us to put to this chamber a request for a Senate inquiry to demonstrate—once again, if the government is right—that its hands are clean, that it has not been involved in a conspiracy to undermine the wages and conditions of these particular Victorians, that it has not been involved in any illegal activity involving Mr Townshend or his company, that it has not been involved in actions to ensure that witnesses before courts in this country perjure themselves and that actions have not been taken by this government to encourage others to engage in assault against citizens of this country.

It will no doubt be argued by this government that it knew nothing of these matters. Well, produce the files! The officers told us before the estimates committees that they have had quite extensive involvement with the company and with the company’s solicitors, which just so happens to be the same solicitors used by a senior minister in this government. I think these questions do require further inquiry. I trust my colleagues agree with me.

Senator HARRADINE (Tasmania) (4.29 p.m.)—I rise very briefly to explain to the Senate the reason why I asked Senator Carr...
The ACTING DEPUTY PRESIDENT (Senator Murphy)—Are you seeking leave to make some comments in that respect?

Senator HARRADINE—No, I am speaking to the motion. My request was in no way related to the subject matter of either the statement by the minister or the response by Senator Carr. Honourable senators will realise that we are in the middle of a debate that is likely to take considerable time and there are a whole lot of people in the background who would like to know when they are needed around the place. So there was no reflection. I say to Senator Carr that he should observe that I too was opposed to the extension of time tonight. I have never seen that situation where there was no open

Senator Robert Ray—It happened a couple of months ago.

Senator HARRADINE—I stand corrected. But, for my part, I would like to have knocked off at midnight tonight and come back tomorrow and, if necessary, next week.

Question resolved in the affirmative.

PARLIAMENTARIANS’ TRAVEL ALLOWANCE PAYMENTS

The ACTING DEPUTY PRESIDENT (Senator Murphy)—I table a document providing details of travelling allowance payments made by the Department of the Senate to senators and members during the period July to December 2000.

DEPARTMENT OF THE SENATE

Register of Senior Executive Officers’ Interests

The ACTING DEPUTY PRESIDENT—I present notifications of alterations to the Register of Senate Senior Executive Officers’ Interests, lodged between 5 December 2000 and 25 June 2001.

COMMITTEES

Reports: Government Responses

The ACTING DEPUTY PRESIDENT—In accordance with the usual practice, I table a report on parliamentary committee reports to which the government has not responded within the prescribed period, as at 28 June 2001. The report has been circulated to honourable senators. With the concurrence of the Senate, the report will be incorporated in Hansard.

Leave granted.

The report read as follows—

PRESIDENT’S REPORT TO THE SENATE ON GOVERNMENT RESPONSES OUTSTANDING TO PARLIAMENTARY COMMITTEE REPORTS AS AT 28 JUNE 2001

PREFACE

This document continues the practice of presenting to the Senate twice each year a list of government responses to Senate and joint committee reports as well as responses which remain outstanding.

The practice of presenting this list to the Senate is in accordance with the resolution of the Senate of 14 March 1973 and the undertaking by successive governments to respond to parliamentary committee reports in timely fashion. On 26 May 1978 the then Minister for Administrative Services (Senator Withers) informed the Senate that within six months of the tabling of a committee report, the responsible minister would make a statement in the Parliament outlining the action the government proposed to take in relation to the report. The period for responses was reduced from six months to three months in 1983 by the then incoming government. The then Leader of the Government in the Senate announced this change on 24 August 1983. The method of response continued to be by way of statement. Subsequently, on 16 October 1991 the then government advised that responses to committee reports would be made by letter to a committee chair, with the letter being tabled in the Senate at the earliest opportunity. The current government in June 1996 affirmed its commitment to respond to relevant parliamentary committee reports within three months of their presentation.

This list does not usually include reports of the Parliamentary Standing Committee on Public Works or the following Senate Standing Committees: Appropriations and Staffing, Selection of Bills, Privileges, Procedure, Publications, Regulations and Ordinances, Senator’s Interests and Scrutiny of Bills. However, such reports will be included if they require a response. Government responses to reports of the Public Works Committee are normally reflected in motions for the approval of works after the relevant report has been presented and considered.
Reports of the Joint Committee of Public Accounts and Audit (JCPAA) primarily make administrative recommendations but may make policy recommendations. A government response is required in respect of such policy recommendations made by the committee. However, responses to administrative recommendations are made in the form of an executive minute provided to, and subsequently tabled by, the committee. Agencies responding to administrative recommendations are required to provide an executive minute within 6 months of tabling of a report. The committee monitors the provision of such responses.

The entry on this list for a report of the JCPAA containing only administrative recommendations is annotated to indicate that the response is to be provided in the form of an executive minute. Consequently, any other government response is not required. However, any reports containing policy recommendations are included in this report as requiring a government response.

Legislation and other committees report on bills and on the provisions of bills. Only those reports in this category that make recommendations which cannot readily be addressed during the consideration of the bill, and therefore require a response, are listed. The list also does not include reports by legislation committees on estimates or scrutiny of annual reports, unless recommendations are made that require a response.

A guide to the legend used in the ‘Date response presented/made to the Senate’ column.

* See document tabled in the Senate on 27 June 2001, entitled Government Responses to Parliamentary Committee Reports–Response to the schedule tabled by the President of the Senate on 7 December 2000, for Government interim/final response.

** Report contains administrative recommendations only – response is to be provided direct to the committee in the form of an executive minute.

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<td>Air safety and cabin air quality in the BAe 146 aircraft</td>
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<td>Airspace 2000 and related issues</td>
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<td>Scrutiny of Bills (Senate Standing)</td>
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<td>Fourth report of 2000: Entry and search provisions in Commonwealth legislation</td>
<td>6.4.00 *(interim)</td>
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<td>Superannuation and Financial Services (Senate Select)</td>
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<td>Report on the provisions of the Family Law Legislation Amendment (Superannuation) Bill 2000</td>
<td>6.3.01</td>
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<td>The opportunities and constraints for Australia to become a centre for the provision of global financial services</td>
<td>26.3.01 (presented 22.3.01)</td>
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<td>A ‘Reasonable and Secure’ Retirement? The benefit design of Commonwealth public sector and defence force unfunded superannuation funds and schemes</td>
<td>5.4.01</td>
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<td>Enforcement of the superannuation guarantee charge</td>
<td>22.5.01 (presented 27.4.01)</td>
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<td>Time not expired</td>
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<tr>
<td>Issues arising from the committee’s report on Taxation Laws Amendment (Superannuation Contributions) Bill 2000</td>
<td>24.5.01 Not required</td>
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<td>Treaties (Joint)</td>
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<td>Treaties tabled on 18 March and 13 May 1997 (8th report)</td>
<td>23.6.97 *(interim)</td>
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<td>Agreement with Kasakstan, Treaties tabled on 30 September 1997 and 21 October 1997 (11th report)</td>
<td>24.11.97 *(interim)</td>
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<td>No</td>
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Title of report | Date report tabled | Date response presented/made to the Senate | Response made within time specified (3 months)
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UN convention on the rights of the child (17th report) | 10.11.98 (presented 28.8.98) | *(interim) | No
Two treaties tabled on 26 May 1998, the Bougainville Peace Monitoring Group Protocol and treaties tabled on 11 November 1998 (20th report) | 29.3.99 | 8.2.01 | No
Three treaties tabled on 7 March 2000 (31st report) | 10.4.00 | 8.3.01 | No
Six treaties tabled on 7 March 2000 (32nd report) | 16.5.00 | 24.5.01 | No
Two treaties tabled on 6 June 2000 (34th report) | 23.8.00 | 5.4.01 | No
The Kyoto Protocol —Discussion paper (38th report) | 4.4.01 | Not required | -
Privileges and immunities of the International Tribunal on the Law of the Sea and the treaties tabled on 27 February and 6 March 2001 (39th report) | 22.5.01 (presented 18.4.01) | - | Time not expired

DEPARTMENT OF THE PARLIAMENTARY LIBRARY
Advance to the Presiding Officers for 2000-01

The ACTING DEPUTY PRESIDENT—I present details of an amount determined from the advance to the Presiding Officers for 2000-01 for the Department of the Parliamentary Library and an explanatory memorandum relating to the requirement for use of the funds from the advance.

PARLIAMENTARIANS' TRAVEL ALLOWANCE PAYMENTS

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.32 p.m.)—I table a document providing details of parliamentarians' travel paid by the Department of Finance and Administration during the period July to December 2000.

BUDGET 2000-01

Portfolio Budget Statements

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.33 p.m.)—I table a corrigendum to the portfolio budget statements 2000-01 for the Finance and Administration Portfolio. I advise senators that copies are available from the Senate Table Office.

DOCUMENTS

Bringing Them Home Progress Report

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (4.33 p.m.)—I table a progress report on Commonwealth initiatives in response to the Bringing them home report.

COMMITTEES

Privileges Committee Report

Senator ROBERT RAY (Victoria) (4.33 p.m.)—I present the 97th report of the Committee of Privileges, relating to a person referred to in the Senate.

Ordered that the report be printed.

Senator ROBERT RAY—I seek leave to move a motion relating to the report.

Leave granted.

Senator ROBERT RAY—I move:

That the report be adopted.

This is the 36th in a series of reports recommending that a right of reply be accorded to persons who claim to be adversely affected by being referred to, either by name or in such a way as to be readily identified, in the
Thursday, 28 June 2001

Senate. Earlier today, on 28 June 2001, the President referred a submission dated 27 June from Mr Terence O’Shane to the Committee of Privileges, under Privilege Resolution No. 5. The submission responded to remarks made by Senator Heffernan in the Senate during the adjournment debate on 25 June. The committee considered the submission at its meeting this morning and recommends that a response in the terms included in the report I have just tabled be incorporated in Hansard.

The committee has always reminded the Senate that, in matters of this nature, it does not judge the truth or otherwise of statements made by honourable senators or persons who seek redress. I commend the report to the Senate.

Question resolved in the affirmative.

The response read as follows—

APPENDIX ONE
RESPONSE BY MR TERRY O’SHANE
PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE
OF 25 FEBRUARY 1988

On Monday evening, 25 June, 2001, Senator Heffernan made the following remarks in the Senate in the context of a speech on Child Sexual Abuse:

“Recent events have highlighted the sexual, physical and emotional abuse, often in warlike conditions, of women and children in our indigenous community. The honesty and clarity of the statements by the former chair of the Council for Aboriginal Reconciliation, Dr Evelyn Scott, is to be commended. The courage and strength of her family - her daughters and son, Mr Sam Backo - is awe-inspiring. Their honesty in breaking the code of silence on the stolen innocence and ultimate betrayal of their childhood should be both a beacon of light at the end of what has been a very long and dark tunnel and an inspiration for all victims of child abuse.

In view of the widespread allegations that a high profile indigenous leader, Mr Terry O’Shane, is the person who abused members of Evelyn Scott’s family, I find the contradictions and hypocrisy of some male Aboriginal leaders breathtaking - none more so than that of the deputy chairman of ATSIC, who was convicted and jailed for rape in the 1960’s and is now seeking the high moral ground.”

1. Senator Heffernan’s remarks were made in the knowledge that the Supreme Court of Queensland had made an order on Friday night, 22 June, 2001 prohibiting the publication of any allegation by Dr Evelyn Scott to the effect that I sexually abused any of her children.

2. These allegations are false and without foundation. To my knowledge, no complaint has ever been made to the Police. There has never been a Police investigation nor have any criminal charges ever been laid.

3. Senator Heffernan’s unfounded remarks in the Senate have done irreparable harm to my family and I and have immeasurably damaged my reputation and standing in the community.

4. Under the laws of this nation, every person is presumed to be innocent unless and until proven guilty in a Court of law. By attacking my character in this manner, Senator Heffernan has not only harmed my family and I but has undermined the integrity of our judicial process. It cannot be right or fair for a person’s character to be destroyed under the cloak of parliamentary privilege with no recourse to legal redress.

5. I request the Committee grant me the limited redress of incorporating this Submission in Hansard.

(Signed) Terry O’Shane
Terence Joseph O’Shane
Chairperson
Cairns & District ATSIC Regional Council

Membership

The ACTING DEPUTY PRESIDENT (Senator Murphy)—The President has received letters from party leaders seeking the appointment of members to committees.

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

That senators be appointed to committees as follows:

Intelligence Services—Joint Select Committee—

Appointed: Senators Calvert, Coonan, Faulkner, Greig, Sandy Macdonald and Ray

Rural and Regional Affairs and Transport Legislation Committee—

Participating member: Senator Denman.
AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001
Consideration of House of Representatives Message
Message received from the House of Representatives acquainting the Senate that the House has agreed to the Australia New Zealand Food Authority Amendment Bill 2001 with amendments, and desiring the concurrence of the Senate in the amendments.
Ordered that consideration of the message in committee of the whole be made an order of the day for a later hour.

ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION AMENDMENT (WILDLIFE PROTECTION) BILL 2001
Consideration of House of Representatives Message
Message received from the House of Representatives acquainting the Senate that the House has agreed to the Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Bill 2001 with amendments, and desiring the concurrence of the Senate in the amendments.
Ordered that consideration of the message in committee of the whole be made an order of the day for a later hour.

INTERACTIVE GAMBLING BILL 2001
In Committee
Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Murphy)—The committee is considering the Interactive Gambling Bill 2001 and Senator Brown’s amendment (1) to government amendment (31). The question is that the amendment moved by Senator Brown be agreed to. (Quorum formed)
Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question now is that government amendments (2), (4), (5), (11) to (15), (17) and (28) to (31) on sheet ER279 be agreed to.

Senator HARRIS (Queensland) (4.40 p.m.)—I would like to seek some clarification from the minister. The amendments that we have before us at the moment go to removing from the bill the reference to an ‘Australian-based’ organisation. That is amendment (2) on sheet ER279. Amendment (5) on the same sheet will remove the definition of ‘Australian-provider link’. In the same group of amendments that we are looking at, amendment (31) refers to an ‘Australian-customer link’. Could the minister clarify whether there are any problems in this regard? I recognise the difference in wording. Amendment (5) omits the definition of an ‘Australian-provider link’. Does that create any problems with amendment (31), which has a reference in it to an ‘Australian-customer link’.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.42 p.m.)—The short answer is that, when the bill was originally drafted, it was not anticipated that we might be able to invoke the powers that are available under the Interstate Wire Act to deal with offshore companies in the way we are proposing. The removal of the link enables us to have jurisdiction over all companies providing services to Australian gamblers whether or not they have links with Australia. We took the reference out because, in doing so, it gives us a broader power or a greater reach and enables us to take action against those providers who come to Australia whether or not they have any other connection with Australia.

Senator HARRIS (Queensland) (4.43 p.m.)—Again, for clarification, can the minister, for the benefit of the committee, convey to us whether, in removing the reference to ‘Australian-based’, that has the effect of allowing an offshore entity to provide wagering in Australia, or is there sufficient state legislation that will preclude an offshore provider providing wagering facilities within Australia?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (4.44 p.m.)—The short answer is that we would allow the provision of services from offshore in the area of wagering, because we have allowed wagering to be exempt from the provisions of the bill—wagering meaning sports betting.

The TEMPORARY CHAIRMAN (Senator Murphy)—The question now is
that the amendments moved by Senator Alston be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The question now is that clause 7 stand as printed.

Question resolved in the negative.

Senator HARRADINE (Tasmania) (4.45 p.m.)—by leave—I move amendments (1) and (4) on sheet 2225:

(1) Clause 4, page 6 (after line 9), after the definition of lottery, insert:

**non-Australian-based interactive gambling service** has the meaning given by section 8B.

(4) Page 9 (after line 14), after clause 8A, insert:

**8B Non-Australian-based interactive gambling services**

(1) For the purposes of this Act, a **non-Australian-based interactive gambling service** is a gambling service, where:

(a) the service is provided in the course of carrying on a business; and
(b) the service is provided to customers using any of the following:

(i) an Internet carriage service;
(ii) any other listed carriage service;
(iii) a broadcasting service;
(iv) any other content service;
(v) a datacasting service; and
(c) the service does not have an Australian-provider link (see section 7).

Note: This definition relates to the offences created by section 15A.

(2) Subsection (1) has effect subject to subsection (3).

**Excluded services**

(3) For the purposes of this Act, none of the following services is a **non-Australian-based interactive gambling service**:

(a) a telephone betting service;
(b) a service to the extent to which it relates to the entering into of contracts that, under the Corporations Law, are exempt from a law relating to gambling or wagering (see section 9); and
(c) an exempt service (see section 10).

A service under subsection (1) includes any agent or intermediary used by the gambling service for the making or receipt of any payments within the meaning of subsection 8A(1).

These amendments are the first of a number of amendments that I am seeking to move. I am proposing these amendments so that the legislation will be effective. Unless these amendments are accepted by the parliament, the government’s legislation will be substantially ineffective. The reason for that is that nothing in this legislation, or in any proposed amendments to this legislation of which I am aware, will prevent the non-Australian based interactive gambling sites or services from taking advantage of the government’s legislation. In other words, these organisations will in fact be able to conduct gambling services from outside Australia to Australian citizens. Despite what the minister said, this legislation therefore will be next to useless, unfortunately.

Amendment (4) defines an overseas gambling service. It is described as a non-Australian based interactive service which provides a service in the course of carrying on a business using the Internet, broadcasting or datacasting, and does not have an Australian-provider link. You will note that I have dealt with the issue of agents and intermediaries in this amendment. I think Senator Greig raised this very important matter. I am aware that the National Office for the Information Economy, NOIE, at page 25, used the arguments that ‘overseas operators could use an intermediary to avoid financial controls’. This amendment counteracts that situation. This amendment spells out that any agent or intermediary is included in the definition of a non-Australian based interactive gambling service—an overseas gambling service—and would include associated companies such as hotels and casinos if they are part of the business. I challenge anyone to deny that that ties up those intermediaries which are chosen to avoid financial controls.

The key issue in all of these amendments is that if you go to the question of money and ensure, by dint of the legislation, that it would be imprudent financially for overseas gambling services to undertake services to
Australian customers then that is the answer. There have been all sorts of arguments put forward that generally it is technically very difficult because of ISPs and cooperation and all the rest of it. This has got nothing to do with that. This is to do with hitting them where it hurts, and that is in the back pocket. Once you start hitting them in the back pocket, they will find somewhere else to go. Later, there will be proposals from me and Senator Brown so that the contracts become unenforceable. The banking industry would be required to come into the picture. It is unfortunately necessary for me to explain that situation, because to deal with these two amendments in isolation makes it very difficult to explain.

I will foreshadow for the committee what I am going to do later when I define, in amendment No. 3, what a prohibited payment is. All financial transactions are covered. The term ‘payment’ would be defined inclusively to cover a wide range of payment media, including currency, cheques, credit card transactions and electronic transfers of funds such as direct debit and direct credit. So that the minister can understand this, I will quote from page 35 of the NOIE report.

It states:

Other payment types such as cheque ... do not identify merchants by type of service ...

That may be so, but these amendments introduce such an element of uncertainty into gambling transactions with overseas operators that the amendments will act as a powerful deterrent. Overseas operators will be dissuaded when dealing with Australian customers if their money is at risk by law. That is the way to fix it all up. I do not know what the government is frightened of. The banking industry may be yelling in the background, but it would be very sad if the government were taking notice of the banking industry, because the banking industry itself has admitted certain things.

I draw the attention of the chamber to what the Australian Bankers Association has said in answer to questions from the South Australian Select Interactive Home Gambling Committee about other means of telecommunications. There were certain questions asked of the Australian Bankers Asso-

ciation, and it made certain things clear. The main force behind the South Australian inquiry was the Hon. Nick Xenophon of the South Australian Legislative Assembly. The answers that were given are very revealing as to what the banking industry itself is able to let us know about Visa cards, for example. This is what the banking industry said to that committee:

Effective December 2000, Visa Issuers——

that is, banks——

must inform their cardholders via the cardholder agreement that a Visa card may not be used for any illegal purchase.

Is this committee aware of that? The banking industry went on to say:

This is a reminder of the cardholder’s responsibility to ascertain the legality of Internet gambling in his country of domicile.

Effective December 2000, Visa Issuers may systematically decline online gambling to meet local regulations, or for their own reasons.

The banks are saying that. What guarantee has the government got from the banks? If the banks are being critical of this approach, what are they now saying to the government? Is the minister aware of what the banks said to the South Australian inquiry? Are they saying one thing to the committee—when they are under the provisions of the South Australian legislature and its standing orders in respect of committees—and another thing to the federal government? The banking industry are saying that they do have a role to play in this. They have also indicated:

Visa requires Internet gambling merchants to:

Identify the transaction as originating from a betting/gambling merchant by using the merchant category code ...

That is all right for the organisations here in Australia, but under this legislation those organisations are no longer able to conduct gaming operations. That opens it up again to the internationals.

As I have pointed out—and I will deal with it further—the banking industry says it is quite clear that it is able to respond to situations where transactions have been conducted illegally. Just to reinforce that, I will quote from the transcript of the South Aus-

...
Australian inquiry. The Hon. Nick Xenophon said:

Further to what the Chairman said about 90 million transactions, you do see a clear distinction between a gambler who has lost money taking a proactive role to contact the bank, and the banks themselves having to be policemen of the scheme?

On behalf of the Australian Bankers Association, Mr Gilbert responded:

Absolutely. If the community is given a right that is exercisable in those circumstances, of course we would recognise it and are quite happy to do so. That is what the law of the land provides. There is no equivocation on that. We would be very concerned about transferring the cost of detecting, identifying and policing onto the private sector, which is simply providing financial services for a whole range of legitimate consumer activities.

Why wouldn’t the government, in the end, agree to the proposition that a contract between a punter and an operating overseas site is unenforceable? (Time expired)

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.00 p.m.)—I say to Senator Harradine that he, Senator Brown and many of us want to limit as much as possible the ability of people to gamble with offshore service providers. We all operate against a background of constant changes in technology. I do not accept the throw-in-the-towel, hopeless position of Senator Greig that it is all too hard and you just do not do anything about it. You have to do your best. I do not think it is responsible behaviour on the part of the government to essentially adopt Senator Harradine’s approach, which is to make a virtue of uncertainty—make it so uncertain as to who might be hit with what. This is just random fire being sprayed around, and you hope that that will be sufficient to deter.

When I look at Senator Harradine’s amendments—and bear in mind that we have had these for only a day or two—I see that the issue does require considerable careful examination of the implications. For example, this amendment talks in terms of customers. I presume a customer is meant to be a gambler or someone who is lodging a bet. But it does not give me any consolation to see a broad term such as ‘customer’ used. You could have a customer obtaining services from someone who happens to be providing interactive gambling services but who also runs subsidiary services, whether it is operating a pizza service on the side as part of the casino operation or whether that person deals in other equipment that you could argue is for the benefit of an interactive gambling service. You may well have a host of unintended consequences.

When I look at the offence provision, I see that a person is guilty of an offence if a person makes or receives a prohibited payment. Given that we are all aware of the difficulties of taking action against someone on the other side of the world who might be providing a service or receiving a payment, and given their relative ease of dealing with someone who makes a payment in Australia, it seems to me overwhelmingly likely that this would make it a criminal offence for everyone who makes a bet in Australia with an offshore service provider. That cannot be good social policy. As we know, there are 290,000 problem gamblers. Most of these are not people who are acting rationally, or they would stop gambling. If you have people betting offshore beyond their means, to make it a criminal offence does not seem to be a way to help those people.

I say to Senator Harradine: we have sympathy for the general proposition that we should be doing what we can to limit their ability to gamble offshore, and to limit financial transactions as much as possible may well be a way to go. As I have already indicated to Senator Harradine, we have attempted to formulate some words which would go to the enforceability of illegal gaming transactions. This is the advice that I have received. I have not been sitting down with banks or anyone else, trying to work through precisely how these things would operate. It is a very arcane jurisdiction. I had Nick Xenophon explaining charge-back arrangements to me. I have no idea how clearing house operations work in practice.

All I know is that there are probably many credit provider agreements that you would have to wade through in great detail because they would probably have access to the
world’s best lawyers. You would have to very carefully and scientifically analyse the impact of what looks, on the face of it, to be a simple proposition: let us ban credit card transactions. If I get a statement from Visa because I bought a book overseas, it just tells me that Mark Bishop Pty Ltd sold me the book. I say, ‘I’ve never had any dealings with Mark Bishop Pty Ltd.’ It just happens to be the name that that shop uses for its own purposes. It could just as easily be called Joint Venture No. 4 Pty Ltd.

In all sorts of ways, it needs a great deal of careful consideration and analysis. I am just not attracted to the idea that we should make a virtue of confusion by going ahead and doing something that looks like a good idea at the time and that throws up a lot of unintended consequences. Everyone throws their hands up in the air and says, ‘This is chaos,’ and Senator Harradine says, ‘There you go, we have scared a lot of people off.’ A more responsible approach to take is to have this matter carefully examined, and we certainly have that in mind. Senator Vanstone wrote a letter to Senator Woodley yesterday that gives a commitment to having these matters carefully examined at the Ministerial Council on Gambling.

Senator Brown’s amendment commends itself to the government. It provides a power to make regulations which would allow for an agreement to be unenforceable and to have no effect where it provides for the payment of money for the supply of an illegal interactive gambling service and that civil proceedings do not lie against a person to recover money alleged to have been won from or paid in connection with an illegal interactive gambling service. It puts a requirement on the minister to take all reasonable steps to ensure that regulations are made for the purpose within nine months. It makes it clear what direction the parliament wants to go in. It obliges the minister to take all reasonable steps to provide regulations that will address that issue.

Senator Harradine—Mr Temporary Chairman, I rise on a point of order, because I do not know what the minister is talking about. That is not an amendment that I have been provided with.

Senator Brown—Mr Temporary Chairman, on the point of order: Senator Harradine is quite right. That amendment has not been circulated. I have asked for it to be circulated, and I apologise that it is not in here. I did not know the minister was going to make such early reference to it. He has a copy. I will see that Senator Harradine gets one posthaste.

Senator ALSTON—I certainly think that Senator Harradine should see it for the purpose of assessing what we regard as being the better way ahead. My principal point remains that we should not be looking for a quick fix on the run. We should put ourselves in a position where we can take considered action after the matter has been thoroughly examined both at the ministerial council level and at, presumably, various other technical levels. Then you have an obligation on the minister to take all reasonable steps to introduce regulations that will give maximum effect to that statutory intent. It seems to me that that is a much safer way to proceed. You are much more likely to achieve your end objective and you are much more likely to not have a whole host of unintended consequences. For those reasons, whilst I have sympathy for what Senator Harradine is proposing to do, I think it is too complex to put something in in the hope that it will improve the situation when it may well have the opposite effect. We would rather get it right.

This puts us under pressure to take action and to carefully consider the position. There are a number of things that are being considered. As we know, Nick Xenophon was doing the rounds the other day, and he put forward a proposal which in the short time available has been considered. There are a number of other matters. Presumably, if the states are serious about harm minimisation approaches, they may well have gone down this track to some extent. There is a proposal to conduct an independent study into current ATM card technology. There are a number of issues that need to be considered in detail. That is why I am foreshadowing that the government is attracted to Senator Brown’s
approach, because it both gives us time to get it right and puts us under an obligation to take the matter further as quickly as we can.

Senator HARRIS (Queensland) (5.10 p.m.)—I rise to speak in support of Senator Harradine’s amendments. What Senator Harradine is proposing is actually a reality. All of us know that banks outsource simple functions like the processing of cheques. That is a normal function of banking that is accepted today. In that same process we have companies like E-success—who have a subsidiary called Citadel—and Falcon, who also has a subsidiary company. Their function is to vet a card transaction in the time between it being implemented by the customer and the service being delivered by the provider. Why is this already in existence? It is in existence because we have electronic fraud. We already have a process for the step between the customer paying for the service and the provider supplying that service to check whether that card is legitimate. There is no reason whatsoever that that function could not be extended to check whether it is an Australian based card that is paying for an offshore Internet gambling function. There are two very simple steps that could be put into a process that already exists. That is why I favour Senator Harradine’s process, because the ability to do that is already there. I commend Senator Harradine’s amendments.

Senator GREIG (Western Australia) (5.13 p.m.)—I just wanted to respond briefly to some comments the minister made at the beginning of his contribution. The minister said, reflecting on my position on this bill, that I was saying it was all too difficult and therefore nothing should be done. That is a complete misrepresentation of my position and the service supplying that service to check whether that card is legitimate. There is no reason whatsoever that that function could not be extended to check whether it is an Australian based card that is paying for an offshore Internet gambling function. There are two very simple steps that could be put into a process that already exists. That is why I favour Senator Harradine’s process, because the ability to do that is already there. I commend Senator Harradine’s amendments.

Senator HARRADINE (Tasmania) (5.14 p.m.)—A transaction between two or more persons which involves an illegal act—is that transaction itself not unenforceable?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.15 p.m.)—If you mean in terms of civil recovery, then I think it would be that an agreement is void if against public policy, from my long distant days of contract law back in the sixties. In terms of what other consequences flow, that would be a function of what is provided in the criminal law itself. And you often find, for example, that there is no penalty imposed on a mere purchaser; it is only on the provider. You may well find, for example, that the benefits are all one way.

I seem to recall there were a range of cases on this in terms of void if against public policy and gambling and I think in some respects that operated to mean that a gambler could get his money back but a service provider could not, so there is not an equality of treatment necessarily. It often depended where the loss had fallen as to whether the courts would simply let the loss lie where it fell or intervene and allow action to be taken to recover it to protect the interests of the party with less bargaining power—that being the gambler.

It simply highlights the fact that we are all wanting to go in the same direction. No-one is for a moment standing here saying, ‘People want to gamble offshore—away they go,’ although I think you can probably distinguish between people who pay cash and people who bet with credit cards, because you can say that the person betting with a credit card may well be betting beyond their means and ability to pay, whereas a person who has cash, presumably, at least has the current wherewithal. But in principle we are all trying to do what we can to limit the ability of Australians to gamble offshore, because if we are making it illegal to gamble here we should therefore be doing our best to limit their ability to do the same thing elsewhere.
I am simply concerned to ensure that we get it right and I feel profoundly uncomfortable with going ahead with what might look like a simple proposition but which may take you to all sorts of areas that you do not want to end up in. That is why the cautious approach is the right one here. It does mean that we are not just walking away from it saying that we will have a look at it later when we have a review. The amendment of Senator Brown actually does put the onus very much on the government to conduct inquiries, to look into what is feasible and then to take appropriate action. It seems to me that is the way we should be going.

Senator WOODLEY (Queensland) (5.18 p.m.)—Minister, you referred to the letter from Senator Vanstone to me in this particular debate a few minutes ago. Did you table the letter? If not, I think it should be incorporated in Hansard and I seek leave to have that happen.

Leave granted. The letter read as follows—

Senator John Woodley
Senator for Queensland
Parliament House
CANBERRA ACT 2600
27 June 2001
Dear Senator Woodley

I would like to assure you that the Commonwealth is absolutely committed to reducing the harm that problem gambling imposes on the community. We also share your concern over the impact that new forms of gambling are having on individuals and families. With this in mind, I am writing to outline the work being done by the Commonwealth and the Ministerial Council on Gambling in relation to problem gambling. I also hope to underscore the Commonwealth’s determination in this area, inform you of the work that we are planning to undertake in the future and make a commitment that the Commonwealth will proceed with the development of a National Harm Minimisation Strategy on Problem Gambling.

As you may be aware, after a period of inaction by the states, the Commonwealth established the Ministerial Council on Gambling. At the Council’s meeting in April 2001, as a first step towards a common approach, a National Strategic Framework on Problem Gambling was agreed to. The Framework aims to provide a platform for the sharing of information and good practice between jurisdictions on issues associated with problem gambling. It will also build on work already undertaken collaboratively between jurisdictions and be a vehicle for the development of some national initiatives. The National Strategic Framework has four themes: prevention, early intervention and continuing support, building effective partnerships, and national research and evaluation.

At the same meeting, the Council also agreed to evaluate the impacts of pre-commitment schemes, the phasing out of note acceptors, breaks in gaming machine operation and linked jackpots. These topics will be added to the work program of the working party on research. The working party will report back to the Ministerial Council on the current research programs and also facilitate new research initiatives.

Other relevant matters that are under active consideration by the Ministerial Council include setting limits to the further growth in the numbers of poker machines in any area, restricting the hours that poker machines might operate and placing messages on machines about the amounts won and lost, and time spent playing.

Only recently, I also announced the membership of the National Advisory Body on Gambling. This body reports to directly to me. On 5 June, the Advisory Body agreed that it would seek public submissions on the best focus for new research into problem gambling, best practice harm minimisation and possible areas for Commonwealth intervention.

I am convinced that the Ministerial Council’s collaborative approach is essential to achieve sustainable, long-term results, nevertheless, I share your view that efforts need to expedited in order to minimise the harm that problem gambling is currently having on individuals, families and the community.

With this urgency in mind, I am proposing that the information gathered by the Advisory Body be worked into a draft National Harm Minimisation Strategy on Problem Gambling. I then propose that this document be presented to the Ministerial Council on Gambling for their consideration.

While I am sure that the strategy I have mapped out is the only way to achieve effective results in our federal framework, I would welcome any suggestions you may care to offer to strengthen or expedite this strategy. In particular, I am keen to hear of your views on harm minimisation and the research that you think needs to be undertaken to ensure that properly informed policy decisions are made.
Should you wish to arrange a meeting to discuss these important issues, please contact my office on 02 6277 7560.

Yours sincerely

AMANDA VANSTONE

Senator MARK BISHOP (Western Australia) (5.19 p.m.)—Minister, you have been having this discussion with Senator Harradine and Senator Brown and opposing Senator Harradine’s amendment, which I think at first glance most people regard as one that would be completely effective in achieving the government’s end purpose of restricting growth of interactive gambling. I do not pass any comment as to the utility of the approach but it certainly reads on first glance to be effective in achieving the stated purpose of the government that has been spelt out in recent months.

As I understand it, we have Senator Brown’s amendment, which similarly addresses this issue. As I understand your remarks, there has been some sort of discussion with Senator Brown and perhaps an agreement reached as to process if his amendment should be passed by this chamber. Does the minister mind putting on the record—so we can all understand—what has been the outcome of his negotiations on this issue with Senator Brown and what undertakings derive from that which are imposed upon the government in terms of future action in respect of those undertakings? I am a little bit unsure as to how specific they are.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.20 p.m.)—There have been discussions between various senators in my office, many of which I have not been privy to. I have essentially been concerned to try and judge these issues on the merits and to look at what seems to me to make sense and what does not. I simply say again that you say it looks like eminent commonsense on the face of it but I am very nervous about something that makes it an offence—I presume a criminal offence—for a person to make a payment to an offshore gambling provider. That just means an ordinary common garden Australian who has a bet on the Internet commits a criminal offence. It does not seem to me to be what we are on about here. We are trying to make it very difficult for offshore service providers to cater for Australian gamblers.

Senator Harradine’s notion of maximum uncertainty, I am sure, is directed entirely to those providers to try and discourage them, whereas the mere fact that they are offshore makes it much less likely that you will be able to do anything tangible about their behaviour—certainly in terms of it being an offence. I would have thought that again it would only be if they came to Australia that you could prosecute them because you do not have an extraterritorial power that is recognised internationally. If these services are being provided from the Caribbean, you really cannot do anything about it in terms of it being an offence. All you are left with is an offence committed by ordinary Australians who have made what might be a very modest bet—it might be someone who can well afford to lose substantial sums of money having a modest bet on an irregular basis and they commit the offence. That is not where I would want to end up in all this. I think what we are trying to do is say that consumers are not the problem here; the only people who are wanting online gambling are the providers because they see a lot of money to be made out of it. We should be making their lives as difficult as possible. I agree with Senator Harradine on that. It is then a matter of how you can best achieve that outcome. Even on the face of it, the amendment that Senator Harradine has put before the committee just needs further work.

Senator MARK BISHOP (Western Australia) (5.23 p.m.)—I was not asking that question to take a partisan position as to the utility of the amendment moved by Senator Harradine one way or the other. I was more seeking to get an understanding on the public record of the nature of any agreement, if it does exist, between the government and Senator Brown. You have just informed us there have been a series of negotiations in your office—some of those you have participated in, some you haven’t. I have just been handed an amendment to be moved by Senator Brown in due course as to the making of regulations in respect of illegal interactive gambling services.
What I am trying to establish is: what process has the government undertaken to go through now? Are you going to have some sort of review? When will it be concluded? Will it be made a public document? If the review recommends a particular course of action, how is the government going to give effect to it? What are the regulations seeking to achieve? If you are unable or unwilling to make us privy to your discussions, I would put the same question to Senator Brown, so that we have an understanding of what the outcome will be of the alternative position if Senator Harradine’s amendment is defeated.

Senator BROWN (Tasmania) (5.24 p.m.)—I would like to know from the opposition what their position is on Senator Harradine’s amendment.

Senator MARK BISHOP (Western Australia) (5.25 p.m.)—When Senator Harradine’s amendment comes to a vote we will not be supporting it, Senator Brown.

Senator BROWN (Tasmania) (5.25 p.m.)—That is quite important. I thank the opposition for that because the government is not supporting that or similar amendments that I have as well. I would support Senator Harradine’s amendment because I think it is the right one. Given that situation where on the crossbench we are faced with the government and the opposition both setting themselves against the unenforceable agreement provisions that Senator Harradine has quite rightly brought forward and a similar amendment I have been talking with the minister’s office. My office has been doing so to come up with this amendment, which says that the minister must take all reasonable steps to have regulations for this purpose within six months. You might note, because it is on the record, that it was nine months. I have insisted that be brought back to six months because I want to see it this year. No doubt it will be brought in and dealt with this year.

I agree with Senator Harradine and Senator Harris and others that the mechanism is there. But it is a big breakthrough to use this mechanism on an industry as big as this one. I do not want to see it dropped simply because we do not have the numbers in this place. Getting the government committed to this course of action is very important. Therefore, I have brought forward this alternative amendment, but it is effectively a fallback situation for me. I will be voting for Senator Harradine’s amendment.

Senator HARRADINE (Tasmania) (5.27 p.m.)—Is the minister suggesting that you can make it an offence for the provider but not for the customer, the punter? Is the minister suggesting that that would hold up in law? Is the minister aware of the argument that this could be open to fraud? This is a very key point. Quite clearly I would love to be in a situation of saying let the provider beware, not let the customer beware. I assume now that, because of the other amendments, the overseas site will be an illegal site and they will be acting illegally in accordance with Australian law. You are saying that, on the one hand, one person involved in the transaction will be committing an offence. Do you think that is going to stand up? I would have loved to have done that because I think that is a great joke. The punter could run up a lot of winnings and then, if he runs up losings, he does the overseas site into his bank and says ‘Don’t pay.’ Are we being realistic here? I was advised, though I did not obtain legal advice about this, that it could be regarded as opening the way for fraud.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.29 p.m.)—I hope Senator Harradine will appreciate that this sort of advice is not worth very much. My understanding from first principles of criminal law is that you can make something an offence in any form you would like. I recall, for example, that it was illegal under the Police Offences Act to provide services for prostitution, but it was not illegal for someone to take advantage of those services. Guttercrawling used to be a way of frightening people off. If you were driving too slowly down the street, they would pick you up for guttercrawling even though they really knew what you were on about. You had a situation where the offence was not on the part of the
consumer; it was on the part of the service provider. I do not think we ever called them ‘service providers’ in those days, but that is probably what they were doing.

The criminal law can go wherever it wants to. Parliament is the ultimate authority. If it wants to ignore or modify or have a one-sided outcome, it can do all of those things. That is my understanding. Maybe you could get into arguments about whether you are aiding and abetting, and again, I suppose, you could have a specific provision that said, ‘No conduct on the part of a gambler should be construed as aiding and abetting or colluding with’ or whatever else, even though you say you might be happily taking advantage of the service while you are winning and then dobbing them in when you lose. You can spell it out in any form you like, essentially.

All those issues deserve to be explored. They are social policy judgments. Some people might say that the maximum deterrent effect is to tell all these punters that they are actually at risk of going to jail if they gamble offshore and so there is a social purpose to be achieved. On the other hand, people might say, ‘Well, they are really quasi-innocent victims and we should be focusing on the real offenders.’ It is certainly an area of legitimate public debate that should be carefully considered. I am grateful to Senator Brown for the efforts he has made to come up with a workable solution.

Senator MARK BISHOP (Western Australia) (5.31 p.m.)—I thank Senator Brown for his response to my previous question, but that puts the question back to you, Minister. If Senator Brown’s amendment gets up, you have six months to make some regulations, under section 69, which go to Senator Brown’s purpose. Are you going to be conducting an inquiry? Will it be done within your office? Will it be done by NOIE? Will it be a public inquiry? Will there be an opportunity for public input into that inquiry? Once the inquiry is concluded, is it intended that it be made public or tabled on the floor of either house for inspection?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.33 p.m.)—We are putting a framework in place here. We are not endevouring to spell out, step by step, precisely what will flow from it. However, it does impose obligations. It requires the minister to take all reasonable steps. As I understand it, the ministerial council meeting will occur within that period so that will obviously be an important opportunity to explore all of these things to see where the states have got to in terms of their harm minimisation strategies and what they have already discovered in terms of feasibility in going down this path. We will certainly be doing whatever we can to give effect to the obligation that this provision would place on the government.

As I have said repeatedly, we are in sympathy with the whole approach so there is no question of us somehow saying, ‘Right, we can forget about all this.’ We actually want to make it work and we will do whatever we can to explore all the possibilities. There is not much point in me trying to be definitive today. If this amendment is carried, we will have a statutory obligation. There will be at least one major event and all the parties around the country who are interested will presumably have views on the subject which they will direct to us. I am sure that Senator Brown, Senator Harradine and Senator Woodley, who has probably lived with this issue for longer than most people, will all have suggestions which, by and large, will prove to be very helpful.

Senator BROWN (Tasmania) (5.34 p.m.)—I think that the opposition is pursuing the point of whether there is going to be a full-blown public inquiry into this, and I cannot see the purpose of that. We have evidence from Senator Harradine and from Senator Harris, and I have it as well, having spoken to the banking authorities and the other people who are most engaged with this issue, that it can be done. This provides the opportunity to ensure that there are no glitches. The government has the ability to get the expert advice and to come up with the regulations, and then it is up to us to tackle those regulations in here if we think that they are faulty.

Amendments not agreed to.
Senator BROWN (Tasmania) (5.35 p.m.)—by leave—I move Australian Greens amendments (1) to (15) on sheet 2216:

(1) Clause 3, page 2 (line 20), after “Australia”, insert “or overseas”.

(2) Clause 3, page 2 (after line 20), after paragraph (a), insert:

(aa) prohibiting foreign-based interactive gambling service providers from soliciting, or providing interactive gambling services to, persons resident in Australia; and

(ab) prohibiting persons resident in Australia from using, or betting on, an interactive gambling service; and.

(ac) making agreements relating to unlawful gambling unenforceable; and

(3) Clause 4, page 5 (after line 10), after the definition of Federal Court, insert:

foreign-based interactive gambling service has the meaning given by section 5A.

(4) Clause 4, page 6 (after line 6), after the definition of Internet service provider, insert:

legal wagering service provider means:

(a) a person who is authorised under the law of a State or Territory to carry on bookmaking activities; or

(b) a person who is authorised under the law of a State or Territory to conduct totalizator betting.

(5) Clause 5, page 8 (after line 4), after paragraph (a), insert:

(aa) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:

(i) a horse race;

(ii) a harness race;

(iii) a greyhound race;

(iv) a sporting event;

(ab) a service to the extent to which it relates to betting on:

(i) an event; or

(ii) a series of events; or

(iii) a contingency;

that is not covered by paragraph (aa).

(6) Clause 5, page 8 (after line 8), at the end of the clause, add:

(4) Paragraphs (3)(a), (aa) and (ab) do not apply to a service to the extent to which:

(a) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or

(b) the service relates to betting on a horse race, harness race, or greyhound race that is to be held anywhere in Australia if it is provided by a person who is not a legal wagering service provider.

(5) The regulations may exempt any person, or class of persons, from the operation of part or all of subsection (4) in such circumstances, and subject to such conditions, as may be specified in the regulations.

(6) Paragraph (3)(ab) does not apply to a service to the extent to which the service is:

(a) a service for the conduct of a lottery; or

(b) a service for the supply of lottery tickets; or

(c) a service relating to betting on the outcome of a lottery; or

(d) a service for the conduct of a game, where:

(i) the game is played for money or anything else of value; and

(ii) the game is a game of chance or of mixed chance and skill; and

(iii) a customer of the service gives or agrees to give consideration to play or enter the game; or

(e) a service relating to betting on the outcome of a game of chance or of mixed chance and skill.

(7) Page 8 (after line 8), after clause 5, insert:

5A Foreign-based interactive gambling services

(1) For the purposes of this Act, a foreign-based interactive gambling service is a gambling service, where:

(a) the service is provided in the course of carrying on a business; and

(b) the service is provided to customers using any of the following:

(i) an Internet carriage service;

(ii) any other listed carriage service;

(iii) a broadcasting service;
(iv) any other content service;  
(v) a datacasting service; and  
(c) the service does not have an Australian-provider link (see section 7)  
Note: This definition relates to the offence created by section 15A.

(2) Subsection (1) has effect subject to subsection (3).

Excluded services

(3) For the purposes of this Act, none of the following services is a foreign-based interactive gambling service:

(a) a telephone betting service;
(b) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:
   (i) a horse race;
   (ii) a harness race;
   (iii) a greyhound race;
   (iv) a sporting event;
(c) a service to the extent to which it relates to betting on:
   (i) an event; or
   (ii) a series of events; or
   (iii) a contingency;
      that is not covered by paragraph (aa);
(d) a service to the extent to which it relates to the entering into of contracts that, under the Corporations Law, are exempt from a law relating to gaming or wagering (see section 9);
(e) an exempt service (see section 10).

(4) Paragraphs (3) (a), (b) and (c) do not apply to a service to the extent to which
   (i) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or
   (ii) the service relates to betting on a horse race, harness race, or greyhound race that is to be held anywhere in Australia if it is provided by a person who is not a legal Australian wagering service provider.

(5) Paragraph (3)(c) does not apply to a service to the extent to which the service is:
   (a) a service for the conduct of a lottery; or
   (b) a service for the supply of lottery tickets; or
   (c) a service relating to betting on the outcome of a lottery; or
   (d) a service for the conduct of a game, where:
      (i) the game is played for money or anything else of value; and
      (ii) the game is a game of chance or of mixed chance and skill; and
      (iii) a customer of the service gives or agrees to give consideration to play or enter the game; or
   (e) a service relating to betting on the outcome of a game of chance or of mixed chance and skill.

(6) The exclusion of a service under paragraph (3)(a)(b) or (c) does not exclude the service from the operation of Part 7A.

(8) Clause 6, page 8 (line 20), omit “neither”, substitute “none”.

(9) Clause 6, page 8 (line 25), at the end of subclause (3), add:  
   ;(c) a gambling service that is excluded from section 5;  
   (d) a gambling service that is excluded from section 5A.

(10) Heading to Part 2, page 11 (lines 2 to 4), omit the heading, substitute: Part 2—Offences

(11) Heading to clause 15, page 11 (line 7), omit “to customers in Australia”.

(12) Clause 15, page 11 (lines 8 to 12), omit subclause (1), substitute:  
   (1) A person is guilty of an offence if the person intentionally provides an Australian-based interactive gambling service.

(13) Clause 15, page 11 (lines 17 to 22), omit subclause (3) (and the note).

(14) Page 11 (after line 22), at the end of Part 2, add:  
15A Offence of providing a foreign-based interactive gambling service to customers in Australia  
   (1) A person is guilty of an offence if:
(a) the person intentionally provides an foreign-based interactive gambling service; and
(b) the service has an Australian-customer link (see section 8).

Penalty: 2,000 penalty units.

(2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

(3) Subsection (1) does not apply if the person:
(a) did not know; and
(b) could not, with reasonable diligence, have ascertained; that the service had an Australian-customer link.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the Criminal Code).

(15) Page 11 (after line 22), at the end of Part 2, add:

15B Offence of using an interactive gambling service in Australia

(1) A person while resident in Australia must not use, or bet on, an interactive gambling service.

Penalty: 50 penalty units.

This comprehensive set of amendments deals with foreign based interactive gambling services. They are aimed at most appropriately defining regulations within the legislation to deal with foreign based interactive gambling services. The concern of the majority in the Senate is not to allow foreign based services to ply their trade in Australia. This set of amendments is the premium set of amendments to deal with that. However, I am aware that they do not have the numbers to get through the Senate. I wanted to make the point forcefully, but I will leave the matter there.

Amendments not agreed to.

Senator HARRADINE (Tasmania) (5.37 p.m.)—by leave—I move my amendments (2), (3) and (5) on sheet 2225:

(2) Clause 4, page 6 (after line 19), after the definition of prohibited Internet gambling service, insert:

prohibited payment has the meaning given by section 8A.

(3) Page 9 (after line 14), after clause 8, insert:

8A Prohibited payments

(1) For the purposes of this Act, a prohibited payment is either:
(a) a payment made for the benefit of a non-Australian-based interactive gambling service by, or on behalf of, a customer who is physically present in Australia; or
(b) a payment made by, or on behalf of, a non-Australian-based interactive gambling service for the benefit of a customer who is physically present in Australia.

(2) A payment includes, but is not limited to, any or all of the following forms of payment:
(a) an amount of Australian currency;
(b) an amount of foreign currency;
(c) a cheque;
(d) a money order;
(e) a credit card transaction;
(f) an electronic transfer of funds;
(g) a bill of exchange;
(h) a promissory note;
(i) a loan;
(j) a transfer or allotment of securities;
(k) an agreement or contract conferring on a person a right (whether actual or contingent) to receive any valuable consideration or the performance of any service.

Note: This definition relates to offences created by section 15A.

(5) Page 11 (after line 22), after Part 2, insert:

Part 2A—Prohibited payments

15A Offences relating to prohibited payments

(1) A person is guilty of an offence if the person makes or receives a prohibited payment.

Penalty:
(a) for a person who is customer of an interactive gambling service—10 penalty units; or
(b) for any other person—200 penalty units.

(2) A constitutional corporation is guilty of an offence if the corporation makes or receives a prohibited payment.
Penalty: 1,000 penalty units.

(3) It is a defence to a prosecution of a person or a corporation for an offence against subsection (1) or (2), as the case may be, if the person or corporation proves that the person or corporation did not know, and could not with reasonable diligence have discovered, that the person or corporation was making or receiving a prohibited payment.

(4) In this section:

   constitutional corporation means:
   
   (a) a foreign corporation; or
   
   (b) a trading corporation to which paragraph 51(xx) of the Constitution applies; or
   
   (c) a financial corporation to which paragraph 51(xx) of the Constitution applies; or
   
   (d) a corporation incorporated in a Territory.
   
   (e) a body corporate that carries on, as its sole or principal business, the business of:
   
   (i) banking (other than State banking not extending beyond the limits of the State concerned); or
   
   (ii) insurance (other than State insurance not extending beyond the limits of the State concerned);
   
   (f) a body corporate that is a holding company of a body corporate covered by any of the above paragraphs.

15B Agreements relating to prohibited payments unenforceable

Any agreement, whether oral or in writing, that relates to a payment that is a prohibited payment under this Act has no effect, and no action may be brought or maintained in any court to recover any such payment.

It is important that we at least have in the legislation a definition of ‘prohibited payment’. Irrespective of what the government might or might not do, we should deal with this matter so that it is in the legislation, no matter what happens. ‘Prohibited payment’ is defined in proposed section 8A(1) as:

   (a) a payment made for the benefit of a non-Australian-based interactive gambling service by, or on behalf of, a customer who is physically present in Australia; or
   
   (b) a payment made by, or on behalf of, a non-Australian-based interactive gambling service for the benefit of a customer who is physically present in Australia.

No matter what happens to my other amendments, that provision is necessary if the government is going down the track of regulation. I for one am not very happy about leaving major questions to government for its regulatory decisions. Matters should be contained in legislation. Proposed section 8A(2) states:

   A payment includes, but is not limited to, any or all of the following forms of payment...

I will not go through all those forms—you can see them in front of you. In amendment (5) I put forward the offences to be created by proposed section 15A which apply to four categories of persons. I put that forward on the understanding that you may run into problems if it is not an offence to gamble on a prohibited site which is an overseas site. I could accept the minister’s advice and thus excise any offence being created for an individual customer—I am open to that. But, as the government has indicated that it will vote down the amendments—and, of course, the opposition has constantly stated that it has an overall view on all of the proposed amendments, and I understand that—there is no point in my proceeding further than to ask that the amendments be put to the vote.

Under proposed section 15A, which is headed ‘Offences relating to prohibited payments’, the penalty for a person who is a customer of an interactive gambling service is 10 penalty units. I seek leave to excise proposed section 15A(1) on the last page of sheet 2225.

Leave granted.
Amendments not agreed to.
Senator BROWN (Tasmania) (5.44 p.m.)—I move Greens amendment (17) on sheet 2216:

(17) Page 11 (after line 22), after Part 2, insert:

Part 2A—Unenforceability of agreements relating to unlawful gambling

15D Agreements relating to unlawful gambling unenforceable

(1) Any agreement, whether oral or in writing, that relates to any form of gambling that is prohibited under this Act has no effect, and no action may be brought or maintained in any court to recover any money alleged to have been won from, or any money paid in connection with, any such form of gambling.

(2) Nothing in subsection (1) applies to or in respect of any form of gambling that is otherwise lawful.

(3) Any agreement, whether oral or in writing, that relates to funds transfer to, or through, an intermediary for the sole or dominant to facilitate transfer of cleared funds to a gambling service provider who is providing a service that is unlawful under this Act has no effect and no action may be brought or maintained in any court to recover any money alleged to have been won from, or any money paid in connection with, any such transfers.

(4) Nothing in subsection (3) applies to or in respect of any form of funds transfer that is otherwise lawful.

This amendment relates to making unlawful gambling agreements unenforceable. We have debated that, but I feel as strongly as Senator Harradine and Senator Harris feel about it, so I have moved the amendment.

Amendment not agreed to.

Amendments (by Senator Alston)—by leave—agreed to:

(19) Clause 6, page 8 (line 16), omit paragraph (c), substitute:

(c) an individual who is physically present in Australia is capable of becoming a customer of the service.

(20) Clause 6, page 8 (after line 17), after sub-clause (1), insert:

(1A) For the purposes of paragraph (1)(c), in determining whether an individual who is physically present in Australia is capable of becoming a customer of a service, it is to be assumed that the individual will not falsify or conceal the individual’s identity or location.

Senator BROWN (Tasmania) (5.45 p.m.)—I move amendment (16) on Australian Greens sheet 2216:

(16) Page 11 (after line 22), at the end of Part 2, add:

15C Offence of providing an electronic link to an interactive gambling service

(1) A person must not provide, by means of the Internet, subscription broadcasting or narrowcasting or any other online communications system, any service that enables a person to gain access to any form of gambling service prohibited by this Act.

Penalty: 50 penalty units.

(2) Subsection (1) does not apply to, or in respect of, any form of gambling that is otherwise lawful.

(3) The regulations may exempt any person, or class of persons, from the operation of part or all of subsection (1) in such circumstances, and subject to such conditions, as may be specified in the regulations.

This is the amendment which makes it an offence to provide an electronic link to an interactive gambling service. It is a bit like if I have my bookshop with a little blinking sign facing customers which says, ‘If you want a quick bet with your change, press this button and maybe you will go straight to an overseas gambling site—who knows?’ It is to stop that from happening. I recommend that strongly to the committee.

The TEMPORARY CHAIRMAN (Senator Lightfoot)—The question is that the amendment moved by Senator Brown be agreed to. Those of that opinion say aye; those against say no.

Senator Alston—No.

Senator BROWN (Tasmania) (5.46 p.m.)—Chair, I just wonder what trouble the government has with that one. It seems to me it is a good amendment.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.46 p.m.)—I think the shortest answer is that this bill is all about
prohibiting interactive activities, particularly the new and exciting temptations that are likely to be coming online shortly. It is not about correcting the current problems that are essentially the responsibility of the states. We have always taken the view that we have clear constitutional power, under the telecommunications power, to deal with interactive activities in all their manifestations but that poker machines and their regulation are a matter for the states. It is true that technology now allows a number of things to occur in terms of linking poker machines—for data and monitoring purposes, for example, which can be quite helpful in assessing the activities. But linked jackpots, which I think is what you have in mind as the vice you seek to remedy, are really part and parcel of the way in which poker machines have evolved. It is very much open to the states to deal with the excesses of the poker machine business. We would certainly encourage them to do that, and we will be doing that through the ministerial council and elsewhere. But we do not believe that this act, which is essentially concerned with interactive gambling activities, should be used as a means of incidentally dealing with the offline old forms of gambling.

Senator BROWN (Tasmania) (5.49 p.m.)—by leave—I now draw the committee’s attention to Australian Greens amendments (7) and (1) to (6) on sheet 2285, and I move them:

(7) Page 11 (after line 22), after Part 2, insert:

Part 2A—Offence of providing an Australian-based interactive gambling service to customers in designated countries

15A Offence of providing an Australian-based interactive gambling service to customers in designated countries

(1) A person is guilty of an offence if:

(a) the person intentionally provides an Australian-based interactive gambling service; and

(b) the service has a designated country-customer link (see section 9B).

Penalty: 2,000 penalty units.

(2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of conviction for the offence or any later day) during which the contravention continues.

(3) Subsection (1) does not apply if the person:

(a) did not know; and

(b) could not, with reasonable diligence, have ascertained;

that the service had a designated country-customer link.

Note: The defendant bears an evidential burden in relation to the matters in subsection (3) (see subsection 13.3(3) of the Criminal Code).

(4) For the purposes of subsection (3), in determining whether the person could, with reasonable diligence, have ascertained that the service had a designated country-customer link, the following matters are to be taken into account:
(a) whether prospective customers were informed that Australian law prohibits the provision of the service to customers who are physically present in a designated country;

(b) whether customers were required to enter into contracts that we subject to an express condition that the customer was not to use the service if the customer was physically present in a designated country;

(c) whether the person required customers to provide personal details and, if so, whether those details suggested that the customer was not physically present in a designated country;

(d) whether the person has network data that indicates that customers were physically present outside a designated country:
   (i) when the relevant customer account was opened; and
   (ii) throughout the period when the service was provided to the customer;

(e) any other relevant matters.

(5) Section 15.4 of the Criminal Code (extended geographical jurisdiction—category D applies to an offence against subsection (1)).

(6) For the purposes of this section, an Australian-based interactive gambling service is an interactive gambling service, where the service has an Australian-provider link.

(7) For the purposes of this section, an interactive gambling service has an Australian-provider link if, and only if:
   (a) the service is provided in the course of carrying on a business in Australia;
   (b) the central management and control of the service is in Australia;
   (c) the service is provided through an agent in Australia;
   (d) the service is provided to customers using an Internet carriage service, and any or all of the relevant Internet content is hosted in Australia.

(8) For the purposes of this section, the relevant Internet content, in relation to an interactive gambling service, is Internet content that is accessible, or available for access, by an end-user in the capacity of customer of the service.

(1) Clause 2, page 2 (after line 2), after sub-clause (2), insert:

(2A) Part 2A commences on the 28th day after the day on which this Act receives the Royal Assent.

(2) Clause 3, page 2 (after line 20), after paragraph (a), insert:

   (aa) prohibiting Australian-based interactive gambling services from being provided to customers in designated countries; and

(3) Clause 4, page 4 (after line 25), after the definition of datacasting service, insert:

   designated country has the meaning given by section 9A.

(4) Clause 4, page 4 (before line 26), before the definition of designated Internet gambling matter, insert:

   designated country-customer link has the meaning given by section 9B.

(5) Page 9 (after line 26), after clause 9, insert:

9A Designated country

(1) The Minister may, by writing, declare that a specified foreign country is a designated country for the purposes of this Act.

(2) A declaration under subsection (1) has effect accordingly.

(3) The Minister must not declare a foreign country under subsection (1) unless:
   (a) the government of the country has requested the Minister to make the declaration; and
   (b) there is in force in that country legislation that corresponds to section 15.

(4) At least 90 days before making a declaration under subsection (1), the Minister must cause to be published a notice:
   (a) in the Gazette; and
   (b) in a newspaper circulating in each State, in the Northern Territory and in the Australian Capital Territory; setting out the Minister’s intention to make the declaration.

(5) In deciding whether to declare a foreign country under subsection (1), the Minister must have due regard to:
(a) any complaints; and
(b) any supporting statements;
made by the government of that country.

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

(6) Page 9 (before line 27), before clause 10, insert:

9B Designated country-customer link
For the purposes of this Act, a gambling service has a designated country-customer link if, and only if, any or all of the customers of the service are physically present in a designated country.

These amendments are to prevent the export from Australia of Internet gambling to certain designated countries. I am sure all senators have read the amendments including, at the back, the section headed ‘Offence of providing an Australian-based interactive gambling service to customers in designated countries’. In brief, this addresses my concern right from the outset that the majority in this place is wanting to move to prevent Internet gambling because of the damage it causes to Australian society, but the legislation ostensibly allows gambling houses in Australia to export Internet gambling facilities all around the world to other countries. It is obvious that what is bad for Australian households is bad for households elsewhere around the world. This provision allows another country which does not want Australian service providers exporting gambling into its domestic situation and which has similar legislation in place to say to the Australian government, ‘Please put us on the list as a designated country to make it illegal for a gambling house in Australia to export to us.’ That is a good neighbour policy. I think it is somewhat of a breakthrough in terms of innovative legislation, and I strongly commend it to the committee.

Senator ALLISON (Victoria) (5.52 p.m.)—I too will be supporting these amendments. I think they are important. Initially my colleague Senator Woodley and I were concerned about the prospect of Australia’s indicating that there were dangers—as indeed there are—associated with a massive expansion of interactive gambling online. To us it seemed to be untenable to say that this was a danger for our own citizens but we were not prepared to protect other countries that thought likewise. This is a good compromise to that blanket ban. It still allows Australian companies, which in some states at least are well regulated, to provide a service which is welcome in some parts and to some people. So this is a good solution which does allow other countries to opt in to our ban. I hope that it will be an encouragement to many countries around the world, when they examine the potential dangers of interactive gambling, to take a lead from Australia and that it will be easier for them to do so because of our precedent and our willingness to take on board their concerns about operatives in this country working in their country. I will vote for these amendments with some enthusiasm.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.53 p.m.)—The government also accepts the proposition. It is very much in line with what I have been saying consistently for some weeks and months now. We do not have jurisdiction over other countries and we have no right to presume that they do not want certain types of social activity but, where they make it plain through their parliaments that they do have a similar view, we have an obligation to respond positively. Therefore, I acknowledge these amendments as being very much in line with what we have been advocating.

Senator GREIG (Western Australia) (5.54 p.m.)—The flaw in this argument is the fact that, if we were to succeed in banning online gambling from within Australia to Australians, or from an online gambling provider that is Australian to an offshore site, they can simply move offshore. Mr Kerry Packer has already said that, if his operations in online gambling are frustrated in Australia, he will move to Vanuatu—an obvious outcome. I do not mean to single him out—it could apply to anybody or any organisation—but Australian companies could still locate themselves in a country where there was no prohibition, such as Vanuatu, and
continue their services into those countries that would theoretically be banned from receiving those services from within Australia. So the argument to me is a nonsense. For that reason, I cannot support the amendments.

Amendments agreed to.

Amendments (by Senator Alston)—by leave—agreed to.

(24) Page 9 (after line 14), after clause 8, insert:

8A Excluded wagering service

(1) For the purposes of this Act, an excluded wagering service is:

(a) a service to the extent to which it relates to betting on, or on a series of, any or all of the following:
   (i) a horse race;
   (ii) a harness race;
   (iii) a greyhound race;
   (iv) a sporting event;
(b) a service to the extent to which it relates to betting on:
   (i) an event; or
   (ii) a series of events; or
   (iii) a contingency;

that is not covered by paragraph (a).

(2) Paragraphs (1)(a) and (b) do not apply to a service to the extent to which:

(a) the service relates to betting on the outcome of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event; or
(b) the service relates to betting on a contingency that may or may not happen in the course of a sporting event, where the bets are placed, made, received or accepted after the beginning of the event.

(3) Paragraph (1)(b) does not apply to a service to the extent to which the service is:

(a) a service for the conduct of a scratch lottery or other instant lottery; or
(b) a service for the supply of tickets in a scratch lottery or other instant lottery; or
(c) a service relating to betting on the outcome of a scratch lottery or other instant lottery; or
(d) a service for the conduct of a game covered by paragraph (e) of the definition of gambling service in section 4; or
(e) a service relating to betting on the outcome of a game of chance or of mixed chance and skill.

(25) Page 9, after clause 8A, insert:

8B Excluded gaming service

(1) For the purposes of this Act, an excluded gaming service is a service for the conduct of a game covered by paragraph (e) of the definition of gambling service in section 4, to the extent to which the service is provided to customers who are in a public place.

(2) In this section:

public place means a place, or a part of a place, to which the public, or a section of the public, ordinarily has access, whether or not by payment or by invitation (including, for example, a shop, casino, bar or club).

section of the public includes the members of a particular club, society or organisation, but does not include a group consisting only of persons with a common workplace or a common employer.

(26) Page 9, after clause 8B, insert:

8C Designated broadcasting link and designated datacasting link

Designated broadcasting link

(1) For the purposes of this Act, a gambling service has a designated broadcasting link if:

(a) either:
   (i) the service is expressly and exclusively associated with a particular program, or a particular series of programs, broadcast on a broadcasting service; or
   (ii) the sole purpose of the gambling service is to promote goods or services (other than gambling services) that are the subject of advertisements broadcast on a broadcasting service, and the gambling service is associated with those advertisements; and
(b) such other conditions (if any) as are specified in the regulations have been satisfied.
Designated datacasting link

(2) For the purposes of this Act, a gambling service has a designated datacasting link if:

(a) either:
   (i) the service is expressly and exclusively associated with particular content, or a particular series of content, transmitted on a datacasting service; or
   (ii) the sole purpose of the gambling service is to promote goods or services (other than gambling services) that are the subject of advertisements transmitted on a datacasting service, and the gambling service is associated with those advertisements; and

(b) such other conditions (if any) as are specified in the regulations have been satisfied.

(3) In this section:
   content, in relation to a datacasting service, does not include advertising or sponsorship material.
   program has the same meaning as in the Broadcasting Services Act 1992, but does not include advertising or sponsorship material.

 Senator BROWN (Tasmania) (5.56 p.m.)—I move amendment (1) on sheet 2284:

(1) Amendment (24), at the end of clause 8A, add:

(4) Subsection (1) does not apply to a service unless the person who provides the service is authorised under a law of a State or Territory to provide the service.

Senator BROWN—That is correct.
Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (5.57 p.m.)—I would like a moment to reflect on what Senator Brown is putting forward, and this might provide a convenient opportunity.

Progress reported.

COMMITTEES
Selection of Bills Committee

Reports

Senator COONAN (New South Wales) (5.58 p.m.)—by leave—On behalf of Senator Calvert, I present the 9th and 10th reports of 2001 of the Selection of Bills Committee.

Ordered that the reports be adopted.

Senator COONAN—I seek leave to have the reports incorporated in Hansard.

Leave granted.

The reports read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 9 OF 2001

1. The committee met on 26 June 2001.

2. The committee considered a proposal to refer the provisions of the Alcohol Education and Rehabilitation Account Bill 2001 to a committee but was unable to reach agreement on whether the provisions of the bill should be referred.

3. The committee resolved to recommend that the following bills not be referred to committees:

- Fair Prices and Better Access for All (Petroleum) Bill 2001
- Trade Practices Amendment (Representative Actions) Bill 2001
- Trade Practices Amendment (Mergers in Regional Markets) Bill 2001
- Trade Practices Amendment (Unconscionable Conduct) Bill 2001
- Trade Practices Amendment (Operation of State and Territory Laws) Bill 2001
- Finance and Administration Legislation Amendment (Application of Criminal Code) Bill (No. 1) 2001
- Financial Sector (Collection of Data) Bill 2001
- Migration Legislation Amendment (Immigration Detainees) Bill 2001
- Reconciliation and Aboriginal and Torres Strait Islander Affairs Legislation Amendment (Application of Criminal Code) Bill 2001
- Taxation Laws Amendment Bill (No. 2) 2001
- Taxation Laws Amendment Bill (No. 3) 2001
- Trade Marks and Other Legislation Amendment Bill 2001
- Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 2) 2001

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

- Bill deferred from meeting of 22 May 2001
- Aviation Legislation Amendment Bill (No. 2) 2001

Bills deferred from meeting of 19 June 2001

- Financial Services Reform Bill 2001
- Financial Services Reform (Consequential Provisions) Bill 2001
- Corporations (Compensation Arrangements Levies) Bill 2001
- Corporations (Fees) Amendment Bill 2001
- Corporations (National Guarantee Fund Levies) Amendment Bill 2001
- States Grants (Primary and Secondary Education Assistance) Amendment Bill 2001
- Vocational Education and Training Funding Amendment Bill 2001

Bill deferred from meeting of 26 June 2001

- Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001

(Paul Calvert)
Chair
27 June 2001

SELECTION OF BILLS COMMITTEE

REPORT NO. 10 OF 2001


2. The committee resolved to recommend

(a) That the following bill be referred to a committee as follows:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alcohol Education and Rehabilitation Account Bill 2001</td>
<td>Immediately</td>
<td>Community Affairs</td>
<td>9 August 2001</td>
</tr>
</tbody>
</table>

25444
That the provisions of the following bill be referred to a committee as follows:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cybercrime Bill 2001</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>21 August 2001</td>
</tr>
</tbody>
</table>

(Paul Calvert)
Chair
28 June 2001

Sitting suspended from 5.59 p.m. to 7.30 p.m.

INTERACTIVE GAMBLING (MORATORIUM) BILL 2000
In Committee
Consideration resumed.

The TEMPORARY CHAIRMAN (Senator George Campbell)—The committee is considering the Interactive Gambling Bill 2001, as amended, and the amendment moved by Senator Brown to government amendment (24) on sheet ER279. The question is that Senator Brown’s amendment be agreed to.

Question resolved in the negative.

Senator ALLISON (Victoria) (7.31 p.m.)—I move Democrat amendment (1): Clause 68, page 49 (lines 25 and 26), omit sub-clause (1), substitute:

(1) Before 1 July 2003, the Minister must cause to be conducted a review of the following matters:

(a) the operation of this Act;
(b) the growth of interactive gambling services;
(c) the social and commercial impact of interactive gambling services;
(d) the effect of the following provisions:
   (i) paragraphs 5(3)(aa) and 6(3)(aa) and section 8A (excluded wagering services);
   (ii) paragraphs 5(3)(ab) and 6(3)(ab) and section 8B (excluded gaming services);
   (iii) paragraphs 5(3)(ac) and 6(3)(ac) and section 8C (services that have a designated broadcasting link);
   (iv) paragraphs 5(3)(ad) and 6(3)(ad) and section 8C (services that have a designated datacasting link);
   (v) paragraphs 5(3)(ae) and 6(3)(ae) and section 8D (excluded lottery services);
   (vi) the effectiveness of this Act in dealing with the social and commercial impact of interactive gambling services;
   (f) technological developments that are relevant to the regulation of interactive gambling services;
   (g) technological developments that may assist in dealing with problem gambling.

This amendment brings forward the review which was in the legislation for 2004 to 1 July 2003 and identifies, in terms of reference, the matters to be considered in that review. They include the effectiveness and operation of the legislation. They look at the exemptions which have been agreed to—wagering, lotteries and the like. They also look at the technological developments, which I think are likely to develop and arise over the next two years or so. I think it is important that we have this review and that it takes place sooner than was planned. In that period of time there will be an opportunity to see, as I said, how effective the bill has been. I think we will also see in that period of time a development of interactive gambling through datacasting, through digital television and the like. Already, as I mentioned in my second reading contribution, there are many organisations which have identified those last two areas I mentioned—interactive television—as being opportunities for exploitation and great opportunities for generating wealth, very often at other people’s expense. I commend this amendment as being a way in which we can see at a sooner stage how well this ban is being put into effect.

Senator BROWN (Tasmania) (7.33 p.m.)—I will be supporting that amendment. I want to comment on some public response to this legislation as it proceeds. Lasseters say that the legislation and amendments that were passed today have set a dangerous
precedent for global Internet censorship and call the amendment, which is the one to do
with designated countries, ‘totally unnecessary’, but then go on to threaten the minister
with legal action, although the minister has not done anything yet. They also say that
they might seek compensation in the High Court. In a very twisted argument, they say,
‘We have voluntarily adopted the policy’—that is, of stopping players from registering—if they reside in states or
countries prohibiting online gambling on religious or legislative grounds.’ They have a
policy that they say is the equivalent to what the Senate has passed today; but the Senate
cannot do it, the parliament cannot do it—Lasseters can.

We have this extraordinary situation of a big gambling company threatening action
against the parliament moving to prohibit online gambling from Australia being ex-
ported to a country that says, ‘Please, do not send it to us because we have similar laws to
you, and we do not want it exported to citi-
zens in our country either. You do not allow
it in Australia; we do not want it exported to
our country.’ What an extraordinary thing
from Lasseters. Yet, after saying that they are
looking at the law and what they might do
about challenging the minister abusing the
powers and questioning in the High Court
the constitutional rights to enact the law—that is, questioning our right in the Senate to
amend this legislation as we see fit—they go
on to bring out the biggest threat of the lot,
the daddy of threats. They say that this leg-
nislation may be subject to action through the
World Trade Organisation. Aren’t Austra-
lians going to be glad to hear Lasseters
threatening us with the World Trade Organi-
sation because we are trying to regulate
gaming in this country and, in so doing,
say, ‘We want to extend the same sorts of opportunities to other countries that may be
affected by this’?

I think Lasseters need to take an orange
juice, to settle down a little, to think about
their responsibility as a corporate citizen in
the same way that we are considering their responsibility as a parliamentary citizen and
to come up with something more construc-
tive than that. I think they may well do them-
selves a service if they think much more
about how they can make their services un-
available to problem gamblers altogether,
whether they be overseas or here. I know
Lasseters have a big clientele overseas. If
they say that do not operate where it is
against religious tenets, then they need to
think about whether they should operate in
circumstances which are socially repugnant,
whether or not they are religious. It is a nice
try from Lasseters, but it will not wash.

Senator BOSWELL (Queensland—
Leader of the National Party of Australia in
the Senate and Parliamentary Secretary to
the Minister for Transport and Regional Serv-
ices) (7.37 p.m.)—I would like to direct a
question to the minister. I refer to govern-
ment amendment No. 27, which says:

(1) For the purposes of this Act, an ex-
cluded lottery service is:
(a) a service for the conduct of a lottery;
or
(b) a service for the supply of lottery
tickets.
(2) Subsection (1) does not apply to an
electronic form of:
(a) scratch lottery; or
(b) other instant lottery.

Could the minister inform me whether a
game of keno that throws up results every
five minutes would be excluded under clause
8D?

Senator ALSTON (Victoria—Minister
for Communications, Information Technol-
logy and the Arts) (7.38 p.m.)—The excluded
service provision involves a new definition.
You will find it on sheet XX222, the Aus-
tralian Democrats amendments. Amendment
No. 3 states:
(1B) Without limiting subsection (1A), a condi-
tion specified in regulations made for the pur-
poses of that subsection may provide that the
lottery must not be:
(a) a highly repetitive or frequently drawn form
of a keno-type lottery; or
(b) a similar lottery.

The scheme of the act is that gaming is
banned, and gaming involves casino like
activities where you do have frequent and
repetitive conduct. Insofar as keno activity is
conducted offline, that is not of concern to
this legislation. Insofar as it is conducted
online, it would probably be caught by the
gaming definition. If it is not and it is occurring frequently and repetitively in accordance with that definition, it will be ruled out. There is a general discretion vested in the minister to limit or preclude those types of activities, and that Democrats amendment will allow us, after the event if necessary, to take action in respect of any particular offering.

As I understand it, these things are not available now. Obviously, there will be many modifications and new initiatives, both home-grown and imported, and we will need to have that general power in order to give effect to the spirit of the legislation. It is one thing to allow a lottery which occurs on a periodic basis—it is a defined event which ought to be allowed because there is no evidence that it is socially harmful—but it is another thing to have events which occur frequently and repetitively, where people have the opportunity and almost the inevitability of losing significant sums of money in a fairly short period of time. They will be caught either under the gaming provision or under the general discretionary power vested in the minister to take action in respect of highly repetitive or frequently drawn forms of keno type lotteries or similar lotteries.

Senator ALLISON (Victoria) (7.41 p.m.)—Earlier I spoke about Democrats amendment No. 1 on a different running sheet. I realise now where we are at. My amendment No. 1 relates to the minister setting conditions on the exemptions which will be disallowable. I just want to clarify that it is not about the review; it is about the conditions applicable to the exempted matters.

Senator O’BRIEN (Tasmania) (7.41 p.m.)—As this is the point at which Internet wagering is debated, I put on the record that I have an interest. I have a computer, I have been known to bet on horses and I have an interest in thoroughbreds.

Senator HARRIS (Queensland) (7.42 p.m.)—In light of Senator Boswell’s question to the minister, I would like to seek clarification. The third dot point on page 1 of the government’s supplementary explanatory memorandum says:

The proposed Government Amendments to the Interactive Gambling Bill 2001:

clarify that television games and trade promotions are exempt from the scope of the Bill...

Could the minister clarify whether such programs as *Who Wants to be a Millionaire?* and *The Weakest Link* would be caught by this legislation, or would they be excluded?

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (7.43 p.m.)—There are certain games and promotions that might unintentionally be captured by the original provisions of the bill, including services running in conjunction with television broadcasts such as *Big Brother* or *Who Wants to be a Millionaire?* Of course, it has not been the intention in the whole scope of this bill to limit current activity which precedes interactive technology. Therefore, because of the difficulty of anticipating precisely what might emerge but recognising that there may well be some relatively harmless categories of interactive programming run by the television networks, the government’s amendments will exempt such services that are expressly and exclusively associated with a particular broadcast program or solely provided for the purpose of promoting goods or services other than gambling services that are the subject of advertisements that are broadcast—in other words, t-commerce. These services are not gambling and are not intended to be covered. However, the government’s amendments do build in a review mechanism to allow a re-examination of the social impacts of these services before two years has elapsed.

Some concerns were expressed that the legislation might also operate to unintentionally ban game shows or promotions like *Video Hits* or *Classic Catches*, where there is some form of entry fee, such as a 1900 phone call. Because these services were not intended to be covered by the legislation, we are introducing amendments to exempt them and future services offered in conjunction with material on digital and interactive television but subject to a ministerial power to impose further conditions, with a review of this part of the legislation after two years.

Senator HARRIS (Queensland) (7.45 p.m.)—I thank the minister for that clarification.
tion. That does clearly put on the record the concerns that I had with the possible exclusion of those services.

Amendment agreed to.

Senator HARRIS (Queensland) (7.46 p.m.)—by leave—I move Pauline Hanson’s One Nation amendments (2) to (4) on sheet 2292:

(2) Government amendment (24), at the end of subclause 8A(1), add:

; or (c) a telephone betting service.

(3) Government amendment (24), subclause 8A(2), omit “and (b)”, substitute “(b) and (c)”.

(4) Government amendment (24), at the end of clause 8A, add:

(4) Paragraphs (1)(a), (b) and (c) do not apply to the extent to which the service relates to betting on a horse race, harness race or greyhound race that is to be held anywhere in Australia, unless the person who provides the service is authorised under a law of a State or Territory to provide the service.

(5) Paragraph (2)(a) does not apply if the person who provides the service is:

(a) authorised under a law of a State or Territory to provide the service; and

(b) is bound by a national Code of Practice prepared by a body that is representative of legal Australian wagering service providers and approved by a majority of State and Territory Racing Ministers.

(6) The regulations may exempt a person who is bound by a national Code of Practice mentioned in paragraph (5)(b) from the operation of paragraph (2)(b) in such circumstances, and subject to such conditions, as are prescribed.

These amendments are to bring the Commonwealth legislation closer in line with the state legislation. Amendment (2) has the ability to insert in subsection (1) the ability for a person to place a bet by telephone as a service to the extension as it relates to a bet on an event, a series of events or a contingency in horseracing, harness racing, greyhound racing or a sporting event.

One of the primary reasons for moving this amendment is that, in the government’s original bill, there was an exclusion that would allow those people with a disability to be able to use the Internet to place a wagering bet—only those with a disability. TABs around Australia now have the ability with voice recognition to recognise the voice of a disabled person. That is why we are asking for this to be inserted in this section of the bill. It would allow the disabled to use a telephone with voice recognition to place a wagering bet with their TAB. That is the purpose of that section of the amendments.

The purpose of amendment (4) is to bring the Commonwealth legislation closer to the state requirements. Subsection (4) of amendment (4) would have the function of excluding any overseas providers for the purpose of placing a wagering bet in Australia, and I believe that should receive the support of the majority of the senators in the chamber. The intention of the amendment is to mirror the state licensing requirements for wagering and, in doing so, it would exclude a service provider from outside Australia providing a service for wagering within Australia. I commend both of the amendments, particularly the amendments that will allow the disabled in Australia to use voice recognition to place their wagering bets.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (7.51 p.m.)—I will just indicate why the government opposes these amendments. Insofar as telephone betting is concerned, I do not quite understand what Senator Harris’s desire to extend the ability for disabled people to use the Internet has to do with telephone betting. Telephone betting is a legal activity now and I do not think anyone has proposed to ban it or indeed make it subject for the first time to Australian licensing requirements. Telephone typewriter facilities have been available for quite some time for those who are not able to use the telephone for making a voice call. They can now type in the message that can be then transmitted via a computer and converted into a voice call at the other end. It is perfectly possible for disabled people to use the telephone for betting, and I do not therefore see why we should be imposing restrictions on telephone betting.
As far as the second proposal is concerned, I am not clear whether this is only designed to apply to activities in Australia or whether it is effectively saying that you cannot provide wagering services from offshore unless you are licensed by an Australian authority. If it is the latter, given that we are allowing sports betting to occur, it does not seem to me to make much sense to say that you can bet on Australian events and with Australian providers but you cannot go offshore. You may be a very irregular punter—you may simply want to bet on Ascot once a year. You want to check the best odds, so you go to William Hill or Ladbrokes. They have better odds, but because they are not licensed in Australia to provide that service somehow that becomes illegal. That is illogical.

If we are providing an exemption for sports betting, we can obviously address some of the excesses of that activity by a variety of means, which the states keep swearing on a stack of bibles they are about to get around to doing. Insofar as the activity itself is concerned, I do not see why we should suddenly be imposing a licensing requirement when the Commonwealth’s responsibility is to regulate the activity itself, and the states can impose any additional obligations that they choose.

Senator HARRIS (Queensland) (7.54 p.m.)—I thank the minister for his response. The clear intention is to exclude a provider of a service from outside of Australia. The majority of punters who are going overseas normally have arrangements with their own Australia based betting services. This amendment is not intended in any way to exclude an Australian citizen who is outside of Australia from placing a bet with a service provider from within Australia. Its clear intent is to ensure that nobody from offshore can provide a service unless they have a licence to provide that service that is authorised by a state or a territory. As I said in my speech in the second reading debate, we already have one service provider in Vanuatu who has a turnover of over half a billion dollars annually. That does not bring any benefits to the Australian people, nor does that person pay any turnover tax to the state governments.

This is the purpose of these amendments: to ensure that a wagering facility cannot be put in place unless that person has a licence that is granted by a state or a territory. It is not intended to exclude a person from being overseas and betting on a service that is provided by an Australian licensed provider; it is to ensure that we do not end up with a proliferation of service providers offshore who are actually deriving the benefits from their businesses and not returning anything to Australia. Very briefly, I read into the record in my speech earlier a section about the approximate $600 million which the racing industry pays by way of fees or taxes to the state governments. These amendments are distinctly directed towards ensuring that the industry will continue to be Australian based and not run by a service provider outside of Australia.

Amendments not agreed to.

The TEMPORARY CHAIRMAN (Senator George Campbell)—That makes your other amendment redundant, Senator Harris.

Senator ALLISON (Victoria) (7.58 p.m.)—I move Democrat amendment No. 2 on sheet XX222:

(2) Amendment (25), after subclause 8B(1), insert:

(1A) Subsection (1) does not apply to a service unless such other conditions (if any) as are specified in the regulations have been satisfied.

This is a similar amendment to our amendment No. 1. It relates to allowing the minister to impose conditions on excluded gaming services. So the first amendment was on wagering; this one relates to gaming.

Amendment agreed to.

Senator BROWN (Tasmania) (7.59 p.m.)—I move Australian Greens amendment No. 1 on sheet 2290:

(1) Amendment (27), at the end of clause 8D, add:

(3) Subsection (1) does not apply to a service unless the person who provides the service is authorised under a law of a State or Territory to provide the service.
If you read the double negatives here, it is an amendment to stop overseas lottery operators plying their trade in Australia.

Amendment agreed to.

Senator HARRIS (Queensland) (8.00 p.m.)—It defies logic that you will exclude lottery providers from offshore but the government will not exclude wagering services from offshore.

Senator ALLISON (Victoria) (8.00 p.m.)—I move Democrats amendment (3) on sheet XX222:

(3) Amendment (27), after subclause 8D(1), insert:

(1A) Subsection (1) does not apply to a service unless such other conditions (if any) as are specified in the regulations have been satisfied.

(1B) Without limiting subsection (1A), a condition specified in regulations made for the purposes of that subsection may provide that the lottery must not be:

(a) a highly repetitive or frequently drawn form of a keno-type lottery;

(b) a similar lottery.

This is a similar amendment which allows the minister to apply conditions to an exempted service—in this case, lottery services.

Amendment agreed to.

The TEMPORARY CHAIRMAN (Senator George Campbell)—The question now is that the government amendments, as amended, be agreed to.

Senator MARK BISHOP (Western Australia) (8.01 p.m.)—I think it is probably appropriate at this time to make a few comments. I will address my comments to the issue of wagering but they apply generally to the list of exemptions that have been moved by the government as amended by the various crossbench parties. The opposition want to make five points at the outset and I will develop each briefly.

Firstly, the bill still permits Australians access to Internet wagering and we make the obvious point that wagering is hardly immune from causing gambling problems. Wagering is as much of a problem in terms of problem gambling as any other form of gambling and to exclude it seems, to the opposition, to demonstrate the extent of the hypocrisy that the government displays with this bill. If the bill does become law, Australian gamblers will be able to gamble away all they have and more on many offshore sites that they will still be able to access. Problem gamblers are almost 1½ times more likely to prefer gambling on racing to casino gambling. It is difficult to identify any sensible rationale for the government’s exclusion of wagering from this bill. The government also has chosen to exclude sports betting from the bill, contradicting its decision to restrict new forms of gambling.

The series of amendments exclude wagering and the other forms from the scope of the interactive gambling ban, with the exception of ball by ball or microevent wagering, which will continue to be prohibited. It is clear that the amendments proposed by the government and the crossbench and minor parties cater to the demands of the racing industry and associated industries. The government has stated that it remains ‘concerned about the impact of Internet wagering but recognises that this concern needs to be balanced against the impact of a ban on a bona fide and long-established industry in Australia’.

I stated in my speech in the second reading debate and again tonight that the bill still permits Australians access to Internet wagering, and wagering is hardly immune from causing gambling problems. This amendment to exclude interactive wagering and the other exemptions, when wagering is as much a problem in terms of problem gambling as any other form of gambling, demonstrates, as I said earlier, the extent of the hypocrisy that runs rampant through this bill.

The amendments place beyond a doubt everyone’s suspicions that the government’s primary concern in the passage of this legislation is not the protection of problem gamblers. The government’s decision to cave in to the relatively brief but intensive lobbying by the wagering industry is just further proof to the opposition of the government’s ad hoc policy approach in this whole area. It demonstrates to us that its selective approach is the reason why it cannot come up with a sen-
sible and effective policy for interactive gambling that minimises interactive gambling to the greatest extent possible.

During a recent interview, 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 ...

I make the obvious point that if gamblers play on Australian Internet gambling sites they could not gamble all of what they had and more because there are expenditure thresholds imposed by the legitimate operators in this country. If this bill does become law, Australian gamblers will be able to gamble all they have and more on many offshore sites that they will still be able to access.

My second point in this context is that the Productivity Commission found that problem gamblers are almost 1½ times more likely to prefer gambling on racing to casino gambling. The minister undoubtedly knows this—I tried to bring it to his attention before. We make the obvious point that wagering is not any safer than any other form of gambling. Wagering is not immune to the social effect of problem gambling. It is impossible for us to identify any consistent or sensible policy rationale behind this.

Furthermore, the government has stated repeatedly that it is concerned to prevent any increase in the accessibility of gambling and that is one of the drivers behind this whole approach. We ask this question in passing: if that is one of the drivers that motivates us in this debate, why has the government chosen to exclude wagering and sporting events from the bill?

Sports betting is still a relatively new form of gambling and is highly suited to Internet and home based gambling. The Productivity Commission report observed that it is likely that sports betting:

... will grow rapidly via the internet, largely creating a new market, though there may be some shift away from wagers on racing.

Essentially, then, the government’s own amendments and the amendments of the minor parties, catering to the requests of the horse racing and other existing industries, are encouraging the expansion of an entirely new gambling form in this country. Hypocritical? We say yes.

Finally, the government fails to mention that this bill will permit one form of gambling on the Internet to continue unabated and essentially unregulated, or at least not regulated to the same extent as the existing Internet gambling industries that the bill will prohibit Australians from accessing.

Bringing that together, we ask the obvious question that a range of people have been discussing in this debate and in the press over recent times: how is wagering different? How and why are problem gamblers who choose to bet in the various forms of the racing industry around the country tolerated? Why is that encouraged? Why does this government allow these new products and these new forms of betting to take place in the marketplace when Minister Alston, the Prime Minister and the government have said that the ostensible reason for their intention to ban Internet gambling in various forms is that they want to prevent the further spread of gambling in this country?

To prevent the further spread of gambling is their whole rationale. But this bill, and the amendments we are currently discussing, send out the clear message that they exclude new forms of gambling—Internet wagering and Internet sports betting—which are developing and which technology will allow to spread. So the conclusion we draw is that this bill and the comments of the government are about accommodating new forms of betting. They are about accommodating racing industry and sports betting interests in new mediums of communication.

Senator Alston—But you are against it, are you?

Senator MARK BISHOP—You say this bill is about preventing further forms of gambling and further access to gambling and about attending to existing social problems, yet in this debate and these amendments you expressly provide and allow—and, by implication, encourage—new forms of gambling in new forms of communication. We just
make the obvious point, which I think is probably understood and accepted in this chamber, that that is just contrary to your stated purpose.

Senator HARRADINE (Tasmania) (8.09 p.m.)—Minister, why has an exemption been given to wagering on Internet overseas sites and yet we have just made it illegal to have Internet gambling on overseas lotteries? I am concerned that there is this difference. If there is a feeling around the chamber, as apparently there is, why don’t we revisit that again and see whether we cannot get agreement about that? I think Senator Harris pointed out that it is illogical, and now we have heard Senator Bishop virtually say that it is illogical, to have a ban on the lotteries and not a ban on the wagering.

The TEMPORARY CHAIRMAN (Senator George Campbell)—You are perceptive, Senator.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.10 p.m.)—I do not know how he does it. I thought, if he was at the other end of the chamber, he would not be able to hear what is going on down here. Senator Harradine clearly has been able to read the discussions because I have just indicated to Senator Brown and the chair that I would seek to have that vote recommitted. There was some confusion; I accept the illogicality of it. I hesitated because it struck me that way but, for one reason or another, I do not think we got the right outcome. I was certainly going to seek leave of the chamber to do just that. I am grateful for you once again being ahead of the game. I am seeking leave to have Australian Greens amendment (1) on sheet 2290 to government amendment 27 recommitted.

Leave granted.

Senator HARRIS (Queensland) (8.11 p.m.)—This is probably one of the few times in this chamber when I am now wishing that I had kept my mouth shut because it would be preferable to actually have the Lotto excluded from overseas providers being able to provide it. If it is possible, I will request that my comments be struck from Hansard.

The TEMPORARY CHAIRMAN—It is not possible, Senator.

Senator HARRADINE (Tasmania) (8.12 p.m.)—I think I misunderstood what the minister said. Are we going to now vote?

The TEMPORARY CHAIRMAN—I am going to put the amendment moved by the Australian Greens, Senator Harradine. You will be able to now vote on it again and, hopefully, you will get the correct outcome.

Senator HARRADINE—But that was passed before.

The TEMPORARY CHAIRMAN—But leave was sought to have the vote recommitted and leave has been granted.

Senator HARRADINE—Chair, I would prefer—and I am sure colleagues round here would prefer—to have both of them banned.

The TEMPORARY CHAIRMAN—At this stage only one amendment has been raised. The minister has sought leave to have that amendment recommitted to the vote and leave has been granted by the chamber. I am about to put that amendment to a vote of the chamber.

Senator HARRADINE—I refuse leave.

The TEMPORARY CHAIRMAN—I am sorry, Senator. Leave has already been granted.

Amendment not agreed to.

The TEMPORARY CHAIRMAN—The question now is that the government amendments, as amended, be agreed to.

Question resolved in the affirmative.

Senator BROWN (Tasmania) (8.14 p.m.)—I move Australian Greens amendment (18) on sheet 2216:

(18) Clause 37, page 27 (after line 6), after paragraph (6)(b), insert:

c) an arrangement that involves the use of redirection of URLs of prohibited Internet gambling services, or prohibited Internet gambling content, by a requirement to ensure all Domain Name Services in Australia are ultimately linked to an Australian Root Server where requests for that service or content are redirected, by local reassignment of the IP of the prohibited Internet gambling service
domain, to an information site maintained by the ABA. Sometimes it is tempting to block leave for a recommittal but, of course, the good form and precedence in this house is such that, if recommittal is requested because somebody has voted in an unintended way, the house should really test the true feeling and that is what has happened. I might add that I did not change my vote. Amendment (18) is a technical matter to do with web sites. As the committee can see, it is self-explanatory.

Amendment not agreed to.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.15 p.m.)—by leave—I move government amendments (32), (1), (3) and (16) on sheet ER279:

(32) Page 45 (after line 6), after Part 7, insert:

PART 7A—PROHIBITION OF ADVERTISING OF INTERACTIVE GAMBLING SERVICES

Division 1—Interpretation: definitions

61AA Definitions

In this Part, unless the contrary intention appears:

broadcast means transmit by means of a broadcasting service.

broadcasting service means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

(a) a datacasting service; or

(b) a service that delivers programs using the Internet, where the delivery does not use the broadcasting services bands.

broadcasting services bands has the same meaning as in the Broadcasting Services Act 1992.

datacast means transmit by means of a datacasting service.

display includes continue to display.

exempt library means:

(a) a public library; or

(b) a library of a tertiary educational institution; or

(c) a library of an authority of the Commonwealth or of a State or Territory.

government or political matters means government or political matters relating to any level of government in Australia, and includes any of the following matters:

(a) participation in, association with and communications in relation to any election or appointment to public office;

(b) political views or public conduct relating to activities that have become the subject of political debate;

(c) the performance, conduct, capacity or fitness for office of a person elected or appointed to, or seeking election or appointment to, any public office;

(d) the actions or policies, or proposed actions or policies, of any government in Australia or any Australian political party.

interactive gambling service advertisement has the meaning given by Division 2.

interactive gambling service provider means a person who provides an interactive gambling service.

periodical means an issue (however described) of a newspaper, magazine, journal, newsletter, or other similar publication, issues of which are published at regular or irregular intervals.

program has the same meaning as in the Broadcasting Services Act 1992.

public place means a place, or a part of a place, to which the public, or a section of the public, ordinarily has access, whether or not by payment or by invitation (including, for example, a shop, restaurant, hotel, cinema or club).

publish:

(a) in relation to an interactive gambling service advertisement, has the meaning given by Division 3; and

(b) in relation to something other than an interactive gambling service advertisement, has a meaning equally as broad as it has in relation to an
interactive gambling service advertisement.

section of the public includes:
(a) the members of a particular club, society or organisation; and
(b) a group consisting only of persons with a common workplace or a common employer.

workplace means premises in which employees or contractors work, other than any part of such premises that is primarily used as a private dwelling.

Division 2—Interpretation: interactive gambling service advertisement

61BA Basic meaning of interactive gambling service advertisement
(1) For the purposes of this Part, an interactive gambling service advertisement is any writing, still or moving picture, sign, symbol or other visual image, or any audible message, or any combination of 2 or more of those things, that gives publicity to, or otherwise promotes or is intended to promote:
(a) an interactive gambling service; or
(b) interactive gambling services in general; or
(c) the whole or part of a trade mark in respect of an interactive gambling service; or
(d) a domain name or URL that relates to an interactive gambling service; or
(e) any words that are closely associated with an interactive gambling service (whether also closely associated with other kinds of services or products).
(2) This section has effect subject to sections 61BB, 61BC, 61BD, 61BE, 61BF and 61BG

61BB Exception—political communication
(1) To avoid doubt, if:
(a) something (the advertisement) does not promote, and is not intended to promote, any particular interactive gambling service or services; and
(b) the advertisement relates solely to government or political matters;
the advertisement is not an interactive gambling service advertisement for the purposes of this Part.
(2) Without limiting paragraph (1)(a), the use in an advertisement of the whole name of an interactive gambling service provider does not, of itself, constitute promotion of an interactive gambling service or interactive gambling services for the purposes of paragraph (1)(a).
(3) Subsection (2) does not apply in relation to the use of a name referred to in that subsection in a way prohibited by regulations made for the purposes of this subsection.
(4) Section 61BA does not apply to the extent (if any) that it would infringe any doctrine of implied freedom of political communication.

61BC Exception—Internet sites etc. and business documents
Words, signs or symbols that appear:
(a) on the Internet site of an interactive gambling service that is provided to customers using an Internet carriage service, or on or at an equivalent point of provision of any other interactive gambling service; or
(b) as part of the standard wording of an invoice, statement, order form, letterhead, business card, cheque, manual, or other document ordinarily used in the normal course of the business of an interactive gambling service provider (whether or not the document is in electronic form);
do not, when so appearing, constitute an interactive gambling service advertisement (but this does not prevent a still or moving screen shot of an Internet site or equivalent point of provision referred to in paragraph (a), or a still or moving picture or other visual image of a document referred to in paragraph (b), from being an interactive gambling service advertisement).

61BD Exception—premises of providers
Words, signs or symbols that appear in or on land or buildings occupied by an interactive gambling service provider do not, when so appearing, constitute an interactive gambling service advertisement (but this does not prevent a still or moving picture, or other visual image, of words, signs or symbols that
so appear from being an interactive gambling service advertisement).

61BE Exceptions—management advertisements etc.

To avoid doubt, none of the following constitutes an interactive gambling service advertisement:

(a) the doing of anything that is, or apart from this Part would be, required to be done by any other law of the Commonwealth or by any law of a State or Territory;

(b) an advertisement (for example, an advertisement for staff or calling for tenders), relating to the internal management of the business of an interactive gambling service provider, that does not promote an interactive gambling service;

(c) the taking of any action to prevent persons becoming victims of fraud or any other dishonest or unethical conduct.

61BF Exception—products or services having the same name as an interactive gambling service

(1) If:

(a) apart from this section, something (the advertisement) that relates to a product, or a service, that is not an interactive gambling service would, technically, be an interactive gambling service advertisement because the name, or part of the name, of the product or service is the same as, or substantially similar to, the name, or part of the name, of:

(i) an interactive gambling service; or

(ii) an interactive gambling service provider; and

(b) the manufacturer, distributor or retailer of the product, or the provider of the service, is not associated in any way with the interactive gambling service provider concerned;

then, despite section 61BA, the advertisement is not an interactive gambling service advertisement for the purposes of this Part.

Related bodies corporate taken to be associated with each other

(2) Without limiting the circumstances in which 2 persons would, apart from this subsection, be taken to be associated with each other for the purposes of subsection (1), 2 bodies corporate that are related to each other are taken to be associated with each other for the purposes of that subsection.

(3) For the purposes of subsection (2), the question whether 2 bodies corporate are related to each other is to be determined in the same way as the question would be determined under the Corporations Law.

61BG Exception—anti-gambling advertisements

If:

(a) apart from this section, something (the advertisement) would, technically, be an interactive gambling service advertisement; and

(b) it is clear from the advertisement that its sole or principal purpose is to discourage the use of gambling services or particular kinds of gambling services;

then, despite section 61BA, the advertisement is not an interactive gambling service advertisement for the purposes of this Part.

61BH Definition

In this Division:

words includes abbreviations, initials and numbers.

Division 3—Interpretation: publication of interactive gambling service advertisement

61CA Basic meaning of publish an interactive gambling service advertisement

(1) For the purposes of this Part, a person publishes an interactive gambling service advertisement if the person does any of the following things:

(a) the person includes the advertisement, or something that contains the advertisement, on an Internet site;

(b) the person includes the advertisement in a document (including, for example, a newspaper, magazine, program, leaflet or ticket) that is available, or distributed, to the public or a section of the public;

(c) the person includes the advertisement in a film, video, television program or radio program that is, or
is intended to be, seen or heard by the public or a section of the public;

(d) the person:
   (i) sells, hires or supplies the advertisement, or something containing the advertisement, to the public or a section of the public; or
   (ii) offers the advertisement, or something containing the advertisement, for sale or supply to, or hire by, the public or a section of the public;

(e) the person displays, screens or plays the advertisement, or something that contains the advertisement, so that it can be seen or heard in or from:
   (i) a public place; or
   (ii) public transport; or
   (iii) a workplace;

(f) the person otherwise:
   (i) brings the advertisement, or something that contains the advertisement, to the notice of; or
   (ii) disseminates the advertisement, or something that contains the advertisement, to;

   the public, or a section of the public, by any means (including, for example, by means of a film, video, computer disk or electronic medium).

(2) This section has effect subject to sections 61CB, 61CC, 61CD, 61CE and 61CF.

**61CB Publish does not include broadcast or datacast**

For the purposes of this Part, the broadcasting or datacasting of an interactive gambling service advertisement by a person does not amount to the publication of the advertisement by the person.

**61CC Exception—trade communications**

For the purposes of this Part, the communication of information that is or includes an interactive gambling service advertisement to a group of people all of whom are involved in the provision of interactive gambling services, does not, of itself, amount to a publication of the interactive gambling service advertisement.

**61CD Exception—advertisements in telephone directories**

(1) For the purposes of this Part, the publication of the name of an interactive gambling service provider in a telephone directory does not, of itself, amount to the publication of an interactive gambling service advertisement.

(2) Subsection (1) does not apply if:
   (a) the publication is on the Internet; and
   (b) the entry for the provider contains a link to an Internet site for the provider that relates to an interactive gambling service.

**61CE Exception—ordinary activities of exempt libraries**

Nothing that a person does for the purposes of the ordinary activities of an exempt library amounts, for the purposes of this Part, to a publication of an interactive gambling service advertisement.

**61CF Exception—acknowledgments of assistance or support**

For the purposes of this Part, the publication of an acknowledgment of assistance or support does not amount to the publication of an interactive gambling service advertisement if it complies with regulations made for the purposes of this section that permit the publication of such acknowledgments.

**Division 4—Broadcasting or datacasting of interactive gambling service advertisements in Australia**

**61DA Interactive gambling service advertisements not to be broadcast or datacast in Australia**

(1) A person is guilty of an offence if:
   (a) the person broadcasts or datacasts an interactive gambling service advertisement in Australia; and
   (b) the broadcast or datacast is not permitted by section 61DB; and
   (c) the broadcast or datacast is not permitted by section 61DC.

Penalty: 120 penalty units.

(2) A person is guilty of an offence if:
   (a) the person authorises or causes an interactive gambling service adver-
tisement to be broadcast or datacast in Australia; and
(b) the broadcast or datacast is not permitted by section 61DB; and
(c) the broadcast or datacast is not permitted by section 61DC.

Penalty for contravention of this subsection: 120 penalty units.

61DB  Accidental or incidental broadcast or datacast permitted
(1) A person may broadcast or datacast an interactive gambling service advertisement if:
(a) the person broadcasts or datacasts the advertisement as an accidental or incidental accompaniment to the broadcasting or datacasting of other matter; and
(b) the person does not receive any direct or indirect benefit (whether financial or not) for broadcasting or datacasting the advertisement (in addition to any direct or indirect benefit that the person receives for broadcasting or datacasting the other matter).

(2) Subsection (1) only has effect for the purposes of this Part.

61DC  Broadcast or datacast of advertisements during flights of aircraft
(1) A person may broadcast or datacast an interactive gambling service advertisement in an aircraft during a flight of the aircraft unless the flight begins at a place in Australia and is intended to end at another place in Australia.

(2) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

(3) Subsection (1) only has effect for the purposes of this Part.

Division 5—Publication of interactive gambling service advertisements in Australia

61EA  Interactive gambling service advertisements not to be published in Australia
(1) A person is guilty of an offence if:
(a) the person publishes an interactive gambling service advertisement in Australia; and
(b) the publication is not permitted by section 61EB; and
(c) the publication is not permitted by section 61EC; and
(d) the publication is not permitted by section 61ED; and
(e) the publication is not permitted by section 61EE; and
(f) the publication is not permitted by section 61EF.

Penalty for contravention of this subsection: 120 penalty units.

61EB  Periodicals distributed outside Australia—acts of publication permitted
(1) A person may do, with a periodical that contains an interactive gambling service advertisement, something that amounts to publishing the advertisement if the periodical is not principally
intended for distribution or use in Australia.

(2) Subsection (1) only has effect for the purposes of this Part.

61EC Australian sporting and cultural events of international significance—acts of publication permitted

(1) A person may publish an interactive gambling service advertisement if:

(a) the advertisement is published in connection with a sporting or cultural event held, or to be held, in Australia; and

(b) the event is specified in a notice in force under subsection (2); and

(c) the publication of the advertisement complies with the conditions (if any) specified in the notice in accordance with subsection (3).

(2) For the purposes of subsection (1), the Minister may, by notice published in the Gazette, specify a sporting or cultural event to be held in Australia if, and only if:

(a) the Minister is satisfied that the event will be completed before 1 October 2003; and

(b) in a case where the event is to be held on or after 1 October 2001:

(i) a similar event held before that date (the earlier event) was specified in a notice under this subsection; and

(ii) no application to have another similar event specified in a notice under this subsection has been rejected since the earlier event; and

(c) the Minister is satisfied, having regard to the guidelines in force under subsection (5), that:

(i) the event is of international significance; and

(ii) failure to specify the event would be likely to result in the event not being held in Australia.

Note: Section 61FB provides for the making of applications to have events specified in notices under this subsection.

(3) In a notice under subsection (2) specifying an event, the Minister may also, having regard to the guidelines in force under subsection (5), specify conditions to be complied with in relation to the publication of interactive gambling service advertisements in connection with the event, being conditions related to:

(a) the content of the advertisements that may be published; or

(b) the number of advertisements, or the number of advertisements of a particular kind, that may be published, or that may be published in a particular way; or

(c) the way in which advertisements may be published.

(4) A notice under subsection (2):

(a) comes into force:

(i) on the day when it is published in the Gazette; or

(ii) if a later day is specified in the notice as the day when it is to come into force—on that later day; and

(b) stops being in force (unless it is revoked earlier):

(i) at the end of 3 years after it came into force; or

(ii) if an earlier day is specified in the notice as the day when it stops being in force—on that earlier day.

(5) The Minister may, by writing, determine guidelines for the purposes of subsections (2) and (3).

(6) An instrument under subsection (5) determining guidelines is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(7) Subsection (1) only has effect for the purposes of this Part.

61ED Accidental or incidental publication permitted

(1) A person may publish an interactive gambling service advertisement if:

(a) the person publishes the advertisement as an accidental or incidental accompaniment to the publication of other matter; and

(b) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement (in addition to any di-
rect or indirect benefit that the person receives for publishing the other matter).

(2) Subsection (1) only has effect for the purposes of this Part.

61EE Publication by person not receiving any benefit permitted

(1) A person may publish an interactive gambling service advertisement if:

(a) the publication is not in the course of the provision of interactive gambling services; and

(b) the person publishes the advertisement on the person’s own initiative; and

(c) the person does not receive any direct or indirect benefit (whether financial or not) for publishing the advertisement.

(2) Subsection (1) only has effect for the purposes of this Part.

61EF Publication of advertisements during flights of aircraft

(1) A person may publish an interactive gambling service advertisement in an aircraft during a flight of the aircraft unless the flight begins at a place in Australia and is intended to end at another place in Australia.

(2) For the purposes of subsection (1), each sector of a flight of an aircraft is taken to be a separate flight.

(3) Subsection (1) only has effect for the purposes of this Part.

61EG Defence—advertising under existing contracts or arrangements

(1) Subsections 61EA(1) and (2) do not apply to the publication of an interactive gambling service advertisement if:

(a) the publication was under a contract or arrangement that was:

(i) entered into before the commencement of section 1; and

(ii) for the sponsorship of an event, activity or service; and

(b) if the terms of the contract or arrangement, in so far as they relate to things other than the period to which it applies, were varied on or after the commencement of section 1 and before the publication—if the contract or arrangement had not been so varied, the publication could still be said to have been under the contract or arrangement; and

(c) the advertisement was published before 1 July 2003; and

(d) before the publication of the advertisement, each of the parties to the contract or arrangement notified the Minister, in writing, of:

(i) the date on which the contract or arrangement was entered into; and

(ii) particulars of the contract or arrangement in so far as it relates to the publication of interactive gambling service advertisements, including the circumstances of publication of the advertisements and the nature of the advertisements.

Note: The defendant bears an evidential burden in relation to the matters in subsection (1). See subsection 13.3(3) of the Criminal Code.

(2) For the purposes of this section, if:

(a) a party to a contract or arrangement of a kind referred to in paragraph (1)(a), for the purposes of publishing an interactive gambling service advertisement under the contract or arrangement, engaged (whether before or after the commencement of section 1) another person to do something that amounted to publishing the advertisement; and

(b) the other person did that thing and, consequently, published the advertisement;

the other person is taken to have published the advertisement under the contract or arrangement.

61EH Defence—display of signs before 1 July 2003

(1) Subsections 61EA(1) and (2) do not apply to the display of an interactive gambling service advertising sign if:

(a) the sign was displayed under a contract or arrangement entered into before the commencement of section 1; and

(b) if the terms of the contract or arrangement were varied on or after the commencement of section 1—if
the contract or arrangement had not been so varied, the display of the sign could still be said to have been under the contract or arrangement; and

c) the display of the sign was permitted by regulations made for the purposes of subsection (2).

Note: The defendant bears an evidential burden in relation to the matters in subsection (1). See subsection 13.3(3) of the Criminal Code.

(2) The regulations may permit the display, in specified circumstances, and before a specified date that is earlier than 1 July 2003, of interactive gambling service advertising signs of a specified size and composition.

(3) In this section:

interactive gambling service advertising sign means a sign that is or contains an interactive gambling service advertisement.

sign includes an electronic installation used to display advertisements.

Division 6—Miscellaneous

61FA Failure to broadcast, datacast or publish advertisement not actionable if this Part would be contravened

Civil proceedings do not lie against a person for refusing or failing to broadcast, datacast or publish an interactive gambling service advertisement if the broadcast, datacast or publication is prohibited by this Part.

61FB Applications for the purposes of section 61EC

(1) A person may apply to the Minister to have a particular event specified in a notice under subsection 61EC(2).

(2) An application must be in writing and must set out the grounds on which the applicant thinks the Minister should grant it.

(3) If the Minister needs further information to decide an application, the Minister may ask the applicant to provide the information.

(4) The Minister must decide an application within 60 days after receiving it. This subsection has effect subject to subsections (5) to (7).

(5) If the Minister thinks that it will take longer to decide an application, the Minister may extend, by up to 60 days, the period for deciding it.

(6) An extension must be made by written notice given to the applicant within 60 days after the Minister receives the application concerned.

(7) If the Minister makes an extension, the Minister must decide the application concerned within the extended period.

(8) If the Minister has not decided an application before the end of the day by which the Minister is required to decide it, the Minister is taken to have decided, under section 61EC, to refuse the application at the end of that day.

(9) This section does not limit the power of the Minister to make a decision under section 61EC otherwise than because of an application under this section.

61FC Review of decisions

(1) An application may be made to the Tribunal for a review of a decision made under subsection 61EC(2) or 61EC(3).

(2) In this section:

Tribunal means:

(a) before the commencement of Parts 4 to 10 of the Administrative Review Tribunal Act 2001—the Administrative Appeals Tribunal; and

(b) after the commencement of Parts 4 to 10 of the Administrative Review Tribunal Act 2001—the Administrative Review Tribunal.

61FD Additional conditions for licences under the Broadcasting Services Act 1992

Commercial television broadcasting licence

(1) Each commercial television broadcasting licence is subject to the condition that the licensee will not, in contravention of this Part, broadcast an interactive gambling service advertisement.

Commercial radio broadcasting licence

(2) Each commercial radio broadcasting licence is subject to the condition that the licensee will not, in contravention of this Part, broadcast an interactive gambling service advertisement.
Community broadcasting licence

(3) Each community broadcasting licence is subject to the condition that the licensee will not, in contravention of this Part, broadcast an interactive gambling service advertisement.

Subscription television broadcasting licence

(4) Each subscription television broadcasting licence is subject to the condition that the licensee will not, in contravention of this Part, broadcast an interactive gambling service advertisement.

Provision of a broadcasting service under a class licence

(5) The provision by a person of a broadcasting service under a class licence is subject to the condition that the licensee will not, in contravention of this Part, broadcast an interactive gambling service advertisement.

Datacasting licence

(6) Each datacasting licence is subject to the condition that the licensee will not, in contravention of this Part, datacast an interactive gambling service advertisement.

Definitions

(7) In this section:

class licence has the same meaning as in the Broadcasting Services Act 1992.

commercial radio broadcasting licence has the same meaning as in the Broadcasting Services Act 1992.

commercial television broadcasting licence has the same meaning as in the Broadcasting Services Act 1992.

community broadcasting licence has the same meaning as in the Broadcasting Services Act 1992.

subscription television broadcasting licence has same meaning as in the Broadcasting Services Act 1992.

This Act prohibits the advertising of interactive gambling services.

61FE Reports to Parliament

(1) As soon as practicable after each 31 December, the Minister must cause to be prepared a report on:

(a) the number and nature of any contraventions of this Part occurring in the preceding 12 months; and

(b) any action taken by the Minister or a Commonwealth agency in response to each contravention.

The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after its receipt by the Minister.

(1) Clause 2, page 2 (line 1), omit “Part 2 commences”, substitute “Parts 2 and 7A commence”.

(3) Clause 3, page 3 (after line 17), at the end of the clause, add:

- This Act prohibits the advertising of interactive gambling services.

These amendments relate to the proposed ban on advertising which would cover the advertising of interactive gambling services on radio and television broadcasts, including digital broadcasts, datacasts, billboards and print media. They would also place restrictions on Internet advertising as follows: advertising of interactive gambling services on Internet services aimed at an Australian audience would be banned. Any Internet advertising by an interactive gambling service with customers in Australia would also be banned. The advertising ban would only apply to interactive gambling services that are banned by the bill.

Amendments agreed to.

Senator ALLISON (Victoria) (8.16 p.m.)—by leave—I move Democrat amendments (1) and (2) on sheet XX272:

(1) Clause 68, page 49 (lines 25 and 26), omit subclause (1), substitute:

(1) Before 1 July 2003, the Minister must cause to be conducted a review of the following matters:

(a) the operation of this Act;

(b) the growth of interactive gambling services;

(c) the social and commercial impact of interactive gambling services;
(d) the effect of the following provisions:
   (i) paragraphs 5(3)(aa) and 6(3)(aa) and section 8A (excluded wagering services);
   (ii) paragraphs 5(3)(ab) and 6(3)(ab) and section 8B (excluded gaming services);
   (iii) paragraphs 5(3)(ac) and 6(3)(ac) and section 8C (services that have a designated broadcasting link);
   (iv) paragraphs 5(3)(ad) and 6(3)(ad) and section 8C (services that have a designated datacasting link);
   (v) paragraphs 5(3)(ae) and 6(3)(ae) and section 8D (excluded lottery services);

(e) the effectiveness of this Act in dealing with the social and commercial impact of interactive gambling services;

(f) technological developments that are relevant to the regulation of interactive gambling services;

(g) technological developments that may assist in dealing with problem gambling.

(2) Clause 68, page 50 (after line 3), at the end of clause 68, add:

(4) For the purposes of subsection (1), in determining whether a service is an interactive gambling service, subsection 5(3) is to be disregarded.

These amendments relate to my remarks a little earlier this evening and they are about the review which is brought forward one year from the proposal in the original bill. They are specific terms of reference that I have already outlined.

Amendments agreed to.

Senator BROWN (Tasmania) (8.17 p.m.)—I move Australian Greens amendment (1) on sheet DL200:

(1) Page 50 (after line 7), after clause 69, insert:

69A Regulations about unenforceability of agreements relating to illegal interactive gambling services

Agreements

(1) The regulations may provide:

(a) that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and

(b) that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal interactive gambling service.

Deadline for making regulations

(2) The Minister must take all reasonable steps to ensure that regulations are made for the purposes of this section within 6 months after the commencement of Part 2.

Illegal interactive gambling service

(3) For the purposes of this section, an interactive gambling service is an illegal interactive gambling service if, and only if, the provision of the service contravenes a provision of this Act that creates an offence.

Definition

(4) In this section:

agreement means an agreement, whether made orally or in writing.

This is the backstop amendment to provide that, after the minister has taken all reasonable steps to ensure that it is okay, regulations are made to have agreements relating to illegal interactive gambling services overseas made unenforceable. In brief, if somebody bets on their card overseas, the overseas gambling house cannot enforce the payment of the debt that has accrued through that bet. This is the best way of ensuring that overseas gambling houses do not take Australian bets. Instead of saying, ‘We can’t prohibit you from setting up in Vanuatu,’ we say, ‘If Australians bet on your service in Vanuatu, you can’t enforce the agreement. It is illegal to enforce the agreement whereby the debtor—the person who has placed the bet—has to pay you through the credit card.’

Senator Harradine, Senator Harris and I have all tried to have this measure instituted tonight as part of the legislation, but the government and the opposition opposed it. However, it is breakthrough legislation. The government wanted nine months to consider it. We have come to an agreement that it will be within six months. The government then has
the opportunity to ensure that there are no hidden pitfalls or glitches. It is a very central amendment to this legislation. It provides for the all important restriction that we, at this end of the house, want to see, that is, overseas gambling houses cannot provide for, or attract, Australians to bet because they will not want to because there will be quite widespread default on debts.

Gambling is a business of gaining a debt for the client and a profit for the provider. That is what it is about. A person who provides gambling facilities cannot survive if the punter can default. This is a method of allowing the punter to default. The outcome would be a prohibition on Australians when they try to sign up to gambling houses overseas. It is not the best outcome, but it is the careful outcome. However, the government has come a long way towards accepting that unenforceability of agreements is a necessary requirement if we are going to stop people gambling overseas. The Prime Minister and ministers have all said that they wanted to achieve that aim. It is a pivotal amendment. It is going to take good faith and it has taken my good faith, I can tell you! It is going to take good faith from the government. The amendment speaks for itself, but it is very important and I commend it to the committee.

Senator HARRIS (Queensland) (8.21 p.m.)—I support Senator Brown’s amendment. As Senator Brown has said, we have tried this evening to ensure clarity in the bill. I believe that Senator Harradine’s amendments that required penalties for services provided by offshore entities, because of the ability of the banking industry with today’s technology, can achieve what Senator Harradine set out. When a single mainframe computer in one of three locations in the world can do the entire banking transactions for the world in a day, how difficult would it be to find out where a transaction came from? What Senator Brown is proposing would have to be the de facto of all de facto amendments, but I implore the committee to support it. I possibly have reservations about supporting it, because in actuality it will enact the ability for somebody to enter into a legal contract to receive a service or the supply of a product—and the product in this case is Internet gambling—and then allow that person to rescind that legal contract. That has implications that we may regret in future. Unfortunately, in light of the way the bill has been developing, this is our last chance. I commend the amendment to the committee.

Senator GREIG (Western Australia) (8.24 p.m.)—I suspect that the Russian Mafia and West Indian gangsters may not necessarily rely on the legal system to enforce the payment of debts. As Australians are driven by this legislation from safe, regulated Australian casinos onto unregulated, unsafe casinos, the possibility of international criminals bashing and killing defaulting Australians could become a reality. To be serious, this proposal from Senator Brown could work as a policy only after we have taken the time to consult with other governments. If one country anywhere allows the processing of casino credits, all that the Australian government would be doing by accepting this amendment would be creating a market for money laundering.

No matter how much we dislike gambling, it is an international industry that is accessible from any computer, with unlimited options for sneaking financial transactions around regulators. Australia does not have the policy option that Australians can be prevented from online gambling—we have only the option as to whether the casinos most visited online by Australians are run by Australians, foreigners or crooks. Frankly, if the government is short-sighted enough to ban Australian online gambling businesses, I would much rather see Australians gambling at Ladbrokes.co.uk than at dodgy Russian sites.

Senator HARRADINE (Tasmania) (8.26 p.m.)—We have got to the stage where, with the exemptions that are now in the legislation for certain types of Internet gambling from overseas, the utility of this is questionable. Nevertheless, the minister claims authorship, or the minister’s office claimed authorship. The minister’s officers did not claim authorship in this chamber, and I do not know whether they did outside the chamber, but Senator Alston said something that encour-
aged me to ask what it means. The amendment talks about agreements and it states:

The regulations may provide:

(a) that an agreement has no effect to the extent to which it provides for the payment of money for the supply of an illegal interactive gambling service; and

(b) that civil proceedings do not lie against a person to recover money alleged to have been won from, or paid in connection with, an illegal interactive gambling service.

I thought that, prior to the dinner suspension, the minister said that such proceedings do not lie against a person who has engaged in illegal activity. Therefore, I wonder what the purpose of the amendment is. Is it or is it not a fact that an agreement between two parties to engage in illegal activity has no effect to the extent to which it provides for the payment of money for the supply of an illegal service, for example, and that civil proceedings do not lie against persons who have engaged in illegal activities, whether or not they be illegal interactive gambling?

So I really raise that point again. Is it or is it not a fact that (3) says:

For the purposes of this section, an interactive gambling service is an illegal interactive gambling service if, and only if, the provision of the service contravenes a provision of this Act that creates an offence.

Could the minister point precisely now to the parts of the proposed act to which this amendment is referring? There are two things: firstly, whether or not at the moment civil proceedings do not lie against a person or persons who have engaged in illegal activities, whether or not they be illegal interactive gambling?

Although my memory of all of this from contract law days is pretty hazy, certainly I think we are trying to give effect to that original principle that you should protect the party with the weaker bargaining power from having to make the payment where the transaction itself is illegal. I do not suppose you have a situation where money is likely to go the other way, but if it did you could still preclude the service provider from recovery so that you could in fact have in these terms a win-win outcome for the customer and a lose-lose outcome for the service provider.

Insofar as (3) is concerned, clauses 15 and 15A, I am advised, contain the substantive offence provisions. This seems to be simply bringing together a regulation making power which makes it clearer, at the same time as indicating the general areas of power, that if it is an illegal activity then as a result of the commission of an offence it is an illegal activity for these purposes. Some might say that is superfluous but I suppose draftsmen want to be absolutely sure that the position is clear.

Senator BROWN (Tasmania) (8.34 p.m.)—If I can just help Senator Harradine too, under proposed section 6 a service is prohibited if it is provided to customers using an Internet carriage service or if the service is provided in the course of carrying on a business and has an Australian customer link.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.30 p.m.)—In relation to the first point, I think the situation is generally that the common law does not allow you to recover moneys paid pursuant to an illegal activity, that being void as against public policy. However, the Commonwealth position is always capable of being modified by statute or indeed overturned and in this instance, of course, you have every state and territory with a capacity to make their own rules of the game. So I think the purpose of this is really to put beyond doubt the fact that it is competent to protect an individual from having to pay money which he has paid pursuant to a gambling transaction that is illegal. It does in a sense clarify what Senator Harradine was raising earlier, where I took him to be saying that he did not think you could have a different regime for the customer on the one hand and the service provider on the other. I think that clearly this makes it clear that is the intention here.
should not be able to recover a debt from a customer. It is really saying these regulations will only apply in respect of offences created by this legislation or illegality.

Amendment agreed to.

Senator HARRIS (Queensland) (8.35 p.m.)—I seek the indulgence of both the chair and the senators in the chamber. I believe there should have been a very hastily scribbled amendment that has been circulated in my name that refers to page 9, line 14, and the end of clause 8. Could the chair indicate whether they have a copy of that?

The TEMPORARY CHAIRMAN (Senator Chapman) —We do not have a copy at the moment, Senator Harris. It has not reached this desk.

Senator HARRIS—The amendment is just being photocopied at the moment. I did ask a few minutes ago for that to be done. I apologise for this.

The TEMPORARY CHAIRMAN—If you speak to the amendment, I am sure it will arrive in due course.

Senator HARRIS—The purpose of this amendment is very similar to that of an amendment Senator Brown moved earlier which the government found they could support. The essence of the amendment is that the government could, if they wished, structure the regulations in such a way to exclude an external lottery or wagering service. It does not in any way exclude it, but this amendment gives the government, when we have gone away from this bill, six months to reassess the situation.

The amendment inserts a clause 8E on page 9, line 14, at the end of clause 8. It clearly gives the government the ability in the regulations to exclude wagering services in such circumstances and subject to such conditions as are prescribed. It would then include a clause 8F to follow 8E, which would mirror exactly 8E but speak to copies for lotteries. That is the intention of the amendment. It is not to bind the government into having to do anything, but it would allow the government, if they so wished, to make regulations that would provide for the variation of 8A(2) in such circumstances and subject to such conditions as are prescribed in the regulation. It is not binding the government; it is merely providing a facility to the government that is identical to an amendment moved by Senator Brown that the government has accepted. I commend my amendment to the chamber and so move:

Page 9 (after line 14), after clause 8, insert:

8E Regulations about excluded wagering services

The regulations may provide for the variation of the operation of subsection 8A(2) in such circumstances, and subject to such conditions, as are prescribed.

8F Regulations about excluded lottery services

The regulations may provide for the variation of the operation of section 8D in such circumstances, and subject to such conditions, as are prescribed.

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (8.40 p.m.)—For the record, I must say that it is always dangerous to consider things on the run. This is one minute past midnight, I would have thought, rather than five minutes to. In any event, we have essentially taken a decision not so long ago to say that, if activities are legal, you ought to be able to engage in them onshore and offshore. We rejected a proposal from Senator Harris to require offshore providers to obtain an Australian licence before they could provide services to Australian customers. This is really a slightly watered-down version of the same. To the extent it gives the government power to do it, sure, we will not have to do it now, but someone else might later. It really just attempts to do by the back door what you were not able to do by the front door. I simply cannot see the logic of it. You can say, ‘It’s only giving powers to do things,’ but that is the very point: why would you give power to exclude external wagering services unless they are licensed when we have already determined that that is not a sensible policy approach?

Amendment not agreed to.

Senator Brown—I wish to record my support for that amendment.

Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading
Motion (by Senator Alston) put:
That this bill be now read a third time.
The Senate divided. [8.47 p.m.]
(The Acting Deputy President—Senator H.G.P. Chapman)

Ayes............. 34
Noes............. 28
Majority......... 6

AYES

Abetz, E.            Allison, L.F.
Alston, R.K.R.      Boswell, R.L.D.
Brandis, G.H.       Brown, B.J.
Calvert, P.H.       Campbell, I.G.
Chapman, H.G.P.     Coonan, H.L. *
Ellison, C.M.       Ferguson, A.B.
Ferris, J.M.        Gibson, B.F.
Harradine, B.      Harris, L.
Heffernan, W.       Herron, J.I.
Kemp, C.R.          Knowles, S.C.
Lees, M.H.          Lightfoot, P.R.
Macdonald, I.       Macdonald, J.A.L.
Mason, B.J.         Newman, J.M.
Payne, M.A.         Tambling, G.E.
Tchen, T.           Tierney, J.W.
Troeth, J.M.        Vanstone, A.E.
Watson, J.O.W.     Woodley, J.

NOES

Bartlett, A.J.J.    Bishop, T.M.
Bourne, V.W.        Buckland, G.
Campbell, G.        Carr, K.J.
Collins, J.M.A.     Conroy, S.M.
Cooney, B.C.        Crossin, P.M.
Crowley, R.A.      Denman, K.J. *
Forshaw, M.G.       Gibbs, B.
Greig, B.           Hogg, J.J.
Hutchins, S.P.      Ludwig, J.W.
Mackay, S.M.        McKernan, J.P.
McLucas, I.E.       Murphy, S.M.
Murray, A.J.M.      Ray, R.F.
Ridgeway, A.D.      Schacht, C.C.
Sherry, N.J.        Stott Despoja, N.

PAIRS

Crane, A.W.         Cook, P.F.S.
Eggleston, A.       Faulkner, J.P.
Hill, R.M.          Bolkus, N.
McGuigan, J.J.J.    West, S.M.
Minchin, N.H.       Evans, C.V.

* denotes teller

Question so resolved in the affirmative.
Bill read a third time.

BUSINESS

Consideration of Legislation

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (8.51 p.m.)—I seek leave to move a motion to exempt a bill from the bills cut-off order.

Senator Brown—Before I give leave I need to know what the bill is.

Senator IAN CAMPBELL—It is a very fair question. The motion I would seek to move is that the provisions of the cut-off order not apply to the Parliamentary Contributory Superannuation Amendment Bill 2001, allowing it to be considered during these sittings.

The ACTING DEPUTY PRESIDENT (Senator Chapman)—Is leave granted?

Senator Brown—No.

Leave not granted.

Suspension of Standing Orders

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (8.52 p.m.)—Pursuant to contingent notice standing in the name of the Leader of the Government, I move:

That so much of the standing orders be suspended as would prevent Senator Hill moving a motion to provide for the consideration of a matter, namely a motion to give precedence to a motion to exempt a bill from the provisions of paragraphs (5) to (7) of standing order 111.

Senator Brown (Tasmania) (8.53 p.m.)—I am opposed to this motion. What we are seeing here is a prime ministerial ambush on the Senate on the last night of this sitting before the winter recess to get through a parliamentary superannuation amendment bill, which is very embarrassing to the government.

Senator Ian Campbell—Why?

Senator Brown—Why did you bring it on at this hour of a sitting? I will tell you why it is embarrassing. It is because it is an
attempt, again, to get around the need for a comprehensive reformulation of the whole piece of legislation to make it fair and to make it seen to be fair. That is not what this piece of legislation does. What has been said in the second reading speech is that the Prime Minister promised changes to the parliamentary superannuation scheme to bring it more into line with community standards. This bill does not do that.

Senator Ian Macdonald—Why don’t you ask your Labor mates?

Senator BROWN—The interjection from the senator opposite says it all. They are your Labor mates, because the big parties always get together when it comes to matters of parliamentary superannuation or salaries and changes to the Electoral Act that favour them. They try to get them through the parliament quickly, they try to get them through after media deadlines and they try to get them through when there is pressure on the members of parliament to expedite them. I, for one, am not going to accede to that. This superannuation legislation should be going to a committee now so that it can be considered properly. Above all, we should be looking at the provisions in the legislation for a taxpayers’ top-up of 69 per cent for our superannuation, whereas in the community the average from employers for people in average workplaces is eight per cent. It is that single factor that gets the voters’ ire up. It is not fair that parliamentarians are getting a big lump out of the taxpayers’ purse to top up superannuation in a way that no other worker in the country can. I am one parliamentarian who wants to see it be fair.

I congratulate Mr Peter Andren, the member for Calare, in the House of Representatives, who moved extensive amendments to this legislation to make it fair but could not even get a seconder—and that was just yesterday. Doesn’t that say something about the big parties when it comes to defending their own personal interest? I know that we will get all the usual epithets coming our way about this. But this is an important piece of legislation. Surely, like every other important piece of Senate legislation, it should be going to a committee.

In the last voting break Senator Watson informed me that, as far as the current consideration of Mr Andren’s own legislation, which has been referred to a committee, is concerned, there have been thousands of submissions so far. So the public interest is high, and the public ability to comment on this is very clear. And what do we have here? The government and the opposition together trying to bypass that public interest, to cut it out—but to get through a piece of legislation so that the government at least can say, ‘Well, we’ve changed it so that parliamentarians won’t be able to get access to their superannuation until they are 55. But guess what? That doesn’t apply to us; that applies to the next lot of parliamentarians.’ So even that provision will not be levied on current parliamentarians—even though most of them are safe because the people who are making these decisions are, in the main, over 55. But it is wrong. (Time expired)

Senator ROBERT RAY (Victoria) (8.58 p.m.)—The opposition will support the government in terms of the cut-off motion. That should not come as a surprise to anyone; we have done that about 400 times in the last five years. I suppose that reflects the fact that, when the cut-off motion was carried by the Democrats and the government and imposed on a Labor government, we opposed it. So we have never really felt strongly about it in opposition. This is not to say that, in some circumstances, some legislation should be delayed by that mechanism.

The fact is that this legislation presents us with a bind. We did not initiate it; we did not initiate the timing of it. It has been presented to the Senate. We are damned if we do and we are damned if we do not. Some people would say that it is a step forward to have a community standard placed on all future parliamentarians. Senator Brown would argue that it does not go far enough, and I understand his position on that.

Senator Brown—Just send it off to a committee and I will be happy.

Senator ROBERT RAY—Senator, as I say, we are left in a bind on it. If we do not support it tonight, we will be accused of holding it up.
Senator Brown—Well, I’ll wear that.

Senator ROBERT RAY—But you do not have to wear it; we have to wear it. That is the point. You say that epithets will be thrown at you. I do occasionally do that towards Independents who only ever go on about entitlements because that is the only thing they can get publicity about. But you are, I admit, an honourable exception. You go across a wide range of policy areas, unlike your counterpart in the House of Representatives, who only gets publicity by running the ‘bludge politician’ argument, by running the entitlements argument. I do notice that he takes his fourth staff member, though. He does not hand that back. If he wants to hand his superannuation back, let him. Tonight will not be the appropriate vehicle for an all-out total discussion on MPs’ superannuation, but I suspect we are going to have it.

Senator Ian Campbell—Talking about vehicles, what size vehicle does he take?

Senator ROBERT RAY—I do not know. I think the first point is that we are being consistent in saying that we rarely, if ever, invoke standing order 111, because we never really believed in it; secondly, we are in a bind. We are presented with this legislation. Its origins are well known to everyone in the chamber. It came out of recommendations from a coalition backbench committee. It has gone through the House of Representatives; it is here now. Do we deal with it tonight, or don’t we deal with it tonight? As far as we are concerned, it is here. People will see it as progress. A lot of people will not see it as enough progress. But that is a starting point in terms of people wanting to reform a variety of things.

As far as we are concerned, it is up. We will debate it. We will not try to protract the debate. But I also say this to you, Senator Brown: we are not going to restrict the debate, because then we would be in a position of censuring your views or someone else’s views, and we are not going to do that. If at some stage the government want to come forward with a gag motion on this, I am sorry—we have made it clear, I think; we have taken an honest approach—we will not support that. As the bill is here, we say, ‘We will deal with it.’ The government are saying that it is their second-highest priority. They have just dealt with the online gambling bill. This is their second-highest priority, apparently.

Senator Brown interjecting—

Senator ROBERT RAY—You say that it was not this morning. I agree with you, Senator Brown. It was not this morning, but it now is, as I often say in politics, on a better view. It is now the priority that they have presented us with. We have plenty of time to debate this—thanks to the resolution that was carried against our opposition earlier today that we thought would have put some discipline on the chamber. That is the position we are in, so we will therefore be supporting the government in their decision to seek an exemption from the cut-off.

Senator HARRIS (Queensland) (9.02 p.m.)—I believe that Senator Ray has raised a very important analogy—that is, the importance of the legislation that we have before us. It is very obvious that it is more important to the government to get the superannuation bill through than to get a bill through for the dairy industry that will assist dairy farmers who are actually losing their property. I agree with Senator Brown that this bill should not be granted an exemption from the cut-off. There should be a period in which the people of Australia can comment on this bill. That is what we are here for. We are here to reflect the wishes of the constituents that we represent. I believe that it is wrong in this case for this bill to be dealt with tonight. I believe that it should be referred to a committee and that it should be exposed to the rigour of comments from the Australian people. Not only should the superannuation issue be looked at; we should also most certainly look at the benefits paid to past prime ministers in the same light. I normally would not support retrospective legislation, but I believe that in both those cases it is just, equitable and it should happen.

Senator ALLISON (Victoria) (9.04 p.m.)—The Democrats will support the bill’s exemption from the cut-off. In this case we are disappointed that it has taken so long for the government to put forward any sort of reforms on parliamentary superannuation, so
we are disinclined to not deal with them when they are presented. That is one of the reasons why we will support the exemption. One of the other main reasons is that it is a relatively simple bill and something that we have been calling for for some time. In fact, it reflects an amendment that I had already prepared for a bill which was due to come up a week and half or so ago. So I think we are ready to debate this bill. We had an inquiry into parliamentary superannuation in 1997, and this was a subject that was very much canvassed at that time. I would argue that this will be regarded as long overdue by people who made submissions to that inquiry and those who have made submissions to the more recent one on Mr Andren’s bill. There are no surprises here. It does fall short of the ideal, and we will be pointing out in the debate where it falls short. I will have some amendments to deal with those shortcomings. At this stage we see no reason not to proceed with consideration of the bill.

Question put:
That the motion (Senator Ian Campbell’s) be agreed to.

The Senate divided. [9.10 p.m.]
(The Acting Deputy President—Senator H.G.P. Chapman)

<table>
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**AYES**

Abetz, E.       Allison, L.F.
Alston, R.K.R.  Bartlett, A.J.J.
Bishop, T.M.    Bourne, V.W.
Brandis, G.H.   Buckland, G.
Calvert, P.H.   Campbell, G.
Carr, K.J.      Chapman, H.G.P.
Collins, J.M.A. Conroy, S.M.
Coonan, H.L. *  Cooney, B.C.
Crossin, P.M.   Crowley, R.A.
Denman, K.I.    Eggleston, A.
Faulkner, J.P.  Ferguson, A.B.
Ferris, J.M.    Forshaw, M.G.
Gibbs, B.       Gibson, B.F.
Greig, B.       Herron, J.J.
Hogg, J.J.      Kemp, C.R.
Knowles, S.C.   Lees, M.H.
Lightfoot, P.R. Ludwig, J.W.
Macdonald, J.A.L. Mackay, S.M.
Mason, B.J.     McGauran, J.J.J.
McKiernan, J.P. McLucas, J.E.
Murphy, S.M.    Murray, A.J.M.
Newman, J.M.    Payne, M.A.
Ray, R.F.       Ridgeway, A.D.
Schacht, C.C.   Sherry, N.J.
Stott Despoja, N. Tambling, G.E.
Tchen, T.       Tierney, J.W.
Troeth, J.M.    Watson, J.O.W.
Woodley, J.     

**NOES**

Brown, B.J. * Harris, L.
* denotes teller

Question so resolved in the affirmative.

**Procedural Motion**

Motion (by Senator Ian Campbell, at the request of Senator Hill) agreed to:
That a motion to exempt a bill from the provisions of paragraphs (5) to (7) of standing order 111 may be moved immediately and have precedence over all other business today till determined.

Motion

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.15 p.m.)—I move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Parliamentary Contributory Superannuation Amendment Bill 2001, allowing it to be considered during this period of sittings.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in Hansard.

Leave not granted.

Question resolved in the affirmative.

**BUSINESS**

**Government Business**

Motion (by Senator Ian Campbell) agreed to:
That intervening business be postponed until after consideration of the order of the day relating to the Parliamentary Contributory Superannuation Amendment Bill 2001.
PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT BILL 2001

Second Reading

Debate resumed.

Senator ALLISON (Victoria) (9.18 p.m.)—I rise to speak—

Senator Brown—Mr Acting Deputy President, I rise on a point of order. Would you be so kind as to distribute the speaking order so that we can see where we are on?

The ACTING DEPUTY PRESIDENT (Senator Chapman)—The attendants will distribute that, Senator Brown, but I can advise you are next.

Senator ALLISON—The Democrats welcome the Parliamentary Contributory Superannuation Amendment Bill 2001. It is long overdue and it does not go far enough, but we think it is a small step in the right direction. I notice that the second reading speech of the minister talks about this being brought more into line with community standards. That is what so many people have been calling for for such a long time. Back in 1997, the Democrats initiated an inquiry into just this question. At that time, there was already—and, no doubt, there was for some decades until that point—dissatisfaction with the fact that a separate set of rules applied for parliamentarians, and a very generous set of rules at that, in terms of their superannuation retirement benefits.

For this reason, we do welcome it. I note, however, that the bill proposes to put these changes into effect before the next election. No doubt this has been done so the government not only can respond to the many thousands of complaints that I have received and that the superannuation committee has received but, more importantly, can have said by the time the election comes along, ‘We’ve done something about this.’ We can give moderate support to this move. You could not call it reform, by any measure, but it does take away one of the most serious problems with the bill, and that is that parliamentarians are entitled to pensions provided they are in this place for eight years or three elections, as the case may be. It could mean that for a very long period there is an entitlement to a very substantial pension—much higher than most people can expect in their retirement.

It is important that we have at least reached this milestone. I hope that the Senate will consider the amendments the Democrats will put up. Essentially, they will go to a number of important areas. They will allow parliamentarians to opt out of the pension scheme that we currently have and into an accumulations scheme. We have picked up on Mr Andren’s private member’s bill, which allows parliamentarians to do just that—to opt out into something which is truly a community standards level of retirement benefits. We will also reduce the entitlements. This is what sticks in the craw of so many people in the community: the fact that, while their employer is contributing eight per cent of SG contributions to their superannuation, the notional contribution in this place is more like 69 per cent. So there is a massive difference in the amount of taxpayers’ money which is going into entitlements. That is something that we cannot ignore in this debate.

We cannot in this legislation or in any other legislation force, or through amendment re-create, the parliamentary superannuation scheme into an accumulation scheme, and so the Democrats have opted to bring the parliamentary scheme into line with public service standards. So there will be a considerable reduction in contributions, at least in line with a group in society, the Public Service, where there is some rationale and fairness. Our amendments will deal with that question. They will also apply to the current membership. It is unconscionable that we would in this place make laws for members of parliament who are yet to arrive here and not make laws reducing entitlements for ourselves. It seems to lack any moral strength. It is certainly not fair to the next group of parliamentarians that comes along, when people in this place will continue, as long as they are here, to have a very generous entitlement indeed.

You could argue that we cannot do this—and no doubt we will hear this argument from the government when I come to put my amendments—and that this is acquiring property which is not on just terms. I would
argue that it is a cancellation of a benefit. Of course there is only one way to put that to the test, and that is through the courts. We support the preservation to age 55, and I have drawn up amendments for the Democrats on a bill which was to have been dealt with last week—a minor bill regarding the surcharge—which would have done exactly that. Importantly, our final set of amendments will deal with an ongoing problem which the government refuses to face, and that is one of same sex entitlements. Anyone who does not have a spouse or a de facto spouse relationship in this place cannot pass on their entitlements by way of pension to their partner, and that is an ongoing problem which has not been dealt with by the government. We will continue to push amendments wherever there is an opportunity to do so.

I thought I would quickly mention a couple of the recommendations made in the Democrats dissenting report Parliamentary Contributory Superannuation Scheme and the Judges’ Pension Scheme of September 1997. The first of those recommendations was:

That the level of public subsidy to the PCSS is excessive and needs to be substantially reduced.

We will do that in our amendments. The second recommendation was:

That the Remuneration Tribunal should be asked to determine an appropriate, reduced level of superannuation benefits for parliamentarians, taking into account standards prevailing in the community at large and the unusual nature of parliamentary life.

Recommendation 6 is one that we have not acted on because it is difficult from this position—I think one needs to be in government. It really was saying that we need to:

a. Restructure the scheme as a fully vested accumulation scheme with the level of public subsidy being substantially reduced, and with the Government contribution becoming an appropriate multiple of the parliamentarians’ 11.5 per cent contribution.

It also said:

b. That the redundancy function be separated from the retirement function.

There are some steps, I note, being put in place in this bill to look at that question of redundancy. The Democrats have always said that there may well be an argument in cases of hardship for that to take place. I do not think it should be across the board and I do not think it should be generous. Nonetheless, members who have lost their seats or who are otherwise not in this place should not be starving, but we do expect that there should be a reasonable measure of scrutiny over those benefits.

Recommendation 6(d) was:

d. That membership of the scheme remain compulsory, but where a member can satisfy the trustees that they have adequate retirement savings already, they may opt out of the scheme, thereby forfeiting the benefit of the Government contribution.

When you get to the end of this scheme, if you have served in this place for a lengthy period of time, again the inequities start to apply, just as they do up to the eight-year point. The contributions over that cut-off time suddenly become very generous, whereas up until that point they are not. So there are inequities in this scheme right throughout, and that is why it needs more than simply a bandaid measure which says we will simply preserve until age 55. Other recommendations are:

e. That the rules for survivor and invalidity benefits be reviewed;

f. That parliamentarians be able to make additional contributions if they so opt and be paid interest on those contributions;

g. That benefits under the scheme be paid as a pension, actuarially determined based on the value of the accumulated benefit when the parliamentarian retires or turns 55 (which ever is later), with the parliamentarian able to commute up to 50 per cent of their pension to a lump sum as at present.

The Democrats will support this bill. We do not think it goes far enough, and we do hope that the Senate will look carefully at the amendments that we put up and be of a mind to support them.

Senator BROWN (Tasmania) (9.28 p.m.)—It is not the bill in itself that is at fault here—although it is way short of the mark and should have incorporated into it the provisions along the lines that Senator Allison just outlined—but it is the process which is
so abhorrent. As I said earlier, it is a prime ministerial ambush of the Senate. This bill was not even on the list this morning. It was not even on the list of eight that the government flagged for debate tonight. Through that procedure we saw a little earlier with the precipitant application of the rules to get around the cut-off provisions—which would have, through normal processes, seen this bill debated when we return in August—we are now debating it here tonight, and it will be done, through and out.

I think there is some expectation in this place that I am going to filibuster on this bill tonight, but I can tell all those who are looking at the clocks that I am not in the business of self-flagellation for somebody else’s wrong. In this case, it is the wrong of the government, supported by the opposition, that we are witnessing. I will put the case, and I know that we are not going to have the numbers—so be it.

Let us not mince words about this: the process tonight is to get around public anger about the parliamentary superannuation scheme. Do it in the dead of night; make the improvement so that you can go to the electorate in an election year saying, ‘We’ve put in this age 55 provision,’ to shake off at least some of the public angst there is about it; but leave substantially unchanged the core problem with the superannuation provisions for parliamentarians, which is they are too generous. They are not at arms length. They are something that we and our predecessors have voted for and the big parties are hanging on to like grim death because the current members look forward to the day when they retire with a golden handshake way out of kilter with what people in the Australian work force could expect.

Nice as that feeling might be—that there is a huge bag of money awaiting on retirement for members of parliament compared to what they would be getting if they were in a similarly renumerated job in the general community or that there may even be a multimillion dollar payout through pensions, if they are young enough, for the rest of their lives, as we have seen with former Senator O’Chee’s payout—the fact is that it is not right that that is there. We as parliamentarians cannot think of ourselves as different from the rest of the community. Everybody is in the business of taking the main chance, but those of us elected to parliament can be expected to set community standards when it comes to pay and remuneration. Sadly—and we are not the only parliament in this—politicians as a group do not live up to that.

In my experience, whenever it comes to superannuation, to pay and conditions or to provisions protecting the advantage big parties have through the Electoral Act to get themselves re-elected, the two big parties—the coalition and the opposition—come together very rapidly. Senator Sherry might be interested to know that, back in 1986, I think it was, in the Tasmanian parliament, both my colleague Gerry Bates and I—the two Greens then—were diverted by other matters for half an hour and in that time a big salary rise was put through the parliament by the Labor and Liberal parties. The time taken from the suspension of standing orders to the completion of the third reading was six minutes. I have often thought of writing to the Guinness Book of Records about that. Like the tallest trees in the Southern Hemisphere, we might just have a good case for a Tasmanian record there.

But let us not underestimate the seriousness of the matter. Politics is not in great odour in the wider community. People are cynical and critical of politics, and I guess never more than now—although it has always been there. One of the worst things we can do, as far as allowing that cynicism to fester goes, is to keep on with a superannuation scheme as manifestly selfish, greedy and unfair to the taxpayers as the one that is enjoyed by the current members of this parliament. What we should be doing here tonight is reformulating that so that we get the same sort of superannuation benefits under the same conditions that workers would in the Australian work force in similarly renumerated jobs, and that is not going to happen.

I laud the Australian Democrats amendments. The Greens have got amendments here too. I support them all. I declare a vested interest in every one of them and I will be voting for them. But we are not going to get them through. The reality is that the
big parties yet again, late at night, on the last
night of sitting before the winter break, are
going to push this through and there is not
much we can do about it. However, we must
try because there are some of us here who
very genuinely feel aggrieved at being
captured in this situation and want to
change it.

I do adopt the provision—and I will be
moving it; let me call it the Andren amend-
ment—put forward by the honourable mem-
ber for Calare in the House of Represen-
tatives for an opt-out clause. That clause
would allow at least those parliamentarians
who want to opt out of this superannuation
provision and go for an ordinary superannu-
ation provision through another scheme out
in the marketplace to do that. If that is good
enough for Peter Andren in the House of
Representatives, it is good enough for me. I
will do the same. But I do not think we are
going to even be able to do that. I do not
think that that freedom of choice is going to
be allowed us. I think that will be denied by
this need of the big parties to stick together
in a situation like this where self-interest
becomes the glue that shows up a solidarity
in the parliament rarely seen on any other
topic, except perhaps in a national emer-
gency.

I will leave the amendments to the com-
mittee stage, but I want to move an amend-
ment to the second reading motion. I move:
Omit all words after “That”, substitute:

“the bill be referred to the Select
Committee on Superannuation and Fi-
nancial Services for inquiry and report
by 9 August 2001”.

It is a very brief time but, as members will
know, we have referred the bill proposed by
Mr Andren to the same committee. There
have been thousands of submissions to that
committee. It would be appropriate to put
this piece of legislation to the same commit-
tee—after all, it has only got a provision in it
that Mr Andren has catered for. We would
then give the community an opportunity to,
in a constructive way, express both its feel-
ings and its ideas about how the parliamen-
tary superannuation scheme should be al-
tered. This is an effort to say, ‘Let’s let the
people have a say here.’ I will be interested
to see how the big parties respond to that
option.

Senator HARRIS (Queensland) (9.37
p.m.)—I support Senator Brown’s comments
and record my support for an ability to opt
out of a superannuation scheme that is the
same as that for other Australians. I would
also like at this point in time, with great re-
spect, to reflect upon the position of Sir Joh
Bjelke-Petersen. Not only did he not partici-
pate in the superannuation scheme in Queen-
sland for parliamentarians but, when he left
his public office, he left it with no superan-
nuation whatsoever. I take my hat off to Sir
Joh with great admiration, and record that
Pauline Hanson’s One Nation Party supports
the ability to opt out.

Senator SHERRY (Tasmania) (9.38
p.m.)—Let me commence my remarks by
indicating the way in which the Labor Party
strongly believe that parliamentary superan-
nuation—and, indeed, all MPs’ entitle-
ments—should be dealt with. We believe that
entitlement matters, including superannua-
tion, should be dealt with by an independent
body. That is our preference. We regard the
Remuneration Tribunal as the appropriate
organisation to deal with these issues. Politi-
cians should not determine the entitlements
of politicians. I make this point because the
Labor Party has a view that it is inevitable
that, no matter what we say about entitle-
ments in this context, the public not unrea-
sonably will believe that we may be acting to
some degree out of self-interest. That is why
we strongly believe the matters should go to
a body like the Remuneration Tribunal.

Let me comment now on Senator Brown’s
second reading amendment, which is to refer
the bill to the Select Committee on Superan-
nuation and Financial Services for inquiry
and report by 9 August 2001. The date that
Senator Brown has selected coincides with
the date for the report back on the referral
from Senator Brown of the so-called Andren
bill dealing with so-called choice. I want to
draw a distinction between choice and levels
of superannuation contribution in a short
while. On my understanding, that particular
piece of legislation was referred by Senator
Brown to the select committee. I am deputy
chair of the select committee and my fellow
Tasmanian senator, Senator Watson, is chair. Obviously, we sit on opposite sides of the chamber. However, I would acknowledge his level of expertise in these areas and the significant contribution he has made on these matters. That piece of legislation has been referred to the Senate committee. Hearings will take place in approximately a week and a half in Sydney, following some advertisements that were placed. There will be a full day of hearings on that particular piece of legislation.

We will not be supporting Senator Brown’s second reading amendment because to refer this legislation conflicts with the earlier principle—and Labor’s primary principle—that I outlined, which is that politicians should not determine the entitlements of politicians. If this bill is referred to a Senate committee—and in this case, the Senate Select Committee on Superannuation and Financial Services—you will be expecting a group of politicians to make recommendations in respect of politicians. We do not believe that is appropriate.

I comment about the use of the term ‘choice’. The issue of membership choice—the right to choose to be a member of a particular fund—is a very different issue from the level of contributions that Australians may receive from their employer or choose to contribute themselves. In this country the situation is that membership choice of a particular fund is a very different principle from the level of effective contribution, whether it be to an accumulation fund or to a defined benefit fund such that we enjoy. I might say that politicians are not the only people in the community who are members of a defined benefit fund.

The legislation that we are considering has a number of changes to the existing scheme. My understanding of the bill—and I first read it yesterday afternoon—is that it will impact on new senators and members who joined the parliament following the last election, including MPs and senators who returned to the parliament after previous service was completed before these arrangements take effect and who leave parliament voluntarily or involuntarily, become entitled to a parliamentary pension before age 55 and would have payment of that pension deferred, including the option to commute part of that pension to a lump sum until age 55. There are some exceptions set out in the legislation in respect of invalidity and early access in case of financial hardship. I note that the financial hardship provisions are required to mirror the current publicly available provision that is generally provided for in the community. There is also a reversionary death benefit whereby eligible spouses and children would receive a reversionary pension on the death of a former member whose pension is deferred before age 55.

On my reading earlier today of the regulations for early access to superannuation, there is not a full list of criteria. However, I understand that payments of superannuation prior to age 55 are available on application in respect of what is defined as financial hardship. A person is required to be on certain defined social security payments for a period of 26 weeks and a figure of up to $10,000 a year is available in those circumstances. There is also an early access provision that provides for payment of superannuation where the foreclosure of a person’s mortgage in respect of their own home is threatened. There are provisions in respect to the death of a relative and the payment of a funeral benefit. There are also some other provisions which, depending on the circumstances, may not be considered as major, but which apply, for example, to health costs. Health costs not covered by Medicare are also covered by the hardship provisions. Several limitations and criteria apply to that, but that is a brief summary of those early access provisions.

I want to say a little about the process. As my colleague Senator Ray correctly outlined earlier to the chamber, the bill required the waiving of the cut-off. We have often agreed to the waiving of the cut-off. The cut-off was imposed on us when we were in government by the present government and the Australian Democrats. It is not unusual for the cut-off to be waived. I make the point that this matter is on the agenda tonight for the Senate at the government’s request. The government has listed its program and has chosen the time for this debate to take place. Similarly, with regard to this legislation, the govern-
ment went through its own very quick internal processes which led to the legislation being presented in the House of Representatives and passing that house late yesterday afternoon or early evening. It was a government backbench committee—I am not aware of the individuals who comprised that committee—which considered the matter and the government then put this particular legislation together.

Because of the very tight time frame—as I have said, the legislation was dealt with in the House of Representatives late yesterday afternoon or early evening—there has not been an opportunity for the legislation to be presented through the normal Labor Party caucus processes. Nevertheless, my colleague Mr Kelvin Thomson, who is the Labor Party’s opposition spokesperson on superannuation matters, indicated in the House of Representatives that we would not be opposing the legislation that the government had presented. It is a change and, ultimately, a reduction in cost in respect of the current parliamentary superannuation fund.

With regard to that issue—and I ask the minister to deal with this point in his speech—the explanatory memorandum states several figures for the cost savings. It is indicated that there is a small positive effect on the fiscal balance estimated to be $0.22 million in 2001-02; $0.24 million in 2002-03; $0.25 million in 2003-04; and $0.50 million in 2004-05. As those figures indicate, there is a positive effect on the budget starting in 2001-02. I ask the minister to explain that because a member’s or senator’s entitlement, this being a defined benefit fund, does not become a legal entitlement until they have met the minimum required standard within the superannuation fund of three parliaments or eight years. Given that this legislation will apply to new senators and members who are elected at the next election, and given the other criteria I outlined earlier, I cannot see how there can be a saving in the first eight years or three elections. I cannot see how a saving can result until that period of time has elapsed. I would appreciate an indication of how those figures are derived. It may be because of the accrual budget process rather than the cash budget process, but it would be useful to know the reason for that.

The Australian Democrats and Senator Brown for the Australian Greens have circulated a number of amendments. Again, I make the point that these amendments were circulated just prior to the commencement of this debate. There are three pages of amendments from Senator Brown, plus his second reading amendment, and from the Australian Democrats we have six pages of amendments. We are doing our best to scrutinise them in the time available. We will obviously indicate our position as we go through those amendments. However, on my cursory glance, there are some quite technical, complex amendments. We will nevertheless make a call as we go through them one by one. I remind the Australian Democrats and the Greens that they criticised the government for bringing on this matter in the way that it has—to some extent, that concerns me as well—but it cuts all ways. The Australian Democrats and the Greens have presented us with detailed amendments in a very limited time.

Senator Brown interjecting—

Senator SHERRY—No, it goes to a matter of courtesy, Senator Brown. We have the skilled expertise to examine the amendments. If you were going to move the amendments, they should have been circulated a little earlier.

Senator Brown—Codswallop!

Senator SHERRY—They should have been circulated a little earlier, Senator Brown. It also puzzles me, given the extensively drafted amendments, whether it was such a surprise that the bill was coming on so quickly. Anyway, those are the issues that I want to deal with at this stage of the debate. I referred earlier to the government process. I wonder at the speed of that process, given the election environment that we are in, but perhaps the minister can outline the rationale.

I conclude my remarks by indicating, as I indicated at the commencement of my contribution, that the Labor Party is strongly of the view that parliamentary superannuation, including MPs’ entitlements, should be dealt
with by an independent body, and we regard the Remuneration Tribunal as the appropriate body to deal with these issues. We believe that politicians dealing with politicians’ entitlements is not an appropriate way to deal with the matters. The Remuneration Tribunal would have been a far better process.

Senator ABETZ (Tasmania—Special Minister of State) (9.55 p.m.)—The government has put forward by way of the Parliamentary Contributory Superannuation Amendment Bill 2001 a proposal that will bring the parliamentary superannuation scheme more into line with community standards by deferring the payment of parliamentary pensions for new MPs who join the parliament after the next general election until they reach age 55. The Prime Minister promised changes to the parliamentary superannuation scheme to bring it more into line with community standards, and this bill delivers on that promise. In doing that, the bill imposes a higher standard of preservation on MPs than applies to other Australians who receive pensions. However, it will closely align superannuation for MPs with a majority of Australians who receive lump sum benefits that must be preserved until at least age 55 in most circumstances.

A number of senators have contributed to this debate, and I thank them for that. I thank Senator Allison for her contribution. Senator Brown made a few contributions, some matters of which I believe I have some understanding of—for example, the pay rise that was referred to that went through the state parliament. I note that consolidated revenue never got moneys paid into it from those Green MPs who objected to the pay rise. Whilst they complained about the morality of it, they were more than willing to take the consequences of it. In fact, it reminds me of one Labor candidate in Tasmania who campaigned against that pay increase. Of course, as soon as he won the seat, he very kindly took the increased salary and nothing was ever done about it.

Senator Brown has also told us about superannuation entitlements. You, Mr Acting Deputy President Murphy, and other senators from Tasmania may well recall that it was well known that one of Senator Brown’s mates, Mr Gerry Bates, wanted to leave the parliament. If he had resigned voluntarily, he would not have been entitled to certain superannuation benefits. What he did was resign to contest the Legislative Council seat of Queenborough without any intention of winning it, and, as a result, lost his seat and therefore became entitled, and shortly thereafter moved out of the state of Tasmania.

Senator Brown—Mr Acting Deputy President, I raise a point of order. We should keep the debate at a good level. I wonder whether the senator would like to repeat that outside.

The ACTING DEPUTY PRESIDENT (Senator Murphy)—There is no point of order.

Senator ABETZ—If I can move on to Senator Harris’s contribution, he praised Sir Joh Bjelke-Petersen for not accessing the Queensland superannuation scheme. I do not know the terms of that superannuation scheme, but I do know that Lady Flo Bjelke-Petersen, who served in this place, accessed the federal superannuation scheme. Senator Harris might have one Bjelke-Petersen on his side, but there may well be a Bjelke-Petersen on the other side of the debate. I am not sure that that example necessarily takes us much further.

In relation to Senator Sherry’s contribution, I understand where he and the Labor Party are coming from in relation to politicians’ entitlements. In fairness, this is a diminution of parliamentarians’ entitlements, so I would not necessarily put it into the same category as voting for benefits or to increase benefits to parliamentarians. I make that distinction for Senator Sherry. He also asked me how the expected savings could be justified. I must say that I spooked myself when I found out that I understood the reasoning—that is, that we have now changed the budgeting system from cash to accruals, and it is on the basis of accruals that the anticipated savings are made.

Another issue has been raised which I want to put on the record during the conclusion of the second reading debate, that is, why we are in effect grandfathering entitlements that currently exist. I do not know why
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it has not been mentioned, and there is
somebody sitting pretty close to me here in
this chamber whom I thank for this infor-
mation. The High Court, in November 2000,
brung down a decision in Smith and ANL
Ltd. A very strong High Court—five to
two—determined that section 54 of the reha-
bilitation act was, for the purposes of section
51(xxxi) of the Constitution, a property right
and, therefore, if you changed the legislation
but the person had some benefit beforehand,
that benefit could not be taken away from
them without just compensation. So it is not
possible to try to change people's entitle-
ments now if they are already in a particular
scheme. That is a constitutional argument
that has not been considered and, whilst I
accept I am only a humble Hobart lawyer, I
think that argument has some merit.

I will also respond to the suggestion by
Senator Sherry that we are in an election en-
vironment. I am not sure that we are, but
there is no doubt that constitutionally there
needs to be an election within the next six or
seven months. As a result, a lot of good men
and women in Australia are considering run-
ning for the parliament—be they Democrats,
Greens, Independents, Labor or Liberal—
and I believe it is appropriate for them to
have some idea of some of the benefits that
may or may not accrue to them. I have
expressed from time to time a view—
and I am not sure that it is necessarily the
government view—that the superannuation
benefits parliamentarians get are generous.
When I came into this place I in fact took a
substantial pay cut; I still consider it a great
honour to be able to serve in this place and I
did not take it begrudgingly. But I think
those that have families and have certain
financial commitments have an entitlement
to know what sort of financial benefits may
come their way should they decide to run for
the parliament, and that applies across the
board, I thank honourable senators for their
contributions to this debate.

Amendment not agreed to.

Original question resolved in the affirm-
ative.

Senator Brown—Mr Acting Deputy
President, could I have my no vote recorded
please?

The ACTING DEPUTY PRESIDENT
(Senator Murphy)—It will be recorded. I
am sure Hansard picked it up.

Bill read a second time.

In Committee

The bill.

Senator ALLISON (Victoria) (10.04
p.m.)—by leave—I move amendments (1)
and (2) on sheet 2291:

(1) Schedule 1, page 3 (after line 3), after the
heading to Schedule 1, insert:

Part 1—Preservation age and the rate of
retiring allowance

(2) Schedule 1, page 3 (after line 4), before item
1, insert:

1A Subsection 4(1) (definition of
member)

Repeal the definition, substitute:

member means a member of either
House who makes contributions to the
Trust.

1B Subsection 4(1)

Insert:

non-Trust contributor means a mem-
ber of either House who has never
made or has ceased to make contribu-
tions to the Trust as a result of a choice
made under section 4F.

1C Paragraph 4(4A)(aa)

Repeal the paragraph, substitute:

(aa) a member or a non-Trust contributor
is taken to be employed by the
Commonwealth;

1D Before Part II

Insert:

4F Choosing to be a non-Trust contribu-
tor

(1) This section applies to a member of
either House who is or becomes a
member of another complying super-
annuation fund or the holder of an
RSA.

(2) On or after 1 July 2001, a member of
either House may, by written notice
given to the Trust choose:

(a) to cease to make contributions to the
Trust at the end of a day (not earlier
than the day on which the notice is
given) stated in the notice; or
(b) never to make contributions to the Trust, where the person choosing is a new member of either House.

(3) The person may make this choice on first becoming entitled to parliamentary allowance or at any time he or she is a member.

(4) The person must have effective membership of a complying superannuation fund or be the holder of an RSA for the whole of the period or periods he or she is a member of either House.

(5) A non Trust contributor may not revoke his or her choice after the day stated in the written notice given to the Trust.

(6) In this section:

complying superannuation fund has the meaning given by section 45 of the Superannuation Industry (Supervision) Act 1993.

RSA has the same meaning as in the Retirement Savings Accounts Act 1997.

4G Superannuation contributions for non-Trust contributors

The Commonwealth must make contributions to a non-Trust contributor’s chosen fund or RSA for that person’s benefit. The contributions must be made with effect from the day stated in the written notice to the Trust, and in accordance with the Superannuation Guarantee (Administration) Act 1992.

1E Subsection 13(9)

Repeal the subsection, substitute:

(9) In this section:

Minister of State means a Minister of State who is entitled to a parliamentary allowance and who makes contributions to the Trust.

month means one of the 12 months of the year.

office holder means a person who:

(a) is entitled to a parliamentary allowance; and

(b) holds an office in, or in relation to, the Parliament or either House, being an office in respect of which he or she is entitled to an allowance by way of salary; and

(c) makes contributions to the Trust;

but does not include a Minister of State.

person means a person who makes contributions to the Trust.

1F At the end of subsection 18(1A)

Add “or (6A), as the case may be”.

1G Paragraph 18(1B)(a)

After “subsection (6)”, insert “or (6A), as the case may be”.

1H At the end of paragraph 18(1B)(b)

Add “or (6A), as the case may be”.

1J At the end of paragraph 18(2)(a)

Add “or (6A), as the case may be”.

1K Paragraph 18(2)(aa)

After “subsection (6)”, insert “or (6A), as the case may be”.

1L At the end of paragraph 18(2AA)(a)

Add “or (6A), as the case may be”.

1M Paragraph 18(2AA)(c)

Omit “50%”, substitute “35%”.

1N Paragraph 18(2AA)(d)

Omit “30%”, substitute “21%”.

1P After subsection 18(6)

Insert:

(6A) The rate of retiring allowance payable under this section to a person who is, or becomes, a member on or after 1 July 2001 is such percentage of the rate of parliamentary allowance for the time being payable to a member as is applicable in accordance with the following scale:

<table>
<thead>
<tr>
<th>Number of complete years in period of service of person</th>
<th>Percentage of parliamentary allowance to be paid as retiring allowance</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>35.00</td>
</tr>
<tr>
<td>9</td>
<td>36.75</td>
</tr>
<tr>
<td>10</td>
<td>38.50</td>
</tr>
<tr>
<td>11</td>
<td>40.25</td>
</tr>
<tr>
<td>12</td>
<td>42.00</td>
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<tr>
<td>13</td>
<td>43.75</td>
</tr>
<tr>
<td>14</td>
<td>45.50</td>
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<tr>
<td>15</td>
<td>47.25</td>
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<tr>
<td>16</td>
<td>49.00</td>
</tr>
<tr>
<td>17</td>
<td>50.75</td>
</tr>
<tr>
<td>18 or more</td>
<td>52.50</td>
</tr>
</tbody>
</table>
IQ Subsection 18(7)
After "subsection (6)", insert "or (6A), as the case may be.".

IR After section 18
Insert:

18A Benefits for members who choose to become non-Trust contributors

(1) A member who ceases to make contributions to the Trust as a result of a choice made under section 4F, shall be entitled to a benefit equal to the superannuation guarantee safety-net amount.

(2) Except as provided by this section, this benefit is in substitution for any benefits that would otherwise apply under this Act in respect of the person.

The effect of these amendments is to provide parliamentarians with the option of opting out of the parliamentary super scheme and into an accumulation scheme, and to reduce entitlements and benefits and contributions to parliamentary super. I would argue that both of these amendments are in line with recommendations that were made by the government back in 1997, when we inquired into this question. The government acknowledged that this scheme was a generous one and said that a change to it was desirable. They also said—and I had forgotten this recommendation—that choice and opting out to an accumulation scheme was something which the committee recommended, and that seems to have been forgotten. Another important recommendation was, of course, that future members should not receive any pension before 55. It has taken a long time for the legislation to come up, but it finally has.

As I mentioned in my speech in the second reading debate, the opting out provisions are those which should be familiar to you, Senator Sherry, because they were both amendments which I circulated and were due to be debated while attached to the bill on commutations, so you would have seen them before. But we have all seen them circulated as part of Mr Peter Andren’s bill, which is the subject of the inquiry that is under way, so they should not be entirely surprising. In fact, the reason that Senator Brown and I were able to produce them so quickly is that, as I say, they have been kicking around.

I will mention in more precise terms what that opting out means. Members and senators have an option to stop making contributions to the Parliamentary Retiring Allowances Trust and from that point forward those members and senators will be entitled to a benefit equal to the superannuation guarantee safety net amount—eight per cent this year and nine per cent next. They will be able to choose the fund into which contributions are made, provided of course that it is a complying superannuation fund or an RSA. The decision to become a non-trust contributor would thereby become irrevocable. I would argue that this is in line with what the government has recommended anyway in the past. It certainly would enable those parliamentarians who feel embarrassed and concerned about the fact that our entitlements are so generous to opt for an accumulation scheme, which is one common to most other people.

Bringing the benefits under the Public Service scheme is the other part of our amendment. I draw senators’ attention to page 3 of our amendments on which there is a scale. That scale relates to the percentage of parliamentary allowance to be paid as a retiring allowance given the number of years of service. Whilist, as I said earlier, we would prefer that we fold the parliamentary superannuation scheme and simply go to an accumulation scheme like most people have, that was a very difficult thing for us to do by way of amendment to this bill or any other that is put before us. It has been something we have been trying to grapple with for some time. So we thought we would opt for the next best thing—that is, the Public Service superannuation scheme—and link the rates in the same way.

The highest level of a Public Service pension under the Superannuation Act 1976 is 52.5 per cent of final salary, and that is only payable after 40 years of service. The highest level of parliamentary superannuation is 75 per cent of final salary, so we are looking here at a significant reduction from 75 per cent to 52.5 per cent of final salary. We think that is reasonable. All of the other rates would vary proportionately, as is shown by that table. Using this scale, they would all be
about 70 per cent of what they are currently. I should note that, whilst you would need to be in employment in the Public Service for 40 years to reach the top end of the pension salary scale, we are talking in this amendment of MPs being able to obtain that amount after just 18 years of service.

It is quite interesting to look at some of the entitlements. Our dissenting report has a schedule which estimates the employer contributions to the parliamentary superannuation scheme. On page 2 of that report, we set out a table which shows that, after eight years of service at retirement, the ratio of employer to member contributions is 8.16 times. That decreases as a ratio over time: at 12 years of service, it is 5.99 times; at 18 years, it is 4.8 times; and at 24 years, it is 3.17 times. So clearly this arrangement would give a different weighting, if you like, to entitlements based on the contributions. We think it is a useful, if not ideal, way of demonstrating that parliamentary superannuation can at least be linked with some standard which is based on rational arguments about years of service and reasonableness. It gets away from some of the quirkier, if you like, but certainly more generous aspects of the parliamentary superannuation scheme.

I hope that the ALP has had time to look at those amendments by now. We are essentially putting three groups of amendments, and that is the first one. Going over that again, it is the opting out into an accumulation scheme or an RSA, and linking parliamentary pensions much more to the sort of scale that we see in the Public Service.

Senator ROBERT RAY (Victoria) (10.12 p.m.)—This is just a minor contribution, but I would like to ask the mover of the amendment whether she intends to opt out if this is passed. I would like to ask whether Senator Allison has any other superannuation that can make her more independent than maybe some of the rest of us. Does she have any other superannuation entitlements? I would like to know whether she is going to opt out and whether she has alternative arrangements that will help her through those hard times if she does opt out.

Senator ALLISON (Victoria) (10.12 p.m.)—My preference would be for this to be an accumulation scheme. I have not addressed my mind to that question. I probably will be 55 by the time I leave this place, Senator Ray, so I do not know the answer to that question. Much of it depends on whether or not these amendments are successful. As I said, I think the opting out is not the ideal arrangement. I think it would be far better if we were to move to an accumulation scheme. One of the amendments I will put up is that it affects people like me who are in this place now rather than those who come later. With regard to my other entitlements, I do have some from a short career in teaching. My career before that did not attract superannuation contributions because, like so many women, they were offered mostly to male employees and not to women. So my superannuation entitlements are not enormous. I think that answers your question, Senator Ray.

Senator SHERRY (Tasmania) (10.14 p.m.)—I have a question for Senator Allison on amendment (2) and the subclause that outlines the parliamentary allowance. What is the rationale for that schedule and how has it been arrived at?

Senator ALLISON (Victoria) (10.14 p.m.)—It is somewhat crude, but it does relate to the Public Service schedule, and that is the first one. Going over that again, it is the opting out into an accumulation scheme or an RSA, and linking parliamentary pensions much more to the sort of scale that we see in the Public Service.

Senator ROBERT RAY (Victoria) (10.15 p.m.)—It is not my intention to unnecessarily take up the time of the committee, but I would ask Senator Allison to indicate whether it is PSS or CSS. We will not be supporting this because it illustrates the principle that I outlined earlier—that these matters should be determined by the Remuneration Tribunal. Here we are, with the amendments circulated an hour ago, expected to vote ourselves an allowance. We just do not believe that is an appropriate process or, frankly, an appropriate outcome. Whatever we think about retiring allowances, a schedule or a level of retirement allowances, if
they are to exist—and I am not advocating them—should be determined by the Remuneration Tribunal, not by us sitting here with one hour’s notice of the details of the amendment. This highlights the difficulty of the process you are expecting us to go through, Senator Allison.

You have said that the percentages are somewhat crude, pretty much in line with the Public Service—I am not sure which fund; you might just indicate that. Coming up with somewhat crude figures that apparently have some relationship to one of the two Public Service funds, presenting them in an argument to the Senate and expecting politicians to vote themselves these parliamentary allowances without reference to the Remuneration Tribunal or some other independent body is not a way to go about politicians determining their entitlements, whether it is superannuation or other. So, for that very important reason of principle, consistent with my earlier statement the Labor Party will not be supporting these amendments.

Senator ALLISON (Victoria) (10.17 p.m.)—It is the PSS, not the CSS, that we are referring to. The ‘crudeness’—that might not be quite the right word—relates to the number of years of service. We have not expected that parliamentarians will serve 40 years. If you looked at that scale and matched it with the Public Service, the 18 or more down at the bottom of the left-hand column would equal 40 years in the Public Service. We have crammed, if you like, 18 years into 40, which is the difference. Perhaps it is more arbitrary than crude. It is just a way of using at least some sort of rationale, some sort of basis, on which to calculate a retirement benefit based on years of service.

Senator ABETZ (Tasmania—Special Minister of State) (10.18 p.m.)—I am advised that it is the CSS scheme that is being drawn upon here. Secondly, I also understand that the top rate, which Senator Allison referred to as being 18 or more years, applies to 40 years—that is correct. But there is also another important qualification in the Public Service, that is, you attain the age of 65 years. In case anybody is concerned that I am going to be jumping up on each and every one of these amendments, let me allay that concern. We as a government have taken the view that this is a very specific bill that deals with one basic issue that we believe needs to be dealt with. I understand the relevance of the amendments and the debate that will undoubtedly be excited by the amendments that are being moved. But the government’s view is that with this particular bill this is not the occasion to debate and discuss the amendments further. Whilst of course we as a government recognise the right of Senate to discuss and consider these issues, we will be opposing all amendments on the basis that this is a specific issue bill.

Question put:
That the amendments (Senator Allison’s) be agreed to.

The committee divided. [10.24 p.m.]

(The Temporary Chairman—Senator S.M. Murphy)

Ayes………… 11
Noes………… 48
Majority…… 37

AYES
Allison, L.F.   Bartlett, A.J.J.  
Bourne, V.W.  * Brown, B.J.
Greig, B.    Harris, L.  
Lees, M.H.  Murray, A.J.M.   
Ridgeway, A.D.   Stott Despoja, N.
Woodley, J.  

NOES
Abetz, E.    Alston, R.K.R.  
Bishop, T.M.  Boswell, R.L.D.  
Brandis, G.H.  Buckland, G.  
Calvert, P.H.  * Campbell, G.  
Campbell, I.G.  Chapman, H.G.P. 
Collins, J.M.A.  Conroy, S.M.
Cooney, B.C.  Crossin, P.M.  
Crowley, R.A.  Denman, K.J.  
Eggleston, A.  Ferguson, A.B.  
Ferris, J.M.  Forshaw, M.G.  
Gibbs, B.  Gibson, B.F.  
Heffernan, W.  Herron, J.J.  
Hogg, J.J.  Hutchins, S.P.  
Kemp, C.R.  Knowles, S.C.  
Lightfoot, P.R.  Ludwig, J.W.  
Macdonald, J.A.L.  Mackay, S.M.  
Mason, B.J.  Mclaurin, J.J.  
McKierman, J.P.  McLucas, I.E.  
Murphy, S.M.  Newman, J.M.  
O’Brien, K.W.K.  Payne, M.A.
Senator BROWN (Tasmania) (10.28 p.m.)—I move Greens amendment (1) on sheet 2294:

(1) Schedule 1, page 3 (before line 5), before item 1, insert:

1A Subsection 4(1) (definition of member)
Repeal the definition, substitute:
member means a member of either House who makes contributions to the Trust.

1B Subsection 4(1)
After the definition of non-parliamentary employment insert:
non-Trust contributor means a member of either House who has never made or has ceased to make contributions to the Trust as a result of a choice made under section 4F.

1C Paragraph 4(4A)(aa)
Repeal the paragraph, substitute:
(aa) a member or a non-Trust contributor is taken to be employed by the Commonwealth;

1D Before Part II
Insert:

4F Choosing to be a non-Trust contributor

(1) This section applies to a member of either House who is or becomes a member of another complying superannuation fund or the holder of an RSA.

(2) On or after 1 July 2001, a member of either House may, by written notice given to the Trust choose:

(a) to cease to make contributions to the Trust at the end of a day (not earlier than the day on which the notice is given) stated in the notice; or

(b) never to make contributions to the Trust, where the person choosing is a new member of either House.

(3) The person may make this choice on first becoming entitled to parliamentary allowance or at any time he or she is a member.

(4) The person must have effective membership of a complying superannuation fund or be the holder of an RSA for the whole of the period or periods he or she is a member of either House.

(5) A non Trust contributor may not revoke his or her choice after the day stated in the written notice given to the Trust.

(6) In this section:
complying superannuation fund has the meaning given by section 45 of the Superannuation Industry (Supervision) Act 1993.

RSA has the same meaning as in the Retirement Savings Accounts Act 1997.

4G Superannuation contributions for non-Trust contributors

The Commonwealth must make contributions to a non-Trust contributor’s chosen fund or RSA for that person’s benefit. The contributions must be made with effect from the day stated in the written notice to the Trust, and in accordance with the Superannuation Guarantee (Administration) Act 1992.

1E Subsection 13(9)
Repeal the subsection, substitute:

(9) In this section:
Minister of State means a Minister of State who is entitled to a parliamentary allowance and who makes contributions to the Trust.

month means one of the 12 months of the year.

office holder means a person who:

(a) is entitled to a parliamentary allowance;

(b) holds an office in, or in relation to, the Parliament or either House, being an office in respect of which he or she is entitled to an allowance by way of salary; and

(c) makes contributions to the Trust;

but does not include a Minister of State.

person means a person who makes contributions to the Trust.

1F After section 18
Insert:

18A Benefits for members who choose to become non-Trust contributors
(1) A member who ceases to make contributions to the Trust as a result of a choice made under section 4F, shall be entitled to a benefit equal to the superannuation guarantee safety-net amount.

(2) Except as provided by this section, this benefit is in substitution for any benefits that would otherwise apply under this Act in respect of the person.

This is the Andren amendment which gives freedom of choice to members of parliament to stay with the parliamentary superannuation scheme or to opt out and go into another scheme of their choice, with the accrued superannuation benefits rolling over into that scheme. I cannot see how any member of this chamber could vote against these amendments. I note that the government says it is single-minded and it will not listen to what anybody else has to say. But that is not the nature of parliament. So I appeal to the opposition to support this amendment—and so they should.

Let me give a commitment at the outset: if these amendments get up—and I will be opting out of the superannuation scheme—I will never raise a finger at another member of parliament who does not opt out. But it is very important that this option be there for those of us who want to take it. Why should we be captive to the majority in having a superannuation scheme which is unpopular, unwanted by the majority of Australians, unfair and which makes us feel bad about it as well? I know the arguments that will be used by the other side. But the fact is that this is a freedom of choice matter, and the only reason I can see for not adopting this freedom of choice is that other members are concerned that it will erode even further their position. Obviously that is a risk. I think what would happen under this freedom of choice is that a handful of members would take it now, quite a number of members would take it in the new parliament—that is, new members—and we would rapidly find this current superdoooper superannuation scheme for politicians falling away. But how dare any other member of parliament dictate to those of us who want to get out of this current scheme that we must stay in it.

I note that there was almost no debate on this bill in the House of Representatives, but we have an opportunity now at least to have the government or the opposition say why the opt-out should not be available. The Senate knows that we wanted to refer this to a committee. That has been denied. But let us hear from speakers on both sides why there should not be freedom of choice in this matter.

Senator HARRIS (Queensland) (10.32 p.m.)—I rise briefly to support Senator Brown and to record that the position of Pauline Hanson’s One Nation is that as parliamentarians our superannuation should be equal to that of the people of Australia, and one way to achieve that would be to have the ability to opt out and join a scheme that they are participating in. I commend the amendment to the chamber.

Senator SHERRY (Tasmania) (10.32 p.m.)—The position of the Labor Party, for the reasons that I outlined earlier, is that we will be opposing the amendment.

Senator BROWN (Tasmania) (10.33 p.m.)—I would like to hear those reasons again because I do not think Senator Sherry did say why we should not be able to opt out. I would remind senators that it was a key conclusion reached by the government members of the Senate Select Committee on Superannuation in 1997. I ask Senator Abetz: what has changed in the four years since then?

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that the amendment be agreed to. Senator Brown.

Senator BROWN—I wonder if the attendants have any antiglue material so that we can release Senator Abetz from his position stuck to the chair so that he can get up and answer a very reasonable question that I have just put to him.

Senator Abetz—I have already dealt with all the issues.

Senator BROWN—Well, the reality here is that neither the government nor the opposition has the gumption to address this issue. That is why the debate is taking place at this hour. They simply do not have the guts to get up and argue against an opt-out clause which would allow members who feel differently in this place to make another choice. As I say,
there is no glue like self-interest to stick the big parties together. If there is an argument against this, get up and put it. Of course, the reason this bill is here with the 55-year age provision—which does not apply to us; it applies to some people unspecified in the future who will win seats—is that it is intended to divert attention away from the real matters that are making the public angry about this superannuation scheme, that is, the extraordinary top-up that is coming from our employers, the public, without their permission; it is eight or 10 times as much. Here we have an opt-out—

Senator Ferguson interjecting—

The TEMPORARY CHAIRMAN—Senator Brown, you have the call.

Senator BROWN—Chair, I hope you can hear me. Here we have an opt-out freedom of choice provision for members of parliament, and the Liberal Party, the National Party and the Labor Party say, ‘We won’t give our fellow members that choice.’ What do you think of that? It is an extraordinary situation. We did get some stick for the honourable member for Calare, Peter Andren, earlier in the night, but he has had the gumption to put this forward. I had to think twice about it, but I am with him on this. He has done a decent thing. It is quite unbelievable, and it is not defensible, that other members of parliament would say, ‘But we’re not going to allow you that choice.’ I am obviously going to get nil response from either side. The best defence, they think, is: baton down the hatches, shut up, wait until this goes through tonight, and put it behind, and hopefully the electorate will forget about it. We will be back to push on this issue again.

Amendment not agreed to.

Senator ALLISON (Victoria) (10.37 p.m.)—by leave—I move Democrats amendments Nos 3 and 4 together:

(3) Schedule 1, item 3, page 4 (line 7), at the end of subsection (1), add:

; or (c) the person was a Senator or a member of the House of Representatives immediately before the transitional general election.

(4) Schedule 1, item 3, page 4 (lines 8 to 36), omit subsections (2) to (5).

These amendments put in place the preservation of benefits at age 55 to both current and future members of parliament for both houses.

Senator BROWN (Tasmania) (10.37 p.m.)—I support Senator Allison’s amendments. The Greens have identical amendments on the slate, and they speak for themselves.

Amendments not agreed to.

Senator BROWN (Tasmania) (10.38 p.m.)—Can I just point to the running sheet. The amendments moved by the Australian Democrats and the Australian Greens are identical.

The TEMPORARY CHAIRMAN (Senator Knowles)—Yes, that has been recognised, Senator Brown.

Senator ALLISON (Victoria) (10.38 p.m.)—I move Democrats amendment No. 5:

(5) Schedule 1, page 8 (after line 26), at the end of the Schedule, add:

Part 2—Partnership relationships

4 Subsection 4(1) (definition of former spouse)

Repeal the definition, substitute:

former partner in relation to another person means a person who previously had a partnership relationship with that person.

5 Subsection 4(1)

Insert:

partner in relation to another person means a person who has or had a partnership relationship with that person

6 Subsection 4(1)

Insert:

partnership relationship has the meaning given by section 4B.

7 Subsection 4(1)

Insert:

relative means an ancestor, or a descendant, or a brother or a sister.

8 Section 4B

Repeal the section, substitute:

4B Partnership relationship

(1) For the purposes of this Act, a partnership relationship means a relationship
that is genuine and continuing between 2 people:
(a) who have both turned 18 years of age; and
(b) neither of whom is a relative of the other person; and
(c) who live together, or do not live separately and apart on a permanent basis; and
(d) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(2) For the purposes of paragraph (1)(d), 2 people are to be regarded as having a mutual commitment to a shared life at a particular time if they have been living together as partners, to the exclusion of any other partnership relationship, for a continuous period of at least 3 years up to that time.

(3) For the purposes of paragraph (1)(d), the Trust may form the view, having regard to any relevant evidence, that 2 people have a mutual commitment to a shared life if they have been living together as partners, to the exclusion of any other partnership relationship, for a period of less than 3 years.

(4) For the purposes of subsection (3), relevant evidence 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) whether one person owes any legal obligation to the other person; and
(e) any joint responsibility for the care and support of children, if any; and
(f) the persons’ living arrangements; and
(g) whether the persons represent themselves to other persons as being in a partnership relationship.

9 Section 4C
Repeal the section, substitute:

4C Partner who survives a deceased person

(1) In this section:
deceased person means a person who was, at the time of his or her death:
(a) a person who was entitled to a parliamentary allowance; or
(b) a person who was entitled to a retiring allowance whether or not the retiring allowance was immediately payable.
retired member means a person who was entitled to a retiring allowance, whether or not the retiring allowance was immediately payable.
(2) For the purposes of this Act, a person is a partner who survives a deceased person if:
(a) the person had a partnership relationship with the deceased person at the time of the death of the deceased person (the death); and
(b) in the case of a deceased person who was a retired member at the time of the death:
(i) the partnership relationship began before the retired member became a retired member; or
(ii) the partnership relationship began after the retired member became a retired member but before the retired member reached 60; or
(iii) where neither subparagraph (i) nor (ii) applies—the partnership relationship had continued for a period of at least 5 years up to the time of the death.

10 Section 19
Omit “spouse” (wherever occurring), substitute “partner”.

11 Section 19AA
Omit “spouse” (wherever occurring), substitute “partner”.

12 Section 19AA
Omit “marital” (wherever occurring), substitute “partnership”.

13 Section 19AB
Omit “spouse” (wherever occurring), substitute “partner”.

14 Section 19A
Omit “spouse” (wherever occurring), substitute “partner”.

15 Section 21AA
Omit “spouse” (wherever occurring), substitute “partner”.

that is genuine and continuing between 2 people:
(a) who have both turned 18 years of age; and
(b) neither of whom is a relative of the other person; and
(c) who live together, or do not live separately and apart on a permanent basis; and
(d) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(2) For the purposes of paragraph (1)(d), 2 people are to be regarded as having a mutual commitment to a shared life at a particular time if they have been living together as partners, to the exclusion of any other partnership relationship, for a continuous period of at least 3 years up to that time.

(3) For the purposes of paragraph (1)(d), the Trust may form the view, having regard to any relevant evidence, that 2 people have a mutual commitment to a shared life if they have been living together as partners, to the exclusion of any other partnership relationship, for a period of less than 3 years.

(4) For the purposes of subsection (3), relevant evidence 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) whether one person owes any legal obligation to the other person; and
(e) any joint responsibility for the care and support of children, if any; and
(f) the persons’ living arrangements; and
(g) whether the persons represent themselves to other persons as being in a partnership relationship.

9 Section 4C
Repeal the section, substitute:

4C Partner who survives a deceased person

(1) In this section:
The final amendment for the Democrats relates to entitlements for same sex couples. It removes the discrimination against gay and lesbian couples in access to superannuation entitlements. Central to this amendment is the concept of a partnership relationship, which replaces the existing concept of a marital relationship. A partnership relationship is a genuine and continuing relationship between two people who are adults over 18, who are not related, who live together and who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

A mutual commitment to a shared life can be established in two ways. Firstly, it can be established by cohabitation as partners to the exclusion of any other partnership relationship for a period of three years or more. Alternatively, a mutual commitment to a shared life may exist in the case of partners living together to the exclusion of any other partnership relationship for a period of less than three years if there is relevant evidence of a mutual commitment. The amendment states:

... relevant evidence 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) whether one person owes any legal obligation to the other person; and
(e) any joint responsibility for the care and support of children, if any; and
(f) the persons' living arrangements; and
(g) whether the persons represent themselves to other persons as being in a partnership relationship.

This is a long overdue amendment. The Democrats have been campaigning on this subject for a very long time and will continue to do so. We think that in this day and age it is a reasonable position to take. I note that many jurisdictions at the state and territory level have provisions within their laws to remove that discrimination. Quite frankly, it is really time that the Senate did likewise with its own parliamentarians. I think this is important, as I said earlier, and I think its time has come. Perhaps its time had come some years ago, but we think this is a good opportunity for the government to set right a wrong which has been in place for much too long.

Senator SHERRY (Tasmania) (10.41 p.m.)—I would like to get some clarification from Senator Allison on this matter. Does this amendment apply a same sex couple provision to the parliamentary fund? Does it apply it to other superannuation funds?

Senator ALLISON (Victoria) (10.41 p.m.)—It does apply to the parliamentary superannuation fund. I do not believe it can apply to others, since we are limited by the act which is before us.

Senator SHERRY (Tasmania) (10.41 p.m.)—That is exactly my concern. Here we have a provision from the Australian Democrats. I make it clear that the Labor Party support superannuation same sex couple provisions, but we are—

Senator Brown—When?

Senator Greig—Where?

Senator SHERRY—Just hang on and you will get an answer. You think you are so smart about superannuation. With this amendment, the Democrats are advocating that politicians should receive superannuation only where there is a same sex couple relationship and that no-one else in the rest of the community should.

Senator Brown—They are not.

Senator SHERRY—That is the effect of the amendment if it is passed, Senator Brown.

Senator Brown—You change it, then.

Senator SHERRY—We have a private member’s bill to change it, Senator Brown. If you kept an eye on these issues instead of grandstanding, you would know that we have a private member’s bill to change it for everyone in the community, not just for politicians. I am not going to go out on behalf of
the Labor Party to the same sex couple
groups in the general community and say, ‘You
can’t have this for superannuation, but
politicians can.’ Talk about an outrageous
position to be taking! The challenge for you,
Senator Brown, and for the Australian
Democrats is to come in here and support the
Labor Party’s private member’s bill moved
by my colleague Mr Albanese in the other
place. He has campaigned long and hard on
this issue.

The Labor Party do support the provision
of superannuation for same sex couples. We
do not see it as a moral issue; we see it as a
property rights issue. The property of super-
annuation belongs to the individual and
therefore they are allowed to leave that prop-
erty to whomever they wish, whether in a
same sex couple or otherwise. It is a very
important principle, and it should apply to
everyone, not just politicians. For that rea-
son, we will not be supporting an exclusivity
same sex couple provision for politicians.
We look forward to the day when the private
member’s bill that my colleague Mr Al-
banese in the other place has moved will ap-
ply superannuation provisions to all same
sex couples in the community, whether they
are politicians or not.

Senator GREIG (Western Australia)
(10.44 p.m.)—How convenient. How abso-
lutely, outrageously disgusting.

Government senators interjecting—

Senator GREIG—I hear a chorus of sup-
port for what Senator Sherry is saying from
the coalition, but the coalition is hostile to all
forms of same sex partnership recognition,
superannuation or otherwise.

Senator Ferris—That’s not true.

Senator GREIG—If it is not true then
perhaps the minister could explain why dis-
crimination against same sex couples contin-
ues in social security, immigration, taxation,
the defence forces, property settlement and
superannuation, to name just a few. The fact
is that, until such time as we have compre-
hensive and uniform national antidiscrimi-
nation laws on the grounds of sexuality and
same sex partnership recognition at a Com-
monwealth level, this issue can never be ad-
dressed. There are only two ways in which
you can do that: by amending legislation
before the parliament and by supporting a
comprehensive bill.

We Democrats introduced the very bill
that is necessary to do all of that, and it was
introduced in 1995 by former Democrat
Senator Sid Spindler. It has been on the No-
tice Paper since then and gone nowhere, be-
cause it does not attract the support of either
the coalition or Labor. It really gets my goat
when members of the Labor Party trumpet
with great clarity and fanfare the possibility
of Mr Albanese’s bill passing through the
parliament but fail to point out two funda-
mental things. Firstly, that bill is simply one
part of one section of the Democrats sexual-
ity discrimination bill. That bill precedes the
Albanese bill by some years and goes much
further, covering those other areas, including
immigration, social security, taxation and so
on. It is not just one boutique piece of anti-
discrimination legislation, which the Labor
Party seem to think is the panacea to all dis-
crimination against gay and lesbian people. It
is not.

Secondly, if the answer to resolving this
discrimination is the passage of such a bill,
where is it? Yes, it has been introduced. It
was fundamentally flawed when it was in-
troduced, because it did not actually cover
Commonwealth public servants. I know that,
when Mr Albanese framed that legislation in
the House of Representatives, he was not in a
constitutional position to include Common-
wealth public servants. He could not do that
from the House of Representatives. But not
one of his Labor Senate colleagues thought
it worthwhile to amend it before introducing it.

I also make the point that Mr Albanese is
not the Labor spokesperson on superannua-
tion. Mr Albanese is not even a frontbencher.
So I pose the question: why is it that this bill,
which Labor claim to believe in strongly, is
being advocated not by a frontbencher, not
by someone with a portfolio, but by a back-
bencher with a pink electorate in inner city
Sydney? Where is Mr Beazley on this bill?
There has been deafening silence from him
on this issue. Labor claim to be serious—we
hear this constant rhetoric: ‘We support same
sex couples’—yet, of the five or six amend-
ments to deal with same sex couples that
have been through this chamber since I have been here, Labor have opposed each and every one of them.

Labor often point to the states and say, ‘Oh, yes, but we’ve done it at a state level.’ There is truth in that. Same sex couple recognition now exists in Queensland, New South Wales, Victoria—with the support of the Liberal Party, I note—and Tasmania, to some degree. It covers super; it does not cover other areas. In our own shared home state of Western Australia, Temporary Chairman Knowles, the new government is committed to that reform. It is true that state Labor governments have largely been responsible for that, with the exception of Western Australia, where the precedent for same sex recognition was set by the Democrats with the successful passage at a state level of the Democrats sexuality bill in that state’s upper house by my now retired colleague Helen Hodgson MLC. If Labor can do this at a state level, why can’t they—or won’t they—do it at a federal level?

Senator Sherry—The fact that we’re not in government might have something to do with it.

Senator GREIG—Senator Sherry interjects and says that he is not in government. That is a cop-out. That is not fair. You are in a position to do it from opposition. Just as the mandatory sentencing bill passed this house, so too could same sex couple recognition. If you held the ground on it and kept in form with the Democrats and some other minor parties, including Senator Brown, it would succeed. I do not believe for a second that the government would hold out on this forever. The same is true for the same amendment that was passed on this with the Governor-General bill.

Labor constantly says, ‘This is not the right bill,’ whenever amendment after amendment comes up, and yet it will not progress its own bill. Yes, it will introduce it as a piece of theatre. It will drum it up in the gay press as something that it claims it is doing, while constantly avoiding the topics of immigration, social security, taxation, the defence forces and all those other areas of discrimination that gay and lesbian couples experience discrimination in. So if we do not support this recognition from piece by piece legislation, it can be done only with wholesale legislation. But Labor will not support the sexuality discrimination bill. That will resolve that.

This is the litmus test for Labor. If you are serious about recognising same sex couples, as you say you are, then support it. It is all too convenient to say suddenly, at the last minute: ‘This is a boutique piece of legislation. It is a discrete piece of legislation. It relates only to politicians. It would be unfair to allow same sex couple recognition just for that area.’ How convenient. The truth is, if you were to set that precedent and if you were to meet that benchmark, the electorate would have faith in you in doing this comprehensively in government. Until then, they cannot and should not.

Senator BROWN (Tasmania) (10.50 p.m.)—Senator Greig has put a very cogent case and has showed just how bereft of principle the opposition are in this matter. At least the government is unashamedly discriminatory. But the opposition pay lip-service and duck and weave. They were in office for 13 years and did nothing about this. They are not going to do anything more in opposition, and the record shows that they will not do anything if they get back into government. While the good Democrat senator has been talking, Labor have distributed an amendment to the motion that the report of the committee be adopted, which says:

“and that the following matter be referred to the Select Committee on Superannuation and Financial Services by the last sitting day in November 2001: Whether same sex superannuation rights (which have received the support of the Select Committee on Superannuation and Financial Services in a report in April 2000) should be available to members of the Parliamentary Contributory Superannuation Scheme before being applicable to all in the community who qualify under provisions relating to bona fide relationships, regardless of sexual preference”.

So they do not even know, Senator Greig. They have not made up their minds on that. Fancy having to run a committee to know whether that should be the case or not. That
just shows you what a scheming lot of people they are when it comes to this matter.

This amendment is here to put into the relevant press, so they can say, ‘We’re doing something. There’s a committee sitting on this and after the election we’ll act on it. If only we can get your votes in the ballot box then, trust us, we’ll do something afterwards.’ I would not trust them as far as you could throw a barge pole, or push a barge pole, or touch it with a barge pole, or whatever the proper analogy is. You get so addled trying to work out the scheming that goes on with the Labor Party in this matter that you start to lose track. The Democrats are to be commended on this amendment, and I support it.

Senator SHERRY (Tasmania) (10.52 p.m.)—I do not want to keep the committee in lengthy process, but let me just draw Senator Greig’s attention to one matter that the Democrats have been dealing with with the government in recent times: the so-called superannuation choice provisions. I do not know whether Senator Greig is across that particular piece of legislation, but I understand, Senator Greig, that the only reason you are not supporting the government’s package is that the government will not agree to change that bill in respect of same sex couples. You just said in your contribution that you did not believe the government would hold out. They are holding out on same sex couples in respect of the so-called superannuation choice provision, and they have been holding out for months. So you are wrong. Consult with Senator Allison, who is sitting next to you, and you will find out what has been happening in respect of that particular provision. This government will not support that. That is their position. They have taken an ideological position—I do not know whether it is a party position. As for the Labor Party, you refer to my colleague Mr Albanese, and he is here.

Senator Ferguson—A humble backbencher, too.

Senator SHERRY—You implied he is just a humble backbencher. I have considerably greater respect for the stature of my colleague Mr Albanese. It is not just Mr Albanese who has supported the private member’s bill—the Labor Party caucus has signed up to it. So it has the endorsement of the Labor Party caucus. Should the government agree to the principle of same sex couples on superannuation choice, that will apply to everyone in the community, except for us. On that point I will conclude. We are not willing to sign up to an amendment that means that the only people in Australia who enjoy same sex couple rights in respect of superannuation are federal politicians. We are not prepared to sign up to that.

Senator GREIG (Western Australia) (10.55 p.m.)—Can I respond briefly by taking up the example that Senator Sherry presents when he says that the government is holding out on presenting the super choice bill until such time that the Democrats concede the same sex couple point.

Senator Sherry—No, the government.

Senator GREIG—Sorry, the government. You are right. That is my understanding. I do not pretend to be across the detail of that bill, but I understand the human rights aspect of it. You are right: we Democrats will not support that bill until such time as it eliminates the discrimination against same sex couples. We will not buckle on that, but you will.

Senator Sherry—Good. We will not buckle on that bill. We oppose it for other reasons.

Senator GREIG—You will buckle on every other bill, whether it is the Governor-General bill or this one, and that is the fundamental difference.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that the amendment moved by the Australian Democrats be agreed to.

The committee divided. [11.00 p.m.]

(The Temporary Chairman—Senator S.C. Knowles)

| Ayes | 10 |
| Noes | 49 |
| Majority | 39 |

AYES

Allison, L.F.          Bartlett, A.J.J.
Bourne, V.W *        Brown, B.J.
Greig, B.              Lees, M.H.
This amendment deals with the referral of a matter to the Select Committee on Superannuation and Financial Services. I do not wish to speak at length. We have just had a fairly considerable debate on the matter and I ask the Senate to support our amendment.

Senator BROWN (Tasmania)  (11.06 p.m.)—This is just a scam. You can take it which way you like: either the Labor Party do not know whether same sex couples should get the same provisions as everybody else or they are simply using another tactic to try to get people in the community who think that this discrimination should end to think they are going to do something about it. They are not; they have not. And it is a pretty low manoeuvre. Senator Greig offered the opportunity for them to support the end of discrimination as far as the parliamentary bill is concerned and they simply said, ‘No, that would create a difference between parliamentarians and the rest of the community.’ And we are voting on a piece of legislation that is inherently just that. I think this is a pretty low manoeuvre by the Labor Party.

Senator Abetz—That is why you have recognised it.

Senator BROWN—Senator Abetz, you can get up and give your opinion on this motion, but you will not because that is the nature of you. I say this is a pretty low manoeuvre. At least the government is discriminatory and makes no bones about it. But the Labor Party gives lip-service to ending discrimination and then keeps on hedging and putting it off. That is what they are doing here.

Senator GREIG (Western Australia)  (11.08 p.m.)—We have heard Senator Sherry say tonight it would be unfair to pass a piece of legislation that would affect only one section of the community and yet that is what gay and lesbian people experience every single day in legislation that relates to relationships. What Senator Sherry is now saying is that we should support this bill, but only so far as heterosexual people are concerned. This amendment moved by Senator Sherry is offensive, patronising and nothing more than an undignified attempt by Senator Sherry to
salvage something from the sham that is Labor’s embarrassing position on this legislation.

Amendment not agreed to.

Original question resolved in the affirmative.

**Third Reading**

Motion (by Senator Abetz) proposed:

That this bill be now read a third time.

**Senator Brown** (Tasmania) (11.09 p.m.)—I will be supporting the legislation because of the inherent amendments in it. But what a great opportunity has been lost, as far as this parliament and these two big parties are concerned, to do something right by the community that we serve, to emphasise the Prime Minister’s favourite term, that is, a fair go for Australia. This is not a fair go. It is the epitome of snouts in the trough, which politicians get branded with all the time. Even the minor change that this brings, so that people do not get superannuation entitlements till 55 like the rest of the community, does not apply to us. The Labor Party and the Liberal Party have quite deliberately said, ‘Yes, but not for us’—not even that. The Greens and the Democrats moved the amendments and they voted them down: ‘Don’t touch our fantastic entitlements in any way at all.’

When the pressure rises in the community because there is outrage about it, the Prime Minister ambushes the Senate on the last night of sittings with this amendment to the legislation which came in here yesterday and which has gone through here with extraordinary speed, to give the impression that the government has amended the offending parts of this legislation. It will not wash and the Australian electorate will not accept it as such. So we politicians continue to get the bad name, by desert in this case. When it comes to the opportunity to say, for those who want it, ‘Hang on to it, but do not make other people do it; give them an opt-out clause,’ the big parties get together and say, ‘No, not that because that will show us up. We do not want Peter Andren leaving this gold-plated scheme and going, as far as his electorate is concerned, to join the rest of the people in an eight per cent employer topped up scheme. He cannot have that it because it would show everybody else up.’ It is one thing to say, ‘We want to keep this little bag of gold for ourselves,’ but it is another thing to say, ‘Everybody else has to do the same so we will not stand out in this situation.’

This is not the end of it. It will continue. There will be on 11 July a hearing of the committee in Sydney looking at the honourable member for Calare’s legislation. Thousands of people have written to that committee. A lot of that will be constructive. Above all, it will show us what we already know—that politicians have got an obscenely topped up and self-advantaged scheme and it should be altered. Like everybody else, I will support this minor amendment, but it does nothing to fix the rotten heart of the superannuation scheme that politicians enjoy.

**Senator Watson**—But you are arguing against your earlier logic.

**Senator Brown**—Senator Watson, you can get up and make your contribution. I am making mine. The point is that we had a great opportunity here with the amendments that the crossbenches brought forward to put things right. But the big parties got together in the dead of night on the eve of the winter break and voted it down.

**Senator Greig** (Western Australia) (11.13 p.m.)—I support the Parliamentary Contributory Superannuation Amendment Bill 2001 fully, with the exception that it now contains, explicitly and unambiguously, the prohibition on same sex couples having human rights. On that basis, I will vote against it. It is very rare that a piece of legislation is so personal. Very often we deal with issues on a day-to-day basis that are distant from us and ethereal and have a broad picture about them. I declare clearly my interest in this, being in a same sex relationship of 15 years. I cannot bring myself to support a piece of legislation that says to my partner that he is unworthy of my death benefit if I should die.

**Senator Harris** (Queensland) (11.14 p.m.)—I rise briefly to register the fact that Pauline Hanson’s One Nation opposes the bill because it does not allow an opt out and
it also does not bring the parliamentary superannuation in line with superannuation in the community. I will be voting against the bill.

Question resolved in the affirmative.

Bill read a third time.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Messages received from the House of Representatives returning the following bills without amendment:

- Social Security Legislation Amendment (Concession Cards) Bill 2001
- Agricultural and Veterinary Chemicals Legislation Amendment Bill 2001

**COMMITTEES**

**Intelligence Services Committee**

**Membership**

Message received from the House of Representatives notifying the Senate of the appointment of Mr Andrews, Mr Brereton, Mr Forrest, Mr Hawker, Mr Jull, Mr McArthur, Mr McLeay, Mr Melham and Mr O’Keefe to the Joint Select Committee on Intelligence Services.

**TRADE MARKS AND OTHER LEGISLATION 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) (11.17 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

The major objective of the Trade Marks and Other Legislation Amendment Bill 2001 is to give effect to a post-implementation review of the operation of the Trade Marks Act 1995. That Act repealed and replaced the 1955 Trade Marks Act and came into operation on 1 January 1996. This Bill also makes some minor technical amendments to correct erroneous references in the Patents Amendment (Innovation Patents) Act 2000.

The new Trade Marks Act modernised and streamlined the Australian trade marks registration system and brought it into line with certain requirements of the World Trade Organization’s Agreement on Trade-Related Aspects of Intellectual Property Rights — better known as the TRIPS Agreement. In September last year, the Act was also amended to enable Australia to accede to the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks. Accession would provide a reciprocal, streamlined application procedure for Australian and overseas trade marks owners should they wish to register their trade marks overseas or in Australia.

The new Trade Marks Act has been very successful in meeting its objectives. It has resulted in significant lessening of red tape for businesses, enabling them to get their trade marks registered in a more streamlined manner. It has had major benefits for the operation of the Trade Marks Office and the positive benefits of this, for users of the system, are illustrated by the fact that there have been two fee reductions and no increases in Trade Marks Office fees since the new Act came into force. These excellent results have been achieved without eroding the benefits of registration available to trade marks owners.

This Bill improves the legislation by further streamlining procedures, enabling the Trade Marks Office to provide improved services to the public, removing anomalies and clarifying ambiguities that have come to light since the Act came into operation.

In September 1996, approximately nine months after its commencement, the Registrar of Trade Marks invited submissions from interested groups, and the public, on the operation of the new Trade Marks Act. Some eighteen submissions were received. Respondents included the Institute of Patent and Trade Mark Attorneys, the Trade Marks Sub-Committee of the Law Council of Australia, the Australian Manufacturers' Patents, Industrial Designs, Copyright and Trade Marks Association, members of the legal profession and the Australian Wine and Brandy Corporation. I thank them all for their interest and guidance on this matter.
Other comments were received from a number of sources including focus groups set up within the Trade Marks Office to look at administrative issues, and from the Trade Marks Office help desk which was set up to assist users of the system with the transition to the new legislation. The post-implementation review has allowed interest groups and the public to work with the Trade Marks Office to come up with suggestions to further improve and streamline the legislation. A review team including members of the main interest groups met in February 1998. The review team recommended that a number of changes were necessary for the efficient and effective operation of the Act. This Bill gives effect to the necessary changes.

In the interests of delivering better service to Trade Marks Office customers, section 158 of the Trade Marks Act will be repealed. The provision makes it a strict liability criminal offence for an employee of the Trade Marks Office to prepare, or help prepare, a document to be filed under the Act or to search the Trade Marks Office records, unless specifically authorised to do so. This may, in some circumstances for example, cause doubt as to whether a Trade Marks Office employee may help a person fill in their trade mark application or assist them with a search of the trade marks database. The provision is outdated. Its carry over from the previous legislation is now considered inappropriate. The modern Public Service encourages its employees to give members of the public, within the proper boundaries, every assistance they are able to. The Trade Marks Office is continually striving to improve the service it provides its customers and this provision unnecessarily constrains what it can do. Its repeal will enable the Trade Marks Office to consider new and innovative ways to improve its customer service. Any impropriety by an employee of the Trade Marks Office is able to be dealt under the Australian Public Service Code of Conduct set out in section 13 of the Public Service Act 1999.

This Bill will also repeal paragraph 88(2)(d) of the Trade Marks Act. This provision currently enables a person, in certain circumstances, to apply to a court to cancel or amend a trade mark registration. In considering the matter, the court would be obliged to apply stricter criteria than would have been applied by the Registrar of Trade Marks when accepting the trade mark for registration. Having different sets of criteria apply is clearly unsatisfactory—indeed there is the possibility that a person whose trade mark was removed from the Register by the court under this provision could immediately successfully re-apply for registration of the trade mark. The repeal of this provision will therefore remove the uncertainty inherent in this provision.

The Bill also contains a series of amendments of a minor nature intended to streamline procedures and remove anomalies and ambiguities identified since the Act came into operation. This Bill also amends the Patents Amendment (Innovation Patents) Act 2000 to correct several erroneous references in that Act.

I commend this Bill to the Senate.

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

BUSINESS
Government Business
Motion by (Senator Ian Campbell) agreed to.
That intervening business be postponed till after consideration of government business order of the day No. 4 (Migration Legislation Amendment (Immigration Detainees) Bill 2001).

MIGRATION LEGISLATION AMENDMENT (IMMIGRATION DETAINEES) BILL 2001
Second Reading
Consideration resumed from 27 June, on motion by Senator Minchin:
That this bill be now read a second time.

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

BUSINESS
Government Business
Motion (by Senator Ian Campbell) agreed to.
That intervening business be postponed till after consideration of government business order of the day No. 3, Passenger Movement Charge Amendment Bill 2001.

PASSENGER MOVEMENT CHARGE AMENDMENT BILL 2001
Second Reading
Debate resumed from 27 June, on motion by Senator Tambling:
That this bill be now read a second time.
upon which Senator Ridgeway had moved by way of an amendment:
At the end of the motion, add:
“but the Senate calls on the Government:

(a) to make the charge commissionable and thereby encourage overseas travel agents to comply with the charge regime; and

(b) to introduce legislation allocating a further M$15 per year to the Australian Tourist Commission over the life of the foot and mouth disease prevention program for the purpose of marketing measures designed to boost Australia’s image as a “clean and green destination”.

Senator BROWN (Tasmania) (11.19 p.m.)—I would request from the government a list of the order of the legislation that is now coming up. That last bill went through in three minutes. I am not going to stand for that if I do not have an order of bills in front of me. If the government wants it all slowed down, then they should just keep this up.

The ACTING DEPUTY PRESIDENT—I think you may have just been provided with a list, Senator Brown. The question is that the amendment moved by Senator Ridgeway be agreed to.

Senator SCHACHT (South Australia) (11.20 p.m.)—Is that a committee amendment?

The ACTING DEPUTY PRESIDENT—No, it is a second reading amendment.

Senator SCHACHT—Well, where is Senator Ridgeway?

The ACTING DEPUTY PRESIDENT—He is here. I will put the question again. The question is that the amendment moved by Senator Ridgeway be agreed to.

Question resolved in the affirmative.

Senator SCHACHT (South Australia) (11.20 p.m.)—Can we just slow this down a bit? I have an amendment here, No.2218 revised, in the name of the Democrats, by Senator Ridgeway, which says that the schedule—

The ACTING DEPUTY PRESIDENT—Senator Schacht, if I can just clarify this, that is not the amendment we are considering. The amendment that we have just moved is a second reading amendment, not a committee amendment, which was moved by Senator Ridgeway. I put that to the vote and it was passed.

Senator CARR (Victoria) (11.21 p.m.)—Mr Acting Deputy President, Senator Schacht, who is dealing with this matter for us, has not had an opportunity to examine this second reading amendment. While he has a chance to read it, we might want to slow proceedings down a bit. I seek leave to have that vote recommitted.

The ACTING DEPUTY PRESIDENT—is leave granted?

Leave granted.

The ACTING DEPUTY PRESIDENT—The question is that the amendment be agreed to.

Senator SCHACHT—Thank you.

The ACTING DEPUTY PRESIDENT—The question is that the second reading amendment moved by Senator Ridgeway be agreed to.

Question resolved in the negative.

Original question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (11.23 p.m.)—I move the Australian Democrats request on sheet 2218 revised:

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

(1) Schedule 1, item 1, page 3 (lines 5 and 6), omit the item, substitute:

Section 6

Omit “$30”, substitute “$40”. 
Statement pursuant to the order of the Senate of 26 June 2000

These amendments are framed as requests because they are to a bill which increases a charge contained in an existing Act. It is therefore taken to be a bill imposing taxation within the meaning of section 53 of the Constitution. The Senate may not amend a bill imposing taxation.

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

As this is a bill imposing taxation within the meaning of section 53 of the Constitution, any Senate amendment to the bill must be moved as a request. This is in accordance with the precedents of the Senate.

I will not speak to the request other than to say that it is an increase in the levy from $38 to $40. I spoke about that in the second reading debate earlier today, so I will leave it at that.

Senator SCHACHT (South Australia) (11.24 p.m.)—It is not for me to encourage the Democrats to speak, but I missed your speech in the second reading debate, unfortunately, Senator Ridgeway. I am sure that it was a compelling and eloquent speech, but for the record, if some maniac wants to read Hansard, could you please explain why you are putting another $2 on the tax that the government is increasing from $30 to $38? I would like to hear the reason before we decide to vote yes or no.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (11.25 p.m.)—I was trying to be mindful of time, understanding that people do want to get home. Essentially, it is about maintaining the integrity of the government’s foot-and-mouth measures and about generating about $15 million per annum, which the tourism industry wants allocated to the Australian Tourist Commission to promote Australia more extensively overseas. That is essentially what the increase in the levy is for.

Senator SCHACHT (South Australia) (11.25 p.m.)—I appreciate the explanation, brief as it was, but I am still somewhat confused about why this is necessary.

Honourable senators interjecting—

Senator SCHACHT—I am sorry, I will explain why I am somewhat confused about why the Democrats would want to increase it from $38 to $40. In the second reading debate, the opposition pointed out—and I pointed out on behalf of my colleague Mr Fitzgibbon—that the passenger movement charge already is raising in excess of $80 million more than is being spent on the cost recovery for the process. Therefore, it is not necessary to increase it further, because the government will only put it into consolidated revenue, and there is no guarantee that they will spend it on anything as good as you are suggesting, Senator Ridgeway. After the last 5½ years of this government, I would not trust them with an extra 2c, let alone an extra $2, which will run into several million dollars. Your good intentions are clear, but there is no way that the government will be compelled to spend the extra $2 on what you rightly want it to be spent on. We found out during the estimates that the government are raising an extra $80 million a year above the running costs of the passenger movement charge without the additional $8 to cover the cost of foot-and-mouth disease. As a result, because we cannot trust the government to take up your idea, we will vote against this increase, because they will just put it straight into consolidated revenue.

Request not agreed to.

Bill agreed to.

Bill reported without request; report adopted.

Third Reading

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

Senator Brown—I wish to record retrospectively my opposition to the third reading of the migration bill. I have not had time to look at it, it does concern me, and I am not going to support a bill that I am unable to give full assent to.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Your vote will be recorded, Senator Brown.

BUSINESS

Government Business

Motion (by Senator Ian Campbell) agreed to:
That intervening business be postponed till after consideration of government business order of the day No. 8, Tax Laws Amendment Bill (No. 5) 1999.

TAXATION LAWS AMENDMENT BILL (No. 5) 1999

In Committee

Consideration resumed from 28 March.

The TEMPORARY CHAIRMAN (Senator George Campbell)—The committee is considering Taxation Laws Amendment Bill (No. 5) 1999 and the amendment on sheet 2166 moved by Senator Brown. The question is that the amendment be agreed to.

Senator Brown—I wonder if the attendants could be good enough to provide me with a copy. I am sorry, this is my new amendment here—is that correct?

The TEMPORARY CHAIRMAN—As I understand it, Senator Brown, you have already moved it—No. 1 on sheet 2166.

Senator Brown—I would like a copy of that sheet, please.

The TEMPORARY CHAIRMAN—We will have to have a pause in proceedings for a couple of minutes while we try to locate a couple of running sheets.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (11.31 p.m.)—It seems, Mr Temporary Chairman, that TLAB5 came on slightly too quickly and that we need some discussions around the running sheet and some of the amendments. I think everyone who is going to do the health legislation is available; I see that the shadow spokesman has arrived and is seated. So could I suggest that we report progress. We will move to the health legislation and then come back to TLAB 5 immediately after that.

Progress reported.

BUSINESS

Government Business

Motion (by Senator Ian Campbell) agreed to:

That intervening business be postponed till after consideration of government business order of the day No. 5 (Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001).

HEALTH LEGISLATION AMENDMENT (MEDICAL PRACTITIONERS’ QUALIFICATIONS AND OTHER MEASURES) BILL 2001

Second Reading

Consideration resumed from 27 June, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator HARRADINE (Tasmania) (11.36 p.m.)—Mr Temporary Chairman, could I ask the government to give a certain undertaking. This legislation relates to pathology services, and in the context of the increasing corporatisation of medical services, including pathology, I believe it is essential that there be some sort of process of review to ensure that the public funding of pathology services does not become a prime revenue raising target for the for-profit companies. More and more, these services are being supplied by medical corporations. I believe it would be very important for the minister to outline to the committee what steps are to be taken to ensure that the public funds that are spent on pathology services cannot become a prime revenue raising target for the for-profit companies. Presumably, within the department of health, there will be some monitoring of this, and I would like to hear either now or if you could take it on notice the government’s response on that matter.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.38 p.m.)—I thank Senator Harradine for his particular interest in this area. Unfortunately, I have not had the opportunity to obtain the detailed information he would like. Certainly the government is committed to ensuring that there would be appropriate supervision and monitoring in these areas, but I would like to take the detail of his question on notice and I
will make available a detailed response to
him in the next week or so.

Senator Harradine—Thank you.

Senator FORSHAW (New South Wales)
(11.39 p.m.)—I move opposition amendment
No. 1 on sheet 2275:

1 Page 3 (after line 20), after clause 4, insert:

5 Reports on operation of Act

(1) As soon as practicable after the end of
each financial year ending on or after
30 June 2001, the Minister must cause
to be prepared a written report on the
following:

(a) the number of:
   (i) public pathology collection cen-
tres; and
   (ii) private pathology collection cen-
tres;
   in each State by statistical local ar-
areas;
(b) the number of public or private pa-
thology collection centres that have
commenced or ceased operations in
non-metropolitan areas in the pre-
ceding financial year;
(c) any action taken by the Minister in
the preceding financial year to en-
sure that access to pathology serv-
ces in non-metropolitan areas is not
reduced overall.

(2) The Minister must cause to be laid
before each House of the Parliament a
report prepared under subsection (1)
within 7 sitting days of that House after
he or she receives the report.

(3) In this section:

statistical local area means an area de-
defined in the Australian Standard Geo-
graphical Classification 1999 published
by the Australian Bureau of Statistics
(publication number 1216.0 of 1999).

This first opposition amendment tackles the
problem of a shrinking public sector and loss
of rural services by establishing a reporting
mechanism. The problem of ensuring there
are sufficient collection centres in rural areas
has been acknowledged in the past and is
reflected in the three-for-one provision that
entitles large providers to open more rural
centres. The fact is this bonus allocation has
not been utilised to the necessary extent and
the general pattern of recent mergers in the
industry has seen a dramatic reduction in the
number of centres. In the cities, this has had
beneficial effects as the industry has stabi-
lised, but in rural Australia the pendulum has
swung too far and the public system which
has provided the backbone of services is now
under real pressure. We may not just see
collection centres close; we may in fact also
see the closure of vital small laboratories in
local and regional hospitals that provide
timely and effective services.

As a first step therefore to get this prob-
lem into the light of day, the opposition is
moving this amendment to require annual
public reporting of the number of collection
centres in each local statistical zone. The
minister will be required to report on the
trends in closures of centres in non-
metropolitan areas and the action taken to
ensure that access is not reduced. The report
should include advice on the action taken by
the minister to ensure that access to pathol-
ogy services in non-metropolitan areas has
not been reduced. The object of this amend-
ment is to ensure some transparency and en-
able monitoring of the impact of the new
rules and whether there is a reduction in ac-
access to services. This amendment is an im-
portant measure to enable the public to judge
the impact of this legislation and the effec-
tiveness of the government’s rural health
policies. The government voted for this
amendment last time it was presented, and I
would hope that commonsense prevails and
they will again support it. Indeed, I hope
other senators will also support the amend-
ment.

Senator LEES (South Australia (11.41
p.m.)—We simply do not believe this
amendment is necessary. Indeed, after
checking with the Association of Pathology
Practices and the College of Pathologists, we
have been told by both organisations that
they do not believe these amendments are
necessary and that the entry of new providers
is already catered for sufficiently in the leg-
islation. Both organisations are concerned
about any further delays to this legislation. In
particular, I have some notes from David
Kindon from the AAPP. He said that the de-
lays already to get this legislation through
have meant that private pathology practices
and practices generally that have been geared up ready for it are now suffering losses, and the public sector providers which are brought into the collection centre arrangements are unable to operate legally in the community until the new scheme actually becomes operable.

Obviously, if the government want to support the amendments, they are welcome to. But if we now have an ongoing battle over these amendments and have further delays, it is actually further damaging what I think Senator Forshaw is actually trying to do, which is to advantage the public sector. So I would have to say to the Labor Party that at this time the Democrats do not believe there is any need for this, and indeed it could be quite damaging.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.43 p.m.)—As previously discussed with the opposition, data limitations in relation to the requested report and the uniqueness of pathology render the opposition amendments for reporting on the operation of the act of limited value. The government therefore does not agree to this amendment. Unlike other areas of medical servicing, pathology is an indirect service. The proximity of pathology provided to the patient is not integral to ensure quality, accessible service provision.

This legislation relates to provisions for approval of community based collection centres under the Medicare benefits arrangement. Medicare data provides a limited view of pathology activity. Funding for pathology services occurs through many streams, including Medicare, the Australian health care agreements, health program grants in rural and remote areas, Department of Veterans' Affairs funding, et cetera. The analysis of pathology servicing under the Medicare Benefits Scheme will provide information on only one part of service provision and would not provide an accurate indication of the levels of access to services in various electoral districts. Specimens for testing are collected in multiple settings, including in doctors’ surgeries, nursing homes, laboratories and hospitals and by patients. Collection centres are only one of many facilities within which specimens are collected. Businesses independently make decisions to open or close collection centres or utilise other methods of collecting specimens—that is, collection from doctors’ surgeries, nursing homes, et cetera. Routine data on the pathology is already provided by the Health Insurance Commission in its pathology notes publication. This provides an indication of the number of providers and the service outlets.

Amendment not agreed to.

Senator FORSHAW (New South Wales) (11.45 p.m.)—by leave—I move opposition amendments (2) and (3):

(2) Schedule 1, page 4 (after line 9), after item 2, insert:

2A After subsection 3GA(2)

Insert:

(2A) An Approved Placement for general practice training may be approved only in relation to a location which has been designated as an area of specific workforce shortage because it is under-provided with general practitioners.

(3) Schedule 1, page 4 (after line 19), after item 2A, insert:

2B At the end of paragraph 3GA(5)(a)

Add:

and (iii) that satisfactory supervision arrangements, which are appropriate to the skills and experience of the applicant, are in place;

This amendment to item (2) clarifies the scope of the approved placements program under section 3GA of the Health Insurance Act to make it clear that in the case of placements with general practitioners an approved placement should only be made in an area of specific work force shortage. This is actually a much wider definition than that currently applied by the government. The schemes for general practitioners that currently exist provide for unsupervised training in rural areas or late night locum services. Neither are suitable types of program, and the Phillips report recommended both should be scrapped.

Labor wants to negotiate a community term for postgraduate doctors wanting to try a 13-week stint of general practice before
deciding which registrar program to enter. The current maldistribution of doctors does not allow such a program to be entirely open slather, as some would like. Young doctors have a legitimate desire to undertake a community term at a location reasonably close to where they live. They are very unhappy with schemes that require them to relocate to a remote area, to leave their families behind and to work in an unsupervised setting. Labor will solve this problem by allowing community terms in regional cities with a shortage of terms and in areas of the capital cities such as the outer suburbs and low-income area where there is a serious shortage of doctors and GPs serving those areas are forced to work excessive overtime. This amendment makes clear that there will be some limits on community terms and that they will not detract from the number of rural placements.

The second amendment in this group, No. 3, inserts the second part of Labor’s reforms to approved placement schemes by specifically requiring the body authorising such placements to certify that satisfactory supervision arrangements are in place which are appropriate to the skills and experience of the applicant. This provides a wide degree of flexibility and allows the designated training body coordinating the placements to ensure suitable standards are maintained. Labor will work with doctor organisations to develop the detailed design of these schemes. Its proposals have been warmly welcomed. This is not surprising, as the medical review training panel and the Phillips report have been making the same points to the government for over two years now. I hope that this amendment is supported by the government and other senators, and that the government starts the process of ensuring all approved placement schemes are subject to proper supervision in time for the start of the training year in 2002.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.49 p.m.)—I note Senator Lees’s comments. Requirements for such supervision are already in place, and the government is happy to continue to examine the adequacy of supervisory arrangements in its programs. If doctors feel that they have not received adequate support and supervision, the government is concerned that this should be reported to the Department of Health and Aged Care for investigation and action to prevent any recurrence of the problem. Simply adding a supervision requirement to the legislation will not enhance reporting of problems.

Amendments not agreed to.

Senator LEES (South Australia (11.51 p.m.)—I move Democrats amendment No. 1:

Schedule 1, page 4 (after line 9), after item 2, insert:
2A At the end of subsection 3GC(2)
Add:
; and (d) to compile information in relation to each medical college on the number of people who sit, and the number of people who pass, each examination held by the medical college for people seeking:
(i) admission to advanced training; or
(ii) admission to Fellowship of the college.

2B After subsection 3GC(4)
Insert:
(4A) The report prepared under subsection (4) must include the information compiled by the Panel under paragraph (2)(d) during the year concerned.

2C After subsection 3GC(6)
(6A) In this section, medical college means:
(a) an organisation declared by the regulations to be a professional organisation in relation to a particular specialty for the purposes of paragraph 3D(1)(a); or
(b) the Royal Australian College of General Practitioners.

This amendment is a further attempt to build on the work of the Medical Training Review Panel. From speaking with some junior doctors and talking to some of those who have further information on what the colleges actually do and how they count numbers going in and out, it seems that there is a problem with the way in which information is currently being collected. This amendment will require a report on exams conducted by medical colleges, looking at those who actually qualify to get in rather than just those who are approaching the college or sitting exams to get in—somehow some of those seem to have been counted by colleges—but also looking at how many people are actually graduating and becoming fellows. It is simply seeking another level of information to give us better data on the medical work force.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.52 p.m.)—The government supports this amendment and believes that it will enhance the Medical Training Review Panel’s ability to assess medical work force and training requirements.

Amendment agreed to.

Senator LEES (South Australia (11.52 p.m.)—I move Democrats amendment No. 2:
(2) Schedule 1, page 4 (after line 9), after item 2C, insert:

2D Subsection 3GC(7)
Repeal the subsection.

This amendment removes the sunset clause on the Medical Training Review Panel. I am mystified as to why the government would ever have wanted to do this. I am not sure whether it was an oversight or whether there were some other plans. It was suggested that the government intended to reinvent it in some other area; I do not want to run that risk. Indeed, looking at the way in which all parties that have been involved in the consultation for this legislation have responded, it is well accepted—indeed, it is growing in its importance—for its collection and publication of data and in the assistance it gives us in planning the medical work force.

Senator FORSHAW (New South Wales) (11.53 p.m.)—I was going to jump to my feet on the previous amendment, but I was not quick enough. I will now indicate that, as we did with Senator Lees’s first amendment, we will be supporting the other amendments that are moved by Senator Lees on behalf of the Democrats. We had prepared a similar amendment to this one, in order to ensure the continuation of the Medical Training Review Panel—a panel that the government had wished to see abolished by virtue of the sunset clause coming into effect. By agreement, I understand, with Senator Lees and the Democrats, we did not proceed with our version of that amendment.

I might just say, while I am on my feet, saving me time later, that Senator Lees has also proposed that every two years there should be a report similar to that undertaken by Dr Ron Phillips which was tabled in the Senate in December 1999. Labor had moved a similar motion calling for such a report by August 2002, but the effect of the amendment to be moved by the Democrats is that the report will need to be completed and ta-
bled by December 2001. I just draw to the attention of the government particularly the practical difficulties that this might create, given the probable timing of the next election. We would invite the government to consult the opposition on the selection of the person to conduct this review and the terms of reference so that it is carried out in a proper manner and so that the product can be considered by the incoming minister in the new government.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (11.55 p.m.)—The government agrees to this amendment. Continuation of the Medical Training Review Panel will allow effective monitoring and reporting about medical postgraduate training opportunities to continue, and this is in the interests of students, doctors and the Australian public. I have taken note of Senator Forshaw’s request for consultation, but I am sure it will be done in the same spirit as that extended by the Labor government to the previous Liberal and National parties.

Amendment agreed to.

Senator FORSHAW (New South Wales) (11.56 p.m.)—by leave—I move opposition amendments Nos 4 and 5:

(4) Schedule 1, item 7, page 4 (lines 21 and 22), omit the item, substitute

7 Subsection 19AA(1)

Omit “1 January 2002”, substitute “1 January 2003”.

(5) Schedule 1, item 9, page 4 (line 29) to page 5 (line 1), omit the item substitute:

9 Subsection 19AA(2)

Omit “1 January 2002”, substitute “1 January 2003”.

The opposition is not persuaded that the government has dealt with this issue properly. There have not been satisfactory negotiations with the young doctors, and they remain alarmed at the prospect of the current arrangements becoming permanent without their having any influence. The young doctors rightly see the sunset clause as having been the only thing over the last few years that gave them any relevance to the government, and their attachment to its retention is a consequence of the way they have been treated. The opposition has discussed the issues at length with the young doctors, and they do not want the sunset clause ended now because they just do not trust this government—and I can understand that.

The doctors we have consulted do not want to go back to the days before 1996, and they agree that there should be a structured process for training that gives doctors in training appropriate incomes. This amendment will extend the sunset clause for a final year in order to provide the opportunity for these goals to be achieved. If Labor are elected, we have made the commitment to introduce a community term for young doctors to try general practice in a supervised setting in an area of workplace need. Critically this will include both urban and rural areas. We do not support the current situation, where only rural positions without supervision are available. I understand that the government is opposing this measure, and so I do hope that the Democrats, the Independents and other senators from minor parties will support it. Extending the sunset clause by one year means that whoever wins the next election will certainly have to have the claims of young doctors high on their agenda.

Senator LEES (South Australia (11.58 p.m.)—I am sure that Senator Forshaw is aware from my speech this morning that I have no intention of supporting this. We do not want to extend it yet another year and to put in front of young doctors the possibility that, if Labor comes in, there will be some sort of major change again. I think we need to lock in the basic principle that general practitioners need to be trained as general practitioners, and then work on some of these other issues in other ways. There is a range of opportunities for young doctors to get experience—and they are not all young these days; many of them have come in as mature age students, already having had another profession or with another qualification on their CV—which I highlighted this morning and, given the hour, I will not go through them again. I know that the AMA will not be happy with us doing this. But, from the letters that I have received, extend-
ing this another year cannot solve some of the problems that people are highlighting. We need to do it in other ways.

If I am correct about this, I find it quite extraordinary for Senator Forshaw to say that Labor is thinking of changing some of the rural practices or schemes that are now in place. What we should be doing is extending and expanding our rural opportunities for recent graduates and giving them a greater opportunity to work in rural and regional areas. But I do not believe that we can tackle some of these remaining problems by extending it by yet another year. At the end of that time, presumably the question will be asked: is it going to be extended for another year? It is time to bite the bullet now and to do it now. Senator Forshaw alluded previously to my next lot of amendments in which we are looking at giving young doctors a greater say and a greater involvement in the training process. That is the next Democrat amendment that I will speak to.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (Midnight)—For the reasons given by Senator Lees, the government does not support these amendments. Amendments not agreed to.

Friday, 29 June 2001

Senator FORSHAW (New South Wales) (12.01 a.m.)—I move opposition amendment No. 6:

(6) Schedule 1, page 6 (after line 34), after item 16, insert:

16A At the end of section 19AD
Add:

(2) The Minister must, on or before 30 August 2002, cause a further report to be laid before each House of the Parliament setting out details of the operation of sections 3GA, 3GC and 19AA since the preparation of the report required under subsection (1).

This amendment is intended to ensure that the next government goes about fixing up the mess in medical training in a thorough and consultative fashion. I have full confidence that the next government will be a Labor government and will do that. However, it is still necessary to move this amendment tonight. Drawing on the approach used previously, Labor proposes that the next minister present a further report to parliament on the three relevant sections of the Health Insurance Act, namely sections 3GA, 3GC and 19AA. Such a report would give the Senate an up-to-date overview of the training of young doctors and would report on the various matters which were recommended as needing further action in the Phillips report of 1999 and the introduction of community terms. Having the facts of the situation facing young doctors reported back to the parliament by the middle of next year will put this parliament in a position to decide whether the extended sunset clause should be lifted at that point.

Senator LEES (South Australia) (12.01 a.m.)—This amendment is similar to the one that I will be moving shortly on behalf of the Australian Democrats, but it does not go as far as we want it to go. Our amendment gives junior doctors a greater involvement in this process and gives them the opportunity, when the report is ready, to meet within three months with some members of the Medical Training Review Panel to listen to some of their concerns. Many of the junior doctors that I have met with over this process are saying that they do not feel heard. They feel that there are concerns that they are not able to get through to the Medical Training Review Panel. I think I have dealt with one of those concerns, with the previous amendment requiring the numbers admitted through the examination process and the ones that passed the final exam to be disclosed and available for discussion. The Democrat amendment is stronger in this area than the Labor amendment.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.02 a.m.)—I think there is some confusion with regard to Senator Forshaw’s election dates. He seems to be very presumptive that the date of 2001 will be a Labor victory. I would not concede that and certainly would not agree. Therefore, given that the next possible election date is really 2004, his amendment dates are
completely out of whack with the objectives that the Labor Party is seeking. The requirement for another review so soon after the previous mid-term review would not enhance understanding of the qualification requirements, given that there has been no significant change in training numbers and availability of places since 1999 other than an increase in the availability of both vocational and pre-vocational places for junior doctors. The government does not agree to this amendment.

Amendment not agreed to.

Senator LEES (South Australia (12.03 a.m.)—I move Democrats amendment No. 3:
(3) Schedule 1, page 6 (after line 34), after item 16, insert:

16A Section 19AD

Repeal the section, substitute:

19AD Reports by Minister

(1) The Minister must cause a report setting out details of the operation of sections 3GA, 3GC and 19AA to be laid before each House of the Parliament:

(a) on or before 31 December 1999; and
(b) thereafter, at the end of each 2 year period commencing on a biennial anniversary of 31 December 1999.

(2) Within 3 months after a report mentioned in paragraph (1)(b) is tabled, the Medical Training Review Panel must convene a meeting to discuss the report.

(3) The Medical Training Review Panel must invite representatives of the following to attend a meeting mentioned in subsection (2):

(a) a student or students representing those people enrolled at each university medical school in Australia; and
(b) a representative of the National Rural Health Network.

(4) The Minister must cause a record of the proceedings of a meeting mentioned in subsection (2) to be laid before each House of the Parliament within 20 sitting days after the meeting.

I have little to say other than that this amendment gives the opportunity for the report to be discussed by the new doctors. I recommend it to the Senate.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.04 a.m.)—The government is pleased to support the Democrats proposal to insert a requirement for biannual reporting and to provide a forum for discussion of the reports. This will give medical students and other organisations with interest in the medical workforce an opportunity to be heard and to express their views on future directions for medical training. I look forward to meeting a number of these students at a function on Monday, and I will be pleased to discuss that with them.

Amendment agreed to.

Senator FORSHAW (New South Wales) (12.04 a.m.)—by leave—I move opposition amendments Nos 7 and 8 on sheet 2275:

(7) Schedule 1, item 32, page 9 (after line 23), after subsection (4), insert:

(4A) Approval Principles determined by the Minister under subsection (4) must promote fair competition and the entry of new providers.

(8) Schedule 1, item 32, page 10 (after line 7), at the end of section 23DNBA, add:

(7) In this section:

new provider means a person who, or an entity that, does not have an ownership or management relationship with the holder of an existing approval for an eligible collection centre.

The opposition’s second group of amendments concerning pathology is to simply require the ministerial approval principles to promote fair competition in the entry of new providers. Our concern is that the government has given too much incentive to existing private providers. It risks creating an anticompetitive situation where a few large operators are protected from new entrants by virtue of the new system for calculating the entitlements to licence numbers for collection centres. If licences are only issued on the basis of turnover, it will be impossible for niche operators to grow where they have proven themselves to be efficient service providers.

This bill will effectively close the door on new competition in the private sector and it will stifle growth in the public sector. There
is already a large degree of concentration in the industry, and it is time to allow more competition to ensure that there is no scope for the major companies to slide away from the most cost effective patterns of operating. Under the proposed rules, a new entrant will be limited to, at most, two licences and they will then have to fight for additional licences solely on the grounds of turnover. This puts them in an impossible position as they have no network to build volume and they are competing against much larger groups for whom an extra licence can be gained by the equivalent of an extra day or two’s turnover. This problem should be overcome by rewriting the ministerial guidelines to ensure that new entrants are encouraged rather than frozen out. The overall caps can be maintained in the situation that the major players will have to work hard to maintain their market share by being cost effective and offering customer service that matches the best that new providers can come up with.

I am somewhat surprised that the government have not embraced this amendment, as one would expect them to support fair competition. I therefore hope at this point that the government are willing to be flexible or, in the event that the government are not, that the Democrats will come to the aid of smaller operators to avoid the dominance of a few large providers of pathology services creating an imbalance.

Senator LEES (South Australia (12.07 a.m.)—I found in my time as Democrats health spokesperson that the pathologists were probably the most open and outspoken as far as containing costs is concerned. It is not something the medical profession is well known for, but the pathologists have to be congratulated for the efforts that they have made to work with the government putting in place caps on expenditure and looking at actual reductions in fees to meet the agreements that they have got to contain costs. I think we should listen to the various organisations that represent them in their concern about these amendments. I have had no-one coming to lobby me about this. Indeed, the public sector and the private sector both seem to be not just happy with this legislation but quite desperate to get it through. As I said earlier, there are some real problems in the public sector. They are actually concerned about operating illegally unless we get this legislation through and get it through quickly. I will read again what was said by the AAPP: public sector providers which are brought into the collection centre arrangements are unable to operate legally in the community until the new scheme becomes a reality. So I am not quite sure where Senator Forshaw has got some of his information from, but I really cannot support these amendments.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (12.08 a.m.)—Senator Forshaw is quite right; the government does not embrace these amendments and does not agree to them. The government is committed to ensuring that the principles determined by the minister promote fair competition and the entry of new providers.

Amendments not agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

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

BUSINESS

Government Business

Motion (by Senator Ian Campbell) agreed to:

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

No. 12 Taxation Laws Amendment Bill (No. 2) 2001,
No. 8 Taxation Laws Amendment Bill (No. 5) 1999 – in committee,
No. 7 Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001,
No. 2 Child Support Legislation Amendment Bill (No. 2) 2000 – consideration in committee of the whole of message no. 692 from the House of Representatives,

Order of the day relating to Australia New Zealand Food Authority Amendment Bill 2001 – consideration of message no. 746 from the House of Representatives in committee of the whole,

TAXATION LAWS AMENDMENT BILL (No. 2) 2001

Second Reading

Consideration resumed from 26 June, on motion by Senator Ian Macdonald:

That this bill be now read a second time.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator SHERRY (Tasmania) (12.12 a.m.)—I indicate that the amendment I will now move was originally circulated in my name on sheet 2134 and was to amend the Taxation Laws Amendment Bill (No. 5) 1999. I move:

Page 32 (after line 24), at the end of the bill, add:

Income Tax Assessment Act 1997

1 At the end of Division 51

Add:

51-65 Consideration under RFA Private Forest Reserve Program

Any financial consideration paid under the Regional Forest Agreements Private Forest Reserve Program to the owner of land for registering a perpetual conservation covenant against the title to that land is exempt from income tax.

2 Section 116-25 (cell at table item D1, fourth column)

Omit “None”, substitute “See section 116-82”.

3 After section 116-80

Insert:

116-82 Special rule for consideration received under RFA Private Forest Reserve Program

If you, as a landowner, receive financial consideration under the Regional Forest Agreements Private Forest Reserve Program for registering a perpetual conservation covenant against your land title, the consideration is not capital proceeds for the purposes of this Part.

4 Application

The amendments made by items 3A, 3B and 3C apply to assessments for the 2000-2001 income year and later income years.

We have had extensive debate in the Senate about this matter on a number of previous occasions. The amendment goes to the issue of the Regional Forest Agreements Private Forest Reserve Program. It will allow that a private owner of land who registers a perpetual conservation covenant will be exempt from a range of tax provisions, including capital gains tax proceedings and income tax for the purposes of that conservation covenant. It is not my intention to debate this at length because, as I mentioned, it has been debated on at least two previous occasions in the Senate.

In respect of the Regional Forest Agreements Private Forest Reserve Program—and I will use my home state of Tasmania as an example because it will have an impact in that state—there is provision for farmers in the main, and perhaps other land holders who are not part of the farming community, to put aside some areas or all areas of forest in perpetuity for conservation purposes. We believe this is a sound approach and it will encourage those particular farmers to place those areas in reserve.

It has been raised, certainly to my knowledge by the Tasmanian state government—the current government in Tasmania is a Labor government, and I am aware that the previous Liberal government holds the same view—that, where a person does set aside land, they should not be disadvantaged in terms of the current tax provisions. The current Labor state government in Tasmania, through our Premier, Mr Bacon, and the Minister for Primary Industry, Mr Llewellyn,
have written to the federal Labor opposition. As I have indicated on previous occasions, we support this as being very sound in principle. We have spent some time drafting this amendment. We have to be careful that tax concessions are tightly worded to deliver the intended outcome and not to provide a mechanism for what could be termed as tax minimisation or evasion. That is clearly outside the stated principles of the Private Forest Reserve Program.

While I have made reference to my home state of Tasmania, this is not a measure that is confined to Tasmania; it will obviously apply throughout Australia. However, Tasmania is a state where there are significant forestry operations and where there is significant interest in this particular proposal. Obviously, being a senator from Tasmania, I take a keen interest in these matters. So I will move Labor's amendment and ask for the support of the Senate. I would just indicate that Senator Brown has circulated a hand-written amendment. I am sure that it changes the dates. I am not absolutely sure why Senator Brown has done that, but I would ask him to indicate why the dates have been changed in his proposed amendment to our amendment, as I understand it.

Senator BROWN (Tasmania) (12.17 a.m.)—I move Greens amendment to opposition amendment (1):


The change is because your amendment does not cover the people who were given grants under this system in the month of June 1999. So, if you do not put this amendment in there, will be a small group of landowners in Tasmania who will be taxed and will not get that rebate under this system. This is a Greens amendment that has been taken over by the Labor Party and applied to the current tax bill before us, six months after I moved it. The Labor Party, which has been in a total muddle about this, should have done it last December and is catching up now. I am indebted to Senator Sherry for taking over my amendment. Copying is the greatest form of flattery, and I am flattered. But it has not helped the landowners in Tasmania.

What we do need to understand here is that there is a pretty nasty streak in the Tasmanian Labor Party, particularly in the Bacon government. When I bought this amendment on last year, the Labor Party here rang Premier Bacon and said, 'There's a Green moving this amendment which is going to help landowners in Tasmania.' They said, 'Oh, oppose it.' So the landowners got cut out. That is how small-minded the Labor Party gets when it comes to any forestry issue in Tasmania.

I am going to be a bit big minded about this. I agree with Senator Murray: it is not so much who puts it forward but that it will be carried into effect. Land owners will get the relief from the capital gains tax threat over them that they deserve. That is good for the environment and it is good for the people of Tasmania as a whole. I suggest that Senator Sherry take up the amendment to the amendment. It will make it fair right across the board. The Regional Forest Agreement moneys to land owners who were protecting their blocks began in June 1999. If we do not make that amendment, a small group of people—including one person who got a fairly large sum of money because they were making a pretty grandiose commitment to conservation—would miss out, and that would be quite unfair.

Senator SHERRY (Tasmania) (12.21 a.m.)—Senator Brown has commented that copying is the sincerest form of flattery. I hold up our amendment sheet and yours, and I do see some differences, one of which is the operative date. In your amendment, you have the year 2000-01; you do not have 1999-2000. We have not copied your dates, so I take it that, since you moved the original amendment, you have obtained new information, which you have outlined. Could you be a bit more specific about the number of people involved and, if possible, identify the quantum of money involved?

Senator BROWN (Tasmania) (12.22 a.m.)—You should have spoken with the Bacon government and got those particulars. Let me assure you that there are a number of land owners who in June were given this money under this funding. It is some hundreds of thousands of dollars. If the amend-
ment does not go in, they will be cut out. Let me explain that, if there were not any sums of money in the year 1999-2000, this amendment will sit there; it will not make any difference.

Senator SHERRY (Tasmania) (12:22 a.m.)—I am well aware of the issues in relation to the year 2000-01. At this hour, Senator Brown, you certainly do not encourage us to support your amendment with your belligerent, misleading attitude on this particular matter, but on behalf of the Labor opposition I indicate we will support your amendment despite your not having bothered to speak to us about it prior to circulating it. Despite the rhetoric surrounding your arguments and its somewhat misleading outline, the principle is important and we will support it.

Senator BROWN (Tasmania) (12:23 a.m.)—I am totally indebted to Senator Sherry for those gracious remarks!

Senator BARTLETT (Queensland) (12:24 a.m.)—I put on the record the Democrats’ support for Senator Brown’s amendment and the substantive amendment moved by Senator Sherry, which we have supported in the past when it has been raised. As stated in the past, the Democrats believe we should look to using our tax laws more to provide incentives for land conservation. We will not force a further debate on that at this particular time, but certainly we are keen to expand more widely the use of tax laws to assist in conservation measures. This is one small way to ensure that people who are doing the right thing are not disadvantaged in that way.

Senator SHERRY (Tasmania) (12:24 a.m.)—Senator Brown, it was Oscar Wilde who said, ‘Sarcasm is the wit of a poor fool.’

Senator HARRADINE (Tasmania) (12:24 a.m.)—I just indicate that I will be supporting Senator Sherry’s substantive motion and the amendment by Senator Brown.

Senator KEMP (Victoria—Assistant Treasurer) (12:25 a.m.)—The government will not be supporting the amendment. We have had this debate a number of times in this chamber. The record stands clearly with the government’s position, and I refer to the press release that was made by the Treasurer, headed ‘Capital gains tax amendments and private conservation’, which was issued on 15 June. We felt that that was an appropriate response, and I am sorry that the action by the government has not been recognised in this chamber. I seek leave to incorporate the Treasurer’s press release on this matter.

Leave granted.

The press release read as follows—

TREASURER

NO. 044

Capital Gains Tax Amendments and Private Conservation

I am announcing amendments to the capital gains tax (CGT) rules to ensure that landowners who set aside part or all of their land for conservation in perpetuity will not be disadvantaged. The change will result in a lower tax liability for most landowners entering into perpetual conservation covenants, and a zero tax liability for those landowners who have held their land since before 20 September 1985.

Governments and environmental philanthropic organisations enter into covenants with landowners to conserve their property in perpetuity, in order to maintain its environmental value for all Australians. Previously, nearly all the consideration received for entering into such covenants was taxable. Landowners have not been able to access the pre-1985 exemption or the 12 months CGT discount.

The amendments should promote greater participation in perpetual conservation covenants and so enhance the protection of Australia’s unique and fragile native ecosystems.

Under these amendments, at the time of entering into the covenant the landowner will apportion the cost base of the property between that part subject to the covenant and the remaining property. The covenant will then be treated as a part disposal of the property. CGT will be payable on the difference between the consideration received and the cost base apportioned to the covenant. When the land is subsequently sold, any capital gain will be calculated on the difference between the sale price and the remaining cost base of the property.

The capital gain made from the covenant will attract a pre-1985 exemption, or the 12 months CGT discount for individuals, trusts and complying superannuation entities, where applicable. In addition to these benefits, small business landowners who enter into conservation covenants may be able to access the small business CGT concessions.
The change will be of immediate benefit to landowners who have negotiated covenants with the Tasmanian Private Forest Reserve Program, as well as being relevant to landowners throughout Australia.

Only those covenants entered into for a consideration, and which enhance Australia’s environmental values will be eligible for the new tax treatment. Programs offering conservation covenants would need to be accredited by the Federal Minister for the Environment. Legislation to implement the Government’s decision will be introduced into the Parliament as soon as practicable. The amendments will take effect from 15 June 2000, so as to benefit all landowners who have entered into covenants under the Tasmanian Private Forest Reserve Program.

Canberra
15 June 2001

Those who wish to pursue this issue further I urge to read the previous debates on this matter, but as the hour is late I propose just to state the government’s position.

The TEMPORARY CHAIRMAN (Senator George Campbell)—The question is that the amendment moved by Senator Brown be agreed to.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The amendment moved by Senator Sherry, which transfers an amendment originally to the Taxation Laws Amendment Bill (No. 5) 2000, will go in at page 32 after line 24 at the end of the bill, adding the words that were on the sheet that was circulated. The question is that the amendment, as amended, be agreed to.

Question resolved in the affirmative.

Senator BARTLETT (Queensland) (12.27 a.m.)—I move:

Schedule 1, item 1, page 3 (lines 6 to 17), omit the item, substitute:

1 Subsection 47(1)

(a) the person’s place of residence; or
(b) the person’s place of employment of that employee or any other place from which or at which the employee performs duties of that employment;

the benefit is an exempt benefit.

This was circulated a day or two ago. This bill as a whole, which I did not speak to in the second reading debate because of the hour and time constraints, deals with a number of essentially unrelated income tax and fringe benefits tax measures. One of the major proposals is providing an exemption from fringe benefits tax for free public transport provided to police officers between their home and their place of employment. That is a measure we support, as we do the bill as a whole. We are moving an amendment to the bill to extend the FBT concession to any public transport benefit provided by an employer. The idea behind this is obviously to encourage the use of public transport and permit employers to pay for transport for employees to and from work and not be taxed on providing that benefit.

It is a measure that would cost some money, although when you look at the savings as well that are often not factored in, such as reductions in cars on the road, road expenditure, savings in the health budget, savings in pollution and assisting us in meeting our Kyoto commitments, it comes out well balanced. FBT applying to motor cars as part of salary packages is approximately 10 per cent of the vehicle purchase price, whereas the FBT applying to public transport tickets is approximately 95 per cent of the ticket price. This policy creates significant disincentives for companies to include public transport fares in salary packages and encourages greater use of company cars for community use, which the Democrats certainly think we need to move away from. I commend the amendment as beneficial. It is again trying to use the tax system to facilitate, encourage and provide incentives for more environmentally responsible activities in the area of transport.

Senator KEMP (Victoria—Assistant Treasurer) (12.29 a.m.)—The government understands why the Democrats are moving this amendment. As the Senate is no doubt
aware, the government itself has a number of programs to address the issue of greenhouse gases and transport, such as the alternative fuels program. However, the government does not consider that an extension to the fringe benefits tax system is really the way to take this forward. It is a basic principle of the income tax and fringe benefits tax that expenses of a private nature, such as travel between home and work, are not allowable as deductions from income tax and, where provided to employees as fringe benefits, are subject to a fringe benefits tax. The fringe benefits tax exemption for free travel by police on public transport specifically recognises that police officers travelling to and from work on public transport provide a public safety benefit by acting as a deterrent to criminal and antisocial behaviour.

It also recognises that state governments effectively subsidise this public safety benefit by forgoing fair revenue from police officers travelling to and from duty. This is very different from providing a fringe benefit tax exemption to every employee travelling to and from work on public transport. The fringe benefits tax exemption for free travel by police on public transport specifically recognises that police officers travelling to and from work on public transport provide a public safety benefit by acting as a deterrent to criminal and antisocial behaviour.

Senator SHERRY (Tasmania) (12.30 a.m.)—The Labor opposition will not be supporting the amendment for the reasons that Senator Kemp outlined, and there are a couple of additional points that I will be making. This is a major change to the tax system and FBT. The minister—and I am indebted to him—has indicated the figure. We thought it would be in the hundreds of millions of dollars. Thank you, Minister, for the information that it would be $900 million to $1.2 billion.

There are two other points. The Australian Democrats—and I do criticise Senator Bartlett—gave us a couple of hours notice of this matter. It certainly did not enable us to consider this as deeply as we wanted. For example, we were not able to find an accurate figure, although we had a reasonable idea. There is one other important issue, and here I do not make a criticism of Senator Bartlett or of Senator Stott Despoja but of the other Australian Democrats. Senator Bartlett has claimed that this would be an important measure to encourage the use of public transport. It would do that at significant cost to revenue. If that is the Democrats stated principle, why did they support a GST on public transport?

One of the principal culprits over there is Senator Murray. The Democrats put a GST on public transport which has raised $300 million or $400 million. They should have thought about this as a party when they considered the GST deal that Senator Murray and Senator Lees signed up the Democrats to. Senator Bartlett’s claim that they want to encourage public transport does ring rather hollow with the Labor opposition. As I say, it is not a criticism of you, Senator Bartlett, but a criticism of your other colleagues, except Senator Stott Despoja, who is now your leader. The other issues that have been outlined are further reasons why we cannot support the amendment.

Amendment not agreed to.

Senator SHERRY (Tasmania) (12.33 a.m.)—I indicate that we are withdrawing the other amendment.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

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

TAXATION LAWS AMENDMENT BILL (No. 5) 1999

In Committee

Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Bartlett)—The committee is considering the amendment moved by Senator Brown on sheet 2166.
Senator BROWN (Tasmania) (12.34 a.m.)—I seek leave to withdraw that amendment, because it was taken up by Labor and passed in the last bill. The job is done.

Amendment—by leave—withdrawn.

Bill, as amended, agreed to.

Bill reported with amendment; report adopted.

Third Reading

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

DAIRY PRODUCE LEGISLATION AMENDMENT (SUPPLEMENTARY ASSISTANCE) BILL 2001

Consideration of House of Representatives Message

Consideration resumed from 27 June.

House of Representatives amendments—

(1) Schedule 1, item 3, page 4 (line 6), omit “2 types of SDA payment rights:”, substitute “3 types of SDA payment rights: basic market milk payment rights.”.

(2) Schedule 1, item 10, page 5 (before line 21), before paragraph (a), insert:

(a) basic market milk payment rights;

(3) Schedule 1, item 10, page 6 (line 20), omit “2 types”, substitute “3 types”.

(4) Schedule 1, item 10, page 6 (before line 22), before paragraph (a), insert:

(aa) a type called basic market milk payment rights;

(5) Schedule 1, item 10, page 6 (after line 23), at the end of clause 37D, add:

(2) It is a policy objective that, if an entity is eligible to be granted a basic market milk payment right and an additional market milk payment right, the entity is eligible to be granted the payment right with the higher face value and is not eligible to be granted the other payment right.

(6) Schedule 1, item 10, page 6 (before line 24), before clause 37E, insert:

37DA Basic market milk payment rights—eligibility etc.

Basic eligibility criteria

(1) It is a policy objective that an entity is not eligible to be granted a basic market milk payment right unless:

(a) the entity has been granted a payment right under the DSAP scheme in respect of a dairy farm enterprise (the qualifying enterprise);

(b) the entity held an interest (of a kind referred to in the SDA scheme) in that enterprise, or in any other dairy farm enterprise, at a time referred to in the SDA scheme; and

(c) the number (the market milk number) worked out in accordance with the following formula is at least 25.1 (rounding to 1 decimal place and rounding up if the second decimal place is 5 or more):

\[
\text{Total number of litres of market milk delivered by the qualifying enterprise in the 1998-1999 financial year} \times 100
\]

\[
\frac{\text{Total number of litres of market milk delivered by that enterprise in that year} + \text{Total number of litres of manufacturing milk delivered by that enterprise in that year}}{100}
\]

Note: See also subclause (4) for how those delivery numbers are worked out.
**Calculation of face value**

(2) It is a policy objective that the face value of an entity's basic market milk payment right is to be a share (worked out in accordance with the SDA scheme) of the overall market milk amount for the qualifying enterprise.

**Interpretation**

(3) For the purposes of this clause, the overall market milk amount for the qualifying enterprise is:

(a) if the market milk number is at least 25.1 and less than 30.1—$10,000; or

(b) if the market milk number is at least 30.1—$15,000.

(4) A reference in this clause to the total number of litres of market milk, or the total number of litres of manufacturing milk, delivered by the qualifying enterprise in the 1998-1999 financial year is a reference to that number as determined by the DAA to have been delivered by that enterprise in that year.

(5) This clause is subject to clause 37V (about the effect of death on eligibility etc. for the grant of payment rights).

(7) Schedule 1, item 10, (page 8), line 15, omit the heading, substitute:

37F Market milk payment rights—offsetting

(8) Schedule 1, item 10, page 8 (line 16), after "entity's", insert "basic market milk payment right or".

(9) Schedule 1, item 10, page 8 (line 29), after "entity's", insert "basic market milk payment right or".

Motion (by Senator Troeth) proposed:

That the committee does not press its request for an amendment that the House of Representatives has not made and agrees to the amendments made by the House in place of the requested amendment.

Senator FORSHAW (New South Wales) (12.37 a.m.)—If ever there was an acknowledgment by the government that its original package or scheme for the dairy industry was a failure, then this amendment that has been carried by the government in the House of Representatives is that acknowledgment. If ever there was an admission by this government that its supplementary assistance pack-

age that we are now debating was flawed and needed improvement, then it was made and demonstrated by the amendment that was moved by the government in the House of Representatives and carried yesterday.

What the government has done here is another mean and tricky exercise, and that is appropriate for this government. As I have said all along, the thing that underpins this scheme is an 11c a litre tax on retail sales of milk. When it comes to tax matters—as indeed all other matters, but particularly tax matters—this government is mean and tricky. They are not my words; they are the words of Shane Stone, federal president of the Liberal Party.

Senators will recall that a couple of days ago this Senate carried an amendment, moved by the opposition and supported by the Democrats and other minor party senators, to improve the supplementary assistance scheme for dairy farmers to ensure that more dairy farmers in serious financial difficulties would be able to access the package. We lowered the threshold of 35 per cent of income earned from market milk—that is the qualifying factor for access to this scheme—to 25 per cent. Further, we put into this scheme a floor of $15,000 as a guaranteed minimum, so that any farmer who earned 25 per cent of their income or more from market milk would be able to access this scheme and would be guaranteed at least $15,000. Just as there is a cap of $60,000 on this supplementary assistance package, we put in a floor of $15,000.

When it got to the House of Representatives after that amendment had been opposed by the government in this chamber, what happened? The government put up what it calls its compromise position. Its so-called compromise position was to say that $15,000 was what the opposition moved and the Senate agreed with as a minimum, so this government reduced it to $10,000. There was no real reason given as to why there should be a reduction from $15,000 to $10,000. In fact, the minister’s speech identified the cost that the department had worked out for the additional assistance as some $19 million. It is clear that what the government has done here
is not saving all that much on the total cost of what was involved in our amendment.

The minister, in my view, misled the House of Representatives. He repeated the assertion that was made by Senator Macdonald in this chamber that the opposition’s amendment was going to cost $60 million. We clarified that in this chamber during the debate. That was an honest misunderstanding in respect of the government’s interpretation of the intention of our amendment. We addressed that issue during the debate. The amendment was revised to make it very clear that people could access the scheme and get the minimum of $15,000 or a higher entitlement under the formula, but not both.

Having had that clarified and acknowledged by Senator Macdonald on the record, the minister, Mr Truss, gets up in the House of Representatives and continues this fallacious argument that the opposition’s amendment would cost $60 million. Then he says that we have to amend this amendment, and he does it by reducing the minimum from $15,000 to $10,000 and comes up with this figure of $19 million. I would not have thought that the difference between $10,000 and $15,000 for that group of farmers who might be eligible to be paid the minimum because their formula does not give them that amount would cost a total of $41 million. But, according to this minister, it did.

The minister knew he was misleading the chamber, because it is on the record that we clarified that. But that is not the only thing that this minister misled the House of Representatives about. He asserted, once again, that this package was coming out of the goodness of the heart of the government and that it had been developed by the government, that it had been funded by the government, that this was terrific and that the opposition were really about trying to undermine the scheme. But by accepting our amendment, even though the government has qualified it, the government has acknowledged that our amendment was necessary to ensure that farmers who desperately needed this assistance would actually get an entitlement to it, and that will now happen.

The unfortunate thing, however, is that this government, in its trickiness, has played with the figures and has said, ‘Oh well, if the opposition, the Democrats and the other parties in the Senate say that you should get a minimum of $15,000, this government says that you are going to get a minimum of $10,000.’ Frankly, you have to start asking what really drives the policy decisions of this government when it makes that sort of a change to what was a very appropriate amendment moved by this Senate.

I particularly want to point out that this minister once again has put this parliament in a position where it is now a quarter to one on Friday morning and if this legislation is not passed then the money will not be able to be paid to the dairy farmers. It is an affront to this parliament for such an important item for such an important industry that this parliament is put in this position. What did the minister say in his concluding remarks yesterday in the debate in the House of Representatives? He said:

Frankly, if it is not passed by the Senate in this form tomorrow, the money simply will not be paid to dairy farmers.

Once again, the minister is threatening the parliament and threatening the Senate by saying that, unless we agree to the meanness and the trickiness of this government and agree to reduce the amount that we guaranteed in our amendment from $15,000 to $10,000, dairy farmers are not going to get a cent out of this government. That is just disgraceful. I have to say that the opposition are going to reluctantly support this amendment because we are not going to stand by and watch dairy farmers hung out to dry again by this government and allow them to become the innocent victims of the games being played by the minister for agriculture and of his mismanagement of this scheme.

I want to clarify a couple of other issues. During question time yesterday, the minister sought to attack me. He had a bit of a shot at me by saying that I had made an incorrect statement when I referred to a meatworks that had received Dairy RAP funding as being in his electorate when it was actually in the electorate of Mr Somlyay. Honourable senators will recall that I corrected that on the record as soon as I became aware of it. I felt that that was the necessary thing to do.
What is the government and the minister on about when the subject of a question in question time is to try to run some line on the basis that I might have made that slight error?

What I can say, which is true and which I will put on the record, is that this minister has had huge amounts of money paid to enterprises and other ventures in his electorate under a number of schemes, including Dairy RAP and Regional Solutions. Under round 1 of Dairy RAP, according to the figures that I have been supplied with by the department—and it was not easy to get these details originally, as Senator Woodley will recall, at estimates—65 per cent of the money in Queensland paid under Dairy RAP went to the minister’s own electorate. I understand that he has an electorate that has a high dairy community. We have supported Dairy RAP, contrary to what the minister tried to assert—in fact, Dairy RAP came about because of our urgings—but it has become the plaything of this minister, as we saw with money being given to polocrosse centres and wine appreciation courses. Yet, as my colleague the member for McMillan, Mr Zahra, pointed out in the House yesterday, when his electorate put forward an excellent proposal for funding under Dairy RAP, what did they get? They got nothing—not a cent—out of this government, but Mr Truss has made sure that his electorate has done well.

We know that almost a third of the funds in the Regional Solutions scheme—$4 million out of $12.6 million—has gone to Mr Truss’s electorate. You start to wonder why this has happened. Well, obviously he is concerned about his political future. My colleague Senator Hogg referred to the motto in Monto. Monto is a dairy community in Mr Truss’s electorate. I recall when I visited there, and Senator Hogg referred to this, that I saw the motto of the shire council in Monto is: ‘In abundance prepare for scarcity.’ It is a good motto for that area because, in the past in Monto, they have had abundance but, unfortunately because of this minister’s neglect of his electorate, they are now suffering scarcity. We certainly support the Dairy RAP scheme, which of course is also a part of this legislation, but we will continue to point out areas where we believe there has been pork-barrelling or milk-barrelling, or whatever people want to call it, which is simply to try to prop up the political future of Mr Truss and other members of the government.

I do not want to hold up the Senate any longer, but I believe it is important to put on the record our absolute disgust at the government’s approach to this issue. It has delayed bringing this legislation in, it dropped it in the Senate only in the last couple of weeks and the committee was forced, once again, to hold in a hurry public hearings to allow people in the industry to make their representations. We have cooperated at every step of the way to get this legislation through the parliament, and we passed an amendment that the government itself recognised needed to be passed. But what did it do? It got back to the House, tinkered with the figures and reduced the minimum payment from $15,000 to $10,000.

Senator Troeth—You could have passed this on Tuesday.

Senator FORSHAW—The parliamentary secretary at the table says that we could have passed this. I recall from reading the Hansard that Mr Truss said that the government’s proposal was put to the opposition and to the Senate during proceedings in the Senate. It was not. What discussions may have occurred between advisers to the government and advisers to the opposition and minor parties is one thing, but there was never any proposition put by this government during the debate—and you can check the Hansard—that it would be prepared to accept the opposition’s amendment on the basis that there might have been some change to the minimum guarantee. That was never put. In fact, the minister, Senator Ian Macdonald, stood up at the end of the debate and said that the government did not accept the amendment in any event. So, once again, Mr Truss has misled the House of Representatives as to what actually happened in the Senate.

I will leave my remarks there. We will support this amendment and the legislation, but we do so because we have the interests of the dairy farmers at heart. We are not going to see them become the innocent victims of
the meanness and the trickiness of this government. The dairy farmers will know what has happened in respect of this legislation, and they will get the opportunity to pass judgment on this government in a few months time.

Senator WOODLEY (Queensland) (12.51 a.m.)—I rise to speak in this debate, and perhaps I should begin by saying that the Democrats will support this government amendment, but I would echo some of the words of Senator Forshaw: I really do not understand why we have played around with the figures before us. Really, the government accepted the rationale for the amendment moved here. I think senators will remember that, in fact, there were three amendments: one from the Labor Party, one from the Democrats and one from Senator Harris for One Nation. There was a compromise. We worked together to get a compromise amendment up. It is a shame that the government did not enter into that debate at that point and actually put its compromise. We could probably have expedited the whole debate if that had been so.

I point out that, in the minister’s second reading speech, the government indicated that this new payment would provide benefits to about 892 additional farm enterprises. The parliamentary secretary might comment on whether that is 892 on top of the 300 to 400 we were told about the last time we had this supplementary assistance bill before us, or whether that includes the original 300 to 400. In any case, whichever way you look at the figures, this is at least a doubling of the number who will be assisted, and I am pleased about that. I am pleased that the government has taken on board what the Senate told it.

The government amendment does not quite mirror the amendment that was passed here but it mirrors it fairly closely, apart from the money. So the Democrats accept that the government has at least come some of the way towards acknowledging that we were right. The only regret I have, of course, is that the other amendments that Senator Harris and I moved, which would have helped other farmers who are in desperate need, were not accepted by the Senate. I believe they were also totally valid. They were based on the evidence we heard at the Senate committee hearings and, in fact, were acknowledged in the Senate committee’s report. But the Senate did not accept those other amendments. That is a terrible shame, because I expect there is going to be some fairly disappointed people out there. Nevertheless, we have come part of the way to solving the problem.

The minister really needs to be careful about what he says—and not only what he says about Senator Forshaw. He was reported in the media as having said that if we do not accept his amendment, there will be a blow-out in the budget. That is just not accurate. The budget is not involved in this issue at all. The revenue is raised through the 11c a litre levy on retail sales of milk. We could argue about who actually pays it. Farmers have had a drop in their income of more than 11c a litre, particularly on market milk, so in a sense they are paying. This bill, as did the previous bill, simply refunds the money that has been taken from farmers. There was no threat of a blow-out in the budget because of what the Senate did. The minister really needs to be careful about what he says in the House of Representatives and in the media.

As I have said, the Democrats will support the amendment. I checked with the QDO and the South Australian dairy farmers who gave evidence to our Senate committee, as well as with some farmers in Queensland. They are so desperate they said, ‘We will accept the drop that this government compromise amendment represents, because we desperately need the money.’ In a sense, they were held over the blowtorch and were prepared to accept it as long as the money began to flow. Certainly, I am not about to be blamed for depriving desperate struggling farmers from receiving some more assistance. With those few words, I indicate again that the Democrats will support this compromise amendment moved by the government in the House of Representatives and now here in the Senate.

Senator HARRIS (Queensland) (12.57 a.m.)—Pauline Hanson’s One Nation will support the government’s bill, but the amendments that the government have
agreed to do not address the lessors’ situation. The government have indicated that their proposal is costed at approximately $19 million and that it will take two months of levy to cover it. If we use that equation and the government’s assessment of up to $60 million for Labor’s original proposal, all that was required was to extend the period for six months. No Australian would object to paying 11c a litre extra for their milk to assist those dairy farmers by way of what was Labor’s original amendment. There does not appear to be any elaboration on any of the difficulties that may continue to arise with sharefarmers, lessors and lessees. Is 21 May 2001 set down as a criterion? In other words, does a person have to be operating their dairy on that date to be eligible for this supplementary assistance package?

If that is the case, how does the government propose to assist those lessors, where the lessee has walked off the property—taken the package and the stock—and they do not have a dairy to be eligible for this additional supplement? I would really appreciate a response from the minister on that. The figures that I have to hand indicate that there will be approximately 892 farmers who will gain a benefit from this additional package. As Senator Woodley has clearly indicated, the figures we have show that more than 1,000 farmers missed out in the first assessment, so there are still a substantial number of farmers who will not be assisted. Although the government’s proposed additional funding is appreciated by those in the industry, it does not solve the problem; it is merely a stopgap measure. Sadly, the price that is being paid to producers is still going down.

Senator Forshaw raised an interesting situation in Minister Truss’s own electorate, which had previously supplied a substantial amount of dairy products into Brisbane. We now have the ridiculous situation where, because of the shortages in the south-east corner, they are now trucking milk on a weekly basis from Mareeba to Brisbane. That is more than 1,800 kilometres. The government did not anticipate that some of the largest producers would take the package and opt out, and that is what has caused the shortages of dairy products in these areas. For the industry to survive, and to enable the farmers to have some negotiating leverage back into their industry, there is only one way to resolve this issue: to re-regulate the industry.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (1.03 a.m.)—I thank honourable senators for their comments. Earlier this week, the Senate requested the House to consider an amendment to the Dairy Produce Legislation Amendment (Supplementary Assistance) Bill 2001 to provide for a flat minimum payment of $15,000 to farmers whose market milk deliveries are more than 25 per cent under the DSAP scheme. The proponents in the Senate, the ALP, estimated the cost of the minimum payment under this amendment to be within the range of $10 million to $15 million. Due to what the government understands was an unintended drafting error, the cost of the implementation of that change was likely to be closer to $60 million. The change was therefore rejected by the government. I understand from the advisers that we were told not to put our present compromise amendment because you, Senator Forshaw, would not accept it. If you were too proud at that stage to change your amendment, that is why we are here at 1.05 a.m. debating this particular amendment. We could have passed this on Tuesday, but the delay in the legislation has been caused by what happened during the debate in the Senate earlier this week.

The government has indicated that it is prepared to consider a compromise amendment which reflects the intent of the opposition amendment. It also increases the coverage of the additional market milk payments but it does so in a much more targeted way and retains a sharp and measured focus on providing assistance to the most vulnerable dairy farmers. The government’s amendment would lower the eligibility threshold by 10 percentage points from 35.1 to 25.1 per cent market milk dependency and would provide a stepped minimum payment of $10,000 or $15,000, depending on the level of market milk deliveries.

In effect, the government’s new basic market milk payment right sets a floor in the market milk payment for those enterprises
which have a market milk dependency of more than 25 per cent. Enterprises with a market milk dependency of more than 25 per cent and less than 30.1 per cent would be eligible for a minimum enterprise entitlement of $10,000, and from 30.1 per cent upwards the entitlement would increase to $15,000. Once market milk dependency reaches more than 35 per cent, the enterprise would then be entitled to the additional market milk payment currently provided for in the bill.

As senators are aware, the bill already provides for additional payments to be made based on a sliding scale from 0.12c a litre, for market milk deliveries of 35.1 per cent or more, up to 12c a litre at 45 per cent and above. It is important to note that an entity will be eligible for the larger of the basic payment or the additional market milk payment. This means that, if an enterprise meets the eligibility criteria for both the minimum basic market milk entitlement of $15,000 and an additional market milk entitlement of $20,000, the enterprise would be entitled to the larger of the two sums, which is in fact $20,000. This entitlement would be shared amongst the entities in accordance with their sharing of the entitlements under the original package, provided they were still involved in a dairy farm enterprise on 21 May 2001.

Senator Harris, for your benefit I would just like to say that the point you raised about the lessors will still be up to the Dairy Adjustment Authority to decide and would depend on such questions as whether they were actively seeking a lessee, et cetera. But the date of 21 May 2001, which you asked about, still applies.

As with the additional market milk payment, farmers will have the choice of taking the basic market milk payment as a lump sum or as a quarterly payment over eight years. This new payment is expected to provide benefit to about 892 additional farm enterprises, with some 569 being in South Australia, 129 in New South Wales, 134 in Queensland and 60 in Western Australia. The proposal is estimated to cost an extra $19 million and will require an extension of the 11c levy for about two months.

Senator Woodley, with regard to your question about the additional numbers, we are not aware of the 300-plus figure that you mentioned. The minister actually referred in his remarks to the increase in the number of enterprises picked up by the additional—either $10,000 or $15,000—minimum payments over the original Commonwealth proposal.

I believe that the government has moved promptly to address the concerns of vulnerable dairy farmers and their communities in light of the request it has received from the industry and as revealed by the ABARE report. If there is any disgrace in these whole proceedings, it is the fact that Labor state governments, by and large, have failed to help farmers; it is the federal government which has stepped in to help. Indeed, the alternative dairy plan which was being canvassed by Queensland Labor earlier this year wanted to remove part of the Dairy Regional Assistance Program, and indeed dairy farmers would be a great deal worse off under any of the ALP policies than under this proposal by the government.

Payments under the Supplementary Dairy Assistance Scheme, including the basic market milk payment, will be largely based on DSAP entitlements and information already available to the Dairy Adjustment Authority. Notification of the additional market milk and basic market milk entitlements will be made shortly after passage of this bill, and payments can be made promptly on completion of acceptance processes. As this is the last day of the current winter sittings, the government wishes to stress the importance of the passage of the legislation before parliament rises. Farmers are in genuine need, and it is imperative that they receive this additional assistance as soon as possible rather than face a delay of two months or more, should the government’s compromise proposal not be accepted today.

Senator FORSHAW (New South Wales) (1.10 a.m.)—I will not delay the debate very long. I just have to rise to speak again. Senator Troeth, the parliamentary secretary, has just repeated the false and misleading statement that the Labor Party rejected the government’s compromise proposal in the Senate. Referring to his compromise amendment, which has now been passed in
the House of Representatives, Minister Truss said yesterday:

This alternative was offered in the Senate but rejected by the Labor Party at the time. The issue could have been resolved in the Senate last night but that was not what happened.

That is not true. What happened is this: the Labor Party’s amendment was moved and carried very early in the debate. I am sure Senator Harris and Senator Woodley will recall that it was one of the first amendments carried. Subsequently, approaches were made by the government advisers to the opposition advisers with respect to the wording of the amendment. I would have thought that what goes on in negotiations between the government advisers and the advisers of the opposition or any other party stays there. At no stage in the course of the debate did Minister Macdonald ever indicate that the government had an alternative proposition. Bear in mind that the amendment had already been carried, and it was some time later that approaches were made through the advisers. I understand no approaches were ever made to Senator Woodley or to Senator Harris about any compromise amendment. People from the government’s side were still trying to do calculations as to the cost. I am saying again—and I want it recorded—that the minister misled the Senate with her statements, just as the minister misled the House of Representatives yesterday as to what occurred. I invite the parliamentary secretary to read the Hansard to see what took place.

Question resolved in the affirmative.

Resolution reported; report adopted.

Third Reading

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

CHILD SUPPORT LEGISLATION AMENDMENT BILL (No. 2) 2000

Consideration of House of Representatives Message

Consideration resumed from 5 April.

House of Representatives amendments—

(1) Clause 2, page 1 (after line 18), after subclause (1), insert:

(1A) Part 1 of Schedule 1 and items 22, 23, 24, 25 and 26 of Part 2 of Schedule 1 commence on whichever of the following days applies:

(a) if this Act receives the Royal Assent on or before 1 July 2002—on 1 July 2002;

(b) otherwise—on a day or days to be fixed by Proclamation.

(1B) Items 18, 19, 20 and 21 of Part 2 of Schedule 1 commence on whichever of the following days applies:

(a) if this Act receives the Royal Assent on or before 1 December 2001—on 1 December 2001;

(b) otherwise—on a day or days to be fixed by Proclamation.

(2) Clause 2, page 1 (line 19), omit “Schedules 1 and 4 commence”, substitute “Schedule 2 commences”.

(3) Clause 2, page 2 (lines 1 and 2), omit “1 July 2001—on 1 July 2001”, substitute “1 January 2002—on 1 January 2002”.

(4) Clause 2, page 2 (line 4), omit “Schedules 2 and 3 commence”, substitute “Schedule 4 commences”.


(6) Clause 2, page 3 (line 8), after “paragraph”, insert “(1A)(b), (1B)(b)”. 

(7) Schedule 1, page 4 (after line 4), insert:

Part 1—Lower child support percentages

(8) Schedule 1, page 15 (after line 15), at the end of the Schedule, add:

Part 2—Amendments relating to family tax benefit

A New Tax System (Family Assistance) Act 1999

18 Subsection 3(1)
(subparagraph (b)(i) of the definition of FTB child)

Omit “and 25(1)(b)”, substitute “and 25(1)(b), (1A)(b) and (1B)(b)”.

19 Paragraph 22(7)(c)

After “subsection 25(1)”, insert “, (1A) or (1B)”.

20 After subsection 25(1)

Insert:

(1A) If:
(a) the Secretary is satisfied that there has been, or will be, a pattern of care for an individual (the child) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual in accordance with subsection 22(2), (3), (4), (5) or (6); and

(b) one of those other individuals makes, or has made, a claim under Part 3 of the A New Tax System (Family Assistance) (Administration) Act 1999 for payment of family tax benefit in respect of the child for some or all of the days in that period; and

(c) the Secretary is satisfied that the child was, or will be, in the care of that last-mentioned individual for not less than 10%, but less than 30%, of that period; and

(d) that last-mentioned individual, by written declaration given to the Secretary, waives the individual’s eligibility for family tax benefit in respect of the child for some or all of the days in that period;

the child is to be taken, despite that subsection, not to be an FTB child of the last-mentioned individual on any day covered by the declaration.

(1B) If:

(a) the Secretary is satisfied that there has been, or will be, a pattern of care for an individual (the child) over a period such that, for the whole, or for parts (including different parts), of the period, the child was, or will be, an FTB child of more than one other individual in accordance with subsection 22(2), (3), (4), (5) or (6); and

(b) one of those other individuals makes, or has made, a claim under Part 3 of the A New Tax System (Family Assistance) (Administration) Act 1999 for payment of family tax benefit in respect of the child for some or all of the days in that period; and

(c) the Secretary is satisfied that, if one of those other individuals was to make a claim under Part 3 of the A New Tax System (Family Assistance) (Administration) Act 1999 for payment of family tax benefit in respect of the child for some or all of the days in that period, the Secretary would be satisfied that the child would have been, or would be, in the care of that individual for not less than 10%, but less than 30%, of that period; and

(c) that last-mentioned individual, by written declaration given to the Secretary, waives the individual’s eligibility for family tax benefit in respect of the child for some or all of the days in that period;

the child is to be taken, despite that subsection, not to be an FTB child of the last-mentioned individual on any day covered by the declaration.

(1C) If an individual has given the Secretary a written declaration under subsection (1A) or (1B), the individual may, by further notice in writing given to the Secretary, revoke the declaration with effect from a specified day, not being a day earlier than the date of the revocation.

(1D) A written declaration referred to in subsection (1A) or (1B), or a revocation of such a declaration, must be made in a form and manner required by the Secretary.

Note: The heading to section 25 is altered by omitting “10%” and substituting “30%”.

21 Subsections 25(2) and (3)

After “subsection (1)" , insert “(1A) or (1B)".

A New Tax System (Family Assistance) (Administration) Act 1999

22 Subsections 23(6) and 24(4)

Omit “(and sections 225 and 226 (which deal with tax debts)), substitute “", sections 225 and 226 (which deal with tax debts) and section 227 (which deals with child support debts)”.

23 At the end of subsection 66(2)

Add:

; and (f) section 227 (about deductions from family tax benefit to repay certain child support debts).

24 After section 226

Insert:

227 Payment of deductions to Child Support Registrar

(1) The Secretary must, in accordance with a notice given to the Secretary under subsection 72AB(3) of the Child Support (Registration and Collection) Act 1988 in relation to a person:
(a) make deductions from instalment amounts of family tax benefit that the person is entitled to be paid under section 23; or

(b) make a deduction from an amount of family tax benefit that the person is entitled to be paid under section 24; and pay amounts so deducted to the Child Support Registrar.

(2) However, the Secretary must not deduct an amount under subsection (1) in contravention of section 228.

(3) If the Secretary deducts an amount under subsection (1), then:

(a) on the day the amount is deducted, the total amount of the child support debts of the person (being debts referred to in subsection 72AB(2) of the Child Support (Registration and Collection) Act 1988) is taken to be reduced by an amount equal to the amount deducted; and

(b) on the day the amount is deducted, the person is taken to have been paid an amount of family tax benefit equal to the amount deducted.

(4) A deduction under subsection (1) may result in the family tax benefit that the person is entitled to be paid being reduced to nil.

228 Maximum deduction

(1) This section applies if a notice is given under subsection 72AB(3) of the Child Support (Registration and Collection) Act 1988 to a person that specifies:

(a) an amount to be deducted from family tax benefit that the person is entitled to be paid on a day or days specified in the notice; or

(b) a method of working out such an amount.

(2) The amount deducted on a particular day must not exceed the total amount of the child support debts of the person on that day, being debts referred to in subsection 72AB(2) of the Child Support (Registration and Collection) Act 1988.

(3) If, on a day specified in the notice, the person has at least one FTB child for whom the person is eligible for family tax benefit who is not a designated child support child of the person, the amount deducted on that day must not exceed the difference between:

(a) the amount of family tax benefit that the person is entitled to be paid on that day; and

(b) the amount of family tax benefit that the person would be entitled to be paid on that day, assuming that each designated child support child of the person was not an FTB child of the person on that day.

(4) If, on a day specified in the notice:

(a) each FTB child for whom the person is eligible for family tax benefit is a designated child support child of the person; and

(b) an income support payment or an income support supplement is payable to the person;

the amount deducted on that day must not exceed the difference between:

(c) the amount of family tax benefit that the person is entitled to be paid on that day; and

(d) the forgone amount in respect of the person's income support payment or income support supplement.

(5) For the purposes of subsection (4), the forgone amount, in respect of a person's income support payment or income support supplement, is the amount that represents the difference between:

(a) the amount of the income support payment or the income support supplement that would have been payable to the person if the person had not been entitled to be paid family tax benefit on that day; and

(b) the amount of the income support payment or the income support supplement payable to the person on that day.

(6) In this section:

designated child support child of a person has the same meaning as in section 72AB of the Child Support (Registration and Collection) Act 1988.

income support payment has the same meaning as in the Social Security Act 1991.
income support supplement has the same meaning as in Part IIIA of the Veterans’ Entitlements Act 1986.

Child Support (Registration and Collection) Act 1988

25 Subsection 4(1) (after paragraph (c) of the definition of appealable refusal decision)

Insert:

(ca) a decision under subsection 72AB(3);

26 After section 72AA

Insert:

72AB Deductions from family tax benefit

(1) This section applies to a person if:

(a) the person is entitled to be paid family tax benefit under a determination under section 16 or 17 of the Family Assistance Administration Act; and

(b) the FTB child, or at least one of the FTB children, for whom the person is eligible for family tax benefit is a designated child support child of the person.

(2) An FTB child of a person is a designated child support child of the person if:

(a) the person has a registrable maintenance liability of a kind mentioned in section 17 in respect of the child; and

(b) an amount payable under the liability is a child support debt; and

(c) the day on which the debt became due and payable under section 66 has passed, and the debt remains unpaid in whole or in part.

(3) If this section applies to a person, the Registrar may give a written notice to the Secretary directing the Secretary:

(a) to deduct from each instalment amount of family tax benefit that the person is entitled to be paid under section 23 of the Family Assistance Administration Act an amount specified, or worked out as specified, in the notice; or

(b) to deduct from an amount of family tax benefit that the person is entitled to be paid under section 24 of the Family Assistance Administration Act an amount specified, or worked out as specified, in the notice.

(4) A notice under subsection (3) must:

(a) specify the person’s name and the name of each designated child support child of the person; and

(b) set out sufficient particulars to enable the Secretary to identify the person and each designated child support child of the person; and

(c) be in accordance with section 228 of the Family Assistance Administration Act, which sets out the maximum amount that can be deducted; and

(d) specify the day or days on which deductions are to be made.

(5) In this section:


family tax benefit has the same meaning as in the Family Assistance Act.

FTB child means an FTB child in relation to family tax benefit within the meaning of the Family Assistance Act.

Motion (by Senator Troeth) proposed:

That the committee does not insist on amendments Nos 1 to 5 to which the House of Representatives has disagreed and agrees to the amendments made by the House in place of amendments Nos 1 to 4.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (1.15 a.m.)—Can I just check what the parliamentary secretary has moved?

Senator Troeth—I have just read it out.

Senator Faulkner—Right. So it was amendments Nos 1 to 4. Thank you. I have a copy of the running sheet now. Now that I have been provided with the running sheet, let me try and encapsulate in one concise but thorough contribution the view of the opposition in relation to the Child Support Legislation Amendment Bill (No. 2) 2000. In this instance, on behalf of Senator Evans, I would like to put on the record again Labor’s position on this important issue.
Labor of course believes in the need for a child support scheme. Labor introduced this scheme in 1988 and it has been an important policy. There are few non-resident parents who today question their obligation to provide material support for their children. Unfortunately, that was not always the case. The child support scheme has reinforced to parents that they have obligations to their children. The scheme is also an important hedge against child poverty. Research by the National Centre for Social and Economic Modelling concludes that the scheme lifts around 60,000 children out of poverty each year. However, there is clearly a case for reform of the child support scheme, and Labor supports reform.

The scheme is now more than 12 years old and, during that time, a great deal of change has occurred that has impacted on the scheme’s efficiency. There are also considerable concerns from both resident and non-resident parents that the scheme is not as fair as it could be. Nevertheless, it is difficult for political representatives because we are told by each side that the scheme is skewed against them. This may be the case in some areas. Changes to taxation laws, to employment patterns and to social security legislation, not to mention shifting community expectations, have all had an impact on people’s experience of the child support scheme. However, we cannot respond properly to these pressures on the scheme with ad hoc changes that simply tilt the scales marginally one way or the other or, worse still, simply take money from one side to address perceived unfairness on the other. This kind of cheeseparing always leaves the same number of problems.

The legislation contains a number of positive measures. In fact, we have, without question, supported some seven out of the original 10 measures proposed. Tonight, we will support an additional two measures. However, in the view of the opposition, this legislation has attempted to fudge the reform task that confronts us. I will give an example that relates to the proposal to limit the income cap for payers on high incomes. Labor’s opposition to this measure is about fairness and concern for lower income earners.

There are a number of ways to tackle this issue. One way, which would deliver benefits to those on lower incomes as well as high income earners, is to lift the amount of disregarded income that is not currently considered an amount of more than $10,000. This might be fairer because it takes into account those at the bottom. But you cannot do this without looking across at the financial impact on resident parents. That is the real problem with some of the measures in this bill. There is a failure to look thoroughly at the overall effect of some of the changes. No-one would expect resident parents looking for a break on child support obligation that they believe is unfair to focus only on the big picture. They just want some relief. We understand that. But for every person that will gain a dollar, there is one losing a dollar. There are plenty of resident parents with these concerns that will not get one cent from the government’s measures. It is time we took everyone’s views and circumstances into account.

In the interests of trying to move this particular committee stage debate along, I would like now to move to the measures in this bill that will benefit second families. Labor has supported these measures from the beginning. We are hopeful that they will be passed and come into force soon. These measures have been well thought out and, unlike other parts of this bill, do not simply take from one side to address perceived unfairness on the other. This kind of cheeseparing always leaves the same number of problems.

In trying to do shared care on the cheap, the government is playing God with other people’s money. The only rational way to proceed, if you want to make it fair, is to recognise that government has a role to play. The opposition’s view is that unless our request is passed we cannot support the shared
care measure to be discussed after that. This request makes shared care workable. The opposition would like to restate its support for the principle of shared care. There is nothing wrong with it. However, the government's attempt to enshrine this principle in legislation in both the social security rules and now in the child support rules has created a crude financial incentive to shared care rather than addressed the costs to parents who want to share care.

Recent research conducted by Paul Henman and Kyle Mitchell has thrown more light on this issue. Their research shows that non-resident parents do incur costs as a result of having contact with their children. What is important about the research is that they show that the costs to both separated parents sharing care are higher than the costs of share for intact families. This means that reform of child support which seeks only to shift the balance of resources between resident and non-resident families does not address the real economic pressure both sides may be under. In other words, if the combined costs of caring for children in separated families are 120 per cent of the costs they incurred when they were together, it is no good just trying to divide the original pool of resources differently. The research conducted by Henman and Mitchell should force senators to look more closely at what the opposition has proposed: the change to social security payment tapers that would have ensured that we do not have a situation of robbing Peter to pay Paul.

Whichever way the debate goes tonight, Labor is prepared to sit down with the government and other parties in the near future to settle the outstanding issues. The opposition is moving a number of requests for amendments to this bill, and I urge the Senate to support them. In the interests of time, I have tried to canvass the issues that will come before the committee in this debate. I hope it might assist the committee to make this one substantive contribution and to propose at a later stage in a more formal way— if that would please the minister, and I am sure it would—the requests for amendments that stand in the name of Senator Evans on behalf of the opposition.

Senator WOODLEY (Queensland) (1.26 a.m.)—I seek leave to incorporate a general speech on this matter.

Leave granted.

The speech read as follows—

With the marked increase in marriage dissolution and family separation in Australia over the past 25 years, the welfare of the children of that dissolution is paramount.

We recognise that for the most part children have two parents. The latest terminology of resident and non-resident parents is not a true description of parenting. It is probably better than access, or contact, but it does not reflect the reality that both parents have responsibilities and rights with regard to the parenting of their children, and the Democrats will not lose sight of the importance to children of having both separated parents involved in their upbringing. For this reason social policy debate and actual policy developments relating to issues of resident or non-resident parenthood should not be limited to in terms of financial obligations, but must encompass terms of active parenting relations.

For most children of separated parents, there is a second non-resident parent out there somewhere. Some have little or no contact with their children, most have some contact and many provide significant amounts of direct care for their children. Nor will we allow any notion of assignation of guilt relating to the reasons behind the separation of parents to impact on the rights of children to be parented, supported and nurtured. We will not support moves to make them pawns in the difficult relationships between their parents.

But in the end, the majority of the Child Support Bill is about the cost and payment of raising children in families where for whatever reason parents do not live together. It is not surprising that research by Henman/Mitchell reports that payer parents do incur additional costs as a result of having contact with their children. Indeed that research seems to be the basis for the Government wanting to move the measures before us which take from one parent and give to the other. But Henman/Mitchell, reports that the cost of caring for children by separated families is considerably greater than a pro-rata proportion of the cost of caring for children by an intact couple. Shifting the cost from one parent to the other does not address this.

It is disappointing that, despite having indicated from the start, our support for 7 of the 10 elements of the Bill, and which would have provided financial advantage for payers, this Bill has been delayed by 7 months. It is particularly unfortunate
that the Government could not have seen the wisdom of earlier separating out and passing those elements, particularly as they do not negatively impact on the payee. However this did not happen and we are here today to again consider all 10 measures of the original Bill and indeed a further two amendments.

I will now address the two amendments proposed by the Government and which deal with Family Tax Benefit. With the wisdom of hindsight, the shared care provisions of Family Tax Benefit are certainly problematic. We are about to witness the raising of hundreds of thousands of FTB debts by Centrelink simply because the change in FTB legislation with relation to shared care was not made clear to parents in that situation. Time and time again constituents contact my office to say they have been hit by a debt of FTB. Their puzzle element is clear—their caring circumstances have not changed. They were not clearly told that the goalposts of eligibility for FTB for shared care had moved significantly. It was only in a Centrelink families publication received by parents in January of this year, and after questions raised by the Democrats that the reality that shared care would mean that Centrelink would be seeking repayment of FTB since July 2000. Their degree outrage at the debt is mirrored by the difficulty and hardship they will encounter in repaying it, over many years. I am interested to hear this morning of at least one successful appeal to the Social Security Appeals Tribunal where the notion of changed circumstances was thrown out, and the debt nullified.

New Amendments

So the Australian Democrats welcome with caution the opportunity for the payee parent to receive the full entitlement to FTB. We are concerned at the leverage this could provide to some payee parents who face difficulties in negotiating their parental role with the resident parent. The notion of “guess what I can do to you” is inappropriate empowerment over parties where in reality, animosity and bad behaviours may already exist between separated parents. However the capacity for one party to waive their entitlement to Family Tax Benefit in favour of the other, provided it is done in a non-extortion like manner, allows parties to agree that the percentage of shared care does not equate to shared costs, as was found by the Henman report. Henman points out that for example, a child’s dental costs are almost exclusively met by the resident parent, notwithstanding that the child may spend between 10 and 30% of time with the non-resident parent. In supporting this amendment, I would like to think however that it will advantage those parents who elect to use it to maintain harmonious parenting.

The Australian Democrats also support the second amendment, which enables a child support debt to be recovered from a person’s entitlement to Family Tax Benefit. Child Support assessment is based on the premise that parents pay a share of their income to support their children. The legislation allows for ongoing factors which result in changes to that income, and therefore it can be generally stated that where a person has a child support debt, that they have failed to meet their obligation.

Our support of this amendment does not mean we are not concerned at its impact on payee parents. The measure before us is not punitive to the payee parent, rather it is based on the need of the child to access the assessed level of support determined. It is undesirable that a person who has failed to provide for the support of their child should benefit from Family Tax Benefit legislation while the child goes without. In an ideal world, the child would benefit from the full payment of child support, however this does not happen and in this circumstance this amendment is appropriate.

INSIST ON 3 PREVIOUS AMENDMENTS

Reduction in child support liability for shared care where the non-resident parent has contact with the child for between 10 and 30% of the time—oppose.

We do not dispute that non-resident parents have costs—indeed the 1988 report of the Child Support Formula for Australia (a report from the Child Support Consultative Group) at Chapter 11 included in the development of the formula, the access costs incurred by non-custodial parents. But this is not the way to meet the costs of the non-resident parent—by taking directly away from the resident parents whose costs have not reduced proportionately. A non-resident parent will continue to incur accommodation, educational, ongoing health and non-consumable costs notwithstanding that the children spend time with the other parent. We have said before, we will enter into discussions with the Government on how to address this—perhaps a contact allowance is the answer—but we categorically oppose the inequity proposed by this amendment which will directly disadvantage those parents who have between 70 and 90% care of their children, and whose costs have not proportionately reduced.

Reduction of the cap from $101,153 to $78,838—oppose.

There is no evidence that the present cap constitutes a disincentive to payers to work. Another
measure of the Bill, supported by the Democrats, enables Payee families to keep more income from a second job or overtime. Modelling shows that resident parents may lose up to $90 per week for one child and the effect is most likely to be on the child’s well being. This measure is poorly targeted, and there is no social justice in denying children of higher income earners the opportunity to share in the income of their parents.

Non-disclosure of supporting documents—oppose

We remain opposed to this measure. It is a denial of natural justice and contravenes basic legal principles of access and full and open disclosure. It will mask the transparency and accountability of the departure from assessment process. It is unacceptable to create a situation whereby a party is required to challenge or argue a case when they are not given access to the documentation on which the other party is relying. A person cannot respond to an application which cannot be proven on the basis of that application. It will impact adversely on a payee’s ability to obtain informed advice, and will further disadvantage a payee’s ability to ensure that the payer has made accurate representations as to their financial position. While we do not dispute the personal nature of documents, it remains that this is the case in a range of jurisdictions. I am aware that in these, parties can be compelled to sign a declaration that they will not disclose to third parties, any information gained.

Senator WOODLEY—I need to explain the amendments that I will be moving at the appropriate time. They pretty well mirror the amendments of the Labor Party, so I presume that means we can come together fairly quickly. The Australian Democrats insist on our earlier Senate amendments (1), (3), (4) and (5), which oppose three measures in the original bill. At the same time, we support the two new amendments proposed by the government. The first of the previous amendments upon which we insist is reduction in child support liability for shared care where the non-resident parent has contact with the child for between 10 and 30 per cent of the time. In other words, we will be insisting on our original opposition to that issue. We do not dispute that non-resident parents have costs. Indeed, the 1988 report of the child support formula for Australia, a report from the Child Support Consultative Group, at chapter 11 included the access costs incurred by non-custodial parents in the development of the formula. But this is not the way to meet the costs of the non-resident parent—by taking directly away from the resident parent whose costs have not reduced proportionately. A non-resident parent will continue to incur accommodation, educational, ongoing health and non-consumable costs notwithstanding that the child spend time with the other parent. We have said before we will enter into discussions with the government and other senators on how to address this. Perhaps a contact allowance is the answer, but we categorically oppose the inequity proposed by this amendment, which will directly disadvantage those parents who have between 70 and 90 per cent care of their children and whose costs have not proportionately reduced. We continue to oppose the reduction of the cap, from $101,153 to $78,838, for the reason that there is no evidence that the present cap constitutes a disincentive to payers to work.

Another measure of the bill supported by the Democrats enables payee families to keep more income from a second job or overtime. Modelling shows that resident parents may lose up to $90 per week for one child, and the effect is most likely to be on the child’s well being. This measure is poorly targeted, and there is no social justice in denying children of high income earners the opportunity to share in the income of their parents.

The third issue is the non-disclosure of supporting documents. We continue to oppose this measure. It is a denial of natural justice and contravenes basic legal principles of access and full and open disclosure. It will mark the departure from the transparency and accountability of the assessment process. It is unacceptable to create a situation whereby a party is required to challenge or argue a case when they are not given access to the documentation on which the other party is relying. A person cannot respond to an application which cannot be proven on the basis of that application. It will impact adversely on a payee’s ability to obtain informed advice and will further disadvantage a payee’s ability to ensure that the payer has made accurate representations as to their financial position. While we do not dispute the
personal nature of documents, it remains that this is the case in a range of jurisdictions. In these, parties can be compelled to sign a declaration that they will not disclose to third parties any information gained.

We support two new government amendments. The first is to waive family tax benefit in favour of the other parent. The Democrats welcome, with caution, the opportunity for the payee parent to receive the full entitlement to family tax benefit. We are concerned at the leverage this could provide to some payee parents who face difficulties in negotiating their parental role with the resident parent. The notion of ‘guess what I can do for you’ is inappropriate empowerment over parties where in reality animosity and bad behaviour may already exist between separated parents. However, the capacity for one party to waive their entitlement to family tax benefit in favour of the other, provided it is done in a non-extortionlike manner, allows parties to agree that the percentage of shared care does not equate to shared costs, as was found by the Henman report. I might add that Paul Henman is a personal friend of mine. He points out that, for example, a child’s dental costs are almost exclusively met by the resident parent notwithstanding that the child may spend between 10 and 30 per cent of their time with the non-resident parent. In supporting this amendment I would like to think that it would, however, advantage those parents who elect to use it to maintain harmonious parenting.

Finally, we agree to the beneficial measure to recover child support debt from the payee’s family tax benefit. We support this second amendment moved by the government. It enables a child support debt to be recovered from the payee’s entitlement to family tax benefit. Child support assessment is based on the premise that parents pay a share of their income to support their children. The legislation allows for ongoing factors which result in changes to that income and therefore it can be generally stated that where a person has a child support debt they have failed to meet their obligation. Our support for this amendment does not, however, mean we are not concerned at its impact on payee parents. The measure before us is not punitive to the payee parent. Rather, it is based on the need of the child to access the assessed level of support determined. It is undesirable that a person who has failed to provide for the support of their child should benefit from family tax benefit legislation while the child goes without. In an ideal world the child would benefit from the full payment of child support. However, this does not happen, and in this circumstance, this amendment is appropriate.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (1.33 a.m.)—To clarify for the benefit of the record, we will not be agreeing to the opposition’s further request that they either have made or are going to make.

Senator HARRIS (Queensland) (1.33 a.m.)—I rise to make some comments on the Child Support Legislation Amendment Bill (No. 2) 2000. It is pleasing to see that this bill does take into account the impact and the difficulties felt by second families. This is the first of what I hope will be many steps to right a lot of the wrongs in relation to the child support process.

It has been suggested that one section of the bill that recognises the costs of the custodial parent who has the children from 10 per cent up to 30 per cent of the time is merely taking from the other parent. I strongly disagree with that. I believe that if the non-custodial, or payer, parent has the custody of the children for between 10 per cent and 30 per cent of the year then that should be recognised. It is a difference of between 30 nights per year and 100 nights per year. At present, if the bill is not amended, there is no consideration for a parent who has the children in his or her custody for 70 nights per year, and I believe there should be. I would like to see the child support process improved to the point where the payer, or non custodial, parent had some form of input into how the payments were used. That could be by agreement, preferably, and I believe that it would remove from the process a lot of the dissatisfaction if the payer parent had some form of input.
To emphasise the point, I will give as an example the situation with one paying parent that I know whose children’s ages range between 18 and 20 years. That parent would like to make those payments directly to the children. However, the custodial, or the receiving, parent will not in any way consent to that and maintains that the payment for these adults—because at this stage they are not children—must go through the custodial parent. If those issues were addressed within the child support process, it would move a long way towards removing some of the problems with the act in its present form. I commend the government for moving in the right direction and indicate that Pauline Hanson’s One Nation will support the government in these requests.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that the committee does not insist on Senate amendment No. 1.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that the committee does not insist on Senate amendment No. 2.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—The question is that the committee does not insist on Senate amendment No. 3.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that the committee does not insist on Senate amendment No. 4.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that the committee does not insist on Senate amendment No. 5.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—The question is that the committee agrees to House of Representatives amendment No. 6.

Amendment (by Senator Faulkner) agreed to:

Omit Schedule 1, page 15 (after line 15), at the end of the Schedule, add:

Part 2—Amendments relating to family tax benefit

substitute:

Page 15 (after line 15), after Schedule 1, insert:

Schedule 1A—Amendments relating to family tax benefit

The TEMPORARY CHAIRMAN—The question is that the committee agrees to
House of Representatives amendment No. 8, as amended.

Question resolved in the affirmative.

The TEMPORARY CHAIRMAN—Senator Faulkner, you have a consequential amendment.

Amendment (by Senator Faulkner) agreed to:
Clause 2, page 2 (lines 4 to 8), omit subclause (3).

The TEMPORARY CHAIRMAN—Senator Faulkner, do you wish to move your request on sheet 2269?

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.42 a.m.)—Mr Temporary Chairman, I think I have indicated to the committee the position of the opposition in relation to this matter. I do not intend to move the request for amendment, given that the minister did make the government’s view clear, which was useful from the point of view of facilitating the committee debate. Obviously, in relation to the Senate amendments and House amendments we have dealt with, the opposition’s view was governed by the government’s attitude to the opposition’s further request for amendment. Given the form of the running sheet, it did assist the committee that the minister made clear the government’s position in this regard. Clearly, there is no point pressing that issue and it will not be pressed.

Resolution reported; report adopted.

AUSTRALIA NEW ZEALAND FOOD AUTHORITY AMENDMENT BILL 2001
Consideration of House of Representatives Message
Consideration resumed.

House of Representatives amendments—

(1) Clause 2, page 1 (line 21), omit “Part 3”, substitute “Parts 3 and 4”.

[Clause 2—matters included in standards]

(2) Clause 2, page 2 (line 16), after “Schedule 1;”, insert “(other than item 120A)”.

[Clause 2—technical correction]

(3) Schedule 1, item 36, page 8 (line 8), omit “principles”, substitute “guidelines”.

[Section 10—policy guidelines]

(4) Schedule 1, item 37, page 8 (line 12), omit “principles”, substitute “guidelines”.

[Section 10—policy guidelines]

(5) Schedule 1, item 37, page 8 (line 14), omit “principles”, substitute “guidelines”.

[Section 10—policy guidelines]

(6) Schedule 1, item 37, page 8 (after line 14), after subsection (3), insert:

(3A) Policy guidelines formulated by the Council for the purposes of paragraph (2)(e) must not be inconsistent with the objectives set out in subsection (1).

[Section 10—policy guidelines]

(7) Schedule 1, item 37A, page 9 (lines 15 to 24), omit the item.

[Section 10AA—policy guidelines]

(8) Schedule 1, item 81, page 22 (line 7), before “amend”, insert “by written instrument.”.

[Section 23—decision of Council]

(9) Schedule 1, item 81, page 22 (line 13), after “must”, insert “inform the Authority that the Council has amended the draft, and”.

[Section 23—decision of Council]

(10) Schedule 1, item 118, page 38 (after line 8), after “Council”, insert “for the purposes of this paragraph”.

[Section 40—Board]

(11) Schedule 1, item 118, page 38 (after line 8), after paragraph (c), insert:

(1A) one member nominated by the New Zealand lead Minister on the Coun-

cil for the purposes of this para-

[Section 40—Board]

(12) Schedule 1, item 118, page 38 (line 12), after paragraph “4”, substitute “3”.

[Section 40—Board]

(13) Schedule 1, item 118, page 38 (lines 12 and 13), omit “scientific and public health or-

[Section 40—Board]

(14) Schedule 1, item 118, page 38 (lines 14 and 15), omit “food industry organisations or public bodies”; substitute “organisations, or public bodies, established for purposes relating to science or public health”.

[Section 40—Board]

(15) Schedule 1, item 119, page 38 (before line 18), before subsection (1B), insert:

(1A) A member mentioned in paragraph (1)(a), (c), (ca), (d), (e), (f) or (g) is to be appointed by the Minister.
(16) Schedule 1, item 119, page 38 (line 22), after “(1)(c)”, insert “or (ca)”.

[Section 40—Board]

(17) Schedule 1, item 120, page 38 (before line 25), before subsection (3), insert:

(2B) The Minister may appoint a person as a member mentioned in paragraph (1)(a) or (c) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(a) public health;
(b) consumer affairs;
(c) food science;
(d) food allergy;
(e) human nutrition;
(f) medical science;
(g) microbiology;
(h) food safety;
(i) biotechnology;
(j) veterinary science;
(k) the food industry;
(l) food processing or retailing;
(m) primary food production;
(n) small business;
(o) international trade;
(p) government;
(q) food regulation.

(2C) The Minister may appoint a person as a member mentioned in paragraph (1)(ca) only if the Minister is satisfied that the person is suitably qualified for appointment because of expertise in one or more of the following fields:

(a) public health;
(b) consumer affairs;
(c) food science;
(d) food allergy;
(e) human nutrition;
(f) medical science;
(g) microbiology;
(h) food safety;
(i) biotechnology;
(j) veterinary science.

(18) Schedule 1, item 120, page 38 (line 26), omit “paragraph (1)(a), (c) or (f)”, substitute “paragraph (1)(f)”.

[Section 40—Board]

(19) Schedule 1, item 120, page 39 (lines 7 to 9), omit paragraph (b), substitute:

(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:

(i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or

(ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and

(c) the person has been so nominated.

[Section 40—Board]

(20) Schedule 1, item 120, page 39 (lines 22 to 24), omit paragraph (b), substitute:

(b) the Minister has sought nominations from such organisations and public bodies as are prescribed by the regulations for the purposes of:

(i) if the person is suitably qualified for appointment because of expertise in only one field mentioned in paragraph (a)—the subparagraph of paragraph (a) that is applicable to that field; or

(ii) if the person is suitably qualified for appointment because of expertise in more than one field mentioned in paragraph (a)—a subparagraph of paragraph (a) that is applicable to one of those fields; and

(c) the person has been so nominated.

[Section 40—Board]

(21) Schedule 1, item 120A, page 39 (line 28), after “1991”, insert “as amended by this Schedule”.

[Section 40—Board]

(22) Schedule 1, item 120A, page 39 (after line 33), at the end of the item, add:

(3) Subitem (1) has effect in addition to section 4 of the Acts Interpretation Act 1901.

[Item 120A—Board]
(23) Schedule 1, item 126, page 40 (line 14), omit “a period of 4 years.”, substitute “the period specified in the instrument of appointment. The period must not exceed 4 years.”.

[Section 41—Board]

(24) Schedule 1, item 128, page 41 (line 16), after “2 years”, insert “ending”.

[Section 41—Board]

(25) Schedule 1, item 128, page 41 (after line 20), after subsection (8), insert:

(8A) For the purposes of subsection (8):
(a) a director (however described) of a body corporate is taken to be employed by the body corporate; and
(b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.

[Section 41—Board]

(26) Schedule 1, item 146A, page 43 (line 22), after “any time”, insert “during the period of 2 years ending”.

[Section 52A—Chief Executive Officer]

(27) Schedule 1, item 146A, page 43 (after line 25), after subsection (3), insert:

(3A) For the purposes of subsection (3):
(a) a director (however described) of a body corporate is taken to be employed by the body corporate; and
(b) the secretary (however described) of a body corporate is taken to be employed by the body corporate.

[Section 52A—Chief Executive Officer]

(28) Schedule 1, item 171, page 49 (line 30), omit “principles”, substitute “guidelines”.

[Section 69—policy guidelines]

(29) Schedule 1, page 60 (after line 24), at the end of the Schedule, add:

Part 4—Amendments relating to matters that may be included in standards

186 After paragraph 9(1)(e)
Insert:

(ca) the prohibition of the sale of food:
(i) either in all circumstances or in specified circumstances; and
(ii) either unconditionally or subject to specified conditions;

187 Paragraph 9(2)(a)
Omit “type”, substitute “class”.

188 After subsection 9(2)
Insert:

(2A) To avoid doubt, subparagraphs (1)(ca)(i) and (ii) do not, by implication, limit any other paragraph of subsection (1).

(2B) The matters to which standards, and variations of standards, may relate, are taken always to have included the matter mentioned in paragraph (1)(ca).

(2C) To avoid doubt, paragraph (2)(a), as in force before the commencement of this subsection, is taken always to have had effect as if the reference in that paragraph to type were a reference to class.

[Section 9—matters included in standards]

Motion (by Senator Tambling) proposed:

That the committee agrees to the amendments made by the House of Representatives to the bill.

Senator BROWN (Tasmania) (1.46 a.m.)—I just want to note that, again, this legislation is weighted. The deliberations on food safety in this country and New Zealand are weighted towards the food industry, the corporate sector, and away from the consumer and the public interest. That is a great pity, but there it is.

Senator GREIG (Western Australia) (1.46 a.m.)—We have a very heavy schedule this morning, so I will keep my comments brief. The Democrats will accept the amendments passed in the House of Representatives. Senators will be aware that the Democrats had a number of significant concerns with the original bill, which is why we moved a number of amendments and supported a number of opposition amendments to substantially strengthen the legislation. We acknowledge the support of the opposition for our changes to the board and the government’s agreement to this representative structure. In the committee stage, we indicated that we were happy for an additional representative from New Zealand, pending discussion with the relevant New Zealand authorities. The government’s amendment to our board structure to allow the additional member from the non-mandated positions is acceptable to the Democrats.

Senators will recall that the Democrats were particularly unimpressed with the structure of the ministerial council. We were of the view that the intergovernmental agreement needed to be revisited to ensure
that the health ministers were the lead ministers from each jurisdiction. We did not and do not consider appropriate that the agriculture and trade ministers should have undue influence on food standards which fundamentally go to ensuring health and public safety. That is why we supported the opposition’s amendment to make ministerial guidelines a disallowable instrument.

The Democrats are pleased that the Prime Minister has taken note of opposition and Democrat concerns and has indicated to the health minister that he would write to the heads of government in the near future to convey the Commonwealth government’s wish to make health ministers the lead minister from each jurisdiction. We welcome the government’s movement on this. It needs to be noted that the change to the IGA is not certain. However, we are aware that the majority of states support the refocusing of the ministerial council to reflect the core objective of FSANZ, the body that supersedes ANZFA. Accordingly, the Democrats will not press for the retention of the disallowable instrument. Given the significance of this change for public confidence in Australia’s food standards, I think it is only reasonable that the Prime Minister’s intention be publicly recorded. So I would ask two things of the parliamentary secretary: firstly, what precisely has the Prime Minister stated in respect of his intention to write to the other heads of government; and, secondly, what precisely is the Prime Minister’s request to other heads of government?

Senator FORSHAW (New South Wales) (1.50 a.m.)—I indicate on behalf of the opposition that we will support the bill as amended by the House of Representatives. In fact, I endorse the comments of Senator Greig which referred to the fact that the government has taken on board a number of the amendments moved by the opposition and the Democrats and carried in the Senate. We are pleased to see that the government has accepted those proposals. While the government has not agreed to all the amendments, we believe that the amendments improve the bill substantially and that they strengthen the transparency, independence and science and public health focus on the Australia New Zealand Food Authority.

We also note that the government has given a commitment—and, again, Senator Greig has referred to this—that the Prime Minister will write to all the state and territory heads of government proposing that the food regulation intergovernmental agreement be amended to specify that the lead minister on the ministerial council will be the health minister in all jurisdictions. On the basis of that commitment, and similar to the Democrats, we have agreed not to pursue our amendments in relation to the disallowable instruments. We believe the states will embrace this change. We hope that the commitment will be honoured as soon as possible and that the issue will be resolved as soon as possible. On that basis, we support the bill with the amendments that have been accepted and determined by the House of Representatives.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.51 a.m.)—I thank the opposition and the Democrats for their indications of support for the amendments and arrangements that have been made in the House of Representatives. I note the continuing reservations of Senator Brown on these particular issues. I hope that he will be convinced with the passage of time that the arrangements between Australia and New Zealand will lead to a very satisfactory arrangement as the new Food Standards Australia New Zealand comes into being. The broad policies and principles were extensively debated previously and I think that, given those extensive debates and the issues agreed in the intergovernmental agreement about Australian jurisdictions and the proposed treaty with New Zealand, we will reach a good accord.

Senator Greig asked about the Prime Minister’s intentions. I can confirm that a commitment has been given by the Prime Minister, in correspondence with Dr Wooldridge, that he will be writing to the heads of government in the near future to convey to them the ALP’s preference that the food regulation intergovernmental agreement be amended to specify that health ministers
will be the lead ministers in each jurisdiction. It is, of course, a matter for COAG in that regard but, certainly, the Prime Minister has given an undertaking, and I am pleased to make it known here.

Question resolved in the affirmative.

Resolution reported; report adopted.

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

Consideration of House of Representatives Message

Consideration resumed.

House of Representatives message—

Schedule of the amendments made by the House of Representatives

(1) Schedule 1, item 1A, page 3 (lines 6 to 20), omit the item.
(2) Schedule 1, item 1B, page 3 (lines 21 to 29), omit the item.
(3) Schedule 1, item 10A, page 6 (lines 1 to 6), omit the item.
(4) Schedule 1, item 10B, page 6 (lines 7 and 8), omit the item.
(5) Schedule 1, item 11, page 6 (lines 27 to 29), omit the item.
(6) Schedule 1, item 11, page 6 (line 31), omit “during”; substitute “in making”.
(7) Schedule 1, item 11, page 7 (lines 5 to 9), omit section 303BAA, substitute:

303BAA Certain indigenous rights not affected

To avoid doubt, nothing in this Part prevents an indigenous person from continuing in accordance with law the traditional use of an area for:

(a) hunting (except for the purposes of sale); or
(b) food gathering (except for the purposes of sale); or
(c) ceremonial or religious purposes.

(8) Schedule 1, item 11, page 8 (lines 7 and 8), omit the definition of bear product.
(9) Schedule 1, item 11, page 8 (lines 9 to 11), omit the definition of cat product.
(10) Schedule 1, item 11, page 9 (lines 11 and 12), omit the definition of listed migratory bird.
(11) Schedule 1, item 11, page 10 (line 6), omit the definition of trophy.
(12) Schedule 1, item 11, page 12 (after line 13), after subsection (2), insert:

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

(13) Schedule 1, item 11, page 14 (line 2), after “that is”, insert “not”.
(14) Schedule 1, item 11, page 15 (lines 1 to 11), omit section 303CDA.
(15) Schedule 1, item 11, page 15 (lines 12 to 15), omit section 303CDB.
(16) Schedule 1, item 11, page 16 (line 4), omit “subsections (3), (4A) and (4B)”; substitute “subsection (3)”.  
(17) Schedule 1, item 11, page 17 (lines 26 to 29), omit subsection (4A).
(18) Schedule 1, item 11, page 17 (line 30), omit subsection (4B).
(19) Schedule 1, item 11, page 23 (line 6), omit “or a species of listed migratory bird”.
(20) Schedule 1, item 11, page 24 (lines 20 to 22), omit paragraph (c), substitute:

(c) may consult such other persons and organisations as the Minister considers appropriate.

(21) Schedule 1, item 11, page 24 (line 23) to page 25 (line 13), omit subsections (3A), (3B), (3C), (3D) and (3E).
(22) Schedule 1, item 11, page 26 (lines 8 and 9), omit “or a live freshwater fish”; substitute “, or a live freshwater fish,”.
(23) Schedule 1, item 11, page 26 (lines 8 to 10), omit paragraph (ba), substitute:

(ba) either:

(i) the specimen is not a live terrestrial invertebrate, or a live freshwater fish, prescribed by the regulations for the purposes of this subparagraph; or
(ii) the export is an export from an approved aquaculture program in accordance with section 303FM; and

(24) Schedule 1, item 11, page 27 (line 7), omit “subsections (3) and (4)”; substitute “subsections (3), (3A) and (4)”.
(25) Schedule 1, item 11, page 27 (line 16), omit “or a live freshwater fish”, substitute “, or a live freshwater fish,”.
unless the Minister is satisfied that:

(a) the proposed export would be an eligible non-commercial purpose export (within the meaning of section 303FA); or

(b) the proposed export would be an export from an approved aquaculture program in accordance with section 303FM.

(27) Schedule 1, item 11, page 27 (line 25), omit “conservation status”, substitute “survival”.

(28) Schedule 1, item 11, page 28 (line 2), omit “or a species of listed migratory bird”.

(29) Schedule 1, item 11, page 28 (lines 4 and 5), omit “or any wildlife conservation plan”.

(30) Schedule 1, item 11, page 29 (lines 14 to 19), omit subsection (10).

(31) Schedule 1, item 11, page 30 (after line 28), after subsection (2), insert:

(3) The list may only contain specimens that are live animals or live plants.

(32) Schedule 1, item 11, page 36 (line 29), omit “detrimental to”, substitute “likely to threaten”.

(33) Schedule 1, item 11, page 37 (lines 17 to 19), omit subsection (5).

(34) Schedule 1, item 11, page 43 (line 4), omit “and”.

(35) Schedule 1, item 11, page 43 (after line 4), at the end of paragraph (1)(b), add:

(iii) the maintenance and/or improvement of human health; and

(36) Schedule 1, item 11, page 43 (lines 5 and 6), omit paragraph (c), substitute:

(c) the export is not primarily for commercial purposes; and

(37) Schedule 1, item 11, page 43 (line 7), after “other conditions”, insert “(if any)”.

(38) Schedule 1, item 11, page 43 (line 18), omit “and”.

(39) Schedule 1, item 11, page 43 (after line 18), at the end of paragraph (2)(b), add:

(iii) the maintenance and/or improvement of human health; and

(40) Schedule 1, item 11, page 43 (lines 19 and 20), omit paragraph (c), substitute:

(c) the import is not primarily for commercial purposes; and

(41) Schedule 1, item 11, page 43 (line 21), after “other conditions”, insert “(if any)”.

(42) Schedule 1, item 11, page 43 (lines 28 and 29), omit paragraph (b), substitute:

(b) the export is not primarily for commercial purposes; and

(43) Schedule 1, item 11, page 43 (line 30), after “other conditions”, insert “(if any)”.

(44) Schedule 1, item 11, page 44 (lines 1 and 2), omit paragraph (b), substitute:

(b) the import is not primarily for commercial purposes; and

(45) Schedule 1, item 11, page 44 (line 3), after “other conditions”, insert “(if any)”.

(46) Schedule 1, item 11, page 44 (lines 10 and 11), omit paragraph (b), substitute:

(b) the export is not primarily for commercial purposes; and

(47) Schedule 1, item 11, page 44 (line 12), after “other conditions”, insert “(if any)”.

(48) Schedule 1, item 11, page 44 (lines 18 and 19), omit paragraph (b), substitute:

(b) the import is not primarily for commercial purposes; and

(49) Schedule 1, item 11, page 44 (line 20), after “other conditions”, insert “(if any)”.

(50) Schedule 1, item 11, page 44 (lines 22 to 29), omit subsection (3), substitute:

(3) In this section:

exhibition includes a zoo or menagerie.

(51) Schedule 1, item 11, page 45 (lines 11 and 12), omit paragraph (d), substitute:

(d) the export is not primarily for commercial purposes; and

(52) Schedule 1, item 11, page 45 (line 13), after “other conditions”, insert “(if any)”.

(53) Schedule 1, item 11, page 45 (lines 24 and 25), omit paragraph (d), substitute:

(d) the import is not primarily for commercial purposes; and

(54) Schedule 1, item 11, page 45 (line 26), after “other conditions”, insert “(if any)”.

(55) Schedule 1, item 11, page 45 (lines 34 and 35), omit paragraph (b), substitute:

(b) the export is not primarily for commercial purposes; and

(56) Schedule 1, item 11, page 46 (lines 9 and 10), omit paragraph (c), substitute:

(c) the export is not primarily for commercial purposes; and
(57) Schedule 1, item 11, page 46 (lines 18 and 19), omit paragraph (b), substitute:

(b) the import is not primarily for commercial purposes; and

(58) Schedule 1, item 11, page 47 (lines 4 to 27), omit subsections (8) to (12).

(59) Schedule 1, item 11, page 47 (lines 32 and 33), omit paragraph (b), substitute:

(b) the export is not primarily for commercial purposes; and

(60) Schedule 1, item 11, page 48 (lines 6 and 7), omit paragraph (b), substitute:

(b) the import is not primarily for commercial purposes; and

(61) Schedule 1, item 11, page 48 (after line 9), after section 303FH, insert:

303FI Export or import for the purposes of a travelling exhibition

(1) The export of a specimen is an export for the purposes of a travelling exhibition in accordance with this section if:

(a) the export is not primarily for commercial purposes; and

(b) the conditions specified in the regulations have been, or are likely to be, satisfied.

(2) The import of a specimen is an import for the purposes of a travelling exhibition in accordance with this section if:

(a) the import is not primarily for commercial purposes; and

(b) the conditions specified in the regulations have been, or are likely to be, satisfied.

(62) Schedule 1, item 11, page 50 (line 7), omit “or”, substitute “and”.

(63) Schedule 1, item 11, page 50 (lines 8 and 9), omit subparagraph (iii).

(64) Schedule 1, item 11, page 50 (after line 9), after paragraph (b), insert:

(ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and

(65) Schedule 1, item 11, page 50 (lines 16 to 30), omit subsection (4), substitute:

(4) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

(a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and

(b) the effectiveness of the management arrangements for the operation (including monitoring procedures).

(5) In deciding whether to declare an operation under subsection (2), the Minister must have regard to:

(a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and

(b) whether the legislation applies throughout the State or Territory concerned; and

(c) whether, in the opinion of the Minister, the legislation is effective.

(66) Schedule 1, item 11, page 50 (after line 35), after subsection (6), insert:

(7) If a declaration ceases to be in force, this Act does not prevent the Minister from making a fresh declaration under subsection (2).

(8) A fresh declaration may be made during the 90-day period before the time when the current declaration ceases to be in force.

(9) A fresh declaration that is made during that 90-day period takes effect immediately after the end of that period.

(67) Schedule 1, item 11, page 54 (lines 16 and 17), omit paragraph (aa).

(68) Schedule 1, item 11, page 55 (lines 14 to 18), omit subsection (9), substitute:

(9) The Minister is not required to comply with subsection (8) to the extent to which compliance could reasonably be expected to:

(a) prejudice substantially the commercial interests of a person; or

(b) be detrimental to:

(i) the survival of a taxon to which the plan relates; or

(ii) the conservation status of a taxon to which the plan relates.

(69) Schedule 1, item 11, page 55 (lines 19 and 20), omit subsection (10).

(70) Schedule 1, item 11, page 55 (lines 26 to 31), omit subsection (1), substitute:

(1) Before making a declaration under section 303FN, 303FO or 303FP, the
Minister must cause to be published on the Internet a notice:
(a) setting out the proposal to make the declaration; and
(b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
(c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.

(71) Schedule 1, item 11, page 55 (line 32) to page 56 (line 7), omit subsection (1A).

(72) Schedule 1, item 11, page 56 (line 8), omit “subsection (1A)”, substitute “subsection (1)”.

(73) Schedule 1, item 11, page 56 (lines 15 to 17), omit subsection (4).

(74) Schedule 1, item 11, page 56 (after line 17), after section 303FR, insert:

303FRA Assessments

(1) The regulations may prescribe an assessment process that is to be used for the purposes of sections 303FN, 303FO and 303FP to assess the potential impacts on the environment of:
(a) a wildlife trade operation; or
(b) the activities covered by a plan;
where the operation is, or the activities are, likely to have a significant impact on the environment.

(2) If regulations made for the purposes of subsection (1) apply to a wildlife trade operation or to a plan, the Minister must not declare:
(a) the operation under subsection 303FN(2); or
(b) the plan under subsection 303FO(2) or 303FP(2);
unless the assessment process prescribed by those regulations has been followed in relation to the assessment of the operation or plan, as the case may be.

(3) Without limiting subsection (1), regulations made for the purposes of that subsection may make provision for:
(a) the application of Part 8 (except sections 82, 83 and 84) and the other provisions of this Act (so far as they relate to that Part) in relation to the assessment process, subject to such modifications as are specified in the regulations; and
(b) exemptions from the assessment process.

(4) In this section:
modifications includes additions, omissions and substitutions.

wildlife trade operation has the same meaning as in subsection 303FN(10), but does not include an operation mentioned in paragraph 303FN(10)(d).

(75) Schedule 1, item 11, page 61 (line 9), omit “be in accordance with”, substitute “not be contrary to”.

(76) Schedule 1, item 11, page 61 (lines 29 to 33), omit subsection (4A).

(77) Schedule 1, item 11, page 62 (after line 9), after subsection (6), insert:

Public consultation

(7) Before issuing a permit under this section, the Minister must cause to be published on the Internet a notice:
(a) setting out the proposal to issue the permit; and
(b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and
(c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.

(8) A period specified in a notice under subsection (7) must not be shorter than 5 business days after the date on which the notice was published on the Internet.

(9) In making a decision under subsection (1) about whether to issue a permit, the Minister must consider any comments about the proposal to issue the permit that were given in response to an invitation under subsection (7).

(78) Schedule 1, item 11, page 62 (lines 10 to 12), omit subsection (10).

(79) Schedule 1, item 11, page 66 (lines 5 to 30), omit section 303GEA.

(80) Schedule 1, item 11, page 69 (lines 9 to 13), omit all the words from and including “must consider” to and including “conditions of the permit.”, substitute “must consider whether the transferee is a suitable person to hold the
permit, having regard to the matters set out in the regulations.

(81) Schedule 1, item 11, page 84 (lines 13 to 26), omit section 303GZ.

(82) Schedule 1, item 36A, page 96 (lines 5 to 12), omit the item.

(83) Schedule 1, page 123 (after line 16), after item 84H, insert:

84HA At the end of section 197
Add:
; or (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 208A.

(84) Schedule 1, page 123, after item 84HA, insert:

84HB Before section 208
Insert:

208A Minister may accredit plans or regimes
The Minister may, by instrument in writing, accredit for the purposes of this Division:
(a) a plan of management within the meaning of section 17 of the Fisheries Management Act 1991; or
(b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
(c) a regime determined in writing by the Australian Fisheries Management Authority under the Fisheries Administration Act 1991 for managing a fishery for which a plan of management (within the meaning of section 17 of the Fisheries Management Act 1991) is not in force; if satisfied that:
(d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing; and
(e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.

(85) Schedule 1, page 123, after item 84HB, insert:

84HC At the end of section 212
Add:
; or (k) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 222A.

(86) Schedule 1, page 123, after item 84HC, insert:

84HD Before section 223
Insert:

222A Minister may accredit plans or regimes
The Minister may, by instrument in writing, accredit for the purposes of this Division:
(a) a plan of management within the meaning of section 17 of the Fisheries Management Act 1991; or
(b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory; or
(c) a regime determined in writing by the Australian Fisheries Management Authority under the Fisheries Administration Act 1991 for managing a fishery for which a plan of management (within the meaning of section 17 of the Fisheries Management Act 1991) is not in force; if satisfied that:
(d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and
(e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.

(87) Schedule 1, page 123, after item 84HD, insert:

84HE Paragraph 231(h)
Repeal the paragraph, substitute:
(h) an action provided for by, and taken in accordance with, a plan or regime that is accredited under section 245.
After paragraph 245(b)
Insert:
(89) Schedule 1, page 123, after item 84HF, insert:

84HG Paragraph 255(k)
Omit “of management”, substitute “or regime”.

(90) Schedule 1, page 123, after item 84HG, insert:

84HH After paragraph 265(b)
Insert:

Note: The heading to section 245 is altered by omitting “of management” and substituting “or regimes”.

Note: The heading to section 265 is altered by omitting “of management” and substituting “or regimes”.

Motion (by Senator Ian Campbell) proposed:
That the committee agrees to the amendments made by the House of Representatives to the bill.

Senator BROWN (Tasmania) (1.54 a.m.)—I have done the best I can today to get advice on this from people in the field. The advice from the Tasmanian Conservation Trust is that, although there are shortcomings with this legislation, it is better to get it passed than not.

Senator Ferguson—That’s a change of view.

Senator BROWN—No, it is not a change of view. The trust has been sorting this all the way through. I have a number of very small queries about it, but I will suspend those because it is 1.56 a.m. and it will not make any difference to the outcome. I will be supporting the passage of this legislation.

Senator FORSHAW (New South Wales) (1.55 a.m.)—The opposition will support the bill. To save time, I seek leave to incorporate my remarks in Hansard.

Leave granted.

The speech read as follows—

EPBC Amendment (Wildlife) Bill

It has been unfortunate that this bill has been rushed through the parliament. We have had limited time to first of all consider the bill, and second to consider the significant number of amendments that were moved during the debate.

Senator Bolkus said then that Labor’s support for those amendment’s was on the proviso that we have a bit more time to look at them in more detail before the bill returned to the senate.

The Government also noted that it needed more time for consideration of the amendments. They have now further amended the Bill in the House, undoing many of the senate amendments and altering others.

It is unfortunate that we do not have more time to fully consider their amendments. We do not accept all the arguments they have put forward in rejecting some of the Senate amendments.

However, in the interest of progressing the bill, we will support the Government’s bill as it was amended in the house.

But, be assured that an incoming Labor government will address review these amendments in government.

Labor is already committed to a full scale review of the EPBC legislation. We will return to the amendments moved to this bill and consider how we might achieve better outcomes in the context of this legislation.

I would like to note that we are particularly disappointed with the Government’s failure to appropriately amend the bill to provide the assurance that this bill will not infringe or extinguish any indigenous rights including native title rights. This failure leaves open two undesirable possibilities:

1. at worst it will facilitate infringements of indigenous rights
2. any legal challenge to defend these rights might put at risk other aspects of the bill.

I would also like to make a brief comment on the prior authorisations and associated fisheries provisions. These were provisions moved during the debate on the Environment Legislation Amend-
ment Bill No. 1 and we had concerns with them then and those concerns are still valid.

In Government, Labor will seek to address those issues we outlined during the ELAB No. 1 debate, particularly in relation to the requirements for accreditation of a fisheries regime and offence provisions.

Senator BARTLETT (Queensland)  (1.55 a.m.)—I will not speak for long because of the time, but this is important legislation, so it is appropriate to speak briefly to it. As Senator Brown has indicated, and I concur, the bill as it now stands amended by the House is not as good as it could have been. It is certainly not as strong as it was with the 90-odd Democrat amendments that were agreed to in this place earlier in the week. I put on the record that the process with the bill has been less than ideal, but I recognise that it is preferable to have it pass now. The additional amendment the government has added in the House of Representatives is problematic. The process involved with that is of concern to the Democrats as well, but the package of legislation as it now stands is clearly an improvement on the law in relation to wildlife trade. Some of the Senate amendments that have been retained do mean significant enhancements, in particular making it an offence for the release of live plants held under permit.

Allowing the release of live plants is significant, particularly given the weed problem in many areas of Australia. Ensuring the precautionary principle is an important measure. The duration of permits has been shortened as a result of Senate amendments. A range of matters are required to be considered by the minister. Assessment is required of environmental impact of the activities covered by any plan to approve a wildlife trade operation. Exceptional circumstance permits must comply with CITES requirements. These are some of the Senate amendments that have been agreed to by the government, and they certainly strengthen the bill. It is a shame that some other amendments—particularly some of the consultation measures and some of the animal welfare measures—were not accepted by the House of Representatives. There is still plenty of room for improvement in the environmental legislation governing this country. The Democrats, as I am sure will others in this place, will continue to look for opportunities to further strengthen our federal environment laws, but this legislation goes some steps in that direction. For that reason, the Democrats support this motion.

Question resolved in the affirmative.

Resolution reported; report adopted.

HIGHER EDUCATION FUNDING AMENDMENT BILL 2001
Second Reading

Debate resumed from 21 June, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator CARR (Victoria)  (2.00 a.m.)—My intention is to seek to incorporate some remarks on the Higher Education Funding Amendment Bill 2001, but there are some other issues I need to articulate. Given that we are now at 2 o’clock and we have another education bill to follow, I am sure all senators would welcome us proceeding at speed. Unfortunately, though, I need to get some advice from some officials.

This particular proposition is to amend the Higher Education Funding Act to: provide base funding for universities for 2003; provide funding for 2002-03 for extra places as part of the budget measures, and that is to include some 670 extra places for regional universities; provide funding for 2002-03 for extra support for people with disabilities; vary maximum funding levels to reflect higher HECS receipts; reflect supplementation in regard to Commonwealth superannuation liabilities; transfer funds from the Australian Research Council Act to enable the Institute of Advanced Studies at the Australian National University to access ARC competitive grant programs; clarify the treatment of HECS debts in the event of bankruptcy of the debtor; and broaden the ministerial guidelines making power in relation to HECS and work experience in industry. Further, the bill will amend the Australian Research Council Act to provide base funding for 2003, to supplement for price increases and to transfer funds from HEFA, as already indicated. The opposition’s view is that we should support this legislation, depending upon clarification of a number of issues.
I move this second reading amendment:

At the end of the motion, add “but the Senate condemns the Government for:

(a) reducing government expenditure on universities by $3 billion and shifting the burden onto students and graduates;
(b) cutting 3,500 research training places, including 800 at regional universities; and
(c) continuing to work towards total university fee deregulation”.

I trust the Senate will support that second reading amendment.

Is the minister able to advise me whether or not the government is prepared to take some questions on notice and provide answers within a reasonable period, such as that set down for the return of answers to questions from estimates? If so, it may in fact facilitate the passage of this legislation. Is that possible? At the end of the second reading debate, I will seek the answers to those questions.

In particular, I would like to have answers to the following questions. Does this bill seek to establish clearly that accumulated HECS cannot be extinguished by bankruptcy? Have there been instances where this has happened already? Is it the case that, under the changes proposed in the bill, the Commonwealth would have the power to claim a proportion of bankrupt HECS debtor’s assets, even if in the year of bankruptcy the debtor’s income was below the normal HECS repayment threshold? What are the equity measures in this for the debtors, given that others of the same income would not need to repay HECS? What are the equity arrangements for other creditors who might receive less because of the HECS repayments being made to the Commonwealth? To what extent do the provisions of the Bankruptcy Act not apply to HECS as currently administered? If it is possible, I would like to have those questions answered. I expect there will be a need to have detailed responses to those questions.

The opposition is concerned about the inconsistencies in this legislation. It is normal that after three years a bankrupt is discharged, and other debtors are automatically freed from most kinds of debts. The bill establishes that the provision for the automatic discharge of debts will not apply to HECS debts and that HECS debts have a particular character. Unlike other debts, they do not automatically have to be repaid but are repaid only under certain circumstances—that is, when the debtor’s income reaches a certain level—and they are extinguished by death. For other debts, repayments are made out of the deceased debtor’s estate but for HECS there is no repayment made from the estate of the deceased debtor. Why are HECS debts not treated equally with other debts by making them provable—that is, payable—in the event of bankruptcy?

It would be simpler, more effective and consistent to exclude all HECS debts from the operation of the Bankruptcy Act. That does not appear to be the case under this arrangement, and, if I have understood that correctly, why not? It would seem that there is not an extinguishment of debt. Rather, such a debt would not be considered or repaid by the trustee appointed under the provisions of the Bankruptcy Act, but would still be repaid when the debtor’s income reached the required level. Can the Commonwealth initiate bankruptcy proceedings against the result of unpaid HECS debts? As you can see, a number of issues still require further explanation. Is it possible to have detailed answers to those questions in the same time frame as Senate estimates questions on notice are answered? I seek leave to incorporate the remainder of my remarks.

Leave granted.

The speech read as follows—

Apart from providing base funding for universities and ARC for 2003, the major measures in this Bill implement Budget measures to provide funding for extra places at regional universities and campuses, and extra support for people with disabilities. The regional universities initiative—$35.2 million over four years doesn’t go anywhere near making up for the $171 million taken from regional universities in the 1996 Budget cuts. As well, the Government’s reduction of 3,500 research training places, as part of its White Paper changes, included 800 places lost from regional institutions.
This shows that the Howard Government has not suddenly realised the importance of education, training and research to Australia’s future, but is simply in pre-election spending mode, in a desperate attempt to stay in office.

If they succeed, then the infamous Cabinet Submission will be given new life. Total deregulation of university fees, real-interest loans, and a voucher system of funding will be back at the top of the agenda.

Under this scenario, newer and regional institutions would be most likely to suffer, as well as students, who would face higher fees and, with real interest rates, pay big penalties for not having the money to pay off loans quickly.

This is Dr Kemp’s privatisation/user pays agenda, which benefits the wealthy, and sees no advantage in providing opportunities to less well off Australians.

This government has cut $3 billion from university funding. If public funding had been maintained at 1996 levels, there could have been an extra 21,000 places in 1997, and an extra 54,000 places this year.

Compared with these cuts, the extra places in this Bill look hopelessly inadequate.

Despite the Government’s attempts to deny the findings of the Monash University Report on Australia’s performance as a Knowledge Nation, it cannot deny that Australia ranks 21 out of 29 in the OECD in terms of public expenditure on education.

Australia’s public expenditure on education as a percentage of GDP—at 4.34—is still below the OECD average of five per cent, and well below that of the five leading OECD countries, which all spend more than six per cent.

Australia’s average investment per tertiary student of $US29,194 compares with an OECD average of $35,087.

DETYA’s own figures show the number of students per teaching staff member in our universities has risen from 15.3 to 18.84 since the Howard Government took office.

Senator ALLISON (Victoria) (2.07 a.m.)—I seek leave to incorporate the remarks of Senator Stott Despoja.

Leave granted.

The speech read as follows—

The Democrats will support the various measures in the Higher Education Funding Amendment Bill 2001.

I notice the Minister’s second reading speech proudly points out that enrolments are projected to grow by 27% between 1995 and 2003. What the Minister didn’t point out was most of that growth is international students down to 15% of student numbers dipped in 2000 and preliminary estimates suggest it has declined again in 2001. What the Minister also failed to mention is revenue is only expected to increase by 21.5% in the same period.

This simply means less resources per student. While the projections for further effective cuts per student may suit the ideological agenda of the Minister, nobody who knows anything about education or cares about the quality of education will consider this good news.

Universities cannot sustain their current rate of expenditure relative to income growth. Analysis of the state of universities’ finances undertaken by DETYA and published in the Higher Education Reports for the 2000 to 2002/2001 to 2003 Trienniums show a declining trend since 1996. For example, the sector-wide safety margin (which measures the ability of universities to contain expenditure within the constraints of available revenue) has fallen from 6.5% in 1997 to 3.3% in 1999, with two institutions recording negative safety margins in 1998 and 1999. Since 1996, borrowings have increased by $83m, or 31%. Total revenue growth has slowed over each of the past two years.

We are all aware of the 6% cuts to operating grants announced in 1996 but this doesn’t give a true picture because the increases in higher education cost structures over the past five years have been dramatic.

The First Assistant Secretary of the Higher Education Division of DETYA, Michael Gallagher, estimates that the gap between operating grant indexation and actual salary outcomes has risen to around 15% over the last 5 years. When the effects of a declining Australian dollar are factored into the cost structure of universities—which spend heavily on foreign-sourced items such as books, journals and laboratory equipment—the unfunded shift in the cost structure of universities is at least 20%.

The Minister also boasts in his second reading speech that university revenues have grown to a record level—estimated to be $9.5 billion in 2001—despite Commonwealth cutbacks.

What the Minister also neglects to mention is ‘diversification’ of income sources and increase revenues from commercial and other private sources are not going back to universities’ core activities to ensure a sufficient increase in dollars.
per student to meet rising expenditure costs. As a consequence, academic staff have dropped to 3.8% of the total staff of universities. Libraries are slashing their purchases of books and serials. Staff-student ratios have ballooned from 1:14.8 in 1996 to 1:18.8 in 2000.

The new private income from international education and elsewhere, has been applied to different functions to those supported by the old public income. Thus, the new private income has failed to substitute for the public investment that this Government has cut. The new private income has been applied to new or additional functions.

How much are our notionally public universities spending on marketing?
- On international campuses?
- On recruiting international and other fee paying students?
- On corporate boxes at sporting events?
- On fund-raising and alumni relations?
- How much are they spending to make a commercial buck—90 cents in the dollar, 95 cents in the dollar?

These important questions go to the governance, resourcing and quality of the teaching and learning experience in our universities. The Democrats and indeed the sector remain frustrated that the Minister’s persistent misinformation glosses the undeniable crisis in our universities. A crisis bought about by this government’s own doing.

One of the measures in this Bill is to amend the Australian University Act 1991 to modify the advisory structure of the ANU Council. I am aware that there has been an effective consultation process within, the university on these governance changes and that they are supported by staff and students.

This Bill also provides for a modest increase of 670 funded places targeted at regional universities and campuses. This will help ameliorate the damage done by this government to regional universities.

One of the more devastating critiques of this Governments’ approach to universities was recorded by the Vice-Chancellor of the University of Tasmania who recently told the Senate Inquiry into The Capacity Of Public Universities To Meet Australia’s Higher Education needs that the University of Tasmania could no longer meet the needs of Tasmania because of the lack of funded places.

The Lilydale Campus of Swinburne University of Technology has been forced into an unsustainable policy of massive over-enrolments at the marginal rate because this Government withdrew the Commonwealth Industry Placement Scheme (CIPS) and have never given Swinburne funded places for Lilydale.

The Government approved of Swinburne investing in this campus to ensure access for students in Melbourne’s outer east—and have provided capital grants for the campus—they just refuse to provide funded student places. And the Government’s response to such circumstances? Provider Beware, yes provider beware.

A fundamental responsibility of the Commonwealth is to ensure equitable access to education thus the Democrats welcome the appropriation in this Bill of $1.8 million in 2001 and $2.9 million in 2003 for disability support.

However, we need to consider the Government’s performance in broader terms and the performance is poor. Indigenous students, rural and isolated students, people from low socio-economic backgrounds all remain seriously underrepresented in higher education. The difficulties these students, and indeed all students face is compounded by overly restrictive and totally inadequate income support measures.

A major barrier to participation is cost and it is important to understand that Australian students pay significantly higher tuition fees than most. Let us set aside the miniscule percentage of students in expensive American Ivy league private universities—in 1999-2000, the average fee paid by a student at a 4 year public university in the US—the largest sector in the US—was $US3,356. How does this stack up against fees in Australian Universities?

The only meaningful method in measuring relative cost is a conversion based on the respective purchasing power of the currencies involved. When converted to Australian dollars using the OECD purchasing power parities (PPPs) the average US fee is $A4,396. However, in Australia in 2000, the average HECS fee was $A4,454. Thus, fees at Australian public universities are actually 1.3% higher than at comparable institutions in the US. Indeed Australia is now the third most privatised higher education sector in the world—a feat achieved at the direct expense of students.

As a final comment on this Bill, I note it is one of two omnibus education Bills we are considering today. Given the absolute mess the Government has made of the other Bill—this may well be one of the last two of these we see from this Government in this portfolio area.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.07 a.m.)—I thank senators for their contributions to the debate. Senator Carr’s questions
will be taken on notice. The department has advised me that it will endeavour to answer them by the date that was applied to the questions on notice at the recent Senate estimates.

Amendment agreed to.

Original question resolved in the affirmative.

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

INNOVATION AND EDUCATION 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 CARR (Victoria) (2.09 a.m.)—I will seek leave to incorporate my remarks on the Innovation and Education Legislation Amendment Bill 2001. In addition to those remarks, I will say that this bill contains amendments to three separate bills. Some we considered only a few months ago—the ARC Bill and the HEFA Bill; and we have just considered another, separate amendment to the HEFA Bill. The third issue is amendments to the state grants bill, which we considered in December. I am particularly concerned that this government has felt it necessary to bring forward an omnibus bill covering those three areas. It is the first time this has occurred, to my knowledge. I cannot find another instance where an omnibus bill has been brought forward to contain matters that relate to the different sectors of education within one bill.

It is particularly unfortunate and annoying that the government has sought to combine a range of measures which are, in reality, non-controversial—they are reasonable in the context of this government’s policies—and which the Labor Party has no objection to with a range of other measure which appear to me to be unfair and unreasonable in the way in which they are being administered and which pose serious questions about basic equities. Therefore, as the shadow minister has indicated, we will be seeking to move a number of amendments in the committee stage that balance out the proposals and move for support for public education, which has so sadly been neglected by this government.

The substantive matter that we will need to discuss, which we will discuss by a contingent notice of motion that I will move in the committee stage, goes to splitting this bill into three. I will have to raise the matter in some detail at that point, because I believe it is quite a serious issue. If it is necessary, I will then bring forward other arguments about what I regard to be the administrative failure of the department insofar as they have paid certain moneys to certain schools which, on my reading, appear to be outside the guidelines. Frankly, the arguments put forward by the department in response to questions which they gave me only this morning are incredibly thin and not persuasive at all. When the opportunity arises, I may well have to explain the detail of that.

Leave granted.

The speech read as follows—

Innovation and Education Legislation Amendment Bill

This Bill implements some of the measures from the Innovation Statement - a good thing, you might say, except that the Innovation Statement only slightly addressed the problems created by the previous five years of short-sighted and damaging cuts by the Howard Government.

Under John Howard, Commonwealth funding for universities has fallen every year - from $4.875 billion in 1996 to $4.223 billion by 2002.

This adds up to more than $3 billion taken from the public funding of universities.

In 2000, the number of Australian students at our universities fell by more than 3,000.

The extra university places announced in Innovation Statement - 2000 extra places a year - mean that it will take years even to repair last year’s damage.

And the extra funding for research doesn’t change the reduction in research training places at most Australian universities. This year, there are almost 3,500 fewer research training places at Australia’s universities, thanks to the Government’s White Paper on research. So much for its new-found, election-year interest in innovation.
Removal of these places research training places punishes newer universities which have tried to extend their research effort.

The Government tries to say this is about concentrating Australia’s research effort but it is really about reducing investment. Despite the rhetoric, John Howard has not changed - while he might be giving with one hand, he’s still taking away from our future with the other.

This Bill also establishes the Postgraduate Education Loan Scheme (PELS), described by Dr Kemp in his second reading speech as being “designed to encourage lifelong learning and to help Australians upgrade and acquire new skills.

All very fine, except that, if this government was so concerned about helping Australians with lifelong learning, they would not have reduced HECS places for postgraduate coursework by 60 per cent.

Labor believes that a loan scheme has the potential to help students who otherwise would miss out on postgraduate study because of their inability to pay upfront fees, and we are prepared to support it in principle. Nevertheless, we recognise this framework - deregulated fees, with capped loans from the Commonwealth - as the scenario Dr Kemp would like to impose on the entire university sector. He outlined his plan in the infamous leaked Cabinet Submission. If the Coalition is returned at the next election, we can expect the full implementation of that Cabinet submission: total deregulation, vouchers, and real interest rates on student loans.

I should take this opportunity to state again, categorically, that a Labor Government will not deregulate undergraduate university fees and we will not allow real-interest loans.

We will, in fact, as we have said all along, phase out the capacity of universities to charge upfront fees to Australian undergraduates.

The introduction of PELS also opens up the possibility of universities putting up fees unreasonably, and we have some concerns about the mechanism the Government envisages to deal with this: a limit on the amount students may borrow.

The Opposition understands that what the Government has in mind is a single amount.

This could work unfairly in the case of people who incurred large HECS debts (because of course choices) before beginning postgraduate study.

In 1996, this Government increased HECS charges by up to 125%.

Courses in hand three now cost $5,870 a year.

A four-year course at that rate would leave a student with a debt of $23,480.

Now, the same Government is seeking to limit that student’s ability to access postgraduate education, because of their debt level.

But the students who would be most affected by the loan limit would be those whose only path to postgraduate study is a loan - those who can pay upfront will still be able to enrol.

The loan limit on the combined HECS / PELS debt could also disadvantage those students who are unable to pay their HECS upfront in other words, those for whom financial considerations make access to university more difficult. And those are the students PELS is supposedly designed to help.

For this reason, Labor will be moving an amendment to limit the Minister’s power to set a maximum loan amount to consideration of PELS debts only - that is, not to include HECS.

I listened to the objections to this proposal as put by Departmental officers in the enquiry into this Bill on 25 June. My response to that is, Labor does not accept that the difficulties that were described ought to outweigh considerations of equity and fairness. For that reason, we will be proceeding with our amendment.

I note that the Minister’s office is reported (The Age, 16 June) to have been “unable to supply examples of excessively high HECS debts” but advised that there were 2266 graduates with debts exceeding $20,000. So they have presented no evidence that HECS debts alone are a problem, but seem to have decided that debt levels exceeding $20,000 cross some sort of difficulty threshold.

Labor will also be moving an amendment requiring a review of the operation of PELS after 12 months. This will include looking at movements in fees, and I would like to reiterate the point made by the Shadow Minister when this Bill was debated in the House: Labor in government will review the PELS arrangements if universities seek to treat it as a major new source of revenue.

Before moving to the schools part of this Bill, I would like to make a further comment about evidence given to the committee on 25 June enquiring into this legislation. It was put to members of that Committee that there was a great deal of urgency about this Bill, because it implemented some important measures due to commence next year.

Those measures were announced in the Innovation Statement on 29 January. The Bill implementing them was not debated in the House until
19 June. If it is all so urgent, why wasn’t it treated as urgent by the Government? Taking five months before beginning a second reading debate doesn’t sound to me like a Bill that’s being given priority by the Government.

Secondly, much was made in Departmental evidence before the committee about the so-called doubling of funding for the Australian Research Council. The fact is that the extra funding for the ARC, as announced in the Innovation Statement, is heavily back-loaded, with the vast bulk of funds - more than 65 per cent - not allocated until 2004 or Funding in this Bill for the ARC represents just 2.5 per cent of the promised extra funding.

The Government is so keen to develop innovation and research in Australia that it will be 2004 before any significant increase in funds is seen. It is clear that there is no urgency there. So let’s have no more of this sham concern.

Nevertheless, Labor wants to make it absolutely clear that we do not want to stand in the way of any increase in funding for higher education research or university places, particularly given the way in which these key areas have been neglected by the Howard Government.

Therefore, in line with the notice I have already given, Labor will be moving to split this legislation into three parts, one of which will deal only with the additional funding for the ARC and for higher education places. This will allow swift passage of the non-controversial parts of this legislation, while providing appropriate time for debate of the other elements.

It should be noted that, at the hearings of the Senate committee enquiry into this Bill on 25 June, the chairman, Senator Tierney, described this Bill as “complex”. His words were, “it is a complex bill”.

So it is very reasonable for Labor to seek to split it into schools and higher education parts, and, given the message of urgency the Government has sent, despite its own laxity, to seek to separate the non-controversial parts from the rest, in order to ensure quick passage for the sections delivering additional funding for the hard-pressed higher education sector.

I will now move on to the second part of this strangely-constructed Bill. There appears to be no precedent for funding for both universities and schools to be bundled into the one piece of legislation - another reason supporting splitting the Bill as I have described.

Last year’s States Grants legislation provided $859,000 in 2001 for establishment grants, and $1,289m per annum in each of the following years.

This Bill seeks to increase those amounts by a total of $9.5 million, with the increase in 2001 being 330%, 262% in 2002, and 128% in both 2003 and 2004.

We now know that last October, the Government knew that the funds in the States Grants legislation then before Parliament were insufficient to provide for the number of new schools, and their large enrolments.

So what did this Government do?

Did it introduce an amendment to the legislation to try to ensure that, before any funds were actually paid out in establishment grants, the Parliament had appropriated the right amount of money?

No. It allowed a Bill which it knew was wrong to continue its passage through Parliament. And now the Government is trying to tell us that, because it has run out of money, because it failed to correct its own error last year, the Parliament must jump to attention, and deal with this Bill this week. Eight months after the Government knew of its mistake, it has the gall to tell the Senate that this Bill must be passed five days after it was introduced.

Labor’s message to the Government is this: the Opposition has no intention of approving one extra cent of expenditure for non-government schools without a proportionate increase in funding for public education.

Secondly, the Senate Inquiry into this Bill suggests that a significant cause of the blowout in the cost of the establishment grant program is poor administration of the scheme. There are important questions to be answered before the Senate can give proper consideration to this legislation.

A significant element in this blowout is due to the Government and the Department neglecting their own guidelines and in the process artificially inflating the number of students at new non-government schools. We question whether any of the three schools (Christian College Institute of Secondary Education in Geelong, the Australian Islamic College in Kewdale, Perth and All Souls St Gabriels at Charters Towers, Queensland with a total of 1350 'new' students) cited by the Government as the principal reason for the massive increase in establishment grant funding do fall within the government’s own guidelines.

The Government denies this concern. Their response is that “on the balance of evidence available at the time” they were accepted as new schools, that none of the schools are considered to
have been formed from the separation, or the closure and re-opening, of an existing school. It is only possible to maintain their position if other evidence, that they either ignored or didn’t bother to seek out, continues to be ignored.

Let me consider two examples, those of the Christian College Institute of Secondary Education, at Highton in Geelong and the Australian Islamic College at Kewdale in Perth, Western Australia.

The Government’s opinion is based on the limited nature of the records that DETYA keeps. On the basis of that evidence they conclude that CCISE has a different ownership structure as the Christian College Highton, an adjunct school. They conveniently ignore three points:

- That the boards of the two schools are almost exactly identical, with evidence of coordination and collaboration. Only the limited nature of the information that DETYA cares to keep allows them to maintain the legal fiction that the two are separate,
- CCISE is registered as an RTO for purposes of VET in schools. If they are so separate, how does one explain the fact that the postal address for CCISE as an RTO is C/- Christian College Highton!
- In the preamble of the report of the Victorian Registered Schools Board on its visit to CCISE there is a specific mention of the intention of Christian College Highton establishing CCISE as a new senior campus. DETYA notes this fact, but prefers not to pursue it, noting instead that it does not appear to be a new school.

This reminds me of the saying - if it looks like a duck, waddles like a duck and quacks like a duck, then it probably is a duck!

But the wilful blindness and evasion of the Government is equally in evidence in the case of the Australian Islamic College. I refer them to the 2000 edition of the National Register of Independent Schools of Australia, page 46. Here the AIC is described, with its Head Office at Mar- mion Street, Booragoon with, AND I USE THEIR WORDS, campuses at Thornlie, Dianella and Kewdale. A campus at Kewdale! The school’s own publicity makes this clear - “The AIC has re-established the former Kewdale Senior High School site as co-educational operation with classes from years 1-12. The college has two other campuses...”

Campuses again! As I have said previously, the Government is either wilfully blind or intent on misleading us all. A new campus operation, by the government’s own criteria, is ineligible for funding yet it persists with misrepresenting the facts.

Our concern does not lie with any of these schools or their registration, but with the sleight of hand in which this government is engaged. Although the Department couldn’t be bothered to follow this up, even basic research reveals that these schools are either campuses of existing schools or is a pre-existing school re-established under a slightly altered name.

Two issues require greater scrutiny. To what extent has the Government ignored its own guidelines in this matter? Secondly, to what degree has DETYA engaged in expenditure beyond its appropriation as the result of sloppy administration?

Needless to say, there is not a cent extra in this Bill for government schools. Labor will not agree to it on those terms. We will be moving an amendment which calls for additional spending on government schools proportionate to the extra $12.9 million this Bill provides for non-government schools.

It is time for fairer treatment for public education from the Federal Government.

The Minister told us in a media release at the time of the Budget that the Government had a “commitment” to government schools. This is their chance to prove it.

**Senator ALLISON** (Victoria) (2.12 a.m.)—I seek leave to incorporate both my speech and that of my colleague Senator Stott Despoja on the Innovation and Education Legislation Amendment Bill 2001.

Leave granted.

The speeches read as follows—

Speech by Senator Allison

I rise to speak tonight about the Innovation and Education Amendment Bill 2001.

This omnibus bill seeks to amend the Higher Education Funding Act 1998, the Australian Research Council Act 2001 and the States Grants (Primary and Secondary Education Assistance) Act 2000.

I will confine my comments to the provisions in this bill, which relate to the States Grants (Primary and Secondary Assistance) Act 2000. My colleague, Senator Natasha Stott-Despoja, will speak about those parts of the bill relating to higher education.

Amendments to the States Grants (Primary and Secondary Education Assistance) Act 2000, contained in this bill provide for:
• an additional $9.5 million for establishment assistance for new non-government schools;
• an additional $2.5 million for students with disabilities; and
• an additional $760,000 for strategic assistance for educationally disadvantaged students in non-government schools over the 2001-2004 quadrennium.

The Democrats welcome the provision of additional funding for students with disabilities and educationally disadvantaged students in non-government schools.

We are, however, very concerned about the massive increase in funding for establishment grants for non-government schools. Up by a staggering 330% for 2001, 200% for 2002 and by more than 100% for 2003 and 2004.

The Government is getting very used to significantly increasing the funding to non-government schools at the expense of government schools and the Democrats are getting very used to fighting them on this.

And we are clearly have the support of the Australian public.

The Government and Opposition may well be interested in Australian Education Union polling in marginal seats, which found that 94% of voters thought that the Government should spend more money on public education.

The Democrats were the only party to oppose the iniquitous States Grants (Primary and Secondary Assistance) Bill 2000, when it was debated late last year. This Act awards an additional $700 million to the private schools over the next four years.

The Democrats opposed this bill because we are strongly committed to ensuring adequate resourcing of the public education system. We remain strongly opposed to the inequitable grants to non-government schools, particularly wealthy non-government schools, while public schools remain chronically under-funded.

There is simply no justification for providing already wealthy schools with even more public money, when government schools are starved of funds. I regularly visit government schools whose portables have been portables for so long that they are now considered permanent classrooms. You can’t really say that they are portables when they have been in the same position for over 20 years.

And it needs to be understood (and the Opposition needs to be reminded) that it is not just the former Category 1 schools which are very well off. Penleigh and Essendon Grammar, a former Category 3 school in Victoria, which has a gymnasium, a swimming pool, an astro-turf hockey field, ovals, soccer grounds and squash courts was awarded an extra $3.39 million annually.

The annual fees of this school are approximately $8,900.

The Government claims that by providing more funding to such schools, they will lower their fees as a result. But there is no evidence to back this up. In fact evidence to the contrary was provided to the Committee.

One submission made reference to the survey of category 1 schools conducted by the Weekend Australian in June this year. The Australian spoke to all schools in this Category and found that only 8 out of the 59 said that any of that money would go to reducing fees.

It seems clear to me that Dr Kemp is on a mission. His mission is to get as many Australian students as possible into the private education sector.

The Australian Democrats, however, believe in public education. We believe in the benefits of being educated in the public realm. And we believe that the vast majority of public funds should be spent on the 70% of Australian students that belong to the public education system.

So, when the States Grants bill was debated last year, we put up amendments to remove provisions related to establishment grants for non-government schools but the Government and the Opposition voted against them.

We moved these amendments because the Democrats are opposed to the provision of establishment grants for non-government schools.

We believe that scarce public resources should not be spent on new non-government schools which have not been considered within the context of viability or need and which would be better spent on the severely underresourced public schools.

The Democrats argue that this extra money should be spent on government schools so that they are also able to attract more students to them.

But we note that $9.5 million is a drop in the ocean compared with what is really needed.

At this point I’d like to quote from the Association of Primary School Principal’s report into the views of primary principals on the state of public education. This report examined the views of nearly 2,500 government primary school principals, who represent nearly 50% of government principals in Australia. Collectively, these principals educate nearly a third of all Australian pri-
Mary school children and hence what they have to say should be afforded great weight.

In relation to the condition of school facilities, the report stated that:

“Twenty-six per cent of principals indicated that their school facilities are badly in need of an upgrade. The largest group of principals, 57 per cent, indicated that their school facilities are adequate. The high rate at which problems with facilities were identified in handwritten statements, however, suggests that ‘adequate’ may be a term that is applied fairly loosely.

The resource needs identified by respondents suggest that many school facilities, particularly old schools and those with high proportions of demountable buildings, have major design problems. Principals raised concerns about not being able to protect students from the sun, wind, rain or snow during Physical Education, school assemblies and when moving between buildings. The design problems associated with introducing computers into old classrooms are significant. More spacious and flexible learning areas are required in order to implement new outcomes-based curriculum frameworks and attain higher standards. And many schools lack an area where they can meet as a whole school, constraining the development of a sense of community.”

The Democrats are fully aware that the lack of appropriate facilities is just one of the myriad of problems facing public educators at the current time.

We say that at least another billion dollars should be allocated to our schools, so that public education is funded at a level which matches community expectations, whether parents can afford to pay fees or not.

In addition to the increasingly lop-sided balance of support between government and non-government schools, the Democrats are most concerned that automatic establishment payments to new non-government schools have far from adequate accountability requirements.

The Committee heard that there are:

No requirements along the lines of minimum enrolment size. There is no explicit or special accountability or reporting requirements attached to that; in fact, the funds do not even have to be accounted for separately. It is, in fact, a rather profligate use and an unaccountable use of the public’s money - not the federal government’s money.

The Democrats note that the establishment grants can be spent on marketing, advertising or even corporate ventures.

A new private school, may choose to do what Mentone Boys Grammar in Melbourne has done and advertise for new students at prime time on Melbourne radio.

The Democrats are also concerned that the inadequacy of the criteria could lead to the proliferation of poorly planned schools which are not economically viable. This would be poor allocation of scarce resources, and something which is unparalleled in any other sector. For example, if a group of people decide that they want to start up a new community health centre, they don’t just simply receive public money as soon as they open their doors.

Our concerns extend to the lack of any cap on the per capita grants of $500 in the first year and $250 in the second, which together with the lack of stringent accountability mechanisms means that the grants could be easily manipulated to maximise the benefit.

In response to questioning about these accountability requirements, the Department of Education, Training and Youth Affairs advised the Committee that there is nothing to stop a school from selling off the school buildings and the site and moving to another site with a new registration number and the same students.

Clearly, this is not a desirable situation and in no way could be considered an appropriate use of public money.

The evidence presented to the Committee about the circumstances surrounding the provision of establishment grants to Christian College, Highaton in particular, deserve further investigation.

This school received an establishment grant when it was operating at the same address and with the same board of directors as an existing school. When a situation like this arises, you have to question the degree of analysis brought to bear on evaluating the legitimacy of claims for automatic payment of establishment grants.

As I stand here today, I note that we are clearly not alone in our concerns.

In their submission to the Senate inquiry, the Independent Education Union (IEU) recommended that:

The Commonwealth request that MCEETYA, together with non government schooling authorities, broker a common set of guidelines or a cooperative national framework for a nationally consistent approach to the planning, renewal, funding and operation of new and existing government and non government schools.

The IEU further recommended that in the absence of a planning and regulatory regime for the estab-
Thursday, 28 June 2001

Speech by Senator Stott Despoja

The Innovation and Education Legislation Amendment Bill 2001 is an omnibus bill which implements a number of changes announced in the Government’s Innovation Statement - Backing Australia’s Ability:  
- additional funding to the ARC,  
- additional research infrastructure funding,  
- 2000 new undergraduate places for IT, science and mathematics, and  
- the Postgraduate Education Loans Scheme (PELS).

In addition, the Bill adjusts increases funding to non-government school students with disabilities and appropriates an additional $10 million to reflect a significant increase in the average size of new non-government schools in 2000.

The Democrats believe the Innovation and Education Legislation Amendment Bill 2001 Bill should not be passed in its current form. While most of the measures in the Bill are not opposed by the Democrats - the postgraduate loans scheme and the increased appropriation for new schools - are not supported by the Democrats.

This contributes to our reason for supporting the Oppositions desire to split the Bill three ways.  

My colleague, Senator Allison will speak to the changes in the States Grants so I will be confining my comments to the changes to the ARC Act and the Higher Education Funding Act.

ARC & Research Infrastructure In Backing Australia’s Ability, the Government announced a funding package of $2.9 billion for R&D and Innovation over 5 years. While the Government’s backflip to increase investment was welcome it needs to be emphasised that this simply slows down Australia’s decline in R&D investment relative to other OECD countries.

Moreover, only $159 million of this package - 5.5% - will actually be made available in 2002. The massive ‘back-ending’ of the increase is a major disappointment and does not sit well with the Government’s rhetoric on investing in Australia’s future prosperity.

One initiative of Backing Australia’s Ability that was widely welcomed was the decision to double the funding of the ARC over five years. This Bill introduces the first stage of the increase - $18.6 million in 2002.

While better than nothing - a Government that took international realities and the urgent needs of Australia’s researchers and our research capability seriously - would not be so timid. While the Democrats support this increase we urge the Government to reconsider its priorities and ‘front-load’ its intention to double the budget of the ARC.

The Chief Scientist made it very clear that infrastructure spending represents about 40 cents in the competitive research dollar invested in the USA and other OECD countries. However, despite the modest increase to infrastructure funding in this Bill, our investment in research infrastructure remains at a very uncompetitive 20 cents in the dollar. So much for this Government’s commitment to our future.

PELS

The Postgraduate Education Loans Scheme (PELS) is the Government’s response to market failure in domestic postgraduate coursework.

At is important to understand that this failure comes about because of poor policy by successive Governments and in particular the current Government who have removed 25,000 funded places from postgraduate education. That is - it is a failure largely of this Government’s own making.

The key characteristics of the market failure in domestic postgraduate coursework are; evidence that the high cost of fees and removal of HECS places are major barriers to participation in postgraduate coursework from equity groups, declining enrolments from domestic postgraduate students (down more than 12% between 1997 - 2000), and alarming drops in enrolments in particular disciplinary fields, notably science 21.5%, education 21% and agriculture 27%. Indeed, between 1997 and 2000 only Maths and Computing had any growth because of the increase in IT enrolments - all the other disciplinary fields de-
Our primary concerns with PELS are limitations and distortions of marketisation.

In its own terms, PELS it is quite a clever proposal that will enable some students who are currently unable to access postgraduate courses the opportunity to do so.

However, the Democrats are obliged to look at the broader policy context and while superficially PELS is 'better than nothing', we cannot support its implementation in the seriously defective policy and funding regime this Government has imposed on education.

The Democrats are opposed to the marketisation of education and believe the sorry state of postgraduate coursework is a salutary reminder of the limitations and distortions of marketisation.

Our primary concerns with PELS are:

- It is premised on postgraduate education being solely a private benefit for the student,
- it avoids the real problem of insufficient funded places, and
- it cannot overcome the substantial cost differentials between disciplines.

PELS is conceptually quite different from HECS. While both are income contingent loans, HECS is a private contribution to a publicly funded place. This explicitly recognises that there is a considerable public benefit from higher education. PELS, on the other hand, simply advances the full cost of tuition and thus either assumes a private benefit only or refuses to make a public contribution to the public benefit.

Full fees, in conjunction with a substantial drop of HECS places, has led to declining numbers of students in disciplines with little or no private benefit such as education, social welfare, nursing, sustainable agriculture and science. Yet there is considerable public benefit in having graduates with postgraduate skills and knowledge in terms of better teachers, nurses and agriculturists. We are not at all convinced that students in such disciplines are likely to enrol just because they can get a loan to cover up-front fees.

In 2000, there were 409,560 full-time equivalent, fully funded places. Of these 365,920 was the minimum undergraduate target load and 21,498 were HECS-exempt postgraduate research places. This left a notional 22,142 places for postgraduate coursework students.

Universities are still required to offer a HECS place for initial vocational entry qualifications in education and nursing -although not in specialist courses such as midwifery or TESOL - Teaching English to Speakers of Other Languages.

Universities are fully entitled to use these places how they see fit, but it does highlight one of the real issues affecting universities and postgraduates in particular insufficient places due to poor policy. Indeed HECS places for postgraduate coursework students have dropped precipitously from 30,400 in 1996 to 14,600 in 2000. In the same period fee-paying increased from 13,300 to 24,500 - it is this massive cost-shifting to students that has caused the decline in student load.

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This explicit recognition of the considerable public benefit from higher education. PELS, on the other hand, simply advances the full cost of tuition and thus either assumes a private benefit only or refuses to make a public contribution to the public benefit.

In the early 1990s, the then ALP government introduced the Relative Funding Model (RFM). This weighted the funding that went to different disciplines precisely because it was recognised that disciplines have different delivery costs. So science, engineering, medicine are weighted much higher than education, law and humanities.

Whether the cost relativities in the RFM are, or indeed were, ever a good indicator is of course, another matter.

Differential HECS works on a similar basis although the inclusion of education in the top band is predicated on potential private benefit.

The Democrats are concerned that as PELS does not and cannot take cost of delivery into account as it simply relies on markets.

This will create enormous problems in high cost areas with significant industry and/or public benefit but comparatively low private benefit, for example, engineering and science.

The Government has made it very clear it expects universities to offer fee-paying courses on a full-cost recovery basis. The Democrats acknowledge there may be good reasons for wanting to prevent public funds substantially subsidising an MBA or
IT student who is likely to receive considerable private benefit.

However, there must be public investment into high cost areas where there are substantial public and industry benefits such as science and engineering by either, or preferably a mixture of;

- permitting cross-subsidies,
- increased provision of funded places,
- and supplementation to universities for PELS places in high cost and/or high public good areas.

The Democrats are aware of an opposition amendment to establish a review process of PELS. I would like to see that review also focus on the consequence of fee-paying and the operation of PELS on strategic areas including science and education are an explicit term of reference of any reviews.

Without a more sophisticated policy mix, which takes account of significant cost differentials for course delivery -students in key strategic areas will necessarily be discriminated against.

The Democrats find it utterly bizarre that within the same Bill the Government proposes to introduce 2000 new funded places to address the skills shortage in science, maths and IT. But in the very same Bill it proposes a measure that will ensure that science remains unattractive for postgraduates.

It is truly indicative of the poverty of this Government’s policy commitments to education and innovation.

If the Government comes back with a better approach to postgraduate education, which includes additional funded places and other mechanisms to overcome the distortions from simple-minded commitments to markets in education -then the Democrats would be more than happy to revisit our principled rejection of PELS.

As Senators will be aware, this Bill was subject to a brief - and far from satisfactory inquiry process.

Before commenting on the Government’s poor process I do want to touch on a number of issues raised in the inquiry process.

The committee heard evidence that the proposal to allow a Minister the capacity to cap student debt represented an important change to HECS policy that had not been discussed or justified. I think it is important to note that there was widespread consensus in the sector on the need to separate debt incurred from PELS and debt incurred from HECS such that a cap could not be applied to HECS. Indeed, we had recommendations to that effect coming from student groups, the National Tertiary Education Union and the Australian Vice-Chancellors Committee - a broad church by any definition.

In addition, there is considerable concern that PELS represents the ‘thin edge of the wedge’ for dismantling HECS and moving to a PELS environment in undergraduate education. There is already a precedent for expanding student loan arrangements into other areas as one of this years’ budget measures was to effectively introduced PELS for overseas trained professionals enrolled in previously funded bridging programs to meet Australia’s recognition requirements.

While there is a substantial difference between administrative arrangements for handling HECS and PELS debt and legislation to dismantle HECS, the Democrats do believe that on balance there is a very good case for quarantining HECS.

Accordingly, the Democrats take a principled position on this issue and support the splitting of HECS and PELS.

The AV-CC recommended that Bond University be made eligible for PELS. As PELS represents a significant public subsidy to students - though not institutions - through an interest free loan, the Democrats do not support expanding PELS to private universities. As the AV-CC pointed out, this does leave an anomalous situation whereby students at other institutions including Australia’s other private university, Notre Dame, are able to access PELS but students of Bond are not.

The Democrats believe it was an inappropriate decision to place Notre Dame on List A of the Higher Education Funding Act in 1998 - and it is disappointing that the opposition did not appreciate the significance of the Minister’s sleight of hand at that time.

The Democrats accept there may be good contingent reasons to allow public funds going to private universities if there is an absence of public provision - as was the case with Notre Dame’s teacher training programs in the Kimberley.

However, this should only justify inclusion on List B.

The Democrats take the AVCC’s point about Notre Dame and Bond - however it is not good policy to use a poor decision as precedent for another poor decision. Accordingly, we do not support students at Bond University accessing PELS. Moreover, I want to put on the record that the Democrats believe it is time to revisit the status of private universities on the HEFA lists.

To conclude, I want to place on the record our view on some of the process issues that Senator Carr has lightly touched upon.
The Democrats note with much concern that the Government chose not to defend their legislation by putting a submission before the Senate inquiry. We also note that the Department did not provide requested information in a timely fashion to the committee.

This is very poor practice and must be considered a contempt of this House.

The Democrats take our responsibilities as legislators very seriously and believe that we, and more generally, this Chamber would be abrogating community expectations if we do not consider legislation that has very important implications for the policy and funding of education closely.

Not only has the sorry example of what has occurred with this Bill undermine our legislative responsibility it totally undermines the various assertions about the urgency of this Bill.

Senator ALLISON—I indicate that the Democrats will be supporting the ALP amendments but we will be voting against this Bill in whatever form it ends up.


Leave granted.

The speech read as follows—

I rise to speak on the Innovation and Legislation Amendment Bill 2001, which put into effect many of the provisions announced in the Prime Minister’s Innovation Statement earlier this year.

The Innovation Statement, and those parts of it that will be legislated through this Bill, does not provide a proper, forthright answer to the challenge being made to Australia in terms of our international competitiveness.

Rather, it is a slow and belated response.

Those parts of this Bill relating to the Innovation Statement merely put back what’s already been taken out. Like most of the things this Government does, the government’s new innovation program lacks vision and direction.

But what this Bill lacks in vision and direction, it makes up in trickiness. Once again we’ve seen the government engage in all sorts of shenanigans to ensure that they trick, or even blackmail, members of the Senate into quietly supporting some of the mean legislation that they put before us.

It is unprecedented in the history of this parliament that a Bill containing provisions for the funding of universities has been tied in with provisions for schools funding.

And the only reason it’s never been done before is because we’ve never had a government so willing to pull switties like this and so willing to misuse the processes of this parliament to get their legislative agenda through.

Last year the Minister for Education rammed through his unconscionable schools funding bill by tying the changes that saw the nation’s 58 most wealthiest schools get millions extra to funding for every school in Australia.

And now we’re told there’s a need for an extra $10 million for non-government schools that wasn’t accounted for in the original Bill from last year. And once again, the Minister for Education has sought to avoid any scrutiny over the lack of funding he provides for public schools by ramming it through and holding the Senate to ransom - pass my Bill to give more money to non-Government schools, or else universities and R & D won’t get any money, he says.

Labor will, as my colleagues have already indicated, support any increase for much needed funding for universities and research, and will support any extra funding made available for schools.

What we will insist on, however, is that any extra funding made available for private schools be matched by an increase in funds for public schools. That is the fair way to do it, and our amendments will be insisting on that.

Innovation

But first let me turn to those parts of the Bill that implement the Prime Minister’s Innovation Statement made earlier this year.

The importance of proper investment in education and investment is relatively undisputed. Few would argue with the fact that significant investment in education and innovation is fundamental to not only expanding Australia’s export base, but also to attracting foreign investment, and thus for creating quality, skilled employment for Australians and high living standards.

Productivity, our ability to entice the world’s best companies to invest in Australia, and our ability to sell our products to the world are the key elements to our future prosperity.

That is why the current Government’s dramatic failure to pursue policies that facilitate innovation and create a skilled workforce is so alarming.

Australia under the Howard Government is one of the few OECD nations whose investment in research and development has actually declined as a percentage of GDP in recent years.
In 1996, Australia spent around 1.65% of its national income on research and development. Under this Government, we’ve fallen to about 1.4%. Had there not been for the innovation statement and the provisions contained within this Bill, our level of investment was predicted to decline to about 1.2%.

What this basically means is that this Bill and the Prime Minister’s Innovation Statement only go some of the way to putting back what the Government has already taken out.

Even after the Innovation Statement, Australia is still short changed when it comes to education and R & D investment.

The Government has cut a total $3 billion from the Commonwealth’s investment in universities and $2 billion from Research and Development, and the Innovation Statement will, over several years, only put back around $3 billion into education and research.

My concerns with the Innovation Statement and this whole package, however, go much deeper than the mere figures.

It is the fundamental nature and character of the sort of investment that’s being planned that concerns me. I think the essential problem is that a lot of this package is about, as I have said earlier, merely restoring funding.

It’s a package that fills in gaps and puts in what should’ve been there in the first place. It’s a backwards-looking program that isn’t concerned with the need to broaden our export base nor the need to attract foreign investment.

In fact, it doesn’t really seem to have any aims other than to restore funding.

Numerous commentators outside of this parliament have thus been very critical of the package. Paul Kelly, whom we all know as not only a well-renowned journalist, but as a respected and knowledgeable public affairs writer, has said that “The paradox of the innovation statement was its old-fashioned character - government handouts for special interests and tax breaks for business.”

Even writers in publications like the Business Review Weekly, which is not known for its support of the non-conservative cause, have remarked, and I’m quoting from an article by T Stotnicki written in BRW in February this year, “that it was largely the Howard Government’s 1996 cut-back in the R & D concession, and the subsequent drop in private sector R & D, that created the need for this innovation package.”

A large criticism that has come from many quarters, for example from John Schubert, the President of the Business Council of Australia is that the package does not do enough to encourage private sector investment in research.

Australia’s current level of private sector investment in research and development is only at 0.67% of GDP, which is the seventh lowest in the OECD. Business is not seeing the benefits of investing in innovation, and is receiving very little assistance or incentive from the government to do so.

The Government’s answer in this package is merely to restore the R & D tax concession. There is no extension or development of this policy, which was established years ago under the Hawke Government. The Innovation Statement thus only goes some of the way to increasing Australia’s private sector investment in innovation.

The package, broadly speaking, directionless. It has no targets or aims for building export industry, no targets or aims for creating jobs, no targets or aims for attracting foreign investment, and no targets or aims for encouraging business to put more into R & D, and more importantly, no targets or aims for helping business to make capital returns on innovation and R & D.

The Government has identified a political problem in terms of the public’s well-founded perception of it being anti-education and anti-innovation. It has responded to this by throwing money in areas in familiar territory - grants and tax breaks, coupled with little to no strategic direction.

The package is funding for funding’s sake. The Innovation Statement was a purely politically motivated reaction from the Prime Minister to the huge electoral defeats he suffered earlier this year.

It is not a serious package for investing in Australia’s future.

Schools Component

The other missing element from this Bill is any effort from this Government to ensure equal access to opportunities in a globally competitive Australia.

Proper investment in education is not only an underlying tenet of achieving the goals of expanding our export base, attracting foreign investment and creating quality, skills-based jobs.

It also trains people and gives them the skills and hence opportunity to have access to highly skilled and well-paid employment.

Investment in education and research and development will arm Australia in the international battlefield of global competitiveness.

For individuals, the arms required to take part in the battle for skilled and well paid employment is a good and decent education.
It is the responsibility of Government, if it aims to facilitate equality of opportunity, to ensure that all its citizens have proper access to these arms.

Everyone should equally have the right to access decent education to enable access to highly skilled and well-paid jobs.

That is why those of us in the Labor Party were so thoroughly outraged by the Government’s schools funding Bill that came before us at the end of last year.

It was deeply wrong and drastically unfair to give millions of dollars to the nation’s richest schools, schools like the King’s School at Parramatta that have rifle ranges and swimming pools and the rest of it, and then give virtually no increase to poorer non-government and government schools.

And now tied into this Innovation Bill is another $10 million for private schools that the Minister for Education tells us he simply failed to include in the Schools Funding Bill we were forced to pass last year.

As my colleagues and I have already stated, Labor’s position is that we will move amendments to make sure that this extra funding being made available to private schools is to be matched by extra funding for the public system.

This is the first time in the history of this parliament that a Bill has simultaneously dealt with funding for universities and schools, as I have indicated earlier.

Once again, the Minister knows how inequitable his proposals for schools funding are, but is nevertheless determined to ram through his agenda, and will go to any lengths to force the Senate to pass his funding proposals.

Senators will remember the way many of us here were given an ultimatum by the Minister late last year - pass my Bill or else every school in Australia gets no funding.

And now it appears we are being given a similar ultimatum here tonight - pass my Bill or else every school in Australia gets no funding.

The bill before the Senate implements some of the measures from the innovation statement. While the government might be seeking to brag about the announcements that were made in the innovation statement, this needs to be done in the context of the government’s performance since it was elected in 1996.

Under this Government, Commonwealth funding for universities has fallen every year, from $4.8 billion in 1996 to $4.2 billion by 2002, projected in the forward estimates. This adds up to a reduction of $3 billion being taken from the Common-
wealth's investment in universities. When you add to this a $2 billion reduction in government support for research and development, we have had a total of $5 billion cut by this government from investment in university education and from government support for research and development.

A close examination of the table released by the Prime Minister when he launched the innovation statement, it is quite clear that the government has backloaded the funding in the innovation statement.

In the year 2001-02 the Prime Minister’s announcements involve a commitment of extra funding of $159 million; in 2002-03 it is a commitment of $414 million; in 2003-04 it is $619 million; in 2004-05 it is $758 million; and in the last year, 2005-06, it is $947 million. So basically almost 60 per cent of the funding announced by the Prime Minister in January is backloaded into the last two years of the five-year innovation statement.

In other words, almost half of the extra funding announced by the Prime Minister in January this year is not going to be spent until two elections away.

The reality is that last year the number of Australian undergraduate students at our universities fell by more than 3,000. While the extra funding for research is welcome, it does not change the fact that we have had a reduction of almost 3,500 in the number of research training places at Australia’s universities.

One of the announcements made in the innovation statement was the commitment to introduce the Postgraduate Education Loans Scheme, or PELS, and it comes after a major reduction in HECS places for postgraduate course work.

The number of Commonwealth funded postgraduate course work places is estimated to have fallen by around 60 per cent since 1996. To the extent that the new PELS system helps this situation, in giving more Australians access to postgraduate study, Labor will support it. However, we do recognise that it does have the potential to act as a pilot for the full deregulation of undergraduate university fees as outlined in the leaked cabinet submission from October 1999 of the Minister for Education, Training and Youth Affairs, Dr Kemp.

The Labor Party categorically opposes the deregulation of undergraduate university fees at some or all universities and also opposes the replacement of HECS with a real interest rate loan system. We are also committed to phasing out full cost up-front fees for Australian undergraduate students.

With the introduction of PELS, the new Postgraduate Education Loans Scheme, we also recognise the possibility of some universities seeking to put up their fees unreasonably. We have some concerns about the mechanism that the government envisages to deal with this—that is, giving the minister the power to set a limit on how much students can borrow under the combined HECS and PELS.

We have two concerns about this. The first is that it is common knowledge that the children of wealthy parents are more likely to have their university fees paid for by their parents each year. If you make an up-front payment for the university fees, you get a 25 per cent discount on that HECS fee. The parents of students from struggling families cannot afford to make that university fee payment on their behalf. That means that, at the end of an undergraduate degree, the students that have zero HECS debt are more likely to be the students that come from wealthy families. That is one reason why we are concerned about putting a ceiling on the combined HECS and PELS debts.

The second reason is that, because of the changes that this government made to HECS in 1996, students end up with very different HECS debt depending on which course they have enrolled in. Not only did the government increase HECS charges in 1996 by up to 125 per cent but also we now have three different bands.

The second part of this Bill deals with a number of school funding issues. Last year’s states grants legislation allocated $859,000 in the calendar year 2001 for establishment grants and $1.2 million per annum in each of the following years. This bill seeks to increase those amounts by very significant quantities. For example, in 2001 the increase is 330 per cent—that is, a total of $3.7 million. In 2002 it is up 262 per cent—an increase of $4.7 million. In 2003 it is up 128 per cent to $1.65 million. In 2004 it is up 128 per cent again to $1.65 million. The total increase is almost $10 million.

The Labor Party has been accused of holding up education in the Senate during the last few days. This is misleading, mischievous and is simple a question of this Government being inefficient when it comes to dealing with its legislation program.

What needs to be ask is when did the Minister for Education, Training and Youth Affairs know that he needed to provide an extra $10 million for these establishment grants for non-government schools?
This is an issue that came up in the Senate committee that dealt with this issue last week and which reported in the Senate later this week.

We now know from the evidence last week that the Department knew last October that an extra $10 million was needed to fund the schools that David Kemp claims that he is so concerned about.

But the department claims that they did not let the minister know about this or make this decision because they did not want David Kemp to actually exercise the responsibilities of being the Commonwealth Minister for Education, Training and Youth Affairs. We now have a position where the Department of Education, Training and Youth Affairs decides whether they will tell their minister that there is a $10 million hole in the funding for new non-government schools.

When a bill is required to fix up the problem the minister for education puts out a press release saying that it is the Labor Party’s fault that he did not take action last October because his department did not tell him about a $10 million hole.

So the delay in the passage of the innovation rests entirely with David Kemp.

If the passage of this Bill is so important then:

- why was it first debated in the House of Representatives on only the 7th June,
- Why is it inappropriately link universities and schools measures but this Government refuses to split the Bill,
- Why are not sufficient increases for public schools to match the latest round of schools funding increases for private schools and
- why wasn’t the $10 million for private schools not included in last year’s schools’ bill when he was told about the error last October?

Why are the people of this country subject to a Minister that cannot administer his department and is not aware of what is happening with the funding situation of our schools sector.

So if anything could be described as mean and tricky-using the Shane Stone language again-it is this minister’s attempts to claim that the Labor Party in some way is responsible for any potential delay in funding for these schools.

The Labor Party has stated our position many times, which is, we are not against extra funding for non-government schools. Last year we supported the extra funding that was provided to needy non-government schools.

But what we support is fair funding for all of our schools. That means that, having provided massive increases to the non-government schools sector what is missing is the balancing increase in funding for government schools.

There are amendments before the Senate that will increase funding for government schools by an extra $30 million to balance the $10 million that the Government is proposing in this legislation for non-government schools. Our amendments seek to provide an extra $30 million in capital works funding for government schools across the country.

Certain sectors of education in this country under this Government have been severely disadvantaged.

We have a situation where King’s and Geelong Grammar have had their $1 million a year increases by 2004.1 but the local Catholic schools have got only about $60,000 per school and the local public school has got only $4,000 per year out of this government.

The Government has sought to bestow massive increases in establishment grants for new private schools, only months after striking the levels of the allocations in the 2000 State Grants Act. While these grants amount to a very small part of the total recurrent allocations for schools provided by the Commonwealth, this consideration of itself does not justify allowing the funds to be increased, nor does it provide a rationale for the lack of rigorous accountability and eligibility requirements applying to the program.

So this Government and in particular this Minister has got to answer two questions. Why did he get it wrong by a factor of three? Why did he get it wrong when he sat down and tried to calculate how much extra money was needed for the non-government schools? Was it incompetence? Was it a deliberate attempt by this minister to cover up the fact that he is providing very significant increases in establishment grants for non-government schools? If he did find out about it before the legislation passed through both houses last year, why did he not fix it last year? Why did he not fix it when he or his office were first informed that there was a $10 million hole in funding for these new non-government schools?

There is no link between the university and school elements of these Bills and the Parliamentary Library can find no precedent for a Bill, which includes new funding for both schools and universities.

The Labor believes that this Bill should be re-drafted to provide for an additional $30 million in capital works grants to be provided to government schools, to match the extra funding being provided for establishment grants to non-government schools; improved accountability.
arrangements to apply to the use of establishment grants; and the Minister’s power to determine a maximum permitted student debt to be limited to only those amounts borrowed under the Postgraduate Education Loan Scheme.

There are no reasons why this Government cannot excise the section of the Bill containing school establishment grants. They won’t do it because they want to sneak through the extra money for private schools. Despite what Mr Gallagher, the head of the Department’s higher education division says about the impact on research and development, this Bill could be passed in August with no adverse affects on Universities or students.

This is the best example of a mean and tricky government. It highlights a government that is not concerned about the state of public education in this country, but is willing to blame anyone else for this mess in the funding arrangements but itself. This Bill should be split and dealt with accordingly and at the same time the public and private sectors of our education industry should be funded fairly and equitably.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.13 a.m.)—I thank senators for their contributions on the Innovation and Education Legislation Amendment Bill 2001. It is best left for the government to make its remarks when we have the debate on the motion to split this bill, which will be shortly conducted.

Question resolved in the affirmative.

Bill read a second time.

Motion (by Senator Carr) proposed:
That it be an instruction to the committee of the whole that:
(a) the committee divide the Innovation and Education Legislation Amendment Bill 2001 (the parent bill) into three separate bills as follows:
(i) a bill dealing with extra funding for research and higher education, comprising clauses 1 to 3 and Schedule 1 of the parent bill,
(ii) a bill dealing with extra funding for primary and secondary education, comprising Schedule 2 of the parent bill, and
(iii) a bill dealing with the postgraduate education loan scheme, limits on student debts to the Commonwealth and electronic communications with students, comprising Schedules 3, 4 and 5 of the parent bill; and
(b) the committee amend the title of the first bill and add enacting words and provisions for titles and commencement to the second and third bills.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (2.15 a.m.)—The government opposes this motion. I think it is perhaps best if, in addressing this motion, I cover aspects which could be dealt with in the committee stage as well, because I do not want to repeat the government’s position on this. Suffice to say that, as Senator Carr as outlined, this is a bill which the opposition is seeking to split into three; and this is an unusual practice, to say the least. We have in this bill an initiative by the government which deals with extra funding for higher education—a postgraduate education loans scheme which will provide some 245,000 students per year with an ability to take up loans to advance themselves in further education, and the extent of those loans would be to the tune of $995-odd million.

The third part deals with funding amounts listed in the states grants acts—that deals with primary and secondary education assistance—and also deals with small increases in Commonwealth assistance for non-government students with disabilities. The bill increases amounts appropriated for establishment grants for new non-government schools in 2001-04. It deals with an increase from $4.7 million to $14.2 million. So we have here very worthwhile initiatives in the form of one bill.

Omnibus bills are not unusual. In fact, in 1995, the previous Labor government brought forward six omnibus bills. There is nothing untoward or unusual in such a bill having these three aspects to it. The opposition is taking premeditated action designed to kill off this legislation if the bill is split. Those listening to this debate should be aware that, on the two occasions that the Senate acted to divide bills which had originated in the House of Representatives, the practical effect was to kill off the legislation, and I refer to health legislation under the previous Labor government in 1995 and a health bill under this government last year.

Like previous governments, we are not willing to establish a precedent whereby a
hostile Senate can cherry pick the government's legislative program; that is, the government puts up a program, a package of initiatives, and it is then picked off one by one by splitting the bill. The established rules and practices of the Senate provide ample opportunity for consideration and amendment of bills which are brought before the Senate. Opposition senators should be using the normal procedures in amending the bill instead of using this device of splitting the bill to seek to avoid the consequences of their actions in defeating this legislation. In taking this action, opposition senators are rejecting this bill and rejecting every item in it, and no sophistry on their part will change that fact.

Although there is a provision in the Senate for a bill to be split, it is not an exercise that has been embarked upon freely. Indeed, the record shows that this would be only the third time that a bill originating in the House of Representatives has been split. In his letter dated 28 June this year to the Minister for Education, Training and Youth Affairs, the Clerk of the House of Representatives advises:

*House of Representatives Practice* indicates that the action is highly undesirable, as 'the established rules and practices of the Houses provide ample opportunity for the consideration and amendment of bills by each House'. In short, this motion will have the effect of killing the bill and the government will have to reintroduce it in the spring sittings.

I have to place that on record because of the highly unusual approach that the opposition has embarked upon in this matter. We have an omnibus bill. There is nothing untoward about it. But we have an opposition which, rather than reject the legislation and take the consequences for that action, seeks to split the bill, which it knows will kill the legislation. The implications that will be suffered as a result of this splitting of the bill are that, in relation to the amendments to the states grants act which I referred to earlier, there will be delays in some schools being paid the 50 per cent advance establishment grant entitlement. It is estimated that the establishment grant entitlement for the five applications that have been approved for general recurrent funding total just over $240,000, or $131,000 in excess of the remaining allocation of $109,000. We have a delay in funding for five applications from schools, and this involves some 967 students.

But there would also be implications of further delay if this bill were not passed in time for the October payment. That would result in delays in making the payment of the remaining 50 per cent entitlement. On current numbers, that would mean delaying payments for some 54 schools, involving nearly 4,000 students. So a further delay would have a wider impact. Furthermore, if the number of new school applications remained consistent with that of previous years, there could be around 20 new school applications still to be submitted which will not receive any entitlement for 2001. Depending on the number of new schools and their enrolments at the 2001 school census day, schools could be denied funding of between $1 million and $2 million.

If the bill were not passed at all, the implications would be more severe, as these schools would receive no payments this year. Failure to pass the bill would also lead to difficulties with payments in future years. This could affect the funding of new non-government schools across Australia, including Catholic schools, an indigenous school in the Kimberley in my home state, Lutheran schools, Montessori and Steiner schools, Jewish day schools and Islamic schools. The opposition should be ashamed of holding up payment to these schools. The Democrats should also be ashamed if they join in the opposition ruse to thwart this legislation.

If the bill is split and not passed by 30 June 2001, there will also be significant resource implications in relation to non-government schools educating students with disabilities. In particular, Catholic and independent schools who have students with disabilities will not be able to receive payment for their full strategic assistance entitlement of $561 for each student with a disability. There will be a shortfall of $34 per student until the bill is passed.

There will also be implications for the Postgraduate Education Loan Scheme. I point in particular to those adjustments
which need to be made in order to accommodate this scheme. Universities have software provided by outside companies, and most of these companies will not make changes to these computer systems until the legislation is passed. The consequence of a delay is that institutions may not have the required forms which are designed to collect data relevant to universities’, DETYA’s and the ATO’s requirements. If the system is not operational in time, institutions may have to use supplementary forms and input the data into their information systems at a later date, which may lead to errors. Legislative certainty means that institutions will be able to get this work under way.

There are also problems in relation to course planning. During discussions, institutional staff indicated they needed lead time to plan which courses will be subject to the Post Education Loans Scheme, and to consider potential student numbers and consequently appropriate staffing levels resulting from increases in enrolment. There are also communication products which are essential to administering the Post Education Loans Scheme. Institutions require information booklets and forms provided by the department to assist students with applying for the loan service facility. This delay will cause a good many students to be disadvantaged in relation to this Post Education Loans Scheme. I mentioned some 240,000 students that have the prospect of enjoying this initiative, which runs to the tune of in excess of $900 million worth of loans.

The opposition cannot hide behind the fact that by splitting this bill they are casting the onus back onto government to take action to have the legislation passed, because they are really using this ruse in effect to kill the legislation. That is what it will do. The opposition has spoken about amendments which we are yet to have details on. There has been a good deal of contact between the office of the Minister for Education, Training and Youth Affairs and the opposition. We are yet to have details of any amendments that might be forthcoming. Suffice it to say that the splitting of this bill is a thoroughly undesirable practice. It is designed to kill the legislation and it will delay, if not—even worse—avoid funding for those essential purposes that I have indicated. There can be no other description of it than that the opposition are intent upon thwarting these good initiatives by the government. We will oppose vehemently the splitting of this bill, but if when we get to the committee stage the bill is split, the minister has indicated that he will introduce legislation in the spring sittings in an attempt to make the best of a bad situation brought about by the opposition.

Senator CARR (Victoria) (2.27 a.m.)—I was seeking the call before. I asked a question, but perhaps I was a bit too slow. The minister jumped, and that is fair enough because from what the minister said we now know what the government’s position is on these matters. Firstly, those amendments have been circulated, so they should be available to the government.

Senator Ellison—Just now.

Senator CARR—I understand that they were distributed earlier this evening, Minister. I turn, in responding to the minister’s statement, to the rights of the Senate and the appropriateness of the action being proposed here tonight by the Labor Party in regard to splitting this bill. The minister has said tonight that this is a position that the government basically disagrees with. He does not say it is not in the standing orders, because quite clearly the Senate standing orders have always included provisions for bills to be divided on the instructions of the committee of the whole.

That is the established practice in this chamber. That has been the established practice because over a very long time governments have attempted to incorporate within a particular piece of legislation different measures, some of which are good, some of which are bad, some of which affect the operations of departments and some of which go to other policy issues that are not quite as likely to attract the support of the public at large. We have seen through the history of this government attempts to tag unpopular measures onto various popular measures. In the Senate—and in legislative councils around this country—the opportunity has been taken to divide bills, and that remains the case. Every time this occurs, the government of
the day claims that the world as we know it will end and that these actions are reprehensible.

The minister indicated that this action has been undertaken in this place on at least three occasions. The first occasion on which the Senate divided a bill was on 9 June 1995, when the Human Services and Health Legislation Amendment Bill 1995 was divided into two bills, pursuant to the instruction to the committee of the whole, and was moved on notice. That was the action of a Liberal opposition, the detail of which is contained in Odgers on page 260. I suggest that whoever is writing the minister’s speeches draw attention to that. They will also find that the government of the day chose to introduce new legislation—two new bills—reflecting the decisions of the Senate on that matter, which contained provisions that effectively divided the bills.

What we have heard from the minister tonight is that, when this matter is carried by the Senate, the government intends to withdraw the bills. That is a decision the government is taking. The government chooses to do that. The minister also went on to say that Minister Kemp will introduce new legislation in the spring session. It seems to me that what we are being told is that this bill has to be accepted in this particular form or not at all and that has been the tradition of governments—what has always been referred to as Hobson’s choice. I note a point that Senator Harradine made on the Human Services and Health Legislation Amendment Bill in 1995, when he drew attention by way of a paper prepared by the Senate clerks which argued that the purpose of dividing a bill is to facilitate the Senate’s consideration of a matter; to give the Senate an opportunity to vote separately and effectively on all the issues involved; and, should it be necessary, to prevent any possible tacking provisions in a bill, the effect of which may be to infringe the various constitutional powers on amendments.

What was argued on that occasion was that, since the 1600s, when the phrase first entered the language, it has been an elementary political tactic to leave an opponent with what is called Hobson’s choice—that is, one thing or the other; my choice or none. I understand that that provision arose from an old story whereby, at a Cambridge inn, Thomas Hobson enjoyed a monopoly over which customer would have access to his horses. He said that the horse nearest the stable door would be the horse that is taken—‘It’s that horse or none.’ That is where this whole principle of Hobson’s choice arose—that those enjoying a monopolistic capacity demand that a certain action be taken or that no action at all be taken. That is what the government is putting to us here tonight. Essentially it is Hobson’s choice.

Labor say that there are measures in this bill that are worthy of support. The government has options to make sure that those particular provisions are implemented in law but it will not do so, by responding in the way that it has tonight. Labor say that we cannot find any precedents in education to make an omnibus bill, where essentially popular measures or reasonable measures are being put together with unpopular measures that essentially are designed to cover up the mistakes of the department and the government. We cannot find an example where that has occurred in recent times.

I think we are entitled to speculate on the motives of the government in packaging the legislation in the way that it has. Essentially, the department has made a complete mess of this issue of payment of establishment grants to new non-government schools. Last October, when we were in the middle of the consideration of the state grants bill—remember that great controversy over the government’s measures to provide a million dollars extra a year for the wealthier schools in this country—departmental officials discovered that they had made a mistake in the forward estimates in regard to the payment of establishment grants to new non-government schools.

I have found in politics that, if you make a mistake, it is wise not to repeat it, to do something about it and to address it square on. You would expect that public officials would certainly do that. We discovered through an inquiry process of the Senate that the government was not told initially that there had been an error in the forward esti-
mates. It was put to us by senior officials that it was felt within the department that, because the bill was controversial and they were worried about getting the bills through, they were not going to say anything about the matter and that they were not going to seek amendments in this place, which is the normal practice when governments find that they have made errors, but that the government would seek to move amendments to the bill at a more convenient date. We discovered at a subsequent hearing that the minister was involved in this process and that the minister, presumably, was complicit in this parliament passing legislation which the department knew was wrong. The government did not correct that error, and now they expect us to correct it in this legislation.

We discovered that there were other errors last year in regard to not just the establishment grants but also the strategic assistance payments—for funding students with disabilities—where the government had calculated incorrectly certain moneys. We discovered a third error, which is not particularly relevant to this bill, in the innovations statement. In February this year, I asked why the $130 million in the fiscal balance table which had been released as part of the innovation statement was not included. The department told us that the exclusion of the measure to change the operation of the EBA from the fiscal balance table was an oversight. The innovation measures, including the measures that were reported in the 2001-02 portfolio budget statement, were measures affecting the 2001-02 budget.

There are quite a few oversights in regard to the education spending and the administration of programs in this portfolio. Essentially, the administration of the establishment grants program has been abysmal. I think we can show categorically that, in the case of a number of the schools which the government has paid moneys to, there are serious questions as to the actions taken by the government in the payment to those schools which, under the government’s own guidelines, are not to be paid where the school establishes separate campuses of the one school which are not new schools at all but which are just campuses of the existing school. We found from the web sites of those schools that, in terms of their registration or their registered training organisation status, their company structures, their personnel and the actual statements of the state registration boards—which, we are told, is just another error in the preamble of the state registration boards in Victoria—these schools are in fact separate campuses of the one school but are being registered as new schools. Of course, the government has paid money to those schools. That has occurred in Western Australia, in Victoria and, it would seem, in Queensland.

It seems to me that there is a series of questions that relate to the actual payment of the establishment grants to date. What is really quite disturbing is that, having discovered that the expenditure, the appropriation, was in error, the government continued to spend the money and, of course, are at a point where they are now saying that, if this bill is not passed, the October payments will not be made. The reality is that this bill does not prevent moneys being paid in October, because there is an opportunity for the government to reconsider these issues in August. It is disingenuous of the government to argue other than that, because they know the reality of it. That is why they said tonight that they are prepared to consider legislation in the next session.

We are saying that there are other amendments to provide extra money for government schools. There is a need to review the PELS scheme, and there are questions that need to be addressed in relation to the ministerial discretion on the cap, the amount of money that is being set at the maximum loan limit, on the PELS scheme itself. These are issues that we believe can be addressed by way of amendment. That is why we are saying that the splitting of the bill provides an opportunity for the government to allow those measures on which there is broad agreement—such as the extra funding for the universities and the ARC—to be dealt with and processed, but the question of providing additional moneys for government schools should be dealt with separately. So, in that way, I think we are being more than reasonable. It is now appropriate for this government to acknowledge they have made a few
blues about this and settle down and talk to people about getting those blues fixed.

Senator ALLISON (Victoria)  (2.41 a.m.)—I just want to indicate that the Democrats will support this motion to split the bill. I think the minister is being disingenuous by indicating that this is some ruse. He knows very well that this bill was put together for the express purpose of pushing it through. I think we had a states grants bill that should have had the amendments associated with primary and secondary education attached to it rather than to this bill. But, in any case, we all know that the need for this amendment, leaving aside its importance of otherwise, was known when we dealt with the states grants bill in December. It is extraordinary that the minister would have the cheek to suggest that the Senate was somehow being unreasonable or irresponsible in wanting to split this bill. Senator Carr is right: it is entirely up to the government as to whether it accepts a split bill or not.

It seems to me that, if you put these measures together in one omnibus bill, you take that risk. The Senate wants to properly consider each of them and have the opportunity to reject them if that seems necessary. I have to say that it does seem necessary to us in a number of instances. There are some good measures in this bill, but we would like to be able to vote for those measures separately. It would be interesting to get the minister to respond as to why it was necessary to pull these three together, why it is that we have two quite separate higher education bills, essentially, coupled with the primary and secondary schools set of amendments to the legislation. Perhaps the minister can explain why it was so important that these measures be brought together in this way.

Question put:
That the motion (Senator Carr's) be agreed to.

The Senate divided. [2.48 a.m.]
(The President—Senator the Hon. Margaret Reid)

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Question so resolved in the affirmative.

In Committee

The bill.

Senator CARR (Victoria)  (2.52 a.m.)—I move the amendment standing in my name to effect the contingent notice of motion just carried:

(1) That the Innovation and Education Legislation Amendment Bill 2001 be divided into 3 separate bills as follows:

(a) a bill (the *first bill*) dealing with extra funding for research and higher education, comprising clauses 1 to 3 and Schedule 1 of the parent bill;
(b) a bill (the *second bill*) dealing with extra funding for primary and secondary education, comprising Schedule 2 of the parent bill; and
(c) a bill (the *third bill*) dealing with the postgraduate education loan scheme, limits on student debts to the Commonwealth and electronic communications with students, comprising Schedules 3, 4 and 5 of the parent bill; and

(2) That the first bill be amended as follows:

(a) Title, omit “primary, secondary and higher education and of research”, substitute “higher education and research”.

(b) Clause 1, page 1 (line 7), after “Act”, insert “(No. 1)”.

(3) That the second bill be amended as follows:

(a) At the beginning of the bill, insert:

A Bill for an Act to amend legislation about funding of primary and secondary education and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Innovation and Education Legislation Amendment Act (No. 2) 2001*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

(b) That Schedules 3, 4 and 5 be renumbered as Schedules 1, 2 and 3, respectively.

Question resolved in the affirmative.

Progress reported.

TAXATION LAWS AMENDMENT (SUPERANNUATION CONTRIBUTIONS) BILL 2000

Consideration of House of Representatives

Message

Consideration resumed from 24 May.

Motion (by Senator Kemp) proposed:

That the committee does not insist on the Senate amendment to which the House of Representatives has disagreed.

Senator SHERRY (Tasmania) (2.54 a.m.)—The Taxation Laws Amendment (Superannuation Contributions) Bill 2000 deals with the use of a number of different types of superannuation entities to minimise and avoid tax. The main vehicles for this minimisation of tax relate to offshore superannuation funds and certain categories of onshore superannuation funds into which, over a period of three years from 1996 through to 1999, approximately $1.5 billion have been placed. Approximately 2,000 high wealth individuals have placed $1.5 billion in these superannuation funds and, in doing so, they have sought to avoid—and so far have avoided—income tax, superannuation taxes including the superannuation surcharge and fringe benefits taxes. The tax office estimates that the level of revenue at risk is approximately half a billion dollars.

When this matter was last considered, the Labor Party moved an amendment to retrospectively implement this legislation. How-
ever, we did not secure agreement with the Australian Democrats and that consequently meant that we were effectively forced to support the Australian Democrat amendment which did not go to the same period of retrospectivity. The Australian Labor Party maintains that it was never the intention, when superannuation funds were enacted in Australia, for superannuation funds to be used to avoid income tax, the various superannuation contributions taxes, the so-called superannuation surcharge and fringe benefits tax.

Other than the 2,000-odd individuals who have been identified by the tax office, everyone else in Australia pays the appropriate level of tax in respect of superannuation. For those reasons, the Labor Party believes that it is compelling that this legislation be retrospective. It is not unreasonable, if everyone else in Australia is paying their respective level of tax on superannuation funds, for these 2,000 individuals to do the same. Accordingly, the Labor Party will continue to support the amendment moved by the Australian Democrats to ensure that this legislation has at least some measure of retrospectivity.

Question put:
That the motion (Senator Kemp’s) be agreed to.

The committee divided. [3.03 a.m.]
(The Temporary Chairman—Senator A.B. Ferguson)

AYES

Payne, M.A.  Reid, M.E.
Ridgeway, A.D.  Tambling, G.E.
Tchen, T.  Tierney, J.W.
Troeth, J.M.  Vanstone, A.E.
Watson, J.O.W.  Woodley, J.

NOES

Bishop, T.M.  Brown, B.J.
Buckland, G.  Campbell, G.
Carr, K.J.  Collins, J.M.A.
Cooney, B.C.  Crossin, P.M.
Crowley, R.A.  Faulkner, J.P.
Forshaw, M.G.  Gibbs, B.
Hutchins, S.P.  Ludwig, J.W *
Mackay, S.M.  McLucas, J.E.
Murphy, S.M.  O’Brien, K.W.K.
Ray, R.F.  Schachter, C.C.
Sherry, N.J.  

PAIRS

Patterson, K.C.  Lundy, K.A.
Hill, R.M.  Cook, P.F.
Crane, A.W.  Bolkus, N.
Alston, R.K.R.  West, S.M.
Minchin, N.H.  Evans, C.V.
Knowles, S.C.  McKiernan, J.P.
Cooman, H.L.  
Heffernan, W.  
Stott Despoja, N.  

Pair

* denotes teller

Question so resolved in the affirmative.
Resolution reported; report adopted.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives returning the following bill without amendment:
Interactive Gambling Bill 2001

NOTICES

Withdrawal

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.07 a.m.)—Madam President, at the request of the respective senators, I withdraw general business notices of motion 612, 613, 624, 798, 850, 862, 868, 892, 901, 907, 910 and 913.

LEAVE OF ABSENCE

Motion (by Senator Ian Campbell) agreed to:
That leave of absence be granted to every member of the Senate from the termination of the sitting today to the day on which the Senate next meets.

ADJOURNMENT

Motion (by Senator Ian Campbell) proposed:
That the Senate do now adjourn.

Queensland: Government Policies

Senator LUDWIG (Queensland) (3.07 a.m.)—I seek leave to incorporate my speech.

Senator Newman—Have you shown it to us?

Senator LUDWIG—Yes, I certainly have.

Leave granted.

The speech read as follows—

Over the past year I have been listening to the constituents of Queensland through various methods of communication in order to give Queenslanders the opportunity to express their concerns and to allow me to assist them wherever possible.

The responses have indicated that there is considerable discontent throughout the community over the policies that this Government has chosen to adopt. A number of constituents have also asked that I raise these concerns over Government policies in Parliament in the hope that this Government may attempt to address these issues.

The overwhelming majority of responses came from senior citizens, including both self-funded retirees and pensioners. These people have seen first-hand the ‘tricky’ manner in which the Coalition has handled the provision of government assistance to the elderly. The $300 one-off payment was a prime example of an attempt to buy back the elderly’s vote and provide a basis for massive taxpayer-funded self promotion. The $300 was an insult for those that were promised $1000 at the last election, and older Australians know that it doesn’t even come close to compensating for the slug of the GST.

What is most concerning about the entire manner in which the Government has chosen to provide this assistance is the $4.5 million wasted on advertising to promote Government in this election year. The Government could have informed pensioners and retirees of changes through normal channels, however they decided to target the broader community to gain wider electoral support for the upcoming election.

Rather than targeting potential recipients in a cost-effective manner, the advertising campaign gratuitously covers radio, television as well as print.

This is just another example of the Government’s extraordinary wastage of taxpayers money on self promotion. The $4 million campaign would easily have payed for the extension of the $300 payment to all carer pensioners aged over 55. Carers save the Government millions of dollars every year yet the Coalition seem to believe that they do not deserve this additional assistance. This Government clearly has its priorities muddled when it chooses to spend millions of dollars on taxpayer-funded advertising rather than extending a benefit to those most in need. The value of the campaign is highly questionable given the $300 one-off doesn’t even require pensioners to apply—it’s paid automatically. The detail of this payment could have easily been incorporated into the regular seniors newsletter that is mailed directly to all age pensioners and most retirees.

Another example of this Government’s muddled priorities is the $15 million being spent on private health insurance advertising. Rather than spending taxpayers money on health services in the public health system, the Government is further subsidising private health funds. As noted by Labor’s Shadow Minister for Health, the money used for these advertisements could have funded an extra 1250 hip replacement operations or 1000 heart by-pass operations.

It is clear that the Coalition’s attempt to advertise its way back into government will continue throughout the rest of the year, with Senate Estimates indicating that other expenditure proposed for the year include $6.9 million on the Telstra Besley response, a $5 million campaign on the abolition of the Financial Institutions Tax and a $4.2 million campaign to promote Work for the Dole. This Government will spend approximately $20 million per month leading up to October this year on advertising. This is a disgraceful waste of taxpayers money which should be spent in areas of genuine need.

Rather than spending money on genuine public information, this Government has chosen to waste money on opportunistic, cynical advertising.

Telstra

I have mentioned the issue of Telstra’s regional services a number of times in this chamber, primarily because it is an issue which continually arises as being of concern to those outside of the major centres. There is clearly a continued need to be vigilant, as indicated by the recently leaked memo from Telstra. The memo confirms that the
providers plan to cut further jobs from the organisation, with the majority being from regional centres. The memo indicated that of the job cuts Telstra is considering for its National Network Solutions arm, 70% will come from rural centres. This equates to more than 600 jobs lost in regional Australia. National Network Solutions is a unit within Telstra responsible for installing and fixing telephones and contains the field workers who actually do the work on individual phones in homes. Unfortunately for those living in regional towns such as Charleville, Longreach, Dalby and Boonah, it looks as though the already inadequate telephone services will only get worse.

In the March 2001 Performance Monitoring Bulletin, the Australian Communications Authority (ACA) found that Telstra has failed to meet even the Government’s low standards for performance on fifty out of seventy-nine criteria. The ACA’s Customer Satisfaction Survey has also found unprecedented levels of dissatisfaction by Australians with the service they are receiving from telecommunications carriers. As Labor has maintained consistently, the Government needs to retain its position as the majority shareholder in order to ensure that services improve. Telstra’s recent price changes were only achieved via the Government’s position as a majority shareholder in the organisation. The Government would no longer have this influence if it were to fully privatise Telstra, ending any chance of improving services to regional consumers. Privatisation will only ensure that Telstra focuses solely on profits rather than providing services to people living in the regions.

**Unemployment**

Responses I have received from the electorate of Forde show concern at the growing level of unemployment in the area. The unemployment figures in the area of Forde show the Howard Government has broken its promise that the GST would create jobs. From December 2000 to March 2001, the unemployment level has increased by 3% in Beenleigh; 3.7% in Eagleby; 4.6% in Loganlea; and 4% in Waterford West. This Government’s policies on taxation and small business have placed unprecedented pressure on the economy causing small business to suffer and unemployment to rise.

The unemployment problem is certainly not going to be addressed by this Government’s refusal to deal with the situation of Job Network providers using labour hire firms to place their unemployed clients into ‘phantom jobs’. The recent Senate Estimates hearings exposed the practice of Job Network providers setting up their own labour hire company and then employing job seekers in this company only to sack them after completing 15 hours of work. The Government then pays the provider up to $400 for each unemployed person who they place into a job which lasts for a minimum of 15 hours. These so-called jobs often only require the unemployed person to only fill out a survey and often do not even require the unemployed person to leave home at all. The Government should be acting immediately to investigate the Job Network providers to ensure that this practice is stamped out. It must also investigate the apparent sanction given to this practice given by the Department of Employment, Workplace Relations and Small Business. Not only is it a blatant misuse of taxpayers money—it is taking advantage of those in the community who are most in need of assistance. Unemployed people who are attempting to find work should be given as much assistance as possible, not exploited by the bodies who are funded by the government to provide genuine employment opportunities.

**Small Business and Taxation**

On my recent visits to Toowoomba I have again been confronted with the extent to which small businesses are struggling under the current Government’s business and taxation policies. This was confirmed by a substantial number of responses from the Gold Coast area which indicated that small businesses are still hurting from the taxation system implemented by this Government. It is difficult to reconcile this situation with Mr Howard’s boast before the last election that “the tax plan is good for Australia ... It will boost the growth and the strength of the Australian economy”. *(Parliament House, 13 August 1998)*. It is now clear that the GST has not boosted growth or strengthened the economy. In fact, the new taxation system has had a devastating effect on small business, with many simply preferring to close their doors rather than deal with the compliance nightmare and becoming part-time tax collectors for the Government.

An extraordinary number of businesses within the tourism industry on the Gold Coast have been adversely affected by the economic climate created by this Government. The Government needs to provide much more assistance to those small businesses involved in the tourism industry, particularly after slugging them with the most oppressive tax system this country has ever seen. Australian tourists now have the option of going overseas for their holidays and avoiding paying the GST or holidaying in their own country and being slugged with this tax. Prior to the introduction of the GST, the tourism industry briefed this Government extensively about the effect this tax would have on small businesses in this area. The
Government ignored the warnings and now the small business operators in the tourism industry are paying the price.

Unfortunately, small business owners now have the end-of-financial-year GST nightmare to look forward to. According to the President of the National Tax Accountants' Association, Rob Regan, the tax system has been complicated to such an extent that tax agents' fees would increase by 50 to 100 per cent this year. With regard to the 350-page Tax Guide which arrives in the mail this week. Mr Regan made the point in the Courier-Mail (p.3. 26/06/01) that "Prior to the Howard Government coming into power, it was 200 pages - now it’s almost doubled in size".

Mr Regan went on to say that even experts were confused about the new tax regime, concluding that "Tax reform has failed under the Howard Government because it’s too cumbersome".

**Dairy Deregulation**

The Government’s handling of dairy deregulation was identified as an issue of major concern by many survey respondents in the Forde and Groom areas. Many dairy farmers have seen their income plummet as a result of dairy deregulation, with precious little assistance offered by this Government. The Government has set the cut off point for access to additional assistance at only those who had over 35% of their operation devoted to producing market milk. This effectively cuts out at least 20% of dairy farmers in Queensland. Any farmers which took advice prior to deregulation to expand and diversify their businesses have now been penalised for doing so. Many of these farmers now have very low incomes, considerable debt, and yet still cannot access this additional assistance. The Government has failed to develop a cohesive plan to secure the futures of dairy farming families and others in the industry. Labour’s Shadow Agriculture Minister recently highlighted the Government’s vast number of failings in their handling of this issue including: failing to allow dairy farmers to directly access Dairy Regional Assistance Program (DRAP) grants where a project can be shown to result in long-term employment in a dairying area; failing to support farmers seeking to bargain collectively with processors and manufacturers; failing to ensure that neither suppliers nor consumers are being exploited in the wake of deregulation and producing an exit scheme which very few farmers have been able to access. Labor’s amendment to the Government’s legislation was passed through the Senate yesterday. Unfortunately, the government watered down this measure this morning. This amendment was to reduce the cut-off point for access to additional assistance to 25%, as well as introducing a minimum payment of $15000 for eligible farmers. This amendment would have meant that most of the farmers in the ‘quota’ states, including my state of Queensland, who would have missed out under the Government’s plan will now qualify for assistance. The bill is now in the Government’s court as the legislation returns to the House of Representatives - they can support the legislation with Labor’s amendments to insure a fairer compensation deal for our dairy farmers or they can abandon them yet again. The government took the low road and pared back our amendment.

**Environment and Heritage**

Environment and heritage issues seem to consistently rate as issues of major concern in public forums, with similar results emanating from responses from constituents. People seem to be very concerned about the preservation of their local environment as well as the conservation of local man-made structures of historical and natural value. Residents who visit areas such as Mt Tamborine or the Lamington National Park in Forde or the Burleigh Heads National Park in Mcterphone greatly appreciate the opportunity to regularly visit such beautiful local environments and are rightfully determined to ensure that these areas are protected. To ensure the protection of these and other areas of national importance, Labor is campaigning to save the Register of National Estate. This Register has been developed over the last twenty-five years and consists of some thirteen thousand places that have been recognised for their heritage values. It appears that the Howard Government is proposing to scrap the Register through legislation and replace if with two far more limited lists. The Government’s legislation will immediately remove all of these listings from the Register and will replace the Australian Heritage Commission with an advisory council with significantly reduced powers and independence. Labor supports retaining the Register of National Estate as a comprehensive statutory register to be updated and maintained at a national level. Labor will also supporting stronger protection provisions in the existing framework for protection of heritage places with national significance. However, we believe that this should be achieved through amending the current legislation. Many of the places listed on the Register have received greater recognition and protection as a result of their listing. Many places in my local area are listed on this Register including: the Beaudesert War Memorial, the Bethania Lutheran Church, the Boonah War Memorial, Catswold Cottage in Rathdowney, Bishops Peak Shelter, Hillview Art Site, Cedar Creek National Park, Joalah National Park and Tamborine Mountain National Park. It is
of great concern to me that these places will lose the recognition and protection offered by their listing in the Register. Local constituents who also wish to voice their concern over this issue can sign a petition at my office which calls on the Government to maintain the Register of the National Estate.

Whilst it has been clear for some time that the policies embraced by this Government are failing, responses to my survey have confirmed that people do not believe that this Government is up to the job. More importantly, Australians have a right to expect that the Government will attempt to address these issues in a responsible manner - not indulge in a panic-fuelled advertising blitz to buy their way back into government.

Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (3.08 a.m.)—I seek an indication from the chamber whether all senators’ adjournment speeches will be incorporated.

The PRESIDENT—It would be a matter of the speeches being shown in advance to the whips, and it may have been agreed or not have been agreed. I do not know. You have the call, Senator.

Senator HARRIS—I have seen no adjournment speeches, Madam President.

The PRESIDENT—You have the call to speak if you wish, Senator.

Senator HARRIS—I rise to table a grievance—dated 9 May 2001—this evening on behalf of Queenslander Mr Kevin Lindeberg and compiled by Mr Robert F. Greenwood QC, in respect of a charge that the Senate was gravely misled by the Queensland government and the Queensland Criminal Justice Commission when it took evidence in the Heiner affair in 1995 before the Senate Select Committee on Unresolved Whistleblower Cases chaired by Senator Shayne Murphy. The grievance is addressed to Senator Margaret Reid, President of the Senate. Honourable senators should know that, after considering the matter, the President declined to table it but she invited the interested parties, Messrs Lindeberg and Greenwood, to see if any senator would. After an approach and careful consideration, I have agreed to do so. Under normal circumstances I would respect the President’s discretion but on this occasion, regretfully, I cannot.

The grievance does bring serious new evidence and critical insights into the notorious Heiner affair which I believe must be appropriately considered by this chamber. Disturbingly, it reveals for the first time that allegations of child abuse brought about the Heiner inquiry, and that the shredding unacceptably aided in covering up the abuse. This chamber knows that I, along with all other senators, have a longstanding interest in eradicating child abuse, no matter where it exists, who has engaged in it and who has covered it up.

To reiterate, the new evidence reveals what can be reasonably assumed to have been shredded, namely, evidence of abuse of children in that state run institution, and it throws a new and disturbing light on the thousands of dollars of public money paid by the Queensland government to a public servant to buy his silence about the child abuse and related matters. The critical evidence appears to have been deliberately withheld from the Senate at the time when it was considering the Heiner affair. Contempt may therefore have been committed. Given the time constraints, I seek leave to table the grievance and its attachments so this chamber may consider the content during the winter recess.

Leave not granted.

Senator HARRIS—It is my intention to speak more comprehensively, when the Senate resumes, on the grievance and how I believe its serious issues should be addressed by the Senate. To repeat: I have considered the grievance carefully; it is not done lightly. It is not a rehash of old material but a grievance which highlights new evidence and how this chamber may have been seriously misled when making findings in the Heiner affair. Left unaddressed, in the face of this new evidence, those findings may bring disrepute on the Senate and may let a serious possible contempt occur with impunity. I indicate to the Senate that at an appropriate time in the new session of parliament I will read into Hansard the documents which the opposition has declined to give leave to incorporate.
Northern Territory Public Order and Anti-Social Conduct Legislation

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (3.13 a.m.)—I seek leave to incorporate my adjournment speech into Hansard.

Leave granted.

The speech read as follows—

I rise today to speak about a bill that was tabled in the NT Legislative Assembly on 5th June, 2001. According to the Chief Minister, Mr Burke, the Public Order and Anti-Social Conduct Bill 2001 is about the maintenance of law and order—“a set of comprehensive reforms and programs that will safeguard our security”. But on further reading of the legislation, one has to ask the question: “Whose security?” The Chief Minister goes on to say that the bill will “punish where necessary”, but also “assist the rehabilitation of offenders.” This is what Mr Burke calls “managed punishment”. And those who are to be “managed” under this bill are a group known as “itinerants or long-grassers”. Senators may not be all that familiar with the term long-grassers—but to most in the Northern Territory, it is a slang term for homeless Aboriginal people.

A lot of Aboriginal people come into Darwin during the dry season, which happens to coincide with the tourist season. This is when the climate is at its best, when people can actually leave remote communities and know they will be able to get home, and when people can travel up to Darwin, visit friends and family or access specialist medical treatment and hospitals.

Of course when they arrive in Darwin, there isn’t sufficient accommodation, so many people turn to charitable organisations for food and shelter, or they simply sleep under the stars. This is an annual routine for many Aboriginal people. It has been happening for generations. But to the Chief Minister, these ‘long-grassers’ are a blight on Darwin and the harbingers of crime and unsightly behaviour.

So let us be clear on what this bill is about, and whose behaviour is being labelled as ‘anti-social’ and contrary to ‘public order’.

In his second reading speech, the Chief Minister made the comment that:

“Many ways have been tried and many more words have been expended on seeking a solution to the anti-social behaviour of this particular—perhaps even peculiar—group within Territory society. The Government in introducing the Public Order and Anti-Social Conduct Bill is trying yet another way to deal with some of the intrusive activities we see in our streets and parks.

... we are not being racist when we suggest that many of our urban problems might not be there if some of these people went home.”

Clearly this is a bill that is in the league of the NT’s mandatory sentencing legislation. It doesn’t directly name Aboriginal people as the target group, but it is clear after reading the bill and the Chief Minister’s speech, what its true motivations and intentions are. It is also clear that it will disproportionately impact on Aboriginal people, bring them into greater contact with police, and increase the likelihood of Aboriginal incarceration.

But the trade-off, in the Minister’s eyes at least, is the perceived electoral benefits of a tough law and order platform as the Territory approaches an election.

So what is ‘anti-social conduct’?

It includes any behaviour that:

- Causes apprehension, harassment, alarm or distress to a reasonable person entering or leaving a place;
- Obstructs the movement of pedestrians or traffic;
- Obstructs or hinders another person entering or leaving a business;
- Disrupts the peaceful and orderly conduct of an event, entertainment or gathering;
- Interferes with people’s reasonable enjoyment of a place; or
- Disrupts peace or good order in or around a place.

In effect, anti-social behaviour will include things like:

- public loitering,
- jay walking,
- sleeping in parks, and
- people who look different to the ‘model citizen’.

And it is police who will determine what is and is not anti-social, and what is not conducive to ‘public order’.

The bill empowers police officers (of any rank) to issue a person with a ‘direction’ to leave a place or stop acting in an ‘anti-social’ manner in a given place. Directions have a lifespan of up to 72 hours, and can be issued for anti-social behaviour...
that occurs in any public place, any private, lace where the conduct affects people who are in a public place, P
or somewhere that has been deemed a 'prescribed' place by police.
In the process of issuing a 'direction', police can confiscate anything that is contributing to the anti-social conduct. This may mean a stereo, a skateboard and so on. Police are required to return 'detained goods' in a 'reasonable' time frame—but no time limits are referred to in the bill.
Police are also empowered to judge what is 'reasonable' when it comes to deciding whether or not to issue someone with a direction. Police will determine what is 'reasonably necessary' in the interest of public safety, public order, or the protection of the rights and freedoms of others, to end the anti-social conduct.
Surely, if the legal principle of 'reasonableness' is to be exercised, this should be done by a magistrate or a judge.
It is important to note that the bill does not make anti-social conduct a crime.
The crime is committed when someone fails to fully comply with a direction by showing further anti-social conduct before the declaration has expired. A breach of a direction incurs a penalty of up to $2,000 or 6 month's gaol.
When issuing a direction, police may ask for the offender’s name and address. If they fail to divulge the information, this is an offence under the bill, and again incurs a fine of up to $2,000 or 6 month’s gaol.
I return to my earlier point, if 'reasonableness' is the legal principle the NT Government wants to exercise through this legislation—surely the punishment should fit the crime. How could anyone argue that refusing to state your name and address warrants six month’s in gaol—or that sleeping in a park could cost you $2,000?
The bill also applies to private property such as people’s homes, if the police declare the home or the block of flats a 'prescribed place'. Police suddenly have extremely ‘broad powers, such as the right to give directions to residents of the flats in relation, to their conduct within the flats and the surrounding area. Similarly, the Minister could notify an Aboriginal community, and all the dwellings within that community, that they constitute a ‘prescribed place’.
Furthermore, the bill proposes to abolish certain private property rights of peaceful enjoyment and exclusive possession through the creation of a mechanism called a ‘Place of Anti-Social Conduct Declaration’.
In other words, it defies the age-old notion of a man or a woman’s house being their castle, which underpins our common law relating to property.
Any police officer can apply to a court for this declaration, provided that the court is satisfied (on the balance of probabilities rather than any proof) that the place has been associated with 'a continuing or repeated course of anti-social conduct'. Courts have the power to revoke and extend declarations beyond the 12 month limit.
If the house that you rent comes under such a declaration, police can enter (forcibly if necessary) your house at any time without your consent, or a warrant—day or night—if they reasonably suspect that anti-social conduct is occurring in the house.
The only check and balance relating to a declaration is that the officer is required to get the approval of a Superintendent.
While in the house or the surrounding area, police can issue directions to anyone who acts in an anti-social manner, confiscate property and ask for names and addresses.
If police suspect that any person has ‘a thing connected with or relating to an offence’, police can search the entire property, including vehicles, and people. They are also empowered to use ‘reasonable force’ to conduct any of these searches. If anyone does not co-operate, the penalty is also a fine of up to $2,000 or 6 months gaol.
If you are not the owner of the building, but a tenant, you have no right of appeal against the declaration. A tenant would have to convince their landlord to appeal the declaration on their behalf.
The ability of the police to enforce directions that they issue raises a number of questions about police intelligence collection and record keeping.
Records about what directions have been issued and are in force will need to be kept. Consequently, recipients of a direction, who are otherwise law-abiding citizens, are likely to have personal details about their lives collated and held by police.
These are serious privacy questions when you consider that those under this type of surveillance have not broken any law, until such time as they breach a direction.
The North Australian Aboriginal Legal Service has provided a list of the legislation that already exists in the NT to give police and government agencies powers to deal with disorderly conduct. These include the liquor laws to prevent public
drinking, protective custody laws that allow police to detain anyone who is drunk in public, council by-laws to stop sleeping in public places or to move people on from public places if they are disorderly, and so on.

In other words, I fail to see an actual need for the Public Order and Anti-Social Conduct Bill in the NT’s legal system. All of the reasons that the Chief Minister listed as to why the bill is necessary, are sufficiently addressed by current legislation.

So what does this bill achieve that is new? All I can see is that it creates an entirely new class of criminal conduct—namely disobeying a police officer.

And in light of the thinly-veiled racially-discriminatory nature of the bill, I think most Australians would be offended by its intrusive and punitive nature and what its impact on Aboriginal people will be.

Its likely impact will be more Aboriginal being imprisoned for minor offences.

This new law runs totally counter to the mandatory sentencing deal between the Federal and NT governments. And I hope that the Howard Government will take note of this!

Most of the Aboriginal people being gaol will be the same people currently affected by mandatory sentencing—that is Aboriginal people, particularly if they are young, homeless or itinerant.

This new law will increase the interactions between Aboriginal people and police, inevitably resulting in an increase in offences such as:
- resist police,
- assault police,
- offensive language and so on.

Assaults are now “mandatory sentencing offences” in the NT, meaning that the penalty must be gaol—and we are not necessarily talking about short sentences, because no time period is specified.

There is also the potential that minor property damage will result from the increased interactions between police and Aboriginal people as a result of this bill—property damage attracts mandatory minimum gaol terms.

Therefore, what the mandatory sentencing deal may represent in terms of positives for Aboriginal people, the anti-social conduct bill will take away. At the same time as the Federal Government is trying to make the mandatory sentencing deal work to reduce Aboriginal incarceration, the Territory Government is seeking to introduce new laws that will achieve the exact opposite.

The NT’s intent in tabling this bill would appear to be to win the ‘law and order’ vote in the lead up to the next election.

But the long-term outcomes for Aboriginal people are extremely regressive and demoralising. I think all Senators can imagine the impact this bill is going to have on communities that are already struggling with a range of dire social issues and lack of economic opportunities. And let us remember, we are not talking about a small minority of people in the Territory.

We are talking about 25% of the population.

Does Australia really want to revisit the national and international backlash and criticism that came with the mandatory sentencing laws?

Do we want to ignore the main recommendation of the Royal Commission into Aboriginal Deaths in Custody, and relegate another generation of young Aboriginal people to be permanently destined for our gaols?

I hope the Chief Minister of the Northern Territory, and other members of his government will reconsider their advocacy of this bill and ensure it never becomes law in this country.

Thank you.

Knowledge Nation

Senator TIERNEY (New South Wales) (3.13 a.m.)—I rise tonight to speak about a concept known as Knowledge Nation. This has been bandied around quite a lot over the last year or so. If we look at the history of this, it actually goes back to Bill Clinton in America. He was the first one who came up with Knowledge Nation. Tony Blair in the UK then borrowed the term and then Kim Beazley out here in Australia borrowed the term Knowledge Nation. With the old videotapes, when you make a copy of a copy of a copy what you end up with at the end is not particularly good and not particularly clear. That is particularly the case with this so-called Knowledge Nation policy of the ALP. Kim Beazley launched this earlier this year and his first bright idea was an online university, which has been thoroughly rubbished and discredited right around the country. I have made many speeches relating to that and I do not want to dwell on it tonight.

But I do want to dwell on the fact that the Labor Party, who see themselves as an alternative government, have tonight trashed any idea of their Knowledge Nation. Right at the
cusp of where they wanted to lead off with Knowledge Nation, they have refused to pass the Innovation and Education Legislation Amendment Bill 2001, which was going to be the start of the allocation of over $100 million into Knowledge Nation type activities in the schools and universities of this country. I do not know what the shadow minister for education and the Leader of the Opposition are actually doing at the moment. The fact is that they have allowed Senator Kim Carr to come in here and prevent the foundations of their Knowledge Nation starting. Who is running the show in the Labor Party? We have had this rogue senator trashing Labor policy. The Leader of the Opposition should bring the senator into line. I do not think he realises the implication of what has happened. Let me give a little bit of history of how it has developed in the Senate over the last few weeks.

The bill, quite properly, was sent to inquiry with a reporting date. The inquiry was to be held last Monday week, and it was. Then, before we got back to the reporting date, the Democrats combined with Labor to move in the Senate an extension for another hearing. That hearing was held last Monday. That was engineered by Senator Lyn Allison, who has a blind, ideological hatred of private schools. Because this bill quite rightly contains a small amount of money for an increase in funding to private schools because there are more students in those schools, Labor and the Democrats have combined to stop the whole thing. They have deliberately engineered this, and I want to put this very clearly on the Hansard record. They could have had the inquiry, reported back and given us 1½ weeks to debate the bill. But they set a reporting date of today for the Innovation and Education Legislation Amendment Bill 2001. And, with our very busy program of 14 bills to get through today, when did we get to it? We got to it at 2 o’clock this morning. How on earth could it be debated sensibly then anyway?

Let us work out who the guilty parties here are. The guilty parties are Labor and the Democrats. They have stopped this legislation with these manoeuvring tactics. Let us see what the effect of it will be. I do not know if Kim Beazley is actually focusing on what the effects of this bill will be. There are a number of aspects. I mentioned the school one, and I will just treat that very briefly. The Department of Education, Training and Youth Affairs made an estimate of how many new schools were going to start and how many students were going to be in those schools. It happened that there were more schools than they had estimated, and the schools were a little bit bigger. We fund these schools on a pro rata basis. It is not that there are extra dollars per student; there just happen to be more students and more schools. That is why there is an extra appropriation. That is quite reasonable, yet Senator Lyn Allison’s blind, ideological hatred of parental choice is stopping that provision.

Let us have a look at what this also holds up and stops. One of the initiatives is for 2,000 extra places in the universities of this country. There will be students out there who will now miss out. If we consider this in August and there is evidence from the hearing and from the department to say that the effect will be quite patchy, some universities will take a punt and start to plan for their places for next year. Others, perhaps the smaller ones in the regional areas, will be a lot more cautious about it and will not start planning for the places. Therefore, students will miss out in rural and regional Australia. Students who may have gone to university will now not go to university next year because of the irresponsible reaction of the Democrats and Labor senators.

Let us have a look at another measure in the bill. We have established a postgraduate loans scheme in this bill: up to 250,000 postgraduate students will be able to apply for loans and, without an interest component, repay them through a HECS type system. This is a major new push for postgraduate education in this country, the very foundation needed for their Knowledge Nation—and what is happening to it? It is being completely trashed by the stopping of this bill. Will the universities have the time to advertise those places and get them in place for next year? If we consider this legislation in August, which is now certain, maybe it will
Another major provision in the bill relates to the infrastructure that goes with research. Under 13 years of Labor, when research went in, infrastructure often did not—and the universities have been starved of proper infrastructure funding. This bill is the start of correcting that long-term error. If you are to buy and order this sort of equipment, you must have a long lead time to do it. But in the Senate, due to the Labor Party and the Democrats, we have now delayed that by three months. Will it be in place for next year?

This government, through Backing Australia’s Ability, has doubled the number of ARC grants, the research grants, which is something Labor never did—we have doubled them. Excellent research projects will go ahead which are the very foundations of something called the Knowledge Nation. Yet tonight the combined parties here have stopped that going ahead on time. Lead time for getting this research under way with projects being approved has now been completely delayed. So, putting all of those things together, with Backing Australia’s Ability, we are attempting to implement a major new initiative in this country for getting research and training and student numbers post-secondary up and running in a major way, but that has now been hobbled by the actions here tonight.

What is happening in the Labor Party policy area? They claim that, if they come into government this year, they will develop this Knowledge Nation. What we have seen here tonight are the very foundations of that being cut out from under the Labor Party policy. How can Kim Beazley, with any credibility—

The PRESIDENT—Mr Beazley.

Senator TIERNEY—How can Mr Beazley, with any credibility, say that he is going to build the Knowledge Nation when he is knocking the foundations out from under the very process? He needs to focus; he needs to get rogue Senator Kim Carr under control so that we can build the new economy.

The PRESIDENT—Senator, you ought not to refer to the senator in that fashion. I would ask you to rephrase that.

Senator TIERNEY—Senator Kim Carr should be brought under control by the Leader of the Opposition so that we can get innovation and development of our post-secondary education sector on track and running and rising in this country.

Parliamentary Staff

The PRESIDENT (3.22 a.m.)—Before adjourning the Senate, I just wish at this hour to take a moment to thank all staff who have been involved in the late sitting of the Senate, particularly those in the chamber itself and throughout the building. I thank you for your dedication and commitment in serving the Senate to this late hour. The Senate stands adjourned until 12.30 p.m. on Monday, 6 August 2001.

Senate adjourned at 3.23 a.m. (Friday)

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—Directives—Part—


Health Insurance Act—Health Insurance Determination HS/2/01.

National Health Act—Health Benefits Reinsurance (Records of Organisations) Determination 2001 (No. 1).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Communications, Information Technology and the Arts Portfolio: Market Testing of Corporate Services
(Question No. 2673)

Senator Faulkner asked Minister for Communications, Information Technology and the Arts, upon notice, on 9 August 2000:

(1) Has the department and/or any agency in the portfolio, set a timeframe to market test any of its corporate services; if so, which agency, which functions, and what is the timeframe.

(2) In relation to each agency which has, or will, move to market test corporate services, what arrangements have been made to consult with effected employees and their representatives; if such arrangements have not been made, when will these consultations be undertaken.

Senator Alston—The answer to the honourable senator’s question is as follows:

The following agencies within Communications, Information Technology and the Arts portfolio responded with advice that they have not conducted market testing of their corporate services nor other functions:

- Artbank Board
- Australian Broadcasting Authority
- Australia Council
- Australian National Maritime Museum Council
- Bundanon Trust Board
- Film Australia Limited
- Film Finance Corporation
- National Australia Day Council
- National Gallery of Australia Council
- National Library of Australia Council
- National Museum of Australia Council
- National Science and Technology Centre Council

A number of the agencies associated with the portfolio are administratively supported by and have their corporate services supplied by the Department of Communications, Information Technology and the Arts. The question does not apply to these agencies:

- Australia Business Arts Foundation
- Australian Information Economy Advisory Council
- National Council for Centenary of Federation
- Committee on Taxation Incentives for the Arts
- Incubator Advisory Panel
- Intelligent Island Board
- National Australia Day Council
- National Cultural Heritage Committee
- National Electronic Authentication Council
- National Portrait Gallery Board
- Old Parliament House Governing Council
- Playing Australia
- Public Lending Right Committee
- Regional Telecommunications Infrastructure Fund Board (Networking the Nation)
- Visions of Australia
A number of the agencies associated with the portfolio are constituted as independent and autonomous agencies, they are not budget funded and fall outside this question:

- Telstra Corporation
- Australia Post

The following agencies have responded with advice that they have conducted market testing of either both or one or the other of their corporate and non-corporate services:

- The Department of Communications, Information Technology and the Arts
- National Archives of Australia
- Australian Broadcasting Corporation
- Australian National Gallery
- Australian Film, Television and Radio School
- SCREENSOUND Australia
- Australian Film Commission and
- Special Broadcasting Service (SBS)

Individual agency responses are as follows:

**DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY and the ARTS**

1. The Department of Communications Information Technology and the Arts is market testing Human Resource Management, Financial Management (except Budgets) and Property and Office Services (except records management) according to the following timetable.

<table>
<thead>
<tr>
<th>Date</th>
<th>Activity</th>
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<tbody>
<tr>
<td>15 April 2000</td>
<td>Expression of Interest – released.</td>
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<tr>
<td></td>
<td>Request for Tender - Property – released.</td>
</tr>
<tr>
<td></td>
<td>Request for Quotation – Office Services – released.</td>
</tr>
<tr>
<td>4 December 2000</td>
<td>RFT Evaluation completed.</td>
</tr>
</tbody>
</table>

2. Affected employees have been consulted, on a regular basis, about the market testing process with the first Information to Staff in November 1999.

**NATIONAL ARCHIVES OF AUSTRALIA (NAA)**

1. NAA is in the process of setting a time frame.

2. Initial consultations within NAA will commence as soon as a time frame has been finalised.

**SPECIAL BROADCASTING SERVICE (SBS)**

1. SBS has set a time frame to test the costs of the provision of the corporate services against market providers prior to the close of the current financial year. It has recently benchmarked some services against other organisations and the other models, and will continue to do so, and use the most appropriate mix of internal and external resources.

2. Not applicable

**AUSTRALIAN COMMUNICATIONS AUTHORITY (ACA)**

1. The ACA has already outsourced a number of corporate services functions as follows:
   - Network operations for its information technology services;
   - Internal audit services;
   - Records management services;
   - Property management services;
   - Graphic design services; and
   - Computing services.

The ACA is a body subject to the Commonwealth Authorities and Companies Act 1997, and is not subject to the mandatory requirements for market testing of corporate services functions. It therefore has no formal program for the market testing of its corporate functions.
The ACA will, however, examine the scope for outsourcing some more of its corporate services as part of its ongoing efforts to improve the effectiveness and efficiency of its corporate services. The ACA relies heavily on external contractors for provision of applications development and maintenance services in relation to its computerised business systems.

In relation to computing services, the ACA is a member of Group 8. Ipex ITG was the successful tenderer for Group 8, and commenced the provision of services on 26 June 2000.

(2) The ACA has consulted with affected employees during each of the outsourcing initiatives identified in our response to part (1) of this question. The ACA will continue to consult with staff and unions in respect of any future outsourcing initiatives.

AUSTRALIAN BROADCASTING CORPORATION (ABC)

(1) The ABC has not set a time frame to market test any of its corporate services.

However, the ABC does benchmark its IT services against the industry, benchmarking at a minimum of 20% of its IT activities each year. To date the cost of running services in-house has compared very favourably with industry averages.

The ABC also annually benchmarks the cost of the provision of its legal services against the industry. The results show that the ABC makes a considerable saving by having in-house lawyers.

(2) See response to part (1)

NATIONAL GALLERY OF AUSTRALIA (NGA)

(1) and (2) The NGA has not set a time frame to market test any of its corporate services. In recent years the NGA has participated with other national collecting and exhibiting institutions in looking at our ancillary services and has participated in a review of the delivery of such services. The review resulted in a report being presented by Tooher Gale and Associates which confirmed that corporate services delivered in-house was still the most appropriate option for the NGA. The NGA has outsourced janitorial services in the last 12 months, but at this time has no plans to market test other aspects of its operations.

THE AUSTRALIAN FILM TELEVISION AND RADIO SCHOOL (AFTRS)

(1) and (2) The AFTRS is currently documenting all processes in the areas of Human Resources, Pay-roll and Financial Services ready to commence the process of market testing these services.

SCREENSOUND AUSTRALIA

(1) Beginning with the Human Resource Management function, ScreenSound Australia plans to undertake a market testing strategy during 2001. Following an evaluation of this process, other corporate service functions will be considered later. These timetables under review and market testing will be conducted as early as possible.

(2) The unions have been advised in the course of negotiating the agency’s new Certified Agreement of the intention to benchmark and market test corporate services. Relevant staff are kept informed of developments at regular team meetings.

AUSTRALIAN FILM COMMISSION

(1) The AFC has not set a time frame to market test its corporate services

(2) Not applicable.

Communications, Information Technology and the Arts Portfolio: Market Testing of Functions

(Question No. 2692)

Senator Faulkner asked Minister for Communications, Information Technology and the Arts, upon notice, on 9 August 2000:

(1) Has the department, and/or any agency in the portfolio, set a timeframe to market test any of its functions other than corporate services; if so, which agency, which functions, what is the state and city or town location of staff currently undertaking that function, and what is the timeframe.

(2) In relation to each agency which has or will move to market test these functions, what arrangements have been made to consult with effected employees and their representatives; if such arrangements have not been made, when will these consultations be undertaken.

Senator Alston—The answer to the honourable senator’s question is as follows:
The following agencies within Communications, Information Technology and the Arts portfolio responded with advice that they have not conducted market testing of their corporate services nor other functions:

- Artbank Board
- Australian Broadcasting Authority
- Australia Council
- Australian National Maritime Museum Council
- Bundanon Trust Board
- Film Australia Limited
- Film Finance Corporation
- National Australia Day Council
- National Gallery of Australia Council
- National Library of Australia Council
- National Museum of Australia Council
- National Science and Technology Centre Council

A number of the agencies associated with the portfolio are administratively supported by and have their corporate services supplied by the Department of Communications, Information Technology and the Arts. The question does not apply to these agencies:

- Australia Business Arts Foundation
- Australian Information Economy Advisory Council
- National Council for Centenary of Federation
- Committee on Taxation Incentives for the Arts
- Incubator Advisory Panel
- Intelligent Island Board
- National Australia Day Council
- National Cultural Heritage Committee
- National Electronic Authentication Council
- National Portrait Gallery Board
- Old Parliament House Governing Council
- Playing Australia
- Public Lending Right Committee
- Regional Telecommunications Infrastructure Fund Board (Networking the Nation)
- Visions of Australia

A number of the agencies associated with the portfolio are constituted as independent and autonomous agencies, they are not budget funded and fall outside this question:

- Telstra Corporation
- Australia Post

The following agencies have responded with advice that they have conducted market testing of either both or one of the other of their corporate and non-corporate services:

- The Department of Communications, Information Technology and the Arts
- National Archives of Australia
- Australian Communications Authority
- Australian Broadcasting Corporation
- Australian National Gallery
- Australian Film, Television and Radio School
- SCREENSOUND Australia
Australian Film Commission and
Special Broadcasting Service (SBS)

Individual agency responses are as follows:

DEPARTMENT OF COMMUNICATIONS, INFORMATION TECHNOLOGY and the ARTS
(1) The Department of Communications Information Technology and the Arts has not set a timeframe to market test any of its functions other than corporate services.
(2) Not applicable.

NATIONAL ARCHIVES OF AUSTRALIA (NAA)
(1) NAA has not set a time frame to market test functions other than corporate services.
(2) Not applicable

SPECIAL BROADCASTING SERVICE (SBS)
(1) SBS has undertaken extensive evaluation of its outputs over time, including functions other than corporate services, many of which have been outsourced. This has resulted in the outsourcing of several major areas of activity, including advertising services, commissioned programs, and transmission services.
   During 2000-2001 new measures have and will be subject to competitive tendering. These include activities associated with the extension of analogue services to transmission areas with a population exceeding 10,000, the upgrade of the Sydney Analogue Television Transmission Tower, digital signal distribution, as well as activities associated with new media developments and operations.
(2) None of these new activities will impact on current employees.

AUSTRALIAN COMMUNICATIONS AUTHORITY (ACA)
(1) The ACA has already outsourced non-corporate services functions in the following areas:
   • Revenue collection arrangements which are now predominantly managed through a locked box service provider through the Australian banking industry B-Pay system; and
   • A number of telecommunications cabling licensing functions. These include administration of licensing, development of competency definitions, and auditing of installed cabling.
   The ACA does not currently have plans to market test any of its other non-corporate services functions.
(2) The ACA has consulted with affected employees during each of the outsourcing initiatives identified in our response to part (1) of this question. The ACA will continue to consult with staff and unions in respect of any future outsourcing initiatives.

AUSTRALIAN BROADCASTING CORPORATION (ABC)
(1) No, the ABC has not set a time frame to market test any of its non-corporate service functions.
(2) See response to part (1).

NATIONAL GALLERY OF AUSTRALIA (NGA)
(1) and (2) The NGA has not set a time frame to market test any of its corporate services. In recent years the NGA has participated with other national collecting and exhibiting institutions in looking at our ancillary services and has participated in a review of the delivery of such services. The review resulted in a report being presented by Tooher Gale and Associates which confirmed that corporate services delivered in-house was still the most appropriate option for the NGA. The NGA has outsourced janitorial services in the last 12 months, but at this time has no plans to market test other aspects of its operations.

THE AUSTRALIAN FILM TELEVISION AND RADIO SCHOOL (AFTRS)
(1) and (2) The AFTRS is currently documenting all processes in the areas of Human Resources, Payroll and Financial Services ready to commence the process of market testing these services.

SCREENSOUND AUSTRALIA
(1) ScreenSound Australia has, since its inception, market tested a range of its functions for possible outsourcing. At various times almost all Archive functions, which are commercially available with Australia, have been either market tested or indeed outsourced. We currently outsourced
film, audio and video copying, product production, exhibition design and development, and the operation of our café. In the past we have outsourced cataloguing, collection storage, and film, video and audio repair. Most of this outsourcing relates to Canberra operations, but none of it has involved any staff redundancies. It has been designed to increase productivity and to allow staff to focus on more specialised, higher priority work.

(2) The Archive has a strong tradition of thorough consultation with employees about changed work arrangements and all outsourcing and market testing has been done in this context.

AUSTRALIAN FILM COMMISSION

(1) The AFC will be looking to market test its IT desktop systems during the next year. The AFC falls within the very small agency definition as part of the IT Infrastructure Outsourcing Initiative of OASITO.

(2) Arrangements will be made to consult with staff affected once timeframes have been finalised and any potential impact on staff will be referred to the AFC’s Joint Consultative Council established under the AFC’s Certified Agreement.

Prawns: White Spot Virus (Question No. 3493)

Senator Woodley asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 6 March 2001:

(1) (a) Is it true that Thailand is a key source of prawns infected with the White Spot Virus, which have been illegally brought into Australia and that this fact has been the subject of numerous official complaints; and (b) is it also correct that while the department was refusing to allow Australian industry and other interested parties access and input into the preparation of an import risk assessment report on the virus and its possible spread to Australia, the Thai Government was privately given a copy of the confidential report.

(2) With reference to a confidential import risk assessment report on the threat of White Spot Virus being given to the Thai Government: (a) is the Minister aware that the Thai Government had indicated to certain parties that it was ‘very pleased with the extent of influence they had over the final recommendations’; (b) has this matter been brought to the Minister’s attention prior to now; (c) what action has been taken to determine the truth of the allegation; and (d) is it normal for officers of the department to do deals with Thai Government officials on these issues.

(3) (a) Can the Minister explain why he has consistently argued that there is little risk to Australia’s seafood industry in the importation of uncooked green prawns into this country when his own experts agree that these prawns contain the White Spot Virus, which, although totally harmless to humans, has had a devastating effect on the prawn farming industries and marine environment of many countries in South-East Asia; (b) would the Minister not agree that a plea by prawn farming and other interested parties for a moratorium on the importation of these uncooked green prawns to enable a full and open inquiry to be held into the risks of White Spot Virus is a reasonable proposal; and (c) does the Minister think there is no threat, or are he and the department willing to take chances with this devastating marine disease.

(4) (a) Is the Minister aware that many batches of imported uncooked green prawns carrying the devastating marine disease known as White Spot Virus are being illegally distributed as bait prawns and pose a significant threat to Australia’s prawn farms and other crustaceans; (b) does the Minister agree with the assessment of the department that the spread of illegal raw prawn imports into the bait market ‘occurs more widely than was previously thought and may result in an increased risk of exposure to infection with exotic pathogens’; and (c) does the Minister not accept that while this disease may be totally harmless to humans, it could virtually wipe out the fast growing Australian prawn farming industry overnight and create havoc in our marine environment and that it is important that a moratorium be introduced to enable a full inquiry into the situation.

(5) (a) Is the Minister aware that the prawn farming industry first raised concerns about possible incursion of exotic pathogens in imported uncooked prawn products in February 1994 in a letter to the Australian Quarantine and Inspection Service (AQIS); (b) is the Minister aware that the prawn farming industry wrote to AQIS on 16 September 1996 requesting urgent action be taken to implement measures to protect Australia from exotic pathogens in uncooked prawn imports warning, ‘The prawn farming industry in Australia raised the issue of imported whole green prawns for
human consumption being a vector for exotic prawn viruses with AQIS in February 1994. Since then the volume of imports of green prawns has increased, the clock is ticking on Australia’s disease free status and the day the industry looks to the AQIS decision makers for the reason why no decision was made in time!; and (c) can the Minister explain why no action was taken to address the industry’s concerns until February 2001, a period of 7 years.

(6) (a) Can the Minister explain how the virulent White Spot Virus, a marine disease which is totally harmless to humans but devastating to prawns and other crustaceans, made its way into Darwin waters in 2000; (b) can the Minister confirm that initial Commonwealth Scientific and Industrial Research Organisation tests showed the virus had become established in the Darwin Aquaculture Centre and the Aquaculture School of the Northern Territory, that it was present in prawns and crabs in these facilities and in Darwin Harbour near the effluent outlet from the centre; (c) can the Minister assure the Australian prawn farming industry and other Australians that this disease is no longer present in these facilities and the harbour; (d) will the Minister not agree that sooner or later, whether it be through unfortunate incidents such as occurred in Darwin, or through the importation of uncooked prawns from South-East Asia being illegally used for bait, we will have a marine seafood disaster in this country as a result of White Spot Virus, similar to those which have occurred in many other countries; and (e) will the Minister not take action to fully investigate this issue and establish a moratorium on imports of these prawns into this country until that inquiry has established the facts.

(7) With reference to the Darwin White Spot Virus incident: (a) what sampling regime is currently in place to determine the extent of any possible incursion into Darwin Harbour; (b) who is taking the samples; (c) who is conducting the tests; (d) what tests are being done; (e) what species are being collected; (f) where are the samples being collected; (g) how many samples are being taken; (h) will there be independent tests (controls) in addition to internal government testing; (i) when will full test results be made available to industry and the community; and (j) what strategy is in place to communicate with and involve industry.

(8) On 7 February 2001, AQIS Acting General Manager for Animal Biosecurity, Mr David Banks, issued animal biosecurity policy memorandum 2001/06, which proposed import conditions for uncooked green prawns from countries or zones unable to demonstrate freedom from WSSV. This will require the prawns to enter a quarantine cold store facility in Australia where samples will be tested. Shipments that are positive will either be destroyed or re-exported.: (a) is the Minister aware that there are 16 different types of uncooked prawn and prawn products imported into Australia, totalling around 14 000 tonnes a year, and that policy memorandum 2001/06 relates to only 2 of the 16 product types, representing less than 3 per cent of total imports; (b) why are the other 14 uncooked imported product types not subject to the requirements of policy memorandum 2001/06; and (c) can the Minister provide an assurance that these products will not be carrying the White Spot Virus.

(9) With reference to policy memorandum 2001/06: (a) who will be conducting the testing of prawn imports for White Spot Virus; (b) what testing regime will there be; (c) what tests will be used; (d) what will the tests cost; (e) who is going to pay for the tests; (f) why will the tests only be concerned with White Spot Virus and not the other major OIE-listed viruses such as Yellow Head, Infectious Hypodermal and Haematopoietic Necrosis Virus and Taura Syndrome Virus; and (g) can the Minister provide an assurance that the testing regime will be open and transparent and that results of all tests will be made readily available to industry and community groups.

(10) (a) Is the Minister aware that, since the proclamation of policy memorandum 2001/06, and in total contravention of that policy, uncooked whole green prawns have been imported into Australia and released without testing; (b) why were these products released without being tested; and (c) can the Minister give an assurance that these products were not carrying White Spot Virus or other OIE-listed viruses.

(11) (a) Is the Minister aware that the Queensland, New South Wales, the Northern Territory and Tasmanian governments support the prawn farming industry’s call for a short-term, 6-month moratorium on green prawn imports as a result of the threat of the White Spot Virus; (b) is the Minister aware that recreational fishing and conservation groups are calling for a ban on uncooked prawn imports; and (c) is it the Minister’s view that four state governments, industry, conservation and recreational fishing groups have all got it wrong.
Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) My department is aware that in 1999 some prawns pickled in a concentrated brine and preservative solution were imported as bait. The prawns were imported from Thailand where the white spot syndrome virus (WSSV) is present. Action was taken in November 1999 to stop future importation. The matter was again raised by the Australian Prawn Farmers Association in January 2001 and was re-investigated by the Australian Quarantine and Inspection Service (AQIS). The latest investigation confirmed that no imports had occurred since November 1999.

(b) No.

(2) (a) No.

(b) No.

(c) My department advises me that a confidential copy of the draft IRA was not provided to the Thai Government. This has been confirmed with relevant current and former officers in Biosecurity Australia and members of the risk analysis panel (RAP) conducting the import risk analysis (IRA).

(d) No.

(3) (a) I have not ‘consistently argued’ that there is little risk in the importation of uncooked green prawns. I have, however, reported the views of the RAP, made up of eminent experts in crustacean diseases and quarantine risk analysis. The panel assessed the risk of the establishment of white spot disease through the use of imported green prawns for bait as low but nonetheless recommended measures for the further reduction of risk. The RAP recognises that WSSV has had a serious effect on prawn farming in many countries but found no evidence of a significant deleterious effect on the natural marine environment.

(b) The risk management measures proposed by the RAP, and other significant measures, were introduced in December 2000 and February 2001 to manage the risks until completion of the IRA. Biosecurity Australia considers these measures are adequate and in these circumstances a moratorium is difficult to justify scientifically.

(c) The conditions in place until 1996 for imported green prawns were inadequate. However, the measures now in place satisfactorily address that threat, in accordance with Australia’s conservative approach to quarantine risk and Australia’s international obligations.

(4) (a) The States and Territories have responsibility for implementing controls on the end use of green prawns within their own borders, that is, after prawns have left quarantine. The Commonwealth has demanded that commensurate with the stricter import conditions outlined previously, the States and Territories should enforce their licensing and other regulatory powers to address any illicit trade in bait prawns.

With regard to the ‘significant’ threat to Australian prawn farms and other crustaceans, the RAP assessed the risk of disease introduction as low but recommended measures for the further reduction of risk. Measures introduced in December 2000 and February 2001 will help ensure that imported prawns are not diverted to the bait trade. Testing requirements will target prawns infected with WSSV.

(b) Yes.

(c) See the answer to (3) (a) and (b).

(5) (a) Biosecurity Australia confirms that the Australian prawn farming industry raised concerns about an exotic virus in fresh chilled prawns in February 1994.

(b) Biosecurity Australia confirms that the Australian prawn farming industry requested action on uncooked prawn imports, particularly bait prawns, in September 1996.

(c) The Senator appears to be unaware that the issue was taken up by the National Task Force on Imported Fish and Fish Products in 1995 and 1996. The Australian Prawn Farmers Association was a member of the Task Force. Its report issued in December 1996 recommended that action be taken to address the issue of the importation of prawns not intended for human consumption. Pre-empting the recommendation, AQIS introduced a ban in November 1996. These prawns were prohibited with the intention of limiting the use of imported prawns as
bait. The ban meant that fewer poor quality and emergency harvested prawns were imported. Also an IRA of prawns and prawn products was commenced. More recent evidence indicates that the diversion of prawns imported for human consumption into the bait trade, despite the import ban, was greater than expected and further action was taken in December 2000 and February 2001.

(6) (a) Green prawns imported from Indonesia in 1999 were inadvertently (in the belief they were of Australian origin) fed to mudcrabs and prawns in an aquaculture pond at the Darwin Aquaculture Centre and to prawns at the Aquaculture School of the Northern Territory University.

(b) Samples of the imported prawns, the mudcrabs and prawns to which they were fed, and shore crabs and prawns in Darwin harbour at the outfall from the pond were tested for white spot. Samples from each group were positive. The test used recognises segments of viral DNA, ie it is not a definitive test for viable virus. The test results do however indicate that there was transmission of WSSV and that crustaceans in Darwin harbour became infected. Subsequent tests do not indicate that infection became established.

(c) I am advised that susceptible animals at the Aquaculture Centre and Aquaculture School were destroyed and the facilities disinfected to ensure disease was not present in those facilities. Subsequent testing of crustaceans in Darwin harbour indicates that WSSV has not become established there.

(d) The RAP acknowledged that the feeding of raw prawns in aquaculture is dangerous. Another lower risk exposure pathway for the introduction of disease is through the use of imported prawns as bait by recreational fishermen. The measures that have been put in place are designed to prevent the establishment of WSSV in Australia.

(e) See the answer to 3 (b).

(7) The sampling in Darwin Harbour is being conducted by the Northern Territory Department of Primary Industry and Fisheries. Further enquiries should be directed to that department.

(8) (a) The measures are targeted at whole and unpeeled, headless green prawns which are the product most likely to be used for bait.

(b) Those products, which are clearly for human consumption and/or have been processed such that they are not likely to be used as bait, for example prawn cutlets and garlic prawns, are excluded from the measures. The measures also do not apply to product from countries or zones free of diseases of quarantine concern.

(c) The current import conditions are consistent with this Government’s conservative approach to quarantine. Target imports of green prawns will be tested against a strict standard and any consignment detected as carrying WSSV will be rejected.

(9) (a) Selected State diagnostic laboratories will conduct the testing of prawns for WSSV.

(b) All batches of whole green and unpeeled headless prawns are tested for WSSV using a sampling and test protocol designed to detect WSSV infection present at 5% prevalence with at least 95% confidence.

(c) A polymerase chain reaction (PCR) based test for WSSV DNA similar to that used in the testing so far.

(d) The cost per test is approximately $55. This does not include the costs associated with the inspection and collection of suitable samples or the transport of these samples to the laboratories conducting the WSSV testing.

(e) Importers.

(f) WSSV is the major disease of quarantine concern. Biosecurity Australia and the RAP consider the other risk management measures already in place adequately address risk from other diseases. Further information on the risk assessment and risk management for relevant diseases is in the draft IRA report.

(g) The testing regime will be subject to usual auditing and reporting procedures. As part of these procedures, the results can be made available on request.

(10) (a) I am aware that since the announcement of testing and other measures in policy memorandum 2001/06 and prior to the introduction of the testing regime, uncooked whole prawns
were imported and released without testing. This is not in contravention of that policy as the memorandum made it clear that the measures would be phased in. During this intervening period AQIS assessed all consignments of green prawns, particularly to ensure they were intended for human consumption.

(b) See answer to (a).

(c) The interim measures currently in place plus the closer scrutiny by AQIS of all consignments of green prawns minimise the risk of imported product introducing WSSV.

(11) (a) Yes, I am aware that some State governments made such statements. However, all States and Territories have now signed onto the WSSV testing protocol for imported prawns.

(b) I am aware of some recreational fishing and conservation groups calling for a ban on uncooked prawn imports.

(c) As mentioned in earlier responses, a moratorium on imports is not considered necessary and is difficult to justify on current scientific evidence. The RAP, made up of eminent experts in their field, considered the interim measures are appropriate pending the gathering of further information and finalisation of the IRA. These conditions are consistent with the Federal Government’s conservative approach to quarantine and our international SPS obligations.

Ansons Bay, Tasmania

(Question No. 3574)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 4 May 2001:

With reference to the planned conversion to freehold title of Crown land on the Ansons Bay foreshore in north-eastern Tasmania:

(1) Is any Natural Heritage Trust or other federal money being used for the development of a sewerage system, or any other purpose, as part of this development.

(2) What threats does the development pose to local flora and fauna, in particular threatened species listed on the Commonwealth schedule of the Environment Protection and Biodiversity Conservation Act (the Act), such as the Australian Grayling, Dwarf Galaxias, Spotted Tailed Quoll, Leatherback Turtle and Eastern Barred Bandicoot, all of which are known to have habitat in Ansons Bay.

(3) Given the potential threats posed to these species by the proposed development, will the Minister use his powers under the Act to order a comprehensive assessment and approval process of the development.

(4) Has the Minister or any of his staff visited Ansons Bay to see the site of the proposed development.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) No Natural Heritage Trust or other Federal funding is being used for the development of a sewerage system on or adjacent to Ansons Bay foreshore. While not directly related to the issue of the possible conversion of Crown land to freehold land, I have approved a grant of $5,025 to the Ansons Bay Coastcare Group to help protect the wetlands of Ansons Bay by improving the management of car parking and access adjacent to the wetlands.

(2) I understand in general that some Crown land on the Ansons Bay foreshore may be considered for conversion to freehold title. However, I have no more specific knowledge of any proposal at this time. Accordingly, on the information available to me, I am not able to advise whether any proposed action is likely to affect any nationally threatened species in Ansons Bay.

(3) In accordance with the Environment Protection and Biodiversity Conservation Act 1999, when and if proposals are made for actions relating to Ansons Bay, the proponent will need to refer the proposals to me if they are likely to have a significant impact on nationally threatened species or any other matter of national environmental significance.

(4) Neither my staff nor I have visited Ansons Bay in relation to this issue.

Ansons Bay, Tasmania

(Question No. 3575)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 7 May 2001:
(1) Is the Minister aware that the Tasmanian Government has decided to privatise land on the fore-
shore of Ansons Bay in north-east Tasmania.

(2) Has any approach been made to the Federal Government for funds to aid this decision, either di-
rectly or indirectly through studies or to provide services such as a sewerage system; if so what
was or what will be the reply.

(3) Are there any endangered species such as the Australian Grayling, in the area; if so, are they una-
ffected by the decision.

(4) What action is the Minister taking to protect any such species or their habitat at Ansons Bay.

(5) Will the Minister or his officers visit Ansons Bay to view the lands in question and their vulner-
ability to erosion, flooding, pollution, and visual degradation after the Bacon Government’s deci-
sion.

(6) What in this century is the possible impact of global warming on such foreshore land which is
already subject to flooding by the highest tide surges.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) I understand in general that some Crown land on the Ansons Bay foreshore may be considered for
conversion to freehold title by the Tasmanian Government. However, I have no more specific
knowledge of any proposal at this time.

(2) No approach has been made to the Federal Government to provide funding for the purpose of as-
sisting with the conversion of Crown land to freehold title on the foreshore of Ansons Bay.

(3) On the information available to me, I am not able to advise whether there are any endangered spe-
cies in the area that may be considered for conversion from Crown land to freehold title.

(4) In accordance with the Environment Protection and Biodiversity Conservation Act 1999, when
and if proposals are made for actions relating to Ansons Bay, the proponent will need to refer the
proposals to me if they are likely to have a significant impact on nationally threatened species or
any other matter of national environmental significance.

In addition, while not specifically directed at protecting endangered species, I have approved a
grant of $5,025 to the Ansons Bay Coastcare Group to help protect wetlands at Ansons Bay by
improving the management of car parking and access adjacent to the wetlands site.

(5) If the matter is referred under the Environment Protection and Biodiversity Conservation Act
1999, a site assessment by Departmental officers may be considered if required.

(6) On the information available to me it is not possible to predict the impact of global warming on
Ansons Bay.

Greenhouse Gas Abatement Program
(Question No. 3588)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 25
May 2001:

With reference to the Greenhouse Gas Abatement Program (GGAP):

(1) Can a synopsis be provided of the applications for round one GGAP funding, including applicant,
state/territory, amount applied for, brief description of the project and the technology, and the es-
timated greenhouse benefit.

(2) How many were from: (a) for profit companies or corporations; (b) non-profit organisations; (c)
local government; (d) state/territory governments or agencies; and (e) the Federal Government or
its agencies.

(3) How many were received from each state and territory.

(4) What was the range of project types, for example, upgrades or conversions of existing plant, in-
stallation of new technologies, education, incentives, etc; and (b) how many applications fell into
each category and what was the cost, in dollars, and greenhouse benefits of each.

(5) What was the range of technologies, for example, photovoltaics, wind, methane, waste to energy,
ergy efficiency, etc.

(6) Who are the members of the technical expert panel.
Did the Ministerial Council on Greenhouse follow the recommendations made to it by the technical expert panel in all cases, if not, why not.

Senator Hill—The answer to the honourable senator’s question is as follows:

Information regarding the identity of the applicants in GGAP Round 1 is commercial-in-confidence and, therefore, cannot be disclosed. The 10 successful GGAP proposals that have been publicly announced are:

- up to $10 million to the Australian Ecogeneration Association (1.25 Mt CO2-e) for a number of cogeneration plants expected to be constructed in South Australia, Victoria and New South Wales;
- up to $16 million to Origin Energy (1.97 Mt CO2-e) to boost investment in highly efficient cogeneration plants;
- up to $10.93 million to Energy Developments Limited (2.22 Mt CO2-e) and $13 million to Envirogen Pty Ltd (3.10 Mt CO2-e) for the installation of equipment to capture and burn methane gas from coal mines in New South Wales and Queensland to produce electricity;
- up to $8.8 million to BP (1.10 Mt CO2-e) to blend, store and distribute part-ethanol fuel. The plant is based in Brisbane;
- $7.35 million to assist the Douglas Shire Council (1.05 Mt CO2-e) and the Mossman Central Mill Company in their ethanol project which includes the development of an ethanol production plant in Queensland;
- up to $7 million to Nabalco (1.68 Mt CO2-e) to assist in converting its Gove refinery in the Northern Territory from imported oil to natural gas;
- up to $11 million to Queensland Alumina Limited (1.38 Mt CO2-e) to convert to energy efficient kilns in Queensland;
- up to $5 million to Macquarie Generation (1.21 Mt CO2-e) to invest in state of the art turbines at its Liddell power station in the Hunter Valley of New South Wales; and
- up to $3.56 million to Association of Fluorocarbon Consumers and Manufacturers Ltd (0.89 Mt CO2-e) for the recovery, reclamation and destruction of hydrofluorocarbons (HFCs) nationally.

Applications by state/territory:

- NT = 2
- TAS = 2
- ACT = 7
- SA = 10
- WA = 13
- QLD = 15
- VIC = 21
- NSW = 37

Total amount applied for was $1.79 billion. Applications ranged from $0.21 million to $158.21 million.

<table>
<thead>
<tr>
<th>Project type</th>
<th>Number of proposals</th>
<th>Funding Sought $m</th>
<th>Claimed Total Project Cost $m</th>
<th>Claimed Mt CO2-e</th>
</tr>
</thead>
<tbody>
<tr>
<td>Behaviour change/education</td>
<td>1</td>
<td>0.44</td>
<td>0.52</td>
<td>1.35</td>
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<tr>
<td>Integrated regional program</td>
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<td>8.35</td>
<td>63.39</td>
<td>1.08</td>
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<td>Synthetic gases</td>
<td>1</td>
<td>3.56</td>
<td>6.83</td>
<td>11.91</td>
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<td>Tourism</td>
<td>1</td>
<td>9.81</td>
<td>13.97</td>
<td>5.90</td>
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<td>Transport – alternative fuels</td>
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<td>24.62</td>
<td>89.80</td>
<td>1.57</td>
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<tr>
<td>Broad-scale revegetation</td>
<td>2</td>
<td>59.17</td>
<td>489.98</td>
<td>8.20</td>
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<td>Cement technologies</td>
<td>2</td>
<td>23.95</td>
<td>47.85</td>
<td>4.73</td>
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<tr>
<td>Project type</td>
<td>Number of proposals</td>
<td>Funding Sought $m</td>
<td>Claimed Total Project Cost $m</td>
<td>Claimed Mt CO2-e</td>
</tr>
<tr>
<td>--------------------------------------------</td>
<td>---------------------</td>
<td>------------------</td>
<td>------------------------------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Fugitive emissions from pipelines</td>
<td>2</td>
<td>51.47</td>
<td>71.15</td>
<td>3.88</td>
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<tr>
<td>Geological sequestration</td>
<td>2</td>
<td>26.57</td>
<td>71.86</td>
<td>16.28</td>
</tr>
<tr>
<td>Transport – behaviour change</td>
<td>2</td>
<td>16.11</td>
<td>41.93</td>
<td>3.46</td>
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<tr>
<td>Switching to natural gas</td>
<td>3</td>
<td>130.70</td>
<td>367.90</td>
<td>5.27</td>
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<tr>
<td>Local government action agendas</td>
<td>4</td>
<td>81.21</td>
<td>205.02</td>
<td>7.26</td>
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<tr>
<td>Modelling and decision-making tools</td>
<td>4</td>
<td>17.82</td>
<td>31.72</td>
<td>49.22</td>
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<tr>
<td>Power station efficiency</td>
<td>5</td>
<td>326.14</td>
<td>6452.33</td>
<td>73.42</td>
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<tr>
<td>Waste coal mine gas</td>
<td>5</td>
<td>68.97</td>
<td>161.34</td>
<td>20.49</td>
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<tr>
<td>Cogeneration (not principally renewable electricity)</td>
<td>6</td>
<td>79.39</td>
<td>995.15</td>
<td>13.38</td>
</tr>
<tr>
<td>Waste minimisation</td>
<td>6</td>
<td>64.53</td>
<td>203.87</td>
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<tr>
<td>Renewable electricity</td>
<td>9</td>
<td>117.47</td>
<td>1745.27</td>
<td>52.02</td>
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<tr>
<td>Energy efficiency (industrial plant equipment)</td>
<td>12</td>
<td>129.68</td>
<td>371.84</td>
<td>20.78</td>
</tr>
<tr>
<td>Regional partnerships and biological sequestration</td>
<td>12</td>
<td>184.62</td>
<td>968.18</td>
<td>39.90</td>
</tr>
<tr>
<td>Energy efficiency (commercial/residential buildings and appliances)</td>
<td>13</td>
<td>224.04</td>
<td>1248.72</td>
<td>35.95</td>
</tr>
<tr>
<td>Transport</td>
<td>13</td>
<td>138.90</td>
<td>771.42</td>
<td>23.48</td>
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<tr>
<td><strong>Total claimed abatement</strong></td>
<td></td>
<td></td>
<td>417.79</td>
<td></td>
</tr>
</tbody>
</table>

1 The Mt CO2-e figures provided are risk assessed abatement figures over the 5 year Kyoto period 2008-2012.

For details of the range of technologies to be utilised in Round 1 GGAP projects, see paragraph (5) below.

(2) Sources of Round 1 proposals (organisation type):
   (a) For profit organisations = 76
   (b) Non-profit organisations = 13
   (c) Local Government agencies = 4
   (d) State/Territory Government agencies = 12
   (e) Federal Government agencies = 2

(3) Origin by state/territory (See (1) above)

(4) Range of projects by type, GGAP funds sought, claimed total project costs and claimed abatement (See table above).

(5) The information provided in the table above is indicative of the technologies. Methane features in waste processing and waste coal mine gas; ethanol features in several other proposals in fuel mixes; energy efficiency technologies, energy performance contracting; turbine blades and electricity load shifting. Other technologies include tree planting; fixing carbon in algae; reducing methane from cows and sheep, altering travel behaviour, and replacing fuel used in furnaces.
There are 110 entries (covering both individual experts and consulting businesses) registered on the consultants register. For Round 1 assessments approximately 60 contracts were entered in to resulting in approximately 400 assessment reports. The consultants have a wide range of expertise including technical, environmental, financial and economic. For probity reasons, and to ensure that they are not approached by potential applicants, the names of the consultants on the register are not being publicly released.

The technical experts provided risks assessments of the proposals they were contracted to assess and were not required to make recommendations.

**Foxes: Threat Abatement Plan**

(Question No. 3594)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 1 June 2001:

(1) Is the Minister aware that a fox was sighted near Longford and another near Wynyard in Tasmania in May.

(2) Given that predation by the European Red Fox is a listed threatening process and keeping Tasmania fox-free is a key objective, what action has been taken to contain and exterminate the foxes in accordance with the Threat Abatement Plan.

(3) (a) What contingency plan is in place; (b) what are its key actions; and (c) who is responsible for implementing each action.

(4) Has the contingency plan, if it exists, been activated.

(5) What funding and other resources have been committed to exterminate the foxes.

(6) How seriously does the Minister rate this incursion of foxes as a threat to nationally-listed species.

Senator Brown—The answer to the honourable senator’s question is as follows:

(1) Yes.

(2) I am advised that Tasmanian Parks and Wildlife Service officers are undertaking a number of measures to confirm the sighting of, and capture or kill, the fox (or foxes), including the use of hi-tech infra-red cameras imported from the United States. These efforts have been supplemented by a team of hunters from Victoria with experience of fox hunting in East Gippsland.

(3) In 1999, the “Threat Abatement Plan for Predation by the European Red Fox” was adopted in consultation with States and Territories. The plan has six objectives and 27 actions. Each state is responsible for implementing the plan within its own jurisdiction. Where a threat occurs across more than one state, the Commonwealth and states work cooperatively to implement the plan. The following projects were funded by the Commonwealth specifically targeting foxes and/or feral cats:

- Development of immunocontraceptive vaccine for the control of fox populations in Australia.
- Field assessment of target and non-target effects of predator baiting.
- Development of a Humane Felid Specific Toxin and bait delivery system for feral cat control.
- Fertility control of foxes with Cabergoline including its registration for use on Philip Island;
- The potential for habitat manipulation to limit fox density and reduce the need for intensive baiting.
- Development of a cheap and effective fox bait;
- Fox population assessment and control.
- Katarapko Island habitat and species restoration program;
- Assessment of the impact of foxes on brush-tailed rock wallabies and evaluation of the effectiveness of community involvement in fox control;
- Assessment of the impact of fox baiting on tiger quoll populations;
- Preliminary Assessment of analgesic/1080 bait combination for humane predator control.
- Integrated vertebrate pest management on Macquarie Island.
• Bounceback 2000 (an integrated pest management - foxes, cats goats and rabbits - and recovery of threatened species project).
• Operation Wanjarri - Optimising Feral Cat Baiting Strategy in the arid zone.
• Effects on non-target species of 1080 baiting for foxes and dogs.

(4) See the Answer to Question 2. I am advised that Victorian and Tasmanian officials have discussed the issue of fox incursions into Tasmania from Victoria following an incident in 1999 when a fox was accidentally transported to Tasmania from Melbourne. I am seeking further advice from both States on measures being taken to prevent foxes moving to Tasmania, especially in the light of recent reported sightings.

(5) Through the National Feral Animal Control Program under the Natural Heritage Trust, approximately $2.9 million has been provided to fund projects that address the impact of foxes. In addition, funding is also provided through the Endangered Species Program to all States and Territories to address the impact of foxes and other pest species to threatened species and communities. No Commonwealth funding has been sought by Tasmania and none has been provided to deal with these particular sightings.

(6) Fox incursions into Tasmania are treated seriously. As noted above, I am conveying my concern to my counterparts in Victoria and Tasmania and seeking their advice on preventative measures being undertaken.

Human Rights: Falun Gong

(Question No. 3595)

Senator Brown asked the Minister representing the Minister for Foreign Affairs, upon notice, on 4 June 2001:

(1) Were the human rights violations of Falun Gong raised during the trade talks between Australia and China in April 2001; if not, why not.
(2) Is the human rights issue of Falun Gong always considered during trade talks with China.
(3) Will the Australian Government continue to raise the issue of human rights violations in the bilateral human rights dialogue with China.
(4) Hong Kong Security Secretary, Regina Ip, has confirmed there is a Falun Gong blacklist in response to the 95 foreign Falun Gong practitioners that were denied entry into Hong Kong in May 2001. With 19 Australian citizens who practised Falun Gong included in those not permitted in Hong Kong, how will the Australian Government investigate the origins of the blacklist.
(5) Is the Minister aware of cases of alleged harassment against 14 Australian practitioners in Macau in December 2000; if so, what are the details and what action has the Government taken on the matter.
(6) Is the Australian Government aware of the ‘media tours’ organised by the Chinese Government to visit the Masanjia Labor Re-education Camp in May 2001.
(7) Are there concentration camps specifically for Falun Gong practitioners.
(8) With increasing reports of deaths of Falun Gong in police custody in China, what estimates does the Australian Government have of the number of people who have been detained, sentenced and died in custody.
(9) Will the crackdown on Falun Gong be discussed with Chinese authorities when the Prime Minister attends the Asia Pacific Economic Cooperation meeting in October 2001.
(10) Will the Australian Government initiate or support a delegation of Australian or international persons to be sent to China to investigate the alleged human rights violations against Falun Gong practitioners; if not, why not.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) Mr John Anderson, Deputy Prime Minister and Minister for Transport and Regional Services, visited China from 10-12 April 2001. The principle purpose of his visit was to pursue Australia’s interest in the supply of liquefied natural gas to China. He also focused on opportunities for cooperation in the transport, agricultural, services and resource sectors. Human rights issues were not raised as this was not the purpose of the visit.
(2) No.
(3) Yes. This is a key element of the Human Rights Dialogue.

(4) In a letter to the Editor of the Asian Wall Street Journal on 8 June, Hong Kong’s Secretary for Security, Ms Regina Ip, denied that Hong Kong immigration authorities were working from an alleged “blacklist” to refuse entry to 95 foreign Falun Gong practitioners (including 20 Australians) in early May. In a meeting with Australia’s Consul-General for Hong Kong, Mr Bill Tweddell on 16 May, Ms Ip advised that denial of entry to foreign Falun Gong practitioners was decided on “security grounds” because of the need to protect VIPs attending the Fortune Global Conference in Hong Kong (on 8 May). She said this did not mean the same people would automatically be denied entry in future.

(5) My Department has confirmed that 10 Australian Falun Gong practitioners were detained briefly by Macau authorities while undertaking a peaceful demonstration outside a hotel there on 19 December. I am aware of only one case of alleged harassment involving an Australian citizen. Ms Kelly Kong Xu claims that she was refused entry and physically assaulted by Macau immigration officers at the border on 20 December. Ms Kong was visited by an officer of the Australian Consulate-General in Hong Kong while she was receiving treatment in hospital later that day, who subsequently accompanied her whilst she provided a statement to Hong Kong police. The Consulate-General forwarded a note to the Macau authorities on 20 December requesting that the matter be investigated. The Macau government provided a response on 17 January, a copy of which was forwarded to Ms Kong.

(6) My Department is aware of reports that a media tour to Masanjia Labor Reeducation Camp took place in late May 2001.

(7) My Department has information that many Falun Gong practitioners have been sentenced to terms in ‘Re-education Through Labor’ camps. It has no concrete information that camps have been established exclusively for Falun Gong practitioners, although this is certainly possible.

(8) Estimates of the number of Falun Gong practitioners that have been detained, sentenced and died in custody vary. In its 2001 Annual Report, Amnesty International reported that at least 93 Falun Gong practitioners were believed to have died in police custody since July 1999. Falun Gong sources estimate at least 222 practitioners have died in detention or while being taken into custody during the same period. Several tens of thousands Falun Gong practitioners are thought to be in detention.

(9) The agenda for the Prime Minister’s talks at the APEC meeting has not yet been settled.

(10) The Australian Government has strong concerns about the human rights situation in China, including alleged human rights violations against Falun Gong practitioners. It is unlikely to support an international delegation to investigate alleged human rights violations against Falun Gong practitioners. As is commonly the case with international human rights investigations, the delegation would require the consent of the Chinese Government in order to enter China legally and undertake its work. My Department assesses that the Chinese Government is unlikely to agree to a visit by any such delegation.

Department of Veterans’ Affairs: One-off Payments to Senior Australians
(Question No. 3612)

Senator Faulkner asked the Minister representing the Minister for Veterans’ Affairs, upon notice, on 13 June 2001:

(1) How many clients of the department will be receiving a personalised letter from the Minister regarding the one-off payment to senior Australians announced in the 2001-02 Budget.

(2) What will be the cost of production of the letter.

(3) What will be the cost of postage for the letter.

(4) What will be the total cost of the mail out.

(5) What is the timeframe for the dispatch of the letter.

(6) What is the timeframe for the dispatch of letters to the following postcodes: 3131, 3133, 3134, 3135, 3152, 3153, 3155, 3156, 3178, 3179, 3180 and 3802.
Senator Minchin—The Minister for Veterans' Affairs has provided the following answer to the honourable senator’s question:

1. 347,415
2. $0.39*
3. $0.41*
4. $285,932*

*Only an estimate as a final invoice has not yet been received from the mailing house.

5. Letters were progressively lodged with Australia Post from Thursday, 7 June 2001 with the final letters being lodged on Tuesday, 12 June 2001.

6. The Department does not have exact lodgement details for these postcodes. However, lodgement of Victorian letters commenced on Thursday, 7 June 2001 and was finalised on Tuesday, 12 June. No letters were lodged over the long weekend, 9 – 11 June 2001.