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SITTING DAYS—2001

<table>
<thead>
<tr>
<th>Month</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>February</td>
<td>6, 7, 8, 26, 27, 28</td>
</tr>
<tr>
<td>March</td>
<td>1, 5, 6, 7, 8, 26, 27, 28, 29</td>
</tr>
<tr>
<td>April</td>
<td>2, 3, 4, 5</td>
</tr>
<tr>
<td>May</td>
<td>9, 10, 22, 23, 24</td>
</tr>
<tr>
<td>June</td>
<td>4, 5, 6, 7, 18, 19, 20, 21, 25, 26, 27, 28</td>
</tr>
<tr>
<td>August</td>
<td>6, 7, 8, 9, 20, 21, 22, 23, 27, 28, 29, 30</td>
</tr>
<tr>
<td>September</td>
<td>17, 18, 19, 20, 24, 25, 26, 27</td>
</tr>
<tr>
<td>October</td>
<td>15, 16, 17, 18, 22, 23, 24, 25</td>
</tr>
<tr>
<td>November</td>
<td>12, 13, 14, 15, 19, 20, 21, 22</td>
</tr>
<tr>
<td>December</td>
<td>3, 4, 5, 6, 10, 11, 12, 13</td>
</tr>
</tbody>
</table>

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<table>
<thead>
<tr>
<th>City</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>CANBERRA</td>
<td>1440 AM</td>
</tr>
<tr>
<td>SYDNEY</td>
<td>630 AM</td>
</tr>
<tr>
<td>NEWCASTLE</td>
<td>1458 AM</td>
</tr>
<tr>
<td>BRISBANE</td>
<td>936 AM</td>
</tr>
<tr>
<td>MELBOURNE</td>
<td>1026 AM</td>
</tr>
<tr>
<td>ADELAIDE</td>
<td>972 AM</td>
</tr>
<tr>
<td>PERTH</td>
<td>585 AM</td>
</tr>
<tr>
<td>HOBART</td>
<td>729 AM</td>
</tr>
<tr>
<td>DARWIN</td>
<td>102.5 FM</td>
</tr>
</tbody>
</table>
Wednesday, 8 August 2001

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

WORKPLACE RELATIONS AMENDMENT (TERMINATION OF EMPLOYMENT) BILL 2000

In Committee

Consideration resumed from 7 August. The bill.

Senator MURRAY (Western Australia) (9.31 a.m.)—I refer the committee to schedule 1, item 11 on the running sheet, attended to by amendment No. 5 on my sheet No. 2000. With the permission of the committee, I would like to move amendment No. 23 on my sheet No. 2000 together with amendment No. 5, because they hang together.

Leave granted.

Senator MURRAY—I move:

(5) Schedule 1, item 11, page 5 (line 21) to page 6 (line 10), omit the item, substitute:

11  At the end of subsection 170CE(7)
    Add “, or within such period as the Commission allows on an application made during or after those 21 days.”.

11A  At the end of subsection 170CE(7A)
    Add “, or within such period as the Commission allows on an application made during or after those 21 days.”.


11B Subsection 107CE(8)
    Repeal the subsection.

(23) Schedule 1, item 36, page 16 (lines 14 to 35), omit the item, substitute:

36  At the end of subsection 170CP(6)
    Add “, or within such period as a court allows on an application made during or after those 14 days.”.

Note: In Brodie-Harris v MTV Publishing Ltd (1995) 67 IR 298, the Industrial Relations Court of Australia set down principles relating to the exercise of its discretion under a similarly worded provision of the Industrial Relations Act 1988.

36A Subsection 170CP(7)
    Repeal the subsection.

My amendments (5) and (23) refer to items 11 and 36 in the Workplace Relations Amendment (Termination of Employment) Bill 2000 that refer to the discretion of the Industrial Relations Commission and the Federal Court to grant extensions of time to apply for a remedy. These items respectively amend subsections 170CE(8) and 170CP(7), which concern extensions of time to apply to the commission and to the Federal Court or a court of competent jurisdiction for a termination of employment remedy. The intention of the amendments is to tighten the discretion that these tribunals have to grant extensions of time so that it is similar to the discretion that applied under the termination of employment provisions of the former Labor government’s Industrial Relations Act 1988.

In substance, the provisions state that the relevant tribunal may accept an application that is lodged out of time only if it is satisfied that it would be equitable to accept the application. Subsections 170CE(8A) and 170CP(8) then set out the factors to which the commission or court is to have regard in determining whether it would be equitable to accept the application out of time.

The tests proposed by items 11 and 36, in my view, should be deleted and replaced with the words in proposed Democrat amendments Nos 5 and 23. Those words are taken from the extension of time provision contained in subsection 170EA(3) of the former Labor government’s Industrial Relations Act. I think our amendments are an improvement on the government’s proposal.

Senator JACINTA COLLINS (Victoria) (9.34 a.m.)—I seek to clarify—and you may well have done so in your introductory remarks—that the test you are setting down here provides a broader discretion.

Senator Murray—Yes, it does.
Senator JACINTA COLLINS—Senator Murray, could you explain for us how you think that that actually applies? In working through the various provisions last night, I had been able to follow that, but if you could give your explanation I think it would be useful to also have it on the record.

Senator MURRAY (Western Australia) (9.35 a.m.)—I will look for the assistance of the parliamentary secretary as well, because that is a fairly lengthy provision in the original bill and can be assisted by discussion. Essentially, we have suggested that the commission can allow an application made during or after those 21 days for an application to the commission. We have referred to a note of assistance in this matter that sets down the principles established by the Industrial Relations Commission relating to what is reasonable and equitable to establish. That really is the advice I had in drawing together these extensions.

Senator JACINTA COLLINS (Victoria) (9.36 a.m.)—Perhaps I can indicate, for the benefit of the committee, my understanding of the situation. Your amendment—and you can correct me if I am wrong—

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Collins, would you mind addressing your comments to the chair, please.

Senator JACINTA COLLINS—Sorry, through you, Madam Temporary Chair: Senator Murray’s amendment, if I understand it, will allow or give the commission the ability to consider matters in an exhaustive manner. In other words, were the commission mindful to adjust their principles in relation to considering these sorts of issues, that option would be open, whereas the government’s original amendment would not have allowed that scope through simply reflecting the principles in Brodie-Harris v. MTV Publishing Ltd. I think that is my understanding. If it is the case, it is likely that Senator Murray’s amendment provides for a wider discretion, and we would support it. In our view, it is entirely appropriate that the commission’s discretion be as wide as practicable in such instances. They hear the evidence from the parties, they are able to judge their veracity and they have the material before them to make an appropriate decision, whether or not we trust them to make the right calls. In our case we do, and we would support an amendment that provides for a broader rather than a tighter discretion.

Senator MURRAY (Western Australia) (9.37 a.m.)—I thank Senator Collins—it is a bit of a stuttering start for me this morning. I agree broadly with Senator Collins’s interpretation. The question put by Senator Collins is whether what I propose would provide for an exhaustive examination of possible grounds. I am wary of the use of the word ‘exhaustive’, because I can never foresee that, but, yes, it is certainly an intention to expand and improve upon what the government offered.

Amendments agreed to.

Senator MURRAY (Western Australia) (9.38 a.m.)—by leave—I move amendments Nos 6, 7 and 8 on sheet 2000:

(6) Schedule 1, item 13, page 6 (line 32) to page 7 (line 9), omit the item, substitute:

13 At the end of subsection 170CF(2)

Add:

; and (d) if the Commission considers, having regard to all the materials before the Commission, that the application has no reasonable prospect of success, it must advise the parties accordingly.

(7) Schedule 1, item 14, page 7 (lines 15 to 17), omit paragraph (3)(b), substitute:

(b) the Commission has indicated that the applicant’s claim in respect of the ground so referred has no reasonable prospect of success;

(8) Schedule 1, item 14, page 7 (lines 27 and 28), omit “a substantial prospect of being unsuccessful”, substitute “no reasonable prospect of success”.

These amendments relate to items 13 and 14 of the bill and, effectively, they substitute the words ‘no reasonable prospect of success’ and omitting ‘a substantial prospect of being unsuccessful’. The intention, as those senators who recall my minority report way back when, was to ensure that both employers and employees recognise that they should enter the jurisdiction of the Industrial Relations Commission with regard to these matters.
only if there was a reasonable prospect of success—in other words, to omit items which, on the balance of probabilities, would be unlikely to succeed at arbitration. The effect of our proposed amendments will be to prevent an applicant from proceeding to arbitration if his or her claim in respect of harsh, unjust or unreasonable termination were to be applied where the commission would find that the application does not have a reasonable prospect of success. Before making its findings the commission would be required to give the applicant the opportunity to provide further material in support of his or her claim in respect of the grounds of harsh, unjust or unreasonable terminations. These really cover the field all the way up to item 22 of the bill.

Senator JACINTA COLLINS (Victoria) (9.40 a.m.)—Currently, with respect to these amendments, the act provides for the commission to assess the merits of a claim and it may, if it thinks fit, recommend that the applicant elect not to proceed. The government, in the bill, wants to get the commission to indicate that in every case, whether or not it thinks on the balance of probabilities that the claim is likely to succeed. The Democrats’ amendments would mean that, if the commission believes that the application has no reasonable chance of success, it must advise the parties accordingly. The effect of putting so much import on the conciliation proceedings, in our view, will be to turn them into a mini arbitration. This was the matter I was referring to yesterday when I took up Senator Campbell’s reference to the Australian Industry Group as an area where they also had some level of concern.

At this stage I would like to indicate again for the record the Labor Party’s concern with what is occurring here in relation to what I think is an abuse of what the conciliation process is meant to be. In doing so, I would like to take the Senate to submissions by Maurice Blackburn and Co. in their submission to the Senate inquiry into the ‘more jobs, better pay’ legislation, where I think they gave a very good explanation as to why this would occur:

The Commission’s assessment of the merits of the applicant’s case must be made without the benefit of hearing evidence under oath from the witness box. Clearly the Commission’s ability to make such an assessment will depend on the evidence produced. In our experience, the factual positions of the parties at conciliation are often polarised. If applicants stand to lose their entitlements, to elect to go to arbitration, their advisers will have a duty to effectively run a trial at the conciliation conference which will prove the applicant’s claim on the balance of probabilities.

Or, in the Democrats’ case, a different test. To continue:

This approach guarantees that the costs involved for both parties proceeding to conciliation will increase dramatically. The focus will also inevitably move from the current objective of conciliation to settle the matter in a relatively non-legalistic and informal settlement process. In our experience, the accessibility of the current conciliation process provides applicants with an opportunity to confront their grievances with the employer and come to terms with the fact of the termination. We see this process is critical to an effective resolution of the matter.

The proposed amendment will inevitably result in conciliations becoming more legalistic and adversarial as arguments on the merits of the applicant’s case become the central focus of proceedings. This threatens to marginalise the key players in the conciliation process—that is, the employee and the employer themselves. With the focus likely to move away from pragmatic options for settlement of the matter, conciliators in the Commission will take an entirely different role in the process. We anticipate that the proposed amendment will result in fewer claims settling prior to arbitration. Both parties stand to incur significantly increased legal costs.

This view was in part also mirrored by the Australian Industry Group in relation to the conciliation measures. We think that under either of the tests there will be a poor outcome. However, in this instance, the Democrat amendment is vastly preferable to the government’s proposal. In changing the test from ‘likely to succeed on the balance of probabilities’ to ‘no reasonable chance of success’, as I read it, the Democrat amendments, at the very least, will ameliorate the tendency for mini trials to occur and costs to be incurred. However, Senator Murray, some of my colleagues have indicated they are in a quandary over whether your test is really a better test. I am curious to see how you ra-
tionalise that particular wording, on the record, with respect to it providing a better test.

Senator MURRAY (Western Australia) (9.45 a.m.)—I am of course familiar with the arguments that Senator Collins has put. This is an area of some difficulty for all of us because I believe, on a cross-party basis, we are all of the view that as far as possible the processes of the Industrial Relations Commission should be as cheap and as quick and easy to access as possible. The problem we face is that in the pursuit of fairness or justice that particular objective can get out of reach. The evidence put to us consistently over time has been that there has been an abuse of process which has resulted in employees being stretched out and forced to back off and terminate their claims unreasonably by employers, and there has been a similar attitude of employee representatives doing it to employers.

Our assessment of the issue is, therefore, that an early indication to the parties by the commission as to reasonable prospects of success would be desirable because it would mean that, if subsequently it was found that the issue was without merit, that would be a consideration in the resolution of the issue. I accept that there are always difficulties in tests. We know that. Senator Collins as a practitioner of the art of industrial relations negotiations knows that; hence, her justified hesitancy when a new test is brought up. My difficulty was that I accepted the case that somehow you needed a pre-arbitration determination to alleviate what seemed to be, from the evidence given to us, abuse issues in the process of these things. However, I thought that the government’s test was too legalistic and likely to restrain the matter too far. Having accepted the proposition, I therefore had to find a way to express it in a more flexible manner which gave greater discretion to the commission. So that was the consequence of the words. ‘Reasonable’, as you know, is a word which is commonly used in law and has some common law history and understanding; therefore, I thought that ‘no reasonable prospect of success’ was in the end a useful summation of that intent. Quite frankly, as we all know as legislators and as you get more experienced in this business, you design some things with the best of intentions and sometimes the results may not be quite as you would expect. So I accept that you, or some of your colleagues, may be a little wary of this.

Senator JACINTA COLLINS (Victoria) (9.50 a.m.)—Senator Murray’s wording provides a less containing test in relation to the circumstances. I believe the words ‘no reasonable chance of success’ indicate that, if you have any reasonable chance, you are okay. Whereas, if you look at it on the balance of probabilities that the claim is ‘likely to succeed’, that test provides less scope for people who might still have some, perhaps very slight, reasonable chance of success. On that basis, we will support this amendment.

Senator COONEY (Victoria) (9.50 a.m.)—How does that work out? Do the two parties go down and have a preliminary hearing and have another hearing after that? If Senator Collins were to return to industrial relations negotiations—not that she will now because she will go on to be a minister—would she have a preliminary hearing and have another hearing after that? It is a very interesting concept: you have a decision maker making a decision as to whether or not he ought to make a decision of a different nature later on. Will you have different people hearing it or will the same person hear it? If the same person is going to hear it, why do you make the distinction in any event?

Senator MURRAY (Western Australia) (9.51 a.m.)—I know that Senator Cooney has great experience in law. He would know that, whether it is a tribunal or a court or a commission, there are frequently proceedings prior to the main event, if you like, whereby it is established that there is a case or there are grounds or there are justifications and where advice is proffered on those grounds by registrars in a formal sense and, quite often, in an informal sense.

The intent here is to try to weed out those defences to applications which are patently manufactured for the wrong purpose, in other words, to pressure the other side such that they submit even when the case is unwarranted. My understanding of law—and I do not have the same experience as Senator Cooney—is that preliminary hearings or
meetings of this sort are not uncommon. Personally I think it is a useful addition to the process if the commission is able to assist the parties with an early first summation of the situation. It does not prevent applicants pursuing it further if they wish, but then the commission will have regard to their motives.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (9.53 a.m.)—The government will be supporting these amendments. The debate has already taken place on the other side of the chamber, so I feel rather superfluous here this morning. The government believes that the amendments, although they do not take the issues as far as we would like, move them in the right direction. So we will support the amendments. Just for the record—I did not dare interrupt the debate that was taking place between the Labor Party and the Democrats on the last amendment—honourable senators will have noted that the government supported the previous amendment that was made on the basis that the Democrats’ amendments that we have now agreed to were consistent with the sentiment of item 11 of the bill as originally proposed.

Amendments agreed to.

Senator MURRAY (Western Australia) (9.55 a.m.)—I refer to amendment (9) on sheet 2000, which addresses item 15, schedule 1. I also refer to my amendments (10) to (13) on sheet 2000, which oppose items 16 to 24 in schedule 1. I ask by leave that all those matters be dealt with together.

The TEMPORARY CHAIRMAN (Senator Knowles)—You are going to speak to them all together; is that correct?

Senator MURRAY—I will do that if you wish or, if the Senate prefers, I can deal with amendment (9) and then we can deal with amendments (10) to (13).

The TEMPORARY CHAIRMAN—We will deal with amendment (9) first and then with amendments (10) to (13) because we have to put the question separately, anyway.

Senator MURRAY—I move:

(9) Schedule 1, item 15, page 7 (line 35) to page 8 (line 12), omit the item, substitute:

15 At the end of subsection 170CFA(1)

Add:

Note: If a certificate under subsection 170CF(2) identifies both the ground in paragraph 170CE(1)(a) and a ground or grounds of an alleged contravention of Subdivision C, and the Commission has issued a certificate under subsection 170CF(4) in relation to the ground in paragraph 170CE(1)(a), an applicant must make an election as if the certificate under subsection 170CF(2) identified only the ground or grounds in Subdivision C.

This amendment relates to item 15. If you look in the explanatory memorandum, it says that item 15 repeals existing subsection 170CFA(1) and replaces it with a new subsection. That would apply where the commission indicates that on the balance of probabilities the applicant is likely to succeed in arbitration on the ground referred to in paragraph 170CE(1)(a), that is, that the dismissal was harsh, unjust or unreasonable. In that circumstance the applicant could elect to proceed to arbitration to determine whether the dismissal was harsh, unreasonable or to discontinue the application. All we have added is a qualifying note in relation to the certificates which we believe improves the process, if you like. It is on that basis that I support the amendment.

Senator JACINTA COLLINS (Victoria) (9.57 a.m.)—My reading of this amendment—and I am hoping that Senator Murray will be able to confirm this—is that it is aimed at clarifying or ensuring that it is clear that a subdivision C matter or element of a case would be kept alive contra to a 170CFA(2) certificate—that an employer can make that such an action. Is that the case, Senator Murray?

Senator Murray—that is correct.

Senator JACINTA COLLINS—On that basis the Labor Party will support the amendment.
Amendment agreed to.

The TEMPORARY CHAIRMAN—I put the question that schedule 1, items 16 to 24 stand as printed.

Question resolved in the negative.

Senator MURRAY (Western Australia) (9.58 a.m.)—We are referring to schedule 1, my amendments (10) to (13), sheet 2000, in which we move to oppose items 16 to 24. They relate to the election for arbitration or court proceedings.

The TEMPORARY CHAIRMAN—Senator Murray, that matter has already been resolved. We are now on your amendment No. (15).

Senator MURRAY—I thought you had resolved it. I just thought I should put on the record what the matter was about because I had not done so. If you recall, I was asked to deal with the matters respectively, but I am more than happy to proceed as the committee advises. Everybody knows what is happening, so that is fine.

The TEMPORARY CHAIRMAN—Senator, you can still put your view on the record if you so wish.

Senator MURRAY—I have said enough. I just wanted to make sure that everyone knew that it was stopping the elections for arbitration or court proceedings from being further truncated. I move:

(15) Schedule 1, item 26, page 11 (after line 23), at the end of the item, add:

(db) the degree to which the absence of dedicated human resource management specialists or expertise in the undertaking, establishment or service would be likely to impact on the procedures followed in effecting the termination; and

This amendment relates to schedule 1, item 26, of the bill. It adds, at the end of the item, a qualification. This section of the act deals with the nature of the employer’s undertaking. We believe that the absence or presence of dedicated human resource management specialists or expertise impacts on the procedures followed in effecting the termination.

We think that there is a superficiality in regarding the size of a business as relative to liability or ability in the area of human relations. For instance, somebody may come out of a major company having been the human resources manager and start up a small services business. Frankly, those persons would be equipped at all times to know the proper procedures and how they should have dealt with an employee; whereas somebody who comes from a different environment may not be as cluey, if you like, about how you establish matters of process regarding appointment, warnings and eventual dismissal. This is just a qualification of the government’s proposal.

Senator JACINTA COLLINS (Victoria) (10.02 a.m.)—The government’s bill includes the size of a business in the criteria to determine whether a dismissal is unfair by reason of procedural fairness. From our point of view, that is just an alternative means of introducing the exclusion criteria of perhaps the size of the business. It is clear that these amendments, which unfortunately the Democrats support, add a factor to this. The Democrats also want to include the degree to which the absence of dedicated human resource management professionals impacted on procedures followed in effecting a termination. We oppose this. With respect, Senator Murray, we do not believe that ignorance is an excuse. We think there is a pretty clear indication of that principle generally at law. Even with what you propose here, clearly there still will not be a fair go all round. The worker, in effect, is still wearing the cost of the employer’s ignorance.

Procedural fairness and natural justice are fairly fundamental human rights, harking back to Senator Murray’s speech at the second reading stage of the bill. Employment is a fairly important legal and contractual relationship and deserves the application of these principles to it. We ask: to what other contractual or statutory duty would a government even contemplate applying a similar standard? I do not think it is okay to say that you do not have to pay tax because you do not have an accountant. Natural justice and procedural fairness are not difficult principles. If we start giving people excuses for not
applying them, they only start taking them. I think this is a bad proposal in both the government’s and the Democrats’ form and, therefore, we will not support the amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (10.03 a.m.)—I refer to items 25, 27 and 46 of the bill. Item 46 is an applications and savings provision—the other two are the substantive provisions—and it relates to my amendments 14, 16 and 32 on sheet 2000. The amendments seek to omit the operational requirements of the employer’s undertaking, establishment or service. Item 27 states that if the employment of a particular employee or group of employees was terminated on the grounds of the operational requirements of the employer’s undertaking, establishment or service, the termination is not taken to be harsh, unjust or unreasonable, unless the circumstances are exceptional. We oppose that diminution of grounds.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.05 a.m.)—For the record, the government’s view is that remedies in respect of termination of employment should either be reinstatement or compensation in lieu of reinstatement. The remedy should be confined to the damage suffered because the employee has lost his or her job. The Democrat amendment would allow further compensation relating to the manner in which termination is affected. Accordingly, we will be voting against this amendment.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that items 25, 27 and 46 stand as printed.

Question resolved in the negative.

Senator MURRAY (Western Australia) (10.07 a.m.)—Amendment (17) on sheet 2000 refers to government amendments of items 28 and 29. Those items would prevent the commission and the court, as the case may be, including in an award of compensation, in lieu of reinstatement, a component in respect of shock, distress or humiliation or other analogous hurt occasioned by the manner of termination. We had evidence that this would be oppressive, and the Democrats oppose that view. Accordingly, the Democrats oppose items 28 and 29.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.07 a.m.)—-For the record, the government’s view is that remedies in respect of termination of employment should either be reinstatement or compensation in lieu of reinstatement. The remedy should be confined to the damage suffered because the employee has lost his or her job. The Democrat amendment would allow further compensation relating to the manner in which termination is affected. Accordingly, we will be voting against this amendment.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that items 28 and 29 stand as printed.

Question resolved in the negative.

Senator MURRAY (Western Australia) (10.08 a.m.)—I move amendment No. 18 on sheet 2000, which refers to government amendment of item 30 in their bill:

(18) Schedule 1, item 30, page 13 (line 27), omit “a reasonable opportunity”, substitute “reasonable notice and a reasonable opportunity”.

This relates to the dismissal of an application. We have expanded the grounds established in line 27 which state that ‘a reasonable opportunity’ should apply, and we have substituted ‘reasonable notice and a reasonable opportunity’, which we think improves the process side of the matter. Item 30 of the
bill intends to insert a new section 170CIB, which would give the commission, after giving the applicant a reasonable opportunity to be heard, the power to dismiss an application where the applicant fails to attend a proceeding. Proposed section 170CIB should be amended to include the wording ‘reasonable notice and a reasonable opportunity’ to be heard before deciding whether to dismiss the application. It seems to us to be straightforward; people have got to be told what is necessary.

Senator JACINTA COLLINS (Victoria) (10.10 a.m.)—It is my understanding that the provisions we are dealing with here sit within the broader provisions in the bill proposing contingency fee arrangements to be declared. It gives me the opportunity to indicate our clear opposition to those proposals, which we believe can do nothing other than potentially prejudice hearings. It is another experiment in legal process. I am not even sure of the constitutionality of that, as indeed of some other matters later in the bill. With respect to this Democrat amendment, it makes explicit what is already implied in the government’s bill that the applicant be given reasonable notice as well as reasonable opportunity to be heard, and we support that.

Senator MURRAY (Western Australia) (10.11 a.m.)—My view is that as much disclosure, openness and transparency in law as in other things is desirable. One of the allegations made about practice in this field of law is that there are ambulance chasers. I believe that is so in other fields of law as well. I think it is perfectly proper for defendants to have friends in the court who are there as a result of their relationship, such as unions of employers or employees. I think it is perfectly proper, obviously, for people to pay for whatever the advice is. But, if people are there on spec, if you like—a contingency fee, generally speaking, means there is a share in the proceeds or a reward for success—that should be apparent as well, because that indicates the basis on which people are presenting themselves.

I note that in a recent proposition in Perth—Senator Campbell would be aware of this, as would Temporary Chairman Knowles—the finance brokers are going to be challenged by investors on a contingency fee basis where the firm providing the funds will take a 30 per cent—I think it is—cut on success, and I think the organisation for investors will take a five per cent cut. Frankly, I say ‘good on them’. It is out there and in the open, and everybody knows the terms, including the judge. Despite the objections of some in the legal fraternity, I do not think it is a bad thing for everybody to know exactly where they stand when people are presenting themselves as friends, paid advisers or on spec, so I do not object to it at all.

Amendment agreed to.

Senator MURRAY (Western Australia) (10.13 a.m.)—I seek leave to move amendments (19) to (21) together and then I will briefly address them.

Leave not granted.

Senator JACINTA COLLINS (Victoria) (10.13 a.m.)—The reason we would like you to separate them—I will go into this in a bit more detail later—is that we will support (20) and (21) but not (19).

Senator MURRAY (Western Australia) (10.13 a.m.)—With the permission of the chair, I will move (19) alone and (20) and (21) together.

The TEMPORARY CHAIRMAN (Senator Knowles)—Move (19) at this stage and we will deal with (20) and (21) later.

Senator MURRAY—Amendment No. 19 relates to schedule 1, item 31, pages 13 and 14. Item 31 is tests for the making of costs orders. Item 31 of the bill proposes to amend the provisions governing the commission’s power to award costs against parties’ determination of employment applications to widen the circumstances in which costs can be awarded.

The amendments proposed by the bill are complex and do not directly address the issue of parties who continue proceedings or refuse to settle proceedings despite adverse indications from the commission about their prospects of success. Accordingly, the amendments proposed by item 31 of the bill should, in my view, be deleted and replaced by my proposed amendment, with a set of what I think are more straightforward provisions which spell out that the commission
has the power to make costs orders in the following circumstances: where a termination of employment application or proceedings in relation to such an application are commenced without reasonable cause; where unreasonable failure to discontinue such applications or proceedings exists; and where a party engages in unreasonable conduct during proceedings. Further, there should be a provision which specifically provides that the commission may have regard to any certificate or advice given under section 170CF—and you will recall the earlier discussion—and whether a party pursued a course of action contrary to that certificate or advice. I therefore move Democrat amendment No. 19 on sheet 2000:

19) Schedule 1, item 31, page 13 (line 29), to page 14 (line 36), omit the item, substitute:

31 Subsections 170CJ(1), (2), (3), (4) and (5)

Repeal the subsections, substitute:

(1) If the Commission is satisfied:

(a) that a person (first party):

(i) made an application under section 170CE; or

(ii) began proceedings relating to an application; and

(b) the first party did so in circumstances where it should have been reasonably apparent to the first party that he or she had no reasonable prospect of success in relation to the application or proceeding;

the Commission may, on application under this section by the other party to the application or proceeding, make an order for costs against the first party.

(2) If the Commission is satisfied that a party (first party) to a proceeding relating to an application made under section 170CE caused costs to be incurred by the other party to the proceeding; and

(b) that the first party caused the costs to be incurred because of the first party’s unreasonable act or omission in connection with the conduct of the proceeding;

the Commission may, on an application by the other party under this section, make an order for costs against the first party.

(4) In making a decision under this section, the Commission may have regard to any certificate issued or advice given under section 170CF and whether a party pursued a course of action contrary to any such certificate or advice.

(5) An application for an order for costs under this section must be made within 14 days after the determination, discontinuance, settlement or dismissal of the application under section 170CE or proceeding relating to an application under section 170CE (as the case may be).

(5A) A schedule of costs may be prescribed in relation to items of expenditure likely to be incurred in respect of:

(a) an application to the Commission under section 170CE; and

(b) a proceeding in respect of an application under section 170CE.

Senator JACINTA COLLINS (Victoria)

(10.16 a.m.)—What we are dealing with here is, essentially, the government’s key amendments in the bill in relation to costs, a regime that the Labor Party does not support. In respect of this particular amendment, our understanding is that the Democrats pick up the lot, except for clause 4, dealing with the effect of a conciliation certificate on the decision to award costs. We generally oppose in principle the provision for costs in this jurisdiction. The purpose of this jurisdiction was to have a no cost, low formality jurisdiction to deal with industrial issues. Perhaps the first mistake was to let the lawyers in, but there is no way we should be countenancing the trend towards legality that legal costs awards encourage. The reality is that the commission loses the very things that make
it attractive with this trend towards legality, and the Labor Party at least will try to defend the informal and accessible nature of our industrial tribunals.

We respect the fact the Democrats are attempting to provide some balance, but our position in this particular instance is that this attempt will only have a fairly marginal—if not somewhat questionable—effect and so, on this occasion, unlike the next two amendments, we will not support the change.

Senator MURRAY (Western Australia) (10.17 a.m.)—We should note that it is a discretion to the commission; it is a ‘may’ clause and not a ‘must’ clause. Secondly, we have also used the language ‘no reasonable prospect of success’ throughout, so that the more expansive test is available for consideration in those matters. So we have made some adjustments throughout on item 19.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.18 a.m.)—The government’s view is that the Democrats’ amendment, although it does not go as far as item 31 in the bill, which is the government’s preferred position, does move things in the right direction. It says that costs can be awarded in most types of proceedings in the commission which relate to the termination of employment and, by lowering the threshold test for determining costs applications, the proposed amendments will increase access to costs and further deter proceedings that are instituted without any reasonable cause.

To pick up what Senator Collins said earlier in relation to keeping costs down and trying to keep the process informal and also in relation to what was probably a bit of a throwaway line about lawyers getting involved, I think that we all respect the fact that these sorts of proceedings are, for both the employer and the employee, matters of high stakes. Regardless of what sort of employment you are talking about, you are dealing with people’s lives, so clearly people need representation, and some people will obviously feel a lot happier having a lawyer present. I am sure that Senator Ludwig, who is sitting immediately behind Senator Collins, would think that lawyers could and should be involved in these proceedings on occasion. I do not want to encourage Senator Ludwig to speak, but I am sure that lawyers have a place in these situations. Where there are costs, clearly it is appropriate that the commission be able to make an award of costs. I think the Democrats’ amendment is quite reasonable, particularly to the extent that you do need a reasonable deterrent in relation to cases being instituted without reasonable cause. I think awarding of costs is a fair mechanism, not only to do that but also so that the parties have some respect and some knowledge and understanding of the costs that are involved.

Senator JACINTA COLLINS (Victoria) (10.20 a.m.)—Senator Murray may well have convinced me with his comment in relation to the test. If I am correct, Senator Murray’s amendments have not dealt with ensuring that the Democrats’ test, as opposed to the government’s test, on the balance of probabilities was adjusted in all areas consequential to those other ones and, in fact, this amendment deals with that component. Is that correct?

Senator MURRAY (Western Australia) (10.21 a.m.)—As I said before, I am not firing on all cylinders today, but my remark really was in response to Senator Collins’s remark. Sometimes you learn in this place that you should not do that. Senator Collins said that I had almost picked up the government amendment in toto and just amended, I think, clause 4. I indicated that I had actually carried on the language we had used elsewhere in here. For instance, the government’s language did not include the phrase ‘no reasonable prospect of success’. That is really what I meant to say to Senator Collins.

Senator JACINTA COLLINS (Victoria) (10.21 a.m.)—On that basis, if this provision does actually carry out the Democrats’ intention to change the test in this particular provision, we will change our position and support it.

Amendment agreed to.

Senator MURRAY (Western Australia) (10.22 a.m.)—by leave—I move amendments (20) and (21) on sheet 2000:
(20) Schedule 1, item 33, page 15 (lines 9 and 10), omit paragraph (a).

(21) Schedule 1, item 33, page 15 (line 20), omit “This list is not an exhaustive list.”.

Items 32 and 33 in the government’s bill set out the examples of proceedings that will be potentially subject to costs orders. We have knocked out item 33(8)(a), which says that a pre-conciliation conference that parties are directed to attend by the commission should be subject to costs. I do not think if you have been directed to attend something you should have to pay the costs for it, so we have knocked that one out. I think that is a reasonable one. We have also knocked out paragraph 170CJ(8)(a), which ends with the statement: ‘This list is not an exhaustive list.’

Senator JACINTA COLLINS (Victoria) (10.23 a.m.)—I can indicate that to the extent these amendments improve a gutted dead fish, we will support them.

Amendments agreed to.

Senator MURRAY (Western Australia) (10.23 a.m.)—The Democrats oppose item 34, as indicated on sheet 2000:

(22) Schedule 1, item 34, page 15 (line 21) to page 16 (line 6), TO BE OPPOSED.

Item 34 refers to security for costs. It would insert new section 170CJA to give the commission the power ‘in exceptional circumstances’ to order an applicant to give security for the payment of costs that may be awarded against him or her. We think it should be opposed on the basis that the provision applies only to applicants and not respondents to a termination of employment claim.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that schedule 1, item 34 stand as printed.

Question resolved in the negative.

Senator MURRAY (Western Australia) (10.25 a.m.)—I move amendment (25) on sheet 2000:

(25) Schedule 1, item 39, page 17 (line 18), at the end of section 170HBA, add “unless the second application corrects an error in the previous application, or the Commission considers that it would be fair to accept the second application”.

There we are adding words to the item on second applications. We are adding the words ‘unless the second application corrects an error in the previous application, or the Commission considers that it would be fair to accept the second application’. In other words, we are improving the discretion of the commission and allowing for inadvertent errors, and we think that improves the process.

Senator JACINTA COLLINS (Victoria) (10.26 a.m.)—We believe the government’s proposals in the bill to preclude a second application for an unfair dismissal are not warranted. The Democrats propose to allow the commission some discretion in determining whether to allow an application, and this we would support. As far as I am aware, there is no evidence of any problems arising from second applications. If there is a problem, the commission is best placed to determine whether there is good reason to allow a second application. The Democrat amendment preserves its discretion in this area, and therefore we support it.

Senator HARRIS (Queensland) (10.26 a.m.)—I would like to speak very briefly on Democrat amendment (25) and indicate that Pauline Hanson’s One Nation will support the addition of this section. The reason I rise to speak on this is to highlight one of the problems I believe are endemic in the family law legislation. We only have to go to part A applications, which is what is purported to be a revision process within that act, to find that they are without precedent knocked out,
based on the fact that there is no indication that allows an application that was incorrect to be corrected. So we have a parallel situation in the Family Law Act where the section could be clearly defined as the Democrats are clearly defining this one by adding the words ‘unless the second application corrects an error in the previous application’. The point I am making is that, if a similar amendment had been moved to the Family Law Act, it would have assisted an enormous number of applicants who for some reason or other had made an error in their application. I believe it has merit in this application, and I indicate that Pauline Hanson’s One Nation will support the Democrat amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (10.29 a.m.)—by leave—I move amendments (26) and (27) on sheet 2000:

(26) Schedule 1, item 40, page 17 (line 26), after “applicant”, insert “or a respondent”.

(27) Schedule 1, item 40, page 18 (line 2), after “applicant”, insert “or a respondent”.

These amendments refer to schedule 1, item 40 of the bill. That deals with unmeritorious or speculative proceedings. Item 40 of the bill is another of the major provisions in the bill. It would introduce a new series of provisions to give the Federal Court the power to issue penalties to lawyers and other advisers who encourage an applicant to institute or pursue in the commission a speculative or unmeritorious claim in respect of harsh, unjust or unreasonable termination. The prohibition on the encouragement of speculative or unmeritorious claims and proceedings should also apply to lawyers and other advisers of respondents to claims. This change deals with that matter.

But we are also dealing here with quite a fundamental issue. For those who read about alternative law systems with interest, for as long as this country persists with the adversarial mode of law and does not attend to any of the inquisitorial traditions, we will have to pay more attention to the behaviour of lawyers and advisers than we perhaps have to in inquisitorial jurisdictions. That is my belief. This provision attends to that, but it should attend equally to those who advise applicants and respondents and to the applicants and respondents themselves.

Senator JACINTA COLLINS (Victoria) (10.31 a.m.)—I should indicate that it is here that essentially we part ways with the Democrats in their amendments. Whilst the one amendment that sat within the contingency fee arrangements did not quite deal directly with those issues, these matters do deal quite directly with the government’s agenda on unmeritorious and speculative proceedings, although I think this was probably one of the areas where you indicated your thoughts some time ago. All of these amendments, if I am correct, as we go through to the remainder of the bill—or perhaps, from our view of its worth, I should refer to the entrails of the guts of the bill—deal with unmeritorious and speculative proceedings, penalties for advisers and who can make such applications. In our view, the government want to punish worker advocates for encouraging what are in their view unmeritorious or speculative claims by allowing costs to be awarded against them. The Democrat amendments here will extend this regime to apply to employer advocates.

On this point, I want to refer to the submission of the ACTU to the inquiry into this bill, which puts the argument against the government’s proposals, I believe, fairly well. For the record, Senator Campbell, you are probably aware that I am not a lawyer, so it is an argument with which I am dealing with some element of distance. The ACTU’s submission indicates that the Industrial Relations Commission already has the power to issue costs orders against parties who make applications without reasonable cause and/or act unreasonably in connection with the proceedings. The commission has proved itself prepared to make these orders in roughly equal numbers against applicants and respondents, so the power already exists to some extent.

The proposal for fines for representatives who encourage unmeritorious or speculative proceedings, with the onus on the representative to prove that this does not occur once a prima facie case has been made out, is an outrageous interference in the relationship between representatives, whether they be
lawyers, union officials or other persons, and their clients or members. In no other court or tribunal do advisers face the threat of fines for giving advice, nor are they required to make an independent assessment of the facts of the case other than the instructions received from their client. The proposal can have no other intention than to discourage lawyers and union officials from assisting applicants in proceedings related to alleged unfair dismissals.

The ACTU submitted that the considerations raised by the Law Council of Australia in its submission should lead the committee to recommend that this proposal not be passed by the Senate. We draw on these issues which, in summary in the ACTU submission, are that, while a case may not appear winnable on law as it currently stands, law is a process of continual development and there should not be a prohibition on suggesting new interpretations to tribunals. Where a client is advised that a case should not proceed but the client wishes to do so, there are costs orders available for vexatious or unreasonable claims. There will be situations where advisers are forced to disclose what ought to be confidential communications with clients, whether or not these are subject to the law of legal professional privilege, and there is no evidence that unmeritorious claims are made in spite of the availability of costs orders against applicants.

I appreciate that Senator Murray in his amendments is attempting to achieve a balance by extending these provisions to respondent advisers. I think, however, that this approach is wrong. An unfair burden is not made fairer by spreading bad policy more evenly. It still makes bad policy. In our view, this is bad policy. In the committee hearing, there was no evidence that the general process of dealing with legal misconduct is not working, and there are also some quite serious constitutional concerns about proceeding down this path.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.36 a.m.)—We support the amendments moved by the Australian Democrats. They will broaden the operation of the subsection so that the prohibition on the encouragement of speculative or unmeritorious unfair dismissal claims and proceedings applies to the lawyers and advisers of applicants and respondents.

I think Senator Murray referred to ‘ambulance chasers’ in debate on a previous amendment. It is clear from submissions from the Australian Chamber of Commerce and Industry to the Senate inquiry—they provided a number of case studies on that but it is also anecdotally the case—that this seems to be a growing practice in Australia, where some advisers and lawyers are basically encouraging people to make claims under the unfair dismissal provisions. It certainly is a problem that small business have brought to the attention of the government on a number of occasions. Recently in the review of the federal unfair dismissal laws, the government noted:

... the concern of employers and small business about the increasing likelihood of inappropriate or speculative applications arising from legal practitioners operating on a ‘pay if you win’ basis or lawyers or other service providers inappropriately advertising the ease of access to the unfair dismissal process.

I will also quote from one of the ACCI’s case studies that I understand were provided to the Senate committee:

In one particular instance, the respondent’s human resources manager was told by the applicant, three days prior to conciliation, that he wished to withdraw his application. However, the applicant stated that he was advised by his solicitor that he was obligated to proceed with the matter under the engagement agreement with the solicitor. The applicant was distressed by this direction from the solicitor but proceeded with the matter out of intimidation.

That is one example but, from the range of case studies that I have been able to use over the last few minutes, it is not an isolated example. I think the Democrat amendment should move in the right direction in trying to solve that problem.

Could I also correct something that Senator Collins has said. I think she was quoting the ACTU, and so it is quite possible that it is wrong and that she has been misled.
Senator Collins is wrong when she says—and I think she was quoting the ACTU—that the AIRC can make costs orders. The fact is that it cannot make costs orders against third parties. The AIRC has called for the review of the costs provisions so it can have that power. It should also be made clear that it is not constitutional to give that power to the AIRC, so the bill proposes to give that power to the Federal Court.

Senator JACINTA COLLINS (Victoria) (10.40 a.m.)—Perhaps I should clarify a couple of things from the basis of what Senator Campbell said. No, I was not seeking to indicate that the commission could apply costs orders to third parties. I do not think it is appropriate that that occur. The examples that Senator Campbell referred to were very interesting in the committee consideration, because—as I am sure the department representatives here will recall—on questioning about some of those examples and how the victims of such conduct had pursued resolution to matters, we discovered that essentially nothing had been done. There was no example of, for instance, a matter being taken to the Law Council and no action or appropriate redress being applied. It seemed that we had before the committee from organisations—principally ACCI, I think—a list of grievances on which the employers had taken no action. I think that to take such a significant step in our Westminster legal system, a step quite inconsistent with what applies in any other jurisdictions, on a matter that may not be constitutional needs more than ACCI’s complaints, to which they cannot indicate that they have sought redress through the appropriate channels and had no success. The case might have had some merit to us if the government had been able to indicate some examples where redress had been sought and no success had been achieved, but if I am correct in my recollections I cannot think of one case to which that process could be fully applied.

Amendments agreed to.

Senator MURRAY (Western Australia) (10.42 a.m.)—I move Democrat amendment (29) on sheet No. 2000:

(29) Schedule 1, item 40, page 18 (line 26), at the end of subsection (2), add:

; or (d) the Registrar; or
(e) an organisation of employees or employers that represented a party in proceedings at first instance in respect of the unfair termination application.

This amendment refers to the applications to court as well. In that respect, in relation to the question of who should have standing to apply to the Federal Court for such a remedy, the bill currently provides that there should be either the applicant or respondent to the original termination application or the minister. The standing provision, new subsection 170HF(2), should be amended to also give standing to the Industrial Registrar—who, as practitioners know, has a considerable role in these matters—and an organisation of employees or employers that represents the party in the original termination application.

Senator JACINTA COLLINS (Victoria) (10.43 a.m.)—This is where we think this matter is starting to get particularly murky or is making these provisions even more cumbersome, confusing and difficult. Whilst we understand that the Democrats are seeking to follow through the theme of applying balance to how these matters can be applied, I think that limiting the likelihood of such applications to, for instance, the registrar would have been better, and therefore we will oppose this amendment.

Amendment agreed to.

Senator MURRAY (Western Australia) (10.44 a.m.)—The Democrats oppose section
170HG, as indicated in item (30) on sheet No. 2000:

(30) Schedule 1, item 40, page 19 (lines 1 to 7), section 170HG TO BE OPPOSED.

At present, proposed section 170HG provides for the reversal of the onus of proof when an applicant for a penalty makes out a prima facie case that the adviser or lawyer encouraged a speculative or unmeritorious claim. In other words, the adviser or lawyer then has to prove, on the balance of probabilities, that they did not encourage such a claim. This is where my adventurous spirit failed, so I decided that this provision should be opposed.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (10.44 a.m.)—We clearly prefer that this provision remain in the bill, and we encourage Senator Murray, in his get-the-ambulance-chaser mode, to support it. However, he has wimped out at the last hurdle. I make one last plea to Senator Murray not to wimp out at the last hurdle. We need his support. We cannot get them on our own.

The TEMPORARY CHAIRMAN (Senator Knowles)—The question is that section 170HG stand as printed.

Question resolved in the negative.

Senator MURRAY (Western Australia) (10.45 a.m.)—I move:

(31) Schedule 1, item 40, page 19 (line 12), after “application”, insert “or no reasonable prospect of the respondent defending the action”.

This amendment carries through the language that we have used elsewhere.

Amendment agreed to.
Bill, as amended, agreed to.
Bill reported with amendments; report adopted.

Third Reading

Bill (on motion by Senator Ian Campbell) read a third time.
whole. I will come to the detail of those provisions later.

It is becoming almost a matter of notorious information to those people advising potential witnesses who could come before an NCA hearing that witnesses can effectively avoid the consequences of compelled testimony by using one of two routes: making a frivolous claim for immunity on the basis that an answer might incriminate them or simply refusing to answer such a question at all, knowing that the penalties, if any, that will be imposed when the matter is prosecuted are on the very minor part of the scale of criminal responsibility.

This has become an almost unsurmountable impediment to the NCA, which is tasked with investigating serious and organised crime. The bill addresses this problem by removing the defence of reasonable excuse, removing the derivative use immunity and increasing the penalties for refusal to answer. In the view of the shadow minister, this is the way to go. At the moment, witnesses at NCA hearings are able to refuse to give evidence if they have a reasonable excuse. If a witness refuses to answer questions on this ground, the only way that the NCA is able to pursue the evidence is to obtain a court order requiring the witness to give the answer. In practice, this is time consuming and a costly process which is rarely pursued by the NCA. As a result, quite often witnesses are exculpated and avoid the obligation to answer reasonable questions by refusing to answer questions at all.

There have been parliamentary inquiries on the bill. During the joint parliamentary committee hearing on the bill, the ex-chair of the NCA cited a case where a witness before the NCA refused to confirm a family relationship on the grounds that to do so would be self-incriminating. The NCA then had to test whether or not this was a reasonable excuse not to answer a question in the Federal Court. This bill removes the ability of witnesses to refuse to answer a question based on a defence of reasonable excuse. The defence of reasonable excuse will be removed and replaced with the defences set out under the Criminal Code. We will be supporting this direction.

In respect of self-incrimination, currently a witness before the NCA who raises a reasonable claim that the answer to a question or the production of a document may tend to incriminate him or her is entitled to refuse to answer the question or produce the document or thing unless he or she receives an undertaking from the appropriate DPP that the answer, document or thing, or anything derived from them, will not be used in evidence against the person in any later proceedings. The bill removes derivative use immunity. Immunity was an issue that was negotiated on hard at the time this legislation first appeared in the parliament when the National Crime Authority was set up. Under the amendments in the bill, a witness who raises a claim of self-incrimination will be required to answer the question or present the document, and it will be an offence if he or she fails to do so. The evidence then given will not be admissible in any future proceedings—without the need for the DPP to give such an undertaking. However, evidence derived from the evidence given can be used. So this legislation will bring the NCA legislation and powers into line with ASIC, the ACCC and the New South Wales Crime Commission. There will be increased penalties for refusal to answer, and they are supported.

This bill also proposes to extend to state and territory magistrates the authority to issue search warrants sought by NCA members and certain staff members under sections 22 and 23 of the NCA Act. These provisions currently apply only to judges of the Federal Court and state and territory judges. At the time when the NCA was set up this was something that would never have got through the parliament. It is getting through now after some 15 years or so of experience of the operation of the National Crime Authority. The opposition’s position is that it is not appropriate that state and territory magistrates have the authority to grant warrants for NCA activities. We will move an amendment which will limit the extension to federal magistrates only. If the government will not accept this amendment, the opposition will support the amendment that we believe will be moved by the Democrats which will oppose the extension to all magistrates.
The proposed extension of the NCA’s contempt regime has been the subject of adverse comment in several submissions and extensive discussion at the committee’s public hearing. Even the majority report of the committee commendably expressed reticence about this proposal. Unfortunately, government members then took the soft option of agreeing to its implementation for a trial period of five years. In this respect, we share the concerns which have been expressed by people such as the Attorney-General of South Australia, Trevor Griffin, and the former NCA chair, Mr John Broome. Their arguments were essentially twofold: firstly, that as a matter of general principle it is inappropriate to seek to liken an investigatory body such as the NCA to a court and, secondly, that the contempt provisions are unnecessary if the proposals contained in the bill in relation to removing the ‘reasonable excuse’ concept and the substantial increases in penalties are enacted.

Let us make it clear that the NCA is not a judicial body; it is an investigative agency of the federal executive. In our view it is therefore a seriously flawed breach of the separation of powers concept to imply that hindering or obstructing an investigatory body can be equated to contempt of court. On these grounds we reject the inclusion of a contempt regime for the NCA. We believe that it would be prudent to monitor the success of the other provisions, and if the need is still there in, say, five years time then the parliament can revisit the matter.

There are also provisions in respect of Australian Public Service employees. The bill proposes new subsections 47(3) and (4) to the NCA Act, giving the chairperson the power to employ persons outside of the Public Service Act. The NCA’s justification for seeking these additional powers is that it perceives a need for more flexibility than the act provides. We do not have any quarrel with the need for flexible employment provisions, but they already exist in the National Crime Authority’s current legislation and in the Public Service regulations.

We believe much weight should be given to the opinion of Mr John Broome, who was NCA chair for a period of four years from 1995 to 1999. He told the NCA committee that the reasons advanced in the second reading speech for these proposals were ‘clearly spurious’. He stressed that he had regularly faced uncertainty about the NCA’s budgetary situation but that he was always able to achieve the necessary degree of staffing flexibility within the NCA chairperson’s existing statutory powers. The opposition do not believe that the expanded employment powers provided for in the bill are either necessary or desirable. We will move amendments to oppose them.

I mentioned earlier the need for oversight. The flip side of giving our law enforcement agencies effective tools is ensuring that these tools are used appropriately. At the moment there is no independent overview of the NCA, and the question can fairly be asked: who is policing the police? This is by no means intended to reflect on the integrity of the authority or to suggest that corruption within the authority exists. However, history has shown that it is enormously naive to leave police or investigative organisations to supervise themselves.

In this respect, we have been working with the government to achieve some sort of compromise in the role of the Ombudsman. The government proposes to amend proposed section 9(3)(e) to remove the last two grounds for denying the Ombudsman access to information. After negotiation, the opposition have agreed that we will support a modified version of this amendment which will provide that the Attorney-General may certify that the Ombudsman may be denied access to NCA information if such actions may endanger the life of a person or create a risk of serious injury to a person. That would be allowable.

In conclusion, this bill contains a number of provisions which are necessary in order to ensure that the NCA has the capacity to investigate serious organised crime. Labor have always supported the need for and the role of the NCA—in fact, it was Labor that set up the National Crime Authority—and we will continue to do so. However, in the realm of law enforcement there is always a balance to be struck between law enforcement powers, accountability and civil liber-
ties. We believe that the position we are taking with respect to this legislation strikes that balance, and we urge the Senate to accept the amendments that I will be moving in the committee stage.

Senator GREIG (Western Australia) (11.01 a.m.)—I am privileged to be a member of the Joint Committee on the National Crime Authority. My only regret with that is that I do not have enough time to spend on it. The committee has full Democrat support and is clearly interesting and productive. In that context, it might be helpful, before I enter into the second reading debate on the National Crime Authority Legislation Amendment Bill 2000 [2001], just to sketch an outline of exactly what the NCA is and what it does. I would like to do that by borrowing directly from the Bills Digest and commend again the work of Jennifer Norberry from the Parliamentary Library. In summary, Ms Norberry has said:

The National Crime Authority ... describes itself as being conceived as 'part royal commission, part police force.' The Australian Law Reform Commission describes it in the following way:

The NCA is a national law enforcement body whose main role is to counteract organised crime often by working in partnership with other agencies. The NCA's working definition of organised crime is 'a systematic conspiracy to commit serious offences.' Generally, the NCA investigates relevant criminal activities and collects, analyses and disseminates information and intelligence relating to those activities. Where appropriate it establishes co-ordinates task forces with other law enforcement bodies for the investigation of those matters. It may also make recommendations for legal and administrative reforms.

The NCA uses multi-disciplinary teams of lawyers, police, financial investigators, intelligence analysts and support staff to investigate organised crime. The Act gives the NCA coercive powers to compel people to produce documents and to give sworn evidence. Those powers are not available to traditional police services. The NCA can only exercise its coercive powers in matters which have been formally referred to it for investigation. These characteristics are meant to enable the NCA to co-ordinate national investigations against major organised crime by complementing the efforts of other law enforcement agencies and by working co-operatively with them.

Section 7 of the Principal Act provides that the Authority consists of a Chairperson and members who are appointed by the Governor-General. The Chairperson must be a judge or a legal practitioner who has been enrolled to practise for at least five years.

The Principal Act enables the Authority to investigate 'relevant criminal activity' an expression which is in turn linked to the concept of a 'relevant offence' against Commonwealth, State or Territory law. The term, 'relevant offence' is defined as an offence involving two or more persons in substantial planning and organisation using sophisticated techniques. Further, it must involve an offence such as theft, fraud, tax evasion or illegal drug dealing which is punishable by imprisonment for at least three years. This definition attempts to confine the Authority to the investigation of organised criminal activity.

According to the Authority's Annual Report 1999-2000, the most commonly investigated offences include drug importation, cultivation, manufacture and trafficking and associated money laundering, theft, fraud, tax evasion, bribery, extortion and violence.

Under the Principal Act, the Authority has two types of functions. General functions are set out in subsection 11(1) and can be exercised on the Authority's own initiative. They include collecting, analysing and disseminating criminal information and intelligence, investigating matters of its own choosing, making arrangements for the establishment of task forces and co-ordinating their work. The Authority's coercive powers cannot be exercised in relation to its general functions.

Subsection 11(2) confers special functions on the Authority enabling it to investigate matters relating to 'federally relevant criminal activity' referred to it either by the Commonwealth Minister or the relevant State or Territory Minister or Ministers. These investigations are often called special investigations. Before referring a matter to the Authority the Commonwealth Minister must consult with the Inter-Governmental Committee. The Inter-Governmental Committee consists of the Commonwealth Minister and a Minister from each of the States and Territories. A State or Territory Minister must obtain the approval of the Inter-Governmental Committee before referring a matter to the Authority. Once a matter has been referred to the Authority either by the Commonwealth Minister or a State Minister the Authority can investigate that matter using its special coercive powers. These powers include 'hearings, including compulsory appearances and production of documents, imposition of penalties and
warrants for search and seizure, for arrest and for interception of communications’.

Accountability mechanisms were inserted into the Principal Act because of concerns about the powers of the Authority. These mechanisms include the Parliamentary Joint Committee on the National Crime Authority (PIC) which is established under section 53 of the Principal Act. Among other things, the Committee monitors and reviews the performance of the Authority.

Following the passage of the Principal Act and the National Crime Authority (Consequential Amendments) Act 1984, the States and Territories passed mirror legislation enabling the Authority to investigate offences against State and Territory laws. The Principal Act has been recently amended on a number of occasions to clarify its framework for inter-jurisdictional cooperation and respond to the High Court’s decisions in Re Wakim and R v. Hughes.

That is the basic context in which we find the amendment bill before us today. The bill is offering a number of changes to the current powers of the National Crime Authority. We are supportive of the work of the NCA in combating organised crime and accept that it is a unique law enforcement body confronting a difficult task. It has a number of powers, such as I have outlined, that are not normally available to law enforcement bodies. It can, for example, compel people to produce documents and to give sworn evidence. This bill proposes to further expand the powers of the NCA and, while we Democrats are supportive of efforts to combat crime, we are cautious, of conferring excessive powers on any law enforcement body.

The crucial issue is to ensure that there is a balance struck between the imperatives of dealing with serious criminality on the one hand and protecting basic standards of accountability and civil liberties on the other. While aspects of this bill are appropriate, we do have an ongoing concern about a number of the proposals that it contains. In particular, we oppose the proposals to expand the category of people who may issue search warrants. We are also concerned about the new contempt regime and the self-incrimination provisions contained in the bill. We note that these provisions attracted criticism during the committee inquiry into this bill and, in our view, these criticisms are reasonable and well founded. I want to pursue those issues in greater detail in the committee stage and I foreshadow that I will be moving amendments to address some of those Democrat concerns.

The government has circulated a range of amendments, some of which offer a compromise in relation to differing views held by the parties in this chamber. Others simply relate to technical drafting matters. We are supportive of a number of government amendments but in some cases feel that they do not adequately deal with the problems raised by the bill. The opposition will be moving several amendments to address a range of matters considered by the committee examining this bill. The ALP amendments reflect a number of concerns shared by the ALP and the Democrats, and I foreshadow Democrat support for some of those amendments. Greater detail can be found in the minority report to the committee inquiry, which the Democrats were in large agreement with Labor on. However, we had one additional comment, and I will speak to that further when we get to the committee stage.
tempt regime to enable the NCA to go straight to the Supreme Court of the state or territory in which it is holding its hearing and apply to have the suspect’s conduct treated as if it were a contempt of that court.

To further reduce the opportunity for long and costly legal challenges, the bill ensures that this contempt regime will be exempt from the Administrative Decisions (Judicial Review) Act 1977. NCA agents will now also be able to use the self-incriminatory evidence of a person to find other evidence that verifies the admission already made. So, while evidence from their self-incrimination will not be used directly against them, it will be used to assist the NCA to find other evidence against the suspect. As Senator Ellison said this morning in his press conference, at which he released the NCA’s commentary, detailing emerging threats, possible responses and achievements in a range of key organised crime activities, including illicit drug trafficking, people smuggling, fraud and tax evasion and money laundering, this government is doing all it can to ensure that criminals are brought to justice.

Another advantage that the NCA will gain from this legislation is that the often erroneous defence of ‘reasonable excuse’—for conduct such as refusing to answer a question—will at last be removed. In its place will be more clearly defined Criminal Code defences, such as a sudden emergency or an intervening event. If the NCA believes that a suspect does not have a reasonable excuse, this legislative amendment will prevent that person under investigation from challenging the NCA’s decision and authority in the Federal Court.

The introduction of staff positions known as ‘hearing officers’ will be another important reform. These people will be appointed by the federal government on the unanimous recommendation of the Intergovernmental Committee of the National Crime Authority. Hearing officers will be able to undertake hearings on behalf of the NCA and, while their numbers will rise, there will be no change to the number of ‘members’. This will greatly expand and strengthen the NCA’s capacity to carry out a greater number of investigations. Other changes include extending the terms of NCA members from four to six years to allow greater continuity and expanding the class of persons who may issue search warrants to include magistrates.

The committee inquiry heard very convincing evidence in support of the NCA from crime fighting agencies such as the Australian Securities and Investments Commission and the Queensland Criminal Justice Commission, both of which are operating in a highly effective way.

Finally, this legislation will deem the NCA to be a prescribed authority for the purposes of the Ombudsman Act to enable the Commonwealth Ombudsman to deal with complaints made against the agency. This will ensure that a greater level of accountability is introduced to complement the strengthening of the National Crime Authority’s powers. This legislation will help enormously to equip the NCA with the greater power and accountability it needs to fight increasingly more complex and sophisticated forms of organised crime. Members of the committee have been very concerned that, no matter how quickly the NCA and its colleague bodies in the states are able to deal with organised crime, organised crime seems able to always stay a couple of steps ahead. The NCA has already proven its effectiveness in fighting the drug war, amongst other things, and I hope the additional powers it acquires as a result of the passing of this bill will assist it even further in continuing its commendable work.

(Quorum formed)

Senator MARK BISHOP (Western Australia) (11.18 a.m.)—I thought I might take the opportunity to pass a few comments on the National Crime Authority Legislation Amendment Bill 2000 whilst my colleagues come to the chamber. I want to address, at short notice, some of the legal issues raised in the bill. These issues go to reasonable excuse, self-incrimination, increased penalties for refusal to answer, people who may issue warrants, the contempt regime sought to be amended in the bill, the fact that the NCA has non-Australian Public Service employees, and some oversight by the Ombudsman, which is an emerging issue in this debate.
By way of introduction, I point out that the bill presents a number of changes to the NCA Act which will significantly increase the ability of the NCA to conduct investigations into serious and organised crime. In fact, the bill adopts a number of amendments which were put forward by the opposition on 13 March last year in the form of a private member’s bill introduced by the then spokesperson, Mr Duncan Kerr, the shadow minister for justice. At that time, the government could not bring itself to endorse opposition legislation, even though it was both necessary and appropriate, as we repeatedly pointed out in the committee stage, in press releases and in public discussions arising from those developments.

It is fair to say that it is a shame because it is now more than 12 months later that these reforms will be put into place. On that basis, I am pleased to advise that the opposition supports the thrust of the bill in seeking to improve the NCA’s efficiency and effectiveness—worthy objectives, indeed. In particular, we accept the need to amend the NCA Act so as to remove the defence of ‘reasonable excuse’ and the ‘derivative use immunity’ and to increase penalties in this area. However, as always, the opposition is acutely aware that there is a fine balance to be struck between giving law enforcement agencies effective investigation tools and protecting the rights of individuals.

Senator COONEY (Victoria) (11.21 a.m.)—I do not think I will be able to meet the standards just set by Senator Bishop, but I shall endeavour to do so. The National Crime Authority Legislation Amendment Bill 2000 makes very substantial changes to the National Crime Authority Act 1984. Prior to the National Crime Authority Act there was another act which set off a history, if you like, of law enforcement in this area. The National Crime Authority Act set up an authority which was intended to deal with major crime. It is in that context that this legislation might be looked at. It is said that the National Crime Authority does not look at crime that we would call street crime or minor crime, such as breaking and entering. I do not suggest for one minute that breaking and entering is not a serious crime, but it is not the sort of crime that the National Crime Authority is looking for. The NCA is looking for big drug crimes brought about by syndicates or for big commercial fraud—crime behind which there has to be some organisation in the sense that somebody has to plan it—and then it tries to do something about it.

Because of the nature of the crime involved, this legislation gives law enforcement authorities some exceptional powers. Those exceptional powers are given on the basis that they are directed to the sort of crime I have just been talking about. In other words, the sort of person whom an investigator with the National Crime Authority is going to meet is going to be a person of some intelligence, with an ability to organise and to keep close to himself or herself evidence that might otherwise lead to a conviction of that person. It is now said that the act is not sufficient; that legislation has to be introduced to make the powers given under the National Crime Authority Act even more extensive than they presently are.

The power given by the National Crime Authority Act that causes most concern is the power to question people. The investigation of crime depends upon the ability of the authority to question people who are accused of crime. But that itself brings problems, because you have an authority that has, if you like, a different ability to ask questions than, say, a policeman. A policeman cannot force a person to answer a question. The National Crime Authority can in certain circumstances do that.

The problem with that is that the balance of power between the person who is asking the question and the person who is answering the question is stark. The person who has to do the answering is in jeopardy of not being able to do for himself or herself justice to the case that he or she wants to put. So that is the first worry about a questioning regime. The questioning regime set up by the National Crime Authority Act can be quite severe. It has been alleged over the years to have been
severe, and some notable cases have been fought about that issue.

The issues that are central to this legislation are pointed out by the amendments that the government wants to bring to the bill. I want to look in that context at amendment (2) of the amendments that are being suggested to the legislation before us. It sets up a person or a body to examine how this act is to work five years from now. It says:

The Minister must cause a person (the responsible person) to review, and to report in writing about, the operation of the National Crime Authority Act 1984 as affected by the following provisions of this Act:

Then it goes on to describe the sorts of things that must be reviewed. The review and report must include an assessment of the effect of the following provisions in facilitating the performance of the functions of the authority: the provision that removes the defence of reasonable excuse; the provision that removes the derivative-use immunity; the provisions that increase the penalties for non-compliance, the contempt provisions and so on. They are all provisions to be put into this act, if this legislation is passed, which will enable the authority to ask questions regardless of whether a person says that he has a reasonable excuse not to answer. So it is legislation that takes this idea of questioning much further than it has been taken hitherto.

As the act now stands, if a person feels that he or she has a reasonable excuse not to answer, or there is some legal reason why that person feels that he or she has been badly treated, they can go off to the court in certain circumstances.

The basis upon which people are to go off to the court is to be much limited by this provision. This is an example of where the courts are to be again denied a jurisdiction that they presently have. This is another piece of legislation in which there is an attempt to reduce even further the jurisdiction of the courts. It has also been reduced in the migration area. In this context I will quote a passage from Sir Winston Churchill who made a statement in a debate in the House of Commons.

Senator COONEY—It is said that he was a no-good conservative. I think there is a lot of truth in that, Senator, and it is on that basis that I now read the statement. Because he was so conservative, this resonates even more than it otherwise would. Talking about the need to keep the judiciary independent, he went on to say:

The judge has not only to do justice between man and man. He also—and this is one of his most important functions considered incomprehensible in some large parts of the world—has to do justice between the citizens and the State.

Senator Hutchins will forgive him for using the male gender in referring to the judges, but in those days there were very few women, if any, I think—

Senator Abetz—It is a generic term.

Senator COONEY—either in Australia or England, or anywhere else, Senator Abetz.

He said:

The British Judiciary, with its traditions and record, is one of the greatest living assets of our race and people and the independence of the Judiciary is a part of our message to the ever-growing world which is rising so swiftly around us.

He then talked about the need for a judiciary that can do justice between the state and the individual. This piece of legislation seeks to modify that position even more than it is presently modified. To be fair to the government, I think that they see the problems that the legislation is going to present and are setting up this review, which is to take place five years from now, to see how the various amendments will operate. It is proper to have a debate about these issues now because I think that once they are in place it will be very hard to undo them. Once these amendments are set into legislation it is going to be very hard to take away the powers later.

Returning to what I was saying about questioning people, there are two things to be said. Firstly, if you are going to question a person you have to be sure that the question is fair in the sense that the person is able to do justice to himself or herself. Secondly, there are some procedures which are just so bad that you would not use them, whether the person can do justice to himself or not. I might add that a lot of good work has been done on this legislation. I see two people
from the Attorney-General’s Department present in the chamber. They have worked long and hard on this. It is proper in debates on legislation such as this to pay tribute to the public servants that do such work for the country. Not only that, they also have to withstand some fairly vigorous attacks—proper vigorous attacks—by members of this parliament who test them on the legislation they bring forward. I thank the gentlemen sitting in the box to the left of Minister Abetz—Mr Karl Alderson and Mr Geoff McDonald—for the help that they have given over the course of this legislation coming before the parliament.

The other problem in the area of increasing powers—when increasing powers are given to authorities—is that there is very much a law and order campaign going on around Australia at the moment. This campaign is occurring for several reasons. Politicians always have to be very careful of the law and order campaigns. These campaigns tend to get people excited and they perhaps vote in a particular way. The media get people interested, tempers start to rise and that encourages things. We have to be very careful in that context that we do justice to the people who become subject to a law and order campaign.

Perhaps a good illustration of that at the moment is Christopher Skase. He conducted himself in a way that has brought opprobrium upon him, but he is now dead. I was brought up with the old-fashioned idea that, if you cannot say something good of the dead, say nothing. That does not seem to be the situation here. There has to be some dimension to society where people, if they do not forgive, at least do not remember with such harshness as they once did. We all have to go to our deaths and it is hoped that, when we do so, we will not be pursued forever.

Senator Hutchins—Go to confession.

Senator COONEY—I would very much recommend that, Senator. The point I want to make is that this legislation must be looked at with a calm mind, a mind that assesses what is needed and what is not needed. It must be assessed in the context of our being a civil society, where we do not let authorities—and I used that word advisedly—use methods that are not civilised. We, of course, as a civil society want crime suppressed, because people should not be able to go around and arbitrarily damage this society. We should not have people who sell drugs on a vast scale when it is against the law. We should not have people perverting, in effect, the corporate world by doing all sorts of things within that corporate world that should not be done. We should not have corruption in public places. All these sorts of things happen and they should be eradicated. That is the balance we are forever seeking in debates such as this—the balance between what is reasonable and what is not reasonable.

We cannot as a civil society use the same sorts of methods that criminals use. Criminals attack the weak, hide their actions so as to obtain results and are oftentimes motivated by greed and ambition, et cetera. They do all sorts of things that we do not like which are destructive to society. But we cannot use those same methods to bring them to task and we cannot use them in ways that go against the dignity of people, because if we are in the sort of society we hope we are in we have to respect the dignity of everyone. We have to bring to task those who have transgressed our laws in a big way but we have got to do that in a way whereby we can, at the end of the day, say, ‘We’ve done this in a proper and right fashion.’ I think some very interesting discussions will take place in this area during the committee stage, and I am looking forward to that.
of reasonable excuse, remove the derivative use immunity and increase penalties. Again, as my colleagues have already indicated, Labor will not be supporting provisions in the bill that would appear to breach the separation of powers, or those that allow the NCA to employ persons outside the provisions of the Public Service Act.

As I have already indicated, this bill directly adopts a number of provisions that Labor’s shadow minister for justice and customs, the Hon. Duncan Kerr, introduced by way of a private member’s bill in the House last year. The National Crime Authority Amendment Bill would have, exactly like this bill before us today, amended the National Crime Authority Act to remove the defence of reasonable excuse, to remove the derivative use immunity and to increase penalties. This is not the first time this government has engaged in this sort of policy stealing trickery. It is not the first time that they have run out of ideas, looked for inspiration or simply lost the initiative and looked through the pages and pages of Labor’s policy that have been posted on our web site, picked out one they liked and introduced it as a bill.

Apart from this policy, which is now well over a year old for Labor, the government has also recently adopted our scheme for the civil confiscation of assets that are the proceeds of crime. Under this plan, which was again put to the House last year by Duncan Kerr in the form of a private member’s bill, allowance would be made for the confiscation of assets on the grounds that, on the balance of probabilities, they are the proceeds of crime. This bill would target those who profit from crime, such as the so-called drug lords, and attack organised crime by striking at the heart of what drives the international criminal industry—that is, the massive financial rewards that can be reaped from illegal activity. Sadly, though, the government rejected Labor’s Criminal Assets Recovery Bill 2000. But then what did we see almost a year later in February this year when Kim Beazley introduced his 10-point plan to tackle Australia’s drug problem? We saw Minister Ellison, in an attempt to deflect attention from Labor’s drugs policy, announce
Commonwealth Ombudsman, who will have the right to review complaints about the NCA or its members.

As my colleagues have already indicated, Labor wholeheartedly endorses and supports these provisions, considering that these provisions have been part of Labor Party policy for over a year now. In some areas, however, the current bill goes further than Labor’s original bill. In our opinion, some of the provisions in the current bill go too far and should be opposed.

In its current form, this bill will enable the NCA to detain persons who interfere with or obstruct a hearing and take them to the Supreme Court to have their conduct dealt with as if it were a contempt of court. Labor will be moving amendments to remove this provision, because we believe it would amount to a serious breach of the separation of powers. Many members of the government, in the conservative tradition of Sir Joh Bjelke-Petersen, have a serious problem getting their head around the constitutionally guaranteed separation of powers. The NCA is not a judicial body. It is an agent of the executive government, and its hearings should not be treated legally like proper judicial hearings.

Labor will also be moving amendments against provisions in the bill that allow for the NCA to employ persons on a short-term basis outside the requirements of the Public Service Act. These provisions, if implemented, will remove the process of public scrutiny provided for under the Public Service Act and thus create the danger that persons might be employed on the basis of nepotism or favouritism. Apart from these two provisions, which we believe are unnecessary and undesirable, Labor will be supporting this bill.

According to the National Crime Authority’s annual report 1999-2000, the most commonly investigated offences included drug importation, cultivation, manufacture, trafficking and associated money laundering, theft, fraud, tax evasion, bribery, extortion and violence. Following that, a year ago we put up a policy to strengthen and improve the effectiveness of the NCA. That policy is a fundamental tenet of Kim Beazley’s overall plan to fight drugs and crime. Senators would know that members of the government have grown very fond of getting up in this and the other chamber and accusing the Labor Party of having no policies. Kim Beazley has, however, released a series of policy initiatives and plans for Australia in the fields of health, education and banking, among others. These policy plans amount to a lot more than John Howard released before the 1996 election and provide to the Australian people a blueprint of what they can expect to happen when Kim Beazley takes the prime ministership later this year. One of the most detailed of these policy initiatives to come from Kim Beazley has been Labor’s plan to put forward a national response to crime and drugs in Australia, of which the provisions of this current bill are a part.

Crime is a huge issue in Australia. It presents a daily threat to our personal and national security. Organised crime at both a national and international level affects our standard of living by threatening the peace and stability of our personal lives and our communities. In terms of the size and extent of organised transnational crime, the United Nations has estimated that organised crime earns $US1.1 trillion per year and that the international drug trade exceeds the value of the international oil trade, which earns about $US500 billion per year.

In terms of its impact in Australia, the IMF has estimated that international money laundering costs the world $US500 billion, of which Australia would have a significant share. In Australia, over 100,000 people have used heroin. In 1999, 958 people died of heroin overdose. Therefore, a national approach to fighting crime and drugs is urgently needed. As well as providing plans for many of the provisions contained within this bill to strengthen the National Crime Authority, Labor also has, as I have mentioned, detailed plans for a civil confiscation scheme to deny the profiteers of crime access to their assets. We have also released plans for a national coast guard, to improve Australia’s coastal security and protect our borders from criminal activity. Kim Beazley has also outlined a program for establishing community safety zones to stop crime at the source and to work with communities to
fight crime at the local level, and he has promised to provide the Federal Police with better funding, to put more of them in the field with the community.

We have also indicated that a Labor government would provide for the national co-ordination of law enforcement by undertaking a white paper process, similar to the process that is undertaken to determine defence priorities and resources. Labor would also provide national leadership in the fight against drugs by unifying the states and non-government sectors behind a broadly based strategy. The parts of this bill that implement into law the changes proposed last year by Duncan Kerr in his private member’s bill are only a small segment of Labor’s overall strategy to fight drugs and international crime in Australia. As well as strengthening the NCA, which this bill already does, Labor has, thus, promised to implement a broad strategy against drugs and crime.

In conclusion, Labor supports the thrust of this bill, on the grounds that what we are seeing before the Senate is a rehashing of good Labor policy. There is a real need to increase the efficiency and effectiveness of the NCA, as part of a much needed national approach to the fight against crime and against Australia’s drug problem. However, a number of new provisions in this bill are both undesirable and unnecessary, and we will be moving amendments to modify and oppose those provisions. Only Labor will provide this national approach and implement further reforms to fight crime and drugs in Australia. To that end, I support this bill, with amendments.

Senator McGauran (Victoria) (11.53 a.m.)—I feel obliged to speak for a very short time on the National Crime Authority Legislation Amendment Bill 2000 [2001] due to the previous speaker’s rather biased approach. Like Senator Hutchins and previous speakers, I support this bill. As a member of the Joint Committee on the National Crime Authority, I am well versed in the bill and in the opinions of the Labor members.

As previous speakers have said, the bill implements the full powers that the National Crime Authority needs. For example, it strengthens the fines in regard to not answering questions. The point is that the crime bosses have been able to wheel in their legal representatives and tie up and frustrate so many of the investigations of the National Crime Authority. This is in fact a very legalistic piece of legislation. In a nutshell, that is its purpose. It is a very welcome one, and all on the committee support its thrust. It gives the National Crime Authority the full powers that it needs to investigate in particular the drug trade and organised crime in this country.

It is significant to know that this body began, established by a Labor government and supported by the parliament, in 1984. It is true to say that at the time it was established with caution, because society is always balancing civil liberties against the legitimate pursuit of organised crime and the illegal drug trade. In 1984 it was probably true to say that the balance was for civil liberties, that in many ways the National Crime Authority was handicapped in its ability to properly investigate organised crime and the drug trade in this country. It was something new in Australia to set up such a single-minded police force, and there were those initial concerns.

Some 15 years later, I am pleased to be able to say—and I believe it is welcomed by society—that we are now giving the full powers so necessary for such a body to undertake its investigations, powers that are equivalent to the extraordinary powers given to the FBI in America to investigate organised crime. Here, 15 years on, we now have faith in the National Crime Authority, because it has produced. Over those 15 years, it has gained the confidence of society to the point where this parliament is able to give it extra powers to be able to untangle the often legal complications and frustrations visited upon it by the crime bosses and their most expensive lawyers during investigations. That is the nub of this legislation.

It has always been the case that you have had to balance the civil liberties in society against the legitimate pursuit of organised crime, but those in society who so often defend to the hilt civil liberties must realise that the crime bosses impinge on society’s civil liberties by the pushing of their drugs and all
the scourge that that brings upon society. As I said, we have reached a point where the National Crime Authority has been successful in being the only real federal body that has been able to pull together the state police authorities, the Customs officers and the Australian Federal Police under one umbrella to investigate organised crime. It has had stunning success in being able to get all those police bodies to cooperate in particular investigations. It has had stunning success in drug busts—heroin busts, cocaine busts—in cooperation, of course, with other authorities. It has had stunning success in being able to get the confidence of the parliament to establish other bodies such as CrimTrac and AUSTRAC that feed into the National Crime Authority’s investigations.

AUSTRAC is another unheralded body that supports our national crime body. AUSTRAC was established with full powers to follow the money trail. Next to surveillance, following the money trail is the most successful way of bringing down these big crime bosses and the drug barons, and there has been enormous success in AUSTRAC being able to follow the money trail all the way through bank accounts, different companies and different Asian or Colombian connections. It is a very centred trail, as much as the hard drug trail itself. This is but one prong of this government’s Tough on Drugs approach to be tough on law enforcement. It has had enormous success, as mentioned by the Minister for Justice and Customs yesterday in question time, in drug busts. That has filtered all the way down to the streets.

I remember that in my state of Victoria the Melbourne Herald Sun ran a heroin overdose poll, or chart, every day alongside the road toll, and it was phenomenal to think that at one stage a year or two ago there were as many heroin overdoses as there were road deaths. Today, for different reasons—and none less than the drug busts that have been carried out by these enforcement bodies—you can basically count the heroin overdoses on one hand. There has been a phenomenal reduction in this area. They are the successes.

The previous speaker said that we have pinched some of their policies. To start with, I think this is somewhat of a bipartisan approach. I can tell the previous speaker that Duncan Kerr’s private member’s bill was far different to the legislation that we have here. In a nutshell, in fact it was far more civil libertarian. He did not actually agree with the tough components of this legislation. He was not willing to go all the way to track those crime bosses down, and that is to be expected—that is Duncan Kerr’s politics; to be expected to be respected, but not agreed with. That is what Duncan Kerr’s private member’s bill has amounted to. In all, it probably is a half measure; in fact, it is a half measure. This is a full measure and it shows the determination of this government to track down those crime bosses, the drug barons, as part of its three-pronged Tough on Drugs approach.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.01 p.m.)—I thank senators for their contributions to this debate on a very important bill dealing with the National Crime Authority. At the outset, I acknowledge the great work done by Peter Nugent, the former member for Aston, who chaired the parliamentary Joint Committee on the National Crime Authority. I think all senators here would acknowledge the great work that he did, which was also reflected in the often bipartisan support that he had. I think he carried out his duties in a most dignified and professional manner. I think it is also fair to say that he had a very keen interest in this area, and that was shown by his dedication to the job.

In relation to the bill before us and, of course, the comments made by senators, one has to look back to the genesis of the National Crime Authority in 1984 when it was given special powers to investigate organised crime. We needed a national body which could deal with the federal system that we have in Australia, and that is precisely what the National Crime Authority does. Back in 1984, it received across-the-board support. I know that there have been some comments about the special powers that the National Crime Authority has—I think Senator Coo-
ney mentioned that—but, of course, these special powers are there for a very good reason, and that is to assist the National Crime Authority in tackling organised and serious crime in Australia today.

There were comments by Senator Bolkus and Senator Bishop that we should have endorsed the Kerr bill a year ago, but I would say that there are important measures in this bill which were not put forward in the bill sponsored by the member for Denison. These include the removal of reasonable excuse defences that can be abused, hearing officer provisions to improve the National Crime Authority’s flexibility and more detailed provisions to govern oversight by the Ombudsman. The government has also sought in this bill to introduce an important contempt regime to reinforce the National Crime Authority’s hearing powers. So we have here a very different bill, a much more strengthened bill, in relation to the NCA fighting organised crime.

Senator Cooney mentioned that there is always a prospect of law and order campaigns having an undue influence in the passing of this sort of legislation. But I think that when you have had a bill like this looked into by the parliamentary Joint Committee on the National Crime Authority—in fact, I think there were two such inquiries—and it has had this kind of exposure, it has been dealt with in an appropriate manner. In fact, Senator Bolkus said that we should have rushed it through last year, if I understood his comments correctly. The government has given this bill priority, but it is also cognisant of the fact that this is an important piece of legislation dealing with the powers that go to a law enforcement agency and that you have to keep in mind the checks and balances that go with it.

This government is totally committed to resourcing law enforcement agencies to fight organised and serious crime. Since coming to power, this government has funded the National Crime Authority with an additional $79 million to pursue matters which are of serious concern. Today, we are confronted with such things as money laundering and people smuggling, which were not matters that were previously uppermost in the community’s mind, but bodies like the National Crime Authority have to be resourced in relation to that. At the bottom of this, you have the overall problem of the drug situation in Australia. The government, with its Tough on Drugs policy, has demonstrated a clear intent to fight that on the three fronts of law enforcement, education and health.

In relation to this particular bill, there are some amendments which the government is proposing. I realise that some senators have taken up the opportunity of a briefing on this and I acknowledge their involvement—the Democrats certainly have done that—and I acknowledge the contributions made to this by the parliamentary Joint Committee on the National Crime Authority. I think that the comments in relation to the various amendments proposed by the government, opposition and Democrats are best left for the committee stage. Suffice to say that I endorse the comments made by Senator Ferris in relation to increased penalties and accountability and also the comments made by Senator McGauran, who gave a succinct outline of the role of the National Crime Authority and the importance it plays on the national stage. I commend the bill to the Senate.

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

In Committee

The bill.

Senator ELLISON (Western Australia Minister for Justice and Customs) (12.07 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. The memorandum was circulated in the chamber on 20 June this year.

Senator GREIG (Western Australia) (12.07 p.m.)—I move Democrat amendment No. 1 on schedule 2222:

(1) Schedule 1, item 12, page 4 (line 24) to page 5 (line 20), omit subsections (4) and (5), substitute:

(4) A person may refuse:

(a) to answer a question put to him or her at a hearing before the Authority; or
(b) to produce a document or thing that he or she was required to produce at a hearing before the Authority;

if the answer to the question, or the production of the document or thing, as the case may be, might tend to in- criminate the person.

(5) A person must not refuse:

(a) to answer a question put to him or her at a hearing before the Author- ity; or

(b) to produce a document or thing that he or she was required to produce at a hearing before the Authority;

if the answer to the question or the production of the document or thing might tend to prove the person’s guilt of an offence against a law of a State and the Attorney-General of that State, or a person authorized by him or her, being the person holding the office of Director of Public Prosecutions, or a similar office, of that State, has given to the person an un- dertaking in writing that any answer given or document or thing produced, as the case may be, or any in- formation, document or thing ob- tained as a direct or indirect conse- quence of the answer or the produc- tion of the first-mentioned document or thing, will not be used in evidence in any proceedings against the person for an offence against a law of that State other than proceedings in re- spect of the falsity of evidence given by the person and the Attorney- General of that State, or the person so authorized, states in the under- taking:

(c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and

(d) the general nature of those grounds.

(5A) The Authority may recommend to the Director of Public Prosecutions that a person who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hear- ing before the Authority be given an undertaking in accordance with sub- section (5).

(5B) A person must not refuse:

(a) to answer a question put to him or her at a hearing before the Author- ity; or

(b) to produce a document or thing that he or she was required to produce at a hearing before the Authority;

if the answer to the question or the production of the document or thing might tend to prove the person’s guilt of an offence against a law of a Commonwealth or of a Territory and the Director of Public Prosecutions has given to the person an undertak- ing in writing that any answer given or document or thing produced, as the case may be, or any in- formation, document or thing ob- tained as a direct or indirect conse- quence of the answer or the produc- tion of the first-mentioned document or thing, will not be used in evidence in any proceedings against the person for an offence against a law of the Commonwealth or of a Territory other than proceedings in re- spect of the falsity of evidence given by the person and the Director of Public Prosecutions states in the undertaking:

(c) that, in his or her opinion, there are special grounds that in the public interest require that answers be given or documents or things be produced by that person; and

(d) the general nature of those grounds.

(5C) The Authority may recommend to the Attorney-General of a State that a per- son who has been or is to be served with a summons to appear as a witness at a hearing before the Authority or to produce a document or thing at a hear- ing before the Authority be given an undertaking in accordance with sub- section (5B).

This amendment is in relation to selfincrimi- nation, which is one particular issue where we Democrats seem to have differed slightly from both the government and the opposition in our inquiry report on this bill. The amendment we propose here today seeks to remove the elements of this bill that propose to water down the existing right against self- incrimination of witnesses before the Na- tional Crime Authority.
The historical basis of the existing legal privilege against self-incrimination is the common law’s reaction against the use of the ex officio oath by ecclesiastical courts and the Court of Star Chamber and against unjust methods of interrogating accused persons. In 1645 this culminated in a declaration that the use of the oath was unlawful. By the second half of the 17th century, the privilege was well established as common law. In the High Court case of Environment Protection Authority v. Caltex, Chief Justice Mason and Justice Toohey considered the nature of the privilege in great detail. They observed that, historically, the privilege developed to protect individual humans from being compelled to testify, on pain of excommunication or physical punishment, to their own guilt. They went on to say:

In one important sense, the modern rationale for the privilege against self-incrimination is substantially the same as the historical justification—protection of the individual from being confronted by the “cruel trilemma” of punishment for refusal to testify, punishment for truthful testimony or perjury (and the consequential possibility of punishment).

They noted that the privilege is now an internationally recognised human right. As Justice Murphy commented in Rochfort v. Trade Practices Commission:

The privilege against self-incrimination is a human right, based on the desire to protect personal freedom and human dignity.

I note that the right not to be compelled to testify against oneself or to confess guilt is also embodied in the International Covenant on Civil and Political Rights. The courts take Australia’s international human rights obligations into account when making their decisions; so too should we legislators give considerable weight to these obligations in making judgments about the appropriateness of legislation placed before us by the government. At present, witnesses before the NCA have a qualified right against self-incrimination. They may refuse to answer questions if they raise a reasonable possibility of self-incrimination. However, witnesses can be compelled to provide self-incriminatory evidence when they have been given an undertaking that the evidence and anything derived from it will not be used against them.

The bill proposes to remove derivative use immunity. Essentially, this means that, while self-incriminatory testimony provided by a witness under compulsion is not itself admissible in court, any evidence derived from that testimony would be admissible. We Democrats fear that this has the potential to significantly detract from the right against self-incrimination. In many cases, information or evidence derived from testimony may be as useful in a prosecutorial sense as the testimony itself. Our concerns were echoed in strong submissions to the NCA committee by a number of witnesses, including the Victorian bar, the Law Council of Australia and the New South Wales Council for Civil Liberties.

This Democrat amendment addresses these concerns by removing from the bill the relevant provisions relating to self-incrimination. We have left in place substantially the same procedures as currently exist in relation to self-incrimination. We note that the government has attempted to streamline the existing process. We are quite prepared to support alternative processes so long as the substance of existing rights is not affected. However, in this case the right against self-incrimination is affected in a significant way and, as such, we oppose this change.

Senator BOLKUS (South Australia) (12.12 p.m.)—In the second reading debate, I canvassed the issue of the government’s new self-incrimination regime and outlined reasons why the opposition was supporting it. Accordingly, we will not be supporting the Democrat amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.12 p.m.)—Similarly, the government will not be supporting this amendment. The Joint Parliamentary Committee on the National Crime Authority has accepted that the removal of the defence of reasonable excuse was essential to the future operational effectiveness of the authority, and the government’s position on this is quite clear.

Amendment not agreed to.
Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.13 p.m.)—Madam Temporary Chairman, I think you had some foresight in what you did—you were right in the first instance, and I will say why. I wish to withdraw government amendment No. 3 in view of the fact that the opposition will proceed with its amendment. I understand that the opposition is not inclined to support the government’s stance that search warrants should be issued by state magistrates as well, advocating that only federal magistrates should be empowered to do that. The Democrats would make it even more difficult with their suggestion of judges being involved in this process. Having regard to that and the reality of the situation that the government amendment would not get up, I withdraw the government’s amendment. We will be supporting the opposition’s amendment on the basis as outlined.

Senator BOLKUS (South Australia) (12.14 p.m.)—I move opposition amendment No. 4:

(4) Schedule 1, item 26, page 12 (line 17), omit paragraph (c), substitute:

(c) a Federal Magistrate.

In doing so, I welcome the government’s decision not to proceed with its amendment. We would not have supported it. Giving the power and authority to state magistrates is something that we would not contemplate. At the same time, had the government proceeded with its amendment and bowed over ours, we would have had to support the Democrat amendment. I think we have probably struck a pretty good compromise here, and I urge the Senate to support opposition amendment No. 4.

Senator GREIG (Western Australia) (12.14 p.m.)—The Democrats support the opposition amendment to replace the reference to ‘state and territory magistrates’ with ‘federal magistrates’, principally because it is clear that our amendment to go further would not achieve that which we seek to achieve and that the Labor proposal is better than the government proposal.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.15 p.m.)—by leave—I move government amendments (4) to (20), (22) to (25), (27) and (34) to (38):

(4) Schedule 1, heading to Part 8, page 18 (line 2), omit the heading, substitute:

Part 8—Delegation of Chair’s powers

(5) Schedule 1, item 54, page 18 (line 13), omit “Chairperson”, substitute “Chair”.

(6) Schedule 1, item 54, page 18 (line 14), omit “Chairperson’s”, substitute “Chair’s”.

(7) Schedule 1, item 54, page 18 (line 15), omit “Chairperson”, substitute “Chair”.

(8) Schedule 1, item 54, page 18 (line 16), omit “Chairperson’s”, substitute “Chair’s”.

(9) Schedule 1, item 54, page 18 (line 18), omit “Chairperson”, substitute “Chair”.

(10) Schedule 1, item 54, page 18 (line 20), omit “Chairperson’s”, substitute “Chair’s”.

(11) Schedule 1, item 61, page 22 (line 22), omit “Chairperson”, substitute “Chair”.

(12) Schedule 1, item 61, page 22 (line 27), omit “Chairperson”, substitute “Chair”.

(13) Schedule 1, item 61, page 23 (line 4), omit “Chairperson”, substitute “Chair”.

(14) Schedule 1, item 63, page 24 (line 11), omit “Chairperson”, substitute “Chair”.

(15) Schedule 1, item 63, page 24 (line 14), omit “Chairperson”, substitute “Chair”.

(16) Schedule 1, item 74, page 30 (line 19), omit “Chairperson”, substitute “Chair”.

(17) Schedule 1, item 76, page 33 (line 4), omit “Chairperson”, substitute “Chair”.

(18) Schedule 1, item 76, page 33 (line 6), omit “Chairperson”, substitute “Chair”.

(19) Schedule 1, item 137, page 40 (line 2), omit “Chairperson”, substitute “Chair”.

(20) Schedule 1, item 137, page 40 (line 4), omit “Chairperson”, substitute “Chair”.

(21) Schedule 1, item 143, page 41 (line 8), omit “Chairperson”, substitute “Chair”.

(22) Schedule 1, item 143, page 41 (line 9), omit “Chairperson”, substitute “Chair”.

(23) Schedule 1, item 143, page 41 (line 13), omit “Chairperson”, substitute “Chair”.

(24) Schedule 1, item 143, page 41 (line 14), omit “Chairperson”, substitute “Chair”.

(25) Schedule 1, item 143, page 41 (line 15), omit “Chairperson”, substitute “Chair”.

(27) Schedule 1, page 41, at the end of the Schedule (after proposed Part 19), add:
Part 20—Renaming the Chairperson of the Authority

146 Subsection 4(1)
Insert:
Chair means Chair of the Authority.

147 Subsection 4(1) (definition of Chairperson)
Repeal the definition.

148 Subsection 4(1) (definition of member)
Omit "Chairperson", substitute "Chair".

149 Paragraph 7(2)(a)
Omit "Chairperson", substitute "Chair".

150 Subsections 7(3), (4), (5) and (9)
Omit "Chairperson", substitute "Chair".

151 Subsection 8(9)
Omit "Chairperson", substitute "Chair".

152 Subsections 25(3), (3A), (9A) and (9B)
Omit "Chairperson" (wherever occurring), substitute "Chair".

153 Section 26
Omit "Chairperson" (wherever occurring), substitute "Chair".

154 Subsection 28(6)
Omit "Chairperson", substitute "Chair".

155 Subsections 37(1), (1A) and (1B)
Omit "Chairperson", substitute "Chair".

156 Subsection 37(1C)
Omit "Chairperson’s", substitute "Chair’s".

157 Subsection 37(1D)
Omit "Chairperson", substitute "Chair".

158 Section 44
Omit "Chairperson" (wherever occurring), substitute "Chair".

Note: The heading to section 44 is altered by omitting "Chairperson" and substituting "Chair".

159 Subsection 45(1)
Omit "Chairperson", substitute "Chair".

160 Section 46
Omit "Chairperson" (wherever occurring), substitute "Chair".

161 Section 46A
Omit "Chairperson", substitute "Chair".

Note: The heading to section 46A is altered by omitting "Chairperson" and substituting "Chair".

162 Subsection 47(2)
Omit "Chairperson" (wherever occurring), substitute "Chair".

163 Section 48
Omit "Chairperson" (wherever occurring), substitute "Chair".

164 Section 50
Omit "Chairperson", substitute "Chair".

165 Subsections 59(7), (8) and (11)
Omit "Chairperson" (wherever occurring), substitute "Chair".

166 Section 59A
Omit "Chairperson", substitute "Chair".

167 Section 59A
Omit "Chairperson’s", substitute "Chair’s".

168 Subsections 60(3) and (3A)
Omit "Chairperson" (wherever occurring), substitute "Chair".

169 Paragraph 61(2)(d)
Omit "Chairperson", substitute "Chair".

(34) Page 47 (after line 8), at the end of the bill, add:

Schedule 8—Crimes Act 1914

1 Subparagraph 15G(1)(b)(i)
Omit "Chairperson", substitute "Chair".

2 Paragraph 15N(2A)(b)
Omit "Chairperson", substitute "Chair".

3 Subsection 15R(2)
Omit "Chairperson", substitute "Chair".

4 Paragraph 15S(4)(b)
Omit "Chairperson", substitute "Chair".
5 Subsection 15T(4)
Omit “Chairperson”, substitute “Chair”.

6 Subsection 15U(2)
Omit “Chairperson”, substitute “Chair”.

(35) Page 47 (after line 8), at the end of the bill, add:

**Schedule 9—Witness Protection Act 1994**

1 Section 3 (paragraph (b) of the definition of approved authority)
Omit “Chairman”, substitute “Chair”.

(36) Page 47 (after line 8), at the end of the bill, add:

**Schedule 10—Customs Act 1901**

1 Subsection 219A(1) (paragraph (a) of the definition of chief officer)
Omit “Chairman”, substitute “Chair”.

(37) Page 47 (after line 8), at the end of the bill, add:

**Schedule 11—Proceeds of Crime Act 1987**

1 Subsection 39(2)
Omit “Chairman”, substitute “Chair”.

2 Subsection 40(10) (paragraph (b) of the definition of responsible custodian)
Omit “Chairman”, substitute “Chair”.

(38) Page 47 (after line 8), at the end of the bill, add:

**Schedule 12—Taxation Administration Act 1953**

1 Subsection 2(1) (paragraph (d) of the definition of head)
Omit “Chairman”, substitute “Chair”.

The Joint Committee on the National Crime Authority noted that the bill was ‘a convenient vehicle’ to replace references in all Commonwealth acts to the ‘chairperson’ or the ‘chairman’ of the authority with references to the ‘chair’ of the authority. These items therefore replace those references but have no substantive or operational effect. They are merely technical in nature.

Senator **BOLKUS** (South Australia) (12.16 p.m.)—I have been in this place for 20 years and a few months and I do not think I have come across anything as silly, trivial and unnecessary as this obsession and ideological fixation on political correctness that emanates from the Prime Minister’s office. A few years ago the Prime Minister decided that using the term ‘chairperson’ was too politically correct. It represented, as he thought, political correctness taken too far.

What do we have now? At a time when there is an enormous range of issues confronting Australia—when small businesses across the country are crippled by the impact of the government’s GST, when kids across the country are resorting to drugs and gangs because they cannot find productive employment or things to do in their lives and when there are so many other issues confronting us as a national parliament and as a national Senate—this government has fixed on changing legislation to replace the word ‘chairperson’ with ‘chair’. Monty Python would have been proud of this lot.

What does this say about the priorities that we have before the Senate today? Stop the music! Ring the bells! It is critical that we delete the word ‘chairperson’ and replace it with ‘chair’! You have got to be joking. Someone has to tell that little man who lives in the Lodge that this country does have other things to worry about. We have important issues to discuss with respect to the NCA. What sort of madness brings this government to this place with not just one amendment but 34 separate amendments to a piece of legislation to replace the word ‘chairperson’ with the word ‘chair’? Someone has to tell this mob where to get off. The electorate will probably do that very soon. But in the meantime I do not think we will support this amendment.

**Senator GREIG** (Western Australia) (12.18 p.m.)—I support the amendments, and I do so perhaps for different reasons than those Senator Bolkus indicated. The use of non-sexist language is important and not trivial. I have not used sexist language since I have been in this chamber, and I do not recall using sexist language at all during at least the past 10 years. To my great frustration, when I use non-sexist language by referring to you, Senator Knowles, as ‘Chair’, it appears in *Hansard* as ‘Madam Chairman’. If, as Senator Bolkus claims, this is trivial and too time consuming because there are other things we ought to be getting on with, then he should simply cough it through so that we can get on to the next bit.
I am reminded of a quaint anecdote. Betty Boothroyd, who recently retired from the position of Speaker of the House of Commons, was the first female to hold that position. Some conservative MPs—I am not sure whether they were Tory or Labour, as it is hard to tell the difference—were struggling with how to address her in that position. They asked the question: ‘Should we refer to you as Madam Chair or Madam Chairperson or Madam Chairman?’ With a straight face she retorted, ‘Just refer to me as the chair. I have no sex when I am in this position.’

The TEMPORARY CHAIRMAN (Senator Knowles)—For historical purposes, that was actually Senator Ruth Coleman in this chamber one day down the Old Parliament House.

Senator GREIG—Thank you for correcting me. I am happy to stand corrected. I am confusing my anecdote perhaps with one other with respect to Ms Boothroyd. The use of non-sexist language is important and not trivial. However, I note that this is a shift from ‘chairperson’ simply to ‘chair’ and not a swift, sudden move away from removing any reference to gender. But I think it is better grammatically and philosophically, and I reject any notion that it has anything to do with political correctness. The term ‘political correctness’, as it is bandied about by some commentators, is simply a philosophy which I call decency. I support the amendments.

Amendments agreed to.

Senator GREIG (Western Australia) (12.21 p.m.)—I move:

(4) Schedule 1, page 15 (after line 8), after Part 6, insert:

Part 6A—Public interest monitors

49A Subsection 4(1)

Insert:

public interest monitor means a public interest monitor appointed under section 23A.

49B After paragraph 22(3)(b)

Insert:

(ba) subject to subsection (3A)—the Judge has allowed a public interest monitor to test the validity of the application by:

(i) presenting questions for the applicant to answer, either orally or by affidavit; and

(ii) cross-examining any witness; and

(iii) making submissions on the appropriateness of granting the application;

49C After subsection 22(3)

Insert:

(3A) The Judge is not required to comply with paragraph (3)(ba) if, in the opinion of the Judge, the circumstances of the case are such that it would be contrary to the interests of justice to allow a public interest monitor to test the validity of the application. However, if the Judge does not comply with paragraph (3)(ba), the Judge must send a copy of the affidavit and the warrant to a public interest monitor.

49D At the end of subsection 23(3)

Add:

; and (e) send a copy of the affidavit and the warrant to a public interest monitor.

49E After section 23

Insert:

23A Public Interest Monitors

(1) Public interest monitors are to be appointed by the Governor-General on the advice of the Minister. There must be at least one public interest monitor appointed in each State and Territory.

(2) The Governor-General may, on the advice of the Minister, fix the terms and conditions of the public interest monitors.

(3) Any advice to the Governor-General with respect to the appointment of a person as public interest monitor or to the terms and conditions of such an appointment must be consistent with a unanimous recommendation of the Inter-Governmental Committee.

(4) A person must not be appointed as a public interest monitor unless he or she is enrolled as a barrister and solicitor, and has been so for not less than 5 years.

(5) A public interest monitor must not be a person who is, or is a member of, or who is employed in or by or to assist, any of the following:

(a) the Authority;
(b) the Director of Public Prosecutions of the Commonwealth or of a State or Territory;
(c) a commission of a State or Territory formed for the purpose of combating crime or corruption or for protection the criminal justice system;
(d) the police service of the Commonwealth or of a State or Territory.

(6) A public interest monitor is subject to section 51.

(7) The functions of a public interest monitor are:
(a) to monitor compliance by members with sections 22 and 23; and
(b) to appear at any hearing of an application under section 22 for a search warrant to test the validity of the application by:
(i) presenting questions for the applicant to answer either orally or by affidavit; and
(ii) cross-examining any witness; and
(iii) making submissions on the appropriateness of granting the application; and
(c) to gather statistical information about the use and effectiveness of search warrants; and
(d) whenever a public interest monitor considers it appropriate—to give to the Chairperson a report on any non-compliance by members with section 22 or 23; and
(e) to provide to the Chairperson for the Authority’s annual report information about the performance of his or her functions during the period covered by the report.

(8) The Chairperson must not include in the annual report information that:
(a) discloses or may lead to the disclosure of the identity of any person who has been, is being or is to be investigated; or
(b) indicates a particular investigation has been, is being, or is to be conducted.

This amendment proposes a modification to the current warrant application process that would promote the integrity of the process while not compromising the secrecy or effectiveness of law enforcement operations. It is based on a procedure that currently operates in the state of Queensland.

Part 10 of the Queensland Police (Powers and Responsibilities) Act 1997 establishes the position and powers of the Public Interest Monitor. The monitor has a number of functions under the act. Of particular relevance is the requirement that the monitor appear at any hearing of an application to a Supreme Court judge or magistrate for a covert search warrant or surveillance warrant and thereby test the validity of the application by various means. These include, firstly, presenting questions for the applicant to answer; secondly, cross-examining any witness who has sworn an affidavit or given oral evidence in support of the application; and, thirdly, making submissions on the appropriateness of granting the application.

The monitor’s primary role is to represent the public interest where law enforcement agencies seek approval to use search powers and surveillance devices which have the capacity to infringe the rights and civil liberties of citizens. The role is based on the public interest in ensuring that law enforcement agencies meet all the legislative requirements and that their proposed actions do not extend beyond the parameters laid down by parliament. The current process by which warrants are approved is one-sided and unfair. Decisions are made based solely on representations made and evidence presented by the relevant law enforcement agency. The rights, interests and privacy of citizens are deeply affected by these proceedings in which they are not represented. The covert nature of these operations usually precludes direct legal representation of subjects, but it does not mean that their rights and interests cannot be represented by an independent party.

The design of our legal system reflects the view that justice is best served by proceedings in which all interested parties are represented before an independent arbiter. It concerns the Democrats that there is no procedure by which representations can be made on behalf of prospective subjects of warrants as to the lawfulness of issuing warrants or the soundness of the evidence on which the warrant application is based. The third annual report of the Public Interest Monitor
was tabled in the Queensland parliament in November last year. It referred to the establishment of the position of monitor as ‘a unique and fundamentally significant step forward in the process of accountability of investigative agencies’. In part, it said:

The recognition which has been accorded by issuers—

courts (as is customary)—

to the fundamentally important role of the monitor reflects the potential which the position has for expansion into other aspects of the criminal investigative process where, necessarily, there will be infringement of the public’s personal or proprietary rights as a consequence of the imperative of detecting and prosecuting major crime.

The process of the Public Interest Monitor in Queensland confirms that establishing similar accountability mechanisms for Commonwealth law enforcement bodies would be practical, worthwhile and cost effective. The number of warrants currently issued is not so great as to require any significant bureaucratic structure. I expect that appointing one or two barristers in each state or territory, appearing as required and remunerated by way of an hourly rate, would enable a monitor to participate in the vast majority of warrant applications. Obviously, where exceptional circumstances require the immediate determination of a warrant application and a monitor is unavailable to participate in the proceedings, it is appropriate that the application proceed, and our amendments provide for that. However, in such cases the monitor will be required to review the case as soon as possible. This proposal is not expensive or resource intensive; it is simply a change to existing procedures that would enhance the integrity of the current process. I commend this amendment to the Senate.

**Senator BOLKUS** (South Australia)

(12.26 p.m.)—Labour will not be supporting this proposal at this stage, but in saying that we do not reject the proposal outright. We note that this idea would, if implemented, provide a substantial change to the current regime. In those circumstances we believe it needs a thorough examination before endorsement by the parliament. We are aware that a public interest monitor exists in Queensland and that in that state it has generally been regarded as a success. It is our view, however, that this is a relatively new initiative and that we should look at how it operates in Queensland. We also note that the concept was discussed and considered by the NCA committee in the Street legal report, which was concerned with controlled operations, and that that committee—quite a relevant committee—did not support the introduction of a public interest monitor. On the one hand we have the Queensland experience and on the other hand we have an NCA committee considering this concept but not proposing it to the parliament. So we are not supporting Democrat amendment No. 4 at this stage, but we will give this concept some further examination and we will do so when we are in a position to maybe even implement it.

**Senator ELLISON** (Western Australia—Minister for Justice and Customs) (12.27 p.m.)—For the record, the government opposes this amendment by the Democrats. I point out that the NCA operates within a system governed by judicial authorisation of warrants, extensive administrative law, the oversight of the parliamentary Joint Committee on the National Crime Authority and the proposed Ombudsman complaints regime. So I would submit that putting forward a public interest monitor is really not needed—the government does not see that there is a necessity for it. Setting up a public interest monitor scheme in every state and territory would be costly and its benefit is questionable. Further, a parliamentary interest monitor was not recommended by the parliamentary Joint Committee on the NCA in its report on this bill. For those reasons, the government will not be supporting this amendment.

Amendment not agreed to.

**The TEMPORARY CHAIRMAN** (Senator Crowley)—The question is that part 15 of schedule 1 and schedule 4 stand as printed.

**Senator BOLKUS** (South Australia) (12.29 p.m.)—In putting the opposition’s position in respect of both these items that you have raised, I would point out that I worked over this issue extensively during the second
reading debate. The opposition opposes the contempt regime that the bill proposes. I gave many reasons for opposing such regimes in the second reading debate. I also note that Senator Greig, in his minority report from the inquiry into the bill, expressed agreement with Labor’s opposition to those proposals. I therefore urge the Democrats to support the amendments. At this stage, I will not go into the arguments here—unless of course Senator Greig wants to have a protracted debate in respect of them.

Senator GREIG (Western Australia) (12.30 p.m.)—I do not propose a protracted debate, but I would like to place on the Hansard just briefly that, as the bill proposes to introduce a new contempt regime for the NCA—meaning, therefore, anyone essentially who obstructs or hinders the NCA may be referred to the Supreme Court and treated as though they are in contempt of that court—and in light of the significant increase in penalties proposed by this bill and the removal of the reasonable excuse defence, the Democrats are not convinced that this new contempt regime is necessary. If the NCA legitimately faces excessive barriers to conducting its operations, then we are prepared to support a measured response. However, in our view, this bill is excessive.

I note that one is normally ‘held in contempt of court’ where one ‘obstructs an investigative body’ such as the NCA. There is no set penalty for contempt of a court and it can be imposed without the usual prosecution procedures such as a committal and trial by jury. Mr John Broome, former chairperson of the NCA, expressed the point as follows in the course of the committee inquiry into the bill:

The NCA is not a Court. Members of the NCA (including the Chairperson) are not judges and even if they happen to hold a judicial commission they do not sit as judges or perform judicial functions when they exercise the powers conferred on them by the Act. It is an investigative agency of the Executive Government. There are fundamental issues which go to the proper separation of powers under the Constitution which should not be lightly set aside for perceived convenience.

2.47 The need for speed and significant penalties can both be met without this attempt to give the NCA judicial trappings.

On that basis, the Democrats do support this amendment to oppose the proposed contempt regime.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.32 p.m.)—The proposal of the opposition would remove the proposed contempt regime, which the government believes is an essential part of this legislation. This would remove the government’s proposal that the NCA be empowered to deal quickly and efficiently with persons whose conduct is designed to defeat the authority in the performance of its functions. The authority has come across this on a number of occasions. The proposed government amendments would not mean that the NCA itself would deal with a contempt but enable the authority to apply to a court for that court to determine the issue. You still have that aspect of the court dealing with a contempt, so it would not be necessarily an appeal from Caesar unto Caesar.

Contempt style provisions are not novel, as some people have suggested. Under section 219 of the Australian Securities and Investments Commission Act 2001, the Companies Auditors and Liquidators Disciplinary Board can certify to a court that a person has failed to attend before the board. The court can punish that person for non-attendance as if it were a contempt. Similarly, there are many provisions in Commonwealth law under which a court can order a person to comply with a statutory requirement—for example, to produce documents or answer questions—and I refer to section 119 of the Retirement Savings Accounts Act, section 289 of the Superannuation Industry (Supervision) Act 1993 and section 70 of the Australian Securities and Investments Commission Act 2001. So there is a precedent for this, and I draw that to the committee’s attention.

If the contempt provisions are removed by the opposition’s proposal, I will shortly have to circulate revised versions of the government’s proposed review and commencement provisions, government amendments (1) and (2). I just foreshadow that in the event that the opposition’s amendment is supported.

The TEMPORARY CHAIRMAN (Senator Crowley)—The question is that
schedule 1, part 15 and schedule 4 stand as printed.

Question resolved in the negative.

The TEMPORARY CHAIRMAN—We now move to government amendment No. 21.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.34 p.m.)—Can I at the outset seek to do what I mentioned that I would do earlier—that is, circulate revised government amendments Nos 1 and 2, which appear later in the running sheet. I do that just to give other senators notice because now, in view of the opposition’s last amendment having succeeded, it will be necessary for the government to amend its amendments Nos 1 and 2 because of the review and commencement provisions which did touch on the contempt regime. I seek that those now be circulated in the chamber. I will now get on with government amendment No. 21. I move:

(21) Schedule 1, page 41 (after line 2), before item 142, insert:

142A Subsection 4(1) (after paragraph (a) of the definition of member of the staff of the Authority)

Insert:

(aa) a person employed under subsection 47(3);

This amendment amends the definition of a member of staff of the authority to include a reference to a person employed otherwise than under the Public Service Act. This amendment is consequential on the proposed new category of NCA employees and was recommended by the parliamentary Joint Committee on the National Crime Authority to ensure that this new category of staff is able to exercise the same powers, perform the same functions and be subject to the same responsibilities as other members of staff of the authority. This will afford greater flexibility to the National Crime Authority and will also enhance its operations. I commend the amendment to the Senate.

Senator BOLKUS (South Australia) (12.36 p.m.)—The opposition opposes this amendment. As I mentioned in my second reading contribution, we oppose provisions in the bill which seek to allow the NCA to employ staff outside of the Australian Public Service Act. This amendment basically sits within the definition of amendments that we will be opposing. I went at length into the issue of non-APS staff. I referred to Mr John Broome, chairperson of the NCA from 1995 until 1999. His view is that these proposals were ‘clearly spurious’. Chairperson Broome was one of the more respected chairpersons of the National Crime Authority and his advice and experience is something that the parliament should take into account. In accordance with our opposition to the government’s endeavour to give power to employ non-APS staff, we will of course oppose government amendment No. 21.

Senator GREIG (Western Australia) (12.38 p.m.)—This amendment would ensure that the proposed new category of staff of the NCA are able to exercise the same powers, perform the same functions and be subject to the same responsibilities as other members of staff of the NCA. This amendment is contingent on the government being empowered to employ non-APS staff. Given the opposition of both the Democrats and, I understand, Labor to granting the NCA that power, this provision is redundant and does not have Democrat support.

Amendment not agreed to.

Senator BOLKUS (South Australia) (12.39 p.m.)—The opposition oppose schedule 1, part 18 in the following terms:

(6) Schedule 1, Part 18, page 41 (lines 2 to 14), TO BE OPPOSED.

This basically reflects our opposition to the non-APS staff provisions in the legislation and I do not need to speak to it any further. I commend it to the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.39 p.m.)—For the record, this is of a more substantial nature, because it attacks the provision in the bill dealing with non-APS employees. I did touch on that in relation to the previous debate, but the opposition’s proposal will remove the administrative and operational flexibility that the government seeks to achieve by empowering the chair of the authority to employ staff outside the Public Service Act. The NCA has at least as
much need for flexibility as the Director of Public Prosecutions and the Australian Securities and Investments Commission, both of which have this flexibility which was given to them under the previous Labor government. I think that is important to remember.

The National Crime Authority is called upon to respond to a rapidly changing criminal environment in terms of the types of crimes involved, the location of crimes and the techniques and technologies involved. It similarly needs to be able to appoint the best person using the best mechanism for the situation, whether that person be a member of the APS or not a member of the APS. The government, therefore, strenuously opposes the proposal of the opposition and would place on record that the National Crime Authority should have the same flexibility as the DPP and the Australian Securities and Investments Commission.

Senator GREIG (Western Australia) (12.40 p.m.)—After some consideration, the Democrats will support the opposition. In our view, the government has offered no real compelling case for entitling the NCA to employ people other than in accordance with normal procedures. We note, in particular, the comments of Mr John Broome, the former chair of the NCA. He was highly critical of the government’s proposal, arguing in part that the law as it stands provides for the necessary flexibility and adequately allows the NCA to take advantage of specialist expertise. He said, in part:

The reasons for these proposals in the Second Reading Speech—that is, the second reading speech of the minister—are clearly spurious. It is said to be based on a need for specialist expertise ‘from time to time in a particular location’. The Act allows the Chairperson adequate capacity to engage persons for limited periods at any location. The flexibility of the current public sector employment rules are such as to enable the engagement of staff on terms and conditions which are in line with public sector remuneration in Australia. If private sector remuneration is necessary this can be achieved through the use of consultancies. Sections 47 to 50 are in my experience, adequate.

He went on:

This then raises the issue of why these changes are now being proposed. Is it intended that over time the majority of the staff would be engaged under these provisions? What specific problems have been encountered which would give rise to the proposal? Over the years members of the authority, including Chairmen who have come from the Bar, appear uncomfortable and unfamiliar with the need for the procedures which necessarily and appropriately apply to the engagement of staff for public purposes. These requirements include the need to advertise, select on merit and the need to ensure work of similar value is remunerated similarly. The proposals will allow a future Chairperson to engage in personnel practices inimical to the best interests of the NCA and the Commonwealth.

I am inclined to agree with that and I also feel that the message we might send—rightly or wrongly—to the broader Public Service members if we were to go down this path would be one of uncertainty and insecurity in terms of the current arrangements. I do not think that that is a message we ought to send. We therefore support this amendment.

The TEMPORARY CHAIRMAN (Senator Crowley)—The question is that part 18, as amended, be agreed to.

Question resolved in the negative.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.43 p.m.)—I move government amendment No. 26:

(26) Schedule 1, page 41 (after line 14), at the end of the Schedule, add:

Part 19—Prescribed provisions

144 Schedule 1 (after the item relating to the Telecommunications (Interception) Act 1979)

Insert:

Reserve Bank Act 1959, section 79B

145 Schedule 1 (item relating to Regulation 6 of the Reserve Bank Regulations)

Repeal the item.

This is a technical amendment. It relates to schedule 1 of the National Crime Authority Act to replace the reference to regulation 6 of the Reserve Bank regulations with a reference to section 79B of the Reserve Bank Act 1959. The amendment does not affect the substantive operation of schedule 1; it simply
reflects the repeal of the regulation and its re-enactment as section 79B.

Senator BOLKUS (South Australia) (12.43 p.m.)—The opposition agrees with the minister’s reasons and supports the amendment.

Senator GREIG (Western Australia) (12.44 p.m.)—Similarly, the Democrats support this amendment.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (12.44 p.m.)—I move government amendment No. 28:

(28) Schedule 3, item 6, page 44 (lines 13 to 32), omit the item, substitute:

6 After section 8A

Insert:

8B Investigations by other authorities of National Crime Authority actions

(1) If an authority established under a law of the Commonwealth, a State or a Territory has power to investigate action taken by the National Crime Authority, or a member of the staff of the Authority, the Ombudsman may enter into an arrangement with the authority for such an investigation.

(2) If the Ombudsman enters into such an arrangement with an authority established under a law of a State or a Territory, the authority may conduct the investigation to the full extent of its powers under State or Territory law.

(3) The Ombudsman may arrange with the authority for the variation or revocation of the arrangement.

(4) The arrangement may relate to particular action or actions, to a series of related actions or to actions included in a class of actions.

(5) The arrangement, or the variation or revocation of the arrangement, must be in writing.

(6) The regulations may make provision for and in relation to the participation by the Ombudsman in the carrying out of an investigation in accordance with an arrangement under this section.

(7) Nothing in this section affects the powers and duties of the Ombudsman under any other provision of this Act.

(8) In this section:

member of the staff of the Authority

has the same meaning as in the National Crime Authority Act 1984.

This is a declaratory amendment. It will clarify that when the Ombudsman enters into an arrangement with the state or territory complaints authority in relation to a complaint against the NCA then that authority may conduct the investigation to the full extent of its powers under state or territory law. This was always implicit and I commend the amendment.

Senator BOLKUS (South Australia) (12.44 p.m.)—The opposition supports the amendment for the reasons stated.

Senator GREIG (Western Australia) (12.44 p.m.)—The Democrats support the amendment.

Amendment agreed to.

Progress reported.

MATTERS OF PUBLIC INTEREST

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

Visas: Students

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (12.45 p.m.)—On 1 July this year the government brought into operation significant streamlining of the overseas student visa processing system. This was the second part of a two-part reform program to deliver growth and integrity to the overseas student market. As both Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs, I am doubly aware of the importance of getting the export education industry right. It is a question of getting the balance between the commercial aspects of the industry and the need for immigration integrity. The export education industry is estimated by the Australian Bureau of Statistics to be worth $3,717 million to Australia. This means that it is now our 10th ranked export after tourism, petroleum, gold and minerals.
Before I explain exactly what the reforms mean, I think it is important for the record that I put the reforms in their proper historical context. In order to understand the magnitude of the effort required by the Howard government to reform the overseas education industry in this country, it needs to be remembered that the industry is only now recovering from the situation created when the greed for numbers drove Labor government policy against all expert advice from its own immigration department. At the end of the eighties, then education minister John Dawkins was one of those who saw education as a potential multibillion dollar milch cow. All Australia had to do was free up the immigration system to admit large numbers of students and the economy would go ‘gangbusters’, to use a memorable Keating phrase. But as T.S. Eliot wrote, ‘Betwixt the idea and the reality falls the Shadow’. Some parts of Labor have failed to learn any lessons from what has proved to be an enormously costly mistake. It is obvious from Senator Peter Cook’s statements only last week that he has not learned the lesson.

The unpalatable truth for Senator Cook is that, under the Howard government’s skilful husbanding of the overseas education industry, student numbers are at record levels. In the year to 30 June, Australia attracted 146,577 new overseas students—a 23 per cent increase in total visa grant numbers over the previous year, 1999-2000, which showed a nine per cent increase over the 1998-99 year. Offshore grants for the undergraduate sector were particularly strong, showing a 47 per cent rise to 38,555. The irony was that Labor’s ‘get rich quick’ approach to the industry nearly killed it off altogether and left a shemozzle that required between $60 million and $100 million of taxpayers’ money to fix up, and that was for only a small part of the mess. Other unfortunate decisions by the last Labor government concerning overseas students have cost this country hundreds of millions of dollars, but that is a story for another time. Fortunately, most reputable education providers understand that Labor’s ‘get them in at any cost’ mentality does not work in the long run, although I have to admit that there is a small number who are still dazzled by visions of gold at the end of the student rainbow.

The results of the Labor Party’s policy became horribly apparent at the end of the 1980s when the chickens came home to roost. Encouraged by Labor’s lax, open door policy, large numbers of intending students came here, and shonky colleges sprang up overnight to service them, with many offering completely non-existent courses. Not uncommonly, they would register with the state education authorities—I must say that some of them also had dollar signs in their eyes—for, say, 400 students but provide only 10 desks. Rolls would be marked, even though the students were not in attendance because they were out working full-time in many positions, some of them in brothels, on construction sites, or wherever they could find work. So, unofficially, Australia’s student visas were seen to be a soft target for those wanting a backdoor entry to working in Australia or becoming a permanent resident, and extremely cheap at the price. This was hardly likely to promote Australia’s reputation as a quality education destination for genuine overseas students.

While this backdoor entry suited most pseudo students, there were other student visa holders who actually wanted to study in Australia, who were distressed to find that they had no teachers, little equipment and Mickey Mouse classes, if they got any, and went home badmouthing Australian education. Bob Hawke’s response to Tiananmen Square, when we saw him crying in the Great Hall, led to his unilateral decision to allow all People’s Republic of China students, including those already in the pipeline—over 40,000 of them—to become permanent residents. This skewed Australia’s immigration program towards one country, and the effects, financial and otherwise, of that are still there today. But, with regard to student policy, it was all over by the time Bob Hawke cried. His decision merely brought to a head a situation that was already out of control. Labor had to move from doing nothing to manage student entry responsibly to attacking problems created by their mismanagement with a sledgehammer. Overnight, the Labor government shut down
the English language education market for China by introducing a special visa requirement for the PRC, which only ended on 1 July this year. The English language education providers had to be compensated with millions of dollars of taxpayers’ money, and overseas students, whose providers had gone to the wall because the Labor Government had shut up their market like a telescope, had to have their education costs subsidised by the Australian taxpayer.

In the first part of our two-pronged reform program for the overseas student education industry, and after years of inaction by state governments, the Howard government introduced a code of practice to force out the shonky providers still in business by, for example, setting strict parameters for registration, such as having adequate facilities—which is not an unreasonable request—for the numbers registered, and being obliged to inform the immigration department of student non-attendance. The second part of the reform process put into operation on 1 July this year has been the product of many months of working closely with the peak education bodies from every sector of the industry. We have made the overseas student visa system more transparent and objective by publishing, for the first time, our requirements for the granting of student visas. This is now available on the departmental website: www.immi.gov.au in ‘What’s New’. This also makes the process of assessment, in its turn, more objective and less susceptible to the use of discretion by departmental officers.

The categorisation of gazetted and non-gazetted countries was a very blunt instrument introduced by the last Labor government in its desperate bid to staunch the flow of non-bona fide students. It has been replaced by a much more responsive assessment of risk. Countries are now divided into four levels and into education industry sectors based on statistical data as to the incidence of fraudulent documentation, overstaying, student visas, cancellation of visas for various reasons and students who breach their visa conditions by working more than the allocated time. This means that if compliance is high in one sector—say higher education—although in other sectors compliance with visa conditions is poor, the students of higher education in that country are rewarded with less onerous requirements for obtaining a visa. Where compliance levels improve significantly in any sector, risk also falls and students will benefit.

The new rating system recognises that the incidence of students becoming unlawful in some markets is still unacceptably high: 17.6 per cent of students from Vietnam had their students visas cancelled in the year to 30 June and 16.8 per cent of students from India had their visas cancelled. This represented a doubling of the visa cancellation rate for India, notwithstanding that over half the student visa applications in this market under the old rules were rejected for fraud, incompleteness and failure to satisfy the bona fides test. Rates of cancellation were also high for Pakistan, Sri Lanka, Nepal and Korea.

The Howard government is mindful of the need to husband our extraordinary growth in students numbers after the debacle caused by the unmanaged growth during the last Labor government. Here I would like to pay tribute to Senator Kim Carr who, because of his knowledge and interest in this area, has taken a positive and cooperative approach to these reforms. On many occasions it is seen as important to be able to work with others of a different political persuasion to do what is in Australia’s long-term interest.

I have sometimes heard it said that it does not matter if students do not come here to study. It matters a great deal. They take jobs from Australian workers if they work full-time. They often cause grief in their own national communities here by getting up to mischief. Some of those communities report that to us and say that if reflects badly on them. At the end of the day they cause a loss of reputation for Australian education because, when they return to their countries with no improvement in their language skills and no qualification, it is the Australian education system and market that they blame. Over time, this incremental loss of reputation has enormous economic and diplomatic ramifications for this country.

Australia has many attractions for overseas students which are reflected in the ex-
traordinary growth in numbers. The relatively competitive dollar, the great climate, a laid back culture and quality education are all important factors. On the government side we work hard to facilitate the entry of students with generous working conditions. Students are able to work 20 hours a week and longer during the holiday times and they are not restricted, as elsewhere in the world—for example, the US and Canada—to working only on their own campuses. The Howard government has also been farsighted in allowing overseas students who achieve high level qualifications in this country to become migrants immediately on completion of their courses, without going offshore. They now comprise about 50 per cent of our skilled migrant intake.

I would like to end today by referring to a recently released draft OECD study on the mobility of international students. The study points out that student mobility provides a potential flow of qualified workers either in the course of their studies or through subsequent recruitment, allows economies of scale in education systems and brings additional resources to finance them. The immigrants we receive by this means are much more readily absorbed into our work force by dint of their qualifications being obtained in this country. The report points to the ways in which the Australian government has adopted measures to facilitate the entry of foreign students, particularly in information and communications technology. From July they do not have to have professional experience or an employer sponsor in order to apply as skilled migrants. The immigration department is also developing an online immigration application procedure to speed up the process.

The report notes that Australia is one of a group of countries which stand out for their very high intakes of foreign students—over 110 per 1,000 enrolled. Australia rates third on this measurement, at 125 per 1,000 enrolled, after Luxembourg 304, and Switzerland 159 and before Austria and the UK. The OECD study notes:

While the effective size and diversification of education provision can explain why the large industrialised countries are most often host countries to foreign students, the presence at the top of the list of smaller, industrialised countries like Australia, Switzerland and Austria suggests that high levels of economic prosperity are reflected in per capita educational resources and high levels of technology which attract foreign students in certain areas of excellence.

In the reception of non-OECD students, Australia, France, the UK, Denmark and Switzerland are the leading OECD countries in that order: 80 per cent of foreign students overall go to only five countries—Australia, France, Germany, the UK and the US. In Australia, three-quarters of foreign students come from Asia or the Pacific—that is, our major trading partners—and most are enrolled in commercial disciplines. The study goes on:

Concerning the dynamics of the student mobility phenomenon, a comparison at the interval of three years shows that the proportion of foreign students in the OECD countries rose by 4.6 per cent between 1995 and 1998. This trend reflects a process of internationalisation of education which is growing in the OECD countries. This overall rise, however, masks some significant divergencies between countries: among the major host countries, Australia comes top with almost a 40 per cent rise over the period concerned, followed by Switzerland, the UK, Denmark and, a long way behind, Germany and the US.

An article in *Forbes* magazine last year lamented that Australia, with less than one tenth of America’s population, is beating the US at attracting foreign students, and that it is countries like Australia that will be reaping the next crop of entrepreneurs.

The overseas education industry brings us huge benefits in terms of international goodwill and influence when the students we educate go on to become the next generation of leaders in their countries, but it is also a fragile market which needs to be managed well. We will continue to listen to industry and to make changes where necessary to finetune the process. Unlike the last Labor government, this government will not stand idly by while problems become so overwhelming that a sledgehammer approach becomes the only one available. The student visa changes will assist the Howard government to continue to manage overseas student growth prudently and to enhance the value of the Australian education industry.
Visas: Students

Minister for Employment, Workplace Relations and Small Business

Senator JACINTA COLLINS (Victoria) (1.00 p.m.)—Before I commence the remarks I planned to make today, I thank Senator Patterson for a very interesting contribution on overseas students. On behalf of Senator Carr, I thank her for her acknowledgment of his contribution there. However, I raise one issue of caution in the consideration of these issues, and that is what we are currently addressing with respect to our inquiry into higher education in Australia. This is an inquiry of the Senate Employment, Workplace Relations and Small Business and Education References Committee. Amongst many other things, we are addressing the impact of overseas students on the Australian domestic market. I am not in a position to make any comments with respect to conclusions on those issues, but I add to Senator Patterson’s remarks that I think that is one of the important issues that, in a whole of government approach to this issue, we need to be mindful of as well. As I indicated, it was a very valuable and thoughtful contribution. Thank you, Senator Patterson.

Senator Patterson—That might affect preselection. Don’t affect mine!

Senator JACINTA COLLINS—It might have helped mine, Senator Patterson. In my comments today I want to address a number of matters relating to the not quite so new Minister for Employment, Workplace Relations and Small Business. In March of this year, the federal Minister for Employment, Workplace Relations and Small Business, Tony Abbott, gave a speech on industrial relations titled, ‘Reflections of a new boy’. Leaving aside the endearing public school-boy effect, the title successfully conveys, I think, his immature understanding of industrial relations in this country. Unfortunately for us, the passing of April, May, June and July does not appear to have improved his knowledge of his portfolio area at all. This was amply demonstrated in his most recent contribution to public debate, which was titled ‘Why workers are saying no to unions’ and published in the Age on 26 July. The reasons for union membership decline are many and complex. A thoughtful debate on the matter has been conducted over the last few years within the union movement and also amongst academia and the media. In fact, the Age’s recent ‘Perspective’ series, I thought, gave a more useful and measured contribution on the issue. This was published around the same time as the article by the minister. But not so the minister’s piece.

Mr Abbott asserts three reasons for the decline in union membership since 1980. Marxist thinking on the part of unions was the first. Please! The union movement’s total involvement with one side of politics was the second, and a tendency to see members as numbers rather than individuals with needs to be met was the third. That third reason I find particularly offensive from my own involvement as a union official.

Senator Ludwig interjecting—

Senator JACINTA COLLINS—Yes—not validated by the first point. In fact, the whole system seems to be somewhat inconsistent. You are right, Senator Ludwig. However, Minister Abbott’s self-serving views on the decline of the union movement—for instance, the Howard government’s virulent anti-union policies do not rate a mention—are not worth serious contemplation, let alone rebuttal. They are nothing more than political bile masquerading as argument. If he or anyone else is interested in reading something useful on the subject, I suggest they look at the New South Wales Labour Council’s webpage where you can find the results of a nationwide poll of 1,100 people commissioned by the council but carried out by Sydney University’s Australian Centre for Industrial Relations Research and Training in early July. This survey shows that the majority—52 per cent—of people agree with the proposition, ‘I’d rather be in a union.’ This is up from 44 per cent two years ago. Although I doubt it will ever occur, I look forward to the day when the Employment Advocate actually investigates why people feel that they are blocked from joining unions—a clear trend.

Senator Mackay—Wasn’t it ACCIRT research?
Senator JACINTA COLLINS—And ACCIRIT research as well, demonstrating this trend. But, unfortunately, it is something that our champion of freedom of association continues time and time again to ignore.

Far more disturbing than his comments on union decline is the minister’s agenda for industrial relations reform which was set out by him in his ‘confessions of a new boy’ speech. The minister delivered the speech to a meeting of the H.R. Nicholls Society—shock, horror!—and then disseminated it a little more widely in an article in the Australian Financial Review on 27 March this year. That agenda for industrial relations reform was so full of so much analytical error and distortion that I am informed that department officials took up its serious flaws privately with the minister shortly after the article was published, with the suggestion that he do the intellectually honourable thing and correct the record. He has chosen not to, so today I am happy to take up that task.

Mr Abbott’s assertion No. 1 was that Australia’s workplace relations system assumes that workers and bosses are incapable of managing differences, that workers are always weak and gullible, that bosses are always greedy and manipulative, that relations need to be governed by complex rules and that inevitable disagreements must be resolved by someone else. This is wrong in terms of the legislative policy of the Howard government and historically it is untrue. For example, the Howard government’s 1996 workplace relations legislation included as one of its fundamental objectives ensuring that the primary responsibility for determining matters affecting the relationship between employers and employees rests with the employer and the employee at the workplace level—the minister’s own legislation. As far as history is concerned, employers and employees have traditionally been able to sort out the vast majority of matters among themselves, with these often being given legal force by so-called ‘consent awards’ without recourse to conciliation or arbitration. To take a random example: in the Commonwealth Public Service in the financial year 1969-70, some 425 adjustments were made to pay and conditions. Only 26 or six per cent involved arbitration or, in Mr Abbott’s words, ‘having disagreements resolved by someone else’.

Mr Abbott’s assertion No. 2 was that, because the system gives unions the built-in advantage of taking the first move through initiating a dispute, it is like ensuring that one side always wins the toss. This is nonsense, as is what the minister has said about establishment processes. In the federal Workplace Relations Act, certified agreements prevail over and are rapidly displacing awards. Section 170MG(1) of that act enables either an employer or other parties to terminate an agreement and section 170MI enables either party to initiate a bargaining period. There is no question of one side always winning the toss. I can only assume that the minister had spent too much time during the summer at the cricket.

Let us move to Mr Abbott’s assertion No. 3, which was that workers, managers and owners should be talking to one another at the first hint of disagreement rather than to unions, employer organisations, commissioners, judges and courts. In fact, workers and managers talk to one another all of the time. It can safely be assumed that most communication at most workplaces on most disagreements is directly between managers and workers in the first instance, with unions and commissioners, et cetera, getting in on the act if the matter becomes intractable or where it might be more convenient to deal with the unions—on nationwide issues, for example—in large and geographically dispersed organisations. I and probably Senator Mackay can recall a number of employer organisations saying, ‘We don’t like this 1996 legislation because it contains our ability to access commissioners, for instance, when disputes are intractable. Also we like to be able to deal with issues on a nationwide basis in some instances.’

Industrial commissions are virtually never spoken to at the first hint of disagreement, and they would typically send any parties away if they attempted to do so. Indeed, there are many provisions in the Howard government’s Workplace Relations Act requiring the Industrial Relations Commission to do just that. For example, section 170N
precludes the commission from arbitrating during a formal bargaining period.

Let me move to Mr Abbott’s assertion No. 4, which was that around the country there are 4,500 industrial awards regulating everything from the temperature of water in tea urns to the number of beds on building sites to the hours allowed for trade union training. I really am starting to wonder whether Mr Abbott picked up a speech that was perhaps five years old here.

Senator Tierney—Beds on building sites?

Senator JACINTA COLLINS—Yes. Here the minister tries to colour and distort the overall picture with an extreme example, a debating tactic as old as it is dishonourable and also inaccurate. If he is not prepared to count up and tell us the number of awards regulating the water temperature of tea urns, at the very least he could say that such matters do not fall within allowable matters in federal awards.

Let me move to Mr Abbott’s assertion No. 5, which is that the number of pages of industrial legislation—Senator Mackay will like this one—certified agreements and awards is a serious problem. In some ways, it may well be. However, he fails to own up to the fact that the Howard government’s Workplace Relations Act and its associated policies have vastly increased the amount of industrial relations regulatory documentation.

Again, to take a convenient example of the Commonwealth Public Service, there are now some 100 separate individual agency certified agreements that could each be around 100 pages long in place of a single Public Service-wide agreement. Further, there are some 5,500 Australian workplace agreements that could each be 15 pages long. That is to say, in addition to some hundreds of pages of legislation and associated documentation, the policies of the Howard government have bequeathed around 100,000 pages of regulatory workplace relations documentation to the Commonwealth Public Service, a figure far in excess of anything that organisation has known in its 100-year history. It is no surprise that the Victorian government chose to move to another means.

One could go on, but enough is enough to make the point that, while the Howard government alleges policy laziness on the part of the opposition, that does not apparently make up for one of its senior ministers who is not in the least bit bashful about his own sloppy, lazy and distorted analysis of vital areas of policy for which he is responsible. Weak analysis is of course a recipe for weak policy, and it is therefore hard to be optimistic about Mr Abbott being able to bring forth much in his avowed intention to push for further incremental legislative improvement. He needs to catch up on the legislative reform his own government has done first. One can only wonder what those discerning industrial relations specialists and enthusiasts at the H.R. Nicholls Society thought of the minister’s performance. Perhaps that august society does not expect much more than a goodly serving of ideological fodder for its members. If it wanted more from Mr Abbott, it did not get it. It got a cheap caricature of industrial relations in Australia, something it might have obtained from the minister’s filmic namesake if he were still available.

Finally, I have to ask: how long does it take for the line still recently used by the minister—’I’m a new minister’—to lose its value as an excuse for ignorance and incompetence? Surely, the use-by date on it has passed for Minister Abbott. The minister is either incapable of getting on top of his new portfolio or uninterested, and the Australian public deserve to know which one it is. I have covered today the industrial relations side of Mr Abbott’s portfolio, and I look forward to the general business debate on Thursday, when we will cover employment services and Mr Abbott’s contribution there.

Whistleblowers: Heiner Case

Senator HARRIS (Queensland) (1.14 p.m.)—I raise as a matter of public interest the grievance of Mr Kevin Lindeberg. I will quote from a document that was written to the President of the Senate by Greenwood QC. My references to the President will be in the context of reading from that document. Madam Acting Deputy President. I quote from the document written by Greenwood
QC dated 9 May 2001, addressed to the Hon. Senator Margaret Reid, President of the Senate, Parliament House, Canberra:

RE: A MATTER OF MISLEADING THE SENATE IN RESPECT OF THE HEINER AFFAIR

We act for Mr Kevin Lindeberg of 11 Riley Drive, Capalaba, Queensland 4157.

We know that the Heiner Affair came before the Senate in 1994 and 1995 for the purpose of drawing lessons from the case to enhance the formulation of national whistleblower protection legislation. We understand that such legislation has not advanced to date, with a question concerning its current status recently raised by Queensland Senator Andrew Bartlett during the late-November 2000 Question Time to then Justice Minister the Hon Senator Amanda Vanstone.

In light of fresh and compelling evidence in the Dutney and Forde documents which provides a deeper understanding of the Heiner Affair, we have re-examined material placed before the Senate Select Committee on Unresolved Whistleblower Cases in 1995 and the Senate Committee of Privileges in 1996 and 1997/98 and their respective findings, and now suggest that it is open to conclude that:

(a) both Committees of the Senate were misled by both the Goss Queensland government and Criminal Justice Commission (CJC); and

(b) the findings of both Committees, in particular matters, are unsafe and cannot be allowed to stand; otherwise:

(i) the Senate will be brought into disrepute; and

(ii) an injustice will have been inflicted on our client, as a witness before the Senate, of such an unconscionable nature as to undermine public confidence in the workings of the Senate’s committee system.

We acknowledge that certain evidence was put by Mr Lindeberg to the Senate Committee of Privileges in 1996 and 1997/98 that the CJC had misled the Senate, and, on both occasions, the CJC was found to be not in contempt because his complaint could not be sustained.

We submit, however, that both those findings are unsafe. We ask that the matter be revisited for reasons set out below.

Firstly, this grievance is lodged because of our discovery of new and compelling evidence which indicates that both the Goss Queensland Government and CJC knew existed at all relevant times but failed to reveal this evidence, or, with that state of knowledge, went on to knowingly mislead the Senate in a significant manner.

In the case of the CJC, it failed to inform the relevant Senate Committees of its true state of knowledge in either oral and or written submissions when it had an obligation to do so.

This had the effect of:

(a) knowingly misleading those committees and their findings to prevent or attempt to prevent adverse findings being made against itself (the CJC) and others;

(b) causing a detriment to our client;

(c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights, including the rights of children; and

(d) undermining the Australian Federal Government’s commitment to relevant United Nations’ Human Rights conventions and treaties e.g.:

International Covenant of the Rights of the Child;
International Covenant on Civil and Political Rights;
The Right to Organise and Collective Bargaining.

Regarding the Goss Queensland Government, it withheld highly relevant evidence which had the effect of:

(a) knowingly misleading those committees and their subsequent findings to prevent adverse findings being made against the Goss Queensland Government;

(b) causing a detriment to our client;

(c) bringing disrepute on the Senate by casting doubt over its respect for the rule of law and fundamental human rights;

(d) undermining the Australian Federal Government’s commitment to relevant United Nations’ Human Rights Conventions and Treaties as mentioned above.

Our concern that the Senate may have been misled is shared by Queensland Senator John Woodley in his comments in The Queensland Independent October 2000 edition (See Attachment A).

Of particular relevance to this submission, Senator Woodley outlined his concerns in the aforementioned article:

(a) Senator Woodley was a member of a 1995 Senate inquiry into the shredding of the Heiner documents and said he was sure that the inquiry would have drawn different conclusions had they
It is simply untenable to permit the shredding of public documents containing evidence of alleged child abuse in a State-run institution and required for court action to be described by the Australian Senate solely in political terms while ignoring its legality or otherwise.

Our democracy requires that political decisions can or should be taken only within the framework of upholding and respecting the rule of law. In this regard, the Senate, as its view stands concerning certain conduct by Government and other public officials in the Heiner Affair, appears to suggest, on the Parliamentary record, that Executive decree can be placed above both legal considerations or consequences when arguably it is open to conclude that certain sections of the Criminal Code (Qld) may have been breached in respect of those same Cabinet and related decisions.

Such a notion is a danger to Australia’s liberal Parliamentary democracy and the individual rights of all Australians enjoyed under our Constitution.

Forde Inquiry Exhibit 20, dated 7 April 1989, reveals prima facie admissions of the most serious kind concerning unlawful assaults against children held in the care of the State at Sir Leslie Wilson Youth Detention Centre and John Oxley Youth Detention Centre (JOYC). We submit that the submissions should have been thoroughly explored by the Forde Inquiry but they were not, even after the exhibit was tabled and when both Messrs Peter Coyne (former JOYC Manager) and Frederick Feige (Senior Youth Worker) were under Oath in the witness box during its February 1999 public hearings.

We submit that what makes Exhibit 30 so disturbing is that Mr Feige, to the best of our knowledge, still works at the Centre and continues to be paid from the public purse. He appears to have never been questioned over his submissions of possible unlawful assaults on children in care as set out by Mr Coyne. Left unaddressed, we suggest that Mr Feige has neither:

(a) been able to clear his name pursuant to procedural fairness principles in respect of himself;
(b) been able to allay departmental, public and court concern that his professional conduct concerning the care of children held in a State-run institution acceptable; nor has he
(c) been held to account for his actions if found to be true.

Forde Inquiry Exhibit 31 is a summary document prepared by Mr Coyne on 29 September 1988 for his departmental superiors. It reveals the calibre

seen the Dutney document (a fundamental component of our new evidence) “along with a number of others”.

(b) Senator Woodley said the subsequent Senate Privileges Committee inquiries also may have drawn different conclusions if the documents, including the Dutney memorandum, dated 1 March 1990, (See Attachment B) been revealed at relevant times.

In our opinion the Goss Queensland Government and CJC may be in breach of the Parliamentary Privileges Act 1987 (C’wealth), which, in turn, if sustained, may warrant further investigation by an appropriate Federal agency to address obstruction of justice.

As to whether the matter should be reconsidered by a new Senate Select Committee or the Senate Committee of Privileges is something which the Senate must decide for itself as it rightfully protects its own privileges and immunities. Nevertheless, we respectfully submit that the Senate Committee of Privileges may be obliged, in the interests of procedural fairness, to recognise the existence of apprehended bias, given that our client placed certain new documents of a compelling nature before it in 1999 only to have it noted when we believe it warranted action. In other words, prejudgment towards further inaction may exist within that committee to our client’s detriment, and procedural fairness may not be afforded to him.

Additional to the aforementioned fresh evidence, we have just accessed two Exhibits tabled at the Forde Commission of Inquiry into the Abuse of Children in Queensland Institutions in February 1999 by Counsel for Mr Coyne. They are identified as Exhibits 20 and 31 and copies are enclosed (as Attachments C and D respectively) with this grievance.

We submit that conclusions which can be reasonably drawn from their content add weight to our call that the Senate cannot leave matters as they stand.

We suggest that the conclusion reached by the Murphy Select Committee in its October 1995 report The Public Interest Revisited that the shredding was an “...exercise in poor judgment” is inappropriate. We suggest that it brings disrespect on the Senate, especially in light of what we now know was the Goss Government’s true state of knowledge at all relevant times concerning the legal status of the records in question, and what had been going on at the John Oxley Youth Detention Centre during and before the time the Heiner Inquiry sat.
of the staff, according to his assessment, with whom he was required to run the John Oxley Youth Detention Centre. We acknowledge that it is his assessment alone and is therefore open to challenge by those affected pursuant to procedural fairness considerations.

As we now know that evidence such as this was withheld from the Senate, then it is reasonable to suggest that other incidents of alleged child abuse may remain hidden but the Senate was entitled to know about when considering the Heiner shredding and related matters.

We therefore suggest that:

(a) as Mr Coyne’s findings are so serious against a set of criteria (e.g. Point 4: ‘does not verbally, physically or sexually abuse resident children’) that it is reasonable to believe that as a responsible manager of this juvenile justice institution and aware of the employee rights under relevant law and awards, he would have been obliged to reach his conclusions by carefully considering and preserving documented supporting evidence so that if the Queensland Government decided to implement his recommendations it could defend any dismissal before any tribunal or court should an affected (sacked) Youth Worker wish to challenge his or her dismissal;

(b) it is incomprehensible and _prima facie_ negligent that the Forde Inquiry, given its Terms of Reference, did not fully explore Mr Coyne’s findings once his Exhibit was tabled, especially when it was known that at least one of the Youth Workers (and possibly more) continued to work with children at the Centre and gave sworn evidence to the Inquiry as a witness;

(c) it is unacceptable for such vital evidence, as the Dutney Memorandum and Exhibits 20 and 31, _always held_ by the Queensland Government, to have been withheld from the Senate in 1995 by the Queensland Government for its own political ends;

I conclude my quotation from the document at this point and seek leave to have the remainder of the document incorporated in _Hansard_.

Leave not granted.

**Hunter Valley: Protest**

Senator TIERNEY (New South Wales) (1.29 p.m.)—I rise to inform the Senate of a very serious incident in the Hunter Valley last month which occurred during a visit by the Minister for Defence, Mr Reith. Friday, the 13th will be remembered as the Hallowe’en nightmare for local business and community leaders. On a day when Newcastle was highlighting its potential for further defence investment, union protestors who can only be described as thugs did a most childish and dangerous thing. The Minister for Defence was invited to meet with local people including the defence task force from the Hunter business chamber, who were outlining to the minister the defence industry investment potential in the Hunter Valley.

It is certainly no secret that the Hunter has a very proud tradition in regard to defence. We have a major inventory Army base, which is responsible for most of the inventory training. We have RAAF at Williamtown, which not only has the major arms of the fighters for Australia but also has a number of other facilities such as Eastern Command and the Warfare Centre and most recently from this government the addition of the AEWAC early warning aircraft.

On top of this, the defence industries around Newcastle provide a considerable amount of work and in the past have been involved in building a number of significant naval projects. Some of these projects include naval ships but most recently the Minehunter Project. In addition to that, these industries have supplied parts and sections of other major contracts that have recently been awarded such as the submarine contract and the Anzac frigates. What the business community was pointing out to the Minister Reith was that Newcastle has a natural advantage in terms of defence industries. Not only does it have a cluster of defence bases; it also has a most extensive defence industry that has a very proud tradition.

There is coming up very soon a range of contracts which this government has outlined in its defence plan. Indeed, over the next 10 years there will be up to $50 billion worth of defence work available in Australia. So, given that situation and given the minister was in town, one would have thought that the people of Newcastle and the Hunter would want to put forward the best image possible. This was all destroyed by the attack on the minister’s car. Following the briefing, the minister did leave the site and also a number of other business leaders in the community left as well. I was driving the car out of the
Forgacs dockyard at the time and there was a group of unionists numbering about 60 who were holding up banners and protesting. A car came and cut across our path but, having been a former Sydney taxi driver, that was not too difficult to get around. But 60 people on the road forming a blockade was incredibly difficult to get through.

The crowd was very aggressive. They threw things over the car—and this was all recorded on the footage and in the photographs in the media. They threw chocolate milk over the windscreen. This was incredibly dangerous because it made it very difficult to see. This was removed by windscreen wipers and washers so that I could see. I kept proceeding at about two to three kilometres an hour wondering what would have happened if I had stopped the car, because this bunch of union thugs had totally lost it at this point. They were belting the car with the wooden poles they had been using to hold up the banner. The biggest dent in the car was reserved for next to the seat where Peter Reith’s head was. The amount of damage done to the car came to over $6,000. There are 50 parts that need to be replaced and one month later I still have not got the car back. They attacked not only my vehicle but also three others, including a Commonwealth car. One of the employees of Forgacs had his car damaged and a private citizen had the windscreen broken on his car.

What is absolutely amazing is that the minister was there for good news for the Hunter. This minister was there with his chequebook and the possibility of $50 billion of contracts over the next 10 years. Wouldn’t you think that you would want to show the region in its best light, the industries in their best light and the work force in its best light? But these were mainly union members that were carrying on like this. When asked why they had done this, they just said, ‘We wanted to give the minister a send off.’ How childish, and how damaging to the region, particularly as the reports of the incident appeared on the front page of the *Sydney Morning Herald* and right across the country. The TV footage of violent union protests were shot right around Australia.

I would like to canvass a number of issues that have come out of this incident and the negative effect that it has had on the area. Firstly, it is the issue of trying to attract investment to regional Australia—and I notice we have the shadow minister for regional services opposite, so she would be very interested in any investment going into regional Australia. We had a major problem a few years ago in the Hunter Valley when the industrial icon BHP shut down its steel smelting operation in Newcastle. Thousands of jobs were lost and people thought the region would go into major decline. What happened was the reverse. Newcastle’s unemployment dropped dramatically in the year following the shutting down of BHP’s steel smelting. A whole range of other industries took up the slack very quickly. Not only was there a lot of private investment; there was also public investment from the state government Hunter Advantage Fund and the federal government’s structural adjustment package where strategic projects were targeted to help develop new industries in the region.

That has been developing very well. We have industries such as communications, tourism, higher education, IT and engineering—these are all booming in the post BHP era. Unemployment was down last year to seven per cent—levels we have not seen since the 1960s and considerably under those levels seen during the last Labor government, which were around 15 per cent. It had come down to seven per cent—it had actually halved during that time, despite the shutdown of BHP. Why did that happen? Because we were able to attract, with the natural advantages of the Hunter economy, a very wide range of industries to the region. The whole future of the region depends on investors putting this further money in.

So what is the effect when investors see flashed around Australia—and possibly the world—the violent footage that came out of this union protest? We know what happened to one investor who had seen footage of a nonviolent protest that had occurred a few weeks earlier—not this violent footage. They saw that union protest and decided not to invest in the region. What was the effect of
the violent protest? How many watched that and decided they would not invest in the region? That sort of disturbing footage has been a setback for the Hunter.

We have a real chance with further defence industries, despite what these irresponsible union thugs have done. One of the contracts that the minister was there to discuss was the new patrol boat contract, replacing our 15 ageing Fremantle class patrol boats with 25 new boats. A total of $450 million is involved in that project. There are two leading contenders from the Hunter to pick up that work: Australian Defence Industries and Forgacs. We were right there—we were at Forgacs and ADI is next door. This was the centrepiece area for the construction of this new naval work, and it is exactly where this irresponsible protest took place. It is a pity, because the unions have over the last 20 years built a better image for themselves. They had shown in the past that they were more responsible, and that is probably why we have attracted so much investment to the area in recent years.

Indeed, five weeks earlier the Prime Minister was in the Hunter Valley. There were no union thugs hitting Commonwealth cars on that occasion; there was no bad publicity going around the country. A few weeks earlier Stephen Martin, the shadow minister for defence, was also in the area and they welcomed him with open arms: there were no violent protests on that occasion. But, as Graham Gilbert pointed out when he interviewed me on 2SM after the protest, Labor are not in a position to make the decision where defence contracts go and you would think people would be on their best behaviour when bids like this are up in the air, looking as if they could fulfil the contract, particularly when a responsible minister was in the region. This is from one of the major radio commentators. He could not understand why in that situation the unions would not be trying to put their best foot forward.

The unions have said it is an unusual situation, it just all of sudden got out of control and they would have an inquiry into the incident. We say to the unions: where is the inquiry up to? Who are the people responsible that caused over $6,000 worth of damage? Is it going to be left to the taxpayer to pay for it? This is the outcome and this is where the situation is up to at this time.

The main issue is not just damage to property and the endangering of lives. The other main issue is the potential loss to industry in the region. The violence of the protest takes us back to what used to happen in the 1940s. This is the sort of behaviour that belongs back in the 20th century, not in the 21st century. The unions have an obligation to help and work with the business community in the area to attract more employment opportunities, but they have instead undermined the hard work of the local people, such as the Hunter Business Chamber, the Hunter Economic Development Corporation, the Lord Mayor, Newcastle council and the Hunter Area Consultative Committee.

Since BHP announced the shutdown of smelting in 1997, all levels of government in the city—state, local and federal—all political parties and community groups have worked very hard and in a cooperative way to reshape the Hunter economy, and with great success to date. The cooperative spirit has now been severely undermined by this union thuggery. If we are going to rebuild the Hunter economy and offer our children a real future, all levels of the community must continue to work together and rogue unions must come back into the fold. Friday the 13th will go down as a Halloween nightmare for Newcastle when the unions sabotaged attempts to bring new life to the Hunter region. Shame on the union thugs.

**Human Cloning**

Senator COONAN (New South Wales) (1.42 p.m.)—The announcement earlier this week that Professor Severino Antinori of Rome University plans to produce a human clone by impregnating up to 200 women with cloned embryos makes the current debate about stem cell research even more compelling and urgent. It has been rightly condemned as morally wrong and scientifically dangerous.

At the heart of this debate is the tantalising prospect of genetic engineering designed to alleviate suffering and to preserve life. At the other end of the spectrum is the night-
The advancement of science is such that we are called upon as legislators, scientists, bioethicists, parents and concerned citizens to make judgments now that will serve us far into the future. At a time when the potential for development of technology for benign purposes is eagerly anticipated, the potential for abuse is all too real. We must define the parameters and set the boundaries to separate out good eugenics from bad eugenics, to separate legitimate science from abuse. How can we do this in the absence of a moral compass?

The approaches taken in the United States by the Bush administration and in Britain by the Prime Minister, Mr Tony Blair, only serve to illustrate the ethical, political and scientific divide—their approaches are divergent. These approaches also serve to highlight the distinction to be made between stem cell research for therapeutic purposes and for reproductive purposes.

Recently the United States House of Representatives passed the Human Cloning Prohibition Act, banning all human cloning and imposing a 10-year prison term and million-dollar fine on perpetrators. A companion bill is currently in the Senate Judiciary Committee, to be debated later this year.

Britain, on the other hand, is the first country in the world to legalise the therapeutic cloning of human embryos for research purposes. The decision has been criticised by commentators in Germany, France and Holland, and by the Pope, as in effect legitimising reproductive cloning to produce children. The House of Lords Ad Hoc Committee on Stem Cell Research has heard evidence from eminent researchers and organisations calling for nothing short of a worldwide ban on cloning.

In Australia, the need for a nationally consistent approach to legislation regulating assisted reproductive technology and banning the cloning of whole human beings has been recognised in the prohibition of cloning incorporated in the Gene Technology Act 2000. On 8 June 2001, the Council of Australian Governments made a commitment to achieving nationally consistent provisions to prohibit human cloning, whilst acknowledging that this field of regulation is primarily one for each state and federal jurisdiction. The House of Representatives Standing Committee on Legal and Constitutional Affairs is due to hand down a report on human cloning next month.

With all this attention being given to embryonic stem cell research, it might be thought that as a society we would have resolved some of the more fundamental moral dilemmas—that we would be more settled in our thinking about what is the very essence of humanity. However, this is far from the case. News earlier this year that scientists in the United States have created human embryos for the sole purpose of stem cell research and scientific manipulation should also be ringing alarm bells.

The use of excess embryos, created for reproduction as part of in-vitro fertilisation processes, for stem cell research has, however, gained a level of public acceptance. These embryos will eventually be destroyed, and the potential to help others through stem cell research and therapy is seen as benign and beneficial—although there is not much evidence yet of the successful application of cell therapy to prevent or treat categories of inherited diseases and disabilities, diabetes, cancer or arteriosclerosis.

I think it is fair to say that many of us have been mesmerised by the potential for humankind to benefit from stem cell research. Not wishing to stand in the way of progress, we have tended to uncritically accept scientific claims and have not given sufficient thought to dubious means to not easily attained ends. It is time to reassess the means to the end and to intensify research efforts to find cells from other sources. For example, the use of adult stem cells for cell therapies would reduce or avoid the need to
use human embryos or human foetal tissue as a source of stem cells.

Those who object to this research do so on the basis that these pluripotent stem cells are typically taken from the inner cell mass of human embryos at the blastocyst stage. Many hold profound moral and religious objections to the manipulation of a human embryo and do not buy the argument that it is an acceptable means to a collective good. There is some force in this position—although if human life, however microscopic, is to be respected, it is difficult to distinguish between the wrongs inflicted on an unwanted embryo by the extraction of stem cells and its destruction as surplus to IVF requirements in any event. This is not a distinction of kind, but one of degree.

At a basic level, pluripotent stem cells could build a better understanding of human development, abnormal cell specialisation and cell division. Human pluripotent stem cell research could also have a dramatic effect on the development and testing of drugs using human cell lines. There are other potential applications of pluripotent stem cells that, all things being equal, may justify the research. But the glittering prize is undoubtedly the potential to offer a renewable source of replacement cells and tissue to relieve the pain and suffering of disabling diseases and disabilities.

Although adult stem cells may not be the very best source of these cells for all applications, research on adult stem cells suggest that such cells may have similar potential to pluripotent embryonic stem cells. Embryonic stem cells can give rise to any kind of cell in the body. Multipotent adult cells are more flexible than first thought and can produce many, but not all, cell types. In an intriguing article titled ‘Can adult stem cells suffice?’ the June issue of Science magazine reports the findings of surgeon Marc Hedrick of the University of California. Fat cells isolated after liposuction could become cells resembling cartilage, bone and muscle. His paper has apparently prompted some politicians to volunteer to give up some of their excess fat in the cause of science. It would be a plentiful source. Other research suggests stem cells may be isolated from cadavers.

While researchers maintain that they need to access both embryonic and adult stem cells to search for the best source of cells, it must be acknowledged that actual applications to human conditions are a long way off. What is disconcerting is that the long-term consequences of stem cell therapies on humans are completely unknown. This is because few results from animal studies are followed up longer than a year or so after transplants. Before we go hurtling into this brave new world of cell removal and bring on the clones there is time to reflect, to debate and to get the regulatory framework right for future research. The antics of Professor Antinori and his team and his obvious willingness to shop around for a country that will allow his experiments and apparently an unending source of people prepared to submit to these experiments suggest that there needs to be a global response to the prohibition of baby cloning. It would be a delicate balance to ensure that the development of new treatments is not jeopardised whilst effectively banning human reproductive cloning.

Assuming the techniques of cell therapy can be developed within acceptable boundaries to provide real benefits to humankind, we will face the familiar problem of who can access the new technologies and who can benefit. Oxford philosopher Professor Michael Dummett hit the nail on the head when he identified one of the strongest objections to cloning. It would see the commercialisation of the technology available only to the rich who can access it with impunity in any compliant jurisdiction. He warns against a genetically perfected elite lording it over the rest of humanity. As if this is not enough food for thought, Jurgen Habermas, adviser to German Chancellor Gerhard Schroeder, has asked for scientists to treat the embryo as if it were looking over one’s shoulder. Could you justify your research to the victim? It is, I think, an appropriate question for members and senators as we will be asked to make these judgments for ourselves and for our constituents in the not too distant future.

Sitting suspended from 1.53 p.m. to 2 p.m.
QUESTIONS WITHOUT NOTICE

Cabinet Documents

Senator FAULKNER (2.00 p.m.)—My question is directed to Senator Hill, representing the Prime Minister. Can the minister confirm that the Westfield Tower Sydney office of Senator Heffernan, the Parliamentary Secretary to Cabinet, has access to CabNet, the secure online distribution system of classified cabinet documents? Can the Leader of the Government also confirm evidence he has previously given estimates committees that Senator Heffernan has no restrictions on access to cabinet documents? If so, has the Prime Minister therefore initiated an investigation into whether any cabinet documents were accessed on the CabNet system at any time that the well-known Liberal Party operative, Mr Jonathon Seyffer, was using Senator Heffernan’s office, including the many after-hour visits he made using his own set of keys?

Senator HILL—As all honourable senators know, Senator Heffernan is the Parliamentary Secretary to Cabinet. I would therefore expect that he has full access to cabinet documents. I expect—I will get all this checked of course—that that includes through the CabNet mechanism. That is one issue. The secondary issue I really know nothing about at all. I do not know whether Mr Seyffer has access to Senator Heffernan’s office. If he did have access in some circumstance I would be confident that he certainly would not have access to cabinet documents.

Senator FAULKNER—Madam President, I ask a supplementary question. It is the second part of the question that Senator Hill addressed that is of great significance. Given the Prime Minister has a direct responsibility for ensuring the security and integrity of the CabNet document distribution system operated by the cabinet secretariat in the Prime Minister’s own department, will the Prime Minister order that Mr Seyffer be asked whether he at any time had access to classified cabinet documents in Senator Heffernan’s office? All I ask is that the Leader of the Government in the Senate undertake to report back to the Senate on that issue, which is an important and crucial one, as soon as possible.

Senator HILL—It seemed to me a totally obscure question, if I may say so, Madam President. We all have volunteers assisting us in our offices, but we also have a responsibility to protect cabinet documents. I have no reason to doubt that Senator Heffernan would not protect documents in the same way as the rest of us.

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Lebanon led by Mr Nicholas Fattoush. On behalf of honourable senators, I have pleasure in welcoming you here and trust that your visit will be informative and enjoyable.

QUESTIONS WITHOUT NOTICE

Economy: Growth

Senator LIGHTFOOT (2.03 p.m.)—My question is directed to the eloquent, erudite and entertaining Assistant Treasurer, the Hon. Rod Kemp. Will the minister inform the Senate of Australia’s strong economic position when compared with the rest of the industrialised world? Will the minister also outline the benefits to Australian families of the economic growth that the coalition government has delivered? Is the minister aware of any alternative approaches which threaten this growth and jeopardise the jobs of ordinary Australians?

Senator KEMP—I thank the senator for the particular insights that he has brought to this question. It is an important question. I think I have drawn to the attention of this chamber many times before the attempts of the Labor Party to talk down the Australian economy—the constant carping and attacks that have been launched on the Labor Party about the economic performance of the government. Have I got some good news for the Labor Party! The Australian economy is one of the world’s best performing economies. It is one of the world’s best performing economies because of the major reforms that this government has put in place, including tax reform.

Let me share with the senator some important statistics. Since we were elected to government Australia has had an enviable
record. It has enjoyed an annual growth in the economy of well over four per cent, compared with an annual average of around three per cent for the OECD. Australia, as I have said, is one of the fastest growing economies in the industrialised world. What does this mean for Australian families? It means more jobs, matched with higher wages. It means lower interest rates, and it follows that there will be higher living standards for Australian workers. Let me mention some statistics which demonstrate this point. During the long dark years of Labor’s time in office, the average Australian worker experienced a real growth in wages of about 0.4 per cent per year. In some years real wages fell. What an appalling record for a party that goes under the name of the Australian Labor Party.

Senator Cook—Taxes also went down and prices were contained.

Senator Kemp—Senator Cook chips in. The fact of the matter is that the Australian Labor Party is not a labour party, a workers party or an employees party; it is a trade union party and, more particularly, it is a trade union bosses party. The fact of the matter is that virtually 100 per cent of members of the Labor Party in this Senate are trade union bosses. One in five Australian workers belongs to a trade union, but in this Senate virtually 100 per cent of Labor senators are trade union bosses. How this party can hold itself out to represent the Australian worker beggars belief. It had a shocking record on growth of real wages while in office. While it was shovelling trade union boss after trade union boss into this chamber, real wages in this country were performing appallingly. The Labor Party was looking after the unions, but it certainly was not looking after the Australian worker.

Let me contrast the pathetic performance in real wages under the Labor Party with what has happened under the coalition. Real wages under the coalition for the average worker have grown by around 2.5 per cent a year—vastly in excess of the pathetic performance that we saw under the Labor Party. We have delivered lower interest rates, major tax cuts and very strong growth in jobs for Australian workers. This is the party that delivers for the worker. We are not a trade union party, unlike the Labor Party. (Time expired)

Seyffer, Mr John

Senator Conroy (2.08 p.m.)—My question is to Senator Hill, the Minister representing the Prime Minister. Is the minister aware of allegations that Mr John Seyffer was present during hearings of the Joint Committee on Corporations and Securities on 16 August 2000, here in Parliament House, and that he conveyed messages to witnesses regarding the views of the Prime Minister’s office regarding evidence they were providing to the committee? Can the minister confirm whether Mr Seyffer was acting on behalf of the Prime Minister’s office when he told witnesses that the committee was about to be closed down? And, if he were acting on behalf of the Prime Minister or his office, wouldn’t this constitute executive interference with parliament?

Senator Ian Campbell—Senator Conroy should stick to tax cuts.

Senator Hill—I was just thinking that Senator Conroy ought to stick to increasing taxation. That is what the Labor Party is good at—certainly not much good at this. I do not know who was present at a public committee meeting in this place on 16 August last year. I do not know whether Mr Seyffer was present. If he were present, I would be confident that he would not be there doing the bidding of the Prime Minister or the Prime Minister’s office.

Senator Conroy—Madam President, I ask a supplementary question. Given that the minister denies that Senator Heffernan’s staffer John Seyffer was actually representing the Prime Minister, isn’t Seyffer guilty of seriously misrepresenting his role? Can we be assured that neither the Prime Minister nor Senator Heffernan, or their offices, authorised Mr Seyffer’s entry into Parliament House on that day, either through a permanent or a day pass?

Senator Hill—This really is a nonsense. There is no crime to sign any member of the public into Parliament House. I do not know who signed Mr Seyffer in if he was in Parliament House on 16 August. To be quite
frank, I do not much care who signed him into Parliament House.

DISTINGUISHED VISITORS

The PRESIDENT—I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from Japan, led by Mr Hiroyuki Sonoda. On behalf of senators, I welcome you to the chamber and trust that you will enjoy your visit to this country and to the Senate.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Australian Broadcasting Corporation: Services

Senator EGGLESTON (2.11 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. What new and improved services are being delivered as a direct result of the coalition government’s unprecedented commitment to a strong and independent ABC? Is the minister aware of any alternative approaches on the ABC and do they pose a threat to the future of Australia’s largest national broadcaster?

Senator ALSTON—That is a very important question from Senator Eggleston. As he would know from his role as chairman of the relevant Senate committee, we do have a strong commitment to the ABC. Today is a very good news day for all true friends of the ABC. Today the ABC has announced two new regional radio stations, one in Ballarat and the other in the great southern region of Western Australia—so, again, getting services outside the metropolitan areas.

Senator Carr—Oh, really, the marginal seat of Ballarat!

Senator ALSTON—We will put that on record: Senator Carr is strongly critical of the ABC extending services into Ballarat.

Senator Carr—I am very critical of you!

The PRESIDENT—Order! Senator Carr, don’t shout.

Senator ALSTON—The ABC has also announced today that it will employ 50 new radio program makers in regional Australia who will provide more than 10,000 hours per year of local programming—a tremendously important step forward. Of course, this is possible only because the coalition, rather than talking about extra funding for the ABC, is actually providing in the budget an additional $71.2 million—real money, Senator Carr—for the ABC. Today’s announcement, of course, comes hot on the heels of the news that the ABC is also receiving an additional $90 million over five years to provide an Australian Asia TV service. Compare that with the miserable $7½ million they got from Labor for ATV. Yesterday, a number of us were there when the ABC launched ABC Kids—Australia’s first digital television channel. It was also announced by the managing director that they would soon have another four digital channels.

So a lot is happening with the ABC. All those present at that last Senate hearing saw the despicable performance of the Australian parliament’s in-house bully, Senator Faulkner, when he ridiculed, humiliated and embarrassed the ABC as best he could by suggesting that they had no new programs and that they were not interested in quality. Of course, now we have had the ABC announcing nine new Australian television programs. As a result, its level of prime time Australian content will now be nearly 70 per cent.

So the ABC is actually getting in excess of $2 billion in federal government funding in this triennium. In real dollars, total ABC funding is over $100 million more than it was in 1995-96, under Labor, and the same goes for discretionary funding. So all the myths spread by Labor, by its union masters and by the union affiliated so-called Friends of the ABC, which has now been comprehensively exposed as a union front, are absolutely wrong. Labor run around saying they will increase ABC funding but, of course, their record in government was that they cut funding by some 30 per cent. The commitment they gave at the last election was entirely for tied funding. In other words, they are very much into the business of interfering, telling the ABC how to run its busi-
Mr Stephen Smith has achieved an absolute world first. Not only did he get Brian Johns to criticise him for interference, but he also managed to get criticism from the Chairman and from the Managing Director of the ABC recently over that disgraceful interference on the Four Corners program. As the Chairman said, the only political pressure relating to the issue came from Mr Beazley himself, from the shadow minister for communications, from the Friends of the ABC and from the unions, all commenting on a non-industrial matter. Here we have the stark contrast: we are in favour of a quality alternative to the commercials; what Labor wants is a government controlled, compliant lap-dog. We are committed to a strong and independent ABC. We are providing real funds, not tied funds. *(Time expired)*

**Commonwealth Property Holdings: Divestment**

Senator HOGG (2.16 p.m.)—My question is to Senator Abetz, representing the Minister for Finance and Administration. Will the Department of Finance and Administration apply the same principles it applied to the property sell-off—that is, the principles which the Auditor-General has discredited—to the projected sale of Defence properties? Will Finance take account of the Auditor-General’s criticisms and advice in its handling of the Defence sale? Given that Defence financed the construction of these properties, was the department given an option of not selling?

Senator ABETZ—The recent audit of the Commonwealth property sales program will not impact on the planned sales of Defence and other Commonwealth properties. The government’s property sales program for both Defence and non-Defence properties has been highly successful to date, and the Auditor-General has not presented a case for it to be suspended. I might add that the vast majority of the Defence properties planned for sale are surplus to Defence requirements. Undoubtedly, the Labor Party would want us to keep them, despite the fact that they have no defence utility. Sale of these properties will allow the Commonwealth’s resources to be redirected to better social and economic objectives, rather than being tied up in empty buildings or unused land.

So I can confirm to the honourable senator that we, as a government, will continue to pursue the line that, especially in the area of Defence, where there are buildings and there is land that is not required for Defence purposes, those properties will be sold. What we will do with that money is retire Labor’s debt. The same principles will apply: we will pay off Labor’s debt. Of the $96 billion debt left to us when we came into government, we have repaid $58 billion. As a result, the people of Australia have had their tax burden reduced, because the money wasted on interest is no longer required. As a result, we can spend that money on social opportunity benefits.

Those matters are policy matters for the government. With great respect to the Auditor-General’s report, he did not consider what the social benefits would be to young Australians, older Australians and the indigenous community of being able to redirect the moneys we were previously paying on interest into those important social areas. We, as a government, will continue to manage the economy wisely when we undertake property sales. I hope we are as successful as we were with this last lot, with $131 million—a price, indeed, 15 per cent above market value. That was a great outcome for the Australian people which has enabled them to have their debt burden removed. As a result, their tax burden has been lightened, and that seems to be the reason why the Australian Labor Party is so upset. But we make no apologies: we do want to reduce the tax burden on the Australian people and so, when we manage the Australian economy, we factor in situations such as reducing Australia’s debt and the interest bill, so that we can focus attention on those important social needs I have previously mentioned.

Senator HOGG—Madam President, I have a supplementary question. I did hear your answer, Minister but, by way of a supplementary question, I ask why the proceeds of the sale of Defence buildings will not then go to the Defence portfolio, when they were financed out of the Defence budget? Why are
the funds from the sales going to consolidated revenue?

Senator ABETZ—I think the honourable senator was quite right when he said, ‘I did hear your answer.’ Unfortunately, he did not have the capacity to understand it. What I quite clearly said was that, with the sale of these Defence buildings, we would be reducing government debt. What does that mean? That means the moneys will be going into consolidated revenue. In my initial answer, I said that the money would not go back in Defence. But that is one of the problems the Labor Party have: they have the supplementary question written out before question time, and I really do suggest that they get somebody better than Senator Cook to manage their question time tactics.

Parliamentarians: Entitlements

Senator MURRAY (2.21 p.m.)—My question is to the Special Minister of State, Senator Abetz. Minister, have you had the opportunity to read the ANAO’s report into parliamentarians’ entitlements, tabled yesterday? Do you agree that this is an area of great and legitimate public interest? Do you agree too that political standards will undoubtedly be one of the themes likely to dominate the election? With that in mind, does the government intend to fast-track its response to the report? Will the minister be taking a view that is independent of the finance department’s response, which was to disagree, with qualifications, with 25 out of the 28 recommendations? Will the government move to urgently improve transparency, increase simplicity and initiate better administration on entitlements, where that is inadequate?

Senator ABETZ—The honourable senator asks whether I have had time to read the report. The answer to that is yes, but in the four minutes allocated to me, quite frankly, I do not have time to answer the multiplicity of questions that the honourable senator has asked. I believe that there will be a number of election themes. The most important one is going to be the management of the Australian economy. Taxation will be another theme and industrial relations will be another theme, and I hope that within that context the Australian Democrats can sort themselves out in relation to where they stand on industrial relation reform and tax reform.

But in relation to this particular report I believe that some issues of concern have been raised. It is important for us to digest this report. Might I suggest with respect to Senator Murray and to Senator Faulkner that it was a 250-page report, not a simple 40- or 50-page summary which some senators and members read and then thought that was the report and as a result inappropriately condemned Finance. Sure, Finance as a department disagreed with 25 out of the 28 recommendations, but in the body of the report the reason and rationale for that disagreement was set out. With recommendation No. 1, for example, they had ‘Disagree—already implemented’ in effect. What they could have said was: ‘Agree because it’s already done.’ So the belligerent attitude taken by some people on the cursory reading of the report I thought was unfair to the department of finance.

Let me say that the department of finance does not run the government; we are the elected officials, we will make the policy decisions and we will determine what the response to this report is. But it is interesting to note that the Minister for Finance in the previous Keating government who was responsible for this area as a senior minister was, of course, none other than Mr Beazley. He was the same man that said the budget was in surplus, and left us with a $10.3 billion deficit. If he as the Minister for Finance at the time would have wanted to, he could have made a whole host of reforms.

I pay tribute to some of my predecessors in the portfolio, especially Senator Christopher Ellison, who undertook great reforms of transparency. Where were the six-monthly tablings of the travel allowance, charter allowance, Comcar accounts, et cetera under the previous Labor government? Never existed—nonexistent! We introduced that sort of transparency, that sort of accountability, and if we can improve further on that to justify the Australian people’s faith in the parliamentary system and in the way that we spend our entitlements, then we as a government will pursue any reasonable suggestion and we will consider that. The Prime
Minister has already indicated some areas and we will consider them in great detail to ensure that the right thing is done by the Australian people, who at the end of the day fund these entitlements.

Senator MURRAY—Madam President, I ask a supplementary question. I thank the minister for those parts of his answer which answered my questions. Minister, I specifically want to know whether the government intends to fast-track its response to the report in view of the fact that the election is pending and these issues are of great concern to the public. The second thing I want to ask as a supplementary is: is it intended that the few who inevitably spoil things for the many and exceed their use of entitlements will be clamped down on immediately and appropriate caps and restraints put on those who excessively use the entitlements that are available? I refer you to the various tables and graphs in the report.

Senator ABETZ—I thank the honourable senator for his supplementary question. He is quite right: he did ask me about the fast-tracking of our response. So far we have had less than 24 hours to consider our response. If I can give you an indication of my current thought patterns without necessarily committing myself to this, I think it would make sense that we fast-track our response in relation to certain of the recommendations but delay and consider in more detail some of the other recommendations, so I do not think we will be fast-tracking the totality of our response. Having said that, with some of the entitlements that have been shown to have been used in a fairly small ‘l’ liberal way, can I suggest that the idea of capping is one that is potentially appropriate, and I am giving serious consideration to that. The government is doing that, and I think there is a lot of sense in that suggestion. (Time expired)

Business Tax Reform: Small Business

Senator SCHACHT (2.28 p.m.)—My question is to Senator Alston, representing the Minister for Small Business. Is the minister aware of TMP Worldwide survey figures released on 1 August 2001 in which 73 per cent of the 6,500 surveyed businesses said that they found the new BAS was as complex as the old form? Doesn’t the lack of any response to this concern contained in the leaked cabinet submission revealed yesterday represent the failure of the government to take small business concerns seriously? How does the Howard government propose to address the ongoing concern small business has with the amended BAS forms? Why hasn’t this issue been addressed in any way in the proposed small business package?

Senator ALSTON—in terms of the document to which Senator Schacht refers, the leak of which is being investigated by the Australian Federal Police, it simply reflects the coalition’s appreciation of the importance of small business as the engine room of the Australian economy.

Senator Schacht—Yes, it’s in every newspaper today.

Senator ALSTON—it is a working document—all right? We will continue to—

Senator Schacht interjecting—

The PRESIDENT—Order! Senator Schacht!

Senator ALSTON—I know Senator Schacht has a very selective view of the world, Madam President, when it comes to issues like privacy and proper business practices—basically whatever it takes. If the ALP can get away with something, they will, but if someone else has similar concerns, he is not worried. The fact is that that document says that existing enterprise bargaining rules are seen as too time consuming, complex, costly and unnecessarily formal for small business.

Senator Schacht interjecting—

The PRESIDENT—Senator Schacht, you have already asked the question.

Senator ALSTON—that, of course, is a very important issue for small business. We have already made adjustments to simplify the reporting requirements for BAS, and those I think are well understood and appreciated. I am not aware of the Labor Party offering anything other than gratuitous criticism on these issues, but it would be a lot more helpful—

Senator Schacht interjecting—

Senator ALSTON—if Senator Schacht is really interested in helping small business, he
ought to be out there explaining why—for example, in the Tristar dispute—the unions are so implacably opposed to AWAs. Why are they so insistent on pattern bargaining? In other words, you are not interested in helping small businesses; you are only interested in helping the unions. That is your agenda; that is the start and finish of it. That is why 60 per cent of the crowd over there have union backgrounds. They do not have the sort of whiplash that Senator George Campbell has from those 100,000 jobs—dead men around his neck—but they do have prior convictions for putting unions well ahead of the interests of small business. So if those opposite are serious, they will support further changes to the unfair dismissal laws, they will support small business powers to restrict the ability of unions to enter premises and interfere with the running of businesses, and they will recognise the genuine concerns that small businesses have always had with the way in which the Labor Party approaches these issues.

I am asked about the cabinet document. It is quite clear that the coalition is concerned about trying to ensure ongoing improvements for the small business sector. It is also quite clear that the opposition do not like small business. They never did anything to address or alleviate the problems of small business; they always put the unions first, and will always continue to do so.

Senator SCHACHT—Madam President, I have a supplementary question. Given what the TMP Worldwide survey figures show, how can the minister explain the attitude of Mr Macfarlane, the Minister for Small Business, who, in late July, said that he saw no reason to change the structure of the BAS form?

Senator ALSTON—I think we all know that we have already made some finetuning arrangements and, of course, we have had that classic example of Mr Beazley’s backflip on Labor’s BAS reporting methods. In fact, in February this year, he was saying that a Beazley Labor government would slash BAS red tape with an annual statement, that they would roll back the BAS red tape nightmare by only requiring small business to fully calculate their GST liability once a year, and on they go about the need for annual reconciliation. I am not sure what Senator Schacht is now advocating, but if he thinks there are specific changes that small business want—

Opposition senators interjecting—

Senator ALSTON—I heard it only in passing, but I thought Mr Bastian actually welcomed the fact that the government was examining a number of important initiatives.

Senator Schacht—It was on the ABC.

Senator ALSTON—It was even on the ABC. I know that you hate the ABC; you will not fund it but, if you had listened, you would have known about it.

Salmon and Trout Industry: Imports from New Zealand

Senator HARRIS (2.33 p.m.)—My question is to the Minister representing the Minister for Agriculture, Fisheries and Forestry. Is the minister aware that imports of salmon and trout products coming into the main ports of Melbourne and Sydney from New Zealand have increased by 600 per cent since October last year—that is, in October 2000, 3.6 tonnes was imported and, in May this year, imports had risen to 62 tonnes? Can the minister guarantee that this product is strictly 100 per cent New Zealand product, not stocks consisting of a mixture of New Zealand and other countries’ product—that is, transhipped product, using New Zealand as an intermediary?

Senator ALSTON—I am aware that New Zealand is the only substantial exporter of salmon to Australia, but these exports are quite modest in comparison to the size of the Australian market and salmon production in Australia. We did produce some 11,000 tonnes of salmon last year. In the six months to June, New Zealand exported only about 156 tonnes. The quarantine authorities have assured the government that all product marked as New Zealand product is produced in New Zealand. Each consignment is accompanied by an official New Zealand government certificate confirming this origin. So we have no reason to doubt the accuracy and validity of those certificates. Certainly, as far as salmon diseases are concerned, New Zealand has the same disease free status as Aus-
tralia, and New Zealand salmon is not infected by the significant diseases found in the Northern Hemisphere. So we are aware of the concerns expressed by some salmon fishermen and, quite clearly, those concerns and those of anglers in general are ones that the government takes very seriously.

At this stage, we will obviously be expecting AQIS to conduct regular reviews and to be involved in ongoing discussions with their New Zealand counterparts, but the provision of those certificates does provide the necessary degree of assurance and comfort that ought to be required. Certainly the level of imports has risen from a low base but, in the scheme of things, it is still not a hugely substantial item. We are committed to having world’s best practice in quarantine procedures. That will certainly apply to salmon from wherever it comes. As Senator Harris would know, that is a major reason why we have not seen any significant imports from Canada. Certainly, in relation to salmon imports from anywhere, but from New Zealand for your purposes, we are committed to continuing to insist on very high levels of assessment and certification.

**Senator HARRIS**—Madam President, I have a supplementary question. I thank the minister for his answer and for the assurance to the fishing fraternity that these imports meet the same disease free status as stocks in Australia. Would the minister investigate why New Zealand producers can export their stocks of salmon to Australia, but Australian producers, at this point in time, are unable to export to New Zealand under the same criteria? If it is necessary, would the minister take that question on notice and report back to the Senate?

**Senator ALSTON**—I will check to see whether that is in fact accurate. I have some expert advice that we can export salmon but not trout to New Zealand. That may be a trade issue, but it is not a quarantine or safety issue. As far as the safety elements are concerned, we will apply very rigorous standards indeed. I will check on whether there is a denial of market access and, to the extent that there is, we can look at what might be done about that, but it certainly will not have any impact on the very high standards that we will continue to insist upon.

**DISTINGUISHED VISITORS**

The **PRESIDENT** (2.38 p.m.)—I draw the attention of honourable senators to the presence in the chamber of Monsieur Michel Rocard, former Prime Minister of France, AC, and currently a member of the European Parliament. Monsieur Rocard is visiting Australia as a guest of the Australian government to mark the bicentenary of the arrival of Nicolas Baudin’s scientific exhibition in 1801. I see the South Australian senators nodding in recognition of that. On behalf of honourable senators, I have pleasure in welcoming you to the Senate. I trust that this your latest visit to this country will be most enjoyable.

**Honourable senators**—Hear, hear!

**QUESTIONS WITHOUT NOTICE**

**Goods and Services Tax: Small Business**

**Senator CROWLEY** (2.38 p.m.)—My question is to Senator Alston, the Minister representing the Minister for Small Business. Is the minister aware of recent results from the Yellow Pages Business Index which found that, of the seven most important reasons cited for criticism of the federal government’s policies, six were directly related to the goods and services tax and completion of the business activity statement? Can the minister also confirm that none—not one—of the proposals contained in the leaked cabinet submission will in any way address these broad small business concerns with the GST and the new tax system? When will the Howard government actually listen to what all small businesses are saying loud and clear: that they are drowning under the Howard government tax compliance burden?

**Senator ALSTON**—This is what happens when you are obsessed with the GST. I do not suppose that there are many left here who were supporting it all those years ago, back in 1983. Anyone from the Labor Party still here who was in favour of it in 1983? No. I suppose a lot of them were quietly in support of it—

**Senator Cook**—That is untrue.
Senator ALSTON—What, you weren’t around or were you simply off the air?

Senator Cook—It is not true. He is not telling the truth.

The PRESIDENT—Senator Cook, you are shouting. Senator Alston has the call.

Senator ALSTON—Poor old Senator Cook—a serial offender. As we said many years ago, it is a great shame that Senator Cook did not accept that unique job offer as a cleaner at the ILO prior to the 1993 election. It would have done him a lot of good and he might have actually made some progress.

As far as Senator Crowley is concerned, Senator Crowley seems to think that the GST is the be-all and end-all of small business concerns, which is simply not the case. Small businesses have a range of concerns. They want to keep interest rates down, and I bet you they know what will happen to interest rates if you are in the business of roll-back, in the business of $35 billion worth of Knowledge Nation and in the business of giving all sorts of grants and largesse out to your friends. They are very concerned on that front alone.

They have always been concerned about your unfair dismissal laws. They have never known why you hate them so much. There are a lot of other issues that need to be addressed apart from tax, and that is why that working document canvassed 24 measures to help small business, including simplified rules for AWAs. I know that you stand for simplicity there, because you just want to abolish them. That is a nice simple solution, but it happens to be not the preferred path of the small business sector. They actually find it a much more efficient way of getting genuine productivity gains out of their workforce. They do not like pattern bargaining, they do not like people to simply get a standard level of remuneration irrespective of performance, and they do not like many of the union intrusions. So, if you really want to do something for the small business sector, get your patrons to back off. Get them to be a bit more understanding of the need of small business to make a serious quid so that they can pass some of that on to their workers—not just see how much you can screw out of them by way of union membership fees.

Senator CROWLEY—Madam President, I think the minister mentioned nothing of what the question was about but, in spite of that, I will proceed to ask a supplementary question. Is the minister aware that the provisional figures from the Insolvency and Trustee Service Australia show an overall rise in business bankruptcies in the 2000-01 financial year of 13.6 per cent, and that Dun and Bradstreet data shows that bankruptcy has increased by over 30 per cent in the first quarter of 2001? Isn’t this conclusive evidence that the coalition’s GST is having a negative effect on small businesses in Australia, particularly in light of the fact that bankruptcies typically claim firms with a turnover of $1 million or less? When will the government effectively address these concerns instead of spouting the rhetoric and meaningless waffle contained in the leaked cabinet submission? Minister, do you agree with the Liberal Party’s Western Australian state director, Peter Wells, who says about the Liberal Party’s proposal to make the GST paperwork easier for the Liberal Party—

The PRESIDENT—Order! The time for asking the question has concluded.

Senator CROWLEY—Why mess around with the GST if—

The PRESIDENT—Senator Crowley, I call you to order. The time for asking the question has concluded.

Senator ALSTON—Sorry, you are out of time, so I will just give you some quick facts. The fact is that the Insolvency and Trustee Service Australia has stated quite clearly that the GST has not been reported by respondents as being the cause for insolvencies. The fact is that the number of new incorporations has increased significantly since May—in fact, up 29 per cent. Senator Crowley wants to run some pathetic ideological line that every time a business goes broke now it is because of the GST, even though we all know that about 20 per cent of small business a year go to the wall. There is a whole variety of reasons why. Not everyone is a perfect business manager, not everyone calculates how they will conduct their
business operations. But I can tell you one thing, Senator Crowley: they know that you are not going to roll back the GST. They know that it has been costed at about $85 million, and every one per cent would cost you $2.7 billion. They know that you are a fraud. They know that all you are going to do is make life even more difficult for them, and they will not have a bar of it.

The PRESIDENT—Order! Senator Alston, you should withdraw that reference to Senator Crowley.

Senator ALSTON—I withdraw it, whatever it was.

The PRESIDENT—Senator Alston, I asked you to withdraw an offensive remark unequivocally.

Senator ALSTON—and I did.

The PRESIDENT—Thank you.

Child-Care Benefit

Senator PAYNE (2.44 p.m.)—My question without notice is to Senator Vanstone, the Minister for Family and Community Services. Will the minister inform the Senate of the government’s commitment to working families through the delivery of the child-care benefit? Has the minister’s attention been drawn to misleading and ill-informed comments about the government’s child-care policies and the cost of child care? Finally, will the minister advise the Senate of the effect that this commitment has on the affordability of child care for Australian families?

Senator VANSTONE—I thank Senator Payne for that very astute question. I am aware of some very misleading and ill-informed comments about the government’s child-care policies. There is an ABC program called the Insiders, which is meant to be informative. Last Sunday’s program was clearly not a last-minute job. It included a prerecorded interview with a woman who complained about our policy of removing operating grants from community based child-care centres and instead funding those centres on the basis of paying the parents. We continue to support this policy. We think that giving the funds to parents is a good thing. It encourages choice. Yes, some centres have closed, but other centres have opened. There are now over 1,900 more child-care services than there were in 1996.

If the ABC had wanted to provide light, comic relief last Sunday, then it would not have mattered that they did not bother to check the facts. But if they want to pretend to be serious journalists then they should have checked the facts. If they had done so, they would have found quite a different story. We do not know the full details of the woman who was interviewed. She simply identified herself as having two children: one about nine years old and the other 2½ years old. However, we do know what has happened to people in those sorts of groups. For example, a sole parent in a similar position—that is, on the minimum award and therefore getting the full tax and child-care assistance—is much better off under this government than they would have been under Labor.

Let me explain why. If that woman—using the example to which I have just referred—had both of her children in full-time child care, then she would have paid 12.7 per cent of her disposable income on child care under Labor but would pay only 9.1 per cent of disposable income on child care under us. That is more affordable. If both children were in part-time child care, which could be the case—because if she is a single mum she could be working part time—then she would have paid 8.9 per cent of her disposable income under Labor but only 5.4 per cent now. The program also provided a venue for some simply outrageous comments from Christine Wallace:

Kids who need places in child-care centres are collateral damage in the Howard government’s drive to send women back to the kitchen.

This is political prejudice masked as informed comment. The real facts are these: women’s employment is at record levels and the number of women in jobs is 12.5 per cent higher than when Labor left office. Women’s labour force participation is up. They are not being driven back to the kitchen. They are flooding into the work force and they are getting jobs.

The total number of child-care places has increased from 306,500 in 1996 to 457,000 in 2001, which is an increase of 50 per cent.
in just over four years. There are nearly 30,000 more child-care places in long day care than there were in 1996, which represents a 13 per cent increase. Our spending on child care is at record levels. Over the last four years we spent $4.3 billion on child care, which is 30 per cent higher in real terms than the amount spent in the last four years of Labor’s time in office. Further, we have a commitment to reaching $6 billion in the upcoming year.

There is a lot of good information here. Child care is now more affordable for many low income and middle income families. Some families, typically those on higher incomes, use slightly more of their disposable income on child care now than they have done in the past—but I would have thought that Labor senators would have been happy with that. (Time expired)

Senator PAYNE—Madam President, I ask a supplementary question. The minister has provided some information on the position of low income families in relation to child care. Does the minister have any further information for the Senate in relation to affordability and support for Australian families by the Howard government?

Senator VANSTONE—As it turns out, I do. Having said that some high income families might be paying a higher share of their disposable income on child care now than they have done in the past, other families—for example, those who use both long day care and after school hours care, which is a very common situation—are dramatically better off now. More dollars and better targeting have meant more access. The number of children using child care has increased by 52 per cent, and the number of families has increased by 34 per cent.

The Insiders program was sold as one that was going to give both sides of the story. I love the balance on this program! It is not called the Insiders for nothing. There was a former Hawke staffer, obviously a Labor insider; a hired gun with a Labor background; and the wife of a man whose services we terminated on coming to government—and for that we have never been forgiven. How dare we employ as secretaries people in whom we have confidence? How dare a newly elected government do that? Of course, there was also one conservative. So there were three Labor associates and one conservative. (Time expired)

HIH Insurance

Senator HUTCHINS (2.51 p.m.)—I have a series of very simple questions for the Assistant Treasurer, Senator Kemp.

Senator Abetz—That is all they would ever give you, Senator Hutchins!

Senator HUTCHINS—I have simple questions for a simple minister and a simple man. Is the minister aware that HIH Claims Support Ltd, the company his government established ostensibly to help victims of the HIH Insurance collapse, is yet to employ an assessor for industrial special risk claims, despite the passage of legislation funding HCS on 27 June? Can the minister inform HIH industrial special risk policyholders, some of whom have claims of hundreds of thousands or even millions of dollars, when someone will be employed to assess their claims? Are delays such as this a clear sign that the government has failed to make HIH Claims Support accountable for its actions by establishing it as a company?

Senator KEMP—I thank Senator Hutchins for that question. I do not thank him for the unkind comment, I might say. I know that he is a member of the Transport Workers Union and a union boss, and therefore we do not put the standards all that high in relation to such a person. Regrettably, you are probably not aware of the fact that the person responsible for this area—because you phrased your question in the way that you did, I assume that you did not appreciate the error you were falling into—is Mr Joe Hockey, a very clever, smart and effective minister.

I normally have a policy in this chamber—and I think the record shows this—that, if senators get up and want some genuine information from the minister that I happen to represent in this chamber, I am very quick to come back to this chamber and respond. Because you were so rude at the start of your question, I would ask you to phrase your supplementary question in a way appropriate to the standing of this parliament and I will
then be very happy to come back to you with a response from Mr Joe Hockey.

Senator HUTCHINS—Madam President, I ask a supplementary question of the Minister representing the Minister for Financial Services and Regulation. My question is again simple and specific: when will the government be legislating to provide for an appeal mechanism for HCS, a mechanism it promised but which was not established by the legislation passed on 27 June?

Senator KEMP—Thank you for that question, Senator. You did recognise this time, as you did not in your first question, the person responsible for this area. I gave you a big hint, so you were able to pick that up. You are pretty quick, I give you that—you can pick up the odd hint. Let me be clear: this is a very important question and I will be very happy to come back very promptly to the Senate with advice from Mr Joe Hockey.

Dryland Salinity and Water Quality

Senator CHERRY (2.54 p.m.)—My question is to the Minister representing the Prime Minister. At the Press Club last week, the Prime Minister said, ‘There is no more pressing issue than tackling water quality and salinity issues.’ He went on to say, ‘Our priority is that, as surpluses are available, we give them back through lower income tax.’ If salinity is the most pressing issue, why are tax cuts, particularly for high income earners, to be the first call on the surplus? Why, when the National Farmers Federation and the Australian Conservation Foundation say that $3 billion a year is needed to fight salinity, has this government allocated just a 10th of that in its national action plan? Is this a case, as the Democrat leader said today at the Press Club, of going for a short-term political fix at the cost of Australia’s long-term economic and environmental needs?

Senator HILL—No, it certainly is not. It is the view of this government, and I would have thought it was obvious, that we are best able to meet these major challenges of natural resource management through a strong economy. Basically we need the wealth base in order to be able to make the investment we as a nation need to make in water quality and dryland salinity issues.

I remind the honourable senator—and I congratulate him on asking his first question—that the government have sponsored a National Action Plan on Salinity and Water Quality, to which we have committed $700 million and which the states, I am pleased to say, have been prepared to equally support. So we now have a fund of $1.4 billion—the largest sum of money ever to be invested in matters of water quality and dryland salinity in this country. Of course, it will be implemented through regional organisations, which will have a responsibility to deliver programs and will be paid on performance. The first ministerial meeting of the new ministerial council set up under that project will take place at the end of this month.

So this government is tackling the issue of salinity and water quality in a way that no other government in the past has done. This program complements the Natural Heritage Trust, to which this government has now committed an extra $1 billion as well. So that is $1 billion from NHT which will go into the restoration of natural resources in Australia and into sustainable primary production, complementing the $1.4 billion, as I said, that is specifically going into water quality and salinity projects. What that demonstrates is that it is possible to run an economic policy that enables economic growth; in other words, one that keeps taxes down, keeps interest rates down, keeps inflation down, keeps expenditure down and enables the economy to thrive in the way that it is—possibly the strongest economy at the moment in the whole of the developed world—to create the wealth that we can then reinvest in major national projects of importance, such as those I have just mentioned. I am sorry if that is not understood by the Australian Democrats, but that is the way in which we have been so successful for the last 5½ years and the way in which we intend to continue.

Senator CHERRY—Madam President, I ask a supplementary question. Thank you, for that answer, Minister. Does the minister agree with the Prime Minister’s assessment on ABC radio last week that funding of the
The response as follows—

SENATOR LYN ALLISON asked the Minister representing the Minister for Veterans’ Affairs on 7 August 2001...

(1) What is the budget for the proposed epidemiology study of Australian participants of the British nuclear tests program in Australia?

(2) What are the statistical powers of the proposed study?

The Minister for Veterans’ Affairs has provided the following answer to the honourable Senator’s question:

(1) The estimated budget for the planned cancer and mortality study is $1m.

(2) This is a highly complex matter and the Senator’s question warrants a comprehensive response. The Minister for Veterans’ Affairs will write to Senator Allison providing full details in relation to the study.

Australian Hearing Services: Board Appointment

Senator VANSTONE (3.00 p.m.)—There was a question from Senator Evans on 27 June about appointments to the board of Australian Hearing Services. I seek leave to have the response incorporated in Hansard.

Leave granted.

The response as follows—

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

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

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

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

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

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

ANSWERS TO QUESTIONS ON NOTICE

Questions Nos 3136 and 3137

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.00 p.m.)—I have two questions from Senator O’Brien to the Minister then representing the Minister for Health and Aged Care in October of last year—Nos 3136 and 3137. I seek leave to have the responses incorporated in Hansard.

Leave granted.

The responses read as follows—

No. 3136

SENIOR O’BRIEN asked the Minister representing the Minister for Health and Aged Care, upon notice, on 31 October 2000:

(1) Has the Pharmaceutical Benefits Advisory Committee (PBAC) received an application seeking the listing of Aricept on the Pharmaceutical Benefits Scheme (PBS); if so, on how many occasions has an application been made for the listing of the above drug on the PBS.

(2) (a) When was each application lodged; (b) when was each application considered by the PBAC; (c) when was a final decision made by the PBAC in relation to each application; and (d) what was the outcome.

(3) If the above applications were rejected by the PBAC what was the basis for the rejection.

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

(1) The PBAC has received applications seeking the listing of Aricept for the treatment of mild to moderately severe dementia of the Alzheimer’s type on the PBS. An application has been made for the listing of the above drug on the PBS on four occasions.

(2) (a) The applications were lodged in December 1997, December 1999, June 2000 and October 2000.

(b) These applications were considered by the PBAC in March 1998, March 2000, September 2000 and December 2000 respectively.

(c) A final decision in relation to these applications was made by the PBAC at the time of its consideration of each application at PBAC meetings held on 5-6 March 1998, 2-3 March 2000, 31 August - September 2000, and 30 November - 1 December 2000 respectively.

(d) At the March 1998 and September 2000 PBAC meetings, the Committee declined to recommend the listing of Aricept and deferred making a decision on the application considered at the March 2000 PBAC meeting. The committee recommended approval of the application at its December 2000 meeting.

(3) The PBS is the way in which the Government subsidises the cost of drugs and medicinal products to the Australian community, providing reliable and affordable access to a wide range of necessary medicines.

Before a medicine can be subsidised via the PBS, it must be assessed by the PBAC – an independent expert body whose membership includes doctors, health scientists, other health professionals, and a consumer representative. The PBAC advises the Government regarding which drugs and medicinal preparations should be listed as pharmaceutical benefits. When considering applications to list drugs on the PBS, the Committee is required to take into account a number of criteria, including the medical conditions for which the medicine has been approved for use in Australia, and its medical effectiveness, cost-effectiveness and safety compared with other treatments.
At its March 1998 meeting, the PBAC declined to recommend listing of Aricept because it did not accept that the cost-effectiveness and health benefits measures for Aricept were adequate to support PBS availability for all patients with mild to moderate Alzheimer’s Disease.

The PBAC deferred making a decision on the application considered at the March 2000 meeting pending the outcome of a meeting of relevant stakeholders, including expert clinicians, to develop prescribing criteria which would ensure that Aricept could be directed to those patients most likely to benefit from treatment.

At its September 2000 meeting, the PBAC decided not to recommend listing because the Committee considered the prescribing criteria and guidelines proposed by expert clinicians attending the April 2000 stakeholder meeting were impractical and too complicated to administer. Although the criteria for initiation of treatment were appropriate, the PBAC was concerned that the cessation of treatment rule would not target Aricept to those patients who experience an unambiguous clinical improvement on treatment.

In making this decision, the PBAC also encouraged the manufacturer of Aricept to re-submit a listing application which proposed a simpler cessation of treatment rule and also included descriptions of the meaning of improvement resulting from treatment with Aricept in terms of the impact on a typical Alzheimer’s patient and their carer.

The PBAC subsequently recommended approval of the application to list Aricept on the PBS at its December 2000 meeting and listing occurred on 1 February 2001.

No. 3137

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

(1) The PBAC has received applications seeking the listing of Exelon for the treatment of mild to moderately severe dementia of the Alzheimer’s type on the PBS. An application has been made for the listing of the above drug on the PBS on two occasions.

(2) (a) These applications were lodged in June 2000 and October 2000.

(b) The first of these applications was considered by the PBAC at its meeting on 31 August – 1 September 2000. The second application was considered by the Committee at its 30 November - 1 December 2000 meeting.

(c) A final decision in relation to these applications was made by the PBAC at the time of its consideration of the applications.

(d) The Committee declined to recommend the listing of Exelon at the September 2000 meeting, but subsequently approved the application at its December 2000 meeting.

(3) The PBS is the way in which the Government subsidises the cost of drugs and medicinal products to the Australian community, providing reliable and affordable access to a wide range of necessary medicines.

Before a medicine can be subsidised via the PBS, it must be assessed by the PBAC – an independent expert body whose membership includes doctors, health scientists, other health professionals, and a consumer representative. The PBAC advises the Government about which drugs and medicinal preparations should be listed as pharmaceutical benefits. When considering applications to list drugs on the PBS, the Committee is required to take into account a number of criteria, including the medical conditions for which the medicine has been approved for use in Australia, and its medical effectiveness, cost-effectiveness and safety compared with other treatments.

Listing was not recommended at the September 2000 PBAC meeting because the Committee considered the benefits of Exelon appeared to be small and the clinical importance of such benefits to patients and carers to be uncertain. In addition the data submitted by the manufacturer of Exelon showed the level of cost-effectiveness to be unacceptable.

In making this decision, the PBAC also encouraged the manufacturer of Exelon to re-submit a listing application which proposed a simple cessation of treatment rule which could target the drug to those patients who experience an unambiguous clinical improvement on treatment and also
included descriptions of the meaning of improvement resulting from treatment with Exelon in terms of the impact on a typical Alzheimer’s patient and their carer.

The PBAC subsequently recommended approval of the application to list Exelon on the PBS at its December 2000 meeting and listing occurred on 1 February 2001.

**Question No. 3531**

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (3.01 p.m.)—by leave—Yesterday Senator O’Brien raised some questions about a question that had not been answered. I have some further information for Senator O’Brien. A number of factors have led to the delay in responding to the question. It was originally decided to hold over the responses until after the budget to enable the answers to incorporate the latest information on the roads program. While the material was ready by 25 June, the department sought to redraft the response to include the actual payments, rather than the estimates, for the financial year 2000-01. The question, as I mentioned yesterday, was wide ranging and called for the collation of large amounts of material into a format not normally used within the department.

I indicated yesterday that the answer would be tabled today, and it will be. But, in relation to the issues raised by Senator O’Brien yesterday, I am informed by Mr Anderson’s office that his office did speak to Senator O’Brien’s office on three occasions regarding this question. On the first occasion the office undertook to speak with the department and seek further information on timing, on the second occasion the office informed Senator O’Brien’s office that the department was putting the finishing touches to the question on notice and noted that, as the question was wide ranging and required a large amount of detailed information, the question had taken some time to complete and on the third occasion—and this really is the point of this more lengthy than normal response—Senator O’Brien’s office was informed that the question had not arrived yet at Mr Anderson’s office.

The department had indicated that the question on notice had been sent to the office; however, Mr Anderson’s office had not at that time yet received it. On this basis, Senator O’Brien’s office was informed that the office had requested the department to find out exactly where it was in the system. The question on notice arrived in Mr Anderson’s office yesterday afternoon and the answer is to be tabled later today.

Senator O’BRIEN (Tasmania) (3.03 p.m.)—by leave—I move:

That the Senate take note of the statement.

It is interesting to note that we have an explanation put on the record today which was not available to the Minister for Regional Services, Territories and Local Government yesterday and some comments which seek to respond to the comments which I made in the debate on the motion to take note of the minister’s response yesterday. I, again, appreciate that Senator Ian Macdonald is presenting to the Senate the comments that he has been asked by Minister Anderson to present. I was very interested to see the comments in the *Sydney Morning Herald* today about complaints about Mr Anderson’s office from members of the Liberal Party, and I was not surprised about the way my comments were received yesterday.

In the time between when Senator Macdonald made the comments on behalf of the minister today and now, I have obviously not had the chance to check with my office on the precise words of the communication, but very clearly the indication was given to my office that neither the department nor the minister’s office could find the answer to the question which it had previously indicated had been prepared and was with the minister’s office. There seems to me to be a discrepancy between what is now being said and the understanding that we were given through the minister’s office. I will check further to satisfy myself as to the extent of that discrepancy and how it might be explained. I appreciate that the answers are now available. The comments I made yesterday stand as to the inadequacy of the processes which led to the circumstance we find ourselves in.

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (3.05 p.m.)—In speaking to Senator O’Brien’s motion, the
reason I went on at some length to indicate the facts was the way in which Senator O’Brien intimated that the matter had been dealt with and had been responded to by Mr Anderson’s office. It was not, I am informed, lost. Nor was Senator O’Brien’s office—I do not think it was Senator O’Brien’s office—but his office—told it was lost. The facts are as I have related them today. It had been sent from the department and when Senator O’Brien’s office spoke to Mr Anderson’s office it had not yet arrived. They made inquiries and said they would find out where it was in the system. So I emphasise again that that comment about it being lost was not correct.

Can I just go further. I would say to Senator O’Brien that he should not believe everything he reads in the paper. Mr Anderson is the Deputy Prime Minister. He is the Minister for Transport and Regional Services. He has a very busy portfolio. He has an excellent staff, an excellent chief of staff and a very busy office. Unfortunately—and fortunately—at all times with the number of questions we get in estimates and elsewhere our department answers more questions than practically all other departments put together. The opposition are entitled to do that, and we are required to respond and we do. But an enormous demand for resources is put on our department because of the inordinate number of questions asked by the opposition, principally, the department of transport.

I have related to the Senate before that simply answering the opposition’s questions at one estimates committee cost the department almost $90,000—$90,000 just to answer questions! If they were the sorts of questions that were going to bring down the government tomorrow, as a political professional you would almost grudgingly say, ‘Well, that’s fine,’ but the questions seek an interminable amount of detail that is available, in some instances, elsewhere—a lot of it is in reports—and collating it is enormously difficult for a very busy department which has a lot of issues on the go. That was the situation. Mr Anderson runs the portfolio extremely well and extremely efficiently.

Senator MACKAY (Tasmania) (3.08 p.m.)—I was going to raise this tomorrow and still will, but I am not going to let the opportunity go by to indicate Senator Ian Macdonald’s own record in relation to questions on notice. As of today, we have 97 questions on notice outstanding from his direct portfolio area from estimates. We have, as of today, received only two from the regional services, local government and territories area of the Department of Transport and Regional Services. There are 97 outstanding. These questions on notice were due on 13 July and 19 July, respectively. This is an absolute disgrace. The coalition chair of the legislation committee has written to Senator Macdonald indicating that the legislation committee is not happy with his record. This was the subject of comment, unanimously, by the estimates committee report itself, including all of Senator Macdonald’s coalition colleagues.

It is okay for Senator Macdonald to stand up and talk about inane questions. The reality is that, in the last estimates, Senator Macdonald refused to allow the departmental officials to appear on issues like Roads to Recovery—he refused to allow them to come to the table and answer questions—so we were forced to put a number of questions on notice. I would also like to make the point that Senator Macdonald actually sent an AFFA official to the back of the room when asking questions on flood mitigation—probably the most embarrassing experience I have had in my five years in estimates. So I take this opportunity to ask Senator Macdonald, this most recidivist of ministers: where are the 97 outstanding questions on notice? I indicate that I will be raising this again tomorrow.

Question resolved in the affirmative.

ANSWERS TO QUESTIONS WITHOUT NOTICE


Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.11 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to questions without notice asked by Senators
Schacht and Crowley today relating to taxation and small business.

Again we had a very poor performance in question time today by the government on the sensitive subject of the GST and the business activity statement—the albatross around the government’s neck or, more particularly, the albatross that the government has placed around the neck of small business in Australia by burying them under paperwork and forcing them to take time out of their business to be tax collectors.

I would like to do a little comparing and contrasting. The Howard government has brought down a new and allegedly simplified business activity statement. TMP Worldwide Surveys surveyed 6,500 Australian businesses on the question of the new form and 73 per cent of the respondents to that survey found that the new form was as complex and difficult as the old form. Those are the facts of the matter established by an independent survey. Contrast that with this: Labor has explained its roll-back and simplification program to the small business community and, after doing so, Robert Bastian, the Chief Executive of the Council of Small Business Organisations of Australia and the recognised spokesperson on behalf of small business in Australia, said of Labor’s simplified proposals on the business activity statement: I say with absolute clarity that the members of the association who were in the room were very impressed with the idea because it was so simple.

On one hand, in secrecy, the government is admitting its mistakes but on the other hand, in public, it is claiming there are not any. That is the government’s position. The small business community is rejecting what the government is saying. They say that Labor has got its roll-back, in terms of simplifying the GST and the business activity statement, right. They do not believe the government.

Let me go to another compare and contrast. Today we had the usual diatribe from Senator Alston and the one that we have come to recognise from him and Senator Kemp about ‘All’s well; small business never had it so good.’ In the June quarter, business bankruptcies in Australia were up by 78 per cent over the same period last year. What was notable about the period last year? We did not have the GST. What is notable about the period now? We do. Bankruptcies in small businesses are up 78 per cent. Senator Alston says, dismissing the concerns of small business, ‘Well, it is the fault of many of the small business managers.’ I put to him—despite the fact that the senator is not in the chamber and is hiding from this debate, and he should be here to answer—if an increase of 78 per cent is of no concern to him, and if it is his contention that it is not because of the GST, where else in the economy has the government got it wrong? (Time expired)
Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (3.16 p.m.)—I find it hard to get into these debates because they seem to escape reality. On one side you have a government that has put down a proposal on a new form of tax and has gone out to meet the market, and on the other side you have the Labor Party criticising, criticising and criticising. They do not attempt to say, ‘This policy is wrong.’ You criticise it, you kick it to death, you demonise it and say it is the worst thing in the world, but then you say, ‘We are going to use it.’ Be fair dinkum, guys. If it is crook, get rid of it. You cannot come in here and continually knock it, criticise it, demonise it and then say, ‘Oh, by the way, we are going to use it.’ You cannot fool small business. You cannot fool the people of Australia, and you cannot even fool yourselves, if you are honest. If it is crook, get rid of it. If it is good, support it. But you cannot have it both ways. You cannot criticise it and then say, ‘We are going to use it.’ I believe small business people do not want your roll-back because they do not want another 5,000 amendments to the GST. They do not want it. They are trying to cope with it. You know it and so do small business.

If you really want to come in here and support small business, I can tell you how you can do it, and how you can get great accolades. All you have to do is join with us and support the unfair dismissals legislation. If you do that, your credibility is okay with small business. The biggest thing facing small business at the moment, the worst thing they have got, is this unfair dismissal that hangs around their neck like an albatross. We have tried to remove it on five occasions, and we have been blocked every time by the Democrats and the Labor Party. That is the thing that really worries small business. A friend of mine, who I shared a boat with the other day—

Senator Schacht—A what?

Senator BOSWELL—Yes, a boat. This man established his own business and did pretty well. This is his story. It is a sad story that I am about to relate. He sold the business and made a few bob. He invested in a shop for his wife. Their family had grown up and his wife wanted something to occupy her. He employed a girl who was pregnant at the time. He said, ‘You will have to go.’ To cut a long story short: it cost him about 20 grand in legal fees. He finally said, ‘I am sick of this. I am going to sell the business.’ He took a financial knock of $50,000 because the person that he had employed could not do the job. He was one of your supporters, Senator Schacht. He was a man who came from a Labor background. His old man was a supporter of the Labor Party. But I can tell you that he will never vote Labor again in his life as long as he has breath in his body, and neither will his wife. I will give you his name later, on a confidential basis. Can Senator Schacht guarantee that when Labor gets back into power, if ever, you will not have interest rates at 23 per cent for
small business and rural producers. You have no credibility with small business. You have no credibility in rural Australia. You are drop-kicks as far as most people are concerned.

The DEPUTY PRESIDENT—Senator Boswell, when you are saying ‘you’, you are actually referring to the chair. I would appreciate it if you would rephrase that.

Senator BOSWELL—Madam Deputy President, I certainly do not mean you.

The DEPUTY PRESIDENT—It is not me; it is the chair.

Senator Schacht interjecting—

Senator BOSWELL—Senator Schacht and his colleagues are the drop-kicks.

Senator Schacht—Madam Deputy President, I rise on a point of order. I have never been a shrinking violet. I am happy to accept all ranges of abuse. I never object because I think that if you dish it out you have to take it back. I would like to get a ruling for the future on whether being called ‘a drop-kick’ is unparliamentary? I do not think it should be, quite frankly. I am interested to hear.

The DEPUTY PRESIDENT—It is offensive. Senator Boswell, would you rephrase your wording, please. If you would withdraw that word, it would be appreciated.

Senator BOSWELL—I will insert ‘small business failures’. The Labor Party are a group of people who have been failures to small business. If they want credibility, give us a guarantee that unfair dismissals will be taken up by this parliament so that people whom I have just described will have some redress. (Time expired)

Senator Schacht—Madam Deputy President, I rise on a point of order. I ask you to refer to the President whether that good Australian phrase ‘a drop-kick’ actually is unparliamentary. I do not think it should be deemed unparliamentary. I think that most Australians would find it part of the robust democratic debate, and I ask you to refer it to the President for a considered opinion.

The DEPUTY PRESIDENT—I will let the President decide that.

Senator SCHACHT (South Australia) (3.22 p.m.)—I rise to support the motion moved by my colleague Senator Cook to take note of the answers, if you could call them that, that Senator Alston gave in question time today to me and to Senator Crowley on issues relating to small business. What has become public in the last 24 hours is a cabinet document prepared by the Minister for Small Business and the Office of Small Business, which outlines a so-called new agenda for this government to try to restore its popularity in the small business community. The document is reported on in many newspapers today. I note that the minister, Senator Alston, is saying that the Federal Police are investigating how this leak took place. One of the things we all know in Australian politics is that, once the leaking of cabinet documents starts, the government is on the slippery dip to political oblivion. Senator Alston called it a cabinet ‘working paper’ today. He did not actually call it a submission but he acknowledged that it existed and called it a ‘working paper’. When these things happen—when there is a leak and the content becomes public—and when we see what the government is desperately trying to do, we know the government is on that slippery dip to political oblivion.

This working paper, as Senator Alston called it—and I will use that phrase because he is the minister representing the small business minister—puts page after page of new proposals on industrial relations as they could affect small business. Most of the proposals have been previously rejected by this Senate as not necessary, as unworkable, as not required or as not called for by the small business community. Apparently, what the document does not do in all its endless pages is deal with the issue of further simplification of the business activity statement and the impact of the administration of the GST on small business. That is given a big miss.

One of the newspapers today reports that this working document says that, despite the previous changes made a couple of months ago to the BAS, small business is still overwhelmingly upset about it. Despite what the government has done under political pressure, small business is still overwhelmingly troubled by the paperwork required for the GST. In this parliament over the last three
years we have seen the tax act go from about 2,500 or 3,000 pages to 8,000 pages. There have been 5,000 new pages to the tax act, all to introduce the new, ‘reformed’ tax system—the GST and all its measures. How can it be tax reform and simplification when the tax act increases by 5,000 pages? This all requires small business to fill in more forms. You can imagine what would happen if a Labor government had introduced a measure that required only 10 per cent of extra pages. The opposition, the Liberal Party, would have screamed its head off.

So we have the extraordinary position that the only way the government thinks it can get some popularity back is to drag up the hoary old chestnut of industrial relations as it affects small business. For most small businesses—and all the surveys show it—it is not the issue they are concerned about. One of the proposals in this working document, as Senator Alston calls it, is to ban or limit trade union representatives from having access to the workplace. It is pointed out in the document that this is contrary to Australia’s signature to the ILO convention which guarantees in a democracy free access to the workplace. The government has even had to admit that what it wants to do is contrary to our signature to an ILO convention. That is how desperate this government is getting.

Small business has been made the sucker, the fall guy, for this government. When I look at all the newspaper clippings that have come in today what best sums up this government’s attitude to and interest in looking after people is what a Mr Peek, an employee of Tristar, said about his entitlements. The newspaper article states:

Mr Peek notes that the only time when employees got all their entitlements when a company dunned them was in the National Textiles case, where Mr Howard’s brother, Stan, was chairman of the company.

“It’s one law for John Howard’s family and one law for everyone else.”

That sums up this government’s policy. (Time expired)

Senator MASON (Queensland) (3.27 p.m.)—It is always a perversion when the Australian Labor Party seeks to preach to this government about small business. The Labor Party has never understood small business. It has never understood the nature of risk. It has never understood entrepreneurship. It has never understood that behind every successful small business man or business woman lies someone prepared to mortgage their home. A party which primarily comprises union leaders has never understood small business. Every now and then truth breaks out among the ranks of the Labor Party. Recently it was Senator Conroy but last year it was Mr Beazley. On Perth radio, on 7 August last year, he said:

We have never pretended to be a small business party.

That is right—all the Labor Party is concerned about with respect to small business is scare tactics. As my friend Senator Boswell said in a very eloquent fashion, one of the primary difficulties for small business is the fact that Labor supported, and still supports, the job destroying unfair dismissal laws. According to the Council of Small Business Organisations of Australia, the abolition of this law could create up to 50,000 jobs per year—jobs for the people whom the Australian Labor Party says it represents. The Labor Party has never represented the workers of Australia; it simply seeks to represent the trade unionists of Australia. That is a very different thing.

Labor has also removed the flexibility in the industrial relations system by promoting union interest and operating centralised awards. Just this year in the Senate Labor blocked an amendment to the Trade Practices Act which would have given the ACCC more power to take action on behalf of small business, protecting them from secondary boycotts. I have to admit that Labor was initially in favour of the bill. The Democrats will remember that it was in favour of it, but what happened? The trade union movement put pressure on the Labor Party, the Labor Party buckled and then was against the bill.

Senator Schacht and Senator Cook spoke about the business activity statement. The Howard government has listened to the concerns of small business about the BAS and has simplified the system. This will benefit businesses with a turnover of less than $2 million annually, and that is about 90 per
cent of all businesses. These changes include simpler quarterly remittance forms with minimal information requirements, the choice of letting the tax office calculate an estimate of a small business quarterly GST liability, the fact that half a million people are no longer required to lodge instalment activity statements, and a new PAYG option for almost two million taxpayers who need no longer calculate their own tax liability every quarter. My friend Senator Boswell touched on the primary issue at stake here. What is the thing that kills small business faster than anything else?

Senator Schacht—The Liberal Party and the GST.

The DEPUTY PRESIDENT—Order, Senator Schacht!

Senator Schacht—That kills small business more than anything else.

Senator Mason—It is high interest rates. In Labor’s last term of government, interest rates hit 23 per cent and mortgage rates hit 17 per cent. That is what will destroy small business.

Senator Schacht—What about John Howard’s 22 per cent interest rates?

The DEPUTY PRESIDENT—Senator Schacht!

Senator Mason—If you vote Labor, that is what you will get again. What also drives up high interest rates is the government spending too much money. What did Labor do in their last six years of office? They spent $80 billion more than they had. We have paid back $50 billion of the $80 billion. You cannot trust the Labor Party with money. They work off a credit card. Do you know why? It is because none of them have actually worked in business. They have spent their entire lives working for the trade union movement.

Senator Schacht—You’re all lawyers.

The DEPUTY PRESIDENT—Order!

Senator Mason—They have never taken a risk in their life. They do not understand entrepreneurial activity at all. Senator Schacht gibbers across the chamber. He has never understood small business. He certainly does not come from a small business background. One of the sad things is that Labor will never understand that high interest rates not only cripple home owners but also absolutely destroy small business.

Senator Schacht—How many lawyers have been in small business?

The DEPUTY PRESIDENT—Order, Senator Schacht!

Senator Mason—These are the people that employ the people you seek to represent. You have destroyed more jobs, more small business, than any other party in the history of this nation.

Senator Schacht—Which business did you run, Mason?

The DEPUTY PRESIDENT—Order!

Senator Mason—The last six years of your performance were a disgrace. (Time expired)

Senator Ian Campbell—Madam Deputy President, I rise on a point of order. I have just witnessed three minutes of non-stop interjection from Senator Schacht. I know that you called him to order on at least half a dozen occasions and he wilfully breached your directions from the chair. I would ask that Senator Schacht, at the very least, be reprimanded in the most severe of terms. My only alternative to help you maintain order in this place is to move for his suspension under standing order 204.

The DEPUTY PRESIDENT—Are you moving that way, Senator?

Senator Ian Campbell—I suggest that he be reprimanded for wilfully and continuously ignoring your rulings.

Senator Schacht—On the point of order, Madam Deputy President: Senator Campbell is asking you to do something and, if you do not do it, he is going to move a motion that I be tossed out under a particular standing order. I think that is blackmail from the senator. Madam Deputy President, you are in charge of the chamber. You will make your rulings accordingly and we will follow them. That you should do something and, if you do not, the senator will move that I be suspended is an outrageous suggestion to you and the standing of the presidency of the Senate.
The DEPUTY PRESIDENT—There is no point of order, but I wish there would be more silence and less shouting from both sides. Senator Schacht, when I call you to order I would appreciate your coming to order.

Senator Ian Campbell—Madam Deputy President, I raise a point of order. It is entirely disorderly for me or any senator to be accused of blackmail. My point of order, as you would know better than most people in this place, was entirely within the standing orders. In fact, under standing order 203, the natural course if a senator persistently and willfully obstructs the business of the Senate—which was the point I raised with you—or if the senator is reported for that, is action under standing order 204. I did not make any threats, but it is entirely disorderly to accuse a senator of blackmail. I would ask for that comment by the senator, which is disorderly, to be withdrawn.

The DEPUTY PRESIDENT—Senator Schacht, would you withdraw the word ‘blackmail’?

Senator Schacht—I withdraw the word.

Senator BUCKLAND (South Australia) (3.35 p.m.)—I rise to speak to the motion that the Senate take note of answers given by Senator Alston, representing the Minister for Small Business, to questions by Senator Schacht and Senator Crowley. The question by Senator Schacht in relation to the business activity statement and the question by Senator Crowley regarding the GST were very specific but, as usual, we did not get a specific answer from the minister. What we did get was a tirade of nonsense about what he believed in his own small mind to be an issue that prevents small business from progressing in this country. He dismissed the question and went on with a tirade of nonsense about the effects of unfair dismissal laws, enterprise bargaining, patent bargaining and industrial laws on small business. We were not asking about that. The fact is that he was wrong.

It is very clear when we look at the Yellow Pages business index that industrial relations did not rate a mention. What is concerning small business is the lack of work and sales, the GST and cash flow. The index shows that the GST has had a negative impact on the capacity of consumers and businesses to spend, thus the declining level of business activity for small business. The weakest industry sectors for this quarter were manufacturing, at minus 31 per cent; wholesale trade, minus 31 per cent; and building and construction, minus 23 per cent.

There was no mention at all about the effects of the industrial relations law. The truth is that small business do not rate this very highly at all. What they rate highly as causing them the most concern are the complexities of the BAS and the impact of the GST on their businesses. One has only to walk down any street in any business community and ask the operators, the owners, of the businesses or go to the small manufacturing operators and ask them what is the biggest concern they have. They will continually tell you that it is the impact of the GST on their business and the complexities and the time they are spending filling out their BAS forms. That is what is affecting them. Taxation Institute director, Michael Dirks, was of the opinion that:

One telling feature of the new tax system is that prior to tax reform Australia was moving towards a paperless tax system, with more than 70 per cent of returns lodged electronically. Now, the Australian business number regime has brought back paper into the system because it relies on millions of pieces of paper.

He also said:
We had an electronic, efficient system that went back to paper.

So much for the tax reforms of this government. They were tax reforms that were designed to fail—and fail they have. Dunn and Bradstreet economist Duncan Ironmonger said that the expectations for growth in profits, employment and capital investment showed only a weak recovery and that the economy could experience two more quarters of negative growth in these areas. The Managing Director of Dunn and Bradstreet Australia and New Zealand, Christine Christian, said that the rise in expectations was a small step towards recovery but that questions remained about whether it would last. (Time expired)
Question resolved in the affirmative.

Parliamentarians: Entitlements

Senator MURRAY (Western Australia) (3.40 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 Murray today relating to Audit Report No. 5 of 2001-2002 on parliamentarians’ entitlements.

This relates to the issue of the ANAO’s report into parliamentarians’ entitlements, which was tabled yesterday. The minister’s response was useful today because he indicated two major things. Firstly, he indicated that the government would indeed fast-track a response to a number of essential and urgent issues in that report—these are my words, not his, but that is the summation of them. Secondly, he indicated that the government would move to end the excessive use of entitlements by a minority. As an example of that excessive use, I refer senators to figure 5.2 on page 181 and figure 5.3 on page 182 of the report. There is a reference to the average cost, the lowest cost and the highest cost of the use of personalised stationery, newsletters and other printing. For members of the House of Representatives, the lowest cost was $1,294, the average cost was $37,287 and the highest cost was $219,004. The average cost for senators was $7,103.

It is not well enough understood in the community how appreciably different a senator’s role is from a member’s role, and it is perfectly in order for members of the House of Representatives to have a higher expenditure in this area than senators because of a very different publicity requirement. That is not the issue; what is at issue is excessive use. This is not a capped area. If you look at the 148 members of the House of Representatives, you will find that a large majority of them in fact have relatively modest use, despite the very high calls on them to publicise material within their constituencies. For instance, 55—which would be a third—members are in the expenditure range of $0 to $25,000. A further 58—another third—are in the expenditure range of $25,000 to $50,000. Another 20 are in the expenditure range of $50,000 to $75,000. In other words, 120 out of the nearly 150 members of the House of Representatives are below $75,000, with most of them below $50,000. However, right at the top there is one person with an expenditure of $219,000 and four persons with an expenditure of between $100,000 and $125,000. Frankly, that is just not on. It is excessive. It is a pity that it has taken this long for that kind of excessive use to be drawn to our attention. I would hope that the government would move urgently to cap that area and to introduce far better auditing situations and, if there has been abuse—as opposed to excessive use—to notify the parliament of the results of any inquiry into it.

The other point about the inquiry is that it was initiated by the Australian Democrats—by me—and it had the support of the Labor Party and of the cross-benches. It was not enough remarked in the media that in the end the Senate acted to help clean this up. The Senate took that initiative, and I think that as a Senate we need to get some credit for doing this. There was very little mention of it in the media and I thought that was a pity because in the last 5½ years this parliament has seen quite drastically improved accountability in this area, and I believe this report will initiate even greater accountability and much improved systems. (Time expired)

Question resolved in the affirmative.

PETITIONS

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

Occupational Health and Safety Legislation

To the honourable the President and members of the Senate assembled in Federal Parliament:


The Bills contain proposals that would:

• disadvantage injured and ill employees; and
• unravel current workplace health and safety consultative arrangements and committees. There is no evidence that current arrangements are working poorly.
Your petitioners therefore ask the Senate to reject both bills in their current format (May 2001).

by Senator Murray (from 157 citizens)

Petition received.

PRIVILEGE

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

That, for the purposes of the order of the Senate of 5 December 2000 relating to the examination of documents following the order of the Federal Court in Crane v Gething, the person appointed to examine the documents also determine which documents are immune from seizure because they are beyond the scope of the warrants issued on 17 and 18 December 1998 pursuant to section 3E of the Crimes Act 1914 and return those documents to Senator Crane.

NOTICES

Presentation

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

That the Economics References Committee be authorised to hold public meetings during the sittings of the Senate on 21 August 2001, from 3.30 pm, and on 23 August 2001, from 3.30 pm, to take evidence for the committee’s inquiry into mass marketed tax effective schemes and investor protection.

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

That the Senate—

(a) notes that:

(i) 9 August 2001 is International Day of the World’s Indigenous Peoples, and

(ii) in commemoration of the United Nations (UN) Year of Dialogue Among Civilisations, the UN has acknowledged 12 individuals from around the world whose efforts to close the cultural divide between races has been outstanding and inspiring;

(b) congratulates Mr Jack Beetson, an Australian Indigenous educator and long-time advocate of rights for Indigenous Peoples, on being selected as one of the 12 recipients of the UN ‘Unsung Hero’ Award for 2001; and

(c) acknowledges that Mr Beetson has devoted his life to creating bridges of understanding between Indigenous and non-Indigenous Australians, and has played a prominent role in achieving self-determination in education for Indigenous Australians, particularly through his work at Tranby Co-operative for Aborigines in Sydney.

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

That the Senate—

(a) notes:

(i) the Budgewoi Public School Council’s concern with the poor condition of the school’s facilities, and

(ii) that the New South Wales Department of Education has provided an additional $600 000 for the construction of new classrooms, but that this will provide for only four new classrooms; and

(b) calls on the Federal Government to increase the amount of capital grants to government schools for new buildings and maintenance works.

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

That the Senate considers that, wherever there is an existing plantation alternative, old-growth forests and high conservation forests should not be logged.

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

That there be laid on the table by the Minister representing the Ministers for Foreign Affairs and Trade, no later than immediately after motions to take note of answers to questions without notice on 30 August 2001, the following documents:

All documents held by the Department of Foreign Affairs and Trade relating to an agreement this year between Australia and Japan to end the port ban on Japanese fishing boats and allow Japanese fishing boats to ‘reclaim’ approximately 350 tonnes of Southern Bluefin Tuna, including any documents linking that agreement with any subsequent trade agreements between Australia and Japan.

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

That the Senate—

(a) applauds the policies of Denmark, Britain and several other Northern European countries to:
(i) accelerate the phase-out of ozone-depleting hydrochloro-fluorocarbons,
(ii) recognise that hydrofluorocarbons, which are potent industrial greenhouse gases, are only short-term transitional substances which should be avoided wherever practicable, and
(iii) put regulatory mechanisms in place to implement the application of natural refrigerants throughout the refrigeration and air conditioning industries; and
(b) calls upon the Australian Government to increase its efforts to encourage industry to reduce the environmental impact of refrigeration and air conditioning systems in line with the examples set by European governments.

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

That there be laid on the table by the Minister Representing the Minister for Agriculture, Fisheries and Forestry, no later than immediately after motions to take note of answers to questions without notice on 30 August 2001, the following documents:

Copies of an ‘Arrangement in relation to the Rock Lobster Fishery between the Commonwealth of Australia and South Australia’ and a further ‘Arrangement between the Commonwealth of Australia and South Australia in relation to the Rock Lobster Fishery’, notified in the Gazette No. S406 of 21 December 1988, both of which were expressed to have been made under the Fisheries Act 1952 (Cth) and the Fisheries Act 1982 (SA).

COMMITTEES

Selection of Bills Committee

Report

Senator McGauran (Victoria) (3.49 p.m.)—On behalf of Senator Calvert, I present the 11th report of 2001 of the Selection of Bills Committee and move that the report be adopted.

Ordered that the report be adopted.

Senator McGauran—I also seek leave to have the report incorporated into Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 11 OF 2001

1. The committee met on 7 August 2001.
2. The committee resolved to recommend—
(a) That the following bill be referred to a committee as follows:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation Committee Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Interest Disclosure Bill 2001 (see appendix 1 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Finance and Public Administration 18 April 2002</td>
</tr>
</tbody>
</table>

(b) That the provisions of the following bill be referred to a committee as follows:

<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation Committee Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Taxation Laws Amendment (Research and Development) Bill 2001 (see appendix 2 for a statement of reasons for referral)</td>
<td>Immediately</td>
<td>Economics 17 September 2001</td>
</tr>
</tbody>
</table>

(c) That the following bills not be referred to a committee:

- States Grants (Primary and Secondary Education Assistance) Amendment Bill 2001
- Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001
- Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Bill 2001
- Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2001
- Migration Legislation Amendment (Imigration Detainees) Bill (No. 2) 2001
- Treasury Legislation Amendment (Application of Criminal Code) Bill (No. 3) 2001
- Veterans’ Affairs Legislation Amendment (2001 Budget Measures) Bill 2001
The committee deferred consideration of the following bills to the next meeting:

**Bill deferred from meeting of 22 May 2001**
- Aviation Legislation Amendment Bill (No. 2) 2001

**Bills deferred from meeting of 19 June 2001**
- Financial Services Reform Bill 2001
- Financial Services Reform (Consequential Provisions) Bill 2001
- Corporations (Compensation Arrangements Levies) Bill 2001
- Corporations (Fees) Amendment Bill 2001
- Corporations (National Guarantee Fund Levies) Amendment Bill 2001

**Bills deferred from meeting of 7 August 2001**
- Constitution Alteration ( Appropriations for the Ordinary Annual Services of the Government) 2001
- Customs Tariff Amendment Bill ( No. 4) 2001
- General Insurance Reform Bill 2001
- Motor Vehicle Standards Amendment Bill 2001
- New Business Tax System (Debt and Equity) Bill 2001
- New Business Tax System (Thin Capitalisation) Bill 2001
- Superannuation Legislation Amendment (Indexation) Bill 2001
- Taxation Laws Amendment Bill (No. 4) 2001
- Veterans’ Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2001

(Paul Calvert)
Chair
8 August 2001

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**Appendix 1**

Proposal to refer a bill to a committee
**Name of Bill:** Public Interest Disclosure Bill 2001

**Reasons for referral/principal issues for consideration:**
Whether the Bill in its current form provides:
- credibility, that is, would instil confidence in those who need to use it that their disclosures will receive proper consideration and investigation;
- procedures that facilitate the correction of identified cases of maladministration and/or misconduct; and
- appropriate public accountability reporting of processes commenced under the proposed legislation.

**Possible submissions or evidence from:**
- Relevant academics and public officials who may be in a position to comment on the success factors of existing legislation to protect whistle blowers;
- experts on relevant international experience; and
- representatives from jurisdictions which have enacted public sector whistle blower legislation.

**Committee to which bill is to be referred:** Finance and Public Administration Legislation Committee.

**Possible hearing date(s):** Possible reporting date: 18 April 2002.

Vicki Bourne
Whip/Selection of Bills Committee member

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**Appendix 2**

Proposal to refer a bill to a committee
**Name of Bill:** Taxation Laws Amendment (Research and Development) Bill 2001

**Reasons for referral/principal issues for consideration:**
The Bill implements a raft of changes to the R&D tax concession as announced in the Government’s Innovation plan in January 2001 and comes in an environment of declining business expenditure in R&D.

There are significant concerns with the consequences of the change of definitions and requirement for eligible activities to meet both the ‘innovation’ and ‘high technical risk’. There does not appear to be anything in the legislation or EM that limits the changes to the thresholds from being interpreted as near patentability.

There is confusion with some of the proposals - AAT and Federal Court “interpretations of the R&D legislation have established low thresholds for both the ‘innovation’ and ‘technical risk’ criteria” (EM 1.15) but this is contradicted elsewhere by the claim that “the changes are about ‘closing the gate’, not ‘raising the hurdle’ and are not ex-
pected to have a significant impact on most claims”.

There is a need to consider and examine how this legislation addresses the concerns of the proposed definitional changes if they do not raise the ‘hurdle’ for innovation and technical risk; the modelling assumptions and net impact on the budget quantum and BERD; the consequences of the proposed changes to treatment of R&D plant, including deeming of trading stock; the absence of consideration of where conceptual design activity ceases and the expenditure that contributes to the cost basis of the R&D plant starts; the effects of the anti-avoidance measures which may penalise, for instance, individual extraordinary years; and concerns with retrospectivity with both R&D plant and arrangements for R&D projects that straddle both regimes.

Possible submissions or evidence from:
ATO
DISR
AusIndustry
Industry Research and Development Board
David Miles - Chair, Innovation Summit Implementation Group
Chief Scientist
Australian Industry Group
Business Council of Australia
VECCI
ACCI
AIIA
Deloittes
Ernst and Young
KPMG
Business Strategies International
Michael Johnson and Assoc
The Fourth Wave
Telstra
Ericsson
BHP-Billiton
Ford
Robert Bosch
GMH
Technology One
Mincom
Unisys
Bovis Lendlease
Ganinon and Assoc
United Group
Hydramatic Engineering
MYOB

Committee to which bill is to be referred: Economics Legislation Committee
Possible hearing date(s):
Possible reporting date: 26 September 2001 (signed)
Vicki Bourne

Whip/Selection of Bills Committee member
NOTICES
Postponement

An item of business was postponed as follows:

General business notice of motion no. 969 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to the introduction of the Republic (Consultation of the People) Bill 2001, postponed till 9 August 2001.

ENVIRONMENT: 2020 VISION FOR PLANTATIONS

Motion (by Senator Brown) not agreed to:

That the Senate—
(a) considers that the Government’s endorsement of the 2020 Vision for plantations has contributed to unrealistic expectations for plantation investments; and
(b) rejects the statement in the Centre for International Economics’ final report underpinning the 2020 Vision that ‘because of the healthy long term price outlook finding markets for wood before planting should not be a priority’.

Senator Brown—I would like it to be recorded that I was the only assenting voice on that motion.

The DEPUTY PRESIDENT—Thank you.

COMMITTEES
Economics References Committee
Extension of Time

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

That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of
Australia’s stock exchanges be extended to 23 August 2001.

Legal and Constitutional References Committee

Reference

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

That the following matter be referred to the Legal and Constitutional References Committee for inquiry and report by the first sitting day of April 2002:

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 IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (3.52 p.m.)—by leave—I thank my colleagues for granting me leave. Senator Murray and others involved in the debate on the Trade Practices Amendment Bill earlier this year will recall how this motion came about. As I recall, the amendments that were discussed which were supported by Labor at the time were not supported by the government. However, the government took the view at that time that it was desirable to see the legislation as a whole go through because the positive benefits of it outweighed the negative aspects of the amendments. At the time, as I recall, I indicated that the government would be happy to see this matter referred to the committee.

The government still regards these amendments as undesirable. As a matter of policy, we do not support the proposals that are under consideration but, by standing by my commitment to the senator at the time, the government does not stand in the way of these matters being considered further by the Legal and Constitutional References Committee. As they said in the old Newcastle song, never let a chance go by, so I would plead with the Democrats: while they are considering these matters that relate in a serious way to corporate law matters and the legal environment in which companies work, this would be a tremendous opportunity for Senator Murray, after the passage of more than a year in relation to takeovers reform in Australia, to now review the potential for economic benefit to Australia in bringing in the follow-on rule in relation to mergers and acquisitions. We know that would create significant benefits particularly in the information, communications and technology area in Australia, an area in which Australia is doing so well. If only you could get rid of our archaic takeover laws and bring in a modern, forward-looking mergers and acquisitions regime which would allow smaller ICT companies to merge and to build international strength.

I again appeal to Senator Murray: it is not too late; we could put the legislation through in this session and build so many tens of thousands of new jobs with that one brilliant reform proposed by the government. Senator Murray is willing, I think, to look at the necessity of that. This would be a tremendous opportunity to see these matters considered at the same time, so we look forward to Senator Murray bringing forward a review of takeovers reform at the earliest possibility.

Senator SCHACHT (South Australia) (3.56 p.m.)—by leave—On behalf of the opposition, particularly my colleague the shadow minister for small business, Mr Fitzgibbon, we are not opposing this motion. We believe that it may well have been better to have waited till the three years ran out on the sunset arrangement for reinstituting the select committee on retail, which sat and reported a couple of years ago. There was a recommendation there that, if concentration in the grocery market in particular was still considered to be a problem, the parliament reserved the right to reinstitute that select committee of both houses to look at some of the issues that are in Senator Murray’s motion. We would have probably favoured waiting until that period had expired so that there was a select committee of both houses together dealing with the issue, as there was
on the retail matter, which committee I, Senator Murray, I think, and others served on. The issues in his motion were all discussed directly and indirectly as we discussed the issue of the retail market.

The opposition has no objection to the quality and content of the two terms of reference (a) and (b) in themselves. I cannot object to that because, if one goes back over my record when I was a member of the legal committee of the Senate, back 10 years, you will find me on the record as signing a minority report, with then Senator Spindler, wanting to have the power to divest as a standing power in the Trade Practices Act of Australia. I am still of that view. I know that is a controversial view, but it is in term of reference (b) and, as I say, was in the retail inquiry when we found that about three companies had around 70 per cent of the dry grocery business of Australia—and it is probably getting even more concentrated. These issues are of concern.

As for the reversal of the onus of proof, I cannot criticise that. I have expressed views similar to this and, as a former minister for small business, I think these are worthwhile measures to be considered. Nevertheless, the motion is now before us. I still think that the retail committee may have to be reinstated in the next year or so. I think there will still be major issues of concentration in that industry which do affect the running of our national economy. I am not a member of the Legal and Constitutional Committee, but as I can be a participating member at some of the hearings I look forward to the inquiry. The opposition are therefore not opposing this. We look forward to the deliberations of the committee.

Question resolved in the affirmative.

**Scrutiny of Bills Committee Report**


Ordered that the report be printed.

**NATIONAL CRIME AUTHORITY LEGISLATION AMENDMENT BILL 2000 [2001]**

In Committee

Consideration resumed.

The CHAIRMAN—We are now moving to government amendment No. 1 on sheet DY302.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.01 p.m.)—Madam Chair, at the outset, could I take care of some resulting business from the successful amendment by the opposition which resulted in the removal of the contempt regime? As a result of that, the government would move to omit items 111 to 121 of schedule 1. That relates to the reference to hearing officers in the contempt regime which, of course, is now redundant. I have an amendment which deals with that particular proposal, and I ask that that now be circulated to senators.

The other variation is in relation to government amendment (33). That requires the omission of part 1 of that amendment. We will come to that in due course, but I forewarn that the government will be seeking to modify its amendment (33) by omitting part 1. That dealt with telecommunications intercept information being used in contempt proceedings, which is now redundant. In part 2 of amendment (33), reference to the chair should be inserted, so that alteration should be made as well. Those are the two amendments that result from that previous contempt provision.

In relation to government amendments (29) and (30), the government seeks to withdraw its amendment to the Ombudsman access provision as it will support the opposition’s new amendment, which represents a compromise to restrict access in cases involving a risk of death or serious injury. I understand that is the situation with the opposition now. There has been a change in relation to the opposition’s position on that, and the government agrees with that. On that basis, the government would seek to withdraw its amendments (29) and (30) and also to make those other variations to the amendments before the Senate.
The CHAIRMAN—We will deal with the further amendments to your amendment No. 33 when we get there. The question before the chamber is that items 111 to 121 stand as printed.

Question resolved in the negative.

The CHAIRMAN—The government has withdrawn amendments (29) and (30) on sheet DY289. That now leaves us with opposition amendment (7) on sheet 2212.

Senator BOLKUS (South Australia) (4.05 p.m.)—The minister is right to a certain extent. The opposition had an amendment. My understanding is that we have managed to work out an agreement with the government in respect of our amendment and we now have a commonly agreed amendment, opposition amendment No. 7, in respect of the Ombudsman. I probably do not need to talk to it, other than to indicate that we have been able to work out this compromise and, as a consequence, the amendment should be supported by the Senate. I move amendment No. 7:

(7) Schedule 3, item 8, page 45 (lines 3 to 13), omit the item, substitute:

8 After paragraph 9(3)(d)

Insert:

; or (e) if the information, documents or records are, or were, in the possession or under the control of the National Crime Authority—by reason that it would:

(i) endanger the life of a person; or

(ii) create a risk of serious injury to a person;

Senator GREIG (Western Australia) (4.05 p.m.)—The explanatory memorandum indicates that this bill is intended to make a clarifying amendment to avoid any doubt about the application of the Ombudsman Act to complaints against members of the authority. However, the bill also allows the Attorney-General to exempt certain material from disclosure to the Ombudsman. The Democrats’ concern is that this provision is too broadly drafted and would allow the Attorney-General to require the non-disclosure of almost any information relating to the National Crime Authority. People are entitled to have recourse to an effective complaints mechanism in respect of the NCA. We are wary of curtailing the Ombudsman’s ability to obtain information to the extent that the complaints mechanism is rendered ineffective. Under this amendment, the Attorney-General will be able to exempt information from disclosure where its disclosure would endanger the life of a person or would create a risk of serious injury to that person. This is a reasonable limitation, but the Democrats are mindful of the need to monitor the use of this provision to ensure that it is not abused. On that basis, we are supportive of this amendment.

Amendment agreed to.

Senator BOLKUS (South Australia) (4.07 p.m.)—by leave—I move opposition amendments (3) and (1), and (2) and (8) on sheet No. 2122:

(3) Page 2 (after line 18), after clause 3, insert:

PART 2—ESTABLISHMENT OF COMMONWEALTH LAW ENFORCEMENT COMMITTEE

4 Establishment and membership

(1) As soon as practicable after the commencement of this Part and after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Commonwealth Law Enforcement, must be appointed.

(2) The Parliamentary Joint Committee must consist of 10 members, of whom:

(a) 5 must be senators appointed by the Senate; and

(b) 5 must be members of the House of Representatives appointed by that House.

(3) The appointment of members by a House must be in accordance with that House’s practice relating to the appointment of members of that House to serve on joint committees of both Houses.

(4) A person is not eligible for appointment as a member if he or she is:

(a) a Minister; or

(b) a Parliamentary Secretary; or

(c) the President of the Senate; or
(d) the Speaker of the House of Representatives; or
(e) the Deputy President and Chairman of Committees of the Senate; or
(f) the Deputy Speaker of the House of Representatives.

(5) A member ceases to hold office:
(a) when the House of Representatives expires or is dissolved; or
(b) if he or she becomes the holder of an office referred to in a paragraph of subsection (4); or
(c) if he or she ceases to be a member of the House by which he or she was appointed; or
(d) if he or she resigns his or her office as provided by subsection (6) or (7), as the case requires.

(6) A member appointed by the Senate may resign his or her office by writing signed and delivered to the President of the Senate.

(7) A member appointed by the House of Representatives may resign his or her office by writing signed and delivered to the Speaker of that House.

(8) A House may appoint one of its members to fill a vacancy among the members of that Parliamentary Joint Committee appointed by that House.

5 Powers and proceedings

(1) Matters not covered in this Part relating to the Parliamentary Joint Committee’s powers and proceedings must be determined by resolution of both Houses.

(2) The Committee and any subcommittee thereof established pursuant to resolution of both Houses, shall have power to send for persons, papers and records.

(3) Individuals and agencies requested to provide information under subsection (2) or any other provision of this Act shall comply with the terms of such a request save that individuals and agencies requested to provide such information shall not be required to disclose information on current operational matters if, in the opinion of the individual or the agency head, such disclosure would be likely to prejudice the conduct of a current operation or investigation.

(4) The Committee and any subcommittee thereof shall have power to acquire, consider and make use of the evidence and records of the Parliamentary Joint Committee on the National Crime Authority appointed during the thirty-ninth and previous Parliaments.

(5) Any inquiry not completed by the Parliamentary Joint Committee on the National Crime Authority at the time of the commencement of this section shall stand referred to the Committee, and the Committee shall report the findings of the inquiry to the Parliament.

6 Duties

The Parliamentary Joint Committee’s duties are:

(a) to consult with Commonwealth law enforcement agencies which exist or which may be established, including the Australian Federal Police, the Director of Public Prosecutions, the Australian Customs Service, the National Crime Authority, the Office of National Assessments, the Australian Bureau of Criminal Intelligence, the Australian Transaction Reports and Analysis Centre, and the Australian Securities and Investments Commission; and

(b) to consult with other Commonwealth agencies having a law enforcement function which exist or which may be established, including the Australian Defence Force, the Australian Taxation Office, the Australian Quarantine and Inspection Service, the Department of Immigration and Multicultural Affairs, and the Department of Family and Community Services; and

(c) to assess:
(i) the strategic environment of the Commonwealth’s law enforcement agencies and the resources needed to meet identified threats; and
(ii) the cooperative environment in which those agencies operate; and
(iii) the mechanisms needed to ensure that those agencies are accountable to the Parliament and the public; and

(d) to report from time to time to both Houses on the assessments in (c); and
(e) from time to time, to inquire into and, as soon as practicable after the inquiry has been completed, to report to both Houses on Commonwealth law enforcement issues and on the cooperative arrangements between Commonwealth and States law enforcement agencies; and

(f) to inquire into any question in connection with its duties which is referred to it by either House of the Parliament, and to report to that House upon that question.

(1) Page 1 (after line 4), before clause 1, insert:

PART 1—PRELIMINARY

(2) Clause 2, page 1 (after line 10), after sub-clause (1), insert:

(1A) Part 2 and Schedule 5 commence on the day after the day on which the House of Representatives either expires or is dissolved for the first time after this Act receives the Royal Assent:

(1B) If Schedule 5 commences before Part 12 of Schedule 1 to this Act, Part 12 of Schedule 1 to this Act never commences.

(8) Page 47 (after line 8), at the end of the bill, add:

Schedule 5—Parliamentary Joint Committee on the National Crime Authority
National Crime Authority Act 1984

1 Part III
Repeal the Part.

These amendments are designed to establish a single parliamentary joint committee on Commonwealth law enforcement. This is to be a committee that will subsume and replace the Joint Parliamentary Committee on the National Crime Authority. Our proposed Commonwealth law enforcement committee would exercise scrutiny across the whole ambit of Commonwealth law enforcement agencies. It would include the AFP, the Director of Public Prosecutions, the Australian Customs Service, the National Crime Authority, the Australian Bureau of Criminal Intelligence, AUSTRAC, the Australian Securities and Investments Commission and other Commonwealth agencies having a law enforcement function which exists or may be established.

We are driven by a deep understanding that Commonwealth law enforcement is of vital importance. Criminal activity poses serious threats to the stability of our society and its institutions, so we need a sophisticated, cooperative, integrated national and international approach to law enforcement. We believe that this approach needs to exist in our law enforcement agencies, in law enforcement itself, in its policies and in parliamentary processes. The proposed parliamentary joint committee will, we propose, be tasked to oversight all law enforcement agencies. It will inform the national parliament, it should build on an extensive store of knowledge and it should play a vital role in the development of an integrated structure of law enforcement, with integrated tactical and planning strategies and processes. Establishing this committee is a real attempt to put mechanisms in place which will provide for national oversight and a parliamentary process which enables and provides the basis for good strategic planning.

This is the third time that the opposition have attempted to have such a committee established. We believe that it is in the national interest to do so, and we will continue to pursue this objective. A single committee with a good understanding of the totality of our law enforcement needs should ensure that no political party is caught up just in short-term political debate about where funding ought to be directed. It will also strengthen the oversight role of the parliament and will help guard against improper use of power by any Commonwealth law enforcement agency. We believe that we need parliamentary scrutiny of all law enforcement agencies, not just the NCA. There is currently no committee which has jurisdiction to scrutinise the AFP in the way that the Joint Parliamentary Committee on the National Crime Authority can oversee NCA budgetary, employment, legislative and operational matters. The AFP, for instance, conducts controlled operations. It uses listening devices and other surveillance mechanisms and it has powers of arrest, detention and questioning. It is a police agency and we believe that it should have parliamentary oversight. I have moved these amendments in the belief that such oversight is quite de-
sirable for our national system and would also provide a good mechanism for policy formulation for the national parliament.

Senator GREIG (Western Australia) (4.10 p.m.)—We Democrats acknowledge the value in establishing a committee to monitor Commonwealth law enforcement bodies. The proposed committee would subsume the existing National Crime Authority committee and would continue its existing role in monitoring the NCA. However, it would also monitor other Commonwealth law enforcement bodies such as the Australian Federal Police. We would welcome an increase in the accountability of other Commonwealth law enforcement bodies; however, we are wary of reducing scrutiny of the NCA by having the focus of oversight bodies elsewhere. We note that the new committee would continue to scrutinise the NCA but that would only be a part of its responsibilities. We do not feel that we are able to support these ALP amendments on this occasion.

Given that a number of changes are proposed by this legislation, we believe that a specialist oversight body of the NCA is needed at this time to monitor the effect of the new provisions. We note that the increased role of the Ombudsman is strengthened by Labor Party amendments and is supported by the Democrats. We hope that this will provide an effective avenue for complaints against the NCA by having the focus of oversight bodies elsewhere. We note that the new committee would continue to scrutinise the NCA but that would only be a part of its responsibilities. We do not feel that we are able to support these ALP amendments on this occasion.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.12 p.m.)—The government opposes these amendments. Effectively, the amendments would do as Senator Greig said: diminish any scrutiny of the National Crime Authority. The parliamentary Joint Committee on the National Crime Authority was set up for a very good reason: because of the powers given to the NCA and the special place that the NCA enjoys. The government is of a firm view that there should be a joint parliamentary committee which is devoted to scrutiny of the NCA.

This proposal would result in looking at other aspects of law enforcement and would give the new committee an extraordinarily wide application and, in broadening that application, would no doubt diminish its ability to pay due scrutiny to those aspects that require it. You would be looking at all sorts of areas, such as the Australian Quarantine and Inspection Service, the Australian Taxation Office, Immigration and even the Department of Family and Community Services. We have a Senate Legal and Constitutional Committee which, although very hard worked, does a very good job in looking at legislation which deals with these areas, and we have a particular joint parliamentary committee which deals with the NCA.

There is also the question of the relevance of this proposal to this bill. The title of this bill is 'A Bill for an Act to amend the National Crime Authority Act 1984 and the Ombudsman Act 1976, and for related purposes'. I question whether the amendments proposed by the opposition have relevance to the title of that bill, bearing in mind the provisions of standing order 111(3), which says: ... no clause shall be inserted in a bill which is irrelevant to its title.

The subject matter of this bill is really for the NCA and not for a compendious approach to scrutiny of all law enforcement, which is something that should really be reserved for another time and another place.

Amendments not agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.14 p.m.)—I move:

(31) Page 47 (after line 8), at the end of the bill, add:

Schedule 5—Financial Transaction Reports Act 1988

1 Subsection 16(6) (paragraph (b) of the definition of relevant authority)

Omit “Chairperson”, substitute “Chair”.

2 Paragraph 26(1)(c)

Omit “Chairperson”, substitute “Chair”.

Wednesday, 8 August 2001 SENA TE 25905
3 After paragraph 27(5)(a)
Insert:
; and (aa) the NCA may, in a manner that does not identify, and is not reasonably capable of being used to identify, a person to whom the information relates, communicate the information to the Parliamentary Joint Committee on the National Crime Authority under subsection 59(6A) of the NCA Act; and

4 At the end of paragraphs 27(5)(b) and (c)
Add “and”.

5 Paragraph 27(5)(d)
After “(a),” insert “(aa),”.
This will amend the Financial Transaction Reports Act 1988 to enable the National Crime Authority to include appropriately desensitised information about financial transactions in the information to be provided to the parliamentary Joint Committee on the National Crime Authority. The proposed amendments are consequential on proposed provisions which clarify and codify for the first time the right of the parliamentary Joint Committee on the National Crime Authority to access certain information held by the authority. I commend this amendment to the chamber. I think it is fairly self-evident.

Senator BOLKUS (South Australia) (4.15 p.m.)—It is extremely self-evident, and the opposition supports the amendment.

Senator GREIG (Western Australia) (4.15 p.m.)—The substance of this amendment is to allow the National Crime Authority to provide the parliamentary Joint Committee on the National Crime Authority with certain information relating to financial transactions. This amendment is consequential on other provisions, codifying the right of the committee to access information in the possession of the National Crime Authority. Therefore, we support the amendment.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.15 p.m.)—I move government amendment (32):
(32) Page 47 (after line 8), at the end of the bill, add:

Schedule 6—Jurisdiction of Courts (Cross-vesting) Act 1987
1 Subsection 3(1) (at the end of paragraphs (a) to (c) of the definition of special federal matter)
Add “or”.
2 Subsection 3(1) (paragraph (d) of the definition of special federal matter)
Repeal the paragraph.
3 Paragraph 6(2)(a)
Omit “, (d)”.
This is a technical amendment. It removes references to sections 32 and 32B of the National Crime Authority Act 1984, which appear in the Jurisdiction of Courts (Cross-Vesting) Act 1987, as those sections are being repealed by the bill. This is a technical amendment, so it is not of a controversial nature.

Senator BOLKUS (South Australia) (4.16 p.m.)—The amendment is supported by the opposition.

Senator GREIG (Western Australia) (4.16 p.m.)—The Democrats support this amendment, for the reasons given by the Minister for Justice and Customs.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.16 p.m.)—There is a variation to this amendment. The government withdraws part 1, which would have allowed the use of telecommunications interception material in contempt proceedings. Those contempt proceedings are no longer relevant as a result of a successful motion of the opposition. We maintain part 2, which replaces references to “chairman” with references to “chair” of the NCA in the Telecommunications Interception Act 1979. With those variations, I move government amendment No. 33:
(33) Page 47 (after line 8), at the end of the bill, add:
Schedule 7—Telecommunications (Interception) Act 1979

Part 2—Chair of the NCA

2 Subsection 5(1) (subparagraph (b)(ii) of the definition of certifying officer)
Omit “Chairman”, substitute “Chair”.

3 Subsection 5(1) (paragraph (b) of the definition of chief officer)
Omit “Chairman”, substitute “Chair”.

4 Subsection 5(1) (definition of member of the authority)
Omit “Chairman”, substitute “Chair”.

5 Subsection 5(1) (subparagraph (a)(v) of the definition of permitted purpose)
Omit “Chairman”, substitute “Chair”.

6 Paragraph 35(1)(a)
Omit “Chairman”, substitute “Chair”.

7 Paragraph 71(2)(d)
Omit “Chairman”, substitute “Chair”.

8 Subsection 80(2)
Omit “Chairman” (wherever occurring), substitute “Chair”.

9 Subsection 81(2)
Omit “Chairman”, substitute “Chair”.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.17 p.m.)—I move government amendment (2) on sheet DY301:

(2) Page 2 (after line 9), after clause 3, insert:

4 Review of effect of this Act

(1) The Minister must cause a person (the responsible person) to review, and to report in writing about, the operation of the National Crime Authority Act 1984 (the NCA Act) as affected by the following provisions of this Act:

(a) items 1, 3, 5, 11 and 13 of Schedule 1 (the provisions that remove the defence of reasonable excuse);
(b) item 12 of Schedule 1 (the provision that removes the derivative-use immunity);
(c) items 7, 12 and 15 of Schedule 1 (the provisions that increase the penalties for non-compliance);
(d) Part 15 of Schedule 1, and Schedule 4 (the contempt provisions).

(2) The responsible person must be someone who, in the Minister’s opinion, is suitably qualified and appropriate to conduct the review and make the report.

(3) The review and report must relate to the 5 year period (the review period) beginning on the commencement of Part 1 of Schedule 1.

(4) The review and report must include an assessment of:

(a) the effects of the following provisions in facilitating the performance of the functions of the Authority:
   (i) the provisions that remove the defence of reasonable excuse;
   (ii) the provision that removes the derivative-use immunity;
   (iii) the provisions that increase the penalties for non-compliance; and
   (b) the extent (if any) to which persons have been unjustifiably prejudiced because of the enactment of:
   (i) the provisions that remove the defence of reasonable excuse;
   and
   (ii) the provision that removes the derivative-use immunity; and
   (c) the extent (if any) to which courts have imposed increased penalties allowed for by the provisions that increase the penalties for non-compliance.

(5) The review and report must also include an assessment of any other matter that the responsible person considers relevant to the operation of the provisions of the NCA Act as affected by the provisions referred to in paragraphs (1)(a) to (d).

(6) The report must not:

(a) identify persons as being suspected of having committed offences; or
(b) identify persons as having committed offences unless those persons have been convicted of those offences; or
(c) reveal the identity of a person, if doing so might prejudice:
   (i) the safety or reputation of a person; or
(ii) the fair trial of a person who has been or may be charged with an offence.

(7) The Authority must give all reasonable assistance requested by the responsible person in connection with the carrying out of the review and report.

(8) The following activities by a current or former member of the Authority (within the meaning of that Act) or a current or former member of staff of the Authority (within the meaning of that Act) do not constitute a contravention of section 51 of the NCA Act, if they are carried out for the purposes of assisting the responsible person to carry out the review and report:

(a) divulging or communicating information to the responsible person;
(b) recording information;
(c) providing a record of information to the responsible person.

(9) The responsible person must provide a reasonable opportunity for members of the public to make submissions to him or her about matters to which the review and report relate. However, the review process must not include any hearings.

(10) The responsible person must give the report to the Inter-Governmental Committee no later than 6 months after the end of the review period. The report is then to be considered by the Committee and given by the Committee, together with such comments on the report as the Committee thinks fit, to:

(a) the Minister; and
(b) the appropriate Minister of the Crown of each participating State.

(11) After the Minister receives the report and comments from the Inter-Governmental Committee, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House.

This amendment deals with the review in proposed section 4 of the bill. This proposed section sets out the requirement for a five-year review of the provisions that remove the defence of reasonable excuse and derivative use immunity, and increase the penalties for non-compliance with the National Crime Authority Act 1984. It is appropriate that, these provisions having attracted some attention and comment, there be a review in relation to that. I commend the amendment to the chamber.

Senator BOLKUS (South Australia) (4.18 p.m.)—The opposition supports this amendment insofar as it would require a five-year review. It has been amended to pick up the earlier amendments made by the committee.

Senator GREIG (Western Australia) (4.18 p.m.)—The Democrats will be supporting the amendment, for the reasons given by both the minister and the opposition spokesperson.

Amendment agreed to.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.19 p.m.)—I move government amendment (1) on sheet DY300:

(1) Clause 2, page 1 (line 8) to page 2 (line 4), omit the clause, substitute:

2 Commencement

(1) Sections 1, 2, 3 and 4 commence on the day on which this Act receives the Royal Assent.
(2) Schedule 1 (other than Part 17) and Schedules 2 to 7 and 9 to 12 commence on a day to be fixed by Proclamation.
(3) If a provision of this Act to which subsection (2) applies does not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
(4) Part 17 of Schedule 1 commences, or is taken to have commenced, immediately after the commencement of Part 15 of Schedule 1.
(5) Schedule 8 commences on a day to be fixed by Proclamation.

This amends the commencement clause in proposed section 2 of the bill so that provisions that are subject to the five-year review will commence at the same time; therefore, there will be one concurrent review period and it will not be staggered. Previously, the clause gave the option of commencing different parts of the bill on different days. This amendment is fairly straightforward, and I commend it to the chamber.
Senator GREIG (Western Australia) (4.19 p.m.)—As the Minister for Justice and Customs said, this amendment deals with commencement provisions. Among other things, it will ensure that all of the provisions that are to be reviewed under the five-year review will commence simultaneously with the effect that there will be only one comprehensive review period. For that reason we support it.

Amendment agreed to.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

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

VETERANS’ AFFAIRS LEGISLATION AMENDMENT (2001 BUDGET MEASURES) BILL 2001

First Reading

Bill received from the House of Representatives.

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

Bill read a first time.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (4.21 p.m.)—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

Since taking office, this Government has given a high priority to providing appropriate recognition for the service and sacrifice of veterans and addressing anomalies that have deprived some members of the veteran community of their rightful entitlements.

With its latest budget, the Government has again demonstrated its commitment to the veteran community, with initiatives to benefit former prisoners-of-war held by Japan; war widows who lost their pensions upon remarriage and Commonwealth and allied veterans who served alongside Australians during the two world wars.

This bill will give effect to key initiatives in the Veterans’ Affairs Budget. It will amend the Veterans’ Entitlements Act 1986 to restore entitlements to war widows who remarried before 1984 and had their pensions cancelled.

The war widow’s pension was established to compensate Australian women whose husband died on active duty or from war-caused injuries or illness following their return from service. However, if they chose to remarry, they were no longer entitled to that compensation.

The introduction of the Veterans’ Entitlements Act in 1986 recognised the unfairness of this situation and ensured that war widows who remarried in the future would keep their entitlements. However, the decision to limit the change to widows who remarried after May 1984 has meant that for almost two decades there have been two classes of war widows.

These amendments will ensure that widows whose partners have died for their country will be treated equally under the repatriation system.

Other amendments will recognise the service of allied veterans who served during World War I and World War II, by granting them eligibility for the Repatriation Pharmaceutical Benefits Scheme. Eligibility will be extended to Commonwealth and allied veterans who are over the age of 70, have qualifying service from either of the world wars and who have been resident in Australia for 10 years or more.

Like their Australian comrades, allied veterans of these conflicts have an increasing need for medication as they grow older. This initiative will give them access at concessional rates to the full range of medicines and pharmaceutical items available through the Repatriation Pharmaceutical Benefits Scheme, including a number of items that are not available to the wider community under the Pharmaceutical Benefits Scheme.

These newly eligible allied veterans will also be eligible for a pharmaceutical allowance, if they do not already receive it as a service or age pensioner.

Finally, this bill will amend the treatment of superannuation assets for those over 55 years of age but under the pension age.

As announced in the Budget, the Government will not include in the income test for social security pensions any money withdrawn from superannuation assets by this age group.

This Bill makes similar changes to the income testing of payments under the Veterans’ Entitlements Act to ensure that affected members of the
veteran community receive fair and consistent treatment. This bill will further advance the interests of the Australian veteran community and provide a stronger and fairer repatriation system.

Debate (on motion by Senator Denman) adjourned.

NEW BUSINESS TAX SYSTEM (THIN CAPITALISATION) BILL 2001
NEW BUSINESS TAX SYSTEM (DEBT AND EQUITY) BILL 2001

First Reading
Bills received from the House of Representatives.

Motion (by Senator Minchin) agreed to:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Bills read a first time.

Second Reading
Senator MINCHIN (South Australia—Minister for Industry, Science and Resources) (4.22 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—

NEW BUSINESS TAX SYSTEM (THIN CAPITALISATION) BILL 2001
On 11 November 1999 the Government announced that it would ensure Australia receives its appropriate share of tax paid by multinational companies by strengthening the thin capitalisation rules.

The New Business Tax System (Thin Capitalisation) Bill 2001 introduces a new thin capitalisation regime based on the recommendations of the Ralph Review of Business Taxation. It will improve the integrity and fairness of Australia's taxation system.

The new thin capitalisation regime will be more effective in preventing an excessive allocation of debt for tax purposes to the Australian operations of multinationals and will help make sure that Australia obtains a fair share of tax from those who operate internationally.

In relation to operations in Australia, the bill denies tax deductions for debt expenses (mainly interest) in cases where the debt funding of the operations exceeds certain levels. For banks, the tests are framed as a minimum equity capital requirement.

This bill also amends the current income tax law to change the rules on the deductibility of interest expenses for Australians investing offshore.

To reduce compliance costs for small and medium enterprises, the new regime will not apply to taxpayers or groups of taxpayers claiming annual debt deductions (eg, interest expenses) of $250,000 or less.

In addition, the bill will allow Australian branches of foreign companies to borrow internationally without having to pay withholding tax on the subsequent interest payments.

The current thin capitalisation measures, the existing provisions dealing with the capitalisation of foreign bank branches and the existing debt creation regime will be repealed.

The new thin capitalisation regime will apply from the start of a taxpayer's first year of income beginning on or after 1 July 2001. This will accommodate taxpayers with substituted accounting periods and, together with other transitional measures in the bill, gives all taxpayers more time to comply with the new regime.

As a further transitional measure, companies can elect that the current rules apply until 30 June 2004 for interests that were issued before 21 February 2001. This election is in the New Business Tax System (Debt and Equity) Bill 2001. Where that election is made, the instruments will be afforded transitional treatment in the new thin capitalisation regime.

The Government released exposure draft legislation in February 2001 and has consulted extensively with business in the development of these measures, and is confident that the new measures strike an appropriate balance between revenue protection and facilitating commercial arrangements.

Full details of the measures in this bill are contained in the presented explanatory memorandum. I commend the bill and present the explanatory memorandum.

NEW BUSINESS TAX SYSTEM (DEBT AND EQUITY) BILL 2001
The New Business Tax System (Debt and Equity) Bill 2001 introduces a new approach for determining what constitutes equity in a company and what constitutes debt in an entity. The new rules implement the general approach recommended by
the Ralph Review of Business Taxation for distinguishing debt from equity.

The debt/equity rules provide greater certainty and coherence than is attainable under the current law.

Importantly, the Bill explains how the debt/equity borderline is drawn for tax purposes. The rules determine whether returns on an interest may be frankable or may be deductible.

The test for distinguishing debt interests from equity interests focuses on a single organising principle – the effective obligation of an issuer to return to the investor an amount at least equal to the amount invested. This test seeks to minimise uncertainty and provide a more coherent, economic substance based test that is less reliant on the legal form of a particular arrangement.

There is an extended definition of equity based on economic substance (broadly speaking, interests that raise finance and provide returns contingent on the economic performance of a company constitute equity, subject to the debt test).

The definition of debt interest also constitutes a key component of the proposed thin capitalisation regime (contained in the New Business Tax System (Thin Capitalisation) Bill 2001) since it is used to determine what deductions may be disallowed.

This bill amends the dividend and interest withholding tax provisions so that the borderline between the provisions is consistent with the new debt/equity borderline. The rules also apply to the characterisation of payments from non-resident entities.

There has been extensive consultation relating to this subject, commencing from the Review of Business Taxation to the release of exposure draft legislation in February 2001 and subsequently.

The measures will apply from 1 July 2001. However, a transitional rule is available to companies to elect that the current rules apply until 1 July 2004 for interests that were issued before 21 February 2001. This election provides for continuity in private sector decision making and allows issuers sufficient time to redeem issued instruments in an orderly manner.

Full details of the measures in this bill are contained in the presented explanatory memorandum. I commend the bill and present the explanatory memorandum.

Debate (on motion by Senator Denman) adjourned.
The termination payment surcharge came into effect on 20 August 1996. It is imposed on what might be described as golden handshakes paid on termination of employment of so-called high-income earners. Termination payments are the retained amounts—that is, amounts not rolled over or transferred into a superannuation fund—of eligible termination payments made by employers on the termination of an employment of an employee. This is generally in circumstances of redundancy. So we had a double whammy here. Not only did many employees go through the harshness of redundancy but then they were being slugged retrospectively with the so-called surcharge. In many cases, they were employees earning less than the surcharge tax minimum threshold level—an absolutely outrageous situation. I will refer to a couple of practical examples a little later.

The Liberal government announced in the 1996-97 budget that a surcharge would apply to contributions that are subject to a tax deduction, including employer contributions and those made by members, where there is no employer contribution and the deduction had been claimed and where the assessable income and superannuation contributions exceeded $70,000. This $70,000 figure has been indexed and it is now, I believe, approximately $85,242. Since 1999-2000, the so-called reportable fringe benefits of an employee are taken into account in working out superannuation surcharge tax liabilities.

The government introduced a transition period that was scheduled to expire at the start of July. Following the expiry of the transition period, all of the termination payments accrued after 30 June 1983, even entitlements accrued prior to the introduction of the surcharge tax legislation, were to be subject to the surcharge. Criticisms of the surcharge have been subject to significant debate, particularly here in the Senate. I might refer here to the 23rd report of the former Senate Select Committee on Superannuation titled *Superannuation surcharge legislation*, which sets out in very comprehensive detail many of the concerns that have been raised. I acknowledge in the chair here in the Senate today the chair of that committee. I do not want to embarrass
Senator Watson unduly, but I know that he has raised concerns about the adverse impact of this surcharge in the number of ways in which it is applied inequitably to people in the Australian community.

One of these concerns is the question of inequity in the transitional provisions for the termination payment surcharge. The definition of assessable income includes termination payments or golden handshakes. But inclusion of termination payments can result in lower income persons, not simply high income people, being liable for the surcharge. I referred earlier to someone losing their job as a result of redundancy. In their working life up to the point of redundancy they might earn $50,000 or $60,000, but in the year of redundancy, because of the impact of the surcharge tax, their income may be inflated due to the redundancy payout and that then takes them into surcharge tax territory: they cross the minimum threshold.

Despite the Liberal government having been made aware of these sorts of problems—not just through me, not just through industry organisations, not just through well-informed government backbenchers but also through the Senate Select Committee on Superannuation—it has taken these past four years for some of these issues to be addressed. We were going to face the situation where the full 15 per cent surcharge would apply to most substantial taxable separation payments so that before the age of 55 the normally unfunded super tax of 31.5 per cent for post-1983 benefits and the 15 per cent surcharge, a total of 46.5 per cent tax, would apply on taxable separation payments. There would have been thousands of Australian employees—or former employees, after redundancy—who would have been caught in the surcharge net, and thousands of these employees would not have been earning anywhere near the minimum commencement income for the application of the surcharge tax.

The Department of the Parliamentary Library’s Information and Research Services, as we know, produce papers and analyses from time to time. I was reading through one of their reports recently, and they referred to the surcharge legislation. I could not put it better myself when they stated:

... the surcharge legislation remains on the statute books. Many of the witnesses to the 23rd report of the former Senate Select Committee on Superannuation provisions will still be dealing with the complex administration, clumsy assessment procedures and on-going administration costs that are born not just by high income earners, but by all superannuation fund members.

I am indebted to my colleague in the other place Mr Kelvin Thomson, our shadow minister for superannuation, for outlining the particular problems of a former bus driver who worked for the Brisbane City Council. He was earning a modest $17 an hour. Over the course of 22 years, he had built up in his superannuation account some $70,000. People who know something about superannuation know that $70,000 over 22 years is not such a significant amount in the context of superannuation. On the closure of that defined benefit fund that he was a member of and the establishment of an accumulation fund in its place, he and other members rolled over their money into that new accumulation fund. Bear in mind the closure of the fund: he was not taking his money out at that point in time or not technically taking it out; he was taking his money out of the closed defined benefit fund and transferring it into the accumulation fund. That bus driver earning $17 an hour was presented with a tax bill of $10,000. That sort of anomaly highlights all too well the sorts of problems with this surcharge tax that is claimed to be an equity measure. It has impacted far beyond high income earners.

My colleague Mr Thomson also outlined some interesting examples of other problems that have emerged with the application of the tax to defined benefit funds. He refers—and I will not have time to go into the detail here—to some interesting examples provided to him by the Australian and International Pilots Association. Regrettably, the government has had its head in the sand on the issue for the last four years, and some of these issues are now only just being dealt with.

I would also like to refer to another problem drawn to my attention by the Labor member for Charlton, Ms Hoare. This in-
volves shiftworkers at the Eraring power station. They are entitled to the employee’s base wage and have superannuation guarantee payments based on that base wage. When they are assessing income, they have the base salary plus 20 per cent allowances, so their income is well below the superannuation surcharge tax levy lower limit. But the Australian Taxation Office applies the superannuation surcharge levy to the state government employee’s base wage plus actual allowances of 37.7 per cent plus employer superannuation contributions, which puts the income above the superannuation surcharge levy upper limit for the purposes of the surcharge tax. You could understand that a worker in a situation like that, where their entitlements are calculated on one salary but their taxation liabilities are calculated on a different salary, would be very unimpressed.

I have referred in the Senate to another example in my home state of Tasmania in respect of mine workers working at Roseberry on Tasmania’s west coast. Having regard to these sorts of anomalies, Labor has indicated that we intend to have a review of superannuation.

This Liberal-National Party government has no vision whatsoever in relation to superannuation. In fact, all the evidence that has emerged and the stated intention of the Prime Minister in recent weeks indicates there is an ideological problem there. I noted an on-the-public-record comment by one of the Prime Minister’s advisers, Mr Morris, at a recent IFSA luncheon where he expressed concerns about the government not agreeing with compulsory superannuation. Not only is the government opposed to superannuation but every action it takes actually cuts the final retirement income outcome for people from their superannuation funds.

The importance of superannuation is that it is, together with the age pension, the primary income vehicle for our ageing population. The Prime Minister recently discovered that the ageing population is going to be a problem. Superannuation and the interaction with the age pension are the major ways of preparing for this ageing population. This is an extremely important issue. At the moment, just over one in 10 Australians are over the age of 65. By 2025, almost one in four Australians will be over the age of 65. The objective of superannuation is not just to provide an additional income over and above the traditional age pension but to ensure that the moneys needed to pay for that ageing population are put aside and are there ready for retirees to draw down on when they reach that age and that we do not put too much of a burden on the existing taxpayers—our children and our grandchildren—yet the government remains, it seems to me, implacably opposed to superannuation.

We have only to look at some of the other actions of this government in the last five years. It failed to deliver the three per cent co-contribution into Australian superannuation accounts. It attempted recently to reduce the protections in the event of theft and fraud. If a member’s money is stolen—and that is a very rare occurrence in our system, fortunately—the Labor Party ensured that there was a compensation mechanism to pay back 100 per cent of the moneys that were stolen. The Liberal-National Party wanted to reduce that protection to 80 per cent of the moneys. And there is the new surcharge tax, which is the subject of one aspect of this legislation today. The Prime Minister in the 1996 election said ‘no new taxes; no increase in existing taxes’. Rightly, there has been significant focus on the promise the Prime Minister gave about the GST. But he and the Treasurer and this government introduced a massive new tax on superannuation. To some extent they have succeeded in hiding that. I do not think the community has woken up to the fact that they introduced this new tax on superannuation, although slowly but surely more and more people are waking up to it. They did it so that they could hide the tax, so that people would not immediately notice it. You would notice it only when you got the assessment notices. More and more people are receiving those. You would notice it when you went to collect your retirement income, when you looked at your statement and saw that you had been surcharged and taxed. This is this government’s approach to the ageing population.

Senator Kemp—You said you would support the superannuation legislation.
Senator SHERRY—The prime architect of this legislation, and all the errors and problems, has just walked into the chamber—the Assistant Treasurer, Senator Kemp. I would like him to acknowledge that I did in fact criticise and point out the problem that we would have to deal with in this legislation today. The bottom line for this government is they have not added one dollar to the superannuation savings of Australians. They have added administrative complexity, added tax, failed to deliver the increased contributions that they promised and attempted to reduce protections in the event of theft and fraud. What a record! The hypocrisy when we had last week the Prime Minister discovering we have an ageing population and we have to be doing something about it—when the very income we need for people who are entering into retirement is being slugged in this way by this government. We will support this legislation. It corrects one of the errors and one of the problems that we pointed out to the government at the time when they introduced this new tax.

Senator ALLISON (Victoria) (4.43 p.m.)—The Democrats also support the Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001, which is designed to enhance the equity of the treatment of the termination payment surcharge and superannuation contribution surcharge legislation in accordance with the measures announced in this year’s budget. The bill has three objectives. It makes the existing transitional mechanisms permanent where they relate to the portion of a termination payment that is subject to surcharge, it changes how a taxpayer’s adjusted taxable income is determined under the superannuation legislation in certain circumstances and it exempts the excessive component of an employer eligible termination payment from liability to the termination payment surcharge.

The termination payment surcharge is imposed on golden handshake payments if the taxpayer’s adjusted taxable income for the financial year in question is in excess of the surcharge level for 2001-02. The surcharge begins to be levied when assessable income and superannuation contributions for the year exceed $85,242. The maximum surcharge of 15 per cent is payable when assessable income and superannuation contributions reach $103,507. This legislation will improve equity by ensuring that lower income earners who receive termination payments are no longer eligible for the surcharge. At present, redundancy payments are included in the determination of adjusted taxable income for the year. Such a classification can result in a longstanding low income employee being classified in the surcharge category.

Whilst the Democrats support this legislation because it attempts to increase equity, it is also important to point out that this government continues to refuse to consider the equitable treatment of same sex couples on matters of superannuation. Whilst this individual measure is desirable, it does not seem to flow from an underlying desire to ensure that all Australians are treated equitably.

Senator KEMP (Victoria—Assistant Treasurer) (4.45 p.m.)—I appreciate the brevity of the last contribution. Senator Sherry raised a couple of issues, some of them in his usual ungracious fashion. I have to make this preliminary comment, even though I am a man who is not usually provoked: for a person who has spent so much time thinking about superannuation, which I encourage—Mr Acting Deputy President, are an individual who spends a lot of time thinking about super—so little ever emerges from Senator Sherry’s area. Senator Sherry has complained and moaned about super for five years, and one would have thought that, as we go to the next election, he would have had a host of ideas about how to improve superannuation.

Senator Sherry—I have.

Senator KEMP—He has a host of ideas but the truth of the matter is this: what is the Labor Party policy on superannuation? Let me just quote the shadow Assistant Treasurer, who said, ‘We are going to have a review after the election, if the Labor Party happens to win.’ After all this long period of thought and debate and concentration, nothing has emerged whatsoever. Senator Sherry is back on the old superannuation surcharge. As Senator Conroy commented once, Senator Sherry spends about 90 per cent of his
time thinking about the superannuation surcharge. You would have thought that there would have been some decent proposals coming forward. It is not unreasonable to expect that someone who thinks so hard and so long about this topic could have come up with some proposals. The astonishing thing is that nothing has happened.

Senator Sherry has gone around and consulted with people, and he has got up and made speeches attacking the surcharge—although, just for the record, the Labor Party supports the superannuation surcharge as part of its policy. Senator Sherry goes off on these frolics. He cannot convince the Labor Party, no proposals come forward and the truth of the matter is, as the Treasurer, who has a nice turn of phrase, has said, the ALP stands for the Australian lazy party. I think that is exactly the truth. It is a very sad reflection on this chamber and on Senator Sherry directly. As a person who is a self-proclaimed expert on super, he has produced so little policy over such a long period of time. It is a very ordinary performance.

Let me return to the Superannuation Contributions Taxes and Termination Payments Tax Legislation Amendment Bill 2001. The measures in this bill have been widely welcomed because they will improve the overall equity and operation of the surcharge legislation in relation to employer eligible termination payments such as redundancies. I note that the opposition recognise the benefits provided to terminating employees by the bill and will support it. We welcome that support, Senator Sherry.

The three measures contained in this bill were announced by the government on 22 May 2001 as part of the 2001-02 federal budget. The first measure ensures that only a proportion of a termination payment received that relates to service after 20 August 1996 will be subject to the surcharge. Without this change, transitional provisions covering surcharge on retained termination payments would end on 20 August this year and the full amount of such payment would be subject to the surcharge. When the legislation went through, Senator Sherry, there was significant debate on this particular issue, if I remember rightly.

Senator Sherry—There was. This is where you should be apologising. You got the bill wrong.

Senator KEMP—You have to apologise to your constituency because over five years you have produced nothing. Never has there been so much talk for so little policy, Senator. You are the person who has held himself out as the world’s expert in this area.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Through the chair, please.

Senator KEMP—Thank you, Mr Acting Deputy President. It is a very ordinary performance from Senator Sherry. He has lifted the expectations of people with his promises but he has failed to deliver to his own party and failed to convince his own party. And, I might say, he has failed to declare, on numerous occasions, a direct personal interest in all this, to be quite frank.

Senator Sherry—I would not get into that one—we all have an interest.

Senator KEMP—Senator Sherry, I think it is an important issue and, frankly, I will get into it if I am provoked.

Senator Sherry—Just like you have an interest in it, too.

Senator KEMP—But, Senator Sherry, we have proposed a superannuation surcharge—your party has accepted that. You are proposing to remove it.

Senator Sherry—I am not saying that.

Senator KEMP—Oh, you are not saying that! That is an interesting concession from Senator Sherry—that has never before got in the Hansard. The second measure will benefit low to middle income earners who receive modest termination payments. Currently, taxpayers who are not ordinarily subject to the surcharge may become liable in a given year if they receive a redundancy payment. This is because the whole payment is included in the calculation of their adjusted income for surcharge purposes. This measure will ensure that only a proportion of the redundancy payment, based on the employee’s length of service with the employer, will be included in the calculation of their adjusted taxable income.
The third measure will ensure that the maximum rate of taxation payable on any part of an eligible termination payment taken as cash is the top marginal rate plus the Medicare levy. The measures in this bill significantly enhance the fairness and operation of the termination payment surcharge and the superannuation contributions surcharge legislation.

Senator Sherry raised a number of issues, to which I now turn—I hope to Senator Sherry’s satisfaction. Senator Sherry raised the issue of the application of the superannuation surcharge to the transfer of superannuation benefits from a defined benefits superannuation scheme to an accumulation scheme. Senator Sherry took some time on this.

Senator Sherry—They were Mr Thomson’s comments.

Senator KEMP—Do you want me to respond or not?

Senator Sherry—Just making sure you understood.

Senator KEMP—Thank you, Senator Sherry. Every time I get into my ‘trying to assist Senator Sherry’ mood, I get an abusive comment. It never ceases to amaze me. Senator Sherry, you are a singularly ungracious senator.

The issue that was raised is, I understand, in respect of a Brisbane City Council bus driver. The advice that I have received on this matter is that, when benefits are transferred from a defined benefits scheme to an accumulation scheme, the value of the benefit entitlements of the member is determined at that point of time. Where the trustee calculates a member’s benefits using a different method from that required for surcharge reporting purposes, any amounts in excess of the previously reported contributions are assessable in the year that they are transferred.

Frequently when a member converts from defined benefits to accumulation benefits—I think this is very important—there will be an offer of an increase in the member’s entitlements to be transferred to the accumulation membership as an incentive to accept the accumulation benefit. In other words, I am putting before the Senate that in this case there is an incentive, an increased benefit, over and above the benefit that would have been offered in the defined benefits scheme as an incentive when you move to an accumulation scheme, and any increased benefits represent contributions in the year that they are received. That may not have been clear in Mr Thomson’s comments. I do not know if Senator Sherry has any other information in relation to Mr Thomson that he would like to present to me, but my understanding is that the new schemes, the accumulation schemes, offer increased benefits. This causes the result in Mr Thomson’s case that Senator Sherry cited in the debate.

Senator Sherry raised an issue on behalf of shiftworkers at the Eraring power station relating to the superannuation guarantee earnings phase and the surcharge, and I have some information to lay before the Senate. As is well known, the SG legislation requires employers to make compulsory contributions to a superannuation fund for their eligible employees at a certain level based on the employee’s earnings base. In the case of award employees, the contributions are generally determined by reference to the award earnings base; that is, the ordinary time earnings. The earnings base for employees not covered under award arrangements would be the SG default earnings base. My advice is that in most cases this is simply the employee’s salary or wages, excluding overtime. The surcharge applies if a person’s adjustable taxable income exceeds $85,242 in the current financial year. Employees whose adjusted taxable income exceeds $85,242—that is, they are regarded in this legislation as higher income earners—because of a variety of allowances may be subject to the superannuation surcharge even though the earnings base on which their compulsory superannuation contributions is determined is relatively low.

I do not know whether Senator Sherry can shed any light on the Labor Party position. There will always be an argument as to the level at which the superannuation surcharge cuts in. The level that the government has determined is reflected in this year’s figure of $85,242 as the level which is marked out
for higher income earners. We are saying that in calculating this income there may be a variety of allowances that may be subject to superannuation surcharge even though the earnings base on which the compulsory contributions are determined is relatively low.

I commend this bill to the Senate. The bill reflects a very important aspect of this government: this is a consultative government, a government which goes around listening to people. Some issues were raised with this government; as a result, some changes were made in the legislation. I think this reflects the fact that this bill has—as I understand it—the support of all members in the chamber, which I welcome. I urge a speedy passage of the bill so that the wider public can have greater certainty in this matter.

Question resolved in the affirmative.

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

SUPERANNUATION LEGISLATION AMENDMENT (CHOICE OF SUPERANNUATION FUNDS) BILL 1998

Second Reading

Debate resumed from 17 February 1999, on motion by Senator Abetz:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (5.00 p.m.)—I might start by saying that at last—after three years of waiting—the government is finally allowing us an opportunity to debate its so-called choice measure. The Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998 is about anything but choice. This legislation is about the deregulation of the retail distribution of superannuation. It is about increasing fees, charges and commissions paid to the people who distribute superannuation products. It is about lessening the protections that, currently, members of superannuation funds enjoy in Australia. Labor supports informed choice and in particular its preferred option of investment choice.

Let me briefly outline the existing superannuation structure, particularly for Senator McGauran’s edification. Australia has a number of different types of superannuation funds: so-called do-it-yourself, DIY; corporate funds, mainly big business—Senator McGauran, this impacts on them—industry funds, multiemployer funds, as they are commonly known; public sector funds; and retail funds. All except for the latter are governed by nonprofit trustee structures, and these nonprofit trustees generally tender for the administration, investment and insurance provided.

Industry funds are multiemployer funds. They have joint employer and employee trustees. Some of the employee trustees are union officials, just as some of the employer trustees are officials of various industry organisations, just as some of them are executives in the business structure of those organisations. So there is joint trustee membership. And, more importantly, for Senator McGauran’s information, it requires a two-thirds vote of the trustees to make any decision. So they have effectively a joint veto over each other.

We saw the extensive spread of industry funds in the late 1980s following what is known as the three per cent productivity award superannuation case. This case required employers, in lieu of a wage increase for employees, to contribute three per cent of ordinary time earnings into what emerged as largely industry funds. At the same time, corporate funds were allowed to continue to exist. I acknowledge that, and I acknowledge generally the very good work they have done over many years.

The fund to which superannuation moneys are contributed is generally determined by industrial awards and agreements. This was for a very good reason, Senator McGauran, because at the time there was a call from business, particularly small business, that they did not want to have to pay into more than one fund. I think even Senator McGa-
uran can understand that an employer—who might have 20, maybe 100, employees—does not want to have to pay contributions, because of the administrative cost, into separate funds. If you think that the backlash from the business activity statement was significant, you wait and see—we are not going to see this, because I understand this legislation will be defeated—what happens if this legislation is passed and small business have to start contributing superannuation contributions into many different superannuation funds.

There is a more important reason for the continuation of the current system. A feature of Australia’s system is that there is extensive regulation of the retail distribution through the mechanism that I have just outlined. This is important because, generally, the administrative fees decrease as the size of a fund increases. Through the massive size of some of these funds—including corporate funds—they are able to negotiate very effective administrative charges as well as funds management fees and insurance rates, certainly far better rates for administration than we see in the traditional retail product.

There are still quite a few of these traditional retail products around. They are the real dinosaurs of the industry. These products were characterised by an individual purchasing a superannuation product and often paying the first year’s contributions in commission and then often paying one, two or three per cent of future contributions as commission, supposedly to cover administration costs. That is the system that this government wants us to return to—the individual will have to go and purchase a superannuation product—and this is in the name of choice.

This system has been introduced in two countries: Chile and the United Kingdom. A former Prime Minister of the United Kingdom, Margaret Thatcher, deregulated the existing superannuation industry in the United Kingdom. Individuals had to go out and make a choice about where their superannuation contributions were to go. They had to go and buy a product. What occurred was—even amongst people who are educated, and I include in that teachers, for example, and public servants—that people were required to do this and when they went out to buy the individual products following the deregulation of the system, frankly, they got ripped off.

There was an extensive study done about this, and many of the big insurance companies in the United Kingdom were ordered to repay moneys to people who invested. Unfortunately, a very significant proportion of people do not have sufficient financial literacy to make these decisions. They pulled out of existing funds; they were convinced, often by agents on commission, to go and join an alternative product at a very significant—

Senator McGauran—How are you going to keep administration costs down?

Senator SHERRY—I have touched on administration costs and I might return to the issue for the benefit of Senator McGauran. The highest costs occur where you have a transient work force such as in the hospitality industry or casual employees—employees of that type. The cost of multiemployer funds in this country, including corporate funds, is generally about a dollar a week or $50 a year. You cannot get cheaper—it is a very effective system. Indeed, the United States with, I acknowledge, a very right-wing President Bush is examining the Australian system because the right-wing Republicans are impressed by the efficiency of the delivery of superannuation vehicles in Australia, particularly when you are dealing with compulsory superannuation applying to just about the entire Australian work force.

Deregulation was a catastrophe in the United Kingdom. And likewise in Chile. Chile introduced compulsory private retirement savings accounts under the Pinochet regime. These are characterised, again, by the requirement for an individual to go and purchase their own retirement product. There have been surveys of fees, charges and commissions which have been found to generally take 10 per cent of the contributions flowing in to these particular funds. Indeed, it is a common feature of the Chilean system that incentives are provided for employees to switch from one fund to another: free bikes, free mobile phones and the like are offered to people to switch from one fund to another.
This is the outcome that this government would want to see in Australia through this legislation.

The government has stated that this so-called choice legislation will deal with the proliferation of accounts. This is a legitimate problem in Australia: we have eight million members of superannuation funds with 22 million accounts. Most Australians do not know that they can transfer and consolidate their accounts. But this government legislation does not solve that problem. The theory is that you have an individual account and you take it from workplace to workplace, but this legislation confers the power on the employer and, as an employee moves from one workplace to another, their account may not be acceptable to the employer—so it does not solve the problem.

**Senator O’Brien**—It is choice for the employer, not the employee.

**Senator SHERRY**—It is choice for the employer, as my colleague Senator O’Brien has remarked. The employer is going to resist genuine choice where an individual wants to place their money in their own fund because of the administrative costs. My personal suggestion for dealing with the proliferation of accounts is automatic consolidation at the end of each financial year, and this is achievable.

Why are fees, charges and commissions important? Why is it important to contain the cost of a private superannuation retirement system? It is very important because superannuation is not an employment generator for the agents and the retail distribution system. Its objective is to maximise the retirement income of the individuals who are part of the system. The government obviously has an important interest in maximising the retirement income of Australians, particularly given the ageing of our population.

Let me touch on that. Up until the late 1980s, superannuation was mainly the preserve of higher income earners, public servants and the like. The majority of Australians had no superannuation whatsoever. It was the Labor Party that introduced universal superannuation in the late 1980s. We are proud of having introduced universal superannuation, because it showed a vision to deal with the problems of the ageing population that are starting to emerge now and will fully emerge by the year 2020. There will be one in four people over the age of 65 by the year 2025; at the moment it is one in 10. How is this to be paid for? To a significant degree, it will be paid for by universal superannuation introduced by a Labor government in the late 1980s and the subsequent introduction of the superannuation guarantee and the extensive revision and rewrite of the Superannuation Industry (Supervision) Act 1993 which, among a variety of measures, included 100 per cent protection in the event of theft and fraud, which this government sought to water down recently and was fortunately defeated.

The interesting dichotomy of the Australian system is that retail distribution is heavily regulated but that investment takes the most liberal, if I can use that term, free market approach in the entire world. Again, that is of great interest to the American government because, under the Australian system, the trustees, subject to what is called the ‘prudent man’ principle—excuse the sexist terminology but that is the industry terminology—have to spread the investment to ensure that risk is minimised. Subject to that, the moneys are not just invested through the Australian economy—I think about 20 per cent of the investment is overseas—but also through various categories of the Australian economy. That has served Australia well, because under that system we have seen average returns over the last 13 years that have been very impressive. This is not just in one or two funds; right across the industry with only a few exceptions we have seen extremely impressive long-term average returns. It was the Labor Party’s superannuation guarantee policy and the Labor’s Party’s regulatory structure that have seen superannuation grow from about $40 billion in the late 1980s to $497 billion, according to the last APRA superannuation funds trend survey.

This is all about an ideological campaign to deregulate the superannuation industry. There is a common misconception, and I do believe a genuine misconception on the part of Senator McGauran—not in the case of his
colleagues but in his case—that they are union funds. They are not. I heard allegations in the last election being made by the former director of the Liberal Party that these funds contributed to the Labor Party. This was checked and it was found that a big fat zero was contributed by industry superannuation funds to the Labor Party’s election coffers. It was a false allegation.

The trustee system has served Australia well. The investment approach has served Australia well. We need to not be distracted by false issues that the government raises in this legislation but look at how we are going to improve on the superannuation system, how we are going to add to superannuation savings, to prepare for the ageing population. It would be very unfair to spread the cost of retirees in 20 or 25 years back to our children and our grandchildren. The requirement to increase taxes to fund this would be enormous without the superannuation. Labor have an alternative option. The option we put forward—and I am glad to see it has spread through many of the superannuation funds—is investment choice. You have a menu of investment options: you can pick equities, you can pick overseas investment, you can pick ethical investment. There are a whole range of investments, some riskier than others, some returning higher or lower. The fund member can tick a box and indicate where they want their money to go.

Interestingly, when we get to the issue of choice, very few people in funds to date have actually exercised an investment choice. The superannuation system that we have is admired by most overseas countries. They wish they could have done the same. They are facing increasing economic, social and political consequences as a result of the ageing population. I do not think Australia will be free of some of that conflict, but at least we have a firm starting base with our pension system funded from budget and our now universal superannuation system.

It is often argued in the context of choice that we should just leave it to the individual. The argument is that the individual can decide what the complex financial options are for their future. The argument put forward by Senator Kemp and others is that we will educate people to make these decisions if they do not have sufficient knowledge at the present time. Even if you could educate people, it would require a massive education campaign, and any education campaign run by this government would be in the form of a propaganda campaign, telling us how great choice is rather than actually educating people to make sophisticated financial decisions. I put a lot of faith in my pub test. I go down to the local Forth pub and people raise these issues with me.

Senator Kemp—I thought it was your local hairdresser.

Senator SHERRY—My hairdresser has raised it with me, too, Senator Kemp. He gets a general cross-section of the public through his salon. He has since retired.

Senator Kemp—Is that Stefan or Johann?

Senator SHERRY—No; it is Barry, for your information—as trivial and trite as your contribution is on this debate.

The ACTING DEPUTY PRESIDENT (Senator McKiernan)—Minister, you would be aware that interjections are unruly, and you are not in your seat.

Senator SHERRY—When the public ask about these sorts of issues, frankly, the public are lost when it comes to superannuation—not all, but the vast majority of people see the word 'superannuation' and the last thing they want to be doing is sitting down and reading up on all the prospectuses and making decisions about where their money is going to be invested. All the evidence shows that is the public attitude. I would concede that you can turn some of that around. You can educate some people, but I would submit the majority of people in our community simply do not have those skills at the present time. There is a simple practical problem, too: how do you educate people who are functionally illiterate in our society? The population of employees who are functionally illiterate is about 15 per cent. That means they cannot read a road map; they cannot follow a phone book. How on earth are they going to follow the sophisticated financial prospectuses that are being offered under the government model of choice?
I would predict a total disaster with this. In some ways, if you wanted to play the devil’s advocate and create mayhem, you would allow the government to pass this legislation, and we would see a very similar outcome to the one in Chile and the United Kingdom. The Labor Party are not going to do that. Our primary concern is to protect Australian superannuation savings, a well-designed system that has served this country well, and we will be voting against the second reading of the bill.

Senator HOGG (Queensland) (5.19 p.m.)—I rise to oppose the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998, along with my colleague Senator Sherry. I think this is a very important issue. Whilst I understand that it is most likely that this bill will fail at the second reading, I believe it is important to get a few issues on the Hansard record in respect of the issue of choice of funds. As Senator Sherry said, this is an ideologically driven issue and one that we are completely at odds with. If one looks at the issue of superannuation, you realise that superannuation is there to give people security in retirement. On a number of occasions here, I have outlined the three things: security in youth, security at work and security in retirement.

Senator McGauran—What was the first one?

Senator HOGG—It was security in youth: when you are young. People are entitled to feel reasonably safe and secure in those three phases of their life. Of course, one of the burgeoning areas is security in retirement, which cannot be afforded by the age pension, as Senator Sherry quite rightly said, with our ageing population. The advent of superannuation on a broader basis than what it was originally operating was welcomed indeed. Historically, superannuation was the preserve of executives and people in the corporate sector. It was also extended to public servants. Outside of those people, very few others enjoyed the benefit of superannuation. They had no assurance whatsoever that there would be security in their retirement other than by receipt of the age pension. Those who were excluded included skilled, semi-skilled and unskilled workers—white-collar and blue-collar workers alike—and full-time, part-time and casual employees.

Historically, these people had been denied, or did not have made available to them, access to superannuation and security in retirement. So their only prospect was to receive the age pension. Of itself, that was never a bright prospect. In the case of my parents, my father was a blue-collar worker. My father did not have access to superannuation. My father did not have access to a secure income retirement benefit when he retired. Today, we are on the threshold of seeing the younger generation gaining the benefits of lifelong superannuation through a compulsory superannuation scheme that will give them at least some prospect of having security in their retirement. As my colleague Senator Sherry quite rightly points out, that is still with a compulsory superannuation system which is short of the mark. Even when it moves to nine per cent next year, it will be well and truly short of the mark when one considers that, to get a reasonable benefit for retirement, one would need to contribute in the order of 15 per cent. Of course, that will not be achieved by choice of fund. It will only be achieved through an extension of the requirements under the superannuation guarantee.

As Senator Sherry rightly pointed out, we do have an ageing population. We do have this stress on the public purse. We do have this need for security in retirement, for a policy that guarantees people that the payment they will receive will ensure their safety and wellbeing throughout their retirement years. This gets to the very heart of the issue of choice of funds. Under this proposed bill, in my view, people would be subject to a deal of pressure to choose which fund they were to belong to. That pressure could come from high-pressure salespersons; it could come from the employer; it could come from a number of sources. People may feel under adverse pressure to transfer into products that are marketed in a slick and very flash manner—products which might look appealing to the eye in the first instance but which, at the end of the day, offer a hollow return, with those who promote the schemes...
being the real beneficiaries of those schemes. That is the difficulty that lies ahead with this issue of choice of fund.

If you go back and look at how we ended up with a retirement policy at all in this nation, you will see that it was certainly no thanks to this government and that it was certainly no thanks to the employers. Whilst I said that they were prepared to look after those who were in a privileged position within employment, they were certainly never of a mind to look after those who were not in a privileged position. In the 1980s the trade union movement’s push for award superannuation was the initial breakthrough for workers in this country to get superannuation on a broader basis.

As a trade union secretary at that time, I was heavily involved in the gaining of superannuation for my members, many of whom were women, many of whom were part-time and casual employees, who had never had any access during their working life to superannuation. So this was a major achievement indeed. But there was monumental resistance from employers to employees gaining access to that superannuation. We spent countless hours in the industrial commission arguing the pros and cons of superannuation, arguing what sort of fund it should be. My union, the Shop Distributive and Allied Employees Association, was not the only union that was involved in a loggerhead battle with the employers to achieve that minimal breakthrough of three per cent. The three per cent that we were seeking at that stage was nothing more than a deferred wage increase.

We were not seeking that the money be put into a union fund, because none of these funds were union funds. They have been quite wrongly tagged and labelled over a long period of time as union funds. They were industry funds where there were equal representations of employers and employees. The reason for that was that the employees—whose contributions were being paid not voluntarily but in a compulsory scheme, because it was an award provision and later on was covered by the SG—had some confidence that their investment was being protected such that they could reap the benefits of that in their retirement. I recall the rigorous argument that went on as to the merits and demerits of different funds in the state industrial commission in which I was involved at that stage. It got down to not one single fund but a number of funds. But, at the end of the day, the commission in its wisdom, even in Queensland, recognised and limited the number of funds that people could have access to. That was an important thing indeed.

The next step that became of paramount importance was that the representatives appointed by both the employers and the employees were there to represent the interests not of the employer and the employee but of the person whose contribution had been made to that fund, to maximise the return for that person and to ensure, at the end of the day, that there was a reasonable retirement fund and benefit for these people. Part of this argy-bargy at the time was the clamouring by the major superannuation firms to try to claw back and get their greasy fingers into the cut of the superannuation cake and, of course, they were excluded. They whinged and whined about that forever and a day because they knew that there was an ageing population. They knew that the superannuation pot would grow and they wanted to get into the action. They wanted a slice of the action. We have already seen a reasonable attempt by the government to appease the banks, which also wanted a slice of that action, by including retirement savings accounts in previous legislation before this chamber. This really boils down to choice of fund, trying to let the snake oil salesmen and saleswomen out there, who over a long period have preyed off other people’s prospective benefits, pocket it themselves, line their own pockets and make a killing. Of course, they have been basically excluded by the operation of industry funds. This is an attempt to claw back. Claw-back in this case has a lot of connotations for employees.

When we look at some of the difficulties to which Senator Sherry alluded—and I will deal with a couple of those in a moment—we need look no further than at the educational issue. Senator Sherry referred to the fact that somewhere in the order of 15 per cent of people are basically illiterate. They are not
able to read these much-vaunted key feature statements which are supposed to enable a person to take a considered view as to which fund they should or should not belong to. Mr Silk from the Industry Funds Forum gave evidence to the Senate Select Committee on Superannuation and Financial Services. He said, at page 70 of the *Hansard*:

The Australian Bureau of Statistics’ last survey on this—

and this is on functional illiteracy—

was released in 1997. They surveyed 9,000 adult Australians, aged between 15 and 74. Forty-six per cent of the Australian population within that age ranked at level 1 or level 2 on a five-level scale of numeracy and literacy. Level 5 is very good, level 4 is pretty good, level 3 is satisfactory. Levels 1 and 2 are unsatisfactory. Forty-six per cent of adult Australians ranked at level 1 or 2. The percentage of people in the work force would be less than that, but it is still very great indeed.

It is not the people who are able to cope with the system who will have the difficulties under this legislation, it will be those who are vulnerable. These are the people that are vulnerable—the people who do not have the reading skills, the mathematical skills, the business skills. It is not going to affect the corporate end of town. The corporate end of town have at their disposal the technology, the advice, to assist them to make a value choice—and a proper choice—and they have the ability to pay for it. If a couple of dollars go missing in some speculative investment, they are not put on their backside for the rest of their lives. What we have here is the sort of experience that Senator Sherry referred to. He referred to the UK and Chile. When people had the access, they were exposed. They blew everything and found themselves not prospectively in receipt of a benefit on which they could retire with any security.

So we have a difficulty with this piece of legislation. It is going to make a large group of people who are vulnerable more vulnerable. Currently these people have the right and have the access to choice of investment but, through their own choice, they do not go down that path. One only has to look at the evidence that came before the committee to find that choice of investment has not been taken up in any serious way in the community. This may well be a reflection that account balances have not reached a sufficiently high enough level for people to be stirred into action, but it may be that many people do not feel confident or competent enough, or do not understand the system or the information that is put before them, to enable them to make a value judgment as to what would constitute a reasonable investment for them. I quote from page 75 of the *Hansard*, reporting the roundtable of the Senate Select Committee on Superannuation and Financial Services on Tuesday, 14 December. A witness before the committee, Ms Rubinstein from the Australian Council of Trade Unions, told us, and this refers in part to a witness who had appeared earlier in the day:

... I think Peter reported some figures from JMI—that is, Jacques Martin—

15,000 members out of two million members had exercised choice. In a large fund that I have something to do with, I think over 1,000 people have exercised choice out of 350,000 members, or 150,000 to 200,000 active members.

I am not being selective here but, given the time for the second reader, one can find other examples of where there is no clamouring because people do not have the skills, the education, the capacity or the desire to make a choice about their investment. Yet we have the government going down the path of putting this bill before the Senate. They want to deregulate the retail superannuation market and open it up to God only knows who. We do not know their credentials, we do not know the push selling that would take place. We do not know what would happen. The consequences, of course, would be borne by those people who are most vulnerable and who would suffer the greatest effects.

Part of the discussion that we had before the Senate committee was in respect of the key feature statements, which are supposed to be the guiding light for people to make the choice. Having sat through that hearing on 14 December, I cannot recall there being any agreement as to what would constitute a reasonable key feature statement that would allow people to make an informed choice. At the end of the day, we have something that is completely useless to the populace at large.
The government should be focusing on ensuring that there is security in retirement for people, and that we do not have people appearing before the Senate select committee telling us how their superannuation retirement benefit had been invested in a scheme that collapsed. We want to see a decent superannuation scheme for Australian people.

(Time expired)

Senator ALLISON (Victoria) (5.39 p.m.)—The Democrats have always been somewhat ambivalent about providing choice of superannuation funds to employees. For many reasons, some of which have already been raised in this debate, we opposed the government’s Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998 almost three years ago now. However, it is hard to oppose the principle that all workers should choose where their superannuation goes, especially when some workers are already making quite sophisticated choices and financial decisions. In many instances the choice is being made for them by their employer who, I would argue, in many cases has no more understanding of how our superannuation system works than employees.

Regrettably, after considerable discussion with the government and considerable effort to turn this legislation into an acceptable form, I must advise that we cannot support the bill, even with the government amendments that have been circulated. An argument supporting choice is that employees offered choice will be much more interested in the adequacy of their superannuation retirement income if they have greater control over those funds. This greater level of interest should also encourage higher levels of superannuation savings. We have always said that we believe most workers are better off in corporate and industry superannuation funds, and a choice regime would need to reflect that.

Industry funds in this country have served Australian workers extremely well. Over recent years industry funds have delivered an averaged 9.6 per cent return; corporate funds, even higher at 10.7 per cent return. That has been with the consistency of 97.5 per cent of funds paying returns of over nine per cent. By contrast, a wide range of private sector commercial funds have not delivered such high returns and have done so with higher fees. In short, the vast majority of workers would, in our judgment, receive better retirement incomes by being members of industry funds than by being pushed into public office schemes. That has been our judgment and that has been at the forefront of our discussions with government over the last period of time. It is very obvious that the majority of workers are not currently equipped to make decisions about where their superannuation should go, and certainly very few workers are in a better position of knowledge than their trustees about the way to invest money.

The Democrats do not share the pessimism of the ALP about whether in the future this will be the case. We do have faith—I guess you could say—in the opportunities to communicate to workers what superannuation is all about. In fact, the industry, governments and all players in the superannuation sector have failed to get across a very important message to employees about superannuation. It has been my experience that the information provided to employees has been couched in jargon impossible to relate to individuals. It is only in very recent times that the industry has turned this around and is now making great progress. I know there are a number of funds now where members can look on the Internet to find out what their savings are and really engage in that process. We need reform and we need to inform members of superannuation funds about what savings they have and about adequacy. As we all realise, even SG is not likely to deliver the sorts of retirement incomes which most people imagine they will receive.

As I said, we have been engaged on and off for more than a year in discussions with the government, and we had reached an accommodation on the framework of the choice regime. In order that people understand what we think is necessary for an acceptable choice regime, I want to go through the key principles that were discussed, many of which are reflected in the amendments that have been circulated. The industry was very concerned that choice would be im-
posed on them, on top of a whole range of other amendments to our superannuation scheme over the past two years, and so the start-up date for this scheme would need to have been well after the financial services reform legislation had been bedded down. The scheme would have encouraged collective agreements, and this certainly was not part of the scope of the original legislation. We would have insisted on a very strong disclosure regime, with long and short form statements which would have been accurate, simple and devoid of jargon and which would have allowed employees to properly compare schemes one with another, looking at fees and charges, exit and entry charges, commissions, death and disability insurance, rates of return and estimated payout figures, together with investment choices available.

I was very pleased to hear Senator Sherry’s remarks about investment choice because, as people in this place will know, the Democrats have been arguing for a long time for employees to have investment choice. We think there are a lot of great advantages in providing investment choice. This is not just about whether the scheme is a managed growth scheme or another type of scheme; it is also about allowing people to make choices about ethical investment, about environmentally sound investment and about putting into place the three stools—the economy, the environment and social good. We think that superannuation offers a great opportunity for us not just to see that retirement savings are there but also to act for good in our community. Investment choice would have allowed people some involvement in the way that money is invested in this country. So, as I said, I was very pleased to hear those remarks from Senator Sherry. It was not the case when the Democrats initiated an inquiry back in 1996, as I remember, into superannuation investment. At that stage, both major parties said that providing choice would be too complex and unnecessary. I am glad to hear that there is a change of heart with regard to the opposition.

A disclosure regime would have been developed by what was called a ‘choice consultative committee’. That would have been made up of those with the very best expertise in this field. It is a very complex field indeed, and I certainly do not have the necessary knowledge and expertise to determine what exactly a disclosure regime should look like. There were a lot of different views about this in the industry, but we acknowledge that there were people much better equipped to do that. However, key features statements would have fully disclosed all the fees, charges and commissions, the funds’ rates of return, the levels and types of insurance cover and the general risk profiles of the funds, and the statements would have had to be clear and understandable. To promote a more transparent disclosure regime on the impact of fees and charges on earnings, the use of a management expenses ratio or some better alternative, calculated using a clearly stated and compulsory standard, would have been considered.

The states would have been encouraged to put in place consistent regimes as well. Disclosure in some states is not adequate, in our view, and so it would have been desirable for each state to have a consistent regime and one which provided a safety net for employees. The default fund would have been the fund that the majority of employees were in, or the award fund. A notice to new employees would have clearly spelt out all the options. No third line forcing would have been allowed. There would have been a code of conduct for selling superannuation in the workplace. Quarterly payments would have been required, instead of the current annual payments. As we know, the huge fund of so-called ‘lost accounts’ is to a large degree created by the fact that no employer is required to make payments more often than annually. Many do pay quarterly, and some pay monthly, but the payments of the vast majority of workers out there are made annually and, of course, if a business is having financial difficulties, it very often happens that workers’ entitlements are not paid for a whole 12 months, if the company goes bust.

The education campaign that the government originally proposed would have been significantly increased. As has already been said, there is a need not only for much more education for people but also, I think, for support for employees. To this end, a con-
sumer education centre, seed funded by government, could have provided continuing education for members, as well as advice on the use of the key features statements and on other matters to be taken into account by employees in choosing a fund. It could have assisted consumers in taking complaints to the Superannuation Complaints Tribunal and it could have provided independent analysis of choice and other superannuation issues. I think that is a big gap in our current system. Certainly, the inquiry that we are currently conducting in the superannuation committee is demonstrating that it is not clear to those who have got problems with superannuation where they should go and how they should get advice. A consumer centre specifically set up to deal with superannuation issues is very necessary, we think.

It would have been necessary to limit churning and to make greater efforts to solve the issue of members’ lost accounts. This is an urgent matter that should be addressed, with or without a choice regime. We would urge the government to pick up on that issue and see that this money is redistributed.

At the end of the day, in spite of many discussions, a great deal of consultation and a lot of talking, the government was not prepared to accept our condition that such major change to our superannuation system would have to fix the problem of discrimination against same sex couples. That was a fundamentally important condition for the Democrats, and it was stated at the outset. The Democrats cannot, therefore, support this legislation.

I understand that the government has great difficulties, and that has been demonstrated time and time again over the last few weeks when we have put up amendments which neither the coalition nor the Labor Party has been prepared to support. To us this is fundamentally a human rights issue and it is not something we are going to give up on. We think it is time that the federal government faced this issue fairly and squarely as a human rights issue. It is about discrimination and it is time the federal government took a lead on it. Instead of that we in this place are behind many states and other organisations that have come to understand why this discrimination is unacceptable. So in conclusion I say it is regrettable that we have reached this point and have not been able to finally reach agreement. At the end of the day I would ask why this group should not have legislative protection and certainty about their entitlements being transferred to their partner when they die.

(Quorum formed)

Senator KEMP (Victoria—Assistant Treasurer) (5.56 p.m.)—I rise to conclude the second reading debate on the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998. I might say it is a disappointing conclusion to a very important public policy issue which has been brought before this chamber. The Labor Party attitude to choice has been well known. The Labor Party, for reasons which I think we all know, has set its mind against choice, and I think the arguments that Senator Sherry put forward show the utter thinness and poverty of the Labor Party position. The Labor Party position is essentially that workers’ funds should be directed into particular funds whether those funds are performing well or poorly.

Senator Sherry—They are performing.

Senator KEMP—Senator Sherry, the reality, as you know, is that there is a variety of performances.

Senator Sherry—They’re very happy with them.

Senator KEMP—No-one complains about a well performing fund, but members whose superannuation is tied up in a poorly performing fund have a lot of reason to complain. In fact, unless this Senate can progress this debate—as the awareness of superannuation, the importance of superannuation, moves on—a lot of people will be asking why they are not allowed to direct contributions to funds of their particular choice. That would be a very valid question, and until this bill goes through the answer will be: because the Senate—and the Labor Party in particular—was opposed to giving them choice.

Senator O’Brien—No, giving the employer the choice.
Senator KEMP—Senator O’Brien shows his complete lack of appreciation of this issue. Senator O’Brien is the spokesperson, as Senator Sherry is, for particular interests, but the fact of the matter is the interests which are important in this debate are employee interests.

Honourable senators—Hear, hear!

Senator KEMP—Employee interests are the interests here, and the trade union ALP does not speak for employee interests, I might say. What the trade union ALP speaks for is, of course, union interests. The Labor Party’s approach to this is extremely unfortunate, to be quite frank. We can apparently allow an individual to choose his employment, to determine where his investments are, whether he purchases a house or not, whether he gets married or not and indeed to determine whether he wishes to have children or not and take on huge commitments. But, according to the Labor Party, we cannot allow that employee to choose where his superannuation contribution should go. That is the patronising nonsense that the Labor Party puts forward.

This debate will continue for a long period of time, but I point out to the Labor Party that they will be constantly reminded when there are complaints from employees about poorly performing funds and how their contributions continue to be directed to those funds. Letters will be sent to Senator Sherry, who will be kind enough to take particular responsibility for what has happened in this case. Senator Sherry, I point out to you that, in your speech, you showed no understanding of what had been proposed. What you did today will come back to haunt you and the Labor Party.

Let me now turn to the Democrats’ position. It is true that we have had a very long period of discussion with the Democrats. It is true that those discussions were difficult, but we stayed at the table and we kept working at it. I think we came to a very good result—an excellent result—a result which would be welcomed by the industry, employees and, I believe, the Australian community. It is a great shame that, because of an issue which is quite separate from choice of funds, the Democrats find themselves unable to proceed to implement an agreement which they were a party to, which they worked on as hard as we did and which developed, I believe, a very satisfactory model for choice in order to move this debate further forward. I think it is a great pity that this has happened, to be quite frank.

I receive a lot of letters in relation to superannuation, but I cannot recall a letter that I have received from a same sex couple telling me that an individual, because of the death of his or her partner, has not been able to access dependency arrangements under superannuation. I think Senator Greig should carefully reflect on that. I do not know whether Senator Greig has fully appreciated that. There are a lot of issues in superannuation, Senator Greig, but I have to point out to you that this is an issue of how an individual is affected. As I said, I cannot recall a letter—there may have been one, but I cannot recall a letter. I receive letters about a whole host of issues. Senator Greig, as a result of your own interest in this matter, I have briefed you on it to try to indicate to you how the current arrangements work. It seems to me that you have failed to appreciate how the current arrangements work and you have taken this particular step which has inclined your colleagues to act in this particular manner. It is not a light matter that has occurred.

This is a very important policy; I believe that this is a very important issue in superannuation. It provides the freedom and the choice that individuals are quite entitled to exercise in relation to where their superannuation contributions go. I believe that you do not understand how the superannuation system currently works, and I think that is a great pity. The fact of the matter is that you have persuaded your colleagues, despite all the efforts and all the work that went into this to produce what I believe is an excellent model which will benefit the workers of Australia—

*Opposition senators interjecting—*

Senator KEMP—Senator Conroy and Senator Sherry are having a little giggle over there. As the debate goes on in the years to come, Senators, and people complain that their contributions were stuck in particular funds—the contributions that they were...
saving for their retirement—when they did not have the freedom to direct those contributions into the areas that they wanted, we will say that, in this important debate, it was Senator Sherry and Senator Conroy who were laughing and giggling in the front row. It is pathetic. It shows, frankly, the paucity of the Labor Party position. It shows you the authoritarian nature of the Labor Party. The one thing that the Labor Party hates is choice. Whatever public policy you get into, the one thing that the Labor Party cannot take is choice. This is another example where the Labor Party has shown its true colours.

I think it is a great pity that the Democrats have not felt that they are able to proceed with an agreement which we negotiated in good faith. I think the model which we produced, after many tortuous hours, was a good model. It was good for employers, it was good for employees and it was good for the industry. It had a lot of advantages; it set up arrangements for proper consultation and monitoring; it made sure that there was an education program that would properly inform employees. It achieved all those things and it provided time for the scheme to be brought in so that employers, employees and the industry would have time to adjust. But that has not eventuated. I have to say that, to me, that is a great pity, because this was an opportunity for the Senate to grasp an important public policy which could have an important effect on superannuation for the good of this nation. It happened for reasons which I think have been explained and, as I said, this model would have provided real choice for employees.

Senator Sherry got up and said what a dangerous thing this was. I was in Western Australia recently, where they have choice and it works extremely well. It is not an issue with employees—they like it—and it is not an issue with employers. It works.

Senator Sherry—Quote some evidence, Rod.

Senator KEMP—You have not been over there, Senator Sherry—you have been thinking too much about the surcharge. You have never been able to get your mind off the surcharge. Let me tell you: it works well. One of the options that is available in that scheme is unlimited choice—exactly one of the options which is available in the scheme which we have put before this chamber.

What has happened here today is a disappointment. Those senators in the Labor Party were always predictable on this. The Labor Party never came to the table with any sign that they were prepared to think constructively. The Labor Party’s position is: ‘We tell you, the employee, where to put your money, and don’t you dare protest.’ That is exactly what the Labor Party’s position is. That is the contempt with which the Labor Party continue to treat workers. That is your position and it is a disgraceful position, in my view. Frankly, Senator Sherry, the Labor Party, Mr Simon Crean and Mr Kelvin Thomson will find out that a lot of people in the coming months and years will be extremely unhappy as a result of this decision that the Labor Party have made.

I have been through the actions of the Democrats. Again, Senator Greig, I am very
happy to take you through exactly what happens in this area, and that would explain to you why I do not receive letters on this issue about people who are adversely affected. What have you achieved? You have prevented large numbers of Australian workers having the right to determine where their contributions go—that is what you have achieved. Senator, if you look at how superannuation works for the vast majority of funds, I do not believe that the concerns that you have are at all justified.

The government will continue to want to progress choice in superannuation. We are always open to negotiation and discussion. We have given up on the Labor Party. The Labor Party has no policy.

Senator Conroy—You won’t even talk to us.

Senator Kemp—What is the Labor Party’s policy on superannuation? ‘Oh, we’ll have a review after the election.’ Five years of effort and they came up with this brilliant policy; ‘We’ll have a review after the election.’ What a truly pathetic effort; and Senator Sherry, because you spend so much of your time on superannuation, you must bear a heavy responsibility for that. I conclude the debate, but I make the point once again that this government will certainly continue to pursue the policy of choice in the interests of Australian workers.

Senator Forshaw—I seek leave to make a few short remarks.

Leave not granted.

Senator Greig (Western Australia)(6.12 p.m.)—I seek leave to make a short remark.

Leave granted.

Senator Greig—I thank the senators for the opportunity to make a brief remark. I realise that it is not the usual protocol to speak after the minister has spoken, but I did not give a speech in the second reading debate. Also, in his concluding remarks the minister mentioned me several times and threw several rhetorical questions at me which I felt ought to be replied to. The key question that the minister asks is: what have I achieved? Of course, the assumption in that is that I personally, as an individual, am responsible for this bill dying. That is not true. Every single Democrat senator is fully behind the notion that we fully recognise gay and lesbian people as fully human. It is not a fringe issue for us, it is not an eleventh-hour issue for us: we are deadly serious about this. What I hope I have achieved in part, through my advocacy on this issue, is that you might actually take it seriously.

The other thing I have achieved is that I have proved that the coalition is hostile to the recognition of same sex relationships. When I had a debate with Senator Sherry in the discussion on the superannuation of MPs, I made the claim that the coalition was hostile to the recognition of same sex relationships. There was a chorus of outcry from the coalition. I particularly remember Senator Jeannie Ferris calling out, ‘That’s not true.’ Well, hello. A bill valued at $10 trillion over the next few decades is about to die because the coalition will not recognise the humanity of gay and lesbian people and the justice inherent in recognising same sex relationships. All we are talking about here is allowing a lesbian or gay person in a relationship to unambiguously leave their superannuation to their partner, to have the right to a death benefit to their partner or to have the right to a reversionary pension where that applies. The coalition is not prepared to demonstrate that basic element of humanity, to the point where it would rather sink a bill. Do not blame the Democrats or me for allowing a bill—

Senator Harradine—Mr Acting Deputy President, I raise a point of clarification. I do not wish to interrupt the debate. What relevance have the statements being made by either the minister or Senator Greig? I cannot find in this bill any reference whatsoever to homosexual couples. Am I right or am I wrong? Where in this piece of legislation is the issue that Senator Kemp raised or the one to which Senator Greig is responding?

The Acting Deputy President (Senator Watson)—The minister concluded the debate. Senator Greig sought leave of the Senate to make some short comments. The Senate provided him with that opportunity and he was speaking to it. The question of relevance is the point of order that I presume
you were raising. I believe that relevance is important because it would appear that the matter is going to be voted down at the second reading. The questions of the debates between the various parties with the minister had been raised during the discussion and I presume that they are the matters that Senator Greig is referring to. To that extent, in terms of the debates—and the passage or non-passage of the bill—I think they are relevant.

Senator GREIG—Thank you, Mr Acting Deputy President. I will conclude, because I realise that I asked to speak only for a short time. If Senator Kemp so desperately wants this legislation, he has our support. All he needs to do is concede the point on recognising same sex relationships. I am not delaying or frustrating this legislation, nor is Senator Allison and nor are the Democrats as a whole. The coalition is doing so as it digs in on bigotry and intolerance. All it has to do is let go of that, as most states have already done, and the bill will pass.

Question put:
That this bill be now read a second time.

The Senate divided. [6.22 p.m.]

(The Acting Deputy President—Senator J.O.W. Watson)

Ayes.......... 31
Noes.......... 35
Majority....... 4

AYES
Abetz, E.  
Boland, G.H.  
Chapman, H.G.P.  
Crane, A.W.  
Ellison, C.M.  
Ferris, J.M.  
Heffernan, W.  
Hill, R.M.  
Knowles, S.C.  
Macdonald, I.  
Mason, B.J.  
Minchin, N.H.  
Payne, M.A.  
Tchen, T.  
Troeth, J.M.  
Watson, J.O.W.

NOES
Allison, L.F.  
Bolkus, N.  
Brown, B.J.  
Campbell, G.  
Collins, J.M.A.  
Cooney, B.C.  
Crowley, R.A.  
Forshaw, M.G.  
Greig, B.  
Hogg, J.J.  
Lees, M.H.  
Lundy, K.A.  
McKiernan, J.P.  
Murphy, S.M.  
O'Brien, K.W.K.  
Ridgeway, A.D.  
Sherry, N.J.  
West, S.M.

* denotes teller

Question so resolved in the negative.

SUPERANNUATION LEGISLATION  
(COMMONWEALTH EMPLOYMENT)  
REPEAL AND AMENDMENT BILL 1998  
COMMONWEALTH  
SUPERANNUATION BOARD BILL 1998  
SUPERANNUATION LEGISLATION  
(COMMONWEALTH EMPLOYMENT—SAVING AND TRANSITIONAL PROVISIONS)  
BILL 1998  
SUPERANNUATION LEGISLATION  
(COMMONWEALTH EMPLOYMENT)  
REPEAL AND AMENDMENT  
(CONSEQUENTIAL AMENDMENTS)  
BILL 1998

Second Reading

Debate resumed from 7 December 1998, on motion by Senator Ian Campbell:

That this bill be now read a second time.

Senator SHERRY (Tasmania) (6.27 p.m.)—It is not my intention to speak at length on this superannuation legislation, because the core issue, if I can refer to that, is relatively simple, and also because we have had a great deal of debate about super-
annuation matters, not just today but during this week, with seven bills before the Senate. The four bills we are dealing with go to closing the existing Public Service superannuation funds to new entrants. Further, they go to effectively reducing the level of employer contribution into public sector superannuation funds from—depending on individual circumstances—an average of about 17 per cent to 18 per cent employer contribution down to the superannuation guarantee, which is currently eight per cent and is going up to nine per cent next year. That is the impact of the legislation that the Senate is considering.

One interesting point I note is that it is not to apply to all federal government employees. There is a class of employees that has been excluded from the legislation we are considering and that is employees who are in the employment of the military. The military have two currently operating superannuation funds and they have been excluded. No explanation has been given about why the military have been excluded from the current legislation that the government has put forward. Another group of employees—people employed in universities and CAEs, which are substantially funded by the Commonwealth—have also not been included in the legislation we are considering.

There is one important reason why the Labor Party will not be supporting this legislation. In the lead-up to the 1996 election, the Liberal Party issued a policy manifesto that included a range of commitments, a number of which are quite infamous now. The commitment with respect to the GST is well known. There was also a commitment with respect to the surcharge tax—that there would be no increase in taxes, no increase in existing taxes. That promise disappeared as well.

Also, the Liberal-National Party made an ironclad commitment that they would not reduce or change existing Public Service superannuation arrangements, including contribution levels. In this case the Prime Minister went one step further: the Prime Minister, Mr Howard, issued a letter, personally signed, to every public servant in Australia. In that personally signed letter, which I have tabled in previous debates in this chamber, the Prime Minister said that he would not change and reduce the contribution levels into public sector superannuation not just for existing employees but also for prospective employees, for future employees. There could be no clearer commitment given by the Prime Minister of the country than to send a personally signed letter to every public servant in the country giving them that assurance. That is a very significant step further than a published election policy manifesto.

So the Prime Minister entered into that commitment—very clear—and we intend to hold the Prime Minister to that promise that he made in that personally signed letter that he circulated that he would not seek to change the prospective superannuation arrangements of federal public servants in this country. He signed the letter. I suppose that if the Labor Party wanted to create a level of political mayhem we could let the legislation pass and draw the attention of the public servants to this correspondence from Mr Howard. What happens to the standing of a Prime Minister when he personally signs a letter giving an undertaking to public servants and then seeks to break it? Of course, he did not seek to break it this year; he sought to break it back in 1998. This legislation we are dealing with is almost three years old and the government has refused to bring it to a concluding vote.

We were warned—it touched on a threat—by Senator Kemp earlier about our attitude to so-called choice in respect of superannuation. If the Prime Minister wants to make an issue of this in the election, let him. We will produce the personally signed letter by Mr Howard promising not to do it. So if he wants to make it an issue, let him do that, because there can be no greater reduction of the credibility of the political leader of the country when he has personally signed a letter to public servants and then attempts to break that commitment two years later, and here we are three years after the original introduction of the legislation finally bringing it to a vote. The Labor Party’s position on this is very simple: we will hold the Prime Minister to that personally signed commitment not to reduce the contributions into
superannuation for public servants. We are going to hold him to that commitment. As far as I can recall, this is the only occasion in recent Australian political history when the Prime Minister of the day has sent a personally signed letter to such a significant number of Australians. We intend to hold him to that promise and we will be voting against the second reading of the package of four bills that go to this issue.

The bills also relate to the debate we have just had in relation to so-called choice. Effectively, with the ending of the current public sector superannuation funds for new entrants, the market would then be totally deregulated and new public servants would have a choice, so-called, imposed on them. The Labor Party makes no apologies for having indicated three years ago that we would vote against that legislation then. We have held it up for three years—we make no apologies for that—and the government has finally decided to bring it to a vote. I might say that I believe the bills will be defeated, but certainly those new entrants to the Public Service in the last three years do enjoy superannuation entitlements that were promised by the Prime Minister, and the Labor Party has held him to that promise.

What is it about this government with respect to superannuation? Why do they dislike superannuation so much? We had an indication from one of the Prime Minister’s advisers, a Mr Morris, in a public forum that was reported in this week’s Financial Review that the government object to the compulsory nature of superannuation. In Australia up until the late 1980s we had a superannuation system that was largely for privileged or wealthier Australians. Australians who were on lower and middle incomes, who worked in industries such as hospitality, retail and other sectors of the economy, had no superannuation whatsoever. The Labor Party is rightly proud of its extension of superannuation to all employees.

What is it about this government that continually wants to reduce superannuation in a whole range of areas? We have had a long debate on two occasions this week fixing up the surcharge mess. We have had two bills, Nos 15 and 16, in respect of the so-called surcharge, fixing up problems, problems that not just the Labor Party—not just I—warned the government about time and time again over the last four years. The impact of the surcharge tax is to reduce the final account balance of many Australians’ superannuation. In the last financial year it reduced the account balances by $570 million. That is another $570 million taken by this government out of the retirement savings of Australians. That is the impact of it. The Liberal-National Party failed to contribute the co-contribution savings to superannuation. It repackaged it as a savings rebate and that lasted for approximately six months. That was supposedly to encourage savings. Again, that should have gone to the superannuation system.

This government presented a bill last year, which was fortunately defeated, to reduce compensation in the event of theft and fraud in respect of superannuation from 100 per cent to 80 per cent. They wanted to reduce superannuation protections! We have just had a debate about so-called choice and all the problems that that would have led to. What is it about this government when it comes to superannuation? I can only reasonably conclude that they have an ideological objection to compulsorily preparing for the ageing population. It is not as though the current age pension is not compulsorily funded through the tax system. This is very necessary because history has shown that, throughout the entire world, people will not save voluntarily for their retirement. They just will not do it and, if they do do it, they start too late and they do not save sufficiently.

This is the importance of Australia’s approach to preparing for the ageing population: a decent age pension funded from the budget with superannuation built on top of that. This is a model widely admired throughout the world. We have delegations coming regularly to Australia—I have met some of them—from Europe, from China recently and from the United States, for example, who come to look at what we have done. What we have done is not perfect—there are still areas and issues that need to be resolved—but we have put in place a system that is far better developed than that of any comparable advanced economy. It is a sys-
tem to provide a decent, secure retirement income for all Australians. At the moment, one in 10 Australians is over the age of 65; by the year 2025, one in four Australians will be over the age of 65. It is not fair and reasonable to put a question mark over the retirement income of Australians. It is only a government with true vision that can actually start to prepare Australia for the ageing population, as the Labor Party did in the late 1980s with the introduction of compulsory superannuation.

The Prime Minister discovered the issue of the ageing population in a speech a week or two ago. He has since tried to argue that the GST was necessary. Interestingly, countries around the world with VATs or GSTs have increased the rate considerably to help pay for the ageing population. They are being hit with this problem now. Australia will be hit with this problem in 20 to 25 years. Yet the Prime Minister denies that they are going to increase the rate of the GST. Well, we will see.

There is also clear evidence that the Prime Minister has no interest in building superannuation savings. How are we going to deal with the ageing population? I would suggest that the Liberal-National Party has only one other way of dealing with this issue, and that will be to increase the pension age. Some countries have already started doing that. That is what you have to do if you have insufficient superannuation savings—the inadequate private provision of retirement income. That is not fair or reasonable either, but inevitably that is where this government is leading us.

These bills represent yet another attack on the accumulation of superannuation savings in this country. It is yet another attempt to reduce these savings. For those reasons, and for the reasons outlined earlier in relation to the personal commitment and the signed letter given by the Prime Minister, the Labor Party will not be supporting these bills and we will be voting against the second reading.

Senator HARRADINE (Tasmania) (6.41 p.m.)—I am not on the list to speak—Senator Allison, I think, is the next one—but rather than having to call a quorum I will take this opportunity to raise a matter which should be discussed and no doubt will be discussed tomorrow. This group of measures before us deals with questions of superannuation for Commonwealth employees. There are other bills coming forward that will deal with members of parliament. Since the matter was addressed briefly by Senator Kemp and responded to by Senator Greig, I wanted in this second reading debate to advert to a raft of amendments that will be moved by the Democrats and to have an in-principle look at those.

One proposal being put forward by Senator Greig for the Democrats is to have superannuation death benefits paid to a homosexual partner living with the member of the superannuation fund. I put to the chamber: what about all those people living together—those maiden aunts, for example—one of whom is employed and is a member of a superannuation fund and dies? There is no provision in the Democrat proposal for her sister, who is doing an enormous amount of good in the community. No, there is nothing for her—unless she is having sex with her sister! If ever I have seen sex discrimination, this is it. I suggest that the Democrats come and defend that, if they can. They have got it all the wrong way around. I believe that we should seriously have a look at this question and no doubt we will during the committee stage tomorrow.

Senator JACINTA COLLINS (Victoria) (6.45 p.m.)—I rise very briefly in this matter to declare an interest. I am absolutely confident that I can rely on Senator Sherry to represent my interests as a member of the opposition in this matter. I have been informed that the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1998 validates the previous payment by current members of parliament of partial transfer value into our superannuation scheme. In 1995, I was inadvertently allowed to pay to the Commonwealth a partial transfer of my previous superannuation arrangements, and I wish to declare that interest.
Senator ABETZ (Tasmania—Special Minister of State) (6.46 p.m.)—Given the hour, I will keep my comments very brief. I thank honourable senators for their contribution to this debate. It is clear that senators have made up their mind in relation to this legislation. We believe that the reforms in these proposals are worthy of support. Unfortunately, it looks as though they will be voted down. We as a government will seek to pursue them on another occasion. The importance of superannuation reform is in the forefront of a lot of people’s minds. There is the need for this legislation to be carried. It is unfortunate that the Labor Party and the Democrats will combine to break down these important proposals.

The ACTING DEPUTY PRESIDENT (Senator Watson)—I understand that there is a declaration of interest.

Senator JACINTA COLLINS (Victoria) (6.47 p.m.)—I understand I need to remind the Senate of the interest I declared during the debate on the matter.

Question put:

That these bills be now read a second time.

The Senate divided. [6.51 p.m.]

(The Acting Deputy President—Senator J.O.W. Watson)

<table>
<thead>
<tr>
<th>Ayes</th>
<th>30</th>
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<td>Noes</td>
<td>35</td>
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<tr>
<td>Majority</td>
<td>5</td>
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AYES

Boswell, R.L.D.  Brandis, G.H.  
Calvert, P.H.    Chapman, H.G.P.  
Cooman, H.L. *  Crane, A.W.  
Eggleston, A.   Ellison, C.M.  
Ferguson, A.B.  Ferris, J.M.  
Gibson, B.F.    Heffernan, W.  
Herron, J.J.    Hill, R.M.  
Knowles, S.C.   Lightfoot, P.R.  
Macdonald, I.   Macdonald, J.A.L.  
Mason, B.J.     McGauran, J.J.  
Minchin, N.H.   Newman, J.M.  
Patterson, K.C.  Payne, M.A.  
Tambling, G.E.  Tchen, T.  
Tierney, J.W.   Troeth, J.M.  
Vanstone, A.E.  Watson, J.O.W.

NOES

Allison, L.F.    Bartlett, A.J.J.  
Bourne, V.W.    Brown, B.J.  
Buckland, G.    Campbell, G.  
Cherry, J.C.    Collins, J.M.A.  
Conroy, S.M.    Cook, P.F.S.  
Cooney, B.C.    Crossin, P.M.  
Crowley, R.A.   Denman, K.J.  
Faulkner, J.P.  Forshaw, M.G.  
Gibbs, B.      Greig, B.  
Harradine, B.  Hogg, J.J.  
Hutchins, S.P.  Lees, M.H.  
Ludwig, J.W. *  Lundy, K.A.  
McKernan, J.P.  McLucas, J.E.  
Murphy, S.M.    Murray, A.J.M.  
Ridgeway, A.D.  Schacht, C.C.  
Sherry, N.J.    Stott Despoja, N.  
West, S.M.      

PAIRS

Alston, R.K.R.  Carr, K.J.  
Campbell, I.G.  Bishop, T.M.  
Kemp, C.R.  Mackay, S.M.  
Reid, M.E.  Bolkus, N.  
Abetz, E.      Evans, C.V.  

* denotes teller

Question so resolved in the negative.

Senate adjourned at 6.55 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

* National Health Act—Private health insurance premium changes—Report for the quarter commencing 1 April 2001.

The following documents were tabled by the Clerk:

* A New Tax System (Family Assistance) (Administration) Act—  
  Child Care Benefit (Breach of Conditions for Continued Approval) Amendment Determination 2001 (No. 1).  
  Child Care Benefit (Eligibility of Child Care Services for Approval and Continued Approval) Amendment Determination 2001 (No. 1).
Commonwealth Authorities and Companies Act—Notice pursuant to paragraph 45(1)(a)—Participation in formation of Snowy Hydro Limited.

Higher Education Funding Act—Determination under section—

15—Determination No. 23 of 2000.
16—Determination No. 22 of 2000.


QUESTIONS ON NOTICE

The following answers to questions were circulated:

Internet Content
(Question No. 3590)

Senator Greig asked the Minister for Communications, Information Technology and the Arts, upon notice, on 29 May 2001:

(1) What is the definition of ‘item’ as used in the report. For example, when a URL (eg. http://www.somewhere.com.au/page/) displays a single Web page containing 10 prohibited images on that one Web page, is this counted as 1 item, 10 items or 11 items.

(2) Given that the Australian Broadcasting Authority (ABA) complaint form states ‘Note: You can complain about only one item of Internet content in each complaint form’, why do the figures show that 67 items were investigated for 6 complaints about prohibited content hosted in Australia.

(3) What is the reason for the large difference in average number of prohibited items found per complaint about Australian-hosted content (67 items from 6 complaints) as compared to those about overseas hosted content (136 items from 133 complaints).

(4) In relation to the 6 of 221 complaints investigated by the ABA that resulted in finding 67 items of prohibited content hosted in Australia: (a) did the ABA issue 67 separate final takedown notices, with each particular final takedown notice notifying of only one item of content; if not: (i) how many final takedown notices were issued, and (ii) how many items of prohibited content were notified in each of the final takedown notices; (b) (i) how many Internet content hosts were issued with a final takedown notice, and (ii) how many Internet content hosts were issued with more than one final takedown notice; and (c) for each of the 6 complaints that resulted in a finding of prohibited content hosted in Australia, how many final takedown notices were issued regarding: (i) items classified ‘R’ (and how many items), (ii) items classified ‘X’ (and how many items), and (iii) items classified ‘RC’ (and how many items).

(5) In relation to the 45 items of ‘Australian-hosted serious Internet content’ that the ABA referred to the relevant state or territory police service: (a) how many items were found on Australian-hosted World Wide Web sites (excluding Web-based interfaces to Usenet newsgroups); (b) how many items were found in Usenet newsgroups (including Web-based interfaces to Usenet newsgroups); and (c) how many items were found elsewhere (ie. ‘other files that can be downloaded from an archive or library’).

(6) Why did the ABA report in an answer to questions on notice to the Senate Estimates Committee (30 November 2000) that there were 91 items referred to state or territory police from 1 January to the end of November, while the official report states 89 items from 1 January to the end of December.

(7) In relation to the 89 items referred to state or territory police, and the 156 items referred to the Australian Federal Police, in the full year, has the Minister inquired about the prosecution rate of offenders and received information from police that would support claims that the Internet has been made safer; if so, how many prosecutions have commenced in Australia.

(8) In relation to the ABA’s discretion to defer action about prohibited content or potential prohibited content at the request of police in order to avoid prejudicing a criminal investigation: (a) during the period July to December 2000, how many Australian-hosted items were the subject of deferral of action by the ABA at the request of police; (b) does the number of completed investigations include instances where the ABA’s investigation of content is complete but action (eg. issue of a takedown notice) has been deferred by the ABA at the request of police; if so, in relation to completed investigations as at 31 December 2000, how many Australian-hosted items had not been the subject of a final takedown notice due to deferral; and (c) of the 15 incomplete investigations as at 31 December 2000: (i) how many concern Australian-hosted content and how many of the latter were incomplete due to deferral by the ABA at the request of police, and (ii) how many Australian-hosted items were involved.

(9) In relation to the statement in the report that: ‘The Government considered it a logical step to legislate to extend the existing classification system for film, television and other media to the Internet. This system was established to provide guidance to the community, and particularly to con-
cerned parents, on the suitability or otherwise of content. The classifications are based on contemporary community values and are well understood and accepted by the community, what system is in place to enable members of the public to receive guidance on the suitability or otherwise of Internet content, that is, to find out the classification that has been given by the ABA or the Office of Film and Literature Classification (OFLC) to particular Internet content.

(10) During the 12 months, January to December 2000: (a) how many complaints and/or investigations were initiated by the ABA itself and/or its staff; (b) how many complaints were initiated by government agencies (other than the ABA); (c) how many complaints were initiated by members of Parliament; and (d) how many complaints were initiated by persons who are not Australian residents.

(11) During the six months, July to December 2000, how many different individuals or organisations initiated the 290 complaints.

(12) What is the total cost for the 2000 calendar year of the Internet regulatory activities of the ABA and the community activities of NetAlert.

(13) How many items of Internet content were referred to OFLC for the year; and (b) what was the total amount of fees levied by OFLC for classification services for: (i) Australian-hosted content, and (ii) content hosted overseas.

Senator Alston—The answer to the honourable senator’s question is as follows:

(1) In the second Six Month Report for July to December 2000, ‘item’ means Internet content viewed as a single page using a standard browser, or a single Usenet newsgroup message or ‘posting’ as viewed by a standard newsreader. A page containing 10 images is counted as one item.

(2) The ABA’s online complaint form is based on international practice, adapted to take account of the particular requirements of the Australian law. The ABA asks complainants to lodge a separate complaint for each item of content. In this context, ‘item’ means a single page of World Wide Web content, a Usenet newsgroup, or a single posting to a newsgroup.

In some instances the simple equation between complaint and item is not easily made. For example, where a complaint relates to an entire newsgroup, rather than a single posting on it, the ABA investigates a sample of the postings contained in the newsgroup, asks the Classification Board to classify the content concerned and takes appropriate action according to the classification. For the purpose of reporting, each of the postings sampled is then counted as an item in the statistics. Similarly, the ABA may investigate a sample of the content on a World Wide Web site about which a person has complained, and each page would be counted as an item in the statistics. However, investigations relating to complaints about World Wide Web content are less likely to involve more than one item of content, as complaints relating to such content generally pertain to a specific page of content.

(3) Three of the six complaints about Australian hosted content related to Internet content in Usenet newsgroups hosted on Australian servers. As noted above, investigations relating to content hosted in Usenet newsgroups may involve two or more items of content.

All complaints about content hosted outside Australia related to World Wide Web content. A complaint about World Wide Web content is likely to involve only one item of content.

(4) (a) When the ABA investigates a complaint about Internet content that is hosted in Australia, and is satisfied that the content concerned is prohibited content, one final take-down notice is issued to the relevant Internet content host.

In the period 1 July to 31 December 2000, the ABA issued six final take-down notices, related to 1, 15, 10, 10, 1 and 27 items of content respectively.

(b) (i) 5

(ii) 1

(c) The following table shows the number of notices issued per complaint and the number of items classified R, X or RC covered by each notice.
(5) (a) Thirty-six per cent of items referred to State and Territory police services were items hosted on World Wide Web sites.

(b) Sixty-four per cent of items referred to State and Territory police services were items from Usenet newsgroups hosted in Australia.

(c) None of the items referred to State and Territory police services were items hosted in other formats.

(6) The discrepancy appears to relate to misclassification and/or double-counting of some items in the ABA’s complaint database at the time the November 2000 statistic was calculated. The complaint data are regularly reviewed for accuracy and the inaccuracy was corrected prior to calculation of the December 2000 statistic. It is anticipated that such inaccuracies will be eliminated when the interim, prototype complaint management system currently in use is replaced as part of the upgrading of the ABA’s information management infrastructure, scheduled to be complete by the end of June 2002.

(7) Law enforcement investigations relating to Internet content that the ABA has referred to a State or Territory police service are matters to be determined by the relevant agency in question.

The issue of feedback on content referred to the Australian Federal Police (AFP) will be addressed in a new service level agreement to be negotiated between the ABA and the AFP, replacing the current Memorandum of Understanding between the two organisations. As part of the new agreement, the ABA will receive regular reports on action taken in relation to matters it has referred to the AFP. Where appropriate, the ABA will report on the feedback it receives.

(8) (a) Nil.

(b) No; Nil.

(c) (i) 1; Nil.

(ii) 1

(9) In determining the definition of prohibited content under Schedule 5, the Government had the option of applying existing classification guidelines or creating new guidelines, which would take time and may create confusion and uncertainty, not only for users and providers of online content, but also the broader community and the Internet industry. In this context the Government chose to apply the existing classification system for films and computer games.

The Guidelines for the Classification of Films and Videotapes and the Guidelines for the Classification of Computer Games are developed by the Office of Film and Literature Classification (OFLC) in consultation with the community and are approved by Commonwealth, State and Territory Ministers with Censorship responsibilities. The guidelines, which are reviewed regularly, are readily available from the OFLC and set out in detail the nature of the content in each of the classification categories (eg R, X).

Unlike traditional media, where Australia can largely control the import and distribution of material refused classification or subject to legal restrictions, the Internet presents a more complicated medium. Publishing information about the classification of prohibited online content may entail the provision of information that would enable members of the public to access that prohibited content, thereby undermining the policy intent of the scheme.

(1) (a) The ABA initiated 33 investigations during the period 1 January – 31 December 2000. All 33 investigations were initiated following receipt of information which could not be formally considered to be a complaint (because the person was not entitled to make a complaint or the complaint did not contain all the required information), but which the ABA considered warranted investigation due to the apparent serious nature of the content concerned.
Thirteen investigations were initiated as a result of information received from persons who were not Australian residents, mainly from overseas complaint hotlines. The remaining 20 investigations were initiated after receipt of anonymous complaints. The ABA requires complainants to provide their name and contact details when lodging a complaint and it is the ABA's policy to investigate an anonymous complaint only where the complaint appears to relate to child pornography or similarly serious content.

(b) No complainants identified themselves as government agencies.

(c) Seven complainants identified themselves as members of Parliament.

(d) Twenty-nine complaints were received from persons who identified themselves as not being Australian residents. As noted above, the ABA initiated investigations in relation to 13 of these complaints, due to the apparent serious nature of the content concerned. No further action was taken in relation to the remaining 16 complaints, as they appeared to be outside the scope of the co-regulatory scheme.

The ABA received complaints from a broad range of members of the community who encountered online content about which they had concerns. Some 132 different individuals lodged complaints during the period 1 July to 31 December 2000, excluding investigations initiated by the ABA.

The ABA's functions in relation to Internet content regulation are specified in Schedule 5 of the Broadcasting Services Act 1992 and include the following:

- investigating complaints about Internet content;
- registering and monitoring compliance with codes of practice for the Internet industry;
- advising and assisting families about supervision and control of children's access to Internet content;
- conducting and/or co-ordinating community education programs about Internet content and usage;
- conducting and/or commissioning research into issues relating to Internet content and usage;
- liaising with relevant overseas regulators and other bodies in relation to co-operative arrangements for regulation of the Internet; and
- informing itself and advising the Minister and developments and trends in the Internet industry.

Detailed information about the performance of these functions is set out in reports tabled by the Minister for Communications, Information Technology and the Arts on 5 September 2000 and 19 April 2001.

For the calendar year 2000, the costs of these activities were as follows:
Administration costs (1), $294,825
Salary and superannuation (2), $323,494
Total (3), $616,319

Notes:
1. Administration costs relate to the activities of the Online Services Content Regulation Section and relevant costs incurred by the Director of Policy and Content Regulation Branch and Deputy Chairman.
2. Salary and superannuation costs relate to the staff of the Online Services Content Regulation Section only.
3. The following items are not included:
   - other direct labour costs such as employer superannuation contributions, long service leave and separation payments;
   - indirect labour costs;
   - corporate overheads;
   - indirect administration costs; and
   - depreciation.

The total cost for the 2000 calendar year for NetAlert activities was $786,984. Of this amount, $87,014 was expended by the Department of Communications, Information Technology and the
Arts on NetAlert activities early in the 2000 calendar year while the operations of the NetAlert Secretariat were still being established. NetAlert’s main activities are directed at community development and education.

(13) (a) 156

(b) (i) 141 items at a total cost of $77,390

(ii) 15 items at a total cost of $7,650.

Learning Network Australia: Erebus Consulting

(Question No. 3669)

Senator Carr asked the Minister representing the Minister for Education, Training and Youth Affairs, upon notice, on 29 June 2001:

Has the department commissioned Erebus Consulting to conduct a review of the Learning Australia Network; if so: (a) when; (b) what was the cost of the review; (c) what was the scheduled completion date; (d) when was it actually completed; and (e) can a copy of the review be provided.

Senator Ellison—The Minister for Education, Training and Youth Affairs has provided the following answer to the honourable senator’s question:

The Department commissioned Erebus Consulting to conduct an evaluation of the Learning Network Australia.

(a) The evaluation was commissioned on 4 December 2000.

(b) The cost of the evaluation was $110,000.

(c) The scheduled completion date was 30 March 2001.

(d) The evaluation has not been completed. A draft final report of the evaluation was completed on 19 April 2001. It is currently with members of the evaluation’s advisory committee for comment.

(e) Once the evaluation has been formally completed, I shall consider whether to release the final report.

Telecommunications: Mobile Phone Coverage

(Question No. 3691)

Senator O’Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 5 July 2001:

(1) On how many occasions has the Minister or the Parliamentary Secretary requested a financial contribution from the State Governments to expand mobile phone coverage.

(2) In each case: (a) which State was asked to make a financial contribution; (b) when was the request made; (c) how was the request for financial assistance communicated; and (d) what was the quantum of the request.

(3) In each case, what was the response to the Government’s request for funding to expand the mobile phone network.

Senator Alston—The answer to the honourable senator’s question is as follows:

(1) I am advised that such a request appears to have been made on one occasion only. The Minister for Communications, Information Technology and the Arts wrote to Premiers and Chief Ministers of the States and Territories on 24 May 2001 advising that the Government would be seeking equal funding to that being provided by the Commonwealth under the $50.5 million program to improve mobile phone coverage announced on 15 May 2001 as part of the Government’s response to the Telecommunications Service Inquiry. Indicative levels of Commonwealth financial contribution for extension of mobile coverage in each State and Territory were discussed at the Online Council Ministers Meeting held on 6 July 2001 and States and Territories were asked to respond by 27 July to the Commonwealth’s request for equal contributions.

(2) (a) All States and Territories were asked to make a financial contribution.


(c) See answer to (b) above.
Indicative levels of State and Territory contributions requested are: New South Wales $13.97 million; Queensland $12.26 million; Victoria $8.15 million; Western Australia $8.14 million (including the $7 million already committed under the WirelessWest program); South Australia $3.39 million; Northern Territory $2.46 million; Tasmania $1.48 million; Australian Capital Territory $0.05 million.

The Government is waiting for final responses from State and Territory Governments.
CONTENTS

WEDNESDAY, 8 AUGUST

Workplace Relations Amendment (Termination of Employment) Bill 2000—
   In Committee ................................................................. 25819
   Third Reading ............................................................. 25833
National Crime Authority Legislation Amendment Bill 2000 [2001]—
   Second Reading .......................................................... 25833
   In Committee ............................................................... 25846
Matters of Public Interest—
   Visas: Students ............................................................. 25858
   Visas: Students ............................................................. 25862
   Minister for Employment, Workplace Relations and Small Business .... 25862
   Whistleblowers: Heiner Case ........................................ 25864
   Hunter Valley: Protest .................................................. 25867
   Human Cloning ............................................................ 25869
Questions Without Notice—
   Cabinet Documents ..................................................... 25872
Distinguished Visitors ........................................................ 25872
Questions Without Notice—
   Economy: Growth ........................................................ 25872
   Seyffer, Mr John .......................................................... 25873
Distinguished Visitors ........................................................ 25874
Questions Without Notice—
   Australian Broadcasting Corporation: Services ......................... 25874
   Commonwealth Property Holdings: Divestment ...................... 25875
   Parliamentarians: Entitlements ......................................... 25876
   Business Tax Reform: Small Business .................................. 25877
   Salmon and Trout Industry: Imports from New Zealand ............. 25878
Distinguished Visitors ........................................................ 25879
Questions Without Notice—
   Goods and Services Tax: Small Business ............................... 25879
   Child-Care Benefit ........................................................ 25881
   HIH Insurance .............................................................. 25882
   Dryland Salinity and Water Quality ...................................... 25883
Answers to Questions Without Notice—
   Veterans: British Nuclear Tests ........................................ 25884
   Australian Hearing Services: Board Appointment .................... 25884
Answers to Questions On Notice—
   Questions Nos 3136 and 3137 ........................................... 25885
   Question No. 3531 ......................................................... 25887
Answers to Questions Without Notice—
   Business Tax Reform: Small Business ................................. 25888
   Goods and Services Tax: Small Business ............................. 25888
   Parliamentarians: Entitlements ......................................... 25895
Petitions—
   Occupational Health and Safety Legislation ............................ 25895
Privilege ................................................................. 25896
Notices—
   Presentation .............................................................. 25896
Committees—
  Selection of Bills Committee—Report...................................................... 25897
Notices—
  Postponement ....................................................................................... 25899
Environment: 2020 Vision for Plantations.................................................. 25899
Committees—
  Economics References Committee—Extension of Time............................ 25899
  Legal and Constitutional References Committee—Reference .................... 25900
  Scrutiny of Bills Committee—Report.................................................... 25901
National Crime Authority Legislation Amendment Bill 2000 [2001]—
  In Committee.......................................................................................... 25901
  Third Reading......................................................................................... 25909
Veterans’ Affairs Legislation Amendment (2001 Budget Measures) Bill 2001—
  First Reading.......................................................................................... 25909
  Second Reading...................................................................................... 25909
New Business Tax System (Thin Capitalisation) Bill 2001 and
New Business Tax System (Debt and Equity) Bill 2001—
  First Reading.......................................................................................... 25910
  Second Reading...................................................................................... 25910
Business—
  Government Business............................................................................... 25911
Superannuation Contributions Taxes and Termination Payments Tax
  Legislation Amendment Bill 2001—
  Second Reading...................................................................................... 25911
Superannuation Legislation Amendment (Choice of Superannuation Funds)
  Bill 1998—
  Second Reading...................................................................................... 25918
Superannuation Legislation (Commonwealth Employment) Repeal and
  Amendment Bill 1998,
Commonwealth Superannuation Board Bill 1998,
Superannuation Legislation (Commonwealth Employment—Saving and
  Transitional Provisions) Bill 1998 and
Superannuation Legislation (Commonwealth Employment) Repeal and
  Amendment (Consequential Amendments) Bill 1998—
  Second Reading...................................................................................... 25931
Documents—
  Tabling.................................................................................................. 25935
Questions on Notice—
  Internet Content—(Question No. 3590).................................................... 25937
  Learning Network Australia: Erebus Consulting—(Question No. 3669)...... 25941
  Telecommunications: Mobile Phone Coverage—(Question No. 3691)...... 25941