INTERNET
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the Senate and committee hearings are available at:

SITTING DAYS—2001

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RADIO BROADCASTS
Broadcasts of proceedings of the Parliament can be heard on the following
Parliamentary and News Network radio stations, in the areas identified.

CANBERRA 1440 AM
SYDNEY 630 AM
NEWCASTLE 1458 AM
BRISBANE 936 AM
MELBOURNE 1026 AM
ADELAIDE 972 AM
PERTH 585 AM
HOBART 729 AM
DARWIN 102.5 FM
THIRTY-NINTH PARLIAMENT
FIRST SESSION—TENTH PERIOD

Governor-General

His Excellency the Right Reverend Dr Peter Hollingworth, Officer of the Order of Australia,
Officer of the Order of the British Empire

Senate Officeholders

President—Senator the Hon. Margaret Elizabeth Reid
Deputy President and Chairman of Committees—Senator Suzanne Margaret West
Temporary Chairmen of Committees—Senators Andrew Julian Bartlett, Paul Henry Calvert, George
Campbell, Hedley Grant Pearson Chapman, Hon. Rosemary Anne Crowley, Alan Baird Ferguson, John
Joseph Hogg, Susan Christine Knowles, Philip Ross Lightfoot, James Philip McKiernan, Shayne
Michael Murphy, Hon. Nicholas John Sherry and John Odin Wentworth Watson
Leader of the Government in the Senate—Senator the Hon. Robert Murray Hill
Deputy Leader of the Government in the Senate—Senator the Hon. Richard Kenneth Robert Alston
Leader of the Opposition—Senator the Hon. John Philip Faulkner
Deputy Leader of the Opposition—Senator the Hon. Peter Francis Salmon Cook
Manager of Government Business in the Senate—Senator the Hon. Ian Gordon Campbell
Manager of Opposition Business in the Senate—Senator Kim John Carr

Senate Party Leaders

Leader of the Liberal Party of Australia—Senator the Hon. Robert Murray Hill
Deputy Leader of the Liberal Party of Australia—Senator the Hon. Richard Kenneth Robert Alston
Leader of the National Party of Australia—Senator the Hon. Ronald Leslie Doyle Boswell
Deputy Leader of the National Party of Australia—Senator the Hon. Grant Ernest John Tambling
Leader of the Australian Labor Party—Senator the Hon. John Philip Faulkner
Deputy Leader of the Australian Labor Party—Senator the Hon. Peter Francis Salmon Cook
Leader of the Australian Democrats—Senator Natasha Jessica Stott Despoja
Deputy Leader of the Australian Democrats—Senator Aden Derek Ridgeway

Printed by authority of the Senate
## Members of the Senate

<table>
<thead>
<tr>
<th>Senator</th>
<th>State or Territory</th>
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(1) Term expires at close of day next preceding the polling day for the general election of members of the House of Representatives.

(2) Chosen by the Parliament of South Australia to fill a casual vacancy caused by her resignation.

(3) Chosen by the Parliament of New South Wales vice Robert Leslie Woods, resigned.

(4) Chosen by the Parliament of Western Australia vice John Horace Panizza, deceased.

(5) Chosen by the Parliament of New South Wales vice Bruce Kenneth Childs, resigned.

(6) Chosen by the Parliament of Queensland vice Cheryl Kernot, resigned.

(7) Chosen by the Parliament of Queensland vice Warwick Raymond Parer, resigned.

(8) Chosen by the Parliament of South Australia vice John Andrew Quirke, resigned

### PARTY ABBREVIATIONS

AD—Australian Democrats; AG—Australian Greens; ALP—Australian Labor Party; CLP—Country Liberal Party; Ind.—Independent; LP—Liberal Party of Australia; NP—National Party of Australia; PHON—Pauline Hanson’s One Nation

### Heads of Parliamentary Departments

_Clerk of the Senate_—H. Evans

_Clerk of the House of Representatives_—I. C. Harris

_Departmental Secretary, Parliamentary Library_—J. W. Templeton

_Departmental Secretary, Parliamentary Reporting Staff_—J. W. Templeton

_Departmental Secretary, Joint House Department_—M. W. Bolton
HOWARD MINISTRY

Prime Minister
Minister for Transport and Regional Services and Deputy Prime Minister
Treasurer
Minister for Trade
Minister for Foreign Affairs
Minister for the Environment and Heritage and Leader of the Government in the Senate
Minister for Communications, Information Technology and the Arts and Deputy Leader of the Government in the Senate
Minister for Defence and Leader of the House
Minister for Health and Aged Care
Minister for Finance and Administration
Minister for Education, Training and Youth Affairs and Minister Assisting the Prime Minister for the Public Service
Minister for Industry, Science and Resources
Attorney-General
Minister for Immigration and Multicultural Affairs and Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs
Minister for Agriculture, Fisheries and Forestry
Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women
Minister for Employment, Workplace Relations and Small Business

The Hon. John Winston Howard MP
The Hon. John Duncan Anderson MP
The Hon. Peter Howard Costello MP
The Hon. Mark Anthony James Vaile MP
The Hon. Alexander John Gosse Downer MP
Senator the Hon. Robert Murray Hill
Senator the Hon. Richard Kenneth Robert Alston
The Hon. Peter Keaston Reith MP
The Hon. Dr Michael Richard Lewis Wooldridge MP
The Hon. John Joseph Fahey MP
The Hon. Dr David Alistair Kemp MP
Senator the Hon. Nicholas Hugh Minchin
The Hon. Daryl Robert Williams AM, QC, MP
The Hon. Philip Maxwell Ruddock MP
The Hon. Warren Errol Truss MP
Senator the Hon. Amanda Eloise Vanstone
The Hon. Anthony John Abbott MP

(The above ministers constitute the cabinet)
HOWARD MINISTRY—continued

Assistant Treasurer Senator the Hon. Charles Roderick Kemp
Minister for Financial Services and Regulation The Hon. Joseph Benedict Hockey MP
Minister for Regional Services, Territories and Local Government Senator the Hon. Ian Douglas Macdonald
Minister for the Arts and the Centenary of Federation and Deputy Leader of the House The Hon. Peter John McGauran MP
Minister for Community Services The Hon. Lawrence James Anthony MP
Minister for Veterans’ Affairs and Minister Assisting the Minister for Defence The Hon. Bruce Craig Scott MP
Minister for Aged Care The Hon. Bronwyn Kathleen Bishop MP
Special Minister of State Senator the Hon. Eric Abetz
Minister for Sport and Tourism The Hon. Jackie Marie Kelly MP
Minister for Justice and Customs Senator the Hon. Christopher Martain Ellison
Minister for Forestry and Conservation and Minister Assisting the Prime Minister The Hon. Charles Wilson Tuckey MP
Minister for Small Business The Hon. Ian Elgin Macfarlane
Parliamentary Secretary to Cabinet Senator the Hon. William Daniel Heffernan
Parliamentary Secretary to the Minister for Transport and Regional Services Senator the Hon. Ronald Leslie Doyle Boswell
Parliamentary Secretary to the Minister for Foreign Affairs and Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs Senator the Hon. Kay Christine Lesley Patterson
Parliamentary Secretary to the Minister for the Environment and Heritage The Hon. Sharman Nancy Stone MP
Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts and Manager of Government Business in the Senate Senator the Hon. Ian Gordon Campbell
Parliamentary Secretary to the Minister for Defence The Hon. Dr Brendan John Nelson
Parliamentary Secretary to the Minister for Health and Aged Care Senator the Hon. Grant Ernest John Tambling
Parliamentary Secretary to the Minister for Finance and Administration The Hon. Peter Neil Slipper MP
Parliamentary Secretary to the Minister for Education, Training and Youth Affairs The Hon. Patricia Mary Worth MP
Parliamentary Secretary to the Minister for Industry, Science and Resources The Hon. Warren George Entsch MP
Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry Senator the Hon. Judith Mary Troeth
Parliamentary Secretary to the Minister for Reconciliation and Aboriginal and Torres Strait Islander Affairs The Hon. Christine Ann Gallus
SHADOW MINISTRY

Leader of the Opposition
The Hon. Kim Christian Beazley MP

Deputy Leader of the Opposition and Shadow Treasurer
The Hon. Simon Findlay Crean MP

Leader of the Opposition in the Senate, Shadow Minister for Public Administration and Government Services and Shadow Minister for Olympic Coordination and the Centenary of Federation
Senator the Hon. John Philip Faulkner

Deputy Leader of the Opposition in the Senate and Shadow Minister for Trade
Senator the Hon. Peter Francis Salmon Cook

(The following members of the Shadow Ministry are listed in alphabetical order)

Shadow Minister for Industrial Relations
The Hon. Archibald Ronald Bevis MP

Shadow Minister for Environment and Heritage
Senator the Hon. Nick Bolkus

Shadow Minister for Foreign Affairs
The Hon. Laurence John Brereton MP

Shadow Minister for Financial Services and Regulation
Senator Stephen Michael Conroy

Shadow Minister for Family Services and the Aged
Senator Christopher Vaughan Evans

Shadow Minister for Science and Resources
The Hon. Martyn John Evans MP

Shadow Minister for Defence Science and Personnel and Shadow Minister for Forestry and Conservation
Mr Laurie Donald Thomas Ferguson MP

Shadow Minister for Regional Development, Infrastructure, Transport, Regional Services and Population
Mr Martin John Ferguson MP

Shadow Minister for Small Business and Tourism
Mr Joel Andrew Fitzgibbon MP

Shadow Minister for Employment and Training
Ms Cheryl Kernot MP

Shadow Minister for Justice and Customs and Shadow Minister Assisting the Shadow Minister for Population
The Hon. Duncan James Colquhoun Kerr MP

Shadow Minister for Industry, Innovation and Technology and Shadow Minister for the Status of Women
The Hon. Dr Carmen Mary Lawrence MP

Shadow Minister for Education
The Hon. Michael John Lee MP

Shadow Minister for Sport and Youth Affairs and Shadow Minister Assisting the Shadow Minister for Industry, Innovation and Technology on Information Technology
Senator Kate Alexandra Lundy
<table>
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<th>Position</th>
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<tr>
<td>Shadow Attorney-General</td>
<td>Mr Robert Bruce McClelland MP</td>
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<td>Shadow Minister for Regional Services, Territories and Local Government</td>
<td>Senator Susan Mary Mackay</td>
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<td>Shadow Minister for Aboriginal and Torres Strait Islander Affairs, Shadow Minister for Reconciliation, Shadow Minister for the Arts and Manager of Opposition Business</td>
<td>The Hon. Robert Francis McMullan MP</td>
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<td>Shadow Minister for Health</td>
<td>Ms Jennifer Louise Macklin MP</td>
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<td>Shadow Minister for Defence</td>
<td>The Hon. Dr Stephen Paul Martin MP</td>
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<td>Shadow Minister for Agriculture, Fisheries and Forestry</td>
<td>Mr Gavan Michael O’Connor MP</td>
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<td>Shadow Minister for Veterans’ Affairs</td>
<td>Senator the Hon. Christopher Cleland Schacht</td>
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<td>Shadow Minister for Immigration and Shadow Minister Assisting the Leader of the Opposition on Multicultural Affairs</td>
<td>The Hon. Con Sciacca MP</td>
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<td>Shadow Minister for Communications</td>
<td>Mr Stephen Francis Smith MP</td>
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<td>Shadow Minister for Finance and Shadow Minister for Consumer Affairs</td>
<td>Mr Lindsay James Tanner MP</td>
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<td>Shadow Assistant Treasurer</td>
<td>Mr Kelvin John Thomson MP</td>
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(The following Parliamentary Secretaries are listed in alphabetical order)

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<tr>
<td>Parliamentary Secretary to the Shadow Minister for Family and Community Services</td>
<td>Mr Anthony Albanese MP</td>
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<td>Parliamentary Secretary to the Shadow Minister for Communications</td>
<td>Senator Thomas Mark Bishop</td>
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<tr>
<td>Manager of Opposition Business in the Senate and Parliamentary Secretary to the Shadow Minister for Education</td>
<td>Senator Kim John Carr</td>
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<tr>
<td>Parliamentary Secretary to the Shadow Ministers for Industrial Relations and Employment, Training and Population</td>
<td>Senator Jacinta Mary Ann Collins</td>
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<td>Parliamentary Secretary to the Shadow Minister for Agriculture, Fisheries and Forestry</td>
<td>Senator Michael George Forshaw</td>
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<td>Parliamentary Secretary to the Shadow Minister for Health</td>
<td>Mr Alan Peter Griffin MP</td>
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<tr>
<td>Parliamentary Secretary to the Shadow Minister for Regional Development, Infrastructure, Transport and Regional Services</td>
<td>Mr Robert Horne MP</td>
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The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 12.30 p.m., and read prayers.

REPRESENTATION OF QUEENSLAND

The PRESIDENT—I inform the Senate that Senator Woodley resigned his place as a senator for the state of Queensland on 27 July 2001. Pursuant to the provisions of section 21 of the Constitution, the Governor of Queensland was notified of the vacancy in the representation of that state caused by the resignation. I table the original and a facsimile copy of the letter of resignation and a copy of the letter to the Governor of Queensland. I have received, through the Governor-General, from the Governor of Queensland a facsimile copy of the certificate of the choice by the Queensland parliament of John Cherry to fill the vacancy caused by the resignation of Senator John Woodley. I table the document.

SENATORS: SWEARING-IN

Senator John Clifford Cherry made and subscribed the oath of allegiance.

MIGRATION LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

Second Reading

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

That this bill be now read a second time.

Senator SCHACHT (South Australia) (12.34 p.m.)—Madam President—

Senator Patterson—You’ve had a haircut.

The PRESIDENT—Order!

Senator SCHACHT—I have had a haircut? You are very observant, Senator Patterson! I hope you are as observant about my remarks on the bill. In the House of Representatives my colleague the shadow minister for immigration has already indicated that the opposition support the Migration Legislation Amendment (Application of Criminal Code) Bill 2001. The major provisions of the legislation are as follows. The bill clearly defines the application of the Criminal Code against all offences against migration law. The bill replaces references to certain general offence provisions in the Crimes Act 1914 with reference to the corresponding provisions of the Criminal Code. The bill clarifies the physical and fault elements of offences to facilitate the consistent interpretation of offence provisions. The legislation amends migration legislation to remove unnecessary duplication of the general offence provisions in the Criminal Code and amends certain offence provisions to expressly provide that they are offences of strict liability. If an offence is not expressly stated to be one of strict liability, then the prosecution will be required to prove fault in relation to the physical elements of the offence.

The bill itself is policy neutral and does not create any new strict or absolute liability offences. Because of those principles—and, as I said, my colleague in the lower house the shadow minister Mr Sciacca has already indicated this—the opposition support the bill. We understand that there may be an amendment from the Democrats. We await the arguments from the Democrats on their amendment, but on the information we have received so far we are not disposed to support the Democrat amendment. As I said, the opposition support this bill. We see no reason to delay its progress through the Senate. If the Democrats do have an amendment, we look forward to hearing in the debate what that is. We believe this bill should be supported and proceed forthwith.

Senator BARTLETT (Queensland) (12.37 p.m.)—In speaking on behalf of the Australian Democrats to the Migration Legislation Amendment (Application of Criminal Code) Bill 2001, which amends the Migration Act, this is one of a series of bills which harmonises existing offence provisions with the new Criminal Code. The Democrats have been supportive of this harmonisation process, but we have indicated on a number of occasions that we intend to cast a critical eye over offence provisions that reverse the onus of proof or impose strict or absolute liability. On this occasion we will be moving an amendment to address an onus of proof reversal, and that amendment has been circulated in the chamber.
The provision in question places what is known as a legal or persuasive burden on the defendant to establish his or her innocence. This contrasts with an evidential burden which requires only that the defendant point to evidence which suggests a reasonable possibility that the matters necessary for the defence exist or do not exist, with the prosecution bearing the ultimate burden of proof. The amendment seeks to have this legal burden reduced to an evidential burden.

As a matter of common law, the principle is that the prosecution should always bear the legal burden. The Senate Standing Committee on Legal and Constitutional Affairs, in its 1982 Report on the burden of proof in criminal proceedings, set out well the rationale for this principle:

The effect of placing a persuasive burden on a defendant is to create the possibility that the person can, and under the law must, be convicted even though the tribunal in fact is left with a reasonable doubt as to his guilt.

It is a fundamental human right that a citizen not be convicted of a crime until it is proved against him or her beyond a reasonable doubt. Placing the onus of proof upon the prosecution safeguards a fair trial when the full weight of the state, with its considerable financial and human resources, are pitted against an individual. It is sometimes claimed that onus of proof reversals are largely directed at promoting administrative convenience or efficiency and achieving policy goals. In its submission to the Senate Standing Committee on Legal and Constitutional Affairs, the Law Institute of Victoria stated in relation to drug offences:

The use of the presumption of guilt is the result of a lazy attitude in a society which wants to see people, guilty or innocent, punished for alleged wrongs without bothering to ensure the facts establishing guilt are proved beyond reasonable doubt in accordance with long established principles of law.

Turning to the provisions of the legislation itself, item 39 deals with the offence of arranging marriage to obtain permanent residence. A defendant may claim by way of defence that he or she believed on reasonable grounds that the marriage would result in a genuine and continuing marital relationship. Under the bill as it stands, the defendant bears the legal burden of establishing, firstly, that he or she genuinely believed that the marriage would be genuine and continuing and, secondly, that the belief was reasonable in an objective sense. The defence under this section is an adaptation of the general mistake of fact defence, which carries an evidential burden because that is what is appropriate for such defences. There is nothing of substance to distinguish this offence from others that impose a purely evidential burden on the defendant. The maximum penalty for this offence is a $100,000 fine and 10 years imprisonment.

The crucial point to recognise is that, if the legal burden is imposed on the defendant, he or she may be convicted even though the jury is left with a reasonable doubt as to his or her guilt. In the Democrats’ view, this violates fundamental principles of our legal system and there are not appropriate or strong enough reasons for a legal or persuasive burden to be put on the defendant in these circumstances. So we will be moving an amendment in the committee stage to change that to the defendant bearing an evidential burden in relation to the matters in that item which will relate to arranging marriages to obtain permanent residence. We believe that that is a more appropriate level of burden in any proceedings on that particular offence and we think that it is more appropriate in this bill. So, while we support
the bill as a whole, we will be moving that single amendment in the committee stage.

Senator COONEY (Victoria) (12.42 p.m.)—The Migration Legislation Amendment (Application of Criminal Code) Bill 2001 has a lot in common with a number of bills that have come through this chamber setting out crimes that are created within the legislation that particular departments administer. Here we have a bill dealing with migration—legislation administered by the Department of Immigration and Multicultural Affairs. I hope that the bill—I consistently make this remark in this context—does not change the general thrust of what has gone on previously in this area. In other words, I hope that there are no crimes created inadvertently through this legislation. If we presume that there are none, the issue then is whether or not particular offences should be offences of strict liability or ones for which intent has to be proved.

The problem with strict liability is that a person is guilty of an offence no matter what his or her moral situation is. That is always a problem. Nevertheless, administration of the law would be proved difficult if all matters had to be proved so that an element of intent had to be established. The issue of intent should be established in terms of serious offences. Strict liability offences, where there is no moral element to be proved, ought be confined to matters of administration or matters that lend themselves to that sort of treatment. I hope that that distinction is made clear or has been taken into account in this legislation. I notice that the defence of harbouring is dealt with in this legislation. Item 33 reads as follows:

Repeal the subsection—
‘subsection’ being subsection 233(2)—
and substitute:

(2) a person is guilty of an offence if
(a) the person harbours another person; and
(b) that other person is an unlawful non-citizen or removee or deportee.

This goes to the issue that is current at the moment that people who should be outside the country have been, it is alleged, harboured by others. This subsection is directed at those people who do the harbouring. That is a common offence. In other words, if someone escapes from a prison it is an offence for somebody else to harbour him or her. In the old days, say of the English civil war and what have you, people were treated with the greatest severity if they harboured somebody from the wrong side—the wrong side being the side opposite to the one that took the person into custody.

This provision illustrates the problems we are now facing. The issue of keeping unlawful non-citizens or removees or deportees in custody is becoming more and more difficult. In recent days problems have been thrown up at Villawood. The question arises as to whether the administration of this act is being done as well as it might. Why do we have all these escapes taking place, not only from Villawood but from various institutions around the country? Indeed, I think a couple of them, Mr Acting Deputy President Lightfoot, are in your state, which you so well represent. It becomes an issue for us as a parliament to ascertain why this should be happening.

These detention centres are being run by Australasian Correctional Management, as I understand it, a company largely influenced by the Wackenhut organisation in America. It is a matter of some concern as to why this is taking place. When we first started detaining people who sought asylum—boat people—we did not have this problem. The problem is becoming more acute as time goes by, and I think it is time we had a look at why this is happening. There should be an investigation into the whole area.

Concern has been expressed about what is happening in the detention centres and about the number of people who are escaping from them. In response to those concerns, the department tends to say, ‘We have to make the places more secure. That is the issue.’ So you start off by having people confined within cyclone wire fences. Then you have to make them more secure, so you add razor wire, which in my day, when I was a lot younger, was considered a very nasty instrument to use to keep people confined, even in prisons like Pentridge. In any event, there is an escalation of the steps taken to secure people in
these places. It is time that some inquiry was made as to why this is happening.

Not only is that happening but there is a growth it seems in the manufacture of offensive weapons for use within these places. Just what is going on? Is the environment established by the camps at Villawood, Curtin and Port Hedland the proper one for people who are going to become Australian citizens later? As I understand it, at the moment most of these people go on to become residents of Australia. Perhaps after three years they become Australian citizens.

It is not a good thing to bring people, who will be living among us, into the country and then put them behind these very secure fences. This is emphasised in item 33 of the legislation. The situation is at the point where there has to be new legislation brought in to punish those who might give succour to people who escape from these institutions. The people who have escaped are not criminals. They have not been convicted of offences. If they had been convicted of offences they would be in jail. If I wanted to invite you to my house and home, there would be no problem with that. If I wanted to bring in a person who has escaped from jail, who has a criminal conviction, I would be harbouring. But in this situation we have people who are not convicted of any offences—if they get out of a place and they are harboured, the person who harbours them could end up in jail for a considerable period of time.

Not only is there a growth in the number of people escaping from these prisons—which is what they have become: once upon a time we would have called them detention centres but it has gone beyond that now—but we are creating a situation where the number of crimes a person can commit and the severity of the penalty imposed is increasing. The whole thing is beginning to snowball. So we have a situation where new crimes are being created, where new penalties are being imposed, where more and more people are being dragged in to face the music, as it were. Ten years ago this sort of thing was not happening. What is going on in this system?

Is that the right way to conduct a program that deals with people coming to our shores?

The Department of Immigration and Multicultural Affairs should look at this. There is a strange attitude in this department. I have had recent experience of this with respect to a person who wants to come here to study. There is a requirement by the department—I think this is in China somewhere—that it take 16 weeks to assess as to whether a person should be brought here as a student. This is a person who wants to study at Melbourne University, an eminent institution, where, may I say, my son Sean lectures in contract, with great aplomb and skill.

*The Acting Deputy President* (Senator Lightfoot)—It is obviously hereditary, Senator Cooney.

*Senator COONEY*—Thank you, Mr Acting Deputy President.

*Senator McGauran*—On the mother’s side!

*Senator COONEY*—What has happened is that the university—

*Senator Patterson*—Respond to that so that it goes into the *Hansard* for your wife, Barney.

*Senator COONEY*—Yes, I will. Thank you.

*Senator Patterson*—I think she deserves that.

*Senator COONEY*—Yes, she does. You are absolutely right, Senator. My wife is a woman of outstanding ability. As Senator Patterson will tell you, my wife has been a solicitor for over 40 years—the most eminent in Melbourne! The university has its requirements. It wants these people to come to Australia and we want them to come to Australia. Here is a person who will pay thousands of dollars in fees to come to Melbourne University, the pre-eminent intellectual institute in this country, but he is not able to get here on time because the base in China cannot get his visa processed in fewer than 16 weeks. If he wanted to go to England or the United States, it would be much quicker.

*Senator Patterson*—I will give you a briefing on it and tell you why.
Senator COONEY—Thank you. It is, as you would know, Senator Patterson, a matter of some concern. When this matter came to the attention of my office, inquiries were made, and it seems that is the problem. It is very difficult, and you would understand being an eminent academic from Monash—

The ACTING DEPUTY PRESIDENT—You have misread me, Senator Cooney, I am not an academic.

Senator Patterson—He is talking to me now.

The ACTING DEPUTY PRESIDENT—I see. Senator Cooney, you should direct your statements through the chair.

Senator COONEY—Yes, I should. The fact that you are not an academic, Mr Acting Deputy President, does not in any way detract from your intellect and brilliance; it is just that Senator Patterson has those same qualities but in a more formal, academic fashion. That is how I was putting it. In any event, I am glad that Senator Patterson will brief me on that because it is pretty important. I think it is a concern that there is escalation in terms of the security that we have to impose to keep people where we want them. There is an escalation in the number of crimes. I think it is a concern that there is escalation in the number of crimes. What is innocent conduct today should, in my view, only be made criminal conduct for the most serious of reasons tomorrow. This legislation starts ratcheting up the number and the seriousness of the crimes concerned.

The general thrust of the bill is simply to give the legal underpinning to the legislation that the Department of Immigration and Multicultural Affairs administers by way of a code rather than by way of the common law. As Senator Schacht has indicated, nobody complains about that. There is no opposition to that. If it is the decision that the law be underpinned by code rather than by the common law, so be it. But, in so far as this legislation does what I have complained about—create new crimes and add to the seriousness of the penalties that attach to the crimes—that becomes a very significant issue.

I conclude my remarks on the matter. Through you, Mr Acting Deputy President, I am very eager to hear Senator Patterson answer the issues that have been raised.

Senator HARRIS (Queensland) (1.00 p.m.)—I express my wholehearted support of the government for the Migration Legislation Amendment (Application of Criminal Code) Bill 2001. However, I feel the whole issue of illegal immigration has been bogged down in political correctness and warm and fuzzy garbage. Australia is being dragged kicking and screaming into a globally orchestrated population realignment that is neither of our making nor of our choosing. It is about time to take the reins of our own future, take our destiny back under our own control and no longer play the defenceless player in a global agenda sanctioned by the United Nations.

The unregulated movement of illegals—predominantly boat people—with the covert sanction of the United Nations, together with the active participation of sophisticated transnational criminal groups, is resulting in one of the largest hoaxes ever perpetrated on the Australian people. This has got to stop. The estimated potential worldwide supply of this illegal criminal cargo is upwards of 60-odd million. Australia has seen the increasing trend for these illegals to land on our shores each year, much to the financial and social detriment of all Australian citizens. I emphasise that. Each illegal criminal that lands on our shores takes away from the Australian government’s ability to provide social, health and education services for the Australian people.

This country is noted for its high standard of living, which is not only desirable for our own citizens but also highly attractive to overseas residents. I and the majority of Australians—that is, loyal Australians—have no objection to anyone desiring to better their circumstances and standard of living, but I believe that Australia has taken great exception to the abusive influx of the illegals that we are absorbing and the financial costs created for this country. Obviously the liberality of our immigration laws is of great benefit to—and open to monumental abuse by—not only those with criminal intent but also the criminal instigators of this aboma-
ble industry. The potential for future social unrest arising from ethno-national differences between incompatible cultures being forced to amalgamate and expected to live in harmony side by side upon our soil is of great concern. I would be very sad if, in 10 years time, in this wonderful country, we in Australia are facing similar altercations to those that are now predominantly perpetrated between these people in their own countries.

We must ask ourselves whether, under the banner of responsibility that we are entrusted with in this chamber, we have the right to abrogate our responsibility by continuing to do nothing or whether we carry out the designated duty that the Australian people have elected us to carry out—to protect this country from the blatant abuse of our hospitality and resources that is being presently perpetrated upon us and not allow these people to continue to get away with it. A responsible government needs to pursue amendments legislatively and to take action to protect the interests of Australia and its people. It needs to pursue this type of legislation together with the abandonment of any agreements or treaties that are proven to be against our best interests and solely for the benefit of foreign manipulative bodies motivated by purely ulterior motives with no responsibility or requirement to consider the best interests of this country and its people.

There is no doubt that the conditions that we have here in Australia are very desirable to those people overseas. I place clearly on record that I have a great compassion for those genuine refugees—and I repeat the word refugees—who go through the process: they go through the internment camps, they wait their turn and they apply to legally enter this country. They, no doubt, like a lot of other people, have some understanding of the benefits of entering Australia.

I would like to focus on some of the facilities that are available in the detention centres. For entertainment, Woomera Detention Centre provides eight televisions, one in each recreation room; an educational complex; three videos; and 10 computers, six of which are educational. There is band equipment for karaoke and there are radio cassettes. These people are provided with 15 copies of the South Australian Advertiser, 15 copies of the Australian, 10 copies of the Arabic El Telegraph and three copies of the Bamdad Weekly. These people are provided with newspapers at the expense of the Australian people.

Sports equipment is provided for soccer, volleyball, basketball, badminton and table tennis. There is gym equipment and there are weight-lifting machines. These people also have excursions organised. There are three excursions per month from Woomera, involving approximately 160 people. These are the conditions that these people at Woomera are complaining about. I also believe—I have it on reasonably good authority—that the local supermarkets are open out of hours so that these people can purchase the goods that they wish to have. If we look at the health facilities that are provided at Port Hedland, there are two general practitioners. They are available between eight o’clock and six o’clock on weekdays and are on call 24 hours. Six nurses are available, as are psychiatrists, psychologists and dentists. The conditions within these so-called detention centres are considerably better than the Australian people have been made aware of. Recently, I travelled to South Australia but unfortunately I was not granted permission to look at the internal sections of the Woomera Detention Centre. Although I believe that
Woomera’s remote location is suitable, I believe we should consult with the residents of Woomera in a more forthright manner about their concerns about the proposal for certain detainees to be facilitated within the Woomera housing areas.

I reiterate my great concern that the illegal criminals coming into Australia are creating an enormous cost burden on the Australian people, taking away from this government’s ability to provide services to the elderly by way of nursing homes and impacting on our ability to provide education for our own children. I believe the Australian people have very clearly shown in some of the polls that have been conducted around Australia that they believe these illegal criminals should immediately be sent back to their countries of origin—particularly, I emphasise, those who have come past safe havens; in other words, for those who purposely move past other safe havens between their country of origin and Australia there should be no process of assessment. I believe they should immediately be returned to their place of origin.

My definition of the terminology ‘immigration’ is people who change their place of abode—their homeland, in this case—and legally transfer to a new homeland. That is what immigration means. What we have here is, to a large degree, a clear breach not only of Australian law but also of the laws relating to their homeland, in that a considerable number of those countries have restrictions on the transfer of funds out of the country. For these illegal criminals to be able to pay the smugglers they must have accrued quite large sums of money outside their country, so they are breaking the laws of their own homeland. It is for that reason that I say that they clearly are not illegal immigrants; they are illegal criminals. I commend the government on this bill and look forward to the debate in the committee stage.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.15 p.m.)—As has been said, this bill will make all the necessary amendments to the offence provisions to ensure compliance and consistency with the general principles of the Criminal Code. These amendments will not change the meaning or operation of any offence provisions, and the bill is an important step in a process that will bring greater consistency and clarity to Commonwealth criminal law and will also give Australians greater certainty, protection and confidence under the criminal law.

The debate today on the Migration Legislation Amendment (Application of Criminal Code) Bill 2001 has ranged a little wider than the actual topic of the bill. I know that when the Dairy Adjustment Levy Bill used to come into parliament when I was in opposition, I gave passionate speeches about the specialty cheese industry, so I guess I have to sit here and listen to Senators Cooney and Harris stray a little from the actual intent of the bill.

Senator Cooney made some comments about detention, which might be more appropriate in the debate on the Migration Legislation Amendment (Immigration Detainees) Bill 2001. He also made some comments about the student visa program, particularly the student visa program out of China. I offered to give him a briefing on that.

We have implemented quite extensive changes to the student visa program, in very close consultation with the industry. I visited every university that had prequalified institute status and all other universities that had high numbers of overseas students. We have spent around nine days in meetings with the AIEPB, the Affiliation of International Education Peak Bodies, dealing with this issue. We acknowledge that there is an issue relating to processing student visas in China. For Senator Cooney’s information, there has been an increase of over 46 per cent in visas for people from China in the last program year. The problem is that that 46 per cent is also reflected in an increase of about 46 per cent in visa rejections, because of people who come in with fraudulent documentation and incomplete visa applications. So the increase also reflects an increase in visa applications which are not acceptable.

One of our other problems is that we have reached our physical limits in the post in Beijing. Senator Cooney referred to ‘the
strange attitude of the department’. I cannot accept that comment. The officers in the student section of Immigration have worked day and night for nearly two years on the reforms. The officers at posts work extraordinarily hard in processing student visas. For Senator Cooney to say that they have ‘a strange attitude’ is, I think, unfair.

Let me explain what has happened. In China, we have searched and searched for additional space. We thought we had space, and then we found that it did not meet our occupational health and safety requirements: it was not earthquake proof. We have had enormous problems in finding space. One of the things we are now looking to do is to try to preprocess some of the visas back here in Australia. We have worked tirelessly trying to find ways to solve the problem. We have been hamstrung by the fact that we cannot find reasonable and appropriate accommodation in Beijing to house our staff in the manner in which they should be housed—in office space that is safe and secure. We have been dealing with that, while seeing an enormous increase in the market, particularly in China.

We have seen that increase because we have seen universities and other education providers promoting Australian education, which is now about our eighth largest export earner—about equivalent to wheat and greater than wool. We have been working to find the ways and means to speed up the processing across all posts, but there has been an exponential growth, and we have been limited by physical constraints at the Beijing post. I hope that may explain the situation to Senator Cooney.

With regard to what Senator Harris said, I would also like to offer Senator Harris a briefing. He said two things. As for one of them, I regret his emotive reaction. I regret his comment that we are continuing to do nothing. That reflects incredibly badly on senior officers of the department and the minister, who has worked tirelessly with the Chinese, Indonesian and the Cambodian authorities. I happened to be in Cambodia only two weeks ago on a private visit and I met with the minister for the interior. Because of cooperation with Australia and the work of officers from Immigration and Foreign Affairs—in particular Louise Hand, the ambassador—the Cambodians have managed to catch five, I think, of the snakeheads, as bona fide students who put in applications without fraudulent documents and actually come and comply with the student visa here and either apply for an appropriate visa or return home, can achieve peak qualified institute status and are then guaranteed a 20-day turnaround.

We have worked to try to achieve that. We have had seminars with all the educational institutions to tell them about the problems we have had with people putting in fraudulent documentation. We have developed a much better working relationship between the department and the education providers. That relationship was not there before. People saw Immigration as some sort of block to people coming in. I would hate there to be any question about the fact that the officers of Immigration are determined to work towards increasing and improving the number of students coming here to study, provided they are bona fide students who intend to come here to study, to comply with the visa conditions—that is, to not work more than 20 hours during term time, to attend their classes and then to return home or to apply for an appropriate visa. That is what the officers of the immigration department are looking for, and that is what I am looking for. We do not always have that. I am quite happy to arrange for the department to give Senator Cooney a briefing on the issues. They are quite complex, and we have been dealing with an enormous increase in the volume of applications.

With regard to what Senator Harris said, I would also like to offer Senator Harris a briefing. He said two things. As for one of them, I regret his emotive reaction. I regret his comment that we are continuing to do nothing. That reflects incredibly badly on senior officers of the department and the minister, who has worked tirelessly with the Chinese, Indonesian and the Cambodian authorities. I happened to be in Cambodia only two weeks ago on a private visit and I met with the minister for the interior. Because of cooperation with Australia and the work of officers from Immigration and Foreign Affairs—in particular Louise Hand, the ambassador—the Cambodians have managed to catch five, I think, of the snakeheads, as
they are called there, the people smugglers, the people at the forefront.

That did not happen by chance. That happened because there was enormous cooperation between the Australian and Cambodian authorities, work that has been ongoing. To sit here in this chamber and say that there has been nothing done is nothing short of mis-representing the facts and fuelling the views of the sort of people who have totally unacceptable and unworkable solutions, like shooting all the people in the boats. That is what I have been told by some people. When I stop and talk to them, I say, ‘If your sons or daughters were on the patrol boat and they came across a boatload of unauthorised arrivals—children, women and men unarmed—whom are they going to shoot first? The children, so they do not see their parents shot? Always shoot their parents first?’ When it is actually put in those terms, they do not think it is such an easy solution. The solution that Senator Harris put forward, to turn the boats around, is an easy one with which to whip up a bit of enthusiasm around the community, but it is not possible to do that.

These simple solutions sound fine, inspire a bit of aggro and whip people up, but a more sensible debate is the debate about this being an international problem and that Australia has had an increase, but nothing like the increase we have seen, for example, in Ireland, whose Prime Minister I talked to when he visited here. Ireland had 4,000 people during the first half of last year, between January and May. Belgium: I have forgotten the population but they have had a significant number. We are talking about tens of thousands. To whip up the argument that it is totally out of control here—an emotive reaction—is not right. It is a problem—it is an international problem—but to say that we have done nothing is nothing short of mis-representing the facts.

I have a briefing paper which I will offer to give to Senator Harris and which outlines the facts rather than the fiction, and I am happy to have him briefed on what has been done, because to say nothing has been done is nothing short of appalling. We see it as an issue. When I was in Cambodia, those people—257 of them—were being put on a boat. Some children had dysentery. There was not enough water for the people on those boats, and they were going via Indonesia to pick up some more people. Some of those people had been solicited to join those boats. So it is an issue, but it is not the sort of issue that Senator Harris is making it out to be. Again, to say that nothing has been done I find unacceptable, not only because the minister has worked assiduously to address this issue because he believes that people who come here on our refugee program should come in an orderly fashion through the UNHCR. To whip up negative views and indicate that the departmental officers have done nothing is nothing short of unacceptable. They have worked tirelessly in addressing this issue at an international level, cooperating with other countries to reduce the flow of unauthorised arrivals so that we can actually have integrity and we can make decisions about who comes here in cooperation with the UNHCR under our refugee program. I hope that when Senator Harris has had a briefing he will see what has been achieved and may be a little bit more constrained in his comments about the ‘fact’ of the government continuing to do nothing. I will offer him that briefing. I would not normally speak on these issues but I thought both of those remarks had to be commented on even though they were not directly related to the bill. I commend the bill to the chamber.

Question resolved in the affirmative.

Bill read a second time.

In Committee

Senator SCHACHT (South Australia) (1.27 p.m.)—I want to make a few remarks in the committee stage in view of the second reading contributions on the Migration Legislation Amendment (Application of Criminal Code) Bill 2001 that followed my remarks at the beginning of the debate. Like the minister, I heard with some interest the remarks of Senator Harris. The views he expressed are not the views that the opposition would express on this complex issue of dealing with illegal immigrants in this country, not just the populist issue of boat people.
As I have said before in this chamber and certainly at estimates committees, the biggest number of people in this country who are breaking our immigration laws are those who overstay their tourist or visitor visa. Guess which country the biggest number of those overstayers who break our law come from? It is the United Kingdom.

Senator Patterson—Perhaps say how many come.

Senator SCHACHT—Yes, there are large numbers, but in bulk terms in any year we have over 50,000 people in this country who overstay their visa and break the law of this country by overstaying. They have certainly got a visa to get in, unlike the boat people, but they do break the law of Australia. We do not hear the same emotive remarks about the large number of people in this country who are breaking the laws of this country by overstaying. All the effort is directed to the emotive issue of the boat people.

I take this opportunity to say to Senator Harris: yes, we have had boat people come to this country, and in the seventies we had large numbers of boat people from South-East Asia. The parliamentary secretary, Senator Patterson, mentioned her recent visit to Cambodia. I, like many others in this parliament, have visited Cambodia and Vietnam six or seven times over the last decade and a half. I have also met people who were boat people and who came and established themselves in this country very well. Only last week, visiting a business enterprise centre in the suburb of Hindmarsh in Adelaide, I came across a small business dealing in software for computers which was being run by people who, as very young children with their family, were boat people from Cambodia. They went across to Malaysia, took all those enormous risks and underwent suffering, and got entry to Australia. Their parents came here with virtually no qualifications, in many cases. Many of them did not speak much, if any, English. They took all those tough, dirty jobs that many of us in Australia who have been here for several generations would rather not have. They paid for their children to get a good education and these children have now studied at university—one is a microelectronics engineer and another an accountant—and are all in their twenties. They went out and established a computer business, creating wealth and jobs for this country. These are the descendants of people who arrived in Malaysia illegally by boat and, through the process, got accepted into Australia.

According to some of the emotive words of Senator Harris and others, these people should have been turned back in the South China Sea. Maybe we should have had our Navy out there turning them back. I think that their contribution to Australia since proves that, although they may have started off by illegally leaving Vietnam or Cambodia, they have ended up being excellent citizens of this country.

I also have to comment on the remarks of the parliamentary secretary. I concede that Senator Patterson, over the time I have known her in this parliament, has taken on many issues what I would consider a small ‘l’ Liberal, moderate view—maybe not the majority view of the Liberal Party presently in this place. In response to various remarks of Senator Harris, she appealed for decency and understanding of what is a complex issue. I hope that her remarks as parliamentary secretary get through to some of the hardheads, the wedge politicians, in the present government who have been putting out material to try and make this a divisive debate in Australia. For example, I have here a leaflet circulated by Mr Peter Dutton, Liberal candidate for Dickson. On the front page, it says:

Ruddock has restored integrity to the immigration program by strongly emphasising skilled migration, English language proficiency and age limits, and by cracking down on rorts.

It goes on to say, in subheadings:
Protecting our borders
Combating people smuggling
Helping those who genuinely need help

When you go over to the second page, it says, in a subheading:
Labor is soft on illegal immigrants

It then has dot points, which say:
Labor has opposed the government’s amendment to streamline the appeals process in the courts,
process many illegal immigrants use to delay being deported. Yet at the same time Labor claim they want to speed up the processing time.

Labor wants to water down restrictions on temporary protection visa holders to give them access to the same level of services legal immigrants receive.

Some of those remarks and the tenor in which they are printed are similar to what I think Senator Harris said here today, for which he was criticised quite rightly by the parliamentary secretary, Senator Patterson. We welcome your remarks, Senator Patterson, and the temperate way in which you entered this debate today to respond to some of the remarks of Senator Harris. I would also appeal to you to make sure that various Liberal candidates around Australia are not putting out leaflets like this, which is all about trying to make immigration a divisive issue in this coming election, a wedge issue of politics, to try and stir up and create unnecessary fear and hatred in the community by saying, ‘We are tougher on immigrants than the Labor Party.’ But then One Nation are now appealing, ‘We’re tougher than the government.’ We keep spiralling down, trying to prove who is hairier-chested and who is tougher on dealing with immigrants.

The only loser in that debate is Australia. We look like a bunch of dopes doing that, as we spiral downwards, trying to outbid each other on who is going to kick an immigrant harder, who is going to turn the boat around, who is going to put up more razor wire at detention centres and who is going to have longer detention for them. If we think that is smart politics for Australia, not only internally but also externally, then I say to anyone who tries that—like Mr Dutton, like One Nation—that I think you are acting absolutely contrary to the interests of Australia. It might be good for a handful of votes somewhere in Australia to appeal like this, but I agree with what Senator Patterson said. Say to the members of the Australian public, ‘Whom on the boats do you want to shoot first? Or do you not want to shoot them? Do you want the Australian patrol boats to ram them and sink them at sea—going back to what the Romans used to do, the old-style ramming—run over them and let them drown?’ It is all very well to sit back in Australia and imply these things on a talkback program when that person is not looking in the face of someone they are about to drown, turn away or let starve at sea. When you get to that question, I think a large majority of Australians will say, ‘That’s not the Australian way; that’s not what we’ve been about in this country for 200 years of European settlement.’ That is why we do have a reasonable reputation on human rights around the world. I think it is appalling that we have allowed this debate to sink to this level through some people seeking narrow, sectional political advantage.

The opposition have consistently supported the majority of what this government has wanted to do on immigration matters. We have drawn the line on a number of occasions about due process to ensure that, even though it may be costly and it may cause delay, even illegal immigrants appealing on their determination to be declared a refugee under the UN definition have a chance to have a hearing and an appeal. That is a reasonable process. We have argued greatly in the Labor Party about what that fine balance is. We have opposed some of the government measures; we have supported many. For the government to start putting out stuff like that Mr Dutton has put out is a real concern. I suspect Mr Dutton did not put this out unchecked with the Liberal Party headquarters either in Brisbane or in Canberra or with the minister’s office. This is, as I understand it, a draft leaflet. The contents are available to any Liberal candidate to use around Australia.

Let us be fair dinkum, Senator Patterson. Some people in your party—not you; I respect the fact that you are a small ‘l’ liberal moderate on a range of human rights issues, civil liberty issues—are happy to play this card and play it badly. What have you discovered today? That no matter how hard you play this issue someone called One Nation will play it even harder and someone who is not even in this parliament—maybe the National Front or some other even more narrowly based group—will play it even harder than One Nation. So there is a bidding auction of who can do this better and tougher. In the end our country loses, and in the end we
are playing politics on the basis of what is
the worst for people, not what is the best.

In this chamber over the long time that I
have been here, my colleague Senator Coo-
ney—who sometimes I might not have
agreed with internally in the Labor Party on
some issues about the law—has made a great
contribution to protecting the human rights
of even the most illegal of illegal immi-
grants. He is the one that does Australia’s
reputation proud and better in the long term
than those in this community and those in
this parliament who go to base politics every
chance they get. The role of this government
on some of these issues at the moment, as
shown by this leaflet that I have already
quoted from, is all but disgraceful. For them
to complain about One Nation in some ways
is hypocritical.

Senator COONEY (Victoria) (1.43
p.m.)—Can I say something apropos of what
has been said and apropos of what Senator
Harris is talking about. He talks about illegal
criminals coming to this country. Of course,
nobody wants illegal criminals coming to
this country but I think he—

Senator Abetz—What about legal crim-
nals?

Senator COONEY—A very interesting
concept, Senator Abetz—a legal criminal.
What I think he is doing is confusing crimina-
l with people who are seeking asylum.
Senator Harris, can I say this to you: Aus-
tralia has freely and of its own consent signed a
convention called the Geneva Convention
and has brought that convention into domes-
tic law. According to that domestic law,
Australia is obliged to give refuge to some-
body who has a well-founded belief that he
or she will be persecuted for certain princi-
ple that they stand by. Australia did not
have to sign that; it could, in fact, denounce
it. But, while it is there, we have an obliga-
tion to give protection to those people who
come here. They are not criminals. The peo-
l that I think you are referring to—I might
be doing you wrong—are those people who
come here without permission. That does not
make them illegal. If we are parties to the
Geneva Convention, we cannot make it a
crime for them to come here to seek refu-
ge. If they are not refugees, they should be
sent out of the country. But if we are going to
stick to the obligations that we have placed
upon ourselves we have to go through the
process of working out whether they are
genuine refugees or not.

Senator Harris, in your contribution to the
second reading debate you said that they
have broken the laws of their own country,
that they should have somehow asked per-
mission. I have no doubt that there are peo-
ple who come here who have broken the
laws of Iraq or Afghanistan or of other
places, but we in the West think that the laws
of Iraq are such that we are right in bringing sanctions against Iraq. It seems very peculiar that Australia agrees to sanctions being imposed on Iraq—as that is all right because Saddam Hussein is such a terrible fellow—but if anybody tries to escape from his regime then he or she becomes a criminal. It is a proposition that I cannot quite contemplate.

Of course, what you are really asking, Senator Harris, is that if, for example, you are in Afghanistan and you want to be a refugee from there then you have to go along to the head Taliban and ask, ‘Can I escape, please?’ The Taliban would then give you a certificate and off you would go. Otherwise, you would go to Saddam Hussein and that would be it. During the Second World War there was an escape from Colditz. Those of us who were alive then would remember that, but others would only have seen it in the picture show. Senator Harris, what you are really asking is a bit like this example of the escape from Colditz. The Allied airmen went along to the head of the prison and asked, ‘Can we have permission to escape?’ Then, once it was legal, they became lawful refugees.

Senator Harris, I would like you to think about the proposition that you are putting because it really has some interesting ramifications. We as a country have been very generous—that is true—in the way we have looked after our refugees. But I do not think that we should distinguish between the refugees who come here now and the refugees that came here on the Duneera. As Senator Schacht pointed out when he referred to refugees—while he did not specifically talk of those who came to Australia on the Duneera, the general point he made was relevant to them—they have made great contributions to this country. They have become professors at universities, they have become judges and what have you. I ask that you reconsider what you have said. When you say that refugees—genuine refugees from the countries I have spoken about and from other countries as well—should be turned around, I think it presents a terrible picture of what we should be doing as decent human beings.

Senator BARTLETT (Queensland) (1.48 p.m.)—I move:

(1) Schedule 1, item 39, page 9 (lines 16 to 19) omit the item, substitute:

39 At the end of subsection 240(3)
Add:

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see section 13.3 of the Criminal Code).

This amendment is not about boat people. I record the Democrats’ strong repudiation of the comments of Senator Harris. Whilst he may have said that he would not want to direct any Australian to shoot boat people, if you do turn them around and send them back then in many cases you are just as certainly sending them to their death as if you had shot them. That is one of the clear reasons why it is not workable to send people back as some sort of policy solution.

I detailed the amendment in my speech on the second reading, so I will not talk to it at great length. Basically, this amendment relates to item 39 of the bill which deals with the offence of arranging marriage to obtain permanent residence and to people being charged with that offence. The maximum penalty for that offence is a $100,000 fine and 10 years imprisonment, so it is a very severe penalty. In such a circumstance, the Democrats believe that the issue of the burden of proof should not be so harshly weighted against the defendant. The provision in question, as it stands, places a legal or persuasive burden on the defendant to establish their innocence. The Democrat amendment seeks to change that to an evidential burden which requires only that the defendant point to evidence which suggests a reasonable possibility that a defence exists, with the prosecution bearing the ultimate burden of proof.

We believe that, for an offence with such a severe penalty, having such a harsh burden of proof on the defendant is unreasonable. Whilst we certainly do not support the deliberate use of arranged marriages to fraudulently obtain residence, we do believe that if people are being charged with an offence that bears such a significant penalty then they should have a more reasonable burden
of proof and they should not have such a harsh burden of establishing their innocence.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (1.51 p.m.)—The Democrat amendment to the Migration Legislation Amendment (Application of Criminal Code) Bill 2001 relates to the offence of arranging a marriage for the purpose of obtaining a permanent visa. This is regarded by the parliament and the community as a serious offence and it carries a penalty of 10 years imprisonment. That provides a defence to this offence, where the defendant believed on reasonable grounds that the marriage would result in a genuine and continuing marital relationship.

The bill clarifies that the defendant bears a legal burden in this matter. It does not change the existing legal situation in any way. In other words, item 39 of the bill does not change the policy settings for section 240 of the Migration Act. The purpose of the bill is to align existing provisions with the Criminal Code. It does not change the meaning or operation of any of the offence provisions. Item 39 clarifies that the defendant has to prove that he or she held the relevant belief on the balance of probabilities. It is appropriate that a defendant bear a legal burden, because the question of whether he or she held the relevant belief on reasonable grounds is something peculiarly within the knowledge of the defendant.

The fact is that it is the defendant who knows whether a reasonable belief was held, and the interests of justice are served by ensuring that the defendant prove this on the balance of probabilities. It would be very odd if the defendant only had an evidential burden, as is being proposed by the Democrat amendment, because he or she would only have to point to evidence that suggests a reasonable possibility that he or she held the relevant belief. This would also make it significantly more difficult and costly to then require the prosecution to prove beyond reasonable doubt that the defendant did not hold the relevant belief. For these reasons the government does not support this amendment. I believe Senator Schacht said that the Labor Party were not going to support it either.

Amendment not agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

SUPERANNUATION LEGISLATION AMENDMENT (POST-RETIREMENT COMMUTATIONS) BILL 2000

Second Reading

Debate resumed from 1 March, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (1.54 p.m.)—The Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000 makes amendments to a number of public service superannuation schemes, including the Parliamentary Contributory Superannuation Scheme, the Commonwealth Superannuation Scheme and the Public Superannuation Scheme, to make arrangements for the payment of the superannuation surcharge—more commonly known as the ‘superannuation tax’. The changes will allow members of the schemes—

Senator Kemp interjecting—

Senator SHERRY—I hear Senator Kemp chuckling away. There is no reason to laugh, Senator Kemp, when you look at the disgraceful performance of your government on this issue. I think you lost this issue long ago.

Senator Kemp—You voted for it.

Senator SHERRY—We did not vote for it actually—not here anyway. The changes will allow members of the schemes who have taken their pension and been levied with a vicious surcharge debt after retirement to have the debt removed as a lump sum from their entitlement. That enables them to pay the debt as a lump sum, resulting in their pension being reduced over its lifetime to pay for the surcharge debt. I would emphasise that the legislation we are considering does not confer any advantage on public ser-
vants or, for that matter, politicians in respect to the payment of the surcharge.

The changes we are considering follow changes made in 1999 to the Income Tax Assessment Act 1936 and the regulations under the Superannuation Industry (Supervision) Act that established this measure for the majority of superannuation members. So it needs to be understood that the arrangements being talked about here are already in force for other superannuation funds. There is no special benefit or privilege being conferred on the members of the funds this legislation is considering.

We consider that these changes in themselves are non-controversial, but it needs to be pointed out that the saga of the so-called superannuation surcharge is a long tale of deceit, hard truths, pain, anger, waste and broken promises. This is in fact the next instalment.

Senator Kemp—Which you plan to keep.

Senator SHERRY—Senator Kemp, we have had 15 pieces of legislation on the so-called superannuation surcharge to get us to this point. We have had debates about what a tax is—and Senator Kemp well remembers those, and so does your predecessor, Senator Short, who could never quite come up with a definition in his 18 months in the job—and we have had discussion about whether the government has broken its promises and about the inefficiency in the collection of this tax. In a number of cases, we have witnessed some low income earners having to foot the bill for this superannuation tax. Labor will not be opposing this bill—

Senator Abetz interjecting—

Senator SHERRY—which is about improving the capacity of certain members affected by the so-called surcharge to pay the so-called surcharge. You will need my help a little later, Senator Abetz, when you are dealing with this bill—you look at the amendments we have got coming along. I remind the parliament of what an inefficient measure this surcharge is. I also note—and I would like everyone in the Senate to note—that this is one of the most inefficient taxes ever designed in world history. I will come to more of that later.

Senator SHERRY—if the wholesale sales tax is inefficient, Senator Abetz, I am afraid the so-called surcharge takes the record for inefficiency in so-called tax reform. It is often the case, as members of superannuation funds would understand, that a surcharge assessment arrives well after the period in which it was accrued. This is not a problem in itself while you are an active member of a superannuation fund and the trustees can levy it against your entitlement, but when it arrives after you have left the fund the bill still has to be paid. This legislation, once it is passed, will allow the debt to be offset against your outgoing pension instead of your having to face a large once-off bill which you might not have the money to pay for. This will then result in the pension being reduced over its lifetime to pay the surcharge debt, easing the financial burden of payment on those members who are impacted in this way.

The superannuation surcharge was introduced in the 1996 budget. It was in direct breach of the undertaking given by the Prime Minister, Mr Howard, of his 1996 election promise not to introduce any new taxes or increase existing taxes. The so-called superannuation surcharge is a direct breach of the promise given by the Prime Minister in the lead-up to the 1996 election. And of course we all remember the ‘never, ever’ promise on the GST. It was alleged that the surcharge would result in greater fairness in the superannuation system. When the surcharge tax was introduced, despite warning after warning from the Labor opposition and a vast number of industry and individual groups in the community about the problems in the application of the surcharge, this government ignored those warnings. And here we are today dealing with the 15th piece of legislation resulting from the surcharge tax.

Debate interrupted.

QUESTIONS WITHOUT NOTICE
Building Industry: Illegal Activity

Senator JACINTA COLLINS (2.00 p.m.)—My question is to Senator Alston, representing the Minister for Employment, Workplace Relations and Small Business. Is
the minister aware that the Employment Advocate in his report on the building industry claims to be aware of cases of bribery, secret commissions, money laundering, use of illegal immigrants, theft and resale of construction equipment, false invoicing and fraud? When did the Employment Advocate become aware of these crimes? When did the Employment Advocate refer these allegations to the police? If he did not refer them to the police, can the minister explain why he did not?

Senator ALSTON—I will see what information I can obtain.

Opposition senator interjecting—

Senator ALSTON—I know that you have never wanted to be the minister for the arts, and you never will be, so you will just have to make the most of what you have got. I assume that there are some answers that can be provided to Senator Collins, and I will certainly do my best to ascertain those, but I have to say that the whole thrust of her question is essentially to try to trivialise, downplay or distract attention from what are very important issues, particularly in the building and construction sector. Quite clearly, the Labor Party does not want to see a lot of these issues fully explored.

Senator Carr—Why didn’t he go to the police?

Senator ALSTON—I note that you have come out on the weekend on the side of the workers, so-called. In other words, you are in favour of industrial anarchy and you do not mind how far it goes—although, of course, in his usual courageous, lead-from-the-rear manner I notice that it was through Mr Beazley’s spokesman that we were told that the Labor Party actually supported the current strike. If there are matters of factual information that can be provided to Senator Collins they will be.

Senator JACINTA COLLINS—Madam President, I ask a supplementary question. Minister, I must say I am somewhat surprised at your ignorance on this matter, given what the minister has been stating in recent times.

The PRESIDENT—Senator, you should not be directing remarks directly across the chair.

Senator JACINTA COLLINS—My question is: does the minister agree that the Employment Advocate has a clear responsibility to refer allegations of criminal conduct to the proper authorities? Again I ask for an adequate explanation for why these allegations were not referred to the police.

Senator ALSTON—Senator Collins seems to think that I should have the minutiae of all of these matters at my fingertips, that I should somehow be aware of when the Employment Advocate first became aware of information, what he did with it, what judgments he made, the basis for any assessments that he made of them and the basis of statements that he has made. Again, as I say, all of this is designed to trivialise—to pretend that somehow there are not serious matters to be examined. What Senator Collins is essentially saying is, ‘These can’t be serious matters because, if they were, they would have been referred to the police,’ or, ‘We think this is basically a trumped-up charge. We don’t really think this is important. We’d like to focus on the messenger. That is what we’re doing. We’re not concerned about whether in fact there are events that could be characterised as intimidation, blackmail or various other similar matters. No, we want to know why you didn’t talk about them then instead of earlier.’ (Time expired)

Workplace Relations: Workers’ Entitlements

Senator CALVERT (2.03 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Will the minister inform the Senate of how the government is protecting workers’ entitlements? Is the minister aware of any alternative approaches?

Senator HILL—It is worth remembering that the Australian Labor Party is the political arm of the trade union movement in this country.

Senator Faulkner interjecting—

Senator HILL—It is going to give the public a hint as to what they might see in the future if the Labor Party, unfortunately, came
to government again, Senator Faulkner. We have certainly seen a hint of it in recent times. It is true that the ALP is the political arm of the trade union movement, and the trade union movement of recent times, through the Metal Workers Union, has illustrated again how little concern it really has for the long-term interests of Australian workers. Madam President, you will be aware of industrial action by the Metal Workers Union in this country, seeking an extra 1.5 per cent of payroll to be paid towards a fund for so-called ‘workers entitlements’—

Senator Carr—To stop workers getting their entitlements stolen.

The PRESIDENT—Senator Carr, you are shouting, and that is disorderly.

Senator HILL—which was pursued through a most unfortunate strike at a motor vehicle component business by the name of Tristar. As a result of that strike, a large number of employees have been stood down around Australia in the motor vehicle industry, including some 3,400 at GMH, some 6,000 at Ford and some 2,500 at Mitsubishi. The Australian motor vehicle industry, one of the most important industries in employment for workers in this country, is being held to ransom by the Metal Workers Union in support of a new and additional claim. That is what it was: a new and additional claim.

Senator Conroy—Newsflash: Howard saves Mitsubishi—again!

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

Senator HILL—We would have thought that even the Labor Party would have said that the timing was somewhat inopportune, as the Prime Minister was travelling to Japan to seek support from Mitsubishi for a continuation of its manufacturing business in Australia against a background where the metal workers were closing down the industry in Australia and the political arm of the Metal Workers Union was saying naught, washing its hands of it. ‘Nothing to do with us. It’s our brothers in the union, but it’s not us,’ was the cry of Mr Beazley and his colleagues.

This industry, as a globalised industry, needs to remain internationally competitive if it is to survive and provide ongoing employment for Australians. But this is of no interest to the ALP. This claim, as I said, was promoted under the guise of being in support of employee entitlements, but what was overlooked is that the Howard government has actually put in place a scheme to protect employees’ entitlements. It did not exist under the Labor Party when it was in government; it has been put in place since the Howard government came to office. The scheme, operating since 1 January 2000, provides for a maximum of some $20,000 for workers who are left without their entitlements, and it will work fully when the states join in partnership with the Commonwealth. But, unfortunately, apart from the Northern Territory, no state has yet been prepared to make a contribution. So far, it is only the Howard government that is making a contribution. Nevertheless, the scheme is in place and workers’ rights are protected under the scheme. (Time expired)

Senator CALVERT—Madam President, I ask a supplementary question. Thank you, Minister, for telling us what the government is doing. Could you please inform the Senate of any alternative approaches?

Senator HILL—Mr Beazley says he will put a levy on payrolls—charge small business more and increase the costs of business again—but, as I have said, this is a globalised business and we must be internationally competitive. The Labor Party’s alternative is to put up the costs of business to ensure that business is less competitive! Furthermore, Mr Beazley will support pattern bargaining. So, if they go out at one site, the whole of the industry will be entitled to go out. This is the Labor Party’s alternative. This is their alternative for industrial relations—a bit of which we have seen in the last few weeks—and, more importantly, their alternative for the economy: drive up costs again, make Australian manufacturing business uncompetitive and put ordinary Australians out of work, as they did when they were last in government, or, alternatively, reduce their real income, which they also achieved when they were last in government.
Senator MARK BISHOP (2.09 p.m.)—
My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts. Can the minister confirm that Mr Michael Kroger was an employee of Mr Kerry Packer in 1997 at the time that the Four Corners program titled ‘Packer Power’ was aired and that Mr Kroger himself featured in this Four Corners program in regard to his strong advocacy on behalf of Mr Packer and his commercial interests? Is the minister aware that Mr Kroger has admitted the clear conflict of interest here by his agreement to abstain from future discussions about the legal action, but only when asked to do so by other board members? Does the minister believe that it is appropriate for such a member of the ABC board to actively participate in board discussions about a defamation action against the ABC arising from that Four Corners program? (Time expired)

Senator ALSTON—I do not know the details of any employment that Mr Kroger had with Mr Packer or one of the organisations associated with him at that time, but I certainly did read an article this morning about this issue. If my memory serves me correctly, I thought that Mr Kroger did actually disclose the fact on the first occasion that it was raised and then decided subsequently—either he took the initiative or he agreed with others—that he should not be involved in further discussions about the legal action, but only when asked to do so by other board members? Does the minister believe that it is appropriate for such a member of the ABC board to actively participate in board discussions about a defamation action against the ABC arising from that Four Corners program? (Time expired)

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also fair to say that many defendants take the view that there are commercial reasons why you may wish to settle early for a fairly modest amount rather than a matter going on for months and maybe years, after which time both sides have run up extraordinary amounts in legal costs and when even a very modest settlement might be blown out of the water by the amount of lawyers’ fees involved. Maybe I did not always have this view of the world, but I could certainly say from my own experience that when you get a situation where the costs are likely to be much more than the amount of damages awarded, then that is a very good reason why you should consider a commercial settlement. *(Time expired)*

**Car Industry**

**Senator CHAPMAN** (2.16 p.m.)—My question is directed to the Minister for Industry, Science and Resources. Will the minister inform the Senate of recent developments in the Australian car industry which are leading to additional investment, jobs and exports? Is the minister aware of any alternative policies that threaten to undermine the success of this industry?

**Senator MINCHIN**—I thank Senator Chapman for his question and acknowledge his great interest in the Australian car industry. The federal government welcomes the announcement made by Mitsubishi during Prime Minister Howard’s visit to Japan last week that it would be investing a further $70 million into significantly upgrading the Magna and Verada models at its Adelaide plant. This guarantees the jobs of 3,500 workers at least until 2005, and many more in the Australian components industry supplying Mitsubishi.

We are very optimistic that Mitsubishi will make a big investment for a new model post-2005. This is in line with the pattern of success that the industry is enjoying under our government. Exports now are at a record level, $4.2 billion. Car sales are at a record level as a result of abolishing Labor’s wholesale sales tax. The industry are forecasting exports to hit $6 billion by 2005. They are forecasting additional investment of $5 billion over the next five years. Holden itself is investing over $1 billion in its Elizabeth and Holden engine plants in Melbourne. On the back of the support we are giving through our ACIS scheme Toyota are proposing to invest some $270 million to develop a new model Camry here. They are seriously considering locating their R&D for Asia in Australia.

Against that background it is incredible—unbelievable—that all that success is being undermined by this crazy strike by the AMWU, led by Senator Cook’s friend Doug Cameron. He is holding our industry to ransom with this mad strike and threatening to spread the strike to other industries. The contrast could not be greater. Last week we had Prime Minister Howard going to Japan specifically to argue the case for greater Japanese investment in our car industry, while back home the trade union movement, of which the Labor Party is the titular head, was undermining that very industry and threatening investment and jobs in the industry.

The AMWU’s tactic is utterly gutless. They pick on the small component suppliers to try to bully them into submission. The *Advertiser* exposed one of the AMWU’s organisers, Tim Murray, saying the following:

> The delegates will be putting a devious little plot together to stuff up company production, causing maximum disruption to the company.

This is the sort of mindless industrial sabotage which is going to destroy this great Australian industry. The question we are all asking is: where is the titular head of the labor movement in this country, Mr Beazley, on this critically important industry? If he really believes in the Australian car industry—he was in Adelaide saying he does, mouthing all the platitudes—he will tell this rogue union to back off before it destroys the Australian industry. Instead of condemning this outrageous campaign, he and his shadow ministers are simply aiding and abetting this crazy union and its crazy campaign undermining this industry.

As my leader said, every day this strike drags on it is costing this industry about $50 million. It is doing enormous damage to our reputation as a reliable supplier of exports. This industry, if it is to survive, has to do so as an exporter. It cannot do so if we destroy
its reputation by this sort of mindless industrial sabotage, threatening investment and threatening jobs. This union action has led to some 12,000 workers being stood down. If that cascades into the employment industry, you are going to have 50,000 jobs potentially at risk because of the crazy actions of this union, about which Mr Beazley is doing absolutely nothing.

Senator Bolkus interjecting—

The PRESIDENT—Senator Bolkus, will you withdraw those remarks?

Senator Bolkus—I asked him when is he going to stop lying about Senators Hill and Vanstone.

The PRESIDENT—I asked you to withdraw the remarks, not debate the issue.

Senator Bolkus—I will withdraw if you insist.

Job Network

Senator CARR (2.20 p.m.)—My question without notice is directed to Senator Alston representing the Minister for Employment, Workplace Relations and Small Business. Does Minister Abbott accept responsibility for the failings of the Job Network, which have been brought to light by the Department of Employment, Workplace Relations and Small Business’s damning audit of the rorts in the Job Network? How does he explain why he has designed a scheme which has proven so vulnerable to rorting? Why was the minister not kept informed of the problems being encountered in the Job Network, or was he too busy proclaiming its success to pay attention to its problems?

Senator ALSTON—That sounds very much like a question drawn up in the House of Representatives. I do not recall being out there proclaiming the success of the Job Network but maybe Senator Carr has in mind some comments that I made somewhere.

Senator Faulkner interjecting—

Senator ALSTON—I think that is exactly right; he is referring to Abbott. I am very grateful to Senator Faulkner for confirming it—that this bloke, who has been in here for about 10 years, still cannot couch a question to the relevant minister. He is asking me on the basis that I am Mr Abbott.
Senator CARR—As a supplementary question, I ask Senator Alston: do you represent the Minister for Employment, Workplace Relations and Small Business in this chamber? And do you recall Minister Abbott claiming in September last year:
It is competition and choice which is responsible for the fact that the Job Network is 50 per cent better at getting job seekers into work ...
In light of the revelations that the Job Network is in fact riddled with phantom jobs, false job claims and, in the words of Minister Brough, ‘job splitting and serial replacements’, isn’t it now clear that Minister Abbott’s ideological claims about the success of the Job Network were based on jobs that do not in fact even exist? Minister, will you answer that?

Senator ALSTON—I am grateful to Senator Carr for confirming that he was really quoting Mr Abbott and not me. So that whole part of his question was entirely—

Senator Carr—I never even claimed I was quoting you!

The PRESIDENT—Order! Senator Carr, that is disorderly.

Senator ALSTON—Yes, you did. You said, ‘The comments that you made, Minister, in support of Job Network.’ That is what you said, and the Hansard will confirm it. The only area where there is any riddling going on is the Labor Party, which is riddled by the infection of the trade union movement and the extreme attitudes that are adopted to things like competition, because you hate them with a passion. People do not actually see themselves getting any return from their union membership—unless, of course, they are aspiring to get into federal parliament, in which case you get a dream run; otherwise, it is not very much in the interests of ordinary workers. You are much more interested in being able to control these processes; we are much more interested in ensuring that we have systems that work, and this system works.

Australian Taxation Office: Form

Senator STOTT DESPOJA (2.25 p.m.)—My question is addressed to the Assistant Treasurer. Does the minister recall saying in response to a question from me on 27 June in relation to the complexity of the personal services alienation bill that ‘this government has been able to create a system which is more straightforward and better understood by people’? Does the minister also recall informing the Senate on 28 June that the ATO had advised him that they embarked last year on an extensive education and communication program to inform people affected by the alienation measures? Given that it is now known that the ATO were concerned about a lack of awareness of the new rules as early as March and that, as of July, only 800 out of a possible 1.4 million taxpayers who could have been affected had applied for a personal determination of their status, does the minister believe that the ATO misled him, or did the minister mislead the Senate?

Senator KEMP—Thank you for that question. Senator, as you have raised this issue, I will of course go back and check precisely what I said. But the misleading during this debate on the alienation of personal services income came from the Labor Party and, I regret to say, the Democrats. If my memory serves me correctly—I put that qualification in and Senator Stott Despoja will undoubtedly correct me if I am wrong—it was the Labor Party and the Democrats who wanted to tighten the measures that came before this parliament on the alienation of personal services income. When this debate broke out some weeks ago, I regret to say that some of your statements, Senator, seemed to be highly misleading. You were a bit critical of the government at that time. Remember, Senator, that when this bill went through you were critical of the government because you felt the government’s bill was not tight enough. That was your complaint.

That was not the impression that Senator Stott Despoja attempted to give during the campaign in the run-up to the very successful Aston by-election. I would be a little careful of coming into this chamber and making those sorts of claims. You are now the leader of a party, and people look very closely at what you say and they look very closely at your policies. I do not think you can get away with coming into this chamber and attacking the government on the alienation of
personal services income, complaining that this government bill was not tight enough, and then going out into the public and giving quite a contrary impression. I put it to you, Senator, that the misleading occurred as a result of the claims that you made in this parliament and outside this parliament. As a matter of courtesy to you, and I think I am famed for my courtesy, I will certainly check the claims that you have made, but I think you will find that the information I gave at that time was accurate.

Senator STOTT DESPOJA—Madam President, I ask a supplementary question. Does the minister recall that my original question to the Senate related to the complexity of a draft form in circulation? Given that the minister will be checking the previous question and his answers, could he also report to the Senate, firstly, whether the government will commence, as promised, a comprehensive education and communication program to inform people of the changes, as opposed to suggesting that that has already happened; and, finally, what percentage of the $20 million per month budget that will be allocated to government advertising will be allocated to advertising the changes in relation to this form and the legislation.

Senator KEMP—It is clear that the comments I made at that time and further in a letter I wrote to a newspaper have stung Senator Stott Despoja, but I thank her for the question because I have now been able to refresh my memory about the report that Senator Andrew Murray made on this bill on behalf of the Democrats. Senator Andrew Murray claimed the Ralph report called for a very comprehensive test on the issue. The Democrat position was that the legislation applied only a very simple test. Further, they recommended that, instead of one test being required to be satisfied under self-assessment, it be increased to two. So I was right. It was you, Senator, who was trying to make this more complex. It is quite unfair for you to go out and pretend otherwise. (Time expired)

Leader of the Government: Production of Documents

Senator FAULKNER (2.32 p.m.)—My question is directed to Senator Hill, the Leader of the Government in the Senate. Does the Leader of the Government recall telling the Senate on 9 July 1998 of documents the government had ‘received ... overnight from Indonesia’? Given that evidence is now available that the documents referred to originated in Australia and were simply laundered through the hands of Indonesian contacts by Mr Jonathon Seyffer, did the Leader of the Government deliberately mislead the Senate in his description of these documents or was Senator Hill himself grievously misled by Mr Seyffer, by Senator Heffernan or by both of them?

Senator HILL—I do not think there is any evidence that I have misled the Senate.

Senator FAULKNER—Madam President, I ask a supplementary question. I am not surprised that Senator Hill does not want to answer the question I asked, but as a supplementary question I ask whether the Leader of the Government in the Senate agrees in principle with the practice of trying to settle very old political scores through lying and cheating, through bribery and the purchase of confidential documents, and through the laundering of payments and documents through overseas channels. If he does not support these tactics, what action does he propose to take against Senator Heffernan, the frontbencher and cabinet secretary who treated Senator Hill as a patsy?

Senator HILL—The at least perceived conflict of interest between the former Prime Minister of Australia, Mr Keating, in the exercise of his personal business interests was a matter of serious public moment. It deserved to be explored within the parliament. To some extent, it still has not been adequately resolved. If prime ministers wish to pursue their pig farm interests in that way, putting in jeopardy the standing of the high office they hold as Prime Minister, they deserve questions to be asked on that subject in this place.
Backing Australia’s Ability: An Innovation Action Plan for the Future

Senator FERGUSON (2.35 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Is the government committed to taking very significant action over the next two years to boost support for Australia’s scientists and innovators? Is the minister aware of any alternative proposals, and do they involve anything more than reviews, reports and talkfests?

Senator ALSTON—Senator Ferguson has hit the nail on the head on both counts. Our $2.9 billion commitment to our innovation action plan really does deliver the goods over the next couple of years. What you will find is that the ICT centre of excellence will be up and running within that period. That will attract some 250 to 300 high level researchers. By the end of 2002-03, we will have new online curricula for use in Australia’s schools, 6,000 new university undergraduate science and technology places, $112 million in ARC grants, 50 new federation fellowships and a $154 million boost in research infrastructure funding. That is a very impressive and concrete set of commitments and proposals.

I am asked what is the alternative. Sadly, there is not any. I presume that Senator Ferguson was referring to ‘knowledge nation’ or ‘noodle nation’, as it has become known in the wake of that catastrophe that was launched by Mr Beazley recently. The tragedy of ‘Knowledge Nation’, as it is described—and has been for about the last couple of years by Mr Beazley, probably the longest continuous non-disclosure that we have ever seen in political history—is that it is very much like the dot com implosion. Do you remember how all those stocks were up there in the stratosphere? They had huge market caps, no revenue and no business case, but they had a lot of hits on the web site. That is what we are getting here. You do not have any serious commitment to spending money; you do not have any possible way of getting the revenue in hand. What you have got is endless political announcements, political mentions. That is the equivalent of a hit on the web site.

How do we know that science, technology and education communities can expect absolutely nothing from Knowledge Nation? Mr Beazley told us so on 20 July, only a matter of a couple of weeks ago, when he was caught short on Tweed Heads Radio 97 AM. I will tell you what he said. If it was not so tragic, it would be funny. He was asked, ‘Why are our superannuation funds investing in venture capital in the US but not here?’ Do you know why? Why are all Australian jobs going offshore?’ Of course, these are two demonstrably wrong and inaccurate statements, but they provided the basis for him to say, ‘These are kitchen table-bar conversations in this country and that is what Knowledge Nation is all about.’ In other words, it is about having a few beers, talking about a few issues, not having any serious solutions and not having any serious understanding of the complexities. That is what Knowledge Nation is all about. Mr Beazley said, ‘First, of course, we’ve got to have a 10-year plan.’ He went on to say:

You’re not going to achieve anything next year or maybe even the year after that. But by about four or five years in you might be achieving a bit. He also said:

Firstly you’ve got to get your ducks in a row. Firstly, you’ve got to understand what it is you’re trying to achieve.

He clearly has no idea. He went on to say:

So getting the ducks in a row is what you do for the first year or two on the start up.

Do you know what happens if you get a couple of ducks in a row? If you were Mark Ramprakash, you might get another chance. If you were Greg Chappell, you might stay on board. But Kim Beazley is no Greg Chappell. He failed very badly in the first innings in 1998 and he is going to fail comprehensively again shortly in the year 2001.

Senate Coalition Leadership Meetings

Senator O’BRIEN (2.37 p.m.)—My question is to Senator Hill, Leader of the Government in the Senate. Is the minister aware that his colleague Senator Vanstone confirmed to the Age newspaper recently that she had attended meetings of the Senate coalition leadership to discuss matters relating to
the financial affairs of the former Prime Minister Mr Keating? Is he also aware that Senator Vanstone confirmed that Mr John Seyffer attended those meetings but she was unsure in what capacity he was present? Can the leader of the government confirm in what capacity Mr John Seyffer attended Senate coalition tactics meetings, at whose invitation he was present at those meetings and the nature of Mr Seyffer’s involvement in these meetings?

Senator HILL—I read a story along similar lines in a newspaper article recently. I know of no details of the matter.

Senator O’BRIEN—I ask the minister to take my original questions on notice—if, indeed, he was not aware of or present at such Senate leadership discussions—and advise the Senate accordingly. Could he also inform the Senate of the reason that his colleagues, apparently, and not himself were prepared to discuss these matters in the presence of Mr Seyffer, who was supposedly only a volunteer working from Senator Hef- ferman’s office? Did the Prime Minister or the Prime Minister’s office request Mr Seyffer to attend the Senate coalition tactics meetings and, if so, why was this request made? If the minister is not able to answer these questions now, could he take them on notice?

Senator HILL—There is nothing within my area of responsibility that I intend to take on notice—

Senator Carr interjecting—

The PRESIDENT—Order! Shouting is disorderly, Senator.

Senator HILL—In relation to the last assertion made by the honourable senator, I would suggest that he does not believe everything he reads in the newspaper.

Commonwealth Property Holdings: Divestment

Senator ALLISON (2.41 p.m.)—My question is to the Minister representing the Minister for Finance and Administration. I refer to yet another damning report from the Auditor-General on the government’s privatisation agenda, this time on selling off Commonwealth buildings. The Auditor-General points out that, even though properties were sold at value or slightly higher than value, the Commonwealth is worse off after 20 years to the tune of $265 million. Minister, why was there no systematic process of inquiry into whether or not these asset sales were in the public interest? If it is not the job of the department of finance to protect the overall interests of the Commonwealth, whose is it?

Senator ABETZ—I thank Senator Allison for her question. It is always interesting when we get a report from the Australian National Audit Office about how to run buildings and about rents, because it reminds me that the Australian National Audit Office will be paying to the Australian Labor Party an extra $36 million above fair market rental. Despite the embarrassment of that, the ANAO did make some comments in relation to Commonwealth properties that have been sold. The government is of the view that the sales program has been highly successful. The Audit Office concluded that the sales program was successful in that total proceeds exceeded revenue targets by $131 million or 15 per cent. The strategy of selling one-quarter of the properties in packages was successful and most properties were sold at or above their market value. It is unfortunate that some flawed analysis by the Audit Office led to some inappropriate recommendations which could not be accepted by Finance.

The government did consider the issue of sales during 1996, and the government’s approach was based on detailed expert advice coupled with extensive industry consultation. Unlike the ‘expert’ advice that the previous Labor government got when it allowed the Centenary House $36 million rip-off of Australian taxpayers to take place, we got expert advice to assist us. In contrast with Labor’s absence of policy for managing property when it was in government—when it neglected properties time and time again so that there was an outstanding account of literally hundreds of millions of dollars because properties were not being properly looked after, and that at a time when the Australian Labor Party was running deficit budgets—the bottom line for taxpayers is that they are now better off with more than $1.4 billion
redirected to better social and economic objectives, including the reduction of government debt.

Really what Senator Allison is saying is that it would be a lot better for the Australian nation if we owned certain bricks and mortar around the country, in the form of buildings, rather than freeing up money for education, health, indigenous affairs and policies of that nature. I have to say that the government’s approach to this has been a good business decision, providing a good economic position and a good budgetary outcome which has allowed us now to spend more money on those social objectives which the Democrats and the Australian Labor Party allegedly profess some support for. But, of course, what they would do is run up debt or, indeed, as the Labor Party did, sell properties and then use that money, but instead of paying off debt, they just poked it into the recurrent expenditure. What do we do when we sell off buildings is pay off the debt. Might I add that at the end of this financial year $58 billion of the $96 billion debt left by the Australian Labor Party will have been paid off because of our sound economic management. As a result, there is an extra $4 billion per annum which we can use for the social betterment of this nation.

Senator ALLISON—Madam President, I ask a supplementary question. Does the minister accept that the successes come in the form of success for the new owners of the Commonwealth buildings, who have been given a completely risk-free deal with a guaranteed three per cent increase in rent every year for 20 years? Does the Minister accept that figure of $265 million as an overall loss or not? Minister Fahey was reported today as saying that it is not the role of the Auditor-General to question policies. Is it not the case that the Auditor-General was reviewing the effectiveness of management of property sale processes? Australians lost around $15 billion from the undervaluation of the first sale of Telstra; IT outsourcing has been a disaster and has not delivered the claimed savings: is it not the case that your privatisation policies are those that are flawed and not the Auditor-General’s report?

Senator Abetz—Madam President, I rise on a point of order. This so-called supplementary question is a general spray against Mr Fahey, trying to attack him on all sorts of grounds, such as the sale of Telstra, et cetera. I am supposed to answer all those questions in one minute. Most of those questions bear no relationship whatsoever to the senator’s initial question.

The PRESIDENT—Order! Those parts of the question which relate to the original question, the minister may deal with; other matters should be ignored.

Senator ABETZ—One of the issues in the supplementary question which I will not ignore is the assertion by Senator Allison that some of these leases had ratchet clauses of three per cent per annum. Of course, that is in comparison to the Labor Party’s sleazy deal on Centenary House, which had a nine per cent ratchet clause, but when did we ever hear from the Australian Democrats that they condemned that practice, when the Australian Labor Party gets $36 million over the term of the lease, above and beyond rent?

Senator Allison—Madam President, I rise on a point of order. The minister is not answering my question. He is debating something that is to do with the Labor Party and is nothing to do with my question to him. I ask you to guide him to answer my question.

The PRESIDENT—There is no point of order.

Senator ABETZ—I can understand Senator Allison’s embarrassment. She reckons that we as a government are doing something inappropriate when there is a three per cent ratchet clause, yet the Australian Democrats remained so silent over a nine per cent ratchet clause which was for the benefit of the Australian Labor Party. It is still up to Mr Beazley to take me up on my 50c offer.

Fuel Prices

Senator COOK (2.49 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Does the Assistant Treasurer agree that the $1 billion Fuel Sales Grants Scheme, which was supposedly aimed to ensure that the GST did not increase the country-city price differential on petrol, has been an unmitti-
gated disaster? Can the Assistant Treasurer confirm that the Australian Automobile Association figures show that in New South Wales the price differential against Sydney prices has widened in 22 of the 36 towns surveyed and that in Victoria the price differential against Melbourne prices has widened in 11 of the 17 towns surveyed? Don’t these results show that the Treasurer got it wrong when he remarked ‘as a consequence of this grants scheme, for consumers in regional and remote Australia, fuel prices as a consequence of GST need not rise’?

Senator KEMP—I think there may be some debate on this. If Senator Cook would like to remain in the chamber, we can have a good debate on the GST. If Senator Cook wants to have a good debate on fuel and the GST or on roll-back, we are always happy to be here, but every time I challenge the Labor Party to a debate on roll-back, Senator Cook scuttles out of the chamber as quickly as he can. And Senator Conroy goes missing in action too, which is always a pity, because there is one thing about Senator Conroy: he speaks the truth from time to time. On roll-back, we are all waiting for Senator Conroy.

Senator Cook asked about fuel and the GST. My understanding at the moment is that on most occasions fuel is now below the petrol pump price which occurred on 30 June. I think the recent falls in fuel prices in some areas have been quite sharp and dramatic and, in fact, prices are well below the levels that occurred—

Senator Conroy—We are talking about the differential.

Senator KEMP—We are coming to that.

Honourable senators interjecting—

The PRESIDENT—Order! Senators on both sides will cease interjecting. Senator Kemp has the call.

Senator KEMP—The point I am making is that there have been some sharp falls in fuel prices at petrol pumps and those prices have been below the level which reigned when the GST came in. So, Senator Cook, the implication of your question—that the GST was responsible for fuel price rises—is quite wrong.

Let me say, in respect of the Fuel Sales Grants Scheme, that the ACCC recently concluded an investigation into whether the major oil companies had failed to pass on the grant. The ACCC concluded that the evidence did not support a case that the companies had engaged in price exploitation. The ACCC, I am further advised, released on 15 June a discussion paper on reducing the fuel price variability and it aims to facilitate further public consultation and input surrounding the fuel price volatility. So the point I am making to Senator Cook is that this has been monitored by the ACCC. Senator Cook has a tradition of being wrong on most issues, but I put the challenge out once again that, if Senator Cook can indicate to me that he is prepared to debate Labor Party policy on roll-back—maybe there will be a roll-back on fuel, Senator—I am quite happy to stay in the chamber and debate roll-back. I have thrown that challenge out day after day in this chamber and I have never received a little note across the chamber which indicates that the Labor Party is prepared to debate roll-back.

Senator Conroy interjecting—

Senator KEMP—The invitation, Senator Conroy, also applies to you. It is not confined to Senator Cook; it is also to Senator Conroy because, as I have said, Senator Conroy does have a reputation from time to time of speaking the truth about Labor Party policy.

Senator COOK—Madam President, I have a supplementary question. I must say incompetence has slipped to an even greater depth than ever before. Isn’t it a fact that the price differential has increased since the introduction of the GST because the bandaid scheme designed by the Howard government to fix the problem has not worked? Hasn’t this scheme failed because it does nothing to stop oil companies from simply reducing the price support discount they offer to service station owners, thus ensuring the owners often cannot afford to pass the subsidy on? When can those motorists in regional areas of Australia expect the Howard government to do something that will actually work to reduce the country-city price differential on
petrol, instead of widening the gap, as has occurred under the GST?

Senator KEMP—I think it was a very interesting wording of a question that was put by Senator Cook. The attack on the Fuel Sales Grants Scheme has been quite strong today from the Labor Party. One can only assume that the Labor Party proposes to abolish this important scheme. I think people in country and rural Australia, Senator Cook, would be very interested to read the question that you have just posed, because this is a very important and valuable scheme. If the Labor Party, as Senator Cook says, thinks the scheme has failed—if the Labor Party does not like it—all we can assume is that we have another Labor Party policy today: this fuel grants scheme is apparently going to be abolished by the Labor Party.

Economy: Government Policy

Senator WATSON (2.56 p.m.)—My question is addressed to Australia’s longest serving Assistant Treasurer, Senator Kemp.

Honourable senators interjecting—

The PRESIDENT—Order!

Senator WATSON—It is a recognition, Madam President, that is well deserved. Will the minister inform the Senate of the recent strong performance of the Australian economy? Is the minister aware of any threats to this sustained economic performance?

Senator KEMP—Thank you, Senator Watson, for that kind comment. In terms of long service, Senator, I think I have many years to go before I am able to match your record. The background to that question presumably is that Senator Watson had been in this chamber, as I had been, and had witnessed over many months the attempts by the Australian Labor Party to talk down the Australian economy, particularly by Senator Cook, whose record on this matter is particularly unlovely but, as I have said, so often comprehensively wrong. Senator Cook is on record as claiming that the GST adversely affected the economy, and I am now going to put a few statistics before the Senate which I think give the lie to the claims that the Labor Party has made. Over the last five years the Australian economy has had the enviable record of enjoying an annual economic growth of over four per cent. It was a stand-out performance compared with other comparative industrial countries. The OECD’s overall, in contrast to the Australian economy, grew by just over three per cent.

I think the Labor Party went into a state of shock after the March quarter results were published, which in fact showed that GDP grew by over one per cent—better than most other industrialised countries. This strong growth is a factor that the Treasurer has drawn attention to and of course it gives, as I said, the lie to the Labor Party claims about not only the management of this economy but the effect of tax reform on the economy. The fact of the matter is that household consumption, an important measure, grew by a very strong 2.2 per cent in the March quarter. This strong growth in consumption was underpinned by a strong services growth. This cut into Labor’s false claims that the GST had mugged the economy. I think that may have been a phrase that even Senator Cook had used.

Let me draw attention to a number of other important figures. The latest housing finance and approval figures confirm that the housing construction industry has bounced back, thanks to the doubling of the First Home Owners Scheme and the maintenance of low interest rates. I think the contrast between the Labor record on interest rates and ours is quite stark. When Senator Cook, who asked me an earlier question, was a senior minister in the Keating government—I know that is a bit of a surprise to a few people, but he was a senior minister in the Keating government—mortgage interest rates went to 17 per cent plus. I have never heard Senator Cook in this chamber acknowledge that this was a major policy failure on behalf of the Labor Party. Contrast the interest rate of 17.7 per cent plus to the interest rates which home owners are now enjoying—some of them are in the order of about 6.8 per cent. That is certainly very substantially below the levels that we saw under the Labor government. We have also had some good news on the retail sales figures, as well as surveys. (Time expired)
Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Indigenous Australians: Services and Programs

Senator ABETZ (Tasmania—Special Minister of State) (3.01 p.m.)—On 28 June 2001, Senator Ridgeway asked me a question relating to a report by the Commonwealth Grants Commission. I took that question on notice and I now seek leave to incorporate the answer into Hansard.

Leave granted.

The answer read as follows—

Senator Ridgeway asked the Minister representing the Minister Representing the Special Minister of State, upon notice, on 28 June 2001, during Question Time two questions in relation to the Commonwealth Grants Commission Report on Indigenous Funding.

Senator Abetz, the Special Minister of State, has provided the following answer to the honourable Senator’s question:

I can confirm that the then Acting Minister for Finance and Administration, Senator the Hon Rod Kemp, and the Minister for Reconciliation and Torres Strait Islanders Affairs, the Hon Phillip Ruddock, MP, received the Commonwealth Grants Commission’s Report on Indigenous Funding.

The Government is currently examining the contents of the Report and does intend to release the Report publicly following this consideration.

The Government is committed to ensuring that indigenous programme funding is delivered on the basis of need.

That is why we set aside $5.7 million over two years to enable the Commonwealth Grants Commission to conduct the inquiry.

The Commonwealth Grants Commission issued a draft report in October 2000. The final Report will be very useful to help target resources effectively.

Leader of the Government: Production of Documents

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.01 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Environment and Heritage (Senator Hill) to a question without notice asked today by Senator Faulkner relating to Mr John Seyffer and documents concerning the piggery interests of former Prime Minister, Mr Keating.

Mr Seyffer, Senator Heffernan and Mr Tony Staley have all been implicated in a high-level effort to malign former Prime Minister, Mr Keating, in relation to his business affairs. That high-level effort I think is best described as muckraking. The questions being asked by many people are: who is Mr Seyffer? What is his role? We do not have a clear answer from Senator Hill today. Maybe he has been kept in the dark by the Prime Minister and Senator Heffernan. Mr Seyffer purportedly had worked as a volunteer for Senator Michael Baume. Senator Heffernan glibly stated that he inherited Mr Seyffer, along with the furniture and photocopier, when he replaced Senator Baume, but what Senator Heffernan failed to mention is that he also inherited Mr Seyffer’s agenda. It was not just former Senator Baume’s agenda; it was also the Prime Minister’s agenda. Mr Keating’s business affairs have been an obsession of Mr Howard now for some eight years, and Senator Heffernan, Senator Hill and the rest of the government are complicit in hiding the truth about Mr Seyffer. This is a person who is apparently Mr Baume’s former Nowra mate. He was a special guest at the then Liberal President, Mr Staley’s, 60th birthday party. He has access to the swipe card for the after-hours access to Senator Heffernan’s office. He has access to Liberal Party slush funds to allegedly pay officials to retrieve court materials. He launders the money and the documents through Indonesia. On top of that, he makes cameo appearances with members of the government’s Senate question time tactics committee, although Senator Hill was embarrassed in question time today when he was asked about it. He could not provide an answer; in fact, he probably gave one of the greatest non-answers of all time in this chamber.

There are several media references to special agent Seyffer at the Liberal leadership tactics meetings. I do not know where Senator Hill was. Perhaps he was having a day off—we are all entitled to have a day off, I suppose—but this is the portfolio area representing the Prime Minister and I would have
thought that these tactics were the responsibility of Senator Hill. So I was surprised that Senator Hill was not able to answer that question properly asked of him. We know that apparently this Mr Seyffer brings messages to a Senate banking committee from the Prime Minister’s office, telling participants that it should be closed down. This is not an ordinary volunteer, and that is the point. This is not a person who just drops in to a member’s or senator’s electorate office and helps to stuff envelopes and send out constituent letters—he is not a volunteer in that sense at all. This is a person who photocopies documents six times to erase traces of fingerprints from allegedly stolen documents; this is a very different sort of volunteer. This appears to be someone who is a point man in a Liberal Party dirty tricks operation.

If Mr Staley and Senator Heffernan knew about this, one could only assume that Mr Howard also knew about it—after all, Senator Heffernan is the right-hand man of the Prime Minister, or is described as that. It seems reasonable in question time in this chamber that Senator Hill should be asked to clarify these issues and should be asked to clarify the role of Mr Seyffer. Where did the money come from to purchase these documents about Mr Keating’s business interests? Have those moneys been declared to the Australian Electoral Commission? What other covert operations was or is Mr Seyffer engaged in? Does the Liberal Party or, indeed, the taxpayer fund his salary, airfares and other bills? If Senator Hill does not know, he should get an answer from Senator Heffernan and he should report back to the Senate about these important issues at the earliest opportunity. That is the responsible course of action for Senator Hill in the extraordinary circumstances where he appears to be unaware of these issues that have gained so much public notoriety. (Time expired)

Senator HILL (South Australia—Minister for the Environment and Heritage) (3.07 p.m.)—It is true that we in the Liberal Party and the National Party, the coalition, sought to explore an apparent conflict of interest involving the last Prime Minister, Mr Keating, in the exercise of his public duties and his personal business interests. It was Mr Keating who chose to invest in and—to what extent we are not sure—to run this complicated, large and sophisticated piggery operation. It raised a number of serious questions of apparent conflict of interest. If the Labor Party were so principled, you might have thought that they would have brought Mr Keating to account, but that would be far too much to expect. Rather, they turned a blind eye, and it was left to the opposition to explore these issues and to attempt to determine whether or not there was in fact an actual conflict of interest. Unfortunately, the full story has never been told and the Australian public are never going to know for sure the extent to which any such conflict of interest might have existed.

I wonder why, on the first day back after a five-week break, the Labor Party in this place have decided that this issue is the most important issue upon which they should raise a debate after question time. The reason, of course, is that the most important issue in the nation today is industrial relations and the fact that thousands of Australian workers within the motor vehicle industry are out of work because of a rogue union, the metalworkers union, which has decided to pursue an industrial claim at the expense of these workers and at the expense of this great Australian industry, the motor vehicle manufacturing industry. That is the most important issue facing the Australian people and the parliament today. Mr Beazley as the Leader of the Labor Party, the political arm of the trade union movement, is not prepared to call these rogue unionists in and say, ‘This is appalling; this is against the national interest. This is something that Australia can least afford at a time when the Prime Minister of this country, Mr Howard, is seeking to negotiate the ongoing investment of the Mitsubishi company in this country.’

If ever there was a contrast between where the two major parties in this place stand on an important issue, this is it. It is, of course, a great embarrassment to the Labor Party: firstly, because they have not had the courage to stand up to the union movement—they have looked to one side and allowed this roguish behaviour to continue at a loss,
roguish behaviour to continue at a loss, and a huge potential future loss, to the workers; secondly, because they know their own policy is to levy small businesses in this country to provide for a similar fund—I think that the Labor Party intend to do it by upping the superannuation levy, the result of which will be a less competitive motor vehicle industry in Australia; and, thirdly, because they do not want it to be well appreciated that they support a pattern system of industrial bargaining which will mean that, if the workers come out on one site, it is legitimate and expected of them to come out on all sites within the same industry—in other words, to bring the whole industry to its knees in order to pursue some short-term industrial gain without any thought whatsoever to the long-term well-being of those workers. They are three reasons why the opposition would not want today to be debating the most important issue before our nation in terms of our domestic politics.

Senator O’Brien interjecting—

Senator HILL—It is true. The way in which the metalworkers have operated in this instance is appalling: picking on a small component manufacturer in a way that they knew would have flow-on consequences to the larger employment within the vehicle manufacturers—large employment in Ford, in Mitsubishi and in General Motors. Workers are out of work today because the union movement has not been prepared to negotiate in a responsible way but, rather, has chosen to use the big step: a short-term, high-profile action at a long-term economic loss. It is understandable, therefore, why this distraction has taken place. (Time expired)

Senator CARR (Victoria) (3.12 p.m.)—It was said that, in the period of Malcolm Fraser’s term in office as Prime Minister, his favourite party trick was to stick pickled onions in the pockets of various guests at functions. It is said of the current Prime Minister, Mr Howard, that his idea of party tricks is to encourage the patronage of and to provide cover for some of the sewer rats of the Liberal Party to engage in a gutter-crawling exercise, which we have seen involves, according to the Four Corners program, an attempt to settle very old political scores through lying and cheating, through bribery and the purchase of confidential documents, through laundered payments and, of course, through documents sought through various overseas channels.

We have seen a government whose idea of party tricks is to lean on the ABC: its appointment, Mr Shier, sought to suppress a program entitled ‘Party Tricks’, the Four Corners program dealing with this political espionage which involved the very inner circles of the Liberal Party right to the very top of this government. I think we are now entitled in this chamber to raise quite serious matters that go to the question of the accountability and the probity of this government when it comes to its dealings with public officials, and the question of its political ethics when it comes to the way in which it seeks to obtain political advantage on these matters. We are entitled to ask to what extent the Parliamentary Secretary to the Cabinet, Senator Heffernan, has been involved in this saga. This is the man who seeks to present himself as ‘the cardinal’; he is the man who claims to be the confessor of the government, who seeks as part of his day-to-day operations to collect dirt and filth on members of this place and to demonstrate that knowledge in various underhanded ways. We have seen this practice being followed not just against members of the opposition but, as I understand it, against members of the government as well.

We have seen this government determined to lean on the ABC at every opportunity. We have seen an ABC that has been run into the ground. We have seen an attempt by ABC management to do the political work of this government—to suppress an important program which canvasses these questions. We have also seen an attempt by this government to stop the ABC fulfilling its journalistic charter, and it constantly seeks to undermine this. We are faced with a situation where ABC board members find it more palatable and more important to act as the hired guns for media proprietors than to fulfil their obligations to the ABC.

The situation has arisen where the volunteer of all time, Mr Seyffert, has come forward. When he is supposed to be represent-
ing this government, we are entitled to know in what capacity. We are entitled to know which Liberal ministers have attended which meetings with him and in what capacities. We are entitled to know why it is that the Leader of the Government in the Senate does not seem to see that it is within his interests to establish why this person attended meetings of the Senate tactics committee. We are entitled to ask why he sought not to understand the role of such a person. In fact, we are told by Senator Hill that he did not know the individual to whom we are referring—I am sorry, I should rephrase that. He said: ‘I think that I know the individual to whom we are referring. He has worked in various capacities around here on and off for a number of years. I do not know specifically where he is working now.’ We are entitled to ask why Senator Vanstone said, ‘I was with colleagues and we were discussing how to handle questions in the Senate,’ when he was at the meeting. Senator Vanstone said that she did not know who Mr Seyffer was representing, and nor did even the Prime Minister, who said, ‘I would have met him once or twice.’

Senators in this place are told that Mr Seyffer was acting on his own. We consider matters of confidential court documents for the payments of thousands of dollars and we consider his attendance at various meetings in this place. We are entitled to know, for instance, whether he has been representing any member of this government in this chamber. Has he been involved in meetings in this place? Who gave him the pass? Who provided him with the access to their offices and on what basis? Who allowed him to provide those security covers through this place to ensure that he was able to participate in meetings in this building? We are entitled to ask why it is that he has had this sort rarefied access to this government and in what capacity he has been acting. We have Senator Heffernan, the Machiavelli, the stiletto, seeking to present himself—(Time expired)

Senator FERGUSON (South Australia) (3.17 p.m.)—This motion of Senator Faulkner’s to take note of an answer to a question without notice is a pretty fair indication of the embarrassment of the Labor Party: Senator Faulkner makes a very quiet and innocuous contribution and then slinks out the door, and then Senator Carr shows his true colours. Senator Carr is one of the few members in this place who would probably know about the sewer rats that he talked about, and in the Victorian Left of the Labor Party he probably spends a lot of time with them. But how many supporters does he have in here right now?

Senator Carr—How many do you have?

Senator FERGUSON—Senator Carr, you raised this issue, and every one of your party’s senators has walked out on you because every one of them knows that this is a non-issue.

The DEPUTY PRESIDENT—Address the chair, please, Senator Ferguson.

Senator FERGUSON—On the day we come back to the Senate, after a five-week break, the most important issue that Senator Faulkner and Senator Carr can raise is an issue of a Four Corners program—and it was not their information but a program that was aired a couple of weeks ago by the ABC. That is the most important issue to bring before this Senate the very day that we return from the winter recess, and it is all about insinuations and allegations. I am surprised that even Senator Carr would sink to this level. But at least he has the G&D to stay in here and to listen to the whole of the debate, unlike his leader, Senator Faulkner, who made his statements and simply walked out.

In Australia today we have a major strike action that will have an impact on the whole of Australia’s industry and, in particular, the car industry. As Senator Hill and I both know, it has had a significant impact in our state of South Australia. For weeks and weeks this industry has been uncertain of its future. What happens at the very time that we are trying to negotiate some certainty for the future of workers in South Australia? We have the Metal Workers Union going on strike and putting the whole business of car making in Australia in jeopardy. That is the real issue, Senator Carr.

If Senator Faulkner and Senator Carr come into this place the very first day that
we return after the winter recess and the only issue that they can raise is a *Four Corners* program which highlights innuendo about what might or might not have taken place in anybody’s office or about anything to do with former Prime Minister Keating, then they are at a pretty low ebb and it is no wonder the opinion polls are starting to work against them. The Australian people and the Australian electorate are seeing them for what they really are.

On the issue itself, former Prime Minister Keating and I have only one thing in common: we were both in the commercial pig industry for a very long time. The difference between the experience of the former Prime Minister and my experience is that my brother and I worked for 25 years, seven days a week in a commercial piggery, feeding and looking after pigs, and made a very modest income—and it was not because we were poor pig farmers, I can tell you; it was because of the fluctuations in the prices of the commodities and of the grain that we used—while the former Prime Minister made millions without ever setting foot in his piggery. If he set foot in it, it was only to see how somebody else was going to make money for him through some shady deal further on.

In fact, this matter was brought before this chamber night after night by one of my former colleagues. It has been talked about in this parliament but never has a competent answer been given—by former Prime Minister Keating or on behalf of former Prime Minister Keating—on the question of the former Prime Minister’s enterprises and how he managed to make so much money in the piggery industry without ever doing any work or being involved in the industry itself.

Those on the other side of the chamber raise the issue of a *Four Corners* program which tries to put a slant on any piece of information available, whether that information can be verified or not. We heard Senator Faulkner talking about Mr John Seyffer, a man who has never been a member of the Liberal Party, who has never been employed by the Liberal Party and who has never been employed by any member of parliament. Those on the other side try to make something out of an issue that they themselves know is here only as a smokescreen for their own inadequacies. They come back on this first day of parliament after the winter recess when we have about 12,000 workers on strike in the car industry—a most important industry to Australia and, more importantly, to my own state of South Australia—and this is the most important issue that they can raise. It says more about the Labor Party than it does about the issue that they have raised. (Time expired)

**Senator O’BRIEN (Tasmania)** (3.22 p.m.)—You can really tell that the government do not want to debate this: they are trying to hijack this debate and avoid debate on the question before the chair. The reality is that we are talking about what I would say are fairly significant non-answers to questions by the Leader of the Government in the Senate. One would have to say that Senator Hill must have been expecting questions on this matter to be put to him in the Senate today. That he studiously avoided both questions put to him indicates his desire not to put anything on the record for fear that something else will pop out of the woodwork and embarrass him in the future—quite a sensible course of action, I suppose. The reality is that the government do not want to talk about this, and you saw it in their responses today—it was the last thing that they wanted to talk about.

We are talking here about someone called Mr Seyffer—this volunteer, this stuffer of envelopes and licker of stamps—who attended ministerial strategy meetings in Parliament House. This volunteer, who apparently was just inherited by Senator Heffernan, according to what he has told the media, had unfettered after-hours access to his office—the office of the Parliamentary Secretary to Cabinet—both in Westfield Towers in George Street in Sydney and in Parliament House. This is just another volunteer—a stuffer of envelopes and a licker of stamps, apparently, who is personally known by and has direct contact with the Prime Minister. This is the humble volunteer closely connected to those closest to Mr Howard—Senator Heffernan, former senator Mr Baume and Mr Staley. Quite some party
Mr Staley. Quite some party volunteer, one would have to say!

Can you really believe that the Leader of the Government in the Senate would not prick up his ears on hearing one of his colleagues say that this Mr Seyffer, this humble volunteer, had popped up in coalition Senate leadership meetings. It beggars the question where Senator Hill was if he was not attending Senate leadership meetings. Perhaps he was overseas. But it defies belief to accept the view that he would not ask, upon hearing this, why Seyffer was there—or perhaps he really did know why Seyffer was there. The fact that he declined to take on notice the questions put to him indicates just what I said at the outset: this is the last thing that the government wants to debate. It is a matter of great public interest which has occupied a considerable amount of space in the national media, both printed and electronic, but the government does not want to address it. This is a matter on which Senator Hill spent about 30 seconds answering two questions and two supplementary questions. He chose not to discover why a person who apparently had no business being at coalition Senate leadership meetings was there other than asking whether he had something to contribute—that is, preparation for a Senate question time.

Senator Hill was asked whether this particular matter related to a comment he made in the Senate on 9 July 1998 about documents that the government had received—and I quote him—’from Indonesia overnight’. Is this the very item that was discussed at those government Senate tactics meetings that Senator Hill says he knows nothing about but refuses to take on notice? I remind the Senate that this is the Leader of the Government in the Senate who is not prepared to address public interest issues that arise in relation to the performance of the government Senate tactics team and the involvement of this very shady character, Mr Seyffer—this character who is clearly involved in a practice of settling very old political scores through lying and cheating, through bribery and the purchase of confidential documents and through the laundering of payments and documents through overseas channels. He is a very shady character indeed! (Time expired)

Question resolved in the affirmative.

Commonwealth Property Holdings: Divestment

Senator ALLISON (Victoria) (3.28 p.m.)—I move:

That the Senate take note of the answer given by the Special Minister of State (Senator Abetz) to a question without notice asked by Senator Allison today relating to a report of the Auditor-General on Commonwealth Estate property sales. My question concerned the damning report released by the Auditor-General last week on the government’s ideological campaign and its compulsion to privatise anything where it is possible to do so. This report was about the selling-off of Commonwealth buildings. The minister says that it was a highly successful sale, I guess it was, at least for the bevy of advisers and sales consultants who were paid, as I understand it, $20.6 million for their advice. It was also very successful for the new building owners, who get a risk-free deal with a guaranteed three per cent increase every year for the next 20 years from the occupation of those buildings. The best that Senator Abetz could manage in responding to my question was to fall back on former Prime Minister Keating’s legacy of the Australian Taxation Office building, which I understand was owned by the ALP and the rent of which is ratcheted up by nine per cent every year.

Senator Abetz also says that this is somehow the fault of the Democrats. It is not, and we were as outraged as I think most Australians have a right to be both by the arrangements put in place at that time and by the lack of any reasonable attempt by this government to deal with that question. At the time, we condemned those arrangements as being immoral and uncommercial. That is on the record. Tenancies should not have automatic ratchet clauses at all. We fully supported the royal commission at the time, and we would support another inquiry tomorrow if Senator Abetz chose to put one up.

The Auditor-General says that there was no systematic process of inquiry into whether or not these asset sales were in the
public interest. At point 11 of the report the Auditor-General says:

11. Finance advised ANAO in April 2001 that its role was to implement a property divestment program endorsed by Ministers and that it was not charged with the role of protecting the overall interest of the Commonwealth. ANAO considers that, given the administrative division of responsibility and accountability, Finance is the only agency—

not only is it their role but they are the ‘only agency’—

in a position to ensure that property divestment is consistent with the CPPs—

the rules that are laid down for it—

and to make an informed judgment as to whether a property sale and leaseback transaction represents efficient and effective use of Commonwealth resources at the time of the transaction.

It is very clear that it is indeed a matter for the Department of Finance and Administration to take into consideration, which they have not done. In other words, the Auditor-General is saying to us that if the department of finance had realised that there would be an overall loss to the public purse from flogging off buildings in public ownership it was not their job to advise the minister of this—just carry out orders, regardless of how senseless they are or how opposed they are to the public interest and just take the advice of property salespeople, regardless of who benefits from that. On that point, the Auditor-General says:

12. The approver of a Commonwealth property sale effectively endorses both the sale of the property and the execution of leases for the property with the proposed purchaser. An inquiry process necessarily involves Commonwealth officers in making comparisons of costs and benefits of alternative options. In the property sale and long-term leaseback transactions reviewed by ANAO, it was not apparent that a systematic process of inquiry, as required under the Financial Management and Accountability Regulations (FMA Regs) and the Commonwealth Procurement Guidelines (Guidelines), was conducted by Finance prior to executing the sale contract and leasing arrangements with the purchasers. ANAO’s legal advice is that if there is a conflict between the efficient and effective use of public money and the requirements of the CPPs—

the Commonwealth property principles, or the rules—

it would be prudent to seek guidance or reconsideration of the policy. In circumstances where a proposed sale of Commonwealth property does not appear to represent value for money at the time of the final sale, it would be good administrative practice for Finance to inform Minister(s) of the inquiries undertaken and seek their consent before proceeding with the sale.

This is very important advice. *(Time expired)*

Question resolved in the affirmative.

PRIVILEGE

The PRESIDENT (3.33 p.m.)—Senator Tambling, by letter dated 19 July 2001, has raised under standing order 81 a matter of privilege and has requested that a motion to refer the matter to the Privileges Committee be given precedence under that standing order. The essence of the matter raised by Senator Tambling is that the President of the Country Liberal Party purported to direct him to vote against the Interactive Gambling Bill 2001 and that subsequently the central council of the party revoked his preselection as the candidate of the party at the next Senate election, this action being taken in consequence of his non-compliance with the earlier purported direction. Documents supplied by Senator Tambling support these facts.

Senator Tambling indicates that this action is contrary to paragraphs (1), (2) and (4) of the Senate’s Privilege Resolution No. 6, which indicates matters which may be treated by the Senate as contempts. The facts as stated by Senator Tambling appear to involve breaches of those provisions. There are relevant precedents for such actions being found to be contempts of parliament. The matter clearly meets the criteria which I am required to consider under the Senate’s resolutions. I have therefore determined that a motion to refer the matter to the Privileges Committee should have precedence. I table the letter and attachments from Senator Tambling. A notice of motion may now be given to refer the matter to the Privileges Committee.

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

That the following matters be referred to the Committee of Privileges:
(a) whether any person or body purported to direct Senator Tambling as to how he should exercise a vote in the Senate;
(b) whether a penalty was imposed on Senator Tambling in consequence of his vote in the Senate; and
(c) whether contempts of the Senate were committed in that regard.

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

Great Barrier Reef: Prawn Trawling
The Petition of the undersigned shows strong disappointment in the Australian Government’s inadequate protection of the Great Barrier Reef World Heritage Area from the destructive practices of prawn trawling. Prawn trawling destroys up to 10 tonnes of other reef life for every one tonne of prawns while clearfelling the sea floor. There are 11 million square kilometres of Australia’s ocean territory of which the reef represents just 350,000 square kilometres.

Your Petitioners ask that the Senate support the phasing out of all prawn trawling on the Great Barrier Reef World Heritage Area by the year 2005.

by Senator Bartlett (from 60 citizens)

Administrative Decisions (Effects of International Instruments) Bill 1999
To the honourable the President and the Senate assembled in Parliament
The petition of certain citizens and residents of Australia draws to the attention of the Senate our concerns about the Administrative Decisions (Effects of International Instruments) Bill 1999. The bill seeks to extinguish our right to “Fair Go” appeal hearings when an Administrative decision is believed to be inconsistent with any International Treaty or Convention to which Australia has signed.

The joint statement “The Effect of Treaties in Administrative Decision Making”, 25 February 1997 (Clause 4) advise us not to expect inconsistency with Treaties and Conventions which have been signed by Australia but are not enshrined in Australian law – such as the Convention on Civil and Political Rights.

We are thus concerned that the bill may in future be extended to Treaties of domestic or external Territories of Australia, nature also.

We therefore request that the Senate reject the bill.

by Senator Bourne (from 14 citizens)

Corporate Code of Conduct Bill 2000
The honourable the President of the Senate in Parliament assembled:

The petition of the undersigned shows:

Australian companies operating overseas should be required to operate in a manner that is consistent with their obligations under Australian domestic law and under international conventions in the areas of human rights, environment, labour and occupational health and safety.

Your petitioners ask that the Senate should:

Support the Corporate Code of Conduct Bill 2000 moved by Senator Vicki Bourne on behalf of the Democrats.

by Senator Bourne (from 106 citizens)

Republic Plebiscite: Head of State
To the Honourable the President and the Members of the Senate in Parliament assembled:

This petition of certain citizens of Australia draws to the attention of the Senate the growing desire for Australia to become a republic.

Your petitioners therefore request that the Senate conduct a plebiscite asking the Australian people if Australia should become a republic with an Australian citizen as Head of State in place of the Queen.

by Senator Cooney (from 24 citizens)

Petitions received.

NOTICES
Presentation

Senator Gibson to move, on the next day of sitting:
That the time for the presentation of the report of the Economics Legislation Committee on the provisions of the Patents Amendment Bill 2001 be extended to 9 August 2001.

Senator Cooney to move, on the next day of sitting:
That so much of standing order 36 be suspended as would prevent the Scrutiny of Bills Committee holding a private deliberative meeting on 8 August 2001, from 8 am to 10 am, with students from the University of Alabama in attendance.

Senator Lightfoot to move, on the next day of sitting:
That the time for the presentation of the report of the Joint Standing Committee on the National Capital and External Territories on the sale of the Christmas Island resort be extended to 27 September 2001.
Senator Crane to move, on the next day of sitting:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 9 August 2001, from 4 pm, to take evidence for the committee’s inquiry into the Maritime Legislation Amendment Bill 2000.

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

Establishment of a select committee

(1) That a select committee, to be known as the Senate Select Committee on the Australian Tax System be established to inquire into and report, by 30 June 2002, on the manner in which the Australian tax system is catering for the social, environmental and economic needs of Australia.

Matters to be explored by the committee

(2) That, in conducting its inquiry, the committee:

(a) examine the following matters:

(i) the New Tax System, including the goods and services tax (GST) and any proposals for modifications to the GST,

(ii) the business tax measures recommended by the Ralph review, including measures which have, and have not, been implemented, and

(iii) the estimated additional revenue required to provide government services and programs demanded by the Australian community, and possible sources of revenue;

(b) establish the cost benefits and impacts, and strengths and weaknesses of the measures and proposals outlined in subparagraphs (a)(i) to (iii);

(c) in examining the implementation of the new tax system and the Ralph business tax measures—compare the impacts of these tax changes with the claims and estimates that underpinned the proposals for change; and

(d) examine how low income persons could benefit from changes to the tax system.

Composition of the committee

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

(4) That the committee may proceed to the dispatch of business notwithstanding that not all members have been duly nominated and appointed and notwithstanding any vacancy.

(5) That:

(a) senators may be appointed to the committee as substitutes for members of the committee in respect of particular matters before the committee;

(b) on the nominations of the Australian Greens, Pauline Hanson’s One Nation or independent senators, participating members may be appointed to the committee; and

(c) participating members may participate in hearings of evidence and deliberations of the committee, and have all the rights of members of the committee, but may not vote on any questions before the committee.

(6) That the chair of the committee be elected by and from the members of the committee.

(7) That the deputy chair of the committee be elected by and from the members of the committee immediately after the election of the chair.

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

Powers and administration of the committee

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

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

(11) That the committee not commence its inquiry until the date on which the second quarter’s Business Activity Statement for the 2001-02 financial year is due to be lodged.
(12) That the committee advertise for submissions and hold hearings in each state and territory as required.

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

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

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

That the following matter be referred to the Legal and Constitutional References Committee for inquiry and report by 3 December 2001:

Whether the Trade Practices Act 1974 should be amended to:

(a) provide for a reversal of the onus of proof under section 46 in actions brought by the Australian Competition and Consumer Commission (ACCC) where it can first be shown that the corporation has a substantial degree of market power and has taken advantage of that power; and

(b) give the ACCC a power to order divestiture where an ownership situation exists that has the effect of substantially lessening competition.

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

That the Senate—

(a) recognises NAIDOC Week from 8 to 15 July 2001, and National Aborigines Day on 13 July 2001, as events of national importance to all Australians, which celebrate the survival of Aboriginal and Torres Strait Islander cultures and the contribution they make to the national identity;

(b) recognises and congratulates the recipients of National NAIDOC Awards for the outstanding contributions they have made to their communities and the nation:

(i) Mr Kutcha Edwards, NAIDOC Person of the Year,

(ii) Ms Alice ‘Mummy Mick’ Clark, NAIDOC Female Elder of the Year,

(iii) Mr Cec Fisher, NAIDOC Male Elder of the Year,

(iv) Mr Warren Lawton, NAIDOC Sportsperson of the Year,

(v) Dr Cheryl Kickett-Tucker, NAIDOC Scholar of the Year,

(vi) Ms Vanessa Elliot, NAIDOC Youth of the Year, and

(vii) Mr Todd Phillips, NAIDOC Aboriginal Trainee of the Year;

(c) notes that the theme for NAIDOC Week 2001 was reconciliation and a treaty, in keeping with the tradition that National Aboriginal and Islander Day of Celebration is an opportunity to bring to the attention of governments and all Australians the issues that are of concern to them; and

(d) reaffirms its commitment to the goal of true and lasting national reconciliation between Indigenous and non-Indigenous Australians.

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

That the government business orders of the day relating to the following bills may be taken together for their remaining stages:

Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000, and


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

That the Senate—

(a) notes that during a visit to Newcastle by the Minister for Defence (Mr Reith) union protesters caused thousands of dollars in damage to a Commonwealth car and also caused damage to other vehicles, including a car belonging to a private citizen;

(b) condemns this behaviour by protesters on a day when community and business leaders in the area were trying to promote the Hunter Valley for future investment opportunities;

(c) further condemns the use of violence by union thugs, with no regard to the safety of vehicle passengers or the protesters themselves, and which may deter new
business from setting up in the Hunter Valley; and
(d) calls on unions and their members to sanction against violent protests and to work in a positive and cooperative manner with all levels of government and the community to create employment opportunities in the Hunter Valley.

Postponement
An item of business was postponed as follows:

General business notice of motion no. 945 standing in the name of Senator Cook for today, relating to the establishment of a select committee on the impacts of the new tax system, postponed till 9 August 2001.

COMMITTEES
Legal and Constitutional References Committee
Meeting
Motion (by Senator McKiernan) agreed to:
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.

BENCHMARK FOR PENSION LEVELS
Motion (by Senator O’Brien, at the request of Senator Faulkner) agreed to:
That the Senate—
(a) notes the false claim made by the Minister for Family and Community Services (Senator Vanstone) on the 7.30 Report on 20 March 2001, that ‘Labor was never prepared to... make sure that pensioners will have 25 per cent of male total average weekly earnings’;
(b) recalls that it was the Labor Government that introduced the benchmark of 25 per cent of male total average weekly earnings in 1990 and kept the pension above that benchmark at every adjustment between 1990 and 1996;
(c) notes that it was the Howard Government that allowed the standard rate of pension to drop below the 25 per cent benchmark in March 1998;
(d) reminds Senator Vanstone:
(i) that it was the National Commission of Audit (established by the Howard Government on taking office) which, in June 1996, recommended removing this benchmark, and
(ii) that it was only when challenged by the Opposition about its intentions in the light of the recommendation by the National Commission of Audit and when threatened in the Senate with an opposition amendment to prevent government backsliding, that the Government agreed to bring forward its own legislation to give the 25 per cent benchmark a legislative basis; and
urges Senator Vanstone to brief herself on the facts, desist from making any further such false claims and take action to correct the public record at the earliest opportunity.

COMMITTEES
National Capital and External Territories Committee
Report
The DEPUTY PRESIDENT—I present the following report and documents received on 9 July 2001:

In the pink or in the red? Health services on Norfolk Island, dated July 2001, Hansard record of the committee’s proceedings [3 vols] and submissions [2 vols].

Ordered that the report be printed.

Senator CALVERT (Tasmania) (3.39 p.m.)—by leave—I move:
That the Senate take note of the report.
I seek leave to continue my remarks later.
Leave granted; debate adjourned.

Rural and Regional Affairs and Transport Legislation Committee Report
The DEPUTY PRESIDENT—I present the following report and documents received on 18 July 2001:

Proposed importation of fresh apple fruit from New Zealand: Interim report, dated July 2001, Hansard record of the committee’s proceedings, answers to questions on notice, additional information and submissions [63].

Ordered that the report be printed.
Senator CALVERT (Tasmania) (3.39 p.m.)—by leave—I move:
That the Senate take note of the report.
I seek leave to continue my remarks later.
Leave granted; debate adjourned.

Rural and Regional Affairs and Transport References Committee

Report

The DEPUTY PRESIDENT—I present the following report and documents received on 25 July 2001:

The incidence of Ovine Johne’s disease in the Australian sheep flock: Second report, dated July 2001, Hansard record of the committee’s proceedings, documents presented to the committee, additional information and submissions [83].

Senator CALVERT (Tasmania) (3.39 p.m.)—by leave—I move:
That the Senate take note of the report.
I seek leave to continue my remarks later.
Leave granted; debate adjourned.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT—I present the following documents received since the last sitting of the Senate:

Aged Care Standards and Accreditation Agency Limited—Reports—
1998-99. [Received 1 August 2001] 1999-2000. [Received 2 August 2001]


Australia and the IMF—Report for 1999-2000. [Received 2 July 2001]


Australian Dried Fruits Board—Report for the period 1 July 2000 to 31 January 2001 (Final report). [Received 18 July 2001]


Employment Advocate—Report—The building industry. [Received 26 July 2001]

COMMITTEES

Foreign Affairs, Defence and Trade Committee: Joint

Report: Government Response

The DEPUTY PRESIDENT—I present the following document received on 11 July 2001:

Foreign Affairs, Defence and Trade—Joint Standing Committee—Second Australian Government loan to Papua New Guinea: Variation to loan agreement—Government response.

In accordance with the usual practice and with the concurrence of the Senate I ask that the government response be incorporated in Hansard.

The document read as follows—

GOVERNMENT RESPONSE TO THE REPORT OF THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE ON THE 14 DECEMBER 2000 AUSTRALIAN GOVERNMENT LOAN TO PAPUA NEW GUINEA

The US$30 million Australian Government loan to Papua New Guinea of 14 December 2000 was the second provided under the 1998 amendments to the International Monetary Agreements Act 1947 (IMAA), following the US$80 million loan, also to Papua New Guinea, of 21 June 2000. The amendments to IMAA were made in the wake of the Asian financial crisis to provide a framework for the provision of financial assistance by Australia to countries undertaking economic adjustment programs with the support of the International Monetary Fund. Under the amendments to IMAA, the Joint Standing Committee on Foreign Affairs, Defence and Trade is required to report within two months of the tabling of National Interest Statements supporting loans made under IMAA.

Committee’s Report

2. The Committee has supported the execution of the second loan to Papua New Guinea, noting in particular the positive efforts made by the PNG Government to re-establish relations with the IMF and World Bank.
3. The Government is pleased to note that, in its report on the second loan, the Committee has welcomed the additional material provided in the accompanying National Interest Statement, in response to the suggestions for improvements made in the Committee’s report on the first loan to PNG (tabled on 30 October 2000). The changes have rendered the National Interest Statement a much more informative document that the first one, both in terms of explaining Australia’s national interest in the context of the bilateral relationship and the detail provided on the terms and conditions of the second loan to PNG. The Government also notes that the Committee acknowledged, ‘with appreciation’, the regular contact maintained by Treasury with the Committee Secretariat in the lead up to the execution of the second loan.

Committee’s Recommendation

4. The Committee has reiterated its concerns, first expressed in the context of the first loan to PNG, about the timing of the tabling of National Interest Statements in support of loans made under IMAA. The Committee has re-affirmed its previous recommendation that IMAA be further amended to ensure that Parliamentary scrutiny of proposed loans occurs before such loans are executed.

5. This recommendation was rejected by the Government in its response to the Committee’s report on the first loan (tabled on 8 March 2001). The Government noted that the Committee’s proposal could considerably weaken Australia’s capacity to provide rapid and effective assistance to countries facing financial crises. The introduction of a period of Parliamentary scrutiny of the accompanying National Interest Statement before a loan is disbursed, even for the relatively short period of 5-6 weeks suggested in the first Joint Committee report, could critically circumscribe Australia’s capacity to contribute to financial rescue packages and could weaken the effectiveness of international support efforts for countries in crisis.

6. In its report on the second loan, the Committee has made one recommendation: ‘That, should a further loan to Papua New Guinea be contemplated before the Act has been amended as proposed in the Committee’s previous report, a confidential briefing be provided to the Committee on the draft NIS by the relevant Commonwealth agencies at the earliest opportunity. This should be arranged well before the National Interest Statement has been finalised and the loan executed.’

7. The Government has no objections to relevant Commonwealth agencies providing the Committee with confidential briefings prior to the execution of loans under IMAA. It accepts that such briefings can be helpful. It notes, however, that the Committee’s suggestion does not, of itself, address the problems arising from time constraints in the preparation of loans under IMAA. The Government remains of the view that amendment of IMAA would not be appropriate.

8. As noted in the response to the Committee’s report on the first loan to PNG, the Government considers that requirements for accountability and transparency are fully met by the current arrangements under IMAA.

DOCUMENTS

Auditor-General’s Reports
Reports No. 54 of 2000-2001 and Nos 1-4 of 2001-2002

The DEPUTY PRESIDENT—I present the following documents received since the last sitting of the Senate:

Auditor-General—

Audit report for 2000-2001—No. 54—Compliance assessment audit—Engagement of consultants. [Received 29 June 2001]

Audit reports for 2001-2002—

No. 1—Financial statement audit—Control structures as part of the audits of the financial statements of major Commonwealth entities for the year ended 30 June 2001. [Received 9 July 2001]

No. 2—Examination of allegations relating to sales tax fraud: Australian Taxation Office. [Received 10 July 2001]

No. 3—Performance audit—The Australian Taxation Office’s administration of taxation rulings—Australian Taxation Office. [Received 17 July 2001]

No. 4—Performance audit—Commonwealth estate property sales: Department of Finance and Administration. [Received 1 August 2001]

Business of the Senate

Questions on Notice Summary

The DEPUTY PRESIDENT—I table Business of the Senate for the period 1 January to 30 June 2001, and a summary of

Conference of Australian and Pacific Presiding Officers and Clerks

The DEPUTY PRESIDENT—I present a report on the 32nd Conference of Australian and Pacific Presiding Officers and Clerks. I draw senators’ attention to paper No. 16, included as an appendix to the report, which the President is arranging to distribute separately to all senators. Entitled ‘Members of Parliament and Defamation’, it is a thoughtful exposition by the New Zealand Clerk of the House of Representatives, Mr David McGee QC, of issues affecting all members of parliament. It led to an interesting discussion at the conference.

Responses to Senate Resolutions

The DEPUTY PRESIDENT—I present the following responses to various Senate resolutions:

(a) Response from the British Deputy High Commissioner (Mr Court) to a resolution of the Senate of 25 June 2001 concerning the United Kingdom’s policy on commercial whaling;

(b) Response from the Auditor-General (Mr Barrett) to a resolution of the Senate of 20 June 2001 concerning departmental and agency contracts; and

(c) Response from the Chief Minister of the Northern Territory (Mr Burke) to a resolution of the Senate of 27 June 2001 concerning the Public Order and Anti-Social Conduct Bill in the Northern Territory.

BUDGET 2000-01

Consideration by Legislation Committees

Additional Information

Senator CALVERT (Tasmania) (3.41 p.m.)—On behalf of the chair of the Rural and Regional Affairs and Transport Legislation Committee, I present additional information received by the committee relating to hearings on the additional estimates for 2000-2001.

COMMITTEES

Treaties Committee

Report

Senator O’BRIEN (Tasmania) (3.41 p.m.)—On behalf of Senator Cooney and the Joint Standing Committee on Treaties, I presented the 40th report entitled Extradition: A review of Australia’s law and policy, together with the Hansard record of the committee’s proceedings, minutes of proceedings and submissions received by the committee. I seek leave to move a motion in relation to the report.

Leave granted.

Senator O’BRIEN—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DEPARTMENT OF EMPLOYMENT, WORKPLACE RELATIONS AND SMALL BUSINESS: JOB NETWORK Report

Senator JACINTA COLLINS (Victoria) (3.42 p.m.)—by leave—I move:

That the Senate take note of the document.

I would like to discuss the Department of Employment, Workplace Relations and Small Business report, Inquiry arising from the Senate estimates hearings of 4-5 June 2000 into matters concerning the Job Network. Much of this issue first arose at the budget estimates, although those observing the experiment of the Job Network would realise that it has a tardy history that goes back somewhat longer. It was at the time of the last budget estimates that I, along with Senator Carr, raised with the Department of Employment, Workplace Relations and Small Business the issue of Leonie Green and Associates and the placing of people with labour hire companies. I also raised with the department the possibility of people being paid to look for their own job opportunities. You would think that the department—which, in the words of its secretary, Dr Shergold, was suffering ‘research fatigue’—could emphatically and immediately tell us what was acceptable and what was not acceptable behaviour under the Job Network scheme. As we can see from the interim and then the final report, this has not been the case.

I did not comment on the interim report when it was tabled in the Senate on the last sitting day of the last session because I wanted an opportunity to digest what was
tabled in that report. Unfortunately, we have had to wait for the full report before we have got anything worthy of the departmental inquiry. During the budget estimates we were met with indifferent answers: that it was okay to have a labour hire company attached to a job placement provider and that, as long as the 15 hours of paid employment over a five-day period was met, the department was quite happy to dole out taxpayers’ money. Dr Shergold promised to immediately go away and begin an investigation of the allegations and to investigate if any complaints were being received by the department. From that promise we have now received an interim report, as I mentioned, and a final report, which has just been tabled now.

But what were the results of this investigation? The interim report—all three pages of it—quickly identified that some 200 job matching payments had been claimed for people involved in canvassing for jobs, which is not permitted under the contract. It then went on to state that the department was still investigating whether the work undertaken met the ‘15 hours over five days’ requirement, whether job splitting had taken place and whether unemployed people who had participated in the system gained any real advantage from the experience. Most disturbing was the interim report’s admission that the department’s own investigation and compliance unit had identified a potential problem with job matching placements at Leonie Green and Associates labour hire company earlier in the year—in February—and had begun an investigation but had failed to bring the investigation to the attention of senior management.

The final report verifies that a number of claims were illegally met through the Victorian offices of Leonie Green and Associates. Media reports have suggested that some $70,000 has been paid back. The report also states that the work undertaken by unemployed people through the labour hire company, and the conditions under which the work was undertaken, do not ‘sit well’ with contractual requirements and that this area will be an ongoing problem. A number of things in this report do not sit well with me. In particular, the report’s recommendations do not in any way seek to understand if the Job Network is subject to wide-ranging rorts or if competitors of Leonie Green and Associates have thought up other schemes that may not be consistent with the spirit of the Job Network contracts or, indeed, might simply be ‘inappropriate’, in the words of the report.

My understanding of what I asked the department to do in the estimates hearing is that I wanted an investigation of the allegations surrounding Leonie Green and Associates, and I wanted to know whether there were similar practices elsewhere in the network and how widespread those practices were. Sadly, my request has not been met. It appears the report’s basic assumption is that the Leonie Green and Associates incident is an isolated one and that the remedy is simply a matter of refining policy to ensure that such misunderstanding of practice does not occur again in the future.

In the pursuit of administrative refinement, the report makes a number of recommendations of changes to procedures within the department that it hopes will provide, to quote the report, ‘a high level, independent point of review’, which I believe Minister Brough says will be implemented. Recommendation 13 of the final report calls for a fraud and compliance committee to act as a ‘high level, independent point of review’ in the department. This is obviously to ensure that issues under investigation are brought to the departmental head’s attention before the next round of estimates. What amuses and concerns me is that the word ‘independent’ is used to describe such a committee. The schedule at the back of the report reveals that everyone on the committee is from the Department of Employment, Workplace Relations and Small Business. There is nothing independent at all about this committee.

One of the opposition’s points since the inception of Job Network is that the working of the Job Network should be transparent, to deter rorting, and that there should be an independent agency people can turn to when they have problems with the Job Network. Currently there is only the department. The department is judge and jury and, when the Job Network contracts come around, execu-
tioner. This report is the result of a constrained investigation. It does not attempt to find out who in the department should have ensured that issues to do with Leonie Green and Associates were properly investigated. It does not attempt to find out whether there are any other rorts in the Job Network and it definitely does not try to address the fundamental flaws in the Job Network system.

Let me go briefly to two components of this report that leave me very concerned. At point 11 of the report the inquiry concluded that a significant number of job placements made by Leonie Green and Associates were inappropriate, and in some cases there was evidence of breaches of the contractual obligations. So we have inappropriate cases that are not actually breaches of the contractual arrangements. While the inquiry concluded at point 11 that some of the strategies introduced for job seeker placements were inappropriate under ESC2, others that have come to attention during the inquiry and which appear to meet the letter but not the spirit of the system raise wider issues of policy. These issues of policy are being addressed separately. What of those issues of policy? The report barely covers them. If we go to the conclusion we are told that some emerging practices have highlighted the need to review policy settings and ESC2 conditions, including the code of conduct.

I would like to know what those emerging practices are and, given what has transpired to date, I think the public needs to know what those emerging practices are. We raised a couple during the Senate estimates in relation to IPA Personnel Pty Ltd and Drake Employment. All we have been told is that the department has not identified any information raising concerns about their use of labour hire companies for placements and that no evidence emerged during the inquiry that suggested any breach of contractual obligations by these two providers. No evidence emerged, but did we look? We should look. After what has arisen in relation to Leonie Green and Associates, we should be looking very carefully. Unfortunately, the government’s response has been consistent with its response to the Job Network overall to date.

This report, as is the case with other investigations, has been severely constrained. If this is the best the department can do in getting to the bottom of the recent crop of Job Network rorts, which have made their way into the media, it is complicit in concealing those rorts which, it appears, will just continue to dwindle out, as the Salvation Army example has done in recent days. In the department’s report Job matching: policy revisions of 24 July, which is the policy response to the document I am commenting on, it is claimed that there is no evidence of widespread manipulation of job placements. I assume the department and the minister signed off on the policy revisions but how do they know that there are no other manipulations going on? They have not even justified how Leonie Green and Associates could ask to have job matching placements brought forward in order to ‘fit’ her bulk recruiting exercise. How can she bring forward unemployed people to boost her figures and boost her performance data? (Time expired)

Senator CARR (Victoria) (3.52 p.m.)—I rise to speak on the Report on enquiry arising from Senate estimates hearings on 4-5 June 2001 into matters concerning Job Network. The issues in this report were originally pursued through the Senate estimates committee, and Senator Collins has already drawn attention to that. I think it has been a valuable exercise in demonstrating that parliamentary committees do in fact work. It highlights the total inadequacy of the Department of Employment, Workplace Relations and Small Business to administer the government programs in these areas. It further highlights just how inadequate the government’s philosophy is in regard to these issues.

I think this whole series of events has to be seen in the context of the government’s policy of so-called mutual obligation where it attempts in many ways to punish people who find themselves unemployed and to place upon them, as Mr Abbott has said on many occasions, the onus of responsibility for their dire social circumstances. This is a government that takes the view that poverty and unemployment are the fault of the individual. It is individual failing and not the
failing of a social system that produces these economic conditions in which so many Australians live in poverty and in social distress. What is the government’s response? It is to set up schemes, such as we have seen with this measure, to provide assistance to particular groups of people whose obvious purpose in life is to provide good news stories.

The report says:

... as a result of the meeting between Leonie Green and Associates on 24 January where they provide to the government good news stories ...

This is so they can highlight to the public the government’s concern about these issues while, by the same token, involving themselves in shoddy and totally inappropriate behaviour. What we have clearly learned through this report—this was alleged at the Senate committee hearing, and hotly refuted at the time by the department and contemptuously rejected at the time by the senior officers—is the total inappropriateness of the government’s administration in this area and of the encouragement that has been given to these Job Network providers, this favoured group, to engage in these sorts of unethical practices through a whole series of meetings throughout this year.

At a provider’s breakfast in January this year, we saw the department publicly defend Leonie Green and Associates when allegations were raised about inappropriate behaviour. It felt it was necessary to provide appropriate support to one of its specialists, in fact a favoured group of people. Leonie Green was the chairwoman of a representative group. She is the person who, clearly, has been provided with some assistance by the department and, as I understand it, she has also been provided with advice from the minister’s office to the effect that, if numbers can be kept up, special favours will be shown in the next round of contractual arrangements.

We have here a very serious question about the probity of the administration of public policy in this area, not to mention the ethical considerations that are involved whereby people are placed in positions which are clearly, as the minister now acknowledges, job splitting and serial placements. We have seen clear cases of behaviour which demonstrates that the keen interest here is to secure money, and to exploit the circumstances of the unemployed by the provision of minimum work in such a way that one can clearly see the government’s ideological program being advanced.

I do not blame Minister Brough so much in this regard. I blame Minister Abbott. He was the one who got out there and promoted this sham. He was the one who got out there and said this was a successful measure because it provided choice. It provided choice for a particular group of Job Network providers to exploit the Commonwealth, to exploit the unemployed. It provided no choice for the poor unfortunate individuals who were caught within the clutches of these organisations. What we heard was Minister Abbott ranting, in his usual ideologically obsessed way, about the failings of individuals and about the capacity of the government to assist failed individuals rather than dealing with the assistance that is needed to provide real options for people. We heard today in the Senate that the government is still trying to cover up this action. While this report is only a first stage—I have no doubt we will return to these issues throughout this parliamentary session—it clearly indicates the department understands now just how they got it wrong. In this report, the department says:

... in the course of the inquiry various practices used by Job Network members have come to our attention. Strategies are in place which indicate an increasing trend for Job Network members to use fees paid under the various contracts, particularly in up-front payments and retainers, to purchase assistance for Job Networks.

It goes on to say:

... some emerging practices have highlighted the need to review policy settings, including the code of conduct.

We know, in Sir Humphrey speak, that that means they have uncovered a shocking rort, and this government’s attention has had to be drawn to it by a Senate committee. It is an appalling failure by the government not to address this serious policy failing. The government stands condemned for its actions. I seek leave to continue my remarks.

Leave granted; debate adjourned.
DEPARTMENT OF EMPLOYMENT, WORKPLACE RELATIONS AND SMALL BUSINESS: EMPLOYMENT ADVOCATE
Report
Senator JACINTA COLLINS (Victoria) (3.58 p.m.)—by leave—I move:

That the Senate take note of the document.

This report, like the one to which Senator Carr and I just spoke, is another example of the Senate estimates committee dredging through the detail of what has been a contemporary public debate about a political issue. There has been much said and written about this government’s calling of a royal commission into allegations of violence, intimidation and other criminal activities in the building and construction industry. But to take a step back, and in the words of Canberra Times journalist, Ross Peake:

This is a stunt with pike, worth inestimable points on the political scorecard.

He described the calling of the royal commission as ‘an expensive over-reaction’. A clear Senate estimates question whose purpose, again to quote Ross Peake, was to create ‘a highly choreographed stoush’. He goes on to say:

And that’s precisely what Howard wants - ranting and raving by the union movement to demonstrate to middle Australia that it is a dangerous and subversive force.

He may be fairly close to the point, but only time will tell whether the PM gets his highly choreographed stoush. The government’s campaign to get some dirt on the building unions does not commence on day 1 of the royal commission. It started in April, when the Minister for Employment, Workplace Relations and Small Business commissioned a report to provide the political cover for a royal commission into the building industry. This report is the report that the minister sought. It is strange that we cannot get details of precisely what the brief was. We have a government document tabled in the Senate. Through estimates and at other times we have sought the precise detail of what the minister sought in procuring this report from the Employment Advocate. There is simply a void. The Employment Advocate’s report does not cover his brief, and so we are not in a position to assess the extent to which he has either been incompetent or had ideological blinkers on in relation to how well he covered the ground on this matter.

What we do know is that Minister Abbott requested a report from the Employment Advocate into practices within the industry—a request that Jonathon Hamberger, Peter Reith’s former political adviser, happily complied with. As soon as it was politically expedient, the report was disseminated to the media. Why bother tabling it here? It has already been out there for some considerable time now. It was disseminated to the media, kick-starting the government’s campaign for a royal commission. That report, which has now been presented, is the political and intellectual basis for the royal commission.

I half expected that the government would come forward with something else as well. When I first read this report, I thought to myself, ‘There goes the likelihood of a royal commission, because there is no intellectual basis to this report and the government will end up being sorely embarrassed if this is what it regards as a suitable quality basis for a royal commission.’ Alas, I was deluded. I obviously had higher standards and should not have expected so much of this government. Stepping back again to the debate about the royal commission, this issue — whether the report itself justifies the expense of tens of millions of dollars for a royal commission that is generally agreed to be a politically motivated exercise—is one aspect that has not received enough critical attention within the media.

This report provides no justification for a royal commission. Regardless of what views you might have as to whether there should be a royal commission, this report in itself does not provide justification. There are many arguments and many issues to be considered beyond this report from the Employment Advocate, but the report from the Employment Advocate in itself is a sore embarrassment. It is a farrago of allegations, innuendo and hearsay. It is bereft of evidence, it is contradictory and it is biased. Had I been the minister and actually observed any Senate
estimates when the Employment Advocate was before us, I would not have bothered asking him to provide a report that would be the basis for a royal commission. I can only suggest that the minister had not observed estimates and the Employment Advocate’s performance there.

This report was produced by the most compromised statutory officer currently on the Commonwealth payroll, an ideological warrior who cut his teeth kicking unions as Peter Reith’s henchman. Dealing first with the source of the report, the Office of the Employment Advocate, it has long been the case that serious reservations about the performance of that office have been canvassed in this place and many others. The most comprehensive inquiry into the functioning of the Office of the Employment Advocate was conducted by the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee inquiry into the ‘more jobs, better pay’ bill back in 1999. We received numerous documented complaints about the perceived bias of the office. In our report, beginning at page 229, we detailed a dozen of those complaints. Time precludes me from canvassing them here now, but I refer anyone interested to that report. One respected academic, Dr David Peetz, submitted to the committee that there was a clear bias in the operations of an organisation purpose built to promote the use of Australian workplace agreements where they were the preferred tools of deunionising employers. I do not believe that the central problem with the OEA has ever—perhaps can ever—be properly addressed. We concluded that the Office of the Employment Advocate should be abolished.

Since that report, there have been many other instances of apparent bias or questionable practices on the part of that office brought before Senate committee inquiries and this place. I do not have the time to detail them today. This report is but the latest in a long line of political activism on the part of the office, particularly under the reign of the current advocate. The report itself is rubbish. It is biased, focusing on the activities of unions and all but ignoring the activities of employers in the industry. Employer activities covered but one very brief section of this report. I go back to my earlier point: it is impossible for us to know whether that was a deficit in the minister’s brief or whether it was a deficit in the Employment Advocate’s report itself.

The report is lacking in any evidence, relying instead on unsubstantiated allegations and hearsay. It is full of assertions but remarkably lacking in any proof. Even with the data that are provided—for example, the particulars with respect to the number of complaints received by the Office of the Employment Advocate—once you go into the detail of the complaints and try to build up anything meaningful in relation to them, they soon lose their veracity. In answer to a question on notice during the estimates hearings, the Employment Advocate provided more detail about the total number of complaints they had received. Dealing with issues such as coercion in agreement making, very soon the data are about a third of the real impact. One should look at what those complaints relate to. The report says that the central aim is as follows:

During the course of conducting inquiries relating to the building and construction industry, officers of the Office of the Employment Advocate have received a range of information about the industry. In many cases, the Office of the Employment Advocate is unable to assist complainants as the matters raised are outside the OEA’s jurisdiction. However, it is often not possible to effectively refer them to other appropriate law enforcement agencies as their matters will simply not be actioned with any priority or at all.

This is the justification for the royal commission. The OEA asserts that there has been a failure in the policing within the industry by a wide range of government agencies and that, as such, a broader investigation—to use the words of the Employment Advocate—is required. This is a very serious matter. The Employment Advocate has made very serious and damning condemnations of unnamed law enforcement agencies, and that is the sort of thing that should be referred to a royal commission. It is not good enough that an officer such as the Employment Advocate can stand before the Senate and make these unwarranted allegations against our law enforcement agencies without any proof, let
alone that they be used by this minister as a basis for a royal commission.

Senator CARR (Victoria) (6.08 p.m.)—
On the same matter, I draw to the Senate’s attention that, if one looks at the broad sweep of Australian history on the question of royal commissions, one can essentially detect that three broad types of royal commissions have been established. There are the ones that surround events—for example, the 1891-92 royal commission in New South Wales into the great strikes of the nineties. That royal commission tried to understand an event after it had occurred. There are the royal commissions into perceived industrial problems. They can result in genuine reform or remedy. There were a string of royal commissions in this category which investigated the working conditions and the safety conditions in the mining industry from the 1920s through to 1946. Then there are the royal commissions that are established for expedient purposes, for short-term political gains. There is no shortage of examples of these.

One of the common characteristics of these types of royal commissions is that the short-term political advantage usually turns up unexpected long-term political damage for those who have initiated these sorts of inquiries. They have a tendency to produce an explosive mixture, which in fact explodes in the hands of their sponsors. The current example, orchestrated by the Office of the Employment Advocate, is an example of the third category. This is at once a cynical and a devious exercise, and it is appropriate that it reflects the character of the current minister. At a time when the building industry in Melbourne, and this is today, has closed down because of the second death on a work site in four days, we hear nothing from this government about issues such as industrial health and safety. When we have a construction worker who is crushed to death by equipment falling from a crane in bad weather, and another who is crushed to death on another building site, what do we hear from this government? Silence.

These are the casualties of Mr Abbott’s inability to understand the realities of working life and his total incapacity to identify with the most human of emotions and the wish of workers to secure just and equitable work practices. In an industry which has been beset with questions of tax avoidance, a range of financial scams, cost cutting and a deteriorating safety record, what solution do they have other than to resort to the old red herring of intimidation and illegal union activity, in an attempt to divert attention away from the real problems which have been confronting the construction industry in this country?

What is the basis of this royal commission that the government has established? What we have is a series of assertions and statements by the ‘employer advocate’ and well-known defender of workers rights, Jonathan Hamberger. He cobbled it together at short notice for the minister, with scant regard to truth or accuracy. We see from Mr Hamberger’s own statements that there has been a rather curious transformation of the evidence, as he calls it. What began as an informal discussion paper put together in 11 days became a letter to the minister, which the minister leaked. The document we saw at the Senate estimates committee had the minister’s stamp upon it—his notations were on the side of it—and it was provided to the media. No additional information has been provided in this report which, of course, carries the same date but has a different signature on the back of it. It is now signed by Mr Hamberger’s own statements that there has been a rather curious transformation of the evidence, as he calls it. What began as an informal discussion paper put together in 11 days became a letter to the minister, which the minister leaked. The document we saw at the Senate estimates committee had the minister’s stamp upon it—his notations were on the side of it—and it was provided to the media. No additional information has been provided in this report which, of course, carries the same date but has a different signature on the back of it. It is now signed by Mr Hamberger, the ‘employer advocate’, but the report we saw at the Senate estimates was signed by Mr David Rushton, Senior Legal Manager.

We saw in that report, despite the best efforts, a series of innuendos and snide assertions that had been collected from various spies and pimps within the industry. We have seen no attempt to disguise the political intent of that report. We heard allegations of bribery, secret commissions, money laundering, use of illegal immigrants, theft and resale of construction equipment, false invoicing and fraud. You would have thought that all of these matters were of such a serious nature that they ought to have been automatically referred to the police. But, according to the Senate estimates evidence, only one case has been referred for legal action.
Mr David Rushton, the senior legal officer of the Employment Advocate’s office, did not feel it necessary to have these matters referred to the police. Surely that counts for something, when one looks at the seriousness of the claims that are being made. This is why I say that there are serious questions about the honesty and integrity of this report. The minister’s duplicity can be seen in the inept performance of his paid servant, Mr Hamberger, at the recent Senate estimates, when I put a series of questions to him on these various matters. He said that he was not an independent statutory officer. I asked the question:

Under what terms aren’t you independent, Mr Hamberger?

He said:

‘Independent’ is not a technical term of art in this context. I report to the minister; it is not a legal concept. I can actually be directed by the minister, under law, in relation to certain of my functions.

I asked him:

Are you subject to the directions of the minister?

He replied:

I am, under the Workplace Relations Act.

I repeated:

So, in that sense, you are not an independent statutory officer.

The answer was:

If you like.

Senator Collins asked him:

Mr Hamberger, under what powers did you provide advice in this particular area?

He said:

It was just incidental to my overall functions ... the minister asked for a general report on the issues in the building industry, and it seemed somewhat churlish not to provide such a report.

So there we have it. It started off as nothing really at all—just a favour to a mate. He would try to say it was nothing political, nothing exceptional, nothing really at all. It became a partisan piece of distortion, seeking to provide the minister with spurious grounds for what has now become a royal commission. What we ought to understand here is that Mr Hamberger’s obliging behaviour is to be seen for what it is: he has been seeking to provide advice to a government for use through various devices. He is not prepared to actually take any of it to the police, but he is prepared to use it as a vehicle for an assault upon trade unionism in this country and as a political device, as the Prime Minister has said, to make industrial relations the central issue in the forthcoming election.

We will have Petrov all over again. We will have a series of hearings just before the election, and there will be no opportunity for rebuttal and no opportunity for any serious cross-examination. That will all happen after the election. We will get the lurid headlines and we will get, in the government’s mind, the short-term political advantage. We have seen the example of the Pakenham meatworkers in Victoria and, with the Abbey Group, we have seen the issues which have gone before the Federal Court, which found against the Employment Advocate for the use of secret tape recordings and various other illegal activities. We have seen all those actions which throw serious doubt upon the capacity of this statutory officer to actually fulfil his functions in a reasonable and objective manner. We now have clear evidence of his complicity in a politically partisan government strategy, by which the government seek to take short-term advantage in the run-up to what they believe to be a dangerously close election for them.

Is it appropriate for a statutory officer to behave in this way? The evidence is overwhelming: I think it is not appropriate. We need to come back to this point: if these matters are as serious as the government alleges, why have they not been referred to the police? As I say, if there is criminal behaviour involved in this union, not one allegation has been levelled against any serving official in the CFMEU. There are a number of matters which have been dealt with by the police, and no prosecutions have been made in those regards. We are entitled to ask what the political motivation of the officers behind this is. Why is Mr Hamberger alleging police incompetence, which seems to be the inference that is being drawn to explain why they have not taken these matters forward? Is he alleging political interference by the law enforcement agencies in this country? That is a
very serious matter. Is he, therefore, able to come forward with all honesty and say that he should not have pursued these matters himself through the various Commonwealth law offices? None of that appears to be the case.

We are entitled to ask why it is that this statutory officer has linked himself in such a partisan way to what is quite clearly a shabby political exercise designed to advance the short-term interests of a failing government desperate to hang onto office and prepared to use the livelihoods of working people in this country by attacking their industrial organisations, in an attempt to hang on so as to be able to claw its way back into office for another term. I do not believe Australians will buy that.

(Time expired)

Question resolved in the affirmative.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—The President has received a letter from a party leader seeking variations to the membership of certain committees.

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

That Senator Ridgeway be appointed to the Rural and Regional Affairs and Transport Legislation and References Committees.

WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2001

PATENTS AMENDMENT BILL 2001

First Reading

Bills received from the House of Representatives.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (4.20 p.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 TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (4.21 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

WORKPLACE RELATIONS AMENDMENT (PROHIBITION OF COMPULSORY UNION FEES) BILL 2001

An important characteristic of Australia’s reformed workplace relations system is the opportunity it has given for workers, union and non-union alike, to fully participate in the formal processes of the system, particularly in making collective or individual workplace agreements. A significant contributing factor in this transformation has been the Coalition’s commitment to freedom of association in the workplace. This fundamental principle is reflected in both the objects and provisions of the Workplace Relations Act 1996, such as those which prohibit compulsory unionism, preference to unionists or coercion in agreement making; and in the promotional and enforcement functions of the Office of the Employment Advocate.

Regrettably, this commitment to the principle of both individual and collective freedom of association is not shared by all in this parliament. In recent years an emerging trend has been identified whereby certain trade union leaders have attempted to coerce non-union employees into joining a union by making a demand that all non-unionists pay a ‘service fee’ on account of union participation in agreement negotiations in their workplace. The coercive nature of the compulsory fee demand is highlighted by the fact that it is typically made without the consent of the relevant employee, and may not even be made until after the so-called services are rendered. Indeed, in many cases the fee demanded has been set at about $500 per year, well above the level of annual union dues.

At its June 2000 conference, the Australian Council of Trade Unions formally adopted a pol-
The inclusion of these compulsory fees in certified agreements to advance these coercive purposes. That is what this Bill does.

There can be no doubt that a compulsory fee demand that is not accompanied by the genuine prior consent of the relevant employee is an affront to that employee's individual rights to freedom of association. Employees who have chosen not to be members of a trade union are faced with the payment of a bargaining fee to that union, or payment of an annual trade union membership fee. Employees who are members of trade unions but who wish to resign their membership are placed in an equally invidious position.

The government does not accept that employees should be the subject of such direct or indirect coercion. The principles of freedom of association and freedom in agreement making mean that an employee should be entitled to exercise their own choice about how and if they wish to participate in negotiating workplace agreements in their workplace. Indeed, under the Workplace Relations Act 1996 employees are not only entitled to the protection of the law if they choose to join or not join a trade union, but they are also entitled to nominate themselves or any other person as their bargaining agent in workplace negotiations. Unless such fees are the product of informed prior written consent by the individual employee subject to the demand, they are coercive and should be unlawful.

It is also of concern to the government that trade unions advocating such fees are seeking to include compulsory fee demands in certified agreements. This means that those unions are trying to extract a majority employee vote to coerce non union members (who may in fact have voted against the agreement) either to pay the fee or join the union. That is fundamentally unfair, and should not be countenanced by public policy makers.

Moreover, by attempting to use the cover of a certified agreement, trade unions are attempting to use an industrial instrument recognised by the Workplace Relations Act, and approved by the Australian Industrial Relations Commission, to give such demands an aura of legitimacy that they would not otherwise have. It is in the public interest that the Act not only prohibit such non consensual demands but also prevent the misuse of certified agreements to advance these coercive purposes. That is what this Bill does.

The inclusion of these compulsory fees in certified agreements was recently challenged in the Australian Industrial Relations Commission by the Employment Advocate. In a decision earlier this year, a senior member of the AIRC found that such fees are designed for coercive purposes. It was, however, concluded that upon a construction of the current terms of the Workplace Relations Act 1996 they were not prohibited from inclusion in certified agreements, notwithstanding their coercive character. Although that decision is under appeal, the fact that there is no specific statutory prohibition on such provisions means that their coercive impact may remain until such time as the loophole allowing their inclusion in certified agreements is closed by legislative amendment.

I now turn to the provisions of the Bill. This Bill proposes to amend the Workplace Relations Act to prohibit unions and employer organisations from requiring non members to pay fees for "bargaining services" except where an employee has individually agreed in writing to pay a fee in advance of the bargaining services being provided. Given that agreement to any payment of such fees should be a private matter for the individual choice of each employee un fettered by others, the Bill will prohibit a certified agreement from including any provision relating to payment of fees for bargaining services.

This Bill proposes to amend the Workplace Relations Act to prohibit discriminatory action against a person because he or she has refused to pay or agreed to pay a fee for bargaining services, or because the person has paid, or intends to pay a lawfully recognised fee. The amendments will also prohibit unions and employer organisations from encouraging or inciting others to take discriminatory action for these same reasons. These amendments will have equal application to both trade unions and employer associations.

In introducing this Bill the government is making it abundantly clear that the specific terms of the Workplace Relations Act should prohibit non consensual fee demands. Whilst we have intended that the current terms of the Act proscribe such provisions in certified agreements, the recent activism by trade unions in advancing these demands and the legal doubt now cast over the issue make a compelling case for specific legislative action.

In introducing this Bill I emphasise that the government does not seek to impede the proper activities of trade unions and employer organisations. The Bill itself gives scope for bargaining fees which are the product of genuine prior consent of the individual and the relevant organisation. Indeed, our laws recognise an important statutory role for registered industrial organisations, and confer upon them significant rights and
obligations. But that legal standing cannot be at the expense of the right of individual employers and employees to freedom of association and protection from coercive or discriminatory conduct. Organisations that seek to achieve relevance in the workplace through coercive conduct, as these fee demands have been characterised by the Australian Industrial Relations Commission, should be given no comfort by the workplace relations system.

PATENTS AMENDMENT BILL 2001

The major objective of the Patents Amendment Bill 2001 is to implement improvements to Australia’s intellectual property system set out in the Government’s Innovation Action Plan for the Future, Backing Australia’s Ability. In the Innovation Action Plan we committed to strengthening and making Australian patents more certain by changing the novelty and inventive step requirements of the Patents Act 1990, to more closely align these tests with international standards. We will do this by acting on the recommendations of the Intellectual Property and Competition Review Committee and of the Advisory Council on Industrial Property review of patent enforcement. I thank the Committee and the Council for their important work in this area.

Although the Innovation Action Plan statement only encompasses standard patents, most of the amendments to implement this commitment are also being made to the new innovation patent system to ensure that these new patents are subject to the same higher standards and are not less valid or less enforceable patent rights.

This Bill will amend the Patents Act to achieve this aspect of the Innovation Action Plan. It will do this in three ways. First, it will expand the prior art base, which is the publicly available information that an invention is compared against to determine whether it is novel and involves an inventive or innovative step. The prior art base currently consists of information in a document that is available anywhere in the world, but restricts information made available through doing an act to Australia and, in relation to inventive or innovative step, common general knowledge to Australia. This Bill amends the prior art base for both innovation patents and standard patents to remove the restriction of common general knowledge and information made available through doing an act to Australia. Such a restriction is seen as artificial in this age of increasing globalisation. In addition, the prior art base for assessing inventive step will be amended to allow different pieces of information to be combined. This will increase the scope of the information the Commissioner can take into account in deciding whether an invention involves an inventive or innovative step and will more closely align our practices with those of Europe and the United States.

Secondly, the Bill replaces the requirement that a patent applicant be given the benefit of any doubt that the Commissioner of Patents has as to whether an invention is novel and involves an inventive or innovative step, with a more stringent test similar to the ‘balance of probabilities’ test more generally used in civil law matters. The new test will require that the Commissioner must be satisfied that an invention claimed in an application for a standard patent satisfies the novelty and inventive step criteria in the Act. In relation to innovation patents, the Commissioner must be satisfied that the invention complies with the novelty and inventive step tests. It is appropriate that these amendments only apply to the Commissioner’s decision in relation to the important tests of novelty, inventive step and innovative step — the test for the Commissioner’s decision about whether the other requirements of the Patents Act have been met will not be changed.

Thirdly, the Bill will require that an applicant for a standard patent or an innovation patent owner must provide the Commissioner with the results of any searches of the prior art base that have been carried out in respect of the invention claimed in the application, or in any corresponding application filed overseas. This will ensure that, when determining whether an invention meets the requirements for novelty, inventive step or innovative step, the Commissioner has available all prior art information that the patent applicant or owner is aware of.

These amendments are consistent with the requirements in many other countries and will prevent patents being granted in Australia for inventions that would not be patentable in those countries.

This Bill also makes a number of other minor and technical amendments to the Patents Act.

Currently, it is possible to have a patent re-examined after it is granted, but the Commissioner can only re-examine an application between acceptance and grant if there is an opposition to the grant of the patent. It is preferable for re-examination, if necessary, to occur before grant so that any issues about the validity of the patent can be resolved before the patent right is granted. Therefore, the Bill removes the restriction on re-examination between acceptance and grant.

The Bill also brings the Patents Act into line with the proposed Patent Law Treaty (PLT). The PLT is intended to make it easier for patent applicants
to obtain patent rights in a number of countries by standardising the formality requirements associated with the patent application process. This will make applying for patents in several countries easier and cheaper because the rules will be the same in all member countries. Although accession to this treaty is not planned at this stage, it is envisaged that Australia will likely accede because of the advantages it offers to patent applicants.

The Patents Act is already substantially compliant with the PLT, however, two minor amendments are needed. These amendments will provide an additional ground on which an application for extension of time can be granted, which is less onerous from the applicant’s perspective than current requirements, and also make it clear that certain fees can be paid by any person.

The Government is committed to ensuring that the legitimate interests of third parties are not compromised by the grant of a patent. For this reason, the Bill also amends section 119 of the Patents Act to correct an inconsistency that would prevent a third party from continuing to use an invention they had legitimately begun to use before patent protection for that invention was sought by the eventual patent owner. The amendments will allow third parties to rely on the prior use defence in section 119 if they derived the subject-matter of the invention from a public disclosure by the patentee provided for by section 24 of the Patents Act.

The amendments in this Bill will result in stronger patent rights and improve the operation of the patent system. The Bill reflects the Government’s commitment to encouraging innovation and providing Australia with a strong intellectual property system that meets the needs of Australians.

Debate (on motion by Senator Ludwig) adjourned.

Ordered that the bills be listed on the Notice Paper as separate orders of the day.

**BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES**

Messages received from the House of Representatives agreeing to the amendments made by the Senate to the following bills:

- Taxation Laws Amendment Bill (No. 5) 1999
- Health Legislation Amendment (Medical Practitioners’ Qualifications and Other Measures) Bill 2001

**CHILD SUPPORT LEGISLATION AMENDMENT BILL (NO. 2) 2000**

Message received from the House of Representatives acquainting the Senate that the House has agreed to amendments Nos 1 and 3 to 5 made and insisted on by the Senate; does not insist on amendments Nos 2 to 5 and 7 made by the House and disagreed to by the Senate; has agreed to the amendments made by the Senate to amendments Nos 1 and 8 made by the House in place of certain Senate amendments; and has agreed to the further amendment made by the Senate.

**ASSENT TO LAWS**

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

- Corporations Bill 2001
- Australian Securities and Investments Commission Bill 2001
- Corporations (Fees) Bill 2001
- Corporations (Futures Organisations Levies) Bill 2001
- Corporations (National Guarantee Fund Levies) Bill 2001
- Corporations (Repeals, Consequentials and Transitioanls) Bill 2001
- Corporations (Securities Exchanges Levies) Bill 2001
- Governor-General Legislation Amendment Bill 2001
- Migration Legislation Amendment (Electronic Transactions and Methods of Notification) Bill 2001
- Health Legislation Amendment Bill (No. 2) 2001
- Export Market Development Grants Amendment Bill 2001
- Family Law Legislation Amendment (Superannuation) Bill 2001
- Primary Industries and Energy Research and Development Amendment Bill 2001
- Trade Practices Amendment Bill (No. 1) 2001
- Appropriation Bill (No. 1) 2001-2002
- Appropriation Bill (No. 2) 2001-2002
- Appropriation (Parliamentary Departments) Bill (No. 1) 2001-2002
- Excise Tariff Amendment Bill (No. 2) 2001
- Customs Tariff Amendment Bill (No. 3) 2001
We are debating the second reading of the Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000. Before question time I raised a number of issues relating to this legislation. Unfortunately, the legislation for the so-called surcharge, despite Labor’s opposition in the Senate, passed through this chamber with the agreement and support of the Australian Democrats.

As of August 1996 a superannuation contributions tax was applied to contributions made by or for members with contributions and income of more than $70,000 per annum. Contributions over the threshold attract an additional tax of one per cent per thousand dollars of contributions in excess of $70,000 up to a maximum of 15 per cent in the case of contributions where income and contributions are $85,000 or more. We should note that those figures have been indexed, and I think the current base start rate for the superannuation surcharge is approximately $82,000.

The alleged or stated purpose of the superannuation surcharge tax was to tax higher income earners. In fact, since its introduction, funds and the tax office have found that the collection of this tax is grossly inefficient and has resulted in increased fees and charges for all superannuation fund members regardless of whether or not they personally have to pay the new tax. The reason for this inefficiency is that it levies the superannuation fund for the tax. The fund has to administer this, which costs it money. That increases the administrative costs for the fund and those costs, in most cases, are paid by all fund members regardless of whether or not they have to pay the tax. Even if they are not earning over the minimum cut-off point for the introduction of the tax, they end up having to wear some of the impost. So it does impact on people earning less than the minimum threshold level.
Another problem with the operation of the tax concerns instances where workers are on a base salary considerably less than the threshold amount yet, because they are earning extra money from overtime or other fringe benefits, they are levied with the surcharge. I had a series of complaints outlined to me by some workers in the mining industry in Rosebery in my home state of Tasmania whose base salary ranges between $50,000 and $60,000. However, if they then add on overtime and other benefits, their remuneration takes them over the minimum threshold point for the payment of the surcharge, which they pay. Their complaint, aside from being concerned about the surcharge, was that the overtime and other payments are not included for the purposes of the superannuation guarantee charge. So they pay the surcharge tax because of the definition of ‘income’ but the definition of ‘income’ for the purposes of superannuation guarantee is different and in fact much lower. So they are receiving superannuation guarantee on a much lower level of income. I am sure, Mr Acting Deputy President Lightfoot, this would be a common occurrence in the mining industry in Western Australia, and I note with some interest, whilst you are in the chair, that a recent council meeting of the Liberal Party in your home state of Western Australia, I understand, unanimously passed a resolution condemning the surcharge tax and its application.

In addition, some low and middle income earners have been forced to pay the tax because they have not provided their tax file number to their superannuation fund or to the tax office in the required time. That was a potential problem for up to 700,000 workers. People might say that people should phone the tax office and give their tax file number but, unfortunately, many people in the community are not aware that they have to do this, and they are accordingly assessed for the surcharge tax when they earn less than the minimum cut-off point. I understand 66,500 surcharge assessment notices have been issued to these people throughout Australia. Knowing that many of these people would not be required to actually pay the surcharge, the tax office has issued a get out of jail card to some 66,500 people, telling them if they rang and told the tax office their tax file numbers they would be reassessed. I would be interested in knowing the latest statistics on the number of people being assessed for the surcharge who earn less than the threshold level.

All of this only occurred because of the cumbersome vehicle that was devised for the collection and assessment of the surcharge. The government hoped to hide the surcharge by requiring the funds to collect it. I know that was their intention. It was a vain hope to hide the surcharge because certainly in the years since the introduction of this new tax it has become very widely known amongst superannuation fund members that this new surcharge has been applied. As time has gone on, the arguments, which, I might say, I have outlined on many occasions, and concerns that we in the Labor opposition have advanced about the implementation of the surcharge—its iniquitous impact, its costs, the various problems and the complexity—have proved to be justified and correct, but the government have stuck their head in the sand.

Senator Conroy—Whatever the contemporary critics say, it just isn’t on.

Senator SHERRY—They have just ignored our criticism, Senator Conroy.

Senator Conroy—that is because they say you’re ‘uninformed and ignorant’.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—May I suggest, Senator Conroy and Senator Sherry, that you carry on your private conversation perhaps at a later time.

Senator SHERRY—All I can say, Senator Conroy, is that we should look at all the evidence about the impact of this surcharge. Mr Acting Deputy President, may I carry on a personal conversation with you?

The ACTING DEPUTY PRESIDENT—Please, yes; I urge you to do that, Senator Sherry.

Senator SHERRY—You well know the inequity in Western Australia, and I am sure you were a delegate to the Western Australian Liberal Party state conference that recently unanimously condemned this tax. It is good to see that people like you, Mr Acting
Deputy President, are also continuing to highlight the various problems that have occurred as a result of this so-called surcharge.

As I said, it is an extremely cumbersome vehicle; it is a very inefficient tax. This was introduced in 1996 at a time when the Liberal-National Party was arguing that we should have a more efficient tax system. But, according to figures provided to me by the Association of Superannuation Funds of Australia, in its first year this tax cost—wait for it—$190 million to implement and collect. This is to collect a tax that in the first year only raised, I think, about $300 million. It is the world’s best example of an inefficient tax, introduced by this government. If you add the fact that the tax office spent $23 million to collect the tax and set up systems to do so in the future and that a further $3.4 million was spent by the Department of Finance and Administration, you end up with $230 million in total costs, both directly through the tax office and indirectly through the superannuation funds, to collect this tax.

Reports of these costs have been brushed aside by Australia’s longest serving Assistant Treasurer, Senator Kemp, who is responsible for explaining such government successes as the ‘no GST on high rollers’ and why the surcharge is not really a tax. He told the *Age* back in 1999:

The government always recognised the surcharge would involve some cost to the industry.

Well, it certainly did.

The government was in the happy situation of knowing that someone else would do its work. This is the government which has made a skill and virtue of offloading its administrative work to others, to which any small business owner who spent January labouring over the BAS, engaged in unpaid tax collection on behalf of the government rather than breach the collection of the tax, and their families can attest. The funds also found that, while they had an increased administrative burden because of the tax, they also had an increase of around 28 per cent in complaints and inquiries arising from the so-called surcharge. So the government managed to outsource the administration and the explanation of the problem to superannuation funds. Notwithstanding all their effort on collection and assessment, the ATO got rather short of its expected revenue. In 1996-97, it issued $454 million worth of notices; it got back only $347 million by 30 June 1998. What a spectacular failure! The expected income in later years, however, has skyrocketed. Why has it skyrocketed? Because the government has extended the base for the calculation of this surcharge by including fringe benefits tax and other related remuneration.

There was an inquiry into the surcharge by the Committee for the Economic Development of Australia, and in October 1999 it released the results of that investigation. It stated:

... the surcharge does not deliver well targeted equity. Administrative costs are so high that all fund members, not just those with surchargeable contributions, are adversely affected—survey evidence reveals that most funds spread the administrative costs of the tax across all fund members.

Interestingly, this was a similar recommendation to the one made by the Senate Select Committee on Superannuation and Financial Services in its inquiry into the tax. The majority of that committee’s members, the Labor opposition and the Australian Democrats—despite having voted for the tax, I think we should note—recommended that ‘an alternative collection mechanism utilising group certificates be adopted and that the advance instalments system not be adopted’.

In my concluding remarks and in respect to the second reading amendment that is being circulated in the chamber at the moment, the current budget papers give an estimate of forward revenue over the next three years. Included within that estimate of revenue is tax revenue from superannuation. That is fine, but what it does not contain is an estimate of tax revenue from the so-called surcharge. If the government is so proud of this new tax on superannuation, it should disclose what the estimated revenue will be from the so-called surcharge in the forward estimates. It should have been clearly disclosed in the budget papers; it was not disclosed. At estimates, I have asked the Assistant Treasurer to give us the figures in the forward estimates. He has refused to give us those fig-
ures. So much for the so-called charter of budget honesty. The government introduced a new tax, apparently very proudly, although with some exceptions, as I have acknowledged—for example, Senator Lightfoot’s determined campaign against this vicious new tax. You are not alone, Senator Lightfoot, I must say; there are others who have complained about this tax publicly and in Liberal Party forums.

Senator Abetz—Are you going to abolish it?

Senator SHERRY—You should ask Senator Lightfoot that. He is the one who is putting the complaints forward. If the government is so proud of this new tax, Minister, why won’t you tell us what the revenue figures are in the forward estimates? In accordance with the charter of budget honesty, this is a figure that should be disclosed.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Sherry, could I interrupt you to advise that you will be moving an amendment before you sit down?

Senator SHERRY—Yes, I was intending to do that. I just got to the amendment and I have one minute left. As I have indicated, we will be supporting this legislation, because it is only reasonable that the application of the surcharge on public servants—and, I might say, politicians—should be in line with the options available to everyone else in the community. It does not confer a special benefit on public servants or politicians. I believe that the projected figures in the budget papers for the revenue from this surcharge should be made available, and to that end I will move a second reading amendment. There are a raft of amendments from the Australian Democrats. I move the second reading amendment on sheet 2311:

At the end of the motion, add:

“but the Senate:

(a) notes that the government:

(i) has not disclosed in the 2001 budget papers the projected revenue to be raised in the forward years from the surcharge/tax, but has it hidden in general tax revenue raised from superannuation; and

(ii) has failed to disclose the revenue figure at Senate estimates; and

calls on the government to disclose the figures forthwith”.

(Time expired)

Senator ALLISON (Victoria) (4.37 p.m.)—The purpose of the Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000 is to allow beneficiaries under three Commonwealth superannuation schemes the option of commuting part of their pension in order to pay off a surcharge assessment received after they have ceased to be members of the scheme. It is part of the general untidiness of the surcharge that an assessment can arrive after the year is over and that that surcharge is the personal responsibility of the individual once they have left the fund. This bill allows beneficiaries of the scheme to elect to commute part of their pension to a lump sum specifically to pay off the surcharge assessment they receive after leaving the scheme.

The bill provides two methods for parliamentarians to do this. When a serving parliamentarian attracts a surcharge liability in a particular financial year, the Department of Finance and Administration enters the amount in a surcharge debt account it keeps for the member. Interest is added each year at a 10-year Treasury bond rate, and upon a member’s retirement the superannuation trust pays the debt amount to the ATO and reduces the member’s benefit accordingly. Alternatively, members can elect to pay off surcharge assessments as they go, with these amounts being credited to their surcharge debt account and the trust forwarding the payments to the ATO. The main point of schedule 1 to this bill is to add a commutation option for payment of surcharge liability where an assessment is received post-retirement.

This piece of legislation has been fraught with difficulties from day one. Senator Sherry, I thought you said that it was the Democrats that supported the bill, suggesting that the ALP did not. It is my understanding that there was consensus in this place and that we all supported the bill.

Senator Sherry—We voted against. I made the call. I remember it well.
Senator ALLISON—I see. The surcharge legislation, as we all know, is a tax, and the reason it was called a surcharge at the time was that the government did not want to admit to that. I thought the ALP supported it, but we certainly supported it on the basis that high income earners enjoyed very significant tax concessions, so this was a way of reducing the inequities in the system. From our point of view, it was reasonable that high income earners should pay this tax, but we did oppose almost everything else in the bill, including the method of collection and the enormous administrative burden on superannuation funds. Our view is that taxes on superannuation ought to be applied at the time at which they are taken rather than during the process in this way.

When this bill was first presented in the Senate, the Democrats circulated our amendments, and at that stage the government indicated that the amendments were too complex to make a response to, so the bill has come up this month instead of in June. I trust that there has been time for a response in the intervening period. I note Senator Sherry’s comments that he has just seen the amendments, but these are almost identical to those that were circulated some eight weeks ago. They provide the same superannuation benefits to same sex couples as those enjoyed by heterosexual couples, and there is very significant discrimination in the area of Commonwealth superannuation schemes. It is not so much the practice in the private sector schemes, but it certainly is in the Public Service, where same sex couples are simply not entitled to the pension which is available to heterosexual couples. We will also again take this opportunity to reform the parliamentary superannuation scheme. We dealt with legislation in the last sitting which preserved benefits until age 55, but again they were only for new parliamentarians: those who were elected at the next election. Even our new senator for Queensland—

Senator Conroy—Cherry!

Senator Sherry—Cherry!

Senator ALLISON—Yes, I do know who he is. He made the point at the weekend, before being sworn in, that he will be one of the last to be grandfathered under this scheme and that those who come in at the next election will not be entitled to what he is entitled to. Our amendments will not only pare back the generosity of the parliamentary superannuation scheme, which is what people complain most about, but also see that the preserving of benefits applies to all of us in this place who are making decisions on behalf of those who come after us. Instead of that situation, it will apply to each and every one of us. It will also allow parliamentarians to opt out of the parliamentary super scheme and go into an accumulation scheme similar to the one put forward in legislation by Mr Peter Andren in the lower house. As I said, it winds back the benefits available in the scheme to bring them more in line with the Public Service. We think that is a reasonable approach. I hope that the ALP and the government have had a chance to properly look at the amendments and make an assessment of them in order to be able to support the amendments when we put them up.

Senator ABETZ (Tasmania—Special Minister of State) (4.44 p.m.)—In closing the debate on the Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000, I wish to remind the Senate that the main purpose of the bill is to give retired public servants and parliamentarians the same options for payment of post-retirement surcharge assessments as they have for pre-retirement surcharge assessments. This option has been made available to many state government employees and parliamentarians the same options for payment of post-retirement surcharge assessments as they have for pre-retirement surcharge assessments. These options will enable the surcharge to be paid from these schemes and pension benefits to be reduced accordingly to take account of that payment. This option has been made available to many state government employees and parliamentarians, and private sector superannuation pension schemes are able to amend their rules to provide similar options for their retired members.

Comments were made by two speakers. I thank them for their contributions. At the end of the day, if the Australian Labor Party want to attack the surcharge, they have to ask themselves, in the unlikely event that they were to win government, whether they would abolish the superannuation surcharge. I interjected that question during Senator Sherry’s speech. I know that that was disor-
derly, but Senator Sherry usually deals with interjections, if he can, as they come across the chamber. On this occasion, there was absolute silence. I think the people of Australia can take that as meaning that, if the Australian Labor Party were to win government, they would not wind back the superannuation surcharge. Recently, in a very good letter to the Advocate—it was not a good letter; part of it was good—Senator Sherry acknowledged that the GST is here to stay. I am sure that Senator Cook would not have approved that letter to the editor. Nevertheless, after all the ranting and raving, Senator Sherry acknowledges that the GST is here to stay.

Similarly, the Australian Labor Party rant and rave against the superannuation surcharge, but guess what? It is here to stay, even if they are elected to government. Who would the surcharge apply to? The superannuation surcharge is a charge of up to 15 per cent levied on the superchargeable employer superannuation contributions of higher income earners. The surcharge is payable if a person’s adjusted taxable income for a financial year is greater than the surcharge threshold, which currently is $81,493. You pay the full 15 per cent once your adjusted taxable income is $98,955. You really have to ask yourself: which battlers are the Australian Labor Party trying to look after? It appears to be all those who earn more than $98,000 per annum. They are the battlers to whom the Labor Party are supposedly going to give tax breaks. It is similar to their ‘pretend’ opposition to the GST, saying that it is unfair, and people like Chris Murphy of Econtech analysing the impact of the GST and telling us that it is the poor souls who struggle on $213,000 or more per annum who are disadvantaged by the application of the GST and the new tax system.

Here we have the Australian Labor Party against our initiatives on the basis that the people the GST hurts are supposedly all the poor struggling souls who earn more than $213,000 per annum and, with this 15 per cent surcharge, all those people who struggle by on $98,955 per annum. I would have thought that is not necessarily the constituency that the Labor Party usually try to play to. They are simply playing to an audience without making any commitment whatsoever to changing the surcharge or the GST—they are both here to stay. You can see what the Labor Party’s game is—to try to cause havoc on the way through. If they were in government, not much would be different.

Senator Allison made some comments in relation to the changes that have been made and how they will not affect current sitting members and senators. As I pointed out during debate on the last sitting day, there is now interesting consideration of those matters in the High Court where it could well be argued and sustained that, if you were to take away rights that had accrued, you would in fact be taking away, in the High Court’s terms, some property rights which would then be compensable.

Senator Sherry—That’s what the surcharge did, too.

Senator ABETZ—No, Senator, that is not a right in the same terms. Nevertheless, if the Australian Democrats are so genuinely concerned, I invite them—I am not sure how many previous Australian Democrat senators have done that; indeed, it will be interesting to see what Senator Woodley does, seeing that he has just retired—to say that this is so unconscionably high that they will pay some of the superannuation surcharge back into general revenue. I invite the Australian people to consider the duplicity of saying that something is immoral but, as it is there, they are going to take full advantage of it. If people oppose it, they should say, ‘It is terrible and, if ever I’m a beneficiary, I will give that proportion back to the taxpayer, as I believe is appropriate.’ Tellingly, not a single member of this parliament has, as I understand it, repaid superannuation after it has accrued to them. So to all those people who like to beat their chest over this issue and say how high and mighty they are, I invite them to put on record, when and if they retire, how much they would pay back to the Australian taxpayer. I daresay that proposition will be met with deathly silence. I thank honourable senators for their contributions to this debate.

Amendment agreed to.
Original question, as amended, resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator SHERRY (Tasmania) (4.53 p.m.)—I want to deal with two issues before we move to Senator Allison’s amendments. There are seven pages of them.

The CHAIRMAN—I believe there are 12 amendments.

Senator SHERRY—There are two matters I want to raise with the Special Minister of State in committee, and I would appreciate it if he could respond before the conclusion of the committee stage. One is that we have just passed a second reading amendment requesting the forward estimates for the surcharge tax collection. The Senate has asked for those figures, so I request that they be made available. Secondly—and your advisers might be able to indicate this, Minister—there are three other funds that I understand come within Commonwealth legislative jurisdiction that are not contained in the Superannuation Legislation Amendment (Post-retirement Commutations) Bill 2000.

The Defence Force has two superannuation funds. Is it intended that the same provisions here will apply to the Defence Force funds, if they do not apply at the moment? The fund that covers the universities—I think it is now called Unisuper—is an amalgam of the old defined benefit fund and an accumulation fund, and my question goes to those members of Unisuper who are members of the defined benefits section of that fund. So there are three public sector superannuation funds that are not named within the provisions of this bill, and my question goes to those members of Unisuper who are members of the defined benefits section of that fund. So there are three public sector superannuation funds that are not named within the provisions of this bill, and I believe they would have similar, if not the same, problems. I therefore would have thought that this bill would have application to those funds as well. If it does already have application, that is fine. If it does not, could you indicate that it does not and why the government has not included those particular funds within this legislation? There may be others, but they are three that have been drawn to my attention.

Senator ABETZ (Tasmania—Special Minister of State) (4.55 p.m.)—The advisers tell me that the Unisuper fund is not under Commonwealth legislation. I am not sure of that personally, but the advisers have indicated that to me. In relation to the two Defence funds, as I understand it they are under special defence legislation, and that would ultimately be a matter for the Minister for Defence to determine. I will seek to obtain an answer to your question in due course, but not during this debate. The issue of providing the figures will be raised with the Assistant Treasurer, who will undoubtedly provide an answer in due course. At the end of the day, I would submit that the information that Senator Sherry seeks on the changes being made to the scheme by this legislation is interesting but not necessarily material—indeed, not at all material—to the actual issue that we are debating today. But, once again, the government will try to get the information.

Senator SHERRY (Tasmania) (4.57 p.m.)—Thank you for the response as far as you were able to go, Minister. In respect of the Defence Force funds, I believe the principle we are dealing with in the three funds that are part of this legislation would have to be applied to the military funds. It would seem commonsense to me. I am a little concerned that we do not have those funds within this legislation. Be that as it may, you have given me a response as best you can.

There is one final point I want to make. To come back to your summing up of the second reading debate, you did criticise the Labor Party for allegedly sticking up for higher income earners in terms of this 15 per cent new tax. I have outlined the issue that the Labor Party is concerned with, and I want to make it clear for the record that it is the inefficiency of this tax—the way in which it is being collected through the superannuation funds, the costs of collection—and the fact that it is also a breach of the promise that Prime Minister Howard gave in the lead-up to the election in 1996: no new taxes, no increase in existing taxes.

Senator Abetz—Isn’t that a bit like l-a-w law?
Senator SHERRY—If you want to draw that analogy and compare it to your criticism of l-a-w law, that is up to you.

Senator Abetz—People who live in glass houses shouldn’t throw stones.

Senator SHERRY—I want to conclude on this point: Senator Abetz talks about a tax on higher income earners being fair. Those people who earn between $84,000 and $98,000 may pay up to an extra 15 per cent tax. What I put to the chamber—What I put to the chamber—is that Senator Abetz, as a minister in this government, is endorsing higher taxation for higher income earners. He wants to see higher taxes on higher income earners. Senator Abetz has disclosed today that he is all in favour of higher taxes on higher income earners. The Prime Minister has argued effectively for a higher GST rate than 10 per cent to pay for the consequences of an ageing population. The Prime Minister argues that the solution is the GST. Other countries that introduced a GST and then attempted to tackle the problems of an ageing population had to up the GST. In almost every case they have increased it considerably to pay for the ageing population. Senator Abetz has disclosed today that he is all for higher taxes on higher income earners. The Prime Minister has argued effectively for a higher GST rate than 10 per cent to pay for the consequences of an ageing population. If you do not do this, Senator Abetz, there is only one other way in which it can be done, and that is to increase the pension age. That is the only other thing you can do in order to deal with these problems. With the startling disclosure from the minister that he is all in favour of higher taxes on higher income earners, which is news to me—and I hope it will be in the newspapers tomorrow—that he is supporting that principle—

Senator Abetz interjecting—

Senator SHERRY—You are endorsing the principle, Senator. You have enthusiastically endorsed and welcomed higher taxes for higher income earners.

Senator Abetz—Do you believe in flat rate tax?

Senator SHERRY—No, I do not believe in flat rate tax. With that concluding remark, I thank the minister for the assistance he has been able to give in response to my questions at the committee stage.

Senator ALLISON (Victoria) (5.01 p.m.)—by leave—I move amendments Nos 1 to 11:

(1) Schedule 1, item 16, page 9 (line 28) to page 12 (line 3), omit “spouse” (wherever occurring), substitute “partner”.
(2) Schedule 1, item 16, page 9 (line 28) to page 12 (line 3), omit “spouse’s” (wherever occurring), substitute “partner’s”.
(3) Schedule 1, item 18, page 12 (line 6) to page 14 (line 21), omit “spouse” (wherever occurring), substitute “partner”.
(4) Schedule 1, item 22, page 15 (lines 7 to 18), omit “spouse” (wherever occurring), substitute “partner”.
(5) Schedule 2, item 1, page 18 (lines 5 to 12), omit “spouse” (wherever occurring), substitute “partner”.
(6) Schedule 2, item 1, page 18 (lines 5 to 12), omit “spouse’s” (wherever occurring), substitute “partner’s”.
(7) Schedule 2, item 2, page 18 (lines 13 to 19), omit “spouse” (wherever occurring), substitute “partner”.
(8) Schedule 2, item 2, page 18 (lines 13 to 19), omit “spouse’s” (wherever occurring), substitute “partner’s”.
(9) Schedule 2, item 4, page 18 (line 28) to page 30 (line 4), omit “spouse” (wherever occurring), substitute “partner”.
(10) Schedule 2, item 4, page 18 (line 28) to page 30 (line 4), omit “spouse’s” (wherever occurring), substitute “partner’s”.
(11) Page 33 (after line 2), at the end of the Bill, add:

Schedule 4—Amendments to remove discrimination in access to superannuation entitlements

Defence Force Retirement and Death Benefits Act 1973

1 Section 3 (definition of child)

Omit “spouse”, substitute “partner”
2 Section 3 (definition of eligible orphan)

Omit “widow’s”, substitute “surviving partner’s”

3 Section 3

Insert:

Partner’s pension means a pension payable under Division 1 of Part VI.

4 Section 3 (definition of pension benefit)

Omit “widow’s”, substitute “surviving partner’s”

5 Section 3 (definition of spouse pension)

Repeal the definition.

6 Section 6A

Repeal the section, substitute:

6A 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 are not siblings or otherwise in a prohibited relationship within the meaning of section 23 of the Marriage Act 1961; and

(b) who live together on a genuine domestic basis; and

(c) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(2) For the purposes of paragraph (1)(c), 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)(c), the Board 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.

7 Section 6B

Repeal the section, substitute:

6B 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 contributing member, a recipient member or a person in respect of whom deferred benefits were applicable.

(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 recipient member at the time of the death:

(i) the partnership relationship began before the recipient member became a recipient member; or

(ii) the partnership relationship began after the recipient member became a recipient member but before the recipient 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.

8 Division 1 of Part VI (heading)

Repeal the heading, substitute:

Division 1 – Partner’s Pension
9 Part VI (sections 38 to 49)
Omit “spouse” (wherever occurring), substitute “partner”.

10 Part VI (sections 38 to 49)
Omit “spouses” (wherever occurring), substitute “partners”.

11 Part VI (sections 38 to 49)
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

12 Part VI (sections 38 to 49)
Omit “widow” (wherever occurring), substitute “surviving partner”.

13 Part VI (sections 38 to 49)
Omit “widow’s” (wherever occurring), substitute “surviving partner’s”.

14 Part VI (sections 38 to 49)
Omit “widower” (wherever occurring).

15 Part VI (sections 38 to 49)
Omit “widower’s” (wherever occurring).

16 Subsection 41A(1A)
Repeal the subsection.

17 Subsection 75(5)
Omit “widow’s”, substitute “surviving partner’s”.

18 Section 98B
Omit “widow” (wherever occurring), substitute “surviving partner”.

19 Section 98D
Omit “widow” (wherever occurring), substitute “surviving partner”.

20 Section 98J
Omit “widow’s” (wherever occurring), substitute “surviving partner’s”.

21 Section 98K
Omit “widow’s” (wherever occurring), substitute “surviving partner’s”.

22 Section 133
Omit “widow or widower” (wherever occurring), substitute “surviving partner”.

23 Section 136
Omit “widow or widower” (wherever occurring), substitute “surviving partner”.

Judges’ Pensions Act 1968
24 Subsection 4(1) (definition of child of a marital relationship)
Repeal the definition, substitute:

child of a partnership relationship means:
(a) a child born of the partnership relationship; or
(b) a child adopted by the persons engaged in that relationship during the period of the relationship.

25 Section 4AB
Repeal the section, substitute:

4AB 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 are not siblings or otherwise in a prohibited relationship within the meaning of the Marriage Act 1961; and
(b) who live together on a genuine domestic basis; and
(c) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(2) For the purposes of paragraph (1)(c), 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)(c), 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.

### 26 Section 4AC
Repeal the section, substitute:

**4AC 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, an eligible employee or a retirement pensioner.

(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 retirement pensioner at the time of the death:

(i) the partnership relationship began before the retirement pensioner became a retirement pensioner; or

(ii) the partnership relationship began after the retirement pensioner became a retirement pensioner but before the retirement pensioner 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.

### 27 Section 7
Omit “spouse” (wherever occurring), substitute “partner”.

### 28 Section 8
Omit “spouse” (wherever occurring), substitute “partner”.

### 29 Section 8A
Omit “remarriage”, substitute “commenced another partnership relationship”.

### 30 Section 8A
Omit “remarried”, substitute “commenced another partnership relationship”.

### 31 Section 9
Omit “spouse” (wherever occurring), substitute “partner”.

### 32 Section 10
Omit “spouse” (wherever occurring), substitute “partner”.

### 33 Section 10
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 34 Section 11
Omit “spouse” (wherever occurring), substitute “partner”.

### 35 Section 11
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 36 Section 12
Omit “spouse” (wherever occurring), substitute “partner”.

### 37 Section 12
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

### 38 Section 12
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 39 Section 15
Omit “spouse” (wherever occurring), substitute “partner”.

### 40 Section 15A
Omit “spouse” (wherever occurring), substitute “partner”.

### 41 Section 15A
Omit “spouses” (wherever occurring), substitute “partners”.

*Military Superannuation and Benefits Act 1991*

### 42 Section 48
Omit “spouse”, substitute “partner”.

### 43 Subrule 2(1) of the Schedule of Rules to the Trust Deed
After “month”, insert “mutual commitment to a shared life”.

### 44 Subrule 2(1) of the Schedule of Rules to the Trust Deed
After “Parliamentary Candidates Act”, insert “partner”.

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**Monday, 6 August 2001 SGTE 25651**

(f) the persons’ living arrangements; and

(g) whether the persons represent themselves to other persons as being in a partnership relationship.

### 26 Section 4AC
Repeal the section, substitute:

**4AC 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, an eligible employee or a retirement pensioner.

(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 retirement pensioner at the time of the death:

(i) the partnership relationship began before the retirement pensioner became a retirement pensioner; or

(ii) the partnership relationship began after the retirement pensioner became a retirement pensioner but before the retirement pensioner 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.

### 27 Section 7
Omit “spouse” (wherever occurring), substitute “partner”.

### 28 Section 8
Omit “spouse” (wherever occurring), substitute “partner”.

### 29 Section 8A
Omit “remarriage”, substitute “commenced another partnership relationship”.

### 30 Section 8A
Omit “remarried”, substitute “commenced another partnership relationship”.

### 31 Section 9
Omit “spouse” (wherever occurring), substitute “partner”.

### 32 Section 10
Omit “spouse” (wherever occurring), substitute “partner”.

### 33 Section 10
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 34 Section 11
Omit “spouse” (wherever occurring), substitute “partner”.

### 35 Section 11
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 36 Section 12
Omit “spouse” (wherever occurring), substitute “partner”.

### 37 Section 12
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

### 38 Section 12
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

### 39 Section 15
Omit “spouse” (wherever occurring), substitute “partner”.

### 40 Section 15A
Omit “spouse” (wherever occurring), substitute “partner”.

### 41 Section 15A
Omit “spouses” (wherever occurring), substitute “partners”.

**Military Superannuation and Benefits Act 1991**

### 42 Section 48
Omit “spouse”, substitute “partner”.

### 43 Subrule 2(1) of the Schedule of Rules to the Trust Deed
After “month”, insert “mutual commitment to a shared life”.

### 44 Subrule 2(1) of the Schedule of Rules to the Trust Deed
After “Parliamentary Candidates Act”, insert “partner”.
45 Subrule 2(1) of the Schedule of
Rules to the Trust Deed

After “partner”, insert “partnership re-
lationship”.

46 Subrule 2(1) of the Schedule of
Rules to the Trust Deed

Omit “spouse”, substitute “partner”.

47 Subrule 2(1) of the Schedule of
Rules to the Trust Deed

Omit “spouse’s”, substitute “partner’s”.

48 Subrule 7(3) of the Schedule of
Rules to the Trust Deed

Omit “spouse”, substitute “partner”.

49 Subrule 7(4) of the Schedule of
Rules to the Trust Deed

Repeal the subrule, substitute:

(4) In this rule:

partner, in relation to a member means
a person who has a partnership rela-
tionship with the member as defined in
the Glossary in Schedule 1.

50 Heading to Part 5 of the Schedule
of Rules to the Trust Deed

Repeal the heading, substitute:

PART 5—PARTNERS AND
CHILDREN’S BENEFITS

51 Heading to Division 3 of Part 5 of
Schedule of Rules to the Trust Deed

Repeal the heading, substitute:

Division 3—Death of Partner

52 Part 5 of the Schedule of Rules to
the Trust Deed (rules 38 to 54)

Omit “spouse” (wherever occurring),
substitute “partner”.

53 Part 5 of the Schedule of Rules to
the Trust Deed (rules 38 to 54)

Omit “spouses” (wherever occurring),
substitute “partners”.

54 Part 5 of the Schedule of Rules to
the Trust Deed (rules 38 to 54)

Omit “spouse’s” (wherever occurring),
substitute “partner’s”.

55 Part 6 of Schedule of Rules to the
Trust Deed (rules 55 to 61)

Omit “spouse” (wherever occurring),
substitute “partner”.

56 Part 8 of Schedule of Rules to the
Trust Deed (rules 64 to 71)

Omit “spouse” (wherever occurring),
substitute “partner”.

57 Part 8 of Schedule of Rules to the
Trust Deed (rules 64 to 71)

Omit “spouse’s” (wherever occurring),
substitute “partner’s”.

58 Clause 1 of Schedule 1 (definition
of child)

Omit “spouse”, substitute “partner”.

59 Clause 1 of Schedule 1

Insert:

a mutual commitment to a shared life,
at a particular time exists where:

(a) 2 people 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; or

(b) 2 people have been living together
as partners, to the exclusion of any
other partnership relationship, for a
period of less than 3 years, and there
is relevant evidence of a mutual
commitment to a shared life.

Relevant evidence includes, but is not
limited to:

(i) any joint ownership of real estate
or other major assets; and

(ii) any joint liabilities; and

(iii) the extent of any pooling of fi-
nancial resources, particularly in
relation to major financial com-
mitsments; and

(iv) whether one person owes any
legal obligation to the other per-
son; and

(v) any joint responsibility for the
care and support of children, if
any; and

(vi) the persons’ living arrangements;
and

(vii) whether the persons represent
themselves to other persons as
being in a partnership rela-
tionship.

60 Clause 1 of Schedule 1

Insert:

partner means a person who has a
partnership relationship with another
person.

partner’s pension means pension pay-
able to a partner under Part 4 of these
Rules.
partnership relationship means a relationship that is genuine and continuing between 2 people:

(a) who are not siblings or otherwise in a prohibited relationship within the meaning of section 23 of the Marriage Act 1961; and

(b) who live together on a genuine domestic basis; and

who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

61 Clause 1 of Schedule 1 (definition of relevant percentage)
Omit “spouse” (wherever occurring), substitute “partner”.

62 Clause 1 of Schedule 1 (definition of retirement pensioner)
Omit “spouse”, substitute “partner”.

63 Clause 1 of Schedule 1 (definition of spouse’s pension)
Repeal the definition.

64 Part 5 of Schedule 1 (heading)
Repeal the heading, substitute:

PART 5—PARTNER

65 Clause 9 of Schedule 1
Repeal the clause, substitute:

(9) For the purposes of this Part, 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 retirement pensioner at the time of the death:

(i) the partnership relationship began before the retirement pensioner became a retirement pensioner; or

(ii) the partnership relationship began after the retirement pensioner became a retirement pensioner but before the retirement pensioner 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.

66 Clause 10 of Schedule 1
Repeal the clause.

67 Clause 11 of Schedule 1
Repeal the clause.

68 Clause 12 of Schedule 1
Repeal the clause.

69 Schedule 4 (heading)
Omit “spouse”, substitute “partner”.

70 Clause 1 of Schedule 4
Omit “spouse”, substitute “partner”.

71 Schedule 4, Table 1
Omit “spouse” (wherever occurring), substitute “partner”.

Parliamentary Contributory Superannuation Act 1948

72 Subsection 4(1) (definition of former spouse)
Repeal the definition, substitute:

former partner in relation to another person means a person who previously had had a partnership relationship with that person.

73 Subsection 4(1)
Insert:

partner in relation to another person means a person who has or had a partnership relationship with that person

74 Subsection 4(1)
Insert:

partnership relationship has the meaning given by section 4B.

75 Subsection 4(1)
Insert:

relative means an ancestor, or a descendant, or a brother or a sister.

76 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 are not siblings or otherwise in a prohibited relationship within the meaning of section 23 of the Marriage Act 1961; and

(b) who live together on a genuine domestic basis; and
(c) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

(2) For the purposes of paragraph (1)(c), 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)(c), 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.

77 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.

_reired 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.

78 Section 19
Omit “spouse” (wherever occurring), substitute “partner”.

79 Section 19AA
Omit “spouse” (wherever occurring), substitute “partner”.

80 Section 19AA
Omit “marital” (wherever occurring), substitute “partnership”.

81 Section 19AB
Omit “spouse” (wherever occurring), substitute “partner”.

82 Section 19A
Omit “spouse” (wherever occurring), substitute “partner”.

83 Section 21AA
Omit “spouse” (wherever occurring), substitute “partner”.

84 Section 21AA
Omit “spouses” (wherever occurring), substitute “partners”.

Superannuation Act 1976

85 Subsection 3(1) (definition of accumulated contributions)
Omit “spouse”, substitute “partner”.

86 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.

_reired 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.
86 Subsection 3(1) (definition of child)
Omit “spouse”, substitute “partner”.

87 Subsection 3(1) (definition of eligible child)
Omit “spouse”, substitute “partner”.

88 Subsection 3(1) (definition of extra spouse’s pension)
Omit “spouse’s”, substitute “partner’s”.

89 Subsection 3(1)
Insert:

partner’s pension means pension payable under Division 1, 2 or 3 of Part VI.

90 Subsection 3(1)
Insert:

relative means an ancestor, or a descendant, or a brother or a sister

91 Subsection 3 (definition of spouse’s pension)
Repeal the definition.

92 Section 8A
Repeal the section, substitute:

8A 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 are not siblings or otherwise in a prohibited relationship within the meaning of section 23 of the Marriage Act 1961; and
(b) who live together on a genuine domestic basis; and
(c) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.
(2) For the purposes of paragraph (1)(c), 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)(c), the Board 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.

93 Section 8B
Repeal the section, substitute:

8B 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, an eligible employee or a retirement pensioner.
(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 retirement pensioner at the time of the death:
(i) the partnership relationship began before the retirement pensioner became a retirement pensioner; or
(ii) the partnership relationship began after the retirement pensioner became a retirement pensioner but before the retirement pensioner 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.
94 Section 9
Omit “marital relationship” (wherever occurring), substitute “partnership relationship”.

95 Section 16AB
Omit “spouse” (wherever occurring), substitute “partner”.

96 Subsection 51(6)
Omit “spouse”, substitute “partner”.

97 Subparagraph 51A(1)(b)(i)
Omit “spouse”, substitute “partner’s”.

98 Paragraph 65(1)(b)
Omit “spouse’s”, substitute “partner’s”.

99 Part VI (heading)
Repeal the heading, substitute

PART VI—BENEFITS PAYABLE TO PARTNERS AND CHILDREN

100 Division 1 of Part VI (heading)
Repeal the heading, substitute “Division 1—Partner’s Benefit on Death of Eligible Employee before Attaining Maximum Retiring Age”

101 Division 2 of Part VI (heading)
Repeal the heading, substitute “Division 2—Partner’s Benefit on Death of Eligible Employee after Attaining Maximum Retiring Age”

102 Division 3 of Part VI (heading)
Repeal the heading, substitute “Division 3—Partner’s Benefit on Death of Pensioner”

103 Division 3A of Part VI (heading)
Repeal the heading, substitute “Division 3A—Partner’s Benefit attributable to partially dependant children”.

104 Part VI (sections 81 to 110AB)
Omit “spouse” (wherever occurring), substitute “partner”.

105 Part VI (sections 81 to 110AB)
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

106 Part VI (sections 81 to 110AB)
Omit “spouses” (wherever occurring), substitute “partners”.

107 Part VI (sections 81 to 110AB)
Omit “marital” (wherever occurring), substitute “partnership”.

108 Subsection 110S(1)
Omit “spouse” (wherever occurring), substitute “partner”.

109 Section 110TE
Omit “spouse” (wherever occurring), substitute “partner”.

110 Section 110TE
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

111 Section 110TF
Omit “spouse”, substitute “partner”.

112 Section 114
Omit “spouse” (wherever occurring), substitute “partner”.

113 Section 114
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

114 Paragraph 119(4)(a)
Omit “spouse’s”, substitute “partner’s”.

115 Section 136
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

116 Section 136
Omit “spouse” (wherever occurring), substitute “partner”.

117 Section 147
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

118 Section 149
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

119 Section 149
Omit “spouse” (wherever occurring), substitute “partner”.

120 Section 150
Omit “spouse’s” (wherever occurring), substitute “partner’s”.

121 Section 150
Omit “spouse” (wherever occurring), substitute “partner”.

122 Section 157
Omit “spouse” (wherever occurring), substitute “partner”.

123 Schedule 11, Table 3
Omit “spouse” (wherever occurring), substitute “partner”.

Superannuation Act 1990

124 Subsection 44(2)
Omit “spouse”, substitute “partner”.

125 Rule 1.1.1 of the Schedule to the Trust Deed (definition of associated child)
Omit “spouse” (wherever occurring), substitute “partner”.

126 Rule 1.1.1 of the Schedule to the Trust Deed (definition of child)
Omit “spouse”, substitute “partner”.

127 Rule 1.1.1 of the Schedule to the Trust Deed (definition of eligible child)
Omit “spouse”, substitute “partner”.

128 Rule 1.1.1 of the Schedule to the Trust Deed
Insert:

**mutual commitment to a shared life** at a particular time is demonstrated where 2 people:
(a) 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; or
(b) have been living together as partners, to the exclusion of any other partnership relationship, for a period of less than 3 years and the Board, having regard to
(i) any joint ownership of real estate or other major assets; and
(ii) any joint liabilities; and
(iii) the extent of any pooling of financial resources, particularly in relation to major financial commitments; and
(iv) whether one person owes any legal obligation to the other person; and
(v) any joint responsibility for the care and support of children, if any; and
(vi) the persons’ living arrangements; and
(vii) whether the persons represent themselves to other persons as being in a partnership relationship; and
(viii) any other relevant information is of the view that those people have demonstrated a mutual commitment to a shared life.

129 Rule 1.1.1 of the Schedule to the Trust Deed
Insert:

**partner** in relation to a person who has died and who was, at the time of his or her death, a member or retirement pensioner, means a person who has a partnership relationship with that person.

130 Rule 1.1.1 of the Schedule to the Trust Deed
Insert:

**partnership relationship** means a relationship that is genuine and continuing between 2 people:
(a) who are not siblings or otherwise in a prohibited relationship within the meaning of section 23 of the Marriage Act 1961; and
(b) who live together on a genuine domestic basis; and
(c) who have a mutual commitment to a shared life to the exclusion of any other partnership relationship.

131 Rule 1.1.1 of the Schedule to the Trust Deed
Insert:

**relative** means an ancestor, or a descendant, or a brother or a sister.

132 Rule 1.1.1 of the Schedule to the Trust Deed (definition of spouse)
Repeal the definition.

133 Heading to Part 5 of the Schedule to the Trust Deed
Repeal the heading, substitute “Partners”.

134 Rule 5.1.1 of the Schedule to the Trust Deed
Omit “spouse”, substitute “partner”.

135 Rule 5.1.1 of the Schedule to the Trust Deed
Omit “spouses”, substitute “partners”.

136 Rule 5.1.2 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

137 Rule 5.1.2 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

138 Rule 5.1.3 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.
139  Rule 5.1.4 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

140  Rule 5.1.5 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

141  Rule 5.1.6 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

142  Rule 5.2.1 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

143  Rule 5.2.1 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

144  Rule 5.2.3 of the Schedule to the Trust Deed
Omit “spouses’” (wherever occurring), substitute “partners’”.

145  Rule 5.2.3 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

146  Rule 5.2.4 of the Schedule to the Trust Deed
Omit “spouse”, substitute “partner”.

147  Rule 5.2.4 of the Schedule to the Trust Deed
Omit “spouse’s”, substitute “partner’s”.

148  Rule 5.2.5 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

149  Rule 5.2.5 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

150  Rule 5.2.6 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

151  Rule 5.2.6 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

152  Rule 5.2.7 of the Schedule to the Trust Deed
Omit “spouse”, substitute “partner”.

153  Rule 5.2.8 of the Schedule to the Trust Deed
Omit “spouse”, substitute “partner”.

154  Rule 5.3.1 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

155  Rule 5.3.1 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

156  Rule 5.3.2 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

157  Rule 5.3.3 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

158  Rule 5.3.4 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

159  Rule 5.3.7 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

160  Rule 5.3.7 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.

161  Rule 5.3.9 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

162  Rule 5.3.10 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

163  Rule 6.1.11 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

164  Rule 6.1.11 of the Schedule to the Trust Deed
Omit “spouses” (wherever occurring), substitute “partners”.
165 Rule 6.1.12 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

166 Rule 6.1.13 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

167 Rule 6.1.14 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

168 Rule 6.2.5 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

169 Rule 6.2.6 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

170 Rule 6.2.7 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

171 Rule 6.3.1 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

172 Rule 9.1.5 of the Schedule to the Trust Deed
Omit “spouse” (wherever occurring), substitute “partner”.

Superannuation Industry (Supervision) Act 1993

173 Section 10 (definition of dependant)
Omit “spouse”, substitute “partner”.

174 Section 10
Insert:
partner means a person who has a partnership relationship with another person.

partnership relationship has the same meaning as in section 8A of the Superannuation Act 1976.

175 Section 10 (definition of spouse)
Omit the definition.

176 Subsection 18A(7) (definition of relative)
Omit the definition, substitute:

relative, in relation to a person, means:
(a) a parent, child, grandparent, grandchild, sibling, aunt, uncle, great-aunt, great-uncle, niece, nephew, first cousin or second cousin of the person or of his or her partner; or
(b) a person having such a relationship to the person or to his or her partner because of adoption or entering into a subsequent partnership relationship; or
(c) the partner of the person or of a person referred to in paragraph (a) or (b).

Note: See section 10 for the definitions of child and partner

177 Subsection 65(6) (definition of relative)
Omit “spouse” (wherever occurring), substitute “partner”.

178 Paragraph 70B(d)
Omit “spouse”, substitute “partner”.

179 Paragraph 70C(b)
Omit “spouse”, substitute “partner”.

180 Subsection 70E(4) (definition of relative)
Omit “spouse” (wherever occurring), substitute “partner”.

These amendments will remove the current discrimination in the parliamentary superannuation scheme and the two Public Service schemes. They are amendments which I put forward at the time of our last sitting in June and they relate to preserving parliamentary entitlements until age 55. The government has pointed out that it believes the definitions were problematic. We have corrected those to deal with the criticisms made by the government. The definition of ‘partnership relationship’ is now in line with existing provisions and will recognise such relationships between minors and between related persons, although not related persons who may not legally marry, and will adopt the current wording for ‘living together on a genuine domestic basis’. Another change addresses the minister’s concern that the amendments would exclude spouses who do not reside together permanently, such as where one person is in a nursing home, as well as the concern that amendments were out of kilter.
with state and territory legislation dealing with de facto relationships.

We have, we think, put forward amendments which properly deal with any possible objection that the government or the opposition may have to them. There has been plenty of time now for consideration of those amendments. We think this is a reform which is long overdue in this place. As I said earlier, it is where the most significant discrimination takes place. Those who are in the Public Service or who are in this place as parliamentarians are not entitled to see their pensions passed on to their surviving partners in the same way as heterosexual couples are able to do. It is a longstanding discrimination that ought to be fixed.

I trust that we will have ALP support for these amendments. Certainly, the ALP talk a lot about wanting to see this discrimination removed. This is an opportunity for them to do so. As I said, there has been plenty of time for consideration. We have amended our amendments in order to pick up on the problems that have been drawn to our attention by the government, so I can think of no reason why there should not be across the board support for them.

Senator SHERRY (Tasmania) (5.04 p.m.)—I rise to indicate the Labor Party’s position on this legislation and the particular amendments. Just so there is no misunderstanding, we are dealing here with the principle of same sex couples. We debated this on the Thursday night of the last sitting when we were considering amendments that were to apply only to politicians. The amendments before us deal with politicians and public servants, including Defence Force personnel. We debated this on the Thursday night of the last sitting when we were considering amendments that were to apply only to politicians. The amendments before us deal with politicians and public servants, including Defence Force personnel. I note that the issue that I have raised with the minister in a more general form has been picked up in one respect. The Labor Party will not be supporting these amendments. The Labor Party’s position is that we will support an amendment regarding same sex couples that applies to the entire population. We will not pick out certain select groups in the community and apply that provision to those select groups.

As I said in the debate prior to the winter break of the parliament, the Labor Party has a private member’s bill that has been presented by my colleague Mr Albanese in the other place. We look forward to the support of the Democrats and the other minor parties, I hope, when that bill comes before this chamber. That confers same sex couple rights in respect of superannuation on everyone in the Australian community. That is the way that change should be made. I do not believe that the provision as moved should apply just to politicians, public servants or, for that matter, military personnel. That is an inappropriate way to deal with the issue. That is why the Labor Party will not be supporting these amendments today.

Senator GREIG (Western Australia) (5.06 p.m.)—Senator Sherry is in fact quite wrong. Certainly, I acknowledge that we had a robust debate on the issue of same sex couple recognition in relation to federal politicians’ superannuation. The key argument presented at that time by Senator Sherry on behalf of Labor was that it was too ‘boutique’, it was too quarantined to a small slice of the Australian community. I believe that that was an argument of convenience rather than of substance but, nevertheless, that was Labor’s argument. But you cannot possibly realistically expect people to believe you when you say, as Senator Sherry is now saying, that this bill is also boutique because it covers only several hundred thousand people. Come on, let us be real here: this amendment, if passed, would protect all people working for the Commonwealth Public Service. I am not sure whether that is tens of thousands or hundreds of thousands but it is certainly a huge slice of the Australian community. You cannot in any real way say that that is somehow unrealistic.

Senator Sherry has also said that the so-called Albanese bill, introduced into this place by Senator Conroy, would fix that up, that it would cover absolutely everybody. I hasten to point out to you, Senator Sherry, that it does not: it does not cover Commonwealth public servants. I accept, as I said in previous debate on this, that there were technical, constitutional reasons as to why Mr Albanese could not include Commonwealth public servants when he framed the legislation in the other place. However, not one of his Labor Senate colleagues thought to
amend that legislation when it was reheashed and introduced into the Senate. We Democrats will fix that.

So we have the scenario where, if we were to accept Senator Allison’s amendments—and we should—we could cover and protect all Commonwealth public servants and end this discrimination against them in terms of anti-gay proposals. Then, if we were to move quickly on the so-called Albanese bill, we could do the rest. We could do that tomorrow. I am reasonably confident that, if Senator Sherry wanted to move a contingency motion to bring on the so-called Albanese bill, he would probably have the support of my colleagues and we could take care of this tomorrow. But of course Labor is not going to do that. I also make the point that the much trumpeted Albanese bill is simply one part of one section of the Democrats’ Sexuality Discrimination Bill, which precedes Labor’s much trumpeted legislation by some five years.

I also want to make the point again that superannuation is not the only aspect of discrimination that same sex couples experience, so I find it a bit trite for Senator Sherry to say, ‘No, we’ll only address superannuation issues if we can do it in a universal, comprehensive way,’ while at the same time continuing to ignore all of the other discrimination at a Commonwealth level that adversely affects same sex couples—and that is everything from taxation to social security and immigration, from veterans’ affairs to family law. Any aspect of Commonwealth legislation that touches on relationships adversely affects same sex couples—and that is everything from taxation to social security and immigration, from veterans’ affairs to family law. Any aspect of Commonwealth legislation that touches on relationships adversely affects same sex couples, so I do not understand the argument that somehow Labor must ensure, as they say, that any reform within the area of superannuation is universal and comprehensive, ignoring the fact that that discrimination exists in a vast raft of Commonwealth legislation. The only way to address all of that at once is with a comprehensive omnibus bill which deals with all of that and which we Democrats introduced in 1995.

Senator SHERRY (Tasmania) (5.10 p.m.)—Having looked at the APRA superannuation trends, a comprehensive survey of superannuation data in this country that was released in March, if my memory serves me correctly there are about eight million Australians with superannuation accounts. Some have more than one account, I would say, but there are eight million persons in Australia with superannuation of some form or other. So when we are talking about public servants and military personnel—and politicians, for that matter—as your amendments go to, we are dealing with superannuation legislation after all. I do not know what the total number is, Senator Greig; the minister might be able to help us. It might be 150,000; it might be 200,000 people. Whatever the number is, I would think it is probably in that vicinity. To confer that change on that number of people is still limited in the context of the eight million people who have superannuation in Australia.

My argument still stands that the change in this area of superannuation—and I acknowledged this in my previous contribution—is a matter of the property rights of these individuals. I do not see it as a moral issue; my personal view is that it should not be dealt with in that context. Some people do but I do not—it is a property rights issue. I hope that this matter is addressed soon, and I will take up the challenge: I will go and check with my parliamentary colleagues responsible for policy in this area about bringing on that particular piece of legislation, the Albanese bill. I will go and see when it is our intention to bring that bill on.

Senator Greig, you raised some other issues relating to various areas—I do not have the details in front of me—outside superannuation. There are a number of other issues there, but we are dealing with superannuation legislation. We are not dealing with legislation relating to those other matters today; we can deal only with superannuation legislation. So, for those reasons, our arguments still stand. If the Democrats wish to amend the Albanese-Conroy legislation when it is dealt with in the Senate to ensure that it gives total coverage—if there is a lack of coverage—we will deal with that at the time.

Senator ABETZ (Tasmania—Special Minister of State) (5.13 p.m.)—In relation to the suite of amendments being proposed by the Australian Democrats, I would respect-
fully refer them to the comments I made on a previous occasion when we were discussing this type of legislation. It has now become a tactic of the Australian Democrats—within the rules; they are entitled to do it and they have done so again on this occasion—to put forward a suite of amendments dealing with issues that they think need to be dealt with in the superannuation area generally. To the government, it seems highly inappropriate that those issues be addressed on an itsy-bitsy basis rather than on a whole of government and a whole of community basis. Indeed, on the last occasion, we would have had the ludicrous situation that only parliamentarians who were in a same sex relationship would have got the superannuation benefit, as against the rest of the community. It would have been clearly outrageous to have parliamentarians voting for these extra benefits for themselves. In a bill where we were trying to limit some of the superannuation entitlements of parliamentarians, the Democrats proposed a new entitlement and benefit but only for parliamentarians.

There are Senate committee reviews under way, as I understand it, on at least one of these issues. There are other issues, and when and if these matters are addressed it will be appropriate that the law be dealt with in relation to what most members of the community might or might not be able to expect from those changes. This legislation in fact is quite discrete. It deals with the issue of the surcharge and the giving of options to members, and to now try to impose on that legislation the suite of amendments that the Democrats are moving is not appropriate. As a result, the government will be opposing the suite of amendments.

In relation to Senator Sherry’s question, about 250,000 people are under Commonwealth Public Service type schemes. I think about 200,000 people are under the Commonwealth schemes, but then there would be some extras under the Defence Force schemes. I am not sure of the numbers of those. As I understand the Democrat amendments, they would in fact also apply to the defence forces. I do not have the exact number, but I think Senator Sherry’s guess was about right.

I will not respond to Senator Sherry’s little outburst on the rates of taxation, except to say that I think most people accept that if you earn only $6,000 per annum then you do not pay any income tax, because there is a tax-free threshold. If you start earning above that and up to a figure of, I think, $20,000, then you pay 17 per cent tax, and it slides right up to the highest income bracket of 47 per cent. There has been within the community a general acceptance that, within reason, those that earn more have a capacity to pay a bit more tax, but it was inherent in Senator Sherry’s comments that he believes in a flat tax rate. We will not develop that line any further, but I am sure that nobody in the media was misled by Senator Sherry’s quite exuberant comments and his suggestions as to what I was saying.

The would-be Prime Minister of this nation says with some ‘vigour’ that he does not believe that Australians are taxed too highly. We are of the view that the mix is about right, but we will of course give tax relief when and as we can. We are definitely not in the game of increasing taxation. Senator Sherry, I feel very sorry for your colleague Senator Conroy, who got such a bollocking during the last session from your leader, only to have your leader come on board behind Senator Conroy and support everything he said. To return to the bill, the amendments proposed by the Democrats are opposed by the government.
Senator SHERRY (Tasmania) (5.19 p.m.)—It is important for the minister to respond. Like Senator Allison, I do feel that the government have done a U-turn and that Senator Abetz has announced that they are supporting in principle superannuation for same sex couples.

Senator Abetz interjecting—

Senator SHERRY—That is what you said, Minister. If you did not, get up and deny it.

Senator ALLISON (Victoria) (5.20 p.m.)—It is disappointing that the Special Minister of State, Senator Abetz, is not prepared to tell us what the government has in mind on this question, so we will pursue the amendments. I am also interested in the fact that the minister sees this as a tactic. We see it as a human rights issue. The minister says that it is outrageous that we should in this place be seeking extra benefits—outrageous benefits. These are not benefits; these are entitlements. These are entitlements that I am entitled to and these are entitlements that you, Senator Abetz, no doubt are entitled to but that others in this place are not. These are entitlements that many public servants are entitled to, but some are not. Some are discriminated against so they are not.

We are not talking about extra benefits for some discrete group that is seeking advantage over some other group. We are looking for justice and equity for those people who are entitled to benefits to which they have made contributions. Senator Sherry, we have just about had enough of your remarks along the lines that we simply cannot do this for this small group of people. For public servants in the states that have recognised that this is an entitlement—not some extra benefit—in the event of their death, their spouses are entitled to pensions, whether they are same sex couples or otherwise.

Senator Abetz says that he does not want an itsy-bitsy approach, but that is what we have got right now. The Commonwealth is back in the dark ages, led there by very conservative people who do not believe that all people are entitled to the same sorts of entitlements—not outrageous extra benefits but entitlements. That is what this debate is all about. Labor say, ‘We can’t deal with this when it is just parliamentarians.’ That was two months ago. This month, when we are dealing with these amendments, Labor say they are not appropriate because they deal only with public servants, as opposed to the rest of the general population. Let me tell you that the problem is right here—it is with public servants. Generally speaking, it is not out there in the broader community. Most trustees in most superannuation funds are paying entitlements—paying death benefits—for same sex couples.

We want the law changed so that this is clear. We want it up-front—we want to know what we are dealing with. We do think this is important, and we will keep moving amendments to that effect so that those people who are not public servants receive those entitlements without the situation being clouded in doubt about what the legislative arrangements are. You cannot say in this place that we are suddenly benefiting those people who are public servants over and above the rest of the population, because that is patently untrue. These are the people who are facing the greatest level of discrimination in our society. That problem has been fixed in some states and fixed in the broader community to some degree, but here is where it is worst.

So there is no excuse. It is not itsy-bitsy, it is not about extra benefits and it is not about tactics, Senator Abetz; it is about justice. In this place we should be supporting the Democrat amendments. We fixed up the problems the government complained about and we fixed up the problems the ALP complained about—that it was not for a big enough group of people—so there is no justification for not supporting those amendments.

Senator GREIG (Western Australia) (5.24 p.m.)—I want to take the opportunity to draw on the example of Tasmania, given that we have two Tasmanian senators present in the chamber, representing both the government and the opposition in this debate. The fact is that in Tasmania, at a state level—

Senator Sherry—There are four in the chamber.
Senator GREIG—I was thinking of the cleverer ones, Senator. The fact is that in your home state of Tasmania, at a state level, this reform has already occurred. It is worth making the point that that reform was supported by the Liberal Party in Tasmania, as I understand it. I think there was universal support at a state level for superannuation reform for same sex couples. Tasmania has not yet got to the point where it has extended same sex couple benefits in all areas of the law—I understand that that is being worked towards and has cross-party support, and that is commendable—but certainly there are state based regimes recognising same sex couples. Senator Sherry, I think many people in the lesbian and gay community are asking when the Commonwealth is going to catch up.

Senator Sherry—We are not in government yet.

Senator GREIG—Senator Sherry interjects ‘We are not in government’. Thereby the subtext of his argument is that you must be in government to change laws. We Democrats have got news for you: you do not need to be in government to change laws; you can use the dynamics of the numbers in this parliament to change laws without being in government. But you will not do that. As an illustration, you could have, say, a gay male couple in Tasmania, where one partner worked for the state Public Service and the other for the Commonwealth Public Service. You could then have the ridiculous situation where one partner can leave his death benefit and potential reversionary pension to his partner but not the other way round. I think Senator Sherry said that the APRA statistics show there are some eight million superannuants in Australia, but of that I think Senator Abetz said there was a slice of only 250,000.

Within that context, Senator Sherry is arguing that that is only a small slice of eight million. Okay, it is, but that is a bit of a cute argument. I would argue that the Commonwealth parliament and Commonwealth members of parliament have a particular duty of care for Commonwealth public servants. This is the place to act and this is the time to act. I do not accept the argument that, because Commonwealth public servants make up only a small slice of the Australian community, somehow their rights should be ignored. I am not saying for a moment that that does not mean that other people should not have protection, but the reality is that many of them already have that through state based regimes. I accept that much more can and should be done at a Commonwealth level, and this is one step in that direction, but it is quite literally beyond my comprehension why Labor will not support this, given its rhetoric of support.

Question put:
That the amendments (Senator Allison’s) be agreed to.

The committee divided. [5.31 p.m.]
(The Chairman—Senator S.M. West)

Ayes……………... 10
Noes…………….. 43

Majority……….. 33

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

NOES
Abetz, E. Bishop, T.M. Brandis, G.H. Buckland, G.
Conroy, S.M. Coonan, H.L. * Cooney, B.C.
Crowley, R.A. Crossin, P.M. Evans, C.V. Denman, K.J.
Ferris, J.M. Forshaw, M.G. Gibbs, B. Fergusson, A.B.
Lundy, K.A. Macdonald, J.A.L. Mackay, S.M. Mason, B.J.
McKierman, J.P. McLucas, J.E. Murphy, S.M. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A. Reid, M.E. Schacht, C.C.
Troeth, J.M. Watson, J.O.W. West, S.M.

* denotes teller
Question so resolved in the negative.

Senator ALLISON (Victoria) (5.35 p.m.)—I will not prolong this debate. The arguments were rehearsed the last time we dealt with parliamentary super. There are a couple of remarks that the Special Minister of State, Senator Abetz, made on our amendments that I wanted to respond to. He called on the Democrat senators to hand back the money that they might be entitled to on leaving this place. I just want to point out that would not be such an easy thing to do. The problem with parliamentary super is that we are not able to direct that contributions be made to an accumulation scheme. You would have to tear up the cheque or find some way of depositing the money back into revenue. In fact, what we are on about here is reform which is applicable to all of the people in this place. That is what the community expects. They do not expect a few people to make sacrifices at the edges just to make a point about something. They want to see public funds, their taxpayers’ revenue, dealt with in a responsible manner, and the parliamentary superannuation scheme, even though it is now preserved for those parliamentarians coming in after the next election, could never be said to be so.

Our amendment No. 12 takes its cue from Public Service rates. It would bring entitlements more closely in line with pension schemes for public servants. It does not set up an accumulation scheme, but it does allow for a member to opt out of the current scheme and into one such scheme. It is very difficult for us to actually develop legislation that would set up an accumulation scheme, but it does allow for a member to opt out of the current scheme and into one such scheme. It is very difficult for us to actually develop legislation that would set up an accumulation scheme, so we have not chosen to do that. Instead, we have pulled back entitlements so that, by anybody’s measure, they can be seen as reasonable. That is really what the community is asking us to do.

The amendment has been in this place before and we have had a debate about it. It is clear to me that neither the coalition nor the Labor Party will support this amendment, but we are going to keep putting it up. Senator Abetz might call that a tactic and it is a tactic. It is a tactic that keeps drawing the attention of people in this place, including ministers, government members and opposition members, to the overly generous nature of the parliamentary scheme. It was not enough just to preserve benefits for those who come after the next election. People out there are saying, ‘We want to see parliamentarians get their snouts out of the trough and be subject to the sorts of entitlements that the rest of the community are and not have special arrangements.’ This amendment is all about accountability and reasonableness and about parliamentarians not seeking to have, as Senator Abetz described my last amendments, outrageous benefits that are not enjoyed by anybody else.

Senator Abetz—I did not say that.

Senator ALLISON—They are outrageous benefits which are not enjoyed by anybody else. The Democrats again seek to bring back those entitlements so that they are more in line with community standards. I move:

(12) Page 33 (after line 2), at the end of the Bill, add:

Schedule 5—Amendments relating to parliamentary superannuation

Parliamentary Contributory Superannuation Act 1948

1 Subsection 4(1) (definition of member)

Repeal the definition, substitute:

member means a member of either House who makes contributions to the Trust.

2 Subsection 4(1)

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.

3 Paragraph 4(4A)(aa)

Repeal the paragraph, substitute:

(aa) a member or a non Trust contributor is taken to be employed by the Commonwealth;

4 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.

5 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.

6 At the end of subsection 18(1A)

Add “or (6A), as the case may be”.

7 Paragraph 18(1B)(a)

After “subsection (6)”, insert “or (6A), as the case may be.”.

8 At the end of paragraph 18(1B)(b)

Add “or (6A), as the case may be”.

9 At the end of paragraph 18(2)(a)

Add “or (6A), as the case may be”.

10 Paragraph 18(2)(aa)

After “subsection (6)”, insert “or (6A), as the case may be.”.

11 After subsection 18(2)

Insert:

(2AAAA) A benefit under subsection (1A), (1B), (2), (4) or (9) is not payable to a member unless the member has attained the age of 55 years.

(2AAAB) Subsection (2AAAA) applies to a person who is, or becomes, a member on or after 1 July 2001.

12 At the end of paragraph 18(2AA)(a)

Add “or (6A), as the case may be”.

13 Paragraph 18(2AA)(c)

Omit “50%”, substitute “35%”.

14 Paragraph 18(2AA)(d)

Omit “30%”, substitute “21%”.

15 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:
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<th>Percentage of parliamentary allowance to be paid as retiring allowance</th>
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<td>15</td>
<td>47.25</td>
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<tr>
<td>16 or more</td>
<td>52.50</td>
</tr>
</tbody>
</table>

16 Subsection 18(7)  
After “subsection (6)”, insert “or (6A), as the case may be.”.

17 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.

Amendment not agreed to.  
Bill agreed to.  
Bill reported without amendment; report adopted.  

Third Reading  
Bill (on motion by Senator Abetz) read a third time.

ENVIRONMENTAL LEGISLATION AMENDMENT BILL (No. 2) 2001  
Second Reading  
Debate resumed from 28 June, on motion by Senator Ian Campbell:  
That this bill be now read a second time.  
Senator BARTLETT (Queensland) (5.40 p.m.)—I rise to speak on behalf of the Australian Democrats to the Environmental Legislation Amendment Bill (No. 2) 2001, which predominantly amends the Hazardous Waste (Regulation of Exports and Imports) Act 1989, includes some amendments to the Fuel Quality Standards Act 2000 and has a few very minor amendments to some other acts. The amendment to the hazardous waste act is designed to close a loophole that became apparent in 1997 when the prosecution of an unlawful export of computer waste was scrapped because the exporting company had no presence and no assets in Australia. The Democrats welcome this attempt to close the loophole, although we do have some concerns that it does not close it as comprehensively as would be desirable. We have, therefore, circulated a couple of amendments to address that loophole.

The current bill fails to address several situations which one can easily imagine occurring. The new offence provisions in proposed section 40AA of the bill apply only to corporations that purchase hazardous waste; they do not apply to partnerships, individuals or other legally recognised entities. The Democrat amendment aims to ensure that any purchaser of hazardous waste is subject to this new penalty provision, which is the intent contained in it. The current bill requires that the purchasing corporation have a presence in Australia, either as the principal office or as a registered office. The purpose is to ensure that Australia will have jurisdiction over the purchasing corporation in the event of a prosecution for unlawful export of hazardous waste.

The problem that the provision does not address, in the view of the Democrats, is that a registered office does not mean that the purchasing corporation has any assets which can be recovered in the event of a successful prosecution, and it does not necessarily mean that the purchasing corporation has a director subject to Australian jurisdiction, enabling prosecution under the director liability provisions of section 40B in the current act. The amendments circulated on behalf of the Democrats will ensure that the purchasing entity has a presence in Australia, has assets in Australia and, if it is a corporation, has at least one company officer based in Australia. While the Democrat amendments will further close a loophole that obviously needs closing, we also have a second reading amendment. I move:
At the end of the motion, add:

“and that the Senate calls on the Government to ratify the Basel Ban Amendment to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, an amendment which would prohibit the export of hazardous wastes from OECD countries to non-OECD countries”.

This second reading amendment addresses a broader and more important issue in relation to the trade in hazardous waste. It is critical to understand that most of the environmental problems associated with the trade in hazardous waste would be avoided if the Basel ban amendment were to come into force. The amendment, agreed to in 1995 by parties to the Basel convention, would eliminate the export of hazardous waste from OECD countries to non-OECD countries—countries that have made it clear that they do not want to be the dumping ground for the world’s toxic and hazardous waste. This ban would end what one commentator has called ‘the age of toxic colonialism’.

Ten years ago a memo was leaked from the World Bank. In that memo, Mr Lawrence Summers, one of the directors the World Bank, argued that underdeveloped countries were ‘underpolluted’ and that from an economic perspective it made good sense—in his words ‘impeccable logic’—to dump waste in poor countries. It was not only cheaper for the dumping countries but, the logic said, it was also cheaper for the poorer countries because the value of health, environment and life was so much less. The world quite appropriately greeted that memo with horror—a pretty clear statement that this type of crazy logic was not acceptable from civil and civilised countries. Yet Australia’s ongoing failure to ratify the Basel ban and implement the ban in the hazardous waste act supports that ideology and that logic. Not only have we taken the low moral ground in relation to an Australian position but we have also engaged in some heavy-handed attempts to convince others to oppose the ban or to subvert it by proposing amendments that would effectively kill it.

What makes this position even more appalling is that Australia does not currently even have an export trade in hazardous waste. We cannot even argue that a ban would harm those involved in toxic trade. So, instead of taking an ethical position, we have been taking an ideological one—an extreme free trade logic, if you like. One really has to ask what kind of logic it is that says it is okay to dump hazardous waste in countries that have no expertise to handle, store or process the waste and have no resources to deal with the health or environmental effects of the waste. Australia must be responsible for the hazardous waste we produce, which includes its disposal. If we do not want to deal with it in Australia, perhaps we need to become stronger about insisting on reducing the amount we produce. While the Australian Democrats support closing loopholes such as the one that is the subject of this bill, we have to say that closing loopholes while the doors are still open is not good environment practice.

We will also support the amendments to the Fuel Quality Standards Act. We understand the amendments are intended to ensure that failure of enforcement officials to strictly comply with regulatory requirements, such as labelling of samples, does not become the reason that prosecution cannot proceed. We understand it is intended to strengthen, not weaken, enforcement of the act. We obviously, however, will review the regulations and look at them closely once they are tabled.

I will speak further to my amendment when we get to the committee stage of the debate. In terms of the second reading amendment that I have moved, it is important that the Senate makes a clear statement of belief that the government should enforce our treaty obligations for the control of transboundary movements of toxic wastes and ratify all current amendments to the Basel convention.

Senator BOLKUS (South Australia) (5.47 p.m.)—I rise to speak on the Environmental Legislation Amendment Bill (No. 2) 2001 and also the Australian Democrats amendments to the bill. Can I say at this stage that the opposition will support the legislation and also both of the amendments. I will try to canvass some of the points in respect of the amendments in this particular part of the
process rather than to get back into them later in the committee stage. The purpose of this bill is to amend the Hazardous Waste (Regulation of Exports and Imports) Act 1989, to amend the Fuel Quality Standards Act 2000 and to make minor machinery changes to other portfolio legislation.

Amendments to the hazardous waste act will ensure that Australian companies cannot use a current loophole that allows them to avoid the act's requirement by selling hazardous waste to foreign companies. Amendments will make it an offence to sell such waste to a foreign company unless an export permit is in force. Other amendments to the hazardous waste act will allow ministerial 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. We believe that these amendments to the act are an improvement on the existing legislation in the sense that it bans or stops the export of waste to any overseas corporation that does not have an existing permit and registered office in Australia. However, it does not take into account partnerships or individuals, and there are concerns that the loophole has not been completely closed through this amendment. The Australian Democrat amendment goes some way towards rectifying this problem, and it is for that reason we support that amendment.

Although we do get an improvement in the legislation, we believe the legislation does not go far enough. Many of the most significant environmental implications of hazardous waste trade would be avoided if Australia ratified the Basel ban amendment, decision III/I of the Basel convention, which prohibits the export of hazardous waste from OECD countries to non-OECD countries. The government has failed consistently to ratify this treaty. This is another one of those international agreements where Australia is dragging the chain and where Australia needs to act. There is virtually no trade in hazardous waste to non-OECD countries from Australia. Therefore, there is no reason not to progress the amendment decision through Australia’s treaty making processes.

For that reason, we will support the Australian Democrat second reading amendment, which does urge Australia to ratify the Basel convention.

I note here that, in 1992 on winning government, we signed the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal. Our commitment to this international instrument extends to more recent developments. Our platform for the 1998 election stated: Labor in government will:

- ratify and enforce our treaty obligations banning the export and transboundary movements of toxic waste and will ratify all current amendments to the Convention including the Basel Ban.

This amendment has been open for ratification since late 1996. Currently 25 countries have ratified it, and there is no reason why Australia cannot do the same.

This bill also makes further amendments to the Fuel Quality Standards Act. Overall, Labor supports the act and considers it a positive step towards greater protection of the environment and of human health. Indeed, we supported the passage of the act with significant amendments some time ago. But we are still waiting for the government to introduce standards that deliver the full potential of the legislation. In 1997 a government study estimated the cost of deaths associated with fine particles, one of the many air pollutants to which most Australians are subjected to daily, to be at least $3.7 billion a year. This is indeed a serious health issue. It is an issue of concern to many Australians. Public opinion surveys consistently show that air pollution is the No. 1 environmental issue of concern to urban Australians.

The amendments to the Fuel Quality Standards Act that are before us today are primarily concerned with the analysis of fuel samples and evidentiary matters in relation to such samples. The amendments propose a number of technical proposals that go to certificates and what is admissible as prima facie evidence. These amendments protect the rights of defendants to have reasonable notice but they do tighten the legislation. We support them for that reason. As I said, La-
bor supports the bill. It is an improvement on the status quo. However, we also support the Australian Democrats as an indication of our support for more force to be given to the legislation. It is one of those pieces of legislation that in government we will have to revisit to ensure that the Basel convention is not only ratified but also implemented in its full sense.

Senator HILL (South Australia—Minister for the Environment and Heritage) (5.52 p.m.)—I thank honourable senators who have participated in the debate. The only issue at this stage is Senator Bartlett’s proposed second reading amendment in relation to the Basel ban amendment. I recall that I have answered questions on this before in the Senate, but not for a long time. I will very briefly reiterate the Australian government position on the ban amendment, which I think was the position we inherited from the previous government. In any event, as honourable senators will know, we have expressed reservations about the Basel ban amendment which would ban all exports of hazardous waste from parties listed in annex VII to all countries not so listed. We were among those countries who said at COP5 that the criteria used to assign state parties to annex VII should be based on the extent to which parties had the necessary technological expertise to ensure environmentally sound management. The parties had already decided in February 1998 in decision IV/8 to explore issues relating to annex VII through a detailed and documented analysis. I gather that is taking place but that progress has been slow and difficult, and a consultant was not engaged until August of last year to undertake a major part of it. So what is occurring is that the parties are continuing this exploration of the issues attached to assigning state parties.

On that basis, it is still the Australian position that we will not consider ratification of the Basel ban amendment until analysis of issues relating to annex VII has been completed to our satisfaction. However, in an Australian context, it is worth reminding the Senate that Australia already has strict legislation which prohibits exports of hazardous waste to countries which do not consent to their input or in circumstances where the environment minister is not satisfied that the waste will be managed in an environmentally sound manner. I am suggesting that, in relation to any export from Australia, if the concern is the incapacity of a developing country to properly manage such waste, it should not be an issue because the Australian government, through its minister, has a specific obligation to consider the capability of the recipient country. In relation to the ratification of the amendment itself, we are one of a number of countries that are still exploring all issues through a process that has been agreed and is currently being implemented.

Amendment agreed to.

Original question, as amended, resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator BARTLETT (Queensland) (5.57 p.m.)—by leave—I move amendments Nos 1 and 2 together:

(1) Schedule 1, item 10, page 5 (line 23), after “office,” insert “and at least one executive officer.”

(2) Schedule 1, item 10, page 6 (after line 2), at the end of section 40AA, add:

(a) the person sells hazardous waste to another person; and

(b) the person sells hazardous waste knowing, or being reckless as to whether the waste is to be exported; and

(c) an export permit authorising the export of the waste is not in force when the sale occurs.

Penalty:

(a) if the offender is an individual—imprisonment for a term not exceeding 2 years; or

(b) if the offender is a body corporate—a fine not exceeding 2,500 penalty units.

I spoke to these amendments in my second reading contribution, but I will briefly go over them again. These amendments are basically to address a concern of the Democrats
that the loophole closing contained in the bill still contains a few loopholes of its own. The relevant item in the bill introduces a new offence. If a person sells hazardous waste to a body corporate incorporated outside Australia and that body corporate does not have a registered office or a principal office in Australia and the person sells the waste knowing that the waste is to be exported by that body and an export permit authorising the export is not enforced when the sale occurs, then that is a new offence contained in the act. It provides the Commonwealth with the opportunity or the ability to take recourse against an Australian seller of waste.

The Democrats are concerned that this new offence would not cover a person selling waste to an individual. It also does not address the situation where, whilst a corporation may have a registered office, it may not have any assets which can be recovered in the event of a successful prosecution. So it could just be a cardboard corporation that does not have any assets behind it and is set up as a way of avoiding this provision by not having any assets which could be recovered in the event of a successful prosecution. It does not mean that the purchasing corporation would have a director subject to Australian jurisdiction which would enable prosecution under the director liability provisions in the current act.

We believe that the amendments that have been moved will tighten that somewhat by also including a provision that a person will be guilty of an offence if they sell hazardous waste to another person and a provision to ensure that if a body corporate does not have a registered office or a principal office and at least one executive officer in Australia there is at least an Australian person that can be followed up in the event of an inappropriate sale. We believe these amendments would strengthen the intent of that item in the bill and improve the prospects for ensuring that people do not avoid the intent of the overall legislation, which clearly is the main intent behind this bill.

Senator BROWN (Tasmania) (6.00 p.m.)—I take the opportunity to ask the minister what are the circumstances in which a country ought to be able to produce a hazardous waste knowing that it has to be processed in another country and what is the problem with the second reading amendment that the Senate just passed as far as the government is concerned. He did not quite explain that in the second reading debate.

Senator HILL (South Australia—Minister for the Environment and Heritage) (6.01 p.m.)—We believe that there is an argument that you should not accept all developing countries as a group—that the real issue is whether the country has the capacity to properly manage the waste. Therefore we say that there are two criteria that should be important: firstly, that the purchase is made by the recipient country with full knowledge, and, secondly, that the country has the capacity to deal with it. The ban amendment, as I understand it, would mean that all countries within that particular category would have no capacity to be the purchaser. We think that treating them as a bloc in that way is a touch offensive, to be frank about it.

Senator BROWN (Tasmania) (6.02 p.m.)—I might point out to the minister that the point is that his preferred option is to leave it to the judgment of the minister for the environment—at least as far as Australia is concerned—as to whether those facilities in a poor country are good enough. You can get to a situation which the minister is very aware of: Japan quite recently has been buying off prime ministers and ministers for the environment in Caribbean countries to allow it to harpoon and kill whales. The problem is that it is not just the ethicality of a decision by rich world ministers that we should be dependent upon, because it becomes corrupted by money. If ever there was evidence of that, it is the case of whaling with the Japanese. The minister is very well aware of the problem there.

I will take the opportunity of asking the minister if he is convinced that there is no waste disposal problem with the proposed Argentinean model Lucas Heights reactor. Can he tell the chamber what will happen in the event that reprocessing of hazardous waste becomes not possible with other countries, like Japan, and Argentina has to be the intermediary. Is the minister able to reassure the parliament that there will not be a
problem in dealing with radioactive hazardous waste from this Argentinean reactor if it is built in Australia, when quite clearly Australia does not have the means of handling it?

Senator HILL (South Australia—Minister for the Environment and Heritage) (6.04 p.m.)—It is now a few years ago, but, as I recall, the conditions that I attached to approval for the Lucas Heights project required there to be satisfactory processes for managing waste from the reactor. That has to be put in place. I think there are still some outstanding issues in that regard, particularly in relation to a final repository. As I recall it, those matters were adequately covered—they were certainly covered to my satisfaction—in the conditions that were attached to my recommendation for approval.

Senator BROWN (Tasmania) (6.05 p.m.)—Can the minister say what the state of play is as far as the repository matter is concerned. Where is it going to be and who is going to handle it? Short of that, can the minister say what is going to happen with the reprocessing of waste from the proposed reactor? Where is it going to go to, who is going to reprocess it and how is it going to get back here?

Senator HILL (South Australia—Minister for the Environment and Heritage) (6.05 p.m.)—I would need to take advice on what is the current expectation in relation to waste under the new reactor. As I understand it, waste from the existing reactor is being reprocessed in Europe, and waste from that reprocessing exercise will ultimately be returned to Australia in, I think, another 20-odd years time. Between now and then, Australia has to settle on a long-term suitable repository for such material.

Senator BROWN (Tasmania) (6.06 p.m.)—I thank Senator Hill for taking further advice on that and I look forward to the response. I ask whether the matter of reprocessing has been dealt with as far as an Argentinean built facility in Australia is concerned and whether there are any arrangements at all for transfer for reprocessing—or deposit, potentially—of the waste from the proposed reactor in Argentina.

Senator HILL (South Australia—Minister for the Environment and Heritage) (6.07 p.m.)—Without taking further advice I do not think that I can responsibly add to what I have just said. There is the issue of dealing with the waste, and whether or not it is an Argentinean reactor does not seem to me to be a particularly pertinent point. As I have said, long-term arrangements have to be put in place for waste from the current reactor and its replacement.

Amendments agreed to.
Bill, as amended, agreed to.
Bill reported with amendment; report adopted.

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

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2000
Second Reading
Debate resumed from 3 October 2000, on motion by Senator Patterson:
That this bill be now read a second time.
(Quorum formed)

Senator JACINTA COLLINS (Victoria) (6.11 p.m.)—The Senate has addressed issues to do with the Workplace Relations Amendment (Termination of Employment) Bill 2000 many times and in many different forms. I thought that on this occasion it would be useful to reflect on precisely what we are dealing with, and to take a moment to pause in this debate and consider the lives of the people that we are considering in legislation of this type. Work is a fundamentally important part of life. After our primary relationships, be they with our parents, our partners or our children, there is no more important relationship in our lives than the relationship with our workplace. A job provides us with an income, of course, and that is crucial to our wellbeing. But a job does much more than that. ‘What do you do?’ must be the most common question answered in any conversation. ‘I am a politician’, ‘I am a union official’, ‘I am a social worker’—our whole sense of identity and self-respect, our sense of fundamental worth
and the way we define our role in the world are most often derived through our work.

When this is taken away from us and we are told that our services are no longer required, we can lose all of these things, both material and intangible, that work provides. It has either happened to you or it has happened to somebody you know, and the results can be devastating. Economic insecurity, personal instability and a loss of self-esteem are often the result. It is hard to feel good about yourself when you do not know how you are going to feed your kids. Given this, it would be simply cruel to allow the power to dismiss a worker to be unfettered, to allow it to be exercised by a whim of the employer rather than for good reason. No civilised society should allow that, and most civilised societies do not. But this government, in all its wisdom, thinks that an unfettered approach is okay. They may claim that is not the case, but that is exactly the effect of proposals such as the exemption for small business and some other elements in this bill that I will come to later.

In all important aspects, this bill is about taking away the rights of workers to contest dismissals when they are unfair and unjust and about giving unfettered discretion to an employer to dismiss. This legislation is about stacking the decks in favour of employers who do the wrong thing—and it is about making it tougher for an unfairly dismissed employee to pursue a remedy, by putting up blocks in the path to justice.

In reflecting on the justification for this legislation, the first issue is to see whether there is any need for it, as it is in analysing any legislation. Surprisingly, the industrial relations legislation put forth by this government often fails this most basic test, because often an ideological cause rather than a fact is being dealt with. That again is the case here.

These issues have been covered many times in many other debates on the termination of employment or unfair dismissals. Yet again, the purported justification for this legislation has been trotted out as being that it will create more jobs. This myth has been trotted out pretty much every time that the minister has uttered a word on the subject of unfair dismissals. I will not bother quoting examples on this occasion, because I think this issue has been done to death. It travels down from the Prime Minister to Minister Reith and also even to other government senators in committee hearings, and yet, in all these years, the government has not come up with one skerrick of evidence to support such an assertion.

The only factual basis we have to challenge that is the case of Queensland, where legislation was introduced and then removed, with no impact on jobs. All the government does is throw around a figure of 50,000 new jobs. ‘On what basis?’ we ask: it was a figure plucked out of the air by Mr Rob Bastian, the head of the Council of Small Business Organisations of Australia, COSBOA. Mr Bastian admitted, under questioning from Senator Murray during a Senate hearing, that he had no scientific basis for the figure; rather, it was his extrapolation, calculated from unsolicited off-the-cuff comments by business-people contacting COSBOA telemarketers. As it happens, there is some evidence that completely refutes Mr Bastian’s assessment. We have many times revisited the Australian workplace industrial relations survey conducted in 1995. Unfortunately, for something more recent, we are still waiting for a commitment from this government to again conduct comprehensive workplace research.

Unlike Mr Bastian’s guess, the AWIR surveys are the product of proper statistical methods and a large sample—much larger than one person. We have referred to these statistics on many occasions, and I will not revisit them again now. The most relevant piece of the AWIR 1995 survey, which, strangely enough, was unpublished by the government—although it was reported in an ACCIRT reference—was a survey into reasons for not recruiting employees during the previous 12 months. In that survey, only 0.9 per cent of respondents nominated that they had not recruited employees due to unfair dismissal legislation.

Senator Murray has also referred to this material on a number of occasions. In the conclusion to the last report on this matter, he concluded that many of small business
employee relationship problems continue to be those related to owner manager skills, to training and to experience in managing people, rather than those related to the legislation covering termination of employment.

The coalition have been relying on Mr Bastian’s guessing abilities ever since he first uttered his unfortunate comment, which I think he regrets. They have even managed to embarrass him in the process, so much so that a few months back, at the end of the last session when we were originally expecting to be dealing with this bill, he completely distanced himself from the government’s use of this guess.

**Senator Vanstone**—Do you mean your copious notes are not up to date?

**Senator Jacinta Collins**—I am sure that the senator is familiar with the tradition for second reading speeches. The *Australian Financial Review* reported the following:

At one point, Mr Bastian concedes he was on the nose with Labor. But he says this was a result of remarks he made about the number of jobs that would be created if unfair dismissal laws were introduced. He claimed the comments were taken out of context by the then Workplace Relations Minister, Mr Peter Reith.

So right back to the source: he is being quoted out of context. There you have it: the argument most relied on by the government in support of its claims for bills relating to termination of employment is, in fact, the result of poor Mr Bastian being verballed by Mr Reith.

The great irony of all these theoretical arguments and survey results is that we do not even need to rely on them to consider the merit of this bill. As I mentioned, when the coalition government in Queensland did introduce an exemption similar to the one sought here for small business—or slightly different ones to those contained in this bill but still picking up the theme of what is sought by this government for small business—it had no impact on employment rates at all. Yet this bill is still premised on the basis that it will create employment.

These proposals, which seek to benefit small business at the expense of workers’ rights, are unfair and are part of the government’s crusade in support of its view that small business cannot be expected to meet reasonable standards of fairness towards employees. Going back to Senator Murray’s point, their management standards, skills and training are often the important factors here, not their need to be exempted from applying fair standards.

On the one valid empirical analysis of the causes why employers are not employing, a minuscule proportion of employers would point to unfair dismissal provisions. Essentially, that is the lack of justification for this bill. Now let us turn to the proposed cure for the non-existent illness. As I said earlier, the provisions of this bill fall into two broad categories, those that take away the right to pursue an unfair dismissal and those that make the pursuit of that right more difficult.

As for those you could categorise as taking away rights, this bill contains a number of provisions that reduce the number of eligible employees who can claim for unfair dismissal. Going back to the small business area, this government’s particular obsession, there is a provision that, in determining whether a dismissal is unfair, the commission should give regard to the size of the employer’s workplace. This is a different way of achieving an exemption for small business from unfair dismissal provisions. Minister Reith has been tilting at his windmill for years with no success.

This provision implies that small businesses cannot be expected to carry out fair procedures in the termination of employment. The problem with such a provision is twofold. Firstly, it completely ignores the fundamental principle that laws should be applied equally to all. We do not excuse small businesses from having to collect the GST, for instance, and to fill out the business activity statement; they are not excused from paying Workcare or Workcover. So there is no rational justification for excusing them from the need to act fairly in dismissing employees. All this indicates is the attitude of this government to sacking employees: it is not important enough as an area for justice to be applied equally. The second point follows from the first. If you do not check unfair dismissals in this area, it will be abused.
Again, in the words of the then minister back in 1996:

Let us face it: from time to time some employers will do the wrong thing. They will get no truck from us. There ought to be in place a system to properly safeguard the interests of employees. Otherwise, they can wait four years, by which time doing the wrong thing will be made a badge of honour by the government. It is not the interests of all employees that they are concerned about:

We are prepared to make exemptions if you happen to work for a small business.

Another amendment in the bill in this first category seeks to provide that a determination on the grounds of operational requirements is taken not to be harsh, unjust or unreasonable. This would exclude all employees terminated allegedly for redundancy whether or not the circumstances were fair to that employee. A redundancy typically involves two decisions: first, that the retrenchments will be made and, second, which employees will have their employment terminated. If the second decision is made on the grounds that are unfair, an employee should have a right to a remedy. Again, this is an invitation for exploitation.

The following are examples of provisions in the bill which curtail workers’ rights, the second category. With respect to independent contractors, proposed new subsection 170CD(1A) has the effect of excluding independent contractors from a remedy if they are unfairly terminated. There is monumental hypocrisy in the government’s position on this issue: they are happy to treat independent contractors as employees for taxation purposes but they are not so keen to provide them with any of the benefits of being an employee, like protection from harsh, unjust or unfair dismissal. In another area, the demotion of employees, proposed new subsection 170CD(1B) excludes employees who are unfairly demoted from claiming a remedy even though the demotion also involved a wage decrease, albeit not a significant decrease, and in effect amounted to a termination of employment.

In the next area, applications out of time, proposed new subsection 170CE(8A) narrows the criteria to be considered by the commission in deciding an application for extension of time for lodging an unfair dismissal application. This has the effect of changing the current test for accepting applications lodged out of time ‘from requiring the commission to assess whether it would be unfair not to do so’ to ‘it would be equitable to accept the application’. This in effect reverses the current burden of proof and flies in the face of hundreds of years of common law principles.

Another area is conciliation certificates. In the words of the Department of Employment, Workplace Relations and Small Business, this bill attempts to discourage the pursuit of unmeritorious claims ‘which are designed to put pressure on the other party’. The principal way they seek to achieve this in this bill is by discouraging an employee from proceeding with an application if, at the conciliation stage, the commission thinks they might not have a reasonable chance of success. This sounds, on the face of it, fair and reasonable but only if you have no idea of what unfair dismissal conciliation is and does.

Conciliation is not a fact finding exercise: the evidence is not presented, it is not weighed. The two parties or their representatives sit at a table with the commissioner and each tells their side of the story. Some commissioners ask questions; some do not. Some commissioners actively try to settle the dispute; others leave it up to the parties. What is consistent is this: no common law country would allow someone’s legal rights to be determined by the unsworn evidence and untested witnesses that this process relies on. It is a good way to get the ball rolling for a settlement, but that is about it. The employer representatives who appeared before the Senate inquiry into this bill were divided on the merits of this proposal. The best argument against it actually came from the Australian Industry Group, who pointed out that these proposals were more likely to frustrate the process than to assist it, and the reason why is simple:

If you raise the importance of the conciliation process, if you raise the stakes, the parties will have to put a similar amount of time, effort and energy into that that they put into the trial.
I think the ACTU put it best in their evidence to the committee where they said:

These provisions will have the effect of transforming initial conciliation proceedings into minihearings, rather than genuine opportunities for the parties to reach agreement and avoid litigation. With the right to arbitrate at stake, applicants will have no choice other than to put their evidence before the commission and insist that the proceedings be conducted in a judicial manner. This provision will have the perverse effect of completely destroying the very benefits that a conciliation process provides.

Another area is contingency fees. One of the more bizarre proposals in this bill is that representatives acting on behalf of the applicant, the worker, must disclose if they are acting pursuant to a contingency fee arrangement. This is bizarre for two reasons. Firstly, there is no other jurisdiction in this country that requires such a criterion—not one other. This is a Minister Reith experiment. Secondly, it has no apparent purpose and certainly no justifiable purpose. The only possible effect it will have is to prejudice the consideration of a case if the commissioner is the one who might be disposed against contingency fees.

**Sitting suspended from 6.30 p.m. to 7.30 p.m.**

**Senator JACINTA COLLINS**—When we broke for dinner, I was dealing with contingency fees and making the point that there is no other jurisdiction in the country that has such a requirement and that I do not really think that this is the area to start such an experiment. In many respects, the effect could be quite prejudicial on cases. There will be a few questions when we get to the committee stage about how such situations, as proposed in the Democrats’ amendments, might be avoided. It is also interesting to note that the government’s bill does not have a similar provision for the defendant, although I understand that the Democrats are seeking to rectify that.

The other main area I want to cover is that advisers are not to encourage applicants to make or pursue certain applications. That provision would impose a fine on a lawyer, agent or union official if they encourage an employee to make or pursue an unfair termination application if, on the facts that have been disclosed or that ought reasonably to be have been apparent to the adviser, the adviser should have been or should have become aware that there was no reasonable prospect of success in respect of that application. If this proposal were to pass the Senate, it would create the remarkable situation where an applicant could be ordered to pay the costs of the defendant and, on top of that, their adviser to pay a court imposed penalty. There is no good reason for this. The only justification provided by the government—that it will discourage speculative and unmeritorious claims—is barren justification. There already is a provision in the act that punishes an applicant and, if they are subject to bad advice, they can take action through law societies or at common law. Again, with respect to termination of employment law, I think this is not an area that we should be applying such experiments. I seek leave to incorporate the remainder of my remarks. (Time expired)

Leave granted.

The speech read as follows—

Other amendments will prevent the Commission and the Federal Court from including in any damages amount, a component by way of compensation for shock, distress, humiliation, or other analogous hurt, caused by the manner in which the employee’s employment was terminated; confer express power on the Commission to dismiss an application in respect of a termination of employment if the applicant fails to attend a proceeding; confer power on the Commission to require an applicant to lodge an amount as security for any costs that might be awarded against him or her.

It is difficult to see how the proposed amendments creates “… a system to properly safeguard the interests of employees” as alleged by Reith when he was in Opposition. *(Hansard, MPI 31/5/95)*

**International Obligations**

Australia is a signatory to the International Labour Organisation’s Convention concerning the Termination of Employment at the Initiative of the Employer.

This forms Schedule 10 to the Workplace Relations Act 1996.

Article 7 of the Convention requires an employee to be provided with an “opportunity to defend
himself (sic) against the allegations made” in relation to “conduct” or “performance”.

There is no exception in the Convention to exclude an employee the opportunity to defend themselves for operational reasons, unless in exceptional circumstances, as proposed by this Bill. The proposed amendment in the Bill is contrary to Australia’s international treaty obligations.

Conclusion
During the course of the Senate Inquiry into the ‘More Jobs, Better Pay’ Bill, Labor rejected the provisions of the Bill relating to unfair dismissal on the basis that:

“Labor senators agree with these criticisms by practitioner and community organisations of the ways in which the proposed amendments act to limit and obstruct access to fair and affordable remedies against unfair and unlawful dismissal. Taken together, these proposals would:
cut off claimants from sources of financial and legal support,
force them to represent and defend their own interests,
make the system more complicated,
make settlement more legalistic, and
tilt the balance of influence in unfair dismissal cases squarely and thoroughly on the side of the employer. For these reasons, Labor senators oppose the amendments.”

I oppose these amendments for those reasons then, and I oppose them for the same reasons now.

And a final note to the Government: even COSBOA is moving on from this outdated and pig-headed approach—one of Mr Bastian’s contributions before a Senate inquiry on these matters was to say this to all of us: “try to redefine the debate”, in other words, move on.

This Government would do well to listen, instead of trotting out the same old proposals time and again.

Senator MURRAY (Western Australia)
(7.32 p.m.)—I rise to address the Workplace Relations Amendment (Termination of Employment) Bill 2000, which I think is one of either 13 or 14 workplace relations bills racked up in the ether, waiting to be dealt with in this place. Prior to 1993, state tribunals dealt with unfair dismissals, with workers having to show that the dismissal was harsh, unfair or unjust in order to obtain relief. There were few, if any, calls for the abolition of these essential rights of workers.

In 1993, Victoria’s Kennett coalition government moved to significantly lessen access and relief for unfair dismissal. In response, the federal Labor government moved to override the Kennett legislation using the external affairs power. To access the external affairs power, the federal Labor government needed to stick very closely to the terms of ILO Convention No. 158, which holds that an employer must have ‘a valid reason’ for dismissing an employee. This introduced a large number of procedural requirements and a more complex jurisdiction than the old state laws. Employers strongly opposed the provisions because of the change in onus. An unintended effect of the employers’ high profile campaign was to massively raise worker awareness about their rights to challenge unfair dismissal, with a consequent higher increase in applications for reinstatement.

During the 1996 election, the coalition promised to replace Labor’s laws with ‘a fair go all round’ for employers and employees. While little detail was provided at that stage, it was clear that all workers would have access to the regime and that the test for unfair dismissal would be closer to the pre-1993 rules. The Democrats, prior to the election and since, supported the coalition’s policy direction. During the election campaign, the Council of Small Business Organisations of Australia, COSBOA, asked the coalition, the Democrats and the ALP to support an exemption for small business. It is worth remembering that all three parties—the coalition, the Democrats and the ALP—refused to support an exemption for small business in 1996 on the basis that it would breach the fair go all round approach. The Workplace Relations Act subsequently passed through the Senate in 1996 with the Democrats’ support, implementing the fair go all round approach. The Workplace Relations Act relied mostly on the corporations power, rather than the external affairs power relied on by Labor under the 1993 legislation, and that allowed the act to avoid the procedural difficulties of the ILO convention.

It is worth reminding ourselves what the key changes were on unfair dismissals by the Workplace Relations Act 1996. They were:
firstly, a change in the onus of proof; secondly, hearings to be in the commission; thirdly, costs may be awarded against employees; fourthly, an application fee to apply; fifthly, viability of an employer was to be taken into account in damages; sixthly, procedural fairness not to be a mandatory requirement; seventhly, probationary employees were excluded; eighthly, for casual employees the exemption was extended; ninthly, specified term contracts exemptions were excluded; and, tenthly, state systems were reinstated. It is a fact that two-thirds of all unfair dismissal applications are under state law and only one-third of all unfair dismissal applications concern small business.

To give you an idea of the effect of the changes of the Workplace Relations Act 1996 on federal unfair dismissal cases, the total for Australia in 1996 was 15,083—a big escalation on 1995, which was 10,736. So it really was accelerating at a very rapid rate. That is the important point to remember: that trend was reversed. For the year 2000, the total number of unfair dismissal cases in Australia dropped from 15,083 to 7,680. In the ACT—which was, both before and after, under federal legislation—the drop was more modest but, nevertheless, was very clear. It dropped from 536 in 1996 to 236 in the year 2000. Another jurisdiction which was federal both before and after the change was the Northern Territory, where it dropped from 407 in 1996 to 307 in the year 2000.

One of those jurisdictions, though, which remained very high was Victoria, which was 6,169 in 1996 and in the year 2000 was 4,606. In my own state of Western Australia, the drop was dramatic: in 1996 it was 1,849 and in the year 2000 it was 401. So, even in a state where Richard Court’s coalition ruled, the almost automatic direction that businesses went for unfair dismissal applications was state not federal, and that is because of the nature of the legislation and of business itself. I have found, throughout an analysis of this area over a number of years, that small businesses in particular, but businesses generally, are universally ignorant as to whether they fall under state or federal legislation—with regard to this area, anyway—which is to be expected. The issue of unfair dismissals be expected. The issue of unfair dismissals is another sound reason for one of two remedies: either to get rid of the states altogether—no bites from the senators here on that one—or, secondly, to introduce just one industrial relations law or workplace relations law for the entire country.

However, the coalition discovered that this was an awfully popular drum to beat and introduced a number of bills and regulations over time to deal with this issue. One of those was the Workplace Relations Amendment (Unfair Dismissals) Bill 1998, which attempted to attack this area as well. In the exploration of those issues, something became very clear to me which probably should have been clearer before—that is, businesses regard it as an essential right of theirs to hire and fire at will. For many businesses, if there was one unfair dismissal application, that is one too many. That basic philosophical difference between the political parties which prevail in the Senate and most businesses and business organisations has to be clearly acknowledged. There is an underlying desire by businesses for power over employees. Against that, we need to reinforce the rule of law, natural justice and human rights in employment relationships. Whenever it gets a bit testy and vested interests loom large in this place or people exaggerate the issues, we need to come back to the objective role that we have as legislators, and that is to ensure that those essential issues of the rule of law, of natural justice and of human rights in employment legislation are protected by legislators. We remain strongly of the opinion that the historical record and the current practice of employee termination by numbers of businesses are such that it remains necessary to provide an accessible and workable remedy quicker and cheaper than the courts to redress unacceptable dismissal behaviour.

That does not mean to say that we do not recognise that there are problems in terms of process, time or cost or in terms of fairness. In a letter to Senator Jeannie Ferris from the Australian Small Business Association which was tabled in the Senate at that time in 1998, Mr Siekmann said that fairness in the legislation is not the principal problem; the...
fairness of the legal system is. In other words, it is how the law is dealt with that needs a bit of tweaking and adjustment. It is for that reason that the Democrats are keen to view this legislation in a positive light, although in many respects we intend to gut it and divert its direction in a number of areas.

We think that the nature of unfair dismissal legislation should not be affected unduly by exaggerated claims about its job creating or job inhibiting characteristics. Senator Collins, in her second reading remarks, covered this area to some extent. If there is anything which has really damaged this area of assessment, it is this area of exaggerating either the detrimental or the positive effects of particular policies proposed.

Again referring to the review in 1998: in submission No. 12 from the Shop Distributive and Allied Employees Association, the witness concerned put the problem that the Senate must always address in this area in a nutshell. He said:

It is too great a risk to forgo actual existing rights (which have a moral underpinning to them) based on a highly hypothetical premise that there might be an economic benefit.

We always have to remember in this place that what Senator Lees just referred to as the ‘three legs of policy’ need to be attended to—that is, the three legs which comprise economic, environmental and social concerns. Human rights and issues of fairness have a value in themselves over and above their economic consequences.

The Workplace Relations Amendment (Termination of Employment) Bill 2000 was introduced 14 months ago, in June 2000. It contains slightly reworked provisions from one schedule of the 18 in the omnibus third wave More Jobs Better Pay 1999 bill we rejected outright. I refer to it as the third wave because the Industrial Relations Reform Act 1993 was the first wave, the Workplace Relations Act 1996 the second wave and the More Jobs Better Pay bill the third wave. This bill aims to streamline unfair dismissal procedures, to reduce costs and to prevent lawyers in particular unfairly prolonging proceedings. As an aside, although he writes in a somewhat idiosyncratic manner at times, whenever I think about lawyers who do things unfairly I think of Evan Whitton’s writings and the sins of lawyers to which he likes to point. Of course, not all lawyers are sinful and not all lawyers are unfair. I know many who are great pillars of both justice and of our community. But where it occurs we need to address process issues.

In my extensive February 1999 minority report to the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 I took the opportunity to highlight some legitimate concerns we had in relation to process, time and cost of unfair dismissals and the need for the Workplace Relations Act 1996 to be amended. Minister Peter Reith drew on those concerns and included them in his More Jobs Better Pay bill, but in my view he twisted them to a much more substantial watering down of access to arbitration of unfair dismissal claims than I ever intended.

Simply put, we take the view that there is a problem with the unfair dismissal system in that too many employers are effectively forced to pay hush money during the conciliation phase in respect of unmeritorious cases. Part of that is driven by contingency fee based lawyers, and there are technical and process areas that are abused. We also take the view that numbers of employees are oppressed by the same types of legal tactics. An employee in the lower order of wage earners who does not have much financial capital or reserves and who desperately needs to get on with another job cannot easily withstand even a couple of months of legalised dillydallying provoked by the employer and by his or her advisers. So on both sides of the coin employers can be disadvantaged and employees can be oppressed.

For a number of years we have consistently been on the record as saying that, while we will never give way on the right to unfair dismissal protection, we will support sensible and fair improvements to process, time and cost issues. I have personally been subject to a great deal of attack simply because we will not give way on this issue of rights. We will not and, for as long as I am in the Senate, I will not. It just will not happen.
1998 proposals, but we still feel it needs considerable amendment. We still cannot support some provisions in their current form, because they effectively reduce needed protection or they reduce the field that is covered. The Democrats have put amendments, and circulated them in the Senate for the Senate’s consideration in which we oppose 14 items and amend 18 others. Of the remaining items, most are in the applications and savings provisions. We have redirected quite wrongly the substantial provisions.

As is usual with workplace relations matters, there is strong small business and business support for the bill in its unamended form, and there is strong employee organisation or union opposition to many of its provisions. We feel, however, that the route that we are suggesting we take, of adjusting the bill considerably, will produce a modest and moderate outcome which should improve the workability of the bill without eroding rights or entitlements and without allowing the continuation of practices which were frankly unfair to both employees and employers in matters of process. That is all I have to say to you at this juncture. I look forward to the continuing debate.

Senator HUTCHINS (New South Wales) (7.50 p.m.)—It is my pleasure to follow Senator Murray. Although I might not agree with some of the things he has said, he has always acted in a very principled way in relation to the rights of employees and independent contractors in unfair dismissal and termination of employment matters. As you may recall, Mr Acting Deputy President, some months ago we discussed what appears to be a similar bill to the Workplace Relations Amendment (Termination of Employment) Bill 2000. That bill, the unfair dismissal bill, was put before the parliament and subsequently rejected.

The Workplace Relations Amendment (Termination of Employment) Bill 2000 deals with the rights of employees and the rights of independent contractors. It appears that many of the coalition senators who spoke to the unfair dismissal bill—and I assume it will be the same with this termination of employment bill—have never dealt with men or women who believe that they have been unfairly or unjustly dismissed. This legislation proposes to take away significant chunks of the current legislation that allows men and women who believe they have been unfairly or unjustly dismissed to go before an independent tribunal and to argue the case that they should be either reinstated or compensated for that termination.

I make no bones about the fact that I was a full-time official of the Transport Workers Union of Australia for 18 years before I entered the Senate. I am not ashamed about it. In those years I dealt with a number of unfair dismissals or claims by people who felt that they had been unfairly and unjustly dismissed by their employer. On a number of occasions when grievances were brought before me by members who felt that they had been unfairly or unjustly dismissed, as a practising union official I felt that I might have in fact acted in the same way if I had been their employer.

There were many instances over a number of years where I was involved in representing the workplace. On many occasions there would be industrial action in support of someone being reinstated and subsequently there would be hearings before the New South Wales industrial jurisdiction. I remember many of those men who were subsequently reinstated, either through the action of their peers and the support of their workplace or by the intervention and adjudication of the New South Wales industrial commission.

I remember the first case I was involved in concerned a chap who drove for Pioneer at the Walgrove depot in Western Sydney. He had made a mistake with his vehicle—there was no-one injured but there was some damage. He had been with Pioneer for some 16 years and they terminated him on the spot. After the case went before the commission, he was reinstated. He rang me about five years ago when he retired from Pioneer. He worked for them for another 15 years and they were happy with his contribution as an employee. They were very pleased with his attitude as a worker and they kept him on. He got the gold watch and chain—or whatever you get when you work for a significant public company like Pioneer.
So the ability to go before an independent tribunal and argue a case for reinstatement is not necessarily the end of the world for employers or employees. In fact, as I myself have seen over many years when I have been involved in those circumstances, more often than not people that have been reinstated serve out the rest of their working career with the company that sacked them and, as I said in the case of the chap who worked for Pioneer, are loyal and valued employees. Except for those situations that happen sometimes in the heat of the moment which employers may regret, the system that we have in New South Wales has meant that disputes have been able to be satisfactorily adjudicated and that people have been able to resume their working careers with the companies that have been associated with for some time. So it is not always a one-way case.

But, as has been mentioned on a number of occasions by contributors to this debate, this capacity for reinstatement mostly exists under state tribunals. This is for good reason, because only in the last few years have people who have been unfairly or unjustly dismissed had an ability to go before the federal jurisdiction. As I said during the debate on the unfair dismissal bill, my recollection of how you were able to be reinstated under the federal jurisdiction prior to the Labor government’s reforms in the 1990s was that, if you went before the federal arbitration commission and you had a finding by the judge or commissioner that a man or woman had been unfairly and unjustly dismissed, they could only recommend that they be reinstated. If you then wished to have that recommendation adhered to, you had to make a separate application to the Federal Court and go and argue the case there to make sure that that man or woman was reinstated. That is clearly uncivilised, and that was identified by federal Labor when we were in power and supported by the Australian Democrats.

If you go through the basic tenets of the legislation that is now being proposed, you would have to be a bush lawyer to understand what you were supposed to do. If you look at the provisions that have been made available to us, you will see that there is a change to the nature of the cases and that in fact the conciliation period will now become the mini arbitration tribunal phase. It appears to me that you will have commissioners, judges and deputy presidents trying to adjudicate in corridors on matters. That is certainly not fair or just, and the Labor Party reject that. The current system is workable. As Senator Murray has said, it would appear that the number of unfair dismissal applications has been reduced. The reason that there was such a glut of them was that many men and women in this country were denied an opportunity to go and have their fate as a permanent employee determined by an independent tribunal. So we believe this works fairly well now and that it should not be tampered with.

There is the issue about the size of the business being taken into account. I talked earlier about Pioneer, a major public company that employs thousands of people. Of course, it is unionised and it has established grievance procedures and an industrial relations or human resources department where people are advised on how they should act. But there is probably more unfairness and more opportunity for injustice where people are working in small workplaces. More than likely, the balance of power is not in any way shared between the work force and the employer but is overwhelmingly in favour of the employer. If we remove the provision that small workplaces be dealt with differently from large ones, we will find that far more repressive than anything we could imagine, because they are the places where the intimidation, the harassment, the injustice does occur. It would indeed be very unfair and oppressive for the government to persist with legislation that would preclude small workplaces.

As has been mentioned by Senator Collins, small workplaces are not necessarily put off by the fact that they have got the opportunity to have their unfair dismissal cases end up in some arbitration commission because, as I said, a number of them still have state jurisdictions and those state jurisdictions are able to deal with these things anyway. It is no big deal except in some parts of Australia where there has been an overriding
attachment to federal jurisdiction. The claim that 50,000 jobs are at stake or will be created if this is passed needs to be independently established.

I want to speak now about the ability for independent contractors to have access to the provisions of this bill. The independent contractors that I have dealt with over many years were in the transport industry. Those men had purchased their own equipment and worked for one company, as they still do, in all parts of Australia. Those men had their equipment, their vehicles, painted in company colours so that you would not know whether the man jumping out of the IPEC van that pulls up out the front of the Senate tomorrow morning is a lorry owner-driver or an employee driver. He would have a uniform on from IPEC, he would have a two-way radio or some sort of communication in his vehicle and he would work as directed by the IPEC operations people. He would be required to present himself at the IPEC yard or depot from a certain time in the morning and be available until a certain time at night.

If his vehicle is a painted wagon, as most of them are, he would not have the ability to go and deliver a parcel or an item for any other courier or transport company in this region. You could not imagine TNT or Star Track Express or others being comfortable with an IPEC vehicle turning up out the front of this place with their goods on board to be delivered here. In a lot of ways it is simply a fiction that these men and women are independent contractors. In this sort of situation they are to all intents and purposes directed by and wholly responsible to the company whose uniform they wear and whose company colours their truck is painted in. They are subject to direction for certain hours of the day. Why should they be precluded from being reinstated?

It took a long time in New South Wales for lorry owner-drivers to be able to reinstated by the New South Wales commission. As I may have said in my previous speech on unfair dismissals, it took two trips to the Privy Council in London to make sure that these men and women were recognised as employees under industrial relations law. Right now in New South Wales if you are unfairly dismissed as a lorry owner-driver you are able to go the commission and the commission is able to reinstate you if it feels you have been harshly or unjustly dealt with. And why shouldn’t you be? These people have as part of their contribution to their employer purchased a vehicle so that the employer will not have any of the operational costs of running that vehicle for the required number of hours per day.

In fact, the New South Wales legislation goes a little further, because in New South Wales goodwill payments have been paid and have been recognised by companies. As a result of legislation introduced into the New South Wales parliament by the former member for Auburn, Peter Nagle, there is a contract of carriage tribunal in New South Wales. Lorry owner-drivers who are terminated for whatever reason—whether it is downturn of business or because they have been unfairly or justly dealt with—can go before this tribunal and argue about the goodwill that their company knew they had paid and get compensation for it.

It is mere fiction that independent contractors should not have access to these legislative reforms. They are good hard-working men and women in our society. They drive small vehicles up to the heavy rigs. Unfortunately, a lot of them vote Liberal. I will seek to change that over the next few years. They are entitled to the same rigours and benefits of the law as any other man or woman in this country. It is outrageous for the coalition government to introduce legislation that will severely hamper and damage access to justice for these men and women.

The Labor Party rejects this bill—again it is one of those bills that the government just seems to want to bring forward to see how often some of us will get up and have a chat—on the ground that it is unfair and unjust to people who believe they have been terminated unfairly and unjustly.

**Senator BUCKLAND (South Australia)** (8.07 p.m.)—The Workplace Relations Amendment (Termination of Employment) Bill 2000 is a vestige of the government’s second wave law, the Workplace Relations Legislation Amendment (More Jobs Better Pay) Bill 1999, often referred to as the mojo
bill, which was effectively withdrawn by the government in December 1999. Here we are again with a part of that bill.

The mojo bill was rejected in 1999 because the Labor Party and the Australian Democrats opposed the bill. The then Minister for Employment, Workplace Relations and Small Business, Mr Reith, was on a quest to introduce bills that dealt with specific policy matters in contrast to having them contained in one large bill, as was done with the second wave. In essence, this bill entails something like 50 amendments to the unfair and unlawful dismissal provisions of the Workplace Relations Act 1996. The proposed amendments are, to a large extent, the same as those in schedule 7 of the mojo bill. These amendments contain a range of provisions which will, according to the government, reinforce disincentives to speculative and unmeritorious unfair dismissal claims, introduce greater rigour into processing claims for remedy against dismissal by the Australian Industrial Relations Commission and remove unnecessary procedural burdens that such applications place on employers.

The previous speaker, Senator Hutchins, is correct: there seems to be among those who have drafted these amendments a lack of understanding of what actually goes on in the workplace, out there in the real world, where Australian men and women are honestly seeking to earn a living for themselves and their families. There is a great misunderstanding, it seems to me, as to what claimants of unfair termination are actually all about. The amendments do nothing to introduce any degree of fairness across the board. If there is any ‘fairness’, it is biased towards the employers. The harsh reality is that, of those who are terminated in the workplace, only a very small percentage indeed ever get through to the stage of having their termination arbitrated or adjudicated upon by a judge or a commissioner. In the vast majority of cases where an employee has been terminated, the issues are resolved in-house—that is, between the employee, their representative and the employer—because most companies that are genuinely out there seeking to do the right thing have procedures in place that set out very clearly from the date you are first employed what the expectations are, what your obligations are and, in turn, what the obligations of the employer are. Those sorts of things are generally enshrined in the awards and they work very well.

This bill seeks to up-end that good working relationship. Those cases that cannot be resolved directly between the employer and employee and their representative go through the process of conciliation. I believe that any worker who believes that they have been harshly dealt with has the right, at least, to go before a commission for conciliation. Again, in the majority of cases that go before the commission for conciliation either a resolution or a decision is made by the applicant—the worker—that it is quite foolish to pursue their claim any longer and that they will not get relief if the matter is arbitrated. But there is a flaw in that process—not on the part of the commission or on the part of the advocates who put their case. The flaw is the limited time that is available to put your case. My experience—and I have had some experience in this arena, although the majority was in the South Australian jurisdiction—even before the federal commission is that you are very fortunate to get much more than 20 minutes because there is just not enough time. In that 20 minutes, all you can do is state your case as best you can. You do not have the opportunity to draw out the evidence that supports your claim. As a result of that, any recommendation coming from the commission is based on your side of the story and their side of the story. Those that get that far generally do need sufficient time to have the evidence put before the commission for proper assessment. This bill almost eliminates any rights the worker has to do that.

The government’s rhetoric in justifying this bill is of streamlining processes and removing burdens on business, but the majority of this bill is a direct attack on workers’ rights to access termination laws. It is not directed at providing more efficient and effective procedures to ensure that the government’s stated objectives of a fair go all round is achieved in practice. There is no fair go all round in this bill. It is highly loaded
towards fairness to the employer and unfairness to the employee.

These amendments would without a doubt obstruct access to fair, affordable remedies against unfair and unlawful termination, they would cut off claimants from sources of financial and legal support, they would force applicants to represent and defend their own interests, they would make the system more complicated—experience tells me it is complicated enough without making it more so—and they would make settlement more legalistic. Even today, you need a solicitor or barrister to take a matter before the federal Industrial Relations Commission for unfair or unlawful termination for you because of the technicalities of the act as it stands now. These amendments will see applicants requiring the services of senior QCs because of the complications that this bill introduces. The amendments will tilt the balance of influence in unfair dismissal cases squarely and thoroughly on the side of the employer—nothing for the employee.

The then Minister for Employment, Workplace Relations and Small Business, Mr Reith, in his second reading speech on the Workplace Relations Amendment (Unfair Dismissals) Bill 1998 in November 1998, said:

There is no doubt that the small business community has repeatedly called for a fairer deal ... they are saying right across the Australian small business community that if they had a fairer deal they would go out and create jobs.

I think some 50,000 jobs might have been mentioned. But the Howard government continues to lose trustworthiness within small business even with that statement. This is clearly illustrated by the results of the May 2001 Yellow Pages Business Index which recorded the lowest level of support for the Howard government’s policies since it was elected in 1996—not just the termination of employment laws but that is one of them. I quote from that business index:

Small business confidence levels are at one of the lowest levels since the establishment of the index—adding to the three previous quarters’ negative results.

According to the survey results, small business is most concerned about:

- lack of work and sales;
- the GST; and
- cash flow.

That is somewhat worrying because when this bill was introduced we were told that we were going to get some 50,000 jobs and that if there were better unfair dismissal laws jobs would be created. But the unfair dismissal laws do not rate a mention in this index. The main concern is lack of work and sales. Where are the jobs created? Small business do not see them. The GST is affecting small business and of course it is affecting their cash flow. Without cash flow you cannot go out and develop and increase your business; you are restricted in what you can do. The Yellow Pages Business Index goes on to say:

The GST has had a negative impact on consumers’ and business’ capacity to spend, thus the declining level of business activities for small businesses—the weakest industry sectors for this quarter were manufacturing (-31%), wholesale trade (-31%), and building and construction down (-23%).

Coupled with the decline in sales and capital expenditure during this quarter, small firms have a right to be concerned about the Coalition’s ability to manage the country’s economy and stimulate jobs growth.

That statement is not contained in a party political from the ALP; that is from a recognised and respected business index that is relied upon by many and that is very thorough in its obtaining of information. There was no mention in any of that of unfair dismissal laws causing small business not to employ. There is also nothing from small business telling us about the wonderful 50,000 jobs that were going to be created. As I travel around and meet people that I deal with—and I have many friends in small and larger businesses through the state of South Australia and also in some very large national companies—

Senator Ludwig interjecting—

Senator BUCKLAND—I have got friends, Senator Ludwig—limited in number as they may be. None of those companies is putting on full-time employees. They are taking on labour hire employees. There is no permanency; employees work when the work is there—‘Don’t turn up tomorrow because
we have not got anything for you’. They are taking on casuals or part-time employees. Many small businesses are reducing the hours they work to try to keep the same employees all the time. Again, where are our wonderful 50,000 employees? I think the wool has been pulled over the small business community’s eyes by the coalition government.

Has the Howard government given small business a fair go? The bill illustrates the hypocrisy of this government. For example, the Minister for Small Business, Ian Macfarlane, prior to the implementation of the GST, stated:

... we were keen to make sure that we did not disadvantage people with a bit of motivation, a bit of initiative, who want to get out there and earn an income, who want to make sure that they can provide jobs for people in the future—small business who are starting out ...

After the GST was implemented, the Minister for Small Business, in the Sydney Morning Herald on 26 February 200, is reported as saying:

I’m not sure how many small businesses went ... out of business because of it, but I certainly know that marriages were strained, small business were taken away from ... running their small business ...

In the same article, Mr Macfarlane was reported as saying that the government was sorry for foisting such an ‘undue burden’ on small business. Further in the article he is reported as saying:

It was an unwelcome imposition ...

Nowhere is small business worried about the impact of unfair dismissals. In reality there is very little impact on small business through unfair dismissal. It is only when the employer or owner-operator of a small business sticks their head in the sand and refuses to talk to those who seek to remedy the problem, and they are the employers who have that mean streak in them right from the start. I could talk about my favourite fish and chip shop again, but I will spare you the burden.

Once the Industrial Relations Commission judges that an employee’s application is likely to succeed, the Workplace Relations Amendment (Termination of Employment) Bill 2000 almost eliminates their right to appeal that. They are required to put money up-front if they want to take on the employer, and all this on speculation because no-one has yet heard the evidence that supports their claim. Responsible unions and responsible solicitors will say the same thing to an applicant when it comes to unfair dismissal—’If you are genuine, your case will be heard; if you are not genuine, if there is any element of doubt, we do not want to know about it and pursue it for you because it wastes our resources and our time.’

It is a rigorous process that unions and solicitors representing workers go through to ensure that there is no wastage of time and that the worker is not subjected to further pain and suffering as a result of their termination by taking them down the garden path and subjecting them to the rigours of cross-examination. Some of us get very emotional about this issue because we have worked in the field. It disappoints people like me that the drafters of this very ordinary legislation have not been in the field themselves. It is an issue that goes to the fundamental rights of Australian workers. It goes to their fundamental right to be heard. (Time expired)

Senator LUDWIG (Queensland) (8.27 p.m.)—I rise to speak on the Workplace Relations Amendment (Termination of Employment) Bill 2000. I heard Senator Buckland talk about emotions. The way this bill was presented last time and the way it has been presented this time naturally raises emotions. The late amendments from the government show it to be a negative piece of legislation while at the same time the government mouths that it is part of the reform agenda. I am not going to get emotional about it. It is a bad bill. It is as simple as that. The bill provides for no assistance to workers, no encouragement to work. The only encouragement it provides is for employers to utilise the legislation in an adverse, mean, ad hoc and discriminatory fashion. It does that quite easily if they can understand it—and I use that qualification with some justification—if they can follow through and use it to their advantage. Once the difficulties is that the bill is complex. Why is it complex? It is complex because it takes the role of the commission, the independent umpire, and says, ‘We are going to
says, ‘We are going to circumscribe the activities of the independent umpire in these myriad ways to prevent it from making decisions which are fair on the facts.’

The legislation becomes necessarily complex as it tries to wend its way through the workings of an independent commission—to second-guess how the commission will deal with the legislation and how the commission will apply fair rulings in relation to unfair dismissal, rather than leaving the area unfe
terred, rather than leaving the area to the jurisdiction of the commission.

This bill is just a rehash of the ‘more jobs, better pay’ bill. I suspect that this chamber has heard a number of speakers already go through that debate. The real debate is about this ad hoc, mishmash piece of legislation that is being put up again. You would think that by now the government would have got the message, tried to follow through and tried to understand that all it is doing is making it more difficult to administer, making the job of the Industrial Relations Commission more complex, by trying to circumscribe its operation. It knows it, the advisers know it, the government know it. Yet the government still sit there.

The minister said quite adamantly in the second reading speech that this is a wonderful piece of legislation that will assist all the relevant parties. It is designed to assist only one: small business. But, as I said, it only assists it if small business can work its way through the complex piece of legislation. I doubt very much that small business will sit down and read it. You can then ask who else it is designed to assist. Perhaps it is designed to assist big business, the big end of town, which Mr Howard tends to pander to. In the end, they will say something similar to what I say: it is a complex piece of legislation and we are far better working through terminations in a fair and equitable way. It is a pity that the government has not taken a leaf out of its own book and done exactly the same.

The Workplace Relations Amendment (Termination of Employment) Bill 2000 is back in this chamber. As I said, it is part of the so-called reform agenda that has been put up by the government and that was called the second wave laws. It reappears again in 2001, having slid off the agenda in 1999. The government, in effect, should have taken its cue at that time and left it off the agenda. You would have to say that Mr Abbott is bereft of any new talent within his department, in that all it has done is drag it back up again—dragged it back up from 1999 out of Reith’s filed agenda and said, ‘Look, we’ll polish it up and serve it up again,’—perhaps while he is thinking up something new like another royal commission or inquiry.

I suspect that tonight or tomorrow we will hear the government trying to justify the re-introduction of the bill as part of their desire to reform the industrial relations system—perhaps, in my words, to gut it. The government have been single-minded—I will give them that—in trying to unravel our once excellent industrial relations system. Prior to 1996, for a time our system of industrial relations achieved a fair balance. There was a need for some finetuning and for dealing with contemporary needs that may arise. This government chose not to continue the good work that had preceded it—not to build on the process that commenced way back in 1990. I suspect that some of the advisers would remember the reform agendas that were commenced during that period and that brought us significant advances in both productivity and employment. This government chose to cloak its agenda with a catchy title. It seems to choose catchy titles to cloak its dastardly agenda with—for example, the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999.

This was a particularly unrealistic endeavour. It was, in my view, a course that was designed to be confrontational. The government knows that, but it still persists. It is not a true reform agenda at all. This government has missed the boat. It has missed a golden opportunity to bring about real improvements in the industrial relations system. The desire of this government—unashamedly, I think—has been to wind the system back.

It is now many years since the original 1996 workplace relations bill was introduced. The industrial relations system is no better; in fact, it appears worse. It is becoming more complex and more legalistic, and I
suspect it is unworkable on the ground. The system is spinning out of control. You can see what starts to happen. There are amendments upon amendments. Even this evening we received another amendment from the government in relation to this bill which tried to introduce a qualifying period. We are enduring, as I understand it—and I hope that at the committee stage the government might be able to expand on what it intends to do—a situation where it appears that all the government intends to do is find a piece of time where you will not be able to file for reinstatement. Three months seems to be the suggested period. So more complexity is being added to the industrial relations system as it currently exists.

My advice—freely given, although I suspect it will not be taken—is to move on from this agenda. If you want to deal with industrial relations, deal with it in a bipartisan way. State governments have. State governments have committed themselves to real reform to improve their industrial relations systems. State governments have looked at task forces, have progressed an industrial relations system. My own state, Queensland, has adopted a tripartite process—perhaps this government does not understand the meaning of that—to move its industrial relations system on, to commit to a real process of reform that encompasses the employee, the community, employers and government need.

I thought there might be a fresh breath of air from Mr Abbott, providing a different approach to industrial relations. It does not seem to have come to pass. It appears Mr Abbott is simply following the failed agenda of Mr Reith, who has moved on. Perhaps Mr Abbott has taken his eye off the ball and allowed the department once again to set the agenda, perhaps as a delaying tactic, perhaps as a mechanism to allow a bit of time so that he can ponder what his industrial relations system should look like. But, given that this piece of legislation is flawed and given what we are dealing with, it is a matter that should be rejected out of hand. It was rejected by the Senate committee and by the Senate previously, and I hope the Senate will reject the legislation in this process.

Let us just have a look at the flavour of what this bill seeks to do. This is the reform agenda. It seeks to ensure that employees eligible for a remedy under federal laws are ineligible to apply for a state remedy. It wants to take away what they might call forum shopping, but it does not want to ensure that every person has a right to seek a reinstatement. It wants to rule out the entitlement of a person engaged in a contract of services—take contract for services out of the agenda. It wants to remove employees and contractors who—and in some instances they look like employees—wish to avail themselves of fairness in the industrial relations system. You really must take heart from the fact that it wants to separate out employees and independent contractors, but provides no real definition of what an independent contractor is. It only adds more complexity, as we then have arguments about what an independent contractor is or is not.

The bill also encourages an employer to resort to the use of demotion as a strategy rather than dismissal. That is what it does, quite simply. It precludes an employee who has been demoted from seeking an application for termination of employment, where the demotion does not result in a significant reduction in remuneration. What is a ‘significant reduction in remuneration’? It does not in any way, shape or form say what ‘significant’ is. We are left with another area where lawyers will argue for a very long time about what is a significant demotion and whether a demotion sideways is in fact a demotion out of the area into a lower job. How much difference in remuneration is significant will depend a lot on the circumstances. There again it adds to the complexity of the area.

It also closes out the ability of the AIRC and the Federal Court to consider out-of-time applications for termination. That is what it in effect does. It circumscribes that area very narrowly. It tries to adopt a position analogous to that of the commission and say, ‘We will step into the shoes of the commission and we will determine for you and tell you—the commission—how you should treat out-of-time applications.’ Unless you jump through these hoops, and the commission
should take note of that, then it remains out of time and there is no remedy.

In the past, where there were procedural irregularities, merit would have overcome that. In this instance, the amendments appear to say that procedural irregularities will prevail. It allows the commission to cut off the right of an employee to have a matter heard, because the commissioner, without full evidence being tested, might form a view that the application had a substantial prospect of being unsuccessful at arbitration. That is very interesting because it creates a situation where, when you go to a conciliation conference, when you go to represent an employee or when employees represent themselves, you need to bring everything to bear. You need to take the time and energy of the commission to fully consider the whole of the legislation. To do otherwise might prejudice the case. If the commission does not hear the whole case during the conciliation process, the commission might adversely form that view, in which case you would lose and be out the door.

It is not an example that I care to often turn to, but my experience has been that at conciliation the prospect of the employee winning the case sometimes looks a bit poor because the employee, for a range of reasons—lack of experience, knowledge, understanding of what the commission’s role is and lack of ability to accept what is happening, or the employer likewise having the same failings or shortcomings—is not prepared for the full proceedings or the conciliation conference itself. Sometimes in the past, the commission has looked over its glasses, so to speak, and said, ‘This appears to be a very dubious case to be running.’ But it is at that point and after that point that some hard questions are asked about whether the matters should proceed. Often the case is that more tends to come to light and a second conciliation conference is often sought, but by then the views of the parties have hardened. This bill denies the opportunities to ensure that, if there is a case, it is fully aired.

It also directs the commission to take into account the size of the employer’s business in considering whether the termination is unfair, so now we have size as a determining factor. The commission then has to ask, ‘How big is your business?’ Does it go to employee numbers? Does it go to turnover? If the business is a car yard, does it go to the number of cars that the business has in its yard? Does it relate to the amount of debt the business might owe? It might owe more debt, being a big business because of the debt. Of course it does not really say that, but they are all the connotations that might be attached to it.

It directs and circumscribes the activity of the commission to delve into the business. But what if the business is not as what might be first sought? Does the commission then have to put orders on the business to show all, to tell all? Once again we have the area where litigation may abound, where people want to determine the size of the business, as to whether that is a true factor that should be taken into consideration in respect of a reinstatement, once again adding clouds of confusion to an otherwise simple matter of filing for reinstatement and seeking to have it heard by an independent body.

In addition, it confers power on the commission to require a representative who has been retained pursuant to a contingency fee agreement to divulge that. That is another area: is this a new move by the government to place that requirement in all places where litigation might occur or where all contingency fees might occur? It is certainly a matter I will be pursuing during the committee stage, to find out whether it is now government policy that lawyers who use contingency fees should be required to divulge that fact in all proceedings in all federal matters, in immigration matters and right across the board. Is this a matter that the government sees as a necessary requirement? Then one would ask the question: ‘What is the evil the government is trying to challenge?’ Perhaps the government could provide some assistance in demonstrating what is the aim or objective of that piece of the legislation. And it widens access to cost orders!

Let us reflect for a minute. During the last few minutes, have I said anything positive about what this bill will do? I will second guess the answer: no. That is because the bill
is not about a positive change or about bringing about a fair industrial relations system. It is not about what the title suggests it is about; it is about a diminution in the rights and entitlements of employees, and that is clear. You can see that by the next section, where it confers power for the lodgment of an amount of security for costs. That is what we will now have to do. An employee may be terminated without due regard to their financial position and they may not have sufficient funds to provide security of costs, if the employer seeks that. You will then get a position where the employee accepts what might otherwise be an unreasonable or unfair termination, without being able to pursue it in a fair, reasoned way. All these matters will bring about a system which harks back to the kind of situation you might have found in a 19th century coalmine, a situation where the employer used the whip hand to say to employees, ‘This is the process you will go through if I dismiss you; you should cop it now and go.’ The whole premise of this piece of legislation is negative and quite derogatory in relation to employees.

On 27 June 2000, Mr Reith said this bill would introduce greater rigour into the process of the AIRC. This belies the true nature of the bill. In response, Labor senators during the course of the bill rejected the provisions of the bill relating to unfair dismissals because, paraphrasing, to act as a limit and obstruct access to fair and affordable remedies against unfair and unlawful dismissals is what the bill seeks to do in no uncertain terms. The conclusion was that these amendments would make the system more complex and legalistic and would shift the balance of influence in unfair dismissal cases to employers.

Senator COONEY (Victoria) (8.47 p.m.)—What to add after that tour de force by Senator Ludwig is the question I must face. I think the speeches we have heard so far, beginning with Senator Collins and ending—up till now—with Senator Ludwig, have been very learned and very effective and very much on the ball.

Originally, there was a contract of employment which set up a relationship between the employer and employee. That concept has gone back over the centuries, and there has been an eternal struggle between the worker, who contributes his or her labour and intellectual or bodily capacity and skills, and the employer, who can administrate well and who provides, hopefully, management skills and a human nature, capital and organisational ability generally. What is happening is that products and ideas and services are being produced for the purpose, amongst other things of course, of obtaining money and, where money is an issue, there is always going to be a fight as to what a proper distribution of that is. In the 19th century, we had the works of Karl Marx, who was going to distribute money in particular ways; in the 20th century, there has been a swing to the neo-liberal philosophy of saying that the marketplace is what determines the issue. That swing back to the neo-liberal position where what is said to be important is the agreement determined by market forces has led to problems.

Mr Acting Deputy President Murphy, you and I belong to a party that says there is more in life than money, that mammon is not the only thing that man lives by. I should say ‘woman’ as well, but the Bible says that man does not live by bread alone. There are other things that come into the equation. In the employment contract, what should come into consideration is not only the amount of money paid by way of wages but also the conditions under which a person works. There is also the issue of human dignity: there ought to be proper respect between the employer and the employee, and the relationship between the two should not be looked on simply in terms of the hard cold elements of a contract.

The contractual relationship is modified by statute in many ways. The classic example is the Trade Practices Act, which says, for example, that a business should not use its weight in the market to unjustly oppress its competitors. It says that people should be honest in their advertising and that there ought to be rules, in addition to the terms of contract agreed upon between the parties. Fundamentally, at the base of things, there is this contractual arrangement but there should be some outside force which, either through
legislation or the decision of a court or an arbitrator or a similar body, adjusts the relationship so that there is a perception as well as a reality of fairness in the system, no matter what the contractual arrangement is. I think it was Senator Collins who was talking about the necessity of perception, besides the reality of things.

Mr Acting Deputy President, during recent times, as you know, we in this chamber have been struggling over the issue of unfair termination where the employment contract has finished and the employee is sent upon his or her way. There is a system established in this society which decides what is fair and right in a contractual arrangement, modified, as it is in most cases these days, by legislation or by precedents set by the courts. That way is to have the matter decided by an independent body which says, ‘In this case the employer was in the right and had every reason in the world to terminate the agreement’ or ‘In this case the employee had right on his or her side and should be rewarded accordingly.’ That is what the wrongful dismissal legislation as brought in by our party, for example, is all about—trying to get fairness. You would have to say that the government wants to take out the element of fairness that is built into that. The second reading speech talks about reform. That is not reform. This is a retrograde step. This is an attempt to get back to the Combinations Acts, and it should be understood in that context. This is bad legislation not only because it might treat employees unfairly but because it is an attack on the time honoured system that we have in place to decide what is fair in any particular situation; that is, the courts, the tribunals and the commission. This is an attack on that long entrenched system.

The legislation before us is one sided. I can illustrate what I mean by that by going to item 40, which introduces subdivision G—‘Unmeritorious or speculative proceedings’. It says there is going to be a penalty through the payment of costs available in certain circumstances. People reading the legislation might say that, if there has been a reckless and grossly negligent piece of advice that has led people to waste the time of the commission or of any body for that matter, it is reasonable enough to have penalties for that. But when we look at subdivision G, the only unmeritorious or speculative proceedings that are going to be subject to an order for costs are those to be brought by the employee. There is nothing in this that I can see in any event—maybe the parliamentary secretary will point it out to us later—which enables a tribunal or a decision making body to visit an order for costs on those advisers who advise the employer to resist a claim which is quite clearly justified. Why is that? In a system where there are two parties, both parties to the same contract, both parties to the same proceedings, why do you have that situation treated by this legislation in a way which makes penalties available only against the advisers of the employees? Why is that? If speculative and unmeritorious claims are so bad—if that is the situation—why doesn’t this legislation move in and apply a penalty not only to the advisers of one party but to the advisers of the other party as well?

A lot of workers go to firms that are staffed by people who do not charge comparatively big fees and who struggle to see that justice is done for people who are usually very poorly resourced. They are the sort of people who normally act for the workers, as contrasted with those advisers that act for the employers, which are usually big and wealthy practices. I have got nothing against big and wealthy companies or big and wealthy practices, but you would have thought that the big and wealthy solicitors would be in a better position than the smaller legal firms to withstand an order of costs, yet this legislation seeks to punish the smaller firms. Why? Because they are acting for employees—that is why—and because the government say, ‘We really would like to see a situation where employees are not represented. We are happy enough to have employers but not employees represented.’

Subdivision G, I think, illustrates in a very big way what this legislation is all about. This is not legislation to adjust the balance between two parties to an agreement; this is legislation to ensure that the weight and burden of running an action are very much on the employee and on his or her advisers. It is a shame that the legislation—flawed as it is
in that way, loaded as it is in that way, with a culture of oppression of working people—should come before this chamber.

We talk about small business. Small business is a very difficult process to run. You have to be good at managing in order to run a small business or, for that matter, any sort of business. It is hard work, it requires great skills, people can lose millions of dollars and things are hard and frustrating. I hope I come into this chamber with an understanding of the pressures on small business—the need to get enough money to pay the rent, the wages, the various taxes that are imposed upon them, and to run the GST with some sort of ability, which is very hard. You have to prepare your GST statement and your income tax statement. All those things are terribly burdensome on business and on small business in particular. But there is also a burden on employees—people who are starting to make their way in the world, people who want to earn money so that they can bring up a family and pay the mortgage on a house, get a car, and perhaps even get a little holiday home. I hope we are the sort of society that would allow that to happen. We are the sort of society where there is a reasonable distribution of the income that comes into the country. You have to look not only at the situation that small business may be in, but also at the situation that employees might be in. There is a lack of security in jobs these days. It is terribly hard to arrange to bring up a family of any size. Families are too small these days. As a grandfather of a single grandchild, families are much too small these days, may I say, and there is very little you can do about that, that I can see.

Senator Ludwig—Start again.

Senator COONEY—I might have to do that—that is the sort of prospect that is facing me. Perhaps I will have to. In any event, I think it is important for the future of this country and for the future of families in this society that some security be given—security for the small businessman certainly, but also security for the people working there—and, for that matter, security for big companies, because they produce a lot. But for some reason there is an obsession in the minister’s department that somehow people at work should not be entitled to live as decent and self-respecting citizens of a free, democratic and fair society. We have somehow got to put them in a position where they can be sacked easily and where they cannot get together to come to an arrangement with their employer. When they elect their leaders in the unions—as they do—those leaders must be denigrated. This is a culture that seems to have been built up in this department and with the ministers that head the department. It is a culture which I think is a tragedy for this country, because it denigrates the standing of a very important section of this community, and that is the working person, whether the working person be a man or a woman that goes on to a building site—and, as you know, Mr Acting Deputy President, two people were killed on building sites in Melbourne this weekend—or whether it be people who work in a factory which produces automotive parts and who are looking for some security in their work.

We, as human beings, are vulnerable to all sorts of things. We have all the emotions, worries and concerns that are often published in great novels, for example, but also in learned works. We are subject to all those things, but for some reason this department does not take that reality on board. It seems to think that the contract is all and that the common law will solve all problems. The common law judges themselves understand that they cannot do all that needs to be done to make this fair. What is wrong with having a process whereby people can go to an independent tribunal and have a matter decided by the commission?

People say, ‘Oh, look, if you go down there, the easy way out of this is to pay a certain amount of money to get rid of the matter.’ Of course, matters are settled and people do not like settling because they have to pay out money. No doubt, they feel that they have been placed in a situation where that is the only outlet for them. It is a bit like getting a parking fine or a speeding fine, I suppose—you really have to pay it because, if you fight it, you are going to be in trouble. That is the system. It is not only people with wages at stake and with the termination of their employment at issue; it is all sorts of
people, whether they are contracting for a house to be built, a car to be bought or services to be done. All those matters are liable to raise disputes, the same as this. This is not exceptional; this is just another matter, another sort of issue, that goes into making up those things for which we have a system in place to properly discharge the issue in favour of fairness.

Senator HOGG (Queensland) (9.07 p.m.)—I rise to speak in this debate on the Workplace Relations Amendment (Termination of Employment) Bill 2000 following Senator Cooney, who touched on a number of the issues that of course concern me—that is, particularly the issues of fairness and equity and, of course, the issue of security of employment, which this is all about. This bill is about weakening the security of employment, weakening the fairness and weakening the equity that people can expect in their relationship with their employer. Any reasonable person would expect there to be fairness in the system. Any reasonable employer would also expect there to be fairness and equity in the system. But one must start from the premise that the equation is loaded on the side of the employer far more than it is on the side of the employee. When one looks at the second reading speech that accompanied this bill, one finds the statement:

The current provisions in the act are based on the concept of a ‘fair go all round’.

That is the basis of the current act: that everyone should get a fair go. No-one would believe, when they read this bill, that everyone is going to get a ‘fair go all round’. That is going to disappear. If you look further in the second reading speech, it goes on to say:

This bill is designed to maintain the fair balance between the rights of employees and employers while addressing some of the procedural problems that have become evident during the operation of the act.

So the second reading speech says that the bill wants to maintain the fair balance between the rights of the employees and the employers whilst addressing procedural problems. Of course, none of these procedural problems are evident in the second reading speech. None of them are evident anywhere in the explanatory memorandum or in anything else that is associated with this bill. One can only think, ‘What are the procedural problems?’ One’s mind could boogie at what this could mean. The second reading speech goes on to say:

The bill contains a range of provisions designed to reinforce disincentives to speculative and unmeritorious unfair dismissal claims, to introduce greater rigour into the processing by the Australian Industrial Relations Commission of unfair dismissal claims and to remove unnecessary procedural burdens that unfair dismissal applications place on employers.

If one takes a look at that, there are three main elements. The first is ‘to reinforce disincentives to speculative and unmeritorious unfair dismissal claims’. As others have already canvassed in this debate, the number of unfair dismissal claims has already fallen. Most people, when they find themselves dismissed, do not necessarily run off straightaway to seek redress for their unfair dismissal. There might be the odd one here or there, but to have a full bill try to address this issue is just a complete nonsense.

It goes on: ‘to introduce greater rigour into the processing by the Australian Industrial Relations Commission of unfair dismissal claims’. How much rigour can one have? If there are procedural steps that need to be taken in the process of a claim for an unfair dismissal, and if those procedural processes are transparent and allow for transparency of the process, then show where they are at fault but do not come in with a sweeping statement that there are procedural problems and that these need to be overcome by getting greater rigour in the process so as to make it more difficult for people to pursue their just and fair rights in seeking reinstatement before the industrial tribunal.

Last but not least, it refers to the ‘unnecessary procedural burdens that unfair dismissal applications place on employers’. None of these have been enunciated. The quantum of them, to the best of my knowledge, has not been enunciated. The degree of these procedural burdens has not been enunciated anywhere, to the best of my knowl-
So we have a bill which is set to put more obstacles in the path of people who are seeking a legitimate redress to their dismissal. It has been my experience that the vast majority of unfair dismissal claims never make it to a union, an industrial relations consultant or to a lawyer. None of those groups ever see the majority of people who are unfairly dismissed, let alone make it to an industrial commission on their behalf. As I said, the second reading speech talks about procedural problems but none of those are enunciated, as far as I could see, in either the explanatory memorandum or in anything to do with the second reading speech.

The system was and always will be loaded against the employee. That is the nature of the system. The employer has always operated from a position of superiority. As the employer has always had the position of superiority in the master-servant relationship, some substantial time ago that brought about the formation of unions such that, where people were not able to individually defend their rights, they collectively joined together to defend their rights. One of those rights, of course, was their right not to be unfairly dismissed or sacked from their employment. Over a long time, unions—and I am proudly president of the branch of my union in Queensland—have maintained their role and their function in protecting the rights of people who have found themselves unfairly dismissed. But those are workers at the lower end of the pay scale. One should not be under any illusion that unfair dismissal laws relate solely to them. They also relate to people at the higher end of the earning scale. This is where, in many instances, industrial relations consultants and lawyers, over a long time now, have been out to make a killing and have been as robust in the defence of their own clients as the unions would be in the defence of their members. So one cannot single out the union movement when it comes to the issue of unfair dismissals. It now traverses a broader spectrum of people in the workplace.

To help balance the equation, there has always been an opportunity for people to seek redress where they feel that they have been unfairly treated or unfairly dismissed. As I have already outlined by reading from the second reading speech, this bill goes nowhere to ensure that there is a fair go all-round and goes nowhere to ensure that there is a fair balance between the rights of employees and employers. People should stand up for their rights as workers, whether they be in the lowest paid of jobs or whether they be in the highest paid of jobs. To assist the worker through the maze of legal obstacles that, in many instances, are designed to intimidate the worker pursuing their rights and, in some cases, make it impossible for them to claim their basic rights, there must be the help of industrial organisations such as unions or industrial relations consultants and/or lawyers.

But at the end of the day, as I have said, very few unfair dismissal claims are ultimately taken to the commission stage. Most, if not the vast majority of, unfair dismissal claims that I have ever had to handle are settled by negotiation. Those negotiations can be protracted in some instances, but invariably they do not touch the industrial commission in any way—they are settled by amicable agreement. In some instances the employee is reinstated and in others the employer and the employee part company. There is an agreed outcome and that makes, in many instances, the need for the industrial commission quite unnecessary.

There are many unfair dismissals that go unchallenged by the employee who has been unfairly dismissed. That is a feature of society not only today but over a long time, so why we have this beat-up of a bill is beyond me. My experience also tells me that in the majority of cases workers want their unfair dismissals resolved quickly or as quickly as is possible in the circumstances. No-one goes down the path of making an unfair dismissal claim against their employer with a view to it being a protracted, drawn out and extensive process. People want something that can resolve their problems simply so that they can get on with their lives.

The reference in the second reading speech to the procedural problems in the process and to the disincentives to speculative and unmeritorious unfair dismissal claims is a smokescreen. The truth of the
matter is that people do not want to go down that path. They get no joy from it and there is no fun in it for them whatsoever. People want to get on with their lives. They do not want to be tied up bargaining before an industrial commissioner, because that brings no joy to their hearts at all. A very interesting part of this legislation is at paragraph 26, which inserts the new subclause:

(da) the degree to which the size of the employer’s undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination.

We are now getting down to the nub of the issue, and that is that people in small business want to take it out on their employees. I am going to quote a small case with which I had experience a number of years ago, and that will show how this particular piece of legislation could, in effect, be used against employees. At paragraph 27, at the end of section 170CG, the bill adds:

(4) If the employment of a particular employee or group of employees is terminated on the ground of the operational requirements of the employer’s undertaking, establishment or service, the termination is not to be taken to be harsh, unjust or unreasonable, unless the circumstances are exceptional.

I find that exceptional in its own right. What is ‘exceptional’? ‘Exceptional’, as far as I know, is not defined. The explanatory memorandum to the bill states:

Item 27 proposes the insertion of the new subsection 170CG(4). This amendment would preclude the Commission from making a finding that the termination of an employee or group of employees was harsh, unjust or unreasonable where the respondent employer establishes that the employment was terminated on the ground of the operational requirements at the employer’s undertaking, establishment or service, unless the circumstances are exceptional.

That is a blank cheque to the employers to say, ‘Do what you like.’ Who is going to find that the circumstances that are raised are exceptional? The case that I am about to cite is a real case. It is a case that I dealt with. It is the case of a young 16-year-old female who was employed as the sole person in a business in a shopping arcade. She was under the threat of dismissal if she closed the doors of that shop at any stage throughout the trading day, which was invariably from 8.15 a.m. to 5.30 p.m., for reasons which included things such as having to go to the toilet or going to lunch. We had to intervene on behalf of this young lady. I can see what the employer in this case would be claiming to be the operational requirements. The operational requirements would be to leave the door open: ‘Do not close the door. If you close the door, you will get sacked.’ How is this person to prove exceptional circumstances if she gets sacked because she goes to the toilet? It was not uncommon for this young woman to have blood running down her legs during her menstrual cycle. As grotesque as that is, I am not talking about 50, 60 or 70 years ago; I am talking about within the last 10 years. This person lived in fear. The operational requirements of that business were to keep the door open: ‘Do not close the door and, if you close it, you will be dismissed.’ We had the devil’s own job to convince this young person that she had reasonable rights to defend herself against the harshness of the employer. When she did ultimately assert her rights—admittedly under a different act—she found herself dismissed. We had to go through the process of seeking the reinstatement of this person. I cannot be convinced that the shonks out there will not run a battleship or a big truck through this act and burst it wide open, because they will create circumstances to suit themselves for operational grounds and operational procedures and the court will have nothing to go by as to what is considered exceptional. The next paragraph in the explanatory memorandum states:

An employee who claims that his or her selection for redundancy was for a prohibited reason [ie in contravention of a ground or grounds in subsection 170CK(2)] would not be prevented from seeking relief in the Federal Court of Australia for a remedy in respect of unlawful termination.

So what? That is great. But that is a recipe for employers out there who know nothing about fairness and who know nothing about equity, who know nothing about having a just conscience to run rampant and to run over the rights of people in our society. That, to me, is completely unconscionable and should be resisted under all circumstances.
The government has not made out a case, in either the second reading speech or any other material that I have had access to, as to why this bill should be passed. The only reason that the government could want this bill passed is for ideological purposes. But it suits the mantra of the government to seek to make out that there is a problem when in effect one does not exist. I believe that this bill serves no purpose in providing people with a fair, just and equitable system and in giving people the security of employment that they are entitled to. It unbalances the equation. (Time expired)

Senator SHERRY (Tasmania) (9.28 p.m.)—The Workplace Relations Amendment (Termination of Employment) Bill 2000 which is before the Senate deals with stripping away from Australian workers entitlements they have at the moment to protection from unfair and unjust dismissal. At the very heart of this legislation is an attempt by the Liberal-National Party to create two classes of Australians before the law, one class who will have certain rights in respect to unfair dismissal and another class of employees who will have no rights. I cannot think of a piece of legislation that deals with protections before the law in any respect in this country that does what this bill proposes to do.

The bill proposes to amend the 1996 legislation. Unfair dismissal laws are a comparatively new inclusion in Commonwealth law. Interestingly—and I will return to this point a little later in my contribution—prior to unfair dismissal laws existing in the federal jurisdiction, they had existed in state jurisdictions, certainly since the creation of states and since allowing states to have their own industrial legislation. As I said, unfair dismissal laws are a comparatively new inclusion in Commonwealth law. They were inserted by the former Labor government. The laws that we are now amending are not Labor’s laws, however. The laws that this government seeks to alter are its own industrial laws, laws which the former minister for industrial relations, Mr Reith, proclaimed as a good solution to the problems that the government claimed existed in 1996. The then minister, Mr Reith, said:

We have delivered a workable system for dealing with unfair dismissal on the basis of a fair go all round...

This is the second occasion that this government have sought to rewrite their own unfair dismissal laws. They sought to do it in the last parliament, they sought to do it in an earlier bill in this parliament and now they are seeking to do it again. On every one of these occasions the parliament—and the Senate—has rejected this government’s approach, and so it should. The Labor Party rejects this current bill and will be voting against it. The bill is designed to ensure that workers have less protection and fewer rights in circumstances in which they are dismissed in what would otherwise be determined as unfair and unjust circumstances.

The people of Australia are entitled to ask why this government would want to deny workers access to rights they currently have, rights that protect them against circumstances where they are unfairly or unjustly treated in dismissal, rights this government— the Liberal-National government—confirmed on them. That is more so the case given that these laws are comparatively new laws, enacted by this government and the minister, Mr Reith, and proclaimed by Mr Reith as good laws that deliver a workable system for dealing with unfair dismissal on the basis of a fair go all round.

The unfair dismissal laws this government inherited when it came to office in 1996 have themselves been through a process of revision. When Labor first introduced unfair dismissal laws in its 1993 legislation it realised there were some problems with its operation and administration. Subsequently, the Labor Party amended those laws and substantially altered them so that many of the concerns that were identified and raised with the Labor government by various groups in the community were addressed.

We now deal with the third variation of these laws and the government wants to make further radical change. How does the Liberal-National party justify this effort to reduce Australian workers’ rights? The principal argument advanced is a claim that the government will somehow create more jobs. This is a novel approach to job creation. This
is the dismissal led jobs growth plan. This is where you create more jobs by making it easier to sack people from the jobs they already have. It is an absurd proposition.

If there is some link between unfair dismissal laws and jobs growth or unemployment, you would think that now, some years on, we would be able to identify that trend with empirical evidence, with some hard data. In fact, the opposite is the case. If you have a look at the unemployment figures since unfair dismissal laws have operated in the Commonwealth jurisdiction you will find that unemployment went down. These laws were introduced by Labor in 1993-94. At that time the unemployment rate was 10 per cent. In the year that followed their introduction unemployment fell to 8.4 per cent.

If these unfair dismissal laws were supposed to prevent jobs being created, if they were supposed to make unemployment worse, you might have thought the unemployment figures would show it. In the many debates that have occurred on previous occasions on this issue no-one on the government side has been able to justify the claim. In fact, the record shows the opposite to be the case. Not only did unemployment fall in the 12 months after Labor introduced its first set of unfair dismissal provisions; it continued to fall in subsequent years. There is no indication, no statistical data, to demonstrate that these laws are an impediment to employment, none whatsoever. What we have is a bald assertion—in fact, an ideological obsession.

As I mentioned earlier, unfair dismissal laws have been common in all states of Australia for generations—not just for four or five years but for decades. For generations the right of workers to protect themselves against unfair and unjust dismissal has been a common feature of state industrial laws, and they have worked well. There is a significant degree of hypocrisy on the part of the government in the way it has handled these matters. In 1995 the then shadow minister was speaking about changes he wanted to make. He said in the House *Hansard* of 31 May 1995:

Right at the outset I say that there ought to be a proper course of appeal for people who are sacked so that they can ensure that their grievances are properly heard. Let us face it: from time to time some employers will do the wrong thing. They will get no truck from us. There ought to be in place a system to properly safeguard the interests of employees.

This is one example of this government saying one thing and then proceeding to do exactly the opposite. When it comes to the issue of what impact this has on jobs, there are a couple of contributions we should refer to. The government have time and time again not just said that this would create jobs; they have told us how many jobs it would create. The claim is made that getting rid of unfair dismissal laws for small business would create 50,000 jobs. This is not something that the Liberal-National party have said once; they have said it repeatedly. They have said it on a number of occasions outside of the parliament and also in the parliament. In February 1999, the then Minister for Employment, Workplace Relations and Small Business, Mr Reith, said:

Because, if you do that—that is, if you do not support the unfair dismissal exemptions for small business—you will destroy the job prospects of 50,000 Australians in small business.

This was an unqualified claim of 50,000 jobs. The Prime Minister, Mr Howard, the next week in parliament—on 15 February 1999—was a little more circumspect. The Prime Minister, Mr Howard, is far more astute at saying things to produce a perception different to the facts. The former Minister for Employment, Workplace Relations and Small Business is far more blunt: he is more inclined to endorse the use of the appalling tactics we saw in the waterfront dispute of balaclavas and security guards with baseball bats and dogs. The following week the Prime Minister, when he decided to pursue the issue, said:

... if you can get rid of the existing unreasonable, unfair dismissal regime you can generate more jobs.

Let me remind the Senate that this regime, which the Prime Minister describes as ‘the existing unreasonable, unfair dismissal regime’, is his own law. It is the same regime that his minister described as ‘a fair go all
round’. But now it does not suit them to hold that view. It is exactly the same law described by the Prime Minister in 1999 as ‘unreasonable and unfair’. He went on—and, as I say, he is a bit more circumspect when it comes to figures—to say:

A figure of 50,000 more jobs has been mentioned by representatives of the small business community.

This mythical figure of 50,000 jobs exists because one man made a statement that 50,000 jobs would be created. Mr Rob Bastian, the Chief Executive of the Council of Small Business Organisations of Australia—COSBOA—made a statement that, if you got rid of unfair dismissal laws, 50,000 jobs would be created in the small business sector. I think that the Senate is entitled to ask how he arrived at this figure. Where did he get 50,000 jobs from? He guessed. He thought that it would be a good figure. How did he guess it? Off the top of his head. He said, ‘I reckon about one in every 20 businesses will employ an extra person.’ Why one in 20? He does not know. It just seemed to him to be a good idea at the time. Mr Bastian, off the top of his head, said—with not one piece of data from a survey, research or anecdotal evidence; he had nothing to support the claim—that 50,000 jobs would be created.

In most debates on policy as serious and as important as this, his claim would be dismissed as ludicrous and shunned. It is amazing that not only is that not the case but also there are people, such as the minister with responsibility for the portfolio and the Prime Minister, Mr Howard, who have repeated it and repeated it knowing that there was not one shred of evidence to support it. That demonstrates just how callous this government has been in pursuing this issue—effectively, manufacturing an issue where none exists. It also indicates that this debate has nothing to do with economics and the viability of small business, nor anything to do with industrial relations. It is to do with a radical ideological agenda that this Liberal-National Party government has sought to run on industrial relations in a very divisive way since it took office.

There is one piece of empirical evidence which no-one can dispute and that is the Australian Workplace Industrial Relations Survey, normally referred to as AWIRS. It is the only authoritative survey that has been conducted of workplaces in this country in the last 10 years. It is the most comprehensive survey on workplace matters that has been done in the last decade and arguably much longer. The survey brought up some evidence about what influences a small business to decide whether they will employ people. Responses were given in answers to a question on the reasons for not recruiting employees during the previous 12 months. This is the response from small business—that is, the people that Mr Bastian claims to represent. The most significant reason given as to why companies did not employ an extra person was that they did not need any more employees. The response of 66.2 per cent was, ‘We just don’t need them.’ That is fairly understandable. If you do not have demand for your product or service, you do not employ any more people. The next highest response of 23 per cent was, ‘Not recruited due to insufficient work.’ Again, commonsense would tell you that is why business would not employ. ‘Not recruited due to lack of demand for the product’ was the response from a further six per cent. There was a big drop from the second to the third, but when you combine the three responses you get about 95.8 per cent. In fact, the survey allowed multiple answers, so the figures effectively add up to more than 100 per cent.

We can see from this the only authoritative survey carried out in respect of small business in this country that, overwhelmingly, employers said that the reason they do not employ more people is that they do not need the workers, they have not got the work for them and there is not enough demand for their product. These are very sensible reasons, none of which the Liberal-National Party government has ever accepted. It has never engaged in a debate such as the one we are having this evening. I invite it to do so.

The survey actually contained a reference to unfair dismissal. ‘Not recruited due to unfair dismissal laws’ received a total response of 0.9 per cent. Less than one per cent of
small business operators in Australia in the most authoritative survey conducted said that was the reason they did not employ someone. Bear in mind that this was a multiple answer and they could tick more than one reason. Less than one per cent found this to be the factor—not even the most important factor, just any one factor.

One of the key aspects of the bill before the parliament is to change the way in which unfair dismissal applications are dealt with by the commission. At the moment matters go before a conciliation hearing. Some people in this parliament have had some experience with conciliation hearings. Those who have would know that these gatherings are informal with a minimum of legalese. They are discussions in which both sides talk usually very frankly and very often they will come to a resolution because it is an informal gathering where there is give and take. Generally you are able to sort out your problems by getting to the central issue without overburdening the process with legalities and formalities. This legislation turns that process on its head. The bill says that if a worker takes a matter to the conciliation hearing and the commissioner decides that the case is unlikely to succeed then the worker will no longer have the right to pursue that matter to get an actual judgment, to receive a determination. That will ensure that conciliation is the first and final part of the process, and it will require parties to conduct the full case with all the legalese that comes with that.

This bill proposes the commission must take into account the size of a business when determining the merits of the case and the outcome of the case. This is a backdoor way of trying to get the parliament to agree to something that the parliament has now on at least two occasions refused to accept—that is, if you work for a small company with a limited number of employees, whether that is defined as 15 or 20, depending on the government’s mood you are somehow to be given fewer rights. That means you can be dealt with more harshly, you can be sacked unfairly and unjustly and not have the same rights as a person in identical circumstances working for another company or for a larger employer. Let me give as an example a bar attendant in a small club which has five or six employees. If such attendants are threatened or harassed in their employment, they have no rights to go before a commission, whereas employees in a large club in identical circumstances have the right to be heard before the commission. There are two levels of rights with this legislation creating second-class citizens. It is a morally bankrupt principle; it is a sound reason why this legislation should be rejected.

Senator O’BRIEN (Tasmania) (9.47 p.m.)—In the very short time that is available to me this evening, I want to continue the theme that Senator Sherry has just been expounding that this government is intent upon legislating to create second-class employees—that is, second-class in terms of their rights. I suppose you say the Workplace Relations Amendment (Termination of Employment) Bill 2000 has been before the Senate on a previous occasion and I suppose the government believes that, like the dockers, you have to win some time. But the reality is that, if there is any justice in terms of the legislation currently before the Senate, this bill will not be passed. It will be rejected for the very simple reason that there can be no justification in singling out those people working for small business—no doubt they are earning on average less than employees in larger businesses and with fewer long-term prospects—who are required to be more flexible and more valuable employees to keep a small business afloat and then to insult these employees by saying, ‘Yes, but because of the size of the business in which you work, your rights to seek redress if you are unfairly dismissed will be curtailed.’ This is what this legislation is all about. It is amazing to think that, in the period leading up to the federal election, this government cannot find something more likely to deal with the real needs of the community such as, for example, correcting some of the mess that has been created with its business activity statement. I have not met anyone in the community who has been satisfied with the government’s response on the business activity statement to date.

Debate interrupted.
The ACTING DEPUTY PRESIDENT
(Senator Ferguson)—Order! It being 9.50 p.m., I propose the question:
That the Senate do now adjourn.

Valedictory: John Woodley

Senator BOURNE (New South Wales) (9.50 p.m.)—I would like to speak tonight about my very good friend former Senator John Woodley, who retired from the Senate very recently. This is the first opportunity any of us have had to speak about him. I know one of the reasons he retired as he did—that is, he did not tell anybody he was leaving until after the Senate had risen—is that he does not fancy valedictory speeches. But, too bad, I am going to do one anyway and I know there are others who want to speak about John tonight as well.

John started off in this place in 1993 and he was, as I understand it, the only new senator elected at that election. He had spent his life until that point mostly as a Uniting Church or Methodist minister and mostly in outback Queensland. I know he spent a couple of years in the Navy doing national service and he enjoyed those years, and he really loved the time he spent in the Queensland outback and as a church minister in Queensland. I am pretty sure he enjoyed the time he spent in this Senate as well. His first bit of business in this chamber was speaking to an opposition motion on rural Australia and his last bit of business was the dairy assistance bill. I could give senators three guesses as to what his favourite portfolio was, but everyone would get it right.

John once stated that he would try to get as many quotes from the Bible in Hansard as he possibly could, so the whip could always rely on him when we needed a speaker on pretty well anything. Because of that, I have my Bible here with me this evening and I am going to finish off with a couple of quotes from the Bible which I think are accurately descriptive of John. I have a few statistics here from Hansard which I am sure John would enjoy. He made the most interjections bar one of any Democrat senator ever—so far. His first interjection occurred on his second day as a senator. Now that is very disorderly of him, and he is not a disorderly sort of person. It is quite amazing, but he could not help himself with interjections. Despite the large number, not one of John’s interjections was offensive, and we have been through all of them. They were much more likely to be supportive of his fellow Democrat senators. It was very nice standing here giving a speech and hearing a very loud ‘Hear, hear!’ coming from next to me or words to the effect that what I was saying was the most brilliant piece of oratory that had ever been heard—despite the fact that it was not, but it was very nice hearing it. He was gently chiding of the government and the opposition and was very funny in his interjections. I remember he once congratulated Senator Crane on his ability to smile in an interjection, which was interesting.

One of those interjections was his offering to go with Senator Herron to have a Chinese meal. I do not think Senator Herron took him up on that offer, but I should tell Senator Herron that John does not appear to be any less busy now than when he was in the Senate. So Senator Herron may still miss out on that treat! Although, I recommend that he go to Queensland and have a meal with John, because that is always a very pleasant thing to do.

John came to Democrat senators’ assistance on a regular basis in debates. He was always protecting us from others in this place. Madam President, I know that he gallantly came to your assistance on a few occasions, particularly in question time. He has also been very supportive of Senator Boswell, although there was one occasion in 1997 during a very stressful and very lengthy native title legislation debate when he called Senator Boswell ‘a dope’. I think that is the worst he ever got in abusive terms. I know that afterwards he genuinely regretted saying that. John once said that he believed that his Democrat colleagues suspected him of being ‘too reasonable’, so he resolved to be unreasonable sometimes. But I am sorry to say that I think he failed miserably in that attempt. John was never anything but reasonable, and he is still not anything but reasonable.
He has an obvious interest in both animals and food. I am sure all of us here remember his ‘cooked chicken’ campaign, and the campaign on dairy and the campaign on sugar. Anyone who has been in Democrat party meetings will not forget the campaign on the mahogany glider, which he kept up for years—it felt like years; it may only have been months.

Honourable senators interjecting—

Senator BOURNE—It is ‘years’. I am sure that the fact that we still have mahogany gliders in this country is almost solely due to John and his famous mahogany glider campaign. His persistence did usually pay off. One example was his reference to a committee of the impact of native wildlife farming. The motion took so long to get through the Senate that one whip was heard to remark that the wildlife concerned were probably extinct by the time it got through. But at least we were having the debate. There is one very lovely quote from Senator Vanstone where she says that John was ‘very sweet when he got excited’, which is so very Senator Vanstone to say such a thing; but it is also very true.

John took his pastoral duties very seriously. He publicly absolved Andrew Bartlett’s sins during Andrew’s first speech. I am confidently told by Andrew that he has not sinned since. I think that is an excellent record. Absolutely no sins ever since then!

Senator Schacht interjecting—

Senator BOURNE—John absolved him of all his sins. Senator Schacht, I suggest that you might like to talk to ex-Senator Woodley. It would probably do you an enormous amount of good.

I will miss John enormously in this place. I sat next to him for years. He could always be relied on to cheer me up. He could usually be relied on to have eucalyptus drops—not that we would ever eat in the Senate chamber because that would be highly disorderly—most of the time. His work in the Senate has been totally dedicated. Everyone knows how hard he worked, particularly as the chair of the rural and regional committee. He is a very hard worker and a very decent human being. His compassion is pretty legendary, especially in the Democrats. He has been a member of the Democrats for a very long time, almost since our inception. He was the president of the Queensland branch for many years and our national ombudsman during one of the most difficult times we have ever had. He carried that through extraordinarily well; it was such a difficult thing to do. We were all most grateful that he was there at the time. He has promised that he will come back and see us in Parliament House and also visit me in my Sydney office. I am really looking forward to him popping in for the first time.

I would like to finish with a couple of quotes from the Bible, which I thought was a very appropriate thing to finish on. When John first started as a senator in the early nineties, I said a few words of a quote that I liked from the Bible but could only vaguely remember, and he knew immediately where it was in the Bible and what the whole quote was about. It is a rather nice one. I think it sums John’s attitude up very well. I will quote it to the Senate. It is from Proverbs 25:21:

If your enemy is hungry, give him bread to eat; if he is thirsty, give him water to drink; For thou shalt heap coals of fire thus upon his head, and the LORD shall reward thee.

I try to do that. It is not that easy, I have to say, with some people but I am still trying—and I will keep trying, John. I would like to finish with a rather nice quote that, I am pleased to say, I found myself. It is from 3 John 14 and 15. I was just going to sit down after quoting that reference so that everybody would have to run to their Bibles and read it out, but I will read it out anyway, just in case you do not all run to your Bibles, which would be a fairly shocking thing. It reads:

I hope to see you soon, and we will talk together face to face. Peace to you. The friends send you their greetings.

Valedictory: John Woodley

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.59 p.m.)—I do not have any quotes from the Bible, unfortunately, but I want to say a few words following the early retirement—the premature retirement—of our friend John
Woodley. I understand that his health has not been the best in recent times, and I hope that being away from Canberra and possibly away from us will enable a quick recovery.

John Woodley is a thoroughly decent person. He came here because of a very strong commitment to serve people. Looking back over his contribution over the last seven or eight years, one can see his commitment throughout all his work. Recently I was reflecting on his first speech in this place, when he was making the point that in this country we dwell a lot on individualism and the importance of the individual; he wanted us to think more about a collective responsibility. He believed that perhaps it was more important that we spend time thinking about how we can serve and assist each other rather than thinking about how we might serve ourselves as individuals. He summed up his belief in the last few words of his speech, when he said:

I believe the critical attribute which truly measures our nation’s worth is the way we treat those pushed to the edges of life, those at the bottom of the heap.

He said that his aspiration was for Australia to be a truly compassionate country. He brought those values to this place. As I said, we saw them every day in his professional work in the Senate, and I think it made a difference to this place, for the better.

In his first speech, John Woodley talked particularly about his roots in the bush. They explained why he had such an interest in and showed such support for country people, particularly those who are struggling. He was only 2½ years old when his father was thrown from a horse and killed. It must have been very difficult for his mother and the rest of the family, and I am sure that that considerably contributed to his commitment in life to serve the community at large.

Apart from the rural community, he had a very deep commitment to Aboriginal people, who he believed were seriously disadvantaged and seriously misunderstood. He worked hard to overcome both that disadvantage and that misunderstanding. In those areas, he also played a very significant role in this place and assisted us as we wrestled with some of these very difficult issues.

I want to conclude by saying that we will miss John Woodley, his sense of humour and his commitment to those less well off. We wish him well in his retirement. We hope it is a long, happy and healthy retirement, because it is something that he deserves.

**Valedictory: John Woodley**

**Senator WATSON** (Tasmania) (10.03 p.m.)—Tonight I join with colleagues from across the political spectrum to say farewell and to say a prayer for better health to friend John Woodley. John’s premature retirement from this place came on doctors’ advice, so I also take this opportunity of wishing him a long and happy retirement with his very devoted wife, Marie.

Entering the Senate on 1 July 1993, John quickly took on committee work. As chairman of the rural and regional affairs committee, he brought to the fore his special gifts of compassion and caring, with concerns about Aboriginal rights, land rights, justice issues and, as Senator Hill said, people living on the edge of society. These personal qualities were no doubt brought very much to the fore as a result of his very valuable contribution to the Uniting Church’s outreach rural services. In 1962 John was ordained as a Methodist minister. His stands on these social issues are very significant and reflect his religious training and his religious upbringing.

There were rather special circumstances following John’s election to the Senate. He did not wish to relinquish his ministry and his parish work, so the Uniting Church appointed him to a unique position called Minister to the Senate. He discharged those responsibilities with great distinction. Not surprisingly, John was heavily involved in the Parliamentary Christian Fellowship and served for a term as its president. He brought into the fellowship, to share their mission, people with world expertise; the parliament was greatly enriched as a result of those external contacts. Many staff and colleagues also benefited from John’s pastoral outreach.

We all know that for some the work in this parliament can be very stressful at times; in such testing circumstances John was always a person that others could lean on for coun-
selling. He assisted many people over the years.

John and I had a common bond in that we were both members of the Uniting Church of Australia. Many members of the church’s hierarchy were known to us both. John was Queensland director of the social responsibility chapter of the Uniting Church in 1987-94; a few years later, I was the Tasmanian member of that chapter. John went on to become chaplain to the Queensland University of Technology from 1988 to 1993, prior to his election as a Queensland senator for the Australian Democrats.

John, should you be reading this transcript at a later time, I would like to say that we need not remind you that over the years you have touched the hearts and the minds of many people. You have given new meaning to many lives and your sharing and your compassion will therefore long be remembered. Thank you for sharing your Christian commitment with us all.

Valedictory: John Woodley

Senator SCHACHT (South Australia)—I am glad that others have spoken first, to remind me that Senator Woodley has retired. As we know, the announcement of his retirement was made during the winter recess and his replacement was sworn in today. I did not serve on any committees of the Senate with Senator Woodley, but I do note his long interest and involvement, on behalf of the Democrats, in regional and rural matters, and the debates in this place where he often, I thought, ‘out Country Partied’ the National Party on some rural and regional issues. I am not sure that I would have agreed with every view that John had on regional and rural matters about the way things should go forward, but one could not deny his major interest in the subject, in the committee work and in the parliament and in his many speeches in this place.

He was as good a representative of non-metropolitan Australia as any who have served in the Senate during my time here. He came in after I was elected and has left before I finish my term—whenever that may be, and it is subject to the electors of South Australia. He showed that you do not have to be a member of the National Party or even the coalition to have a deep and abiding interest in a range of regional and rural issues.

Senator McGauran—But it helps!

Senator SCHACHT—The way the National Party is going at the moment, Senator McGauran, I think Senator Woodley was probably ahead on points anyway.

I also take note of his religious background and his commitment as a Christian and a member of the Uniting Church, as others, particularly Senator Watson, have commented. As a non-believer, an agnostic leaning towards atheism, I found that to be in a different world to my interests, but I respect the fact that, as far as you can be a practising Christian and a politician in this place, Senator Woodley provided one of the closest examples of how to do it. I find it a bit hard to believe you can say prayers at the beginning of every day of the Senate, Madam President, and then two minutes later there is the most awful dogfight and we are tipping abuse on each other across the chamber. That is why I am against saying prayers in this place. I think it should be excluded both for philosophical reasons—because we do not have an established church in this country—and because it is a bit hypocritical that we stand here solemnly and say the Lord’s Prayer and then, as I say, two minutes later you are calling us to order for abuse that we are levelling at each other. I cannot recollect Senator Woodley ever being called to order for saying something nasty, in the form of an interjection or in his speeches, about another senator. That is a mark of what he would see, and I would recognise, as living his Christian ideals. It is not something that I philosophically agree with, but Senator Woodley did make every effort—as painful as it may have been sometimes—to act those Christian ethics out.

I want to make note that he is a member of the Uniting Church, a church within the range of Christian churches in this country that has led the way in so many areas of promoting social justice and equality in Australia. In particular, if you go back to the great debates in this place in 1993 and 1994, the Mabo debate and subsequent debates
about reconciliation, land rights et cetera, John Woodley’s contribution was always at the nub of the ethics and the morality of those decisions. Again, from a Christian basis, this was very noteworthy and he was a lot less hypocritical than maybe many others who made remarks in this place.

I understand that, even though he may have access to some divine form of order that I do not have access to, in the end, like all of us, age and weariness and ill health sometimes catch up, and he has had to retire. I wish John and his family and all his friends, particularly those in Queensland, well, and I wish him a long retirement. I hope that occasionally I can see him around this place or elsewhere in Australia.

Valedictory: John Woodley

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (10.12 p.m.)—Senator Woodley typically chose to retire out of session, so to speak. One of the reasons he told me that he did this was so that he would not have to sit through these sorts of speeches. Whilst disregarding that part of his indication, I will respect his wishes by not speaking at any great length. But I want to particularly record my appreciation of and admiration for John Woodley. I want also to associate my wife with that—not so much with John, but with Senator Woodley’s wife, Marie, with whom my wife had a bit to do in the Parliamentary Partners Association.

John is a Queenslander. We always used to remind him, although he never resiled from the fact, that he was once a member of the Liberal Party. He always said, when we mentioned this, that it was only for a very short period, but we would continue to remind him of it. I say to his Democrat colleagues that I know he was only joking, but when I last saw him in Cloncurry a couple of weeks ago, I said, ‘Why are you really retiring, John?’ and he said to me, ‘Ian, I thought it was time to retire.’

Senator O’Brien—I will do the same!
if he had a little turn, he would try to hide it, but because she had some medical training she could see through him trying to hide it. It was mainly because of her concern for him, I think, that he decided to call it a day. I am sure the parliament and Australia will be the poorer for his leaving us in the Senate. He did make a real contribution, and I am sure that contribution has counted and will count in the future, even when he is not here. I wish him well, and I would like to be associated with the remarks others have made regarding former Senator John Woodley.

Valedictory: Senator John Woodley

Ovine Johne’s Disease

Senator O’BRIEN (Tasmania) (10.18 p.m.)—I would like to address the last committee report that I worked on with John Woodley. It was the last report that he handed down as Chairman of the Senate Rural and Regional Affairs and Transport References Committee, only two days before he tendered his resignation. That was a matter, like many others, that John Woodley put considerable time and effort into because he felt it was important to take the Senate to the people of Australia through the committee system. It gave him and the Senate an opportunity to understand what people thought and to reflect those thoughts in the reports the committees handed down.

This last report is one such report. It is a report which I am absolutely positive John Woodley felt very strongly about when he committed words to paper, and it is one of a number of unanimous reports handed down by the Rural and Regional Affairs and Transport References Committee. It was a report initiated on a motion that I brought to the Senate in 1997 on the impact of ovine Johne’s disease on the Australian sheep flock and on Australian sheep producers and on the role of government and the industry in dealing with the disease.

It is unfortunate to have to say that the inquiry was necessary because the then Minister for Primary Industries and Energy, Mr Anderson, was doing nothing about the plight of those farmers who had discovered the disease in their flock. It appeared to me that Mr Anderson was taking the easy option when he said that, unless all the states and the industry came to him with an agreed plan to deal with the problem, he was not interested in taking the matter any further. Unfortunately, that appears to be a standard approach by Minister Anderson, and it is now leading to a breakdown in the administration of the transport portfolio, but that is another story.

The committee, unlike Minister Anderson, took the issue of OJD very seriously. It took evidence at nine public hearings in seven different locations. Ninety witnesses appeared before the committee, and it was a fairly thorough investigation. It was very clear from that first inquiry that farmers who had discovered that they had sheep infected with the disease were suffering very badly. Their hardship was certainly financial but it was not just financial. Some felt that they suffered from a social stigma, as a result of the discovery of the disease in their flock.

That was the first report of the committee and there was a subsequent report, which we handed down in the break. That report indicated there was a need for further inquiry into the national OJD program at a later time. That second investigation handed down its report, as I have said, out of session on 25 July this year. The committee found in this second inquiry many things which mirrored the findings of the first report. The committee found that those producers whose flocks were affected by the disease continued to suffer severe economic and social hardship. Not only did the Rural and Regional Affairs and Transport Legislation Committee provide the government with clear evidence that many farmers out there needed help because of the impact of this disease; twice farmers provided some of that advice directly to the Minister for Agriculture, Fisheries and Forestry, Mr Truss. On 30 December 1999 that minister wrote a letter to state agriculture ministers about what he described as ‘recent developments’ on ovine Johne’s disease. In that letter Mr Truss expressed concern about the hardship being created by the control measures applied to that disease but to date Mr Truss has done nothing to fix it. Since July 1997, this government has effectively
ignored the people affected by the disease in their flocks, and they are still waiting.

The second report—I stress again it is a unanimous report—makes 14 recommendations. One of the key recommendations calls on the Commonwealth government to initiate the establishment of a national sheep disease fund to which all producers should contribute and which could be used by producers in every state. The control and possible eradication of this disease depends upon the cooperation of all producers, and that cooperation will only come if there is adequate financial support for producers who are found to have infected sheep. It is the responsibility of the federal agriculture minister to take the lead on the establishment of this fund to ensure the program has adequate financial underpinning. The committee has recommended that Mr Truss place the establishment of such a fund before his state colleagues and the industry for assessment and decision before the end of 2001. The committee was of the view that, if Mr Truss, his state colleagues and the industry decided not to proceed with the fund, then commercial reality should prevail—that is, producers should be permitted to decide whether they vaccinated their sheep on the usual commercial basis governing such stock management options. It is clear that this current program cannot continue without financial support for affected producers.

The committee has also recommended that, subject to appropriate vendor declarations, trading between the control zone and the residual zone should be permitted. This recommendation should also be considered by the Commonwealth and the states as a matter of urgency. If implemented it will assist affected growers to better manage their business without compromising the integrity of the national program. The committee also recommended that case studies of successful on-farm management of OJD form an essential part of communication and education. To date on-farm management practices have not been an acceptable part of the whole of industry attack on the long-term effect of OJD.

The committee has also recommended that vaccine be made available to producers as soon as possible. Trials of the Gudair OJD vaccine have been taking place. It is important that all necessary steps be taken to facilitate discussions with the national registration authority for the revision of the current New South Wales permit to extend the use of the Gudair OJD vaccine while recognising the importance of expediting the completion of vaccine trials. There is also a need for the national OJD program to be controlled by a full-time manager and for the coordination and management of the OJD research program to be strengthened. This would ensure a properly coordinated national focus on the program.

The Howard government should be condemned for failing to act to help the many hundreds of farm families who have been adversely affected by this disease. The initial report by the committee recommended that exceptional circumstances assistance be used in this area. That was rejected by the government. The committee has now recommended other steps be taken to assist those producers, and the committee was unanimously of the view that if that did not occur then those producers should be allowed to get on with their lives commercially and to vaccinate their flocks without the limitations which have been placed upon them by the national program. If the government had acted on the committee’s initial report, many sheep producers would not have been forced to endure their financial and social hardship for so long. Frankly, you would have to say this is yet another example of the National Party simply taking the vote of farmers for granted.

In closing, Senator Woodley and I shared many moments travelling Australia with the Rural and Regional Affairs and Transport References and Legislation Committees. I will miss his company, his counsel and the contribution that he has always had to make in a positive way in seeking to give assistance to the people of rural and regional Australia. I wish him and his wife Marie well in his retirement.

Valedictory: John Woodley

The PRESIDENT (10.27 p.m.)—In concluding today’s proceedings, I join with others who have spoken tonight about Senator Woodley and say that I too will miss him. He
was always a courteous and compassionate person, as has been stated this evening, and I think he made a very real contribution to this chamber. I enjoyed our discussions and the opportunities I had to talk with him. I knew Marie less well than John but knew her for the role that she played. I wish them both well.

Senate adjourned at 10.29 p.m.

Documents

Tabling

The following documents were tabled by the Clerk:

Aged Care Act—
Determination under section—
  44—ACA Ch. 3 No. 2/2001-ACA Ch. 3 No. 6/2001, ACA Ch. 3 No. 8/2001-ACA Ch. 3 No. 11/2001 and ACA Ch. 3 No. 14/2001.
  48—ACA Ch. 3 No. 12/2001.
  52—ACA Ch. 3 No. 13/2001.
User Rights Amendment Principles 2001 (No. 1).


Australian Communications Authority Act and Radiocommunications Act—Radiocommunications (Interpretation) Amendment Determination 2001 (No. 3).


Christmas Island Act—Ordinance No. 1 of 2001 (Utilities and Services Amendment Ordinance 2001 (No. 1)).

Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—
Civil Aviation Amendment Order (No. 10) 2001.

Civil Aviation Amendment Order (No. 11) 2001.

Civil Aviation Amendment Order (No. 12) 2001.

Civil Aviation Amendment Order (No. 13) 2001.

Directive—Part—


Instruments Nos CASA 184/01 and CASA 261/01.


Cocos (Keeling) Islands Act—Ordinance No. 1 of 2001 (Utilities and Services Amendment Ordinance 2001 (No. 1)).

Commonwealth Authorities and Companies Act—
Notice pursuant to paragraphs 45(1)(a) and (c)—Participation in formation and membership of General Practice Education and Training Limited.


Customs Act—Regulations—Statutory Rules 2001 No. 171.


Defence Act—
Determination under section—


Environment Protection and Biodiversity Conservation Act—

Macquarie Island Marine Park—

Comments on representations on the draft management plan, dated May 2001.

Management Plan.

Regulations—Statutory Rules 2001 No. 179.


Federal Court of Australia Act—


Financial Management and Accountability Act—


Fringe Benefits Tax Assessment Act—

Regulations—Statutory Rules 2001 No. 188.


Goods and Services Tax Ruling GSTR 2001/5.

Great Barrier Reef Marine Park Act—

Regulations—Statutory Rules 2001 Nos 178 and 197.


Health Insurance Act—

Health Insurance (Accredited Pathology Laboratories — Approval) Amendment Principles 2001 (No. 2).

Regulations—Statutory Rules 2001 Nos 157 and 158.


Interstate Road Transport Act—

Determination RTR 2001/2—Determination of B-Double Routes.

Interstate Road Transport Regulations—Determination RTR 2001/5—Determination of mass management compliance assurance schemes.

Revocation RTR 2001/1—Revocation of Determinations of B-Double Routes.

Jervis Bay Territory Acceptance Act—Ordinance No. 1 of 2001 (Administration Amendment Ordinance 2001 (No. 1)).

Life Insurance Act—Variation of Prudential Rules No. 47.

Migration Act—


Statement for period 1 January to 30 June 2001 under section—

33.

48B [5].

345 [3].

351 [58].

417 [117].


National Health Act—

Declarations Nos PB 7 and PB 8 of 2001.
Determination—
Product Rulings—
Addendum—
Radiocommunications Act—
Radiocommunications (Aircraft Station) Class Licence 2001.
Radiocommunications (Maritime Ship Station — 27 MHz and VHF) Class Licence 2001.
Remuneration Tribunal Act—Determination—
2001/12: Remuneration and allowances for various public office holders.
2001/13: Classification Structure for Principal Executive Offices.
Safety, Rehabilitation and Compensation Act—
Notice of Declaration—Notice No. 5 of 2001.
Seat of Government (Administration) Act—Ordinance—
No. 1 of 2001 (Reserved Laws (Administration) Amendment Ordinance 2001 (No. 1)). No. 2 of 2001 (Unlawful Assemblies Repeal Ordinance 2001).
Superannuation (Productivity Benefit) Act—
Taxation Determinations TD 2001/16 and TD 2001/17.
Telecommunications Act—
Telecommunications Numbering Plan Amendment 2001 (No. 2).
Telecommunications (Consumer Protection and Service Standards) Act—
   Statement of reasons for diverging from
Australian Communication Authority’s
advice in relation to Universal Service
Subsidies (2001-03 Contestable Areas)
Determination (No. 1) 2001 (Amend-
ment No. 1 of 2001).
Telstra Carrier Charges—Price Control
Arrangements, Notification and Disal-
lowance Determination No. 1 of 2001.
Universal Service Areas Determination
(No. 1) 2001 (Amendment No. 1 of
2001).
Textile, Clothing and Footwear Strategic
Investment Program Act—Textile, Cloth-
ing and Footwear Strategic Investment
Program Scheme Amendment 2001 (No.
3).
Therapeutic Goods Act—Regulations—
Statutory Rules 2001 Nos 159 and 160.
Therapeutic Goods (Charges) Act—Regu-
Trade Marks Act—Regulations—Statutory
Rules 2001 No. 185.
Trade Practices Act—
   Instrument under section 10.03—
      Instrument No. 1 of 2001—Declaration
of designated outwards secondary
shipper body.
      Instrument No. 2 of 2001—Declaration
of designated inwards secondary
shipper body.
Regulations—Statutory Rules 2001 No.
165.
Veterans’ Entitlements Act—
   Instrument under section—
      88A—Instrument No. 10/2001—
Veterans’ Entitlements (counselling
and psychiatric assessment—older
former children of Vietnam veterans)
      90—Veterans’ Entitlements (Treatment
Principles – Enhanced Residential Care for
      196B—Instruments Nos 49-56 of
Regulations—Statutory Rules 2001 No.
209.

PROCLAMATIONS

Proclamations by His Excellency the
Governor-General were tabled, notifying that
he had proclaimed the following Acts to
come into operation on the dates specified:
Australian Research Council Act 2001—1
July 2001 (Gazette No. GN 25, 27 June
2001).
Corporations Act 2001—15 July 2001
(Gazette No. S 285, 13 July 2001).
Electoral and Referendum Amendment Act
(No. 1) 2001—16 July 2001 (Gazette No.
S 284, 13 July 2001).
QUESTIONS ON NOTICE

The following answers to questions were circulated:

**Rail: Commonwealth Grant to the Australian Transport and Energy Corporation**  
(Question No. 3156)

Senator Greig asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 3 November 2000:

1. Did the Commonwealth grant $300,000 to the Australian Transport and Energy Corporation (ATEC) in 1999; if so, was this funding to facilitate the preparation of a pre-feasibility study for an inland Melbourne-Brisbane railway.

2. Did the Minister report in July 2000 that the report had been completed.

3. What conditions did the Commonwealth attach to any grant given for the purposes of such a study.

4. Was ATEC required to provide a copy of the report to the Commonwealth.

5. Has ATEC given a report on the inland rail route to the Commonwealth; if so, when was it received.

6. Will the Minister table the report for the information of honourable senators.

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided the following answer to the honourable senator’s question:

1. Yes.

2. Yes.

3. The Commonwealth’s contribution to the study was subject to the Commonwealth’s accountability arrangements and was provided under a Deed of Grant that set out a range of performance-based terms and conditions for the grant.

4. Yes.

5. Yes. The Commonwealth received the report on 14 July 2000.

6. No.

**Prime Minister and Cabinet Portfolio: Parliament House Employees**  
(Question No. 3508)

Senator Faulkner asked the Minister representing the Prime Minister, upon notice, on 13 March 2001:

1. How many Australian Public Service (APS) officers whose salary is being paid, either in whole or in part, by the department or any portfolio agency, are currently employed in any capacity in Parliament House (excluding all persons employed under the Members of Parliament (Staff) Act).

2. For each of those persons currently employed in Parliament, and without naming those persons, please provide: (a) the capacity in which they are acting; (b) the senator’s or member’s office in which they are employed, or the functional area if they are employed in a parliamentary department; (c) the APS salary level paid to that person; and (d) the period of employment.

3. Please provide the same details for any such persons not currently employed but who have been so employed at any time during the past year.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator’s question:

I am advised by my department as follows:

The Department of the Prime Minister and Cabinet

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Public Service and Merit Protection Commission

(1) One

(2)

Departmental Liaison | The Hon. Dr David Kemp, MP | EL 1 | From 13/8/99

(3) Nil.

Australian National Audit Office

(1) Two

(2)

Clerical duties | Joint Committee of Public Accounts and Audit Secretariat | APS 5 | 28/2/01 – 30/6/01 |

Clerical duties | House of Representatives Standing Committee on Economics, Finance and Public Administration | APS 5 | 5/3/01 – 30/6/01 |

(3)

Clerical duties | House of Representatives Standing Committee on Economics, Finance and Public Administration | APS 5 | 20/9/00 – 4/4/00 |

For the portfolio agencies listed below, there are no APS officers whose salary is being paid by their agency, either in whole or in part, employed at Parliament House:
Senator Bourne asked the Minister representing the Minister for Defence, upon notice, on 8 May 2001:

(1) Is the Commonwealth presently defending a number of common law claims for injury arising out of incidents involving its seagoing ships; if so: (a) what incidents are involved; and (b) how many claims are there in relation to each incident.

(2) (a) When and in which courts were the initiating claim documents filed; and (b) in which courts are the matters being pursued.

(3) Has the Commonwealth admitted any liability or breach of duty of care in relation to any of the incidents; if so, which incidents are they.

(4) How many of the claimants allege injury arising out of the Commonwealth’s breach of duty of care, giving rise to post traumatic stress disorder (PTSD).

(5) Has the Commonwealth instructed the Australian Government Solicitor to commission expert specialists’ reports from consultant psychiatrists and others in relation to the claims of PTSD; if so: (a) approximately how many specialists’ reports have been commissioned to date, by claim and state of origin; and (b) what is the expertise of each of these experts.

(6) (a) Has the Commonwealth received professional legal advice in respect of each case, from the Australian Government Solicitor, as to liability for damages; and (b) has such advice been supported by expert medical opinion obtained by the Australian Government Solicitor.

(7) Does the Minister expect the Australian Government Solicitor and Counsel retained by the Commonwealth to develop a working knowledge of the causes and consequences of PTSD based on expert opinion.

(8) Has the Commonwealth or the Defence Legal Office recently received from the Australian Government Solicitor an application for a study tour to the United States of America, United Kingdom and/or Europe to interview experts on PTSD on the basis that the present number and dollar value of the cases under their control justify the expenditure for two senior solicitors and three counsel (including one senior) of an estimated $80,000 for travel expenses alone.

(9) If the Commonwealth or Defence Legal Office is giving consideration to a proposal for a study tour, similar to the above, has consideration been given to whether: (a) the persons proposed to travel overseas are also those persons who have carriage of all matters currently on foot; and (b) whether any knowledge, expertise or written advice obtained would be admissible in evidence, in each and all the cases currently on foot.

(10) Does the Minister consider that this is an appropriate expenditure of public funds; if so, why.

(11) Does the Minister expect the Australian Government Solicitor to develop knowledge and expertise, based on expert opinion in relation to specific cases, or does the Minister expect the Australian Government Solicitor to develop knowledge and expertise in relation to the causes and consequences of PTSD generally in the context of litigation; if so, why.

(12) Has the Australian Government Solicitor already retained the services of an Australian professor of psychiatry from Adelaide who has an international reputation in lecturing and research in the field of PTSD; if so, does the Australian Government Solicitor not see the obvious benefits in utilising his expertise rather than that of overseas experts.

(13) If the Commonwealth and/or Australian Government Solicitor have considered such a proposal, has a decision been made; if so, how does it justify it being an appropriate expenditure of public monies.

Senator Minchin—The Minister for Defence has provided the following answer to the honourable senator’s question:
(1) Yes.
   (a) The HMAS VOYAGER/HMAS MELBOURNE collision of 10 February 1964 (the 1964 collision), the HMAS MELBOURNE/USS FRANK E EVANS collision of 3 June 1969 (the 1969 collision), an incident that occurred on HMAS KIMBLA on 31 August 1979 (the 1979 incident), an incident that occurred on HMAS ONSLOW in respect of the presence of diesel fumes on 1 March 1981 (the 1981 incident), and an incident that occurred on HMAS STALWART in respect of the presence of hydrogen sulphide (H2S) on 22 October 1985 (the 1985 incident).

   (b) the 1964 collision - 113;
   the 1969 collision - 1;
   the 1979 incident - 1;
   the 1981 incident - 1; and
   the 1985 incident - 5.

(2) (a) the 1964 collision - the High Court of Australia, the Supreme Court of Victoria, the Supreme Court of the Australian Capital Territory, the District Court of New South Wales, and the Supreme Court of New South Wales;
   the 1969 collision - the Supreme Court of New South Wales;
   the 1979 incident - the High Court of Australia;
   the 1981 incident - the District Court of New South Wales; and
   the 1985 incident – the Federal Court of Australia.

   To provide each specific date on which each plaintiff/claimant filed each initiating document in each respective court would entail an unreasonable diversion of limited staffing resources requiring a search of the Commonwealth’s records and the records of its legal representative in circumstances where those records will not necessarily accurately disclose that date as distinct from the date on which documents were issued by a court and/or received by the Commonwealth. Whether initiating documents were dated on the date they are filed by an applicant/plaintiff or his or her legal representative or on another date (e.g. the date the initiating document was issued by a court) is not known to the Commonwealth or its legal representative. That information would be accurately known to the applicant/plaintiff or his or her legal representative and the respective court.

   (b) the 1964 collision - the High Court of Australia, the Supreme Court of Victoria, the Supreme Court of the Australian Capital Territory, the District Court of New South Wales, and the Supreme Court of New South Wales;
   the 1969 collision - the Supreme Court of New South Wales;
   the 1979 incident - the Federal Court of Australia;
   the 1981 incident - the District Court of New South Wales; and
   the 1985 incident – the Federal Court of Australia.

(3) Yes. The 1964 collision and the 1985 incident.

(4) The majority of the 121 claimants.

(5) to (13) The Commonwealth is responding to these claims in accordance with normal practice. This includes:
   defending or settling individual claims in accordance with legal principle and practice, as required by the Legal Services Directions issued by the Attorney-General under the Judiciary Act 1903;
   seeking to ensure efficient and effective use of public money, as required by regulation 9 of the Financial Management and Accountability Regulations.

   It is therefore incumbent on the Commonwealth to take all proper steps to test claims made against it. This includes taking reasonable steps to seek to obtain all evidence relevant to such claims. These steps enhance the Commonwealth’s ability to make appropriate decisions whether to defend, or to seek to settle, individual claims.
Accordingly, the Commonwealth has investigated, and continues to investigate, possible sources of expert evidence relevant to the validity of aspects of the claims, both in relation to current claims and possible future claims.

It would not be appropriate to disclose details of the steps which the Commonwealth has taken or is taking or of any related legal advice which the Commonwealth has received. The Commonwealth will, of course, comply with all court rules and practices regarding disclosure of evidence intended to be called by the Commonwealth in court proceedings.

**Lower Great Southern Family Day Care**

(Question No. 3584)

Senator Mark Bishop asked the Minister for Family and Community Services, upon notice, on 15 May 2001:

With reference to the answer to question on notice no. 2928 (Senate *Hansard*, 29 November 2000, p.20208) relating to the department’s decision to terminate funding to the Lower Great Southern Family Day Care Association and the Minister’s statement ‘Complaints have been made to the Department by parents, carers and staff. These complaints were referred to the Association in the first instance…’:

1. How many complaints did the department receive.
2. Who made the complaints.
3. On what dates were the complaints made.
4. What was the substance of each complaint (please provide details).
5. On what date was each complaint referred to the Association.
6. Were the complaints referred to the Association in writing.
7. If the complaints were not referred to the Association in writing how were they referred and to whom.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

1. The Department has formally logged 35 complaints. In addition the Independent Problem Solving Tribunal funded to investigate issues within the scheme received 36 written submissions and conducted 41 interviews with people who had concerns about the scheme.
2. Complaints were received from parents, carers, committee members, the Liquor Hospitality and Miscellaneous Workers Union, a State government representative, agencies working in the child care field, and staff of the family day care scheme. The Department is not releasing individuals’ names in order to protect privacy.
3. The earliest complaints were made in February 1998 and through to March 2000. Most complaints were received in August, September and October 1999.
4. The complaints covered a wide range of issues relating to management of the service, quality of care and inadequate grievance procedures. More specific details of complaints follow:
   - Physical manhandling of children
   - Two carers abusing children
   - Foul language used to children and in front of children
   - A child being shut in a bedroom
   - Adverse remarks being made to a child about its parents
   - Children being moved between carers without the parents permission or knowledge
   - Parent harassed at home and in a public place by a carer for making a complaint
   - Carers being rude and abrupt towards children
   - Children left unattended in a car while carer shopping
   - Small children hosed after soiling nappies
   - 18 month old often alone and unattended in outside play area
   - Carer spending time watching TV and on the phone and not watching children
   - Lack of care and supervision – 3 and 4 year old often in backyard unattended
   - Carers discussing a parent’s children in front of other parents and children
   - Carers not keeping records of children’s injuries while in care
Lack of outside facilities for children
Constant travel to and from another carer’s home with children in their care
Complaints about diet and insufficient quantity of food
3 year old sleeping in lounge regularly with unguarded fireplace
Poor management practises
Committee’s failure to act on parent’s complaints
Poor treatment of staff by management committee and some carers including unprofessional
behaviour, verbal harassment and intimidation of staff.
Poor composition of management committee
Committee’s failure to deal with issues felt to be compromising quality of care and having adverse
impact on scheme staff
Committee not staffing scheme appropriately to support the work of funded support agencies
Improper meeting procedures
Unreasonable instructions given to staff by management committee
Interference by committee and carers in day to day management of the scheme
No provision for genuine staff input into decision making as required in the Commonwealth’s
family day care handbook
Scheme staff unable to progress development of new child care places for which funding had
been allocated due to committee’s failure to agree on a budget Committee breeches of Association’s
constitution

Before the Independent Problem Solving Tribunal was appointed complaints from parents to the
Department had been referred to the Association. The complaints were made in the date range
given under (3). The complaints came to the Department in a variety of ways. Some were direct
letters to the Department, some were phone calls, some were letters copied to the Department, and
in some cases the Department received letters enclosing copies of complaints written to the
scheme or other agencies.

A number of complaints were referred to the Department because the Association had not
taken any action on these, despite the scheme having clear written policies on some of the areas of
complaint which had been contravened. The committee was already aware of these complaints.
The nature of complaints received direct to the Department were raised with the Association. The
need for effective grievance procedures was raised with the Department on several occasions, including a meeting in August 1999 and in several letters. The Association should have been able to demonstrate to the Department that it was adequately dealing with parents’
complaints. Complaints, action taken, the result and a “signing off” of the complaint should have
been fully documented. Such evidence was not provided to the Department to allay its concerns,
nor was it provided to the Independent Problem Solving Tribunal which was appointed to investi-
gate issues within the scheme and to recommend options for resolution.

Myalgic Encephalopathy/Chronic Fatigue Syndrome
(Question No. 3586)

Senator Allison asked the Minister for Family and Community Services, upon notice, on
23 May 2001:

(1) What Federal policy initiatives have been put in place with respect to the condition known as My-
algic Encephalopathy/Chronic Fatigue Syndrome (ME/CFS).
(2) Is the Federal Government aware that the Victorian State Government has refused to fund the
ME/Chronic Fatigue Syndrome Society of Victoria Incorporated which provides services to 13
000 people ill with CFS in Victoria.
(3) Are there any Commonwealth grant programs or other financial support available to such organi-
sations.

Senator Vanstone—The answer to the honourable senator’s question is as follows:

(1) Health programs for this group are the responsibility of the Minister for Health.
Eligibility for programs administered by the Federal Department of Family and Community Services (eg, Disability Support Pension; Commonwealth-State Disability Services) is not based on type of illness or disability. It varies from program to program but generally focuses on level of impairment, relative need, impact of disability on capacity for work and need for on-going support.

(2) FaCS was not previously aware.

(3) FaCS has a program of funding for peak bodies which provides funding to a range of national secretariats that will be required to act as a two-way conduit between the community and government on a range of social policy issues. The current structure includes the establishment of two new national secretariats to represent the interests of families and disability consumers.

Torres Strait Baseline Study: Report
(Question No. 3605)

Senator Bourne asked the Minister for the Environment and Heritage, upon notice, on 12 June 2001:

With regard to the Torres Strait Baseline Study, pilot study final report June 1993, conducted by the Great Barrier Reef Marine Park Authority:

(1) What follow up action has been taken on each of the recommendations made in the report.

(2) What is known about the current loads of heavy metals entering the food chain on the Great Barrier Reef.

(3) What is the impact of those heavy metals on the Great Barrier Reef and communities in the Torres Strait.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The Torres Strait Baseline Study (TSBS), pilot study was initiated by the Australian Government in response to the concerns of Torres Strait Islanders, scientists and fisherfolk about the possible effects on the Torres Strait Marine Environment from mining operations in the Fly River catchment of Papua New Guinea. The pilot study makes several recommendations involving longer term sampling and monitoring for trace metal levels in sediment and selected indicator organisms in the Torres Strait marine environment.

The TSBS comprises four component programs, each addressing a specific important aspect of the Torres Strait Marine Environment. Several reports were developed and document results of these four component programs that cover:

- Commercial fisheries,
- Community fisheries,
- Marine sediments, and
- Indicator organisms.

The results of the pilot study were used to design a more comprehensive and broadscale Main Study. The Main Study provides information on the trace metal content of sediments, indicator organisms and some of the traditional seafoods of the Torres Strait.

In 1998, in response to requests from the Torres Strait Regional Authority (TSRA), funding was allocated by the Australian Government (Environment Australia) for follow-up monitoring of heavy metals in the Torres Strait marine environment comprising the following six tasks. These are:

- To develop sampling strategies to enable temporal and spatial comparisons of levels of trace metals in an appropriate Torres Strait indicator organism (the mangrove cockle);
- To determine levels of trace metals present in muscle, liver, kidney and fat tissue of dugong;
- To determine levels of trace metals present in muscle, liver, kidney and fat tissue of green turtle;
- To determine levels of trace metals present in Torres Strait sediments;
- To determine levels of trace metals present in tissue of rock lobster; and
- To investigate the implications of these results for the marine environment in the Torres Strait and its traditional inhabitants.
A report detailing the results of this study is in final preparation and is due to be presented to the Torres Strait Regional Authority in August 2001.

(2) Broad-scale, and intensive, site specific monitoring of Great Barrier Reef (GBR) sediment metal concentrations has now been completed (1997-1999), although sediment quality guidelines for heavy metals in the Great Barrier Reef World Heritage Area remain to be developed. Concentrations of metals present in subtidal sediments are variable along the Queensland coast, and often exceed Australian guidelines for metals such as chromium and nickel. As many of these samples were collected at locations remote from human influences, it is likely that they are naturally enriched from runoff sourced from ultramafic igneous rocks and serpentinites which can contribute exceptionally high concentrations of these two metals to overlying soils.

Recent GBR work has also concluded that mercury concentrations in surface sediments in Bowling Green Bay in the central section of the Great Barrier Reef World Heritage Area are three times higher than pre-1850 background concentrations. The majority of this trace metal contamination has been attributed to the downstream transport of mercury used as an amalgam in the gold mining industry of northern Queensland at the turn of the century, and through the more recent use of methoxyethylmercuric chloride as a fungicide by the sugar cane industry.

Similarly, increases in cadmium and arsenic concentrations in marine sediments in the Hinchinbrook region resulting from the use of phosphatic fertilisers naturally enriched in these elements have been noted adjacent to areas with intensive cropping.

(3) Results of monitoring undertaken in the Great Barrier Reef indicate that heavy metals, although present in both sediment and aquatic biota, do not have a significant impact on the reef. With the exception of some sites associated with urban, industrial and agricultural activity, metal contamination in the Great Barrier Reef is a relatively minor concern.

Heavy metals present in the Torres Strait are derived from a number of different sources. The Main Study undertaken as a result of the original pilot study concludes that the influence of the Fly River on the trace metal levels and content of sediments and selector indicator organisms was limited to the northern Torres Strait.

High levels of some trace metals (particularly cadmium) have been found in some seafoods commonly eaten in the Torres Strait. At the conclusion of the TSBS, a warning was issued concerning the consumption of potentially contaminated seafood in the Torres Strait. The impacts of these heavy metals on humans and the Torres Strait marine environment are currently being further explored in the studies referred to in the answer to question 1, due to be completed later this year. Relevant health authorities will need to consider the data to provide further health recommendations or to carry out further study if necessary.

Greenhouse Challenge Agreements
(Question No. 3616)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 14 June 2001:

How many, and what percentage of the total number of, Greenhouse Challenge companies are currently overdue in reporting progress in implementing their Greenhouse Challenge agreements.

Senator Hill—The answer to the honourable senator’s question is as follows:

As of 26 June 2001, 83 companies (or less than 14%) of the current 603 Greenhouse Challenge members have overdue progress reports. The AGO is working closely with these companies and expects that the remaining overdue reports will be received soon.

Australian Quarantine and Inspection Service: Meat Inspectors
(Question No. 3617)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 14 June 2001:

(1) How many meat inspectors are currently employed on a permanent basis by the Australian Quarantine and Inspection Service (AQIS).

(2) How many meat inspectors were employed on a permanent basis as at 1 July 2000 and 1 July 1999.
(3) How many meat inspectors are currently employed on a contract basis by AQIS.

(4) How many meat inspectors were employed on a contract basis as at 1 July 2000 and 1 July 1999.

(5) How many contracts have been signed with contract meat inspectors for the 2001/02 financial year.

(6) What were the total hours worked by contract meat inspectors in the 1999-2000 and 2000-01 financial years.

(7) What was the total cost of the provision of meat inspection services by permanently employed AQIS meat inspectors in the 1999-2000 and 2000-01 financial years.

(8) What was the total cost of the provision of meat inspection services by contracted AQIS meat inspectors in the 1999-2000 and 2000-01 financial years.

(9) How many permanently employed AQIS meat inspectors and how many contracted meat inspectors were engaged at the following meat works in the 1999-2000 and 2000-01 financial years (a) Goulburn; (b) Corowa; (c) Colac; (d) Warrnambool; (e) Wallangarra; (f) King Island; and (g) Longford.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) 336.

(2) 1 July 2000 - 361
1 July 1999 - 416.

(3) There are currently 235 who work varying lengths of time.

(4) As at 1 July 2000 there were 259 contractors registered by AQIS as available for work.
As at 1 July 1999 there were 248 contractors registered by AQIS as available for work

(5) 283.

(6) 1999/2000 – 171,807 hours
2000/2001 (to 19 June) – 225,906 hours.

(7) The total employee-related cost of the provision of meat inspection services by permanently employed AQIS meat inspectors in the 1999/2000 financial year was $20,991,000 and in the 2000/01 financial year the cost to 21 June 2001 was $19,108,000 year to date.

(8) The total cost of meat inspection services by contracted AQIS meat inspectors was: 1999/2000 - $4,779,177 and 2000/2001 (to 21 June) - $6,456,260.

(9)

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<tr>
<th></th>
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<tbody>
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<td>Goulburn</td>
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<td>13</td>
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<td>18</td>
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<tr>
<td>Corowa</td>
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Environment: Tree Fern Exports

(Question No. 3630)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 18 June 2001:

(1) In what way will the Minister ensure that exported tree ferns do not carry other species.

(2) What evidence does the Minister have that tree ferns cannot become a weed species overseas.
(3) What evidence does the Minister have that plants and insects or other species in or on tree ferns will have no impact on foreign ecosystems; if there is no such evidence, will the Minister prevent their export.

(4) Is the Minister aware that many tree ferns survive Forestry Tasmania’s destructive logging practices; if so, how will such tree ferns be identified for exclusion from export; if not, will the Minister prevent the export of tree ferns unless and until only ferns destined for destruction are separated from those which will survive.

(5) Who will determine, on a site by site basis, the quantity of tree ferns for export.

(6) Will private enterprise be involved in the export of the ferns, if so, who.

(7) Will other species besides Dicksonia antarctica be exported; if so which.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The Australian Quarantine and Inspection Service (AQIS) issue Australian Phytosanitary Certificates in compliance with the International Plant Protection Convention and the Export Control Act 1982. These certificates are issued to international standards and certify the health status of the plant. Additionally, the relevant plant protection organisation of the importing country may place restrictions on some species based on pest, weed or disease potential.

(2) I am unaware of any Australian tree fern species becoming a weed overseas. Australia is working cooperatively with the IUCN (International Conservation Union), and Parties to the Biodiversity Convention and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) to improve legislative controls and increase the awareness of the pest potential of species traded internationally. To date, Australian tree ferns have not been identified as a species of high pest potential.

(3) Australia has been issuing export permits for tree ferns since 1984, and currently exports to the USA, South Korea, Taiwan and countries in the European Union. Provided that tree ferns are taken in accordance with an approved management program and their shipment complies with the importing country’s quarantine and plant protection legislation, I do not intend to prevent their export. Should tree ferns or any associated species be identified as posing an unacceptable risk to overseas ecosystems, Australia would ensure that cooperative measures were taken to assist in protecting those ecosystems.

(4) The proposed tree fern management plan only allows for the salvage harvest of tree ferns from areas scheduled to be cleared for conversion to agriculture, plantation or road construction. Under these circumstances, no tree ferns would survive as the sites are clear-felled, bulldozed into windrows and burnt.

(5) I understand that the Tasmanian Forest Practices Act will be amended to incorporate tree fern harvesting operations. Such operations will then require a certified Forest Practices Plan. Under the Forest Practices Plan, a Forest Practices Officer on behalf of the Forest Practices Board will determine the quantity of tree ferns for salvage harvest. All overseas exports will require an export permit from Environment Australia.

(6) A certified Forest Practices Plan permits private enterprise to salvage harvest tree ferns under the Tree Fern Management Plan. The Forest Practices Board will supply tags for all salvage harvested tree ferns. Once the tags have been distributed, the harvester can apply to Environment Australia for a permit to export the tree ferns.

(7) Under the Tree Fern Management Plan, only the numerous and widely occurring Dicksonia antarctica will be commercially harvested and consequently approved for export.

Senator Chris Evans asked the Minister for Communications, Information and the Arts, upon notice, on 22 June 2001:

With reference to the provision of postal services in Bunbury, Western Australia:

(1) Have there been any changes to the mail sorting arrangements in Bunbury; if so, what changes have occurred.
Can the Minister confirm that mail posted in Bunbury to local postcodes 6229, 6230, 6231, 6232 and 6233 is now sent to Perth for sorting by machine, then returned to Bunbury.

Can the Minister confirm that this move has resulted in the loss of five sorting jobs in Bunbury.

(a) Why were the changes implemented; and (b) when was this decision taken and by whom.

Do the changes represent a financial gain for Australia Post.

Has the change resulted in any delay in the local delivery of mail in Bunbury.

Have any new sorting machines been purchased for operations in Western Australia over the past 24 months.

(a) Where are the new machines located; and (b) how much did each cost to purchase.

Was a decision taken not to purchase a new sorting machine for Bunbury.

(a) Why was the decision taken; and (b) when was the decision made and by whom.

Senator Alston—The answer to the honourable senator’s question, based on advice received from Australia Post, is as follows:

(1) and (2) Yes. Prior to September 2000, a significant proportion of the primary sorting of mail posted in the South-West region of WA (which includes Bunbury) was undertaken at the Bunbury Delivery Centre, with the balance being processed at the Perth Mail Centre.

Since 1 September 2000, mail from the South-West region has been sorted at the Perth Mail Centre utilising new high-speed mail sorting technology installed as part of Australia Post’s national $500 million FuturePOST project.

Under the new arrangements, two Australia Post trucks (one commencing in Augusta and the other in Northcliffe) collect mail from the South-West region and transport it to Perth. Once sorted in Perth, mail for delivery in the South-West is transported to various postal locations in the region also by Australia Post trucks. Previously, mail transportation within the region was by contractor.

Yes. Five night sorting staff at the Bunbury Delivery Centre affected by the new arrangements were offered the choice of redeployment or a voluntary early retirement (VER) package. Four staff members chose to take VER packages and the fifth chose to be redeployed.

The new arrangements were introduced to improve customer service and to provide Australia Post with a greater degree of control over its own activities, including the ability to effect recovery in the event of operational problems.

All postal outlets throughout the South-West region now have a standard 5pm clearance time (previously it ranged from 3pm to 5pm) while street posting box clearance times have been extended in Busselton from 3pm to 5pm and in Collie from 11am to 4pm.

Australia Post’s General Manager, Western Australia, approved the new arrangements with effect from 1 September 2000, following a six-month review of mail services in the South-West region.

Yes. The new arrangements have resulted in an overall saving of approximately $100,000 per annum.

No. The new arrangements have not resulted in delays in the delivery of local mail in Bunbury.

Yes. Four new Multi Line Optical Character Readers and four Barcode Sorters have been installed in the Perth Mail Centre over the past 24 months at a total cost of $7.2m.

The project team responsible for undertaking the six-month review of mail services in the South-West region examined the feasibility of relocating an (earlier model) Optical Character Reader to the Bunbury Delivery Centre. However, the project team concluded that such a relocation would not be viable because, based on current and predicted future mail volumes, the machine would have only been operational for between 45-75 minutes per day.

Budget 2001-02: Contingency Reserve

(Question No. 3646)

Senator Sherry asked the Minister representing the Minister for Finance and Administration, upon notice, on 27 June 2001:
With reference to Budget Paper No. 1 2001-02, page 6-91, and to the estimates and projections for
the contingency reserve (the reserve) – Can the following be provided: (a) the components included in
the reserve (including quantification of budget and forward estimates) for decisions made late in the
budget process other than those identified at page 6-58; and (b) the forward estimates of the reserve
(same format as the table at page 6-91) at the time of the 1995-96, 1996-97, 1997-98, 1998-99 and

Senator Abetz—The Minister for Finance and Administration has supplied the following
answer to the honourable senator’s question:

(a) Information on items in the Contingency Reserve is included in Budget Statement 6. It has been a
practice of successive Governments to not detail the components of the Reserve beyond that al-
ready provided in the Budget papers.

(b)

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It should be noted that:

- For the period 1995-1996 to 1998-1999 the Budget was prepared on a cash basis,
- From 1999-2000 onwards the Budget has been prepared on an accrual basis; and
- The figures can not be presented precisely in the same format as that provided in the 2000-01
  Budget Papers because prior to the 2000-01 Budget, the Contingency Reserve estimates were
  not broken down into Expenses and Net Capital Investment.
- This information was previously provided for the Senate Finance and Public Administration
  Legislation Committee on 27 February 2001 (Questions F151 and F152).
Representation Of Queensland ................................................................. 25589
Senators: Swearing-in ........................................................................... 25589
Migration Legislation Amendment (Application of Criminal Code) Bill 2001—
  Second Reading .................................................................................. 25589
  In Committee ..................................................................................... 25597
  Third Reading .................................................................................... 25602
Superannuation Legislation Amendment (Post-retirement Commutations)
Bill 2000—
  Second Reading .................................................................................. 25602
Questions without Notice—
  Building Industry: Illegal Activity ..................................................... 25603
  Workplace Relations: Workers’ Entitlements ..................................... 25604
  Australian Broadcasting Corporation: Conflict of Interest ................ 25606
  Car Industry ....................................................................................... 25607
  Job Network ...................................................................................... 25608
  Australian Taxation Office: Form ...................................................... 25609
  Leader of the Government: Production of Documents .................... 25610
  Backing Australia’s Ability: An Innovation Action Plan for the Future 25611
  Senate Coalition Leadership Meetings .............................................. 25611
  Commonwealth Property Holdings: Divestment.............................. 25612
  Fuel Prices ......................................................................................... 25613
  Economy: Government Policy ........................................................... 25615
Answers to Questions without Notice—
  Indigenous Australians: Services and Programs ............................... 25616
  Leader of the Government: Production of Documents .................... 25616
  Commonwealth Property Holdings: Divestment ......................... 25621
Privilege .................................................................................................. 25622
Petitions—
  Great Barrier Reef: Prawn Trawling ................................................. 25623
  Administrative Decisions (Effects of International Instruments)........ 25623
  Bill 1999 ......................................................................................... 25623
  Corporate Code of Conduct Bill 2000 .............................................. 25623
  Republic Plebiscite: Head of State ..................................................... 25623
Notices—
  Presentation ...................................................................................... 25623
  Postponement ................................................................................... 25626
Committees—
  Legal and Constitutional References Committee—Meeting ............ 25626
  Benchmark for Pension Levels ......................................................... 25626
Committees—
  National Capital and External Territories Committee—Report ......... 25626
  Rural and Regional Affairs and Transport Legislation Committee—
    Report ............................................................................................ 25626
  Rural and Regional Affairs and Transport References Committee—
    Report ............................................................................................ 25627
Documents—
  Tabling .............................................................................................. 25627
CONTENTS—continued

Committees—
Foreign Affairs, Defence and Trade Committee: Joint—
Report: Government Response................................................................. 25627

Documents—
  Auditor-General’s Reports—Reports No. 54 of 2000-2001 and Nos 1-4
  of 2001-2002 ......................................................................................... 25628
  Business of the Senate .......................................................................... 25628
  Questions on Notice Summary............................................................... 25628
  Conference of Australian and Pacific Presiding Officers and Clerks...... 25629
  Responses to Senate Resolutions.......................................................... 25629

Budget 2000-01—
  Consideration by Legislation Committees—Additional Information........ 25629

Committees—
  Treaties Committee—Report.................................................................. 25629
  Department of Employment, Workplace Relations and Small Business:
    Job Network—
      Report ............................................................................................... 25629
  Department of Employment, Workplace Relations and Small Business:
    Employment Advocate—
      Report ............................................................................................... 25633

Committees—
  Membership............................................................................................ 25637
  Workplace Relations Amendment (Prohibition of Compulsory Union Fees)
    Bill 2001, and
  Patents Amendment Bill 2001—
    First Reading ....................................................................................... 25637
    Second Reading .................................................................................... 25637
  Bills Returned From The House Of Representatives................................. 25640
  Child Support Legislation Amendment Bill (No. 2) 2000.......................... 25640
  Assent to Laws........................................................................................ 25640
  Superannuation Legislation Amendment (Post-retirement Commutations)
    Bill 2000—
      Second Reading .................................................................................. 25641
      In Committee ....................................................................................... 25647
      Third Reading ...................................................................................... 25667
  Environmental Legislation Amendment Bill (No. 2) 2001—
    Second Reading .................................................................................... 25667
    In Committee ....................................................................................... 25670
    Third Reading ....................................................................................... 25672
  Workplace Relations Amendment (Termination of Employment) Bill 2000—
    Second Reading ................................................................................... 25672

Adjournment—
  Valedictory: John Woodley................................................................. 25699
  Valedictory: John Woodley................................................................. 25700
  Valedictory: John Woodley................................................................. 25701
  Valedictory: John Woodley................................................................. 25702
  Valedictory: John Woodley................................................................. 25703
  Valedictory: Senator John Woodley...................................................... 25704
  Ovine Johne’s Disease........................................................................... 25704
  Valedictory: John Woodley................................................................. 25705
CONTENTS—continued

Documents—
Tabling.................................................................................................................. 25706
Proclamations....................................................................................................... 25709
Questions on Notice—
Rail: Commonwealth Grant to the Australian Transport and Energy
Corporation—(Question No. 3156)........................................................................ 25710
Prime Minister and Cabinet Portfolio: Parliament House Employees—
(Question No. 3508)............................................................................................ 25710
Defence: Common Law Claims—(Question No. 3578)...................................... 25712
Lower Great Southern Family Day Care—(Question No. 3584)..................... 25714
Myalgic Encephalopathy/Chronic Fatigue Syndrome—
(Question No. 3586).......................................................................................... 25715
Torres Strait Baseline Study: Report—(Question No. 3605)............................ 25716
Greenhouse Challenge Agreements—(Question No. 3616)............................. 25717
Australian Quarantine and Inspection Service: Meat Inspectors—
(Question No. 3617).......................................................................................... 25717
Environment: Tree Fern Exports—(Question No. 3630)................................. 25718
Australia Post: Bunbury, Western Australia—(Question No. 3645)................ 25719
Budget 2001-02: Contingency Reserve—(Question No. 3646)....................... 25720