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Tuesday, 28 August 2001

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 2.00 p.m., and read prayers.

QUESTIONS WITHOUT NOTICE

Aged Care: Subcontractors

Senator McKIERNAN (2.00 p.m.)—My question is directed to Senator Vanstone, representing the Minister for Aged Care. Is the minister aware that a nursing provider in Western Australia, Western Health Care, is attempting to turn all its nursing and care staff into subcontractors? Is this allowed under the Aged Care Act? And doesn’t it raise significant implications for the continuity of care of residents when there are no permanent care staff in these nursing homes? How can staff monitor the conditions of residents over time and note the changes in behaviour if they are constantly being changed? How can staff feel any security in their employment and commitment to the facility if they can have their employment terminated without notice?

Senator VANSTONE—Just by way of preamble, it is important to note that this government has significantly increased the number of aged care places available for older Australians. After the government came to office in 1996, the Auditor-General out in Centenary House—the building that gives the Labor Party some $36 million more than they would otherwise be entitled to; a contract they gave themselves in government, Madam President, you might remember—found that there was a 10,000 aged care place deficit left by the previous Labor government. I have no doubt that $36 million would buy quite a few of those aged care places. Over the last three years, more than 31,000 new places have been released to make up for the deficit and the need for growth. In 1995-96, the former Labor government spent $2.5 billion on residential aged care. The outlay in 2001 financial year is expected to be $4.2 billion.

The PRESIDENT—Point of order, Senator McKiernan.

Senator VANSTONE—Madam President, I am only one minute into my answer.

Senator McKiernan—Madam President, I rise on a point of order. I asked quite a specific question about conditions in Western Australia. Minister, why are you trying to avoid the answer? Why don’t you tell us and fess up?

The PRESIDENT—The minister has had a short time into her question and preamble to the answer, but I am sure she is aware of the question that has been given to her.

Senator VANSTONE—Thank you, Madam President. I can understand the upset of my otherwise honourable colleagues opposite when it is pointed out that in 1995-96 they only spent $2.5 billion on residential aged care, whereas in 2001 this government is expected to spend $4.2 billion—a $1.7 billion increase. The total income to providers of residential aged care during the five years following the Howard government aged care reforms is projected to increase from $4.2 billion in 1997-98 to $6 billion this year—an increase of some 41 per cent. That sets the general scene, and a very positive scene it is for this government. I could go on. I could take up the whole four minutes in time, but I do not think I need to, because I know, Madam President, that you know the good story and I know that the Labor Party know the good story as well. They know how hopelessly they did in aged care. Senator McKiernan asked me a specific question about a specific provider in Western Australia, which goes to the question of whether I know about this provider, whether I have a brief on them and are they turning their staff into subcontractors and subsequent questions following from that—for example, the security of the employee. I do not mean to say you are only interested in employees; you raised the question of the guarantee of care levels for the patients, which of course this government is particularly interested in. I will refer that part of your question to Mrs Bishop.

Senator McKIERNAN—Madam President, I ask a supplementary question. I think it is now clear to the Senate why the minister was seeking to avoid the question: she simply did not know. She has taken the particular points that I addressed to her on notice, and I ask her also to take these points on no-
tice. Is it in the interests of the frail elderly residents to have their nursing home run like a building site?

Honourable senators interjecting—

Senator McKIERNAN—You promised to give it up before question time! Will the government commit to stopping this type of employment arrangement with care staff being subcontractors in the aged care sector?

Senator VANSTONE—Senator McKiernan, yes, I will. But in answer to the simple question of whether it is in the interests of frail and elderly people in nursing homes—because that is largely who is there but there is another population—to be in a place that is run like a building site, no, I will tell you why. The Builders Labourers Federation—as they were called then—and the rough stuff that goes on in the unions and on building sites is something you would not even want to hear about, and none of us would want that visited on people who work in nursing homes and who provide care for the elderly. Do we want to see more union control of Australia? Do we want to see unions controlling Australia coast to coast? No, Senator McKiernan. Thank you for the opportunity of pointing that out.

Economy: Small Business Confidence

Senator CHAPMAN (2.07 p.m.)—I direct my question to the Assistant Treasurer. Will the minister inform the Senate of new independent surveys demonstrating small business confidence in the economy created by the coalition government’s responsible economic management? Is the minister aware of any threats to this increased business confidence?

Senator KEMP—I thank Senator Chapman for that important question. I am happy to report to the Senate that the latest Yellow Pages business index for small and medium enterprises was released today. It shows a marked improvement in business confidence: 61 per cent of small and medium enterprises are confident in their prospects over the next 12 months, in contrast to 18 per cent who are worried. Furthermore, whereas in May this year a net balance of 35 per cent felt that the economy was in a slowdown, the latest figure shows a net balance of 12 per cent now believing the economy is in a period of growth.

I strongly concur with their assessment that the economy is in a period of growth. The Treasurer, Mr Costello, has made some comments on that in recent days. The fact is that this government’s reforms, including tax reform, have created an environment where Australia is more competitive. Cost structures are lower and tax rates are more competitive. This gives small business a better chance to grow.

Dealing with the second part of the question, as to whether I was aware of any alternative policies, I am able to say to Senator Chapman and the Senate that there are a number of concerns that small business have. One of those particular concerns is the Labor Party policy of roll-back. Small business have made their views clear through the thoughts of many people. They would echo the thoughts of Mr Rob Bastian, the President of the Council of Small Businesses of Australia, who said this about the Labor Party’s policy of roll-back:

Roll-back would increase complexity, increase supervision and increase fear.

Many others have made comments about the problems of the Labor Party’s roll-back. It is very clear that the Labor Party policy will complicate taxation for small business. Once you start roll-back, where will it end?

Opposition senators interjecting—

The PRESIDENT—Order! There are far too many people interjecting.

Senator KEMP—We have had some trouble in this Senate when we have asked the Labor Party to define what roll-back is, to tell us how much roll-back—

Senator Sherry—Caravan parks, petrol, BAS.

Senator Conroy—Caravan parks, petrol, BAS.

The PRESIDENT—Order! Shouting in the fashion that is going on is disorderly, and those participating know that.

Senator KEMP—It is a great pity that when you stand up to try to debate issues like roll-back the Labor Party attempts to shout you down. I would have thought they would
have been happy to have a debate on roll-back. I have challenged the Labor Party time and time again to come into this chamber and debate roll-back. Each time, they rush out of the chamber, because it is the last thing they want to talk about. No-one seems to know what roll-back is. I notice my time is running out, and I do have an important quote from Senator Peter Cook on this very issue. If there is a supplementary question, I may be able to share that with the Senate.

**Senator CHAPMAN**—Madam President, I ask a supplementary question. The minister has given some insights into the nature of the growing confidence of small business in the economy as a result of the government’s policies and some of the threats, but I ask him if he could provide further information on those matters.

**Senator KEMP**—We have demanded that the Labor Party come clean on roll-back. Let me just quote a very important person in the Labor Party. It may come as a surprise to some people in the wider public that Senator Cook is an important person in the Labor Party, but he is. At a Senate estimates committee hearing on 23 February, Senator Cook shared with us his views on roll-back. This is what he said:

We are going to roll all the GST back and we are going to roll it back progressively.

This is a quote which I think is at variance with what the Labor Party is now saying. It certainly might rate as the third or fourth most famous quote of Senator Peter Cook. What we need is for the Labor Party to clarify its position on roll-back, because there is no doubt that people in small business are very concerned about the Labor Party policy in this area.

**Aged Care: Templestowe Private Nursing Home**

**Senator CHRISS EVANS** (2.13 p.m.)—My question is directed to Senator Vanstone in her capacity representing the Minister for Aged Care. Can the minister confirm that the government’s aged care standards agency found serious risks to residents in the Templestowe Private Nursing Home in a report dated 16 November last year? Can the minister also confirm that in the five months after the director of nursing resigned, in October 2000, there was no director of nursing employed at this nursing home? Given the subsequent events at this nursing home, can the minister explain how the Templestowe Private Nursing Home was granted accreditation on 12 December 2000, just 26 days after the serious risks were reported and while there was no director of nursing employed at the facility?

**Senator VANSTONE**—I thank the senator for his question. Templestowe Private Nursing Home has been the subject of quite significant debate over the last couple of months. I have some information in relation to that, and I will give that to the senator and indicate that such portions of his question as are not answered by the information I am about to give will be referred to Mrs Bishop.

Mrs Bishop tells me that she was advised on 23 and 24 July this year that the Aged Care Standards and Accreditation Agency conducted an accreditation audit at Templestowe. Serious risk was identified at the home. Since that time, the department and the agency have been working with the home to try to achieve the best outcome for residents, their families and the carers. Mrs Bishop advises that a new provider with a good track record in aged care has purchased the places at the home and that the department approved the transfer of the places on 15 August this year. Although accreditation at the home will cease on 12 September 2001, there is the capacity for the department to determine that exceptional circumstances may exist which would permit the continuation of residential care subsidy for a further six months. That matter is not decided but is still under consideration by the department, and it would allow the new owner further time to undertake a gradual winding down of the home in consultation with the residents and their families.

I hope all senators would support a situation where there are difficulties at a nursing home—decisions not being made and then no time or very little time given to families and residents to accommodate what changes might have to be made. The new approved provider will continue to care for the residents until they are relocated to suitable al-
ternative accommodation. Commonwealth nursing officers are visiting the home regularly to ensure that residents receive appropriate care, and the department and the agency will continue to monitor the home closely.

Mrs Bishop has also been advised of an incident at the home resulting from the vendor-approved provider’s failure to pay a bill. The department has sought and received assurances of restitution of the services from the previous approved provider’s lawyers, and they will ensure that that is carried out. The department has also arranged to have the restitution work professionally assessed when it has been completed. The department will attend the home today to assess the situation and make certain that the residents’ safety needs are met. Senator, I know there are some parts of your question that predate those comments, but I thought that since you are interested in the home you might be interested in that. Those parts of your question which go to earlier dates and other matters will be referred to Mrs Bishop.

Senator CHRIS EVANS—Madam President, I ask a supplementary question. I thank the minister for her answer. I want to focus her in on the question, which was on early incidents, because Minister Bishop has constantly talked about being notified on 23 July. The point of my question is to ask: was the minister notified about the report in November last year which found serious risk to residents and which predates any public comments she has made about it, and also was the minister aware that there was no director of nursing for five months at the home while it was allegedly under the supervision of the department?

I am particularly keen to understand why it was granted accreditation when it had clearly failed care standards only some weeks before. Minister, I appreciate you taking it on notice, but I would like you to—if you could—get an answer as to why the minister has not referred to the November report last year which identified serious risk, and why the home was granted accreditation when clearly it had failed to meet care standards.

Senator VANSTONE—I have nothing to add.

Local Government: Federal Policy

Senator CALVERT (2.18 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Will the minister advise the Senate how the Howard government’s strong economic management has benefited local government? Will the minister outline any new funding provided to councils to assist them in supplying services to local residents? Is the minister aware of any alternative policy approaches in this area which may threaten council funding?

Senator IAN MACDONALD—The Australian economy is now one of the strongest in the world, thanks to the Howard government’s economic management. We all know how it has supported the economy generally but it is not quite so well known how it has supported local government, and through local government home owners, families and small business. Local governments around Australia owe about $6 billion in debt. When Mr Beazley was in charge of the Labor Party government, councils were paying around 14 to 15 per cent interest rates on that debt. Now, as a result of the Howard government’s economic management, councils are paying around six to seven per cent. So there is an eight per cent saving on some $6 billion in debt, which means councils in Australia are now saving something like $480 million every year. That means real savings for home owners, for families and for small business.

I appreciate Senator Calvert asking me this question. Senator Calvert was a very distinguished warden of Clarence council in Tasmania and he did a great job there. Senator Calvert is interested in these things. It is a pity, though, that Mr Beazley’s frontbench has no interest in local government whatsoever. They have not asked one question during question time—the time when you can get a few debates and a few different ideas going—this whole year on local government, and only one has been asked on regional services. That shows what Mr Beazley thinks about local government and about regional services.
In addition to that, Senator Calvert will be pleased to know that the Howard government has just paid out $1.38 billion to local government around the country. That again means that people’s rates—for families, for small businesses, for home owners generally—will be that much less. In addition to that, we have provided $1.2 billion in Roads to Recovery money. That means that motorists can drive on local roads safely as a result of the Howard government’s initiative. The Howard government was able to make that $1.2 billion investment in local roads because of its good economic management.

Senator Calvert asked me whether I was aware of alternatives for policy in relation to local government. Normally I would say that I have heard nothing from Mr Beazley’s frontbench, but I have. There is a policy out from Mr Beazley’s frontbench. They do have a policy for local government. Let me tell you what it says. It says that Labor will ‘work towards’ a review of some financial issues. It does not say that they will have a review, but that they will ‘work towards’ a review. That is not one of the 166 inquiries that Mr Beazley is already having. It is another one that the shadow minister will ‘work towards’. We know that Labor want to up spending on health and education and they will tell you they want to up spending on local government and they want to fund roll-back, but Mr Beazley is simply unbelievable in his claim on local government, as he is with everything else. He could not tell the truth about the health system. He could not tell the truth about his own family and the health system. Why would anyone believe that he could tell the truth in relation to funding of local government?

Goods and Services Tax: Queensland

Senator LUDWIG (2.22 p.m.)—My question is to the Minister representing the Prime Minister, Senator Hill. Is the minister aware of a number of statements made by the Prime Minister yesterday confirming that his government will be fully open and transparent on the issue of the Groom FEC GST scam? In the new spirit of accountability to parliament, will the minister table all of the findings of the internal review conducted by the Liberal Party federal secretariat, which Mr Lynton Crosby stated yesterday was conducted over the weekend? Will the minister table the financial records and work sheets prepared by the Australian Taxation Office, to which Mr Crosby also referred yesterday?

Senator HILL—The Labor Party is back on the big issues again. They have had nearly six years in opposition, nearly six years with the task of seeking to develop an alternative program for government, and the best they can do is get back into the gutter. I would have thought that, within a month or two or three of a federal election, we would now be hearing the substance from Labor. But are we hearing any substance? We have just heard Senator Ian Macdonald on the issue of local government. Labor’s policy on local government is to think about having an inquiry. I had a debate with Senator Cook last week, and he told me what their policy is in relation to boat people. Their policy is that—if they come to government—they will call in the public and discuss what should be done.

Senator Ludwig—Madam President, I rise on a point of order. It is a matter of relevance. My question was: will the minister table the financial records and work sheets prepared by the Australian Taxation Office? So far, we have not heard an answer in relation to that. Will the minister answer the question?

The PRESIDENT—The minister still has time—but, perhaps, Minister Hill, you have strayed somewhat from the question.

Senator HILL—I was trying to put the question in context, because it is a deficient opposition. It is an opposition that has failed in its task of developing an alternative program. I was just saying that in relation to boat people, they are not even going to have an inquiry. They are going to ask the people what they should do.

Senator Faulkner—Madam President, I rise on a point of order. It is a matter of relevance. Could you explain to the Senate how an answer that goes to the issue of boat people can be relevant to the question that Senator Ludwig asked? Surely, that is out of order and surely you should direct the Leader
of the Government in the Senate to answer the question he was asked.

The PRESIDENT—I cannot direct him as to how to answer it, but I can draw his attention to the question and ask that he deal with it and remain relevant to it.

Senator HILL—Madam President, at least on the issue of taxation, we would have thought that we would have heard a Labor policy by now. All we have heard is that they intend to roll back the GST; but they are unwilling to define what that even is. Presumably, that means that they will put up income taxes instead. I raise these issues—

Senator Forshaw—Your idea of roll-back is that you don’t pay it!

Senator Conroy—We have to pay it and you don’t!

Senator HILL—We will talk about economic management if you like!

The PRESIDENT—Order!

Senator HILL—I have been asked to talk about economic management. Let us talk about—

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left should be aware that there have been two points of order taken requesting the minister to stay relevant to the question that he was asked. You should not be tempting him to raise other matters in the fashion that you are.

Senator HILL—I was just taking the interjection, and I was saying that when Labor was last in government they ran a $10 billion deficit—

Senator Cook—Did not!

Government senators interjecting—

Senator HILL—Six years ago, when Senator Cook was a senior economics minister in the Keating government, he said that Labor was not in deficit when they were $10 billion in deficit.

Senator Carr—Madam President, I rise on a point of order. In line with the two previous points of order, I ask how this could possibly be relevant to a question on the issue of government accountability on a scam that this government has been a party to in the Groom FEC.

The PRESIDENT—I appreciate the point that you are raising, but it is very difficult when there are interjections being thrown in at the rate that they are. I ask Senator Hill to try to ignore the interjections.

Senator HILL—I am trying to put the question in the context of a failed opposition. If you fail in opposition, you do not deserve another turn in government. If the best you can do, after nearly six years, is to ask questions about the Groom FEC of the Liberal Party then you are certainly not presenting to the Australian people an alternative that is worth considering. I was taking Senator Cook’s interjection because he denied that his government was in deficit. He is the only person in the country, except for Mr Beazley, to do that. Mr Beazley also denied, I remember, when he was finance minister, that his government was in deficit when it was $10 billion in deficit. When you were in government, you ran up deficits of $10 billion and had record interest rates, record unemployment and high taxation policies. It is no wonder that you do not want to talk about alternative programs, because you might be judged on your record.

The only thing we have got out of Labor in nearly six years is these occasional gutter attacks. Get down there, forget the embarrassment of Centenary House and so forth—the real rorts, the real big rip-offs on the Australian people—because that is the deal that the Labor Party made that ripped off the Australian people. Do not develop alternative policies; rather, hope that you will simply fall into office, and then consult with the people and conduct a whole series of summits on health policy, on education policy, on local government and on immigration. Then work out what you are going to do in government. What a pathetic three years of opposition. How surprising that the best question that the Labor Party can ask is about the Groom FEC. On that subject, the Prime Minister said yesterday—(Time expired)

Senator LUDWIG—Madam President, I ask a supplementary question. Seeing that the minister ran out of time in five minutes to answer a simple yes or no in relation to the
question, can the minister, in the time he has available, answer the question in relation to tabling the financial records and work sheets prepared by the Australian Taxation Office, to which Mr Crosby also referred yesterday? Can the minister also provide copies of every tax invoice that the Queensland Liberal Party has issued to any FEC in the manner of the Costello dinner transaction—that is, those involving the issue of tax invoices ‘net costs’? Hopefully he can answer it in the time available.

Senator HILL—Because this is a transparent government, because it believes in high ministerial standards, because it believes in parliamentary accountability—

Opposition senators interjecting—

The PRESIDENT—Order! It is necessary that I at least hear the answer that is being given, and there is far too much shouting.

Senator HILL—Because of those matters, the Prime Minister has referred this matter to the Commissioner of Taxation and asked that the Queensland division be audited. Furthermore, the Prime Minister said yesterday that it was his view that the results of that audit should be made public. Perhaps the best thing the Labor Party could now do is get on with the task of trying to develop some alternative policies—only a few months to go—after 5½ years of trying to avoid it. Judgment day is fast approaching. It is time that the Labor Party started to attempt to present itself as an alternative government.

Refugees: Norwegian Ship

Senator BARTLETT (2.31 p.m.)—My question is to the Minister representing the Minister for Immigration and Multicultural Affairs. Minister, previously the Prime Minister and the immigration minister have responded to calls from some in the Australian community to turn asylum seekers around and send them back where they came from by saying that this would be inappropriate and inhumane and would imperil people’s lives. Is the government’s action in refusing the Norwegian vessel containing hundreds of rescued asylum seekers permission to enter Australian waters indicative of a change in government policy? Will the government now be refusing entry to future boatloads of unauthorised arrivals?

Senator ELLISON—The Prime Minister has made it very clear that in this instance you have a situation where people were rescued in distress by the Norwegian vessel, the MV Tampa. That vessel then, in accordance with international practice and law, was proceeding to the nearest port to assist those people, to take them there—and that was the port of Merak in Indonesia. It has been reported and was said by the captain of the MV Tampa that, during the course of that journey, a threat was posed, he believed, to him and his crew and, as a result of that threat, he changed the path of the vessel to head towards Christmas Island. Without going into the facts of that issue, that is something which the master of the vessel has said on Australian radio. Of course, it is well known that the vessel then approached Christmas Island and the government of Australia refused to allow it access to Australian territorial waters—the 12 nautical mile limit.

In this instance, the vessel which was rescued was an Indonesian vessel with an Indonesian crew; it was rescued by a Norwegian vessel flying the Norwegian flag. In the course of the journey from that rescue to the nearest port, there was a change in direction which apparently—according to the master of the vessel—was brought on by some threat. Those circumstances are circumstances which we have not witnessed before, and in the circumstances the government have said that this is a matter for the Norwegian government and the Indonesian government. Of course, we have been making representations to both those governments and asking for their cooperation in this matter. At the same time, we have offered all humanitarian assistance available to us on Christmas Island. One has to remember that Christmas Island does not have a port as such. It is an island which has an area where only certain vessels can be serviced. It does not have a wharf where a vessel the size of the MV Tampa can tie up.

Senator Cook—It does have a wharf.
Senator ELLISON—Senator Cook, just hear me out. The fact is that you are dealing here with a large container vessel.

Senator Cook—It does have a wharf.

Senator ELLISON—Not to take the MV Tampa. I was there two months ago and I saw with my own eyes that the MV Tampa cannot berth at Christmas Island. It cannot berth there because there is not a wharf at Christmas Island capable of taking that vessel. In fact, the large vessels that go there for the superphosphate have to use the cantilevers to load them. There is no wharf for them to tie up near; there are moorings but no wharf. I make that very clear for obvious reasons. There is a wharf for much, much smaller boats such as the barges which are there. I say that to correct Senator Cook’s misleading interjection.

We have made it quite clear that we will provide all humanitarian aid that is available and that we are able to give, having regard to the circumstances of Christmas Island and the circumstances of the vessel. I understand that the Royal Flying Doctor Service has been in touch with the master of the vessel, providing medical advice. I understand that supplies and Australian personnel landed on Christmas Island earlier today with a view to providing assistance to this vessel. Australia has honoured its international obligations, with regard to both the Law of the Sea and the convention which we are signatories to in relation to anyone seeking asylum. You have to remember that the people on this vessel have not entered Australian territorial waters or landed on Australia. We have complied fully with the law and we are also offering to provide what humanitarian assistance we can. (Time expired)

Senator BARTLETT—Madam President, I ask a supplementary question. Is the minister aware of comments from experts in the Law of the Sea that the government’s actions undermine the convention, set a significant precedent and have major ramifications? Won’t the government’s refusal to allow entry to the asylum seekers make it more likely that mariners will be less willing to come to the rescue of people in distress at sea? Can the minister also guarantee that Christmas Island was not the closest place from where the asylum seekers were rescued? Can he guarantee that no indication was given at any stage to the captain of the Norwegian vessel by any Australian authority that he would be able to offload the rescued asylum seekers in Australia?

Senator ELLISON—We have not undermined the Law of the Sea in any way, nor have we breached it. This vessel is outside the 12 nautical mile zone for Australia and we have made it very clear that it is a Norwegian vessel outside the zone flying a Norwegian flag with passengers who have embarked from a port in Indonesia and who were travelling on a vessel we believe to be Indonesian with an Indonesian crew. We believe that this is a matter between the Indonesian government and the Norwegian government. But we will offer whatever humanitarian assistance we can.

Goods and Services Tax: Queensland Liberal Party

Senator FAULKNER (2.37 p.m.)—My question is directed to Senator Hill, representing the Prime Minister. On the basis of the Prime Minister’s stated commitment to full transparency on the Liberal Party GST scam, can the minister confirm for the Senate that Minister Macfarlane’s attempt yesterday to deflect the blame for the improper claim of GST input tax credits has already been contradicted by a senior member of the Liberal Party’s Queensland branch? Did the former state president Mr Galtos last night publicly reject Minister Macfarlane’s reference to Mr Galtos and the former state director Mr Jaeschke as being centrally involved in the establishment of the fraud back in November last year? If the Prime Minister is continuing to support Minister Macfarlane’s version of events, can the Leader of the Government provide any information to the Senate which would indicate that Mr Galtos’s claims are false?

Senator HILL—Firstly, there is no evidence of any fraud. That is typical of Senator Faulkner: he simply refers to the fraud as if it is an accepted fact. It is his assertion from the gutter, where he is most comfortable. As I recall, Senator Conroy, for example, yesterday was arguing in fact the mistake had been made in the central office and had not been made by the party officials in the elec-
torate of Groom. You cannot have it both ways; you cannot have Senator Conroy coming in here yesterday blaming the central office and Senator Faulkner, who decides overnight that he wants to have another attack on Minister Macfarlane, coming in here today and blaming the officials in Groom.

What is not in dispute is that in relation to a small number of returns—perhaps it was four returns—there were errors. I think in four out of about 700 returns errors were found. As I understand it, the GST was paid but there were some errors in relation to the payment of that GST. That is my understanding of the matter. Obviously, there is no evidence of any evil intent—any mal intent—because the GST was paid.

Opposition senators interjecting—

The PRESIDENT—Order! Senator Cook and Senator Conroy, if you wish to debate this matter there is an appropriate time at the end of question time when you may do so. The minister is charged with answering this question.

Senator HILL—I think the important thing is that when this matter came to light it was resolved with the Taxation Office; it was resolved before the Labor Party decided that they needed a diversionary tactic last week when Mr Beazley was in such an embarrassing position. Furthermore, to give extra public confidence to the process the Prime Minister has now asked that there be an audit by the Commissioner of Taxation. Furthermore, he has said that he believes that the results of that audit should be made public. I would have thought that that would give any reasonable person confidence in the process and in the desire on our side of politics not only to avoid mistakes being made in returns on the GST but when on the rare occasion a mistake has been made that it is corrected and the corrected sum is duly paid. That on this side of the chamber illustrates parties and a government that believe you have to respect the public interest in these matters.

Draw the contrast with the Labor Party; draw the contrast with Centenary House. This was the Labor Party when they were in government contracting with their own party. On the one hand is the government and on the other hand is the public hand, which determines to pay a rent far in excess of the economic rent, the end result being $36 million. They on the other side are talking about $70 in GST having been paid. The ALP in relation to Centenary House have gained $36 million at the public expense—and in circumstances where they wrote the contract. They, the previous government, wrote the contract with themselves—they, the party—and have taken $36 million from the Australian people. And they have the nerve to come in here today and talk about a mistake of $70 on GST.

I could go on and talk about the Markson Sparks rort. Does the Labor Party want to talk about that—how a million dollars was laundered through the Markson Sparks operation? That is the Labor Party—the real rorters in this parliament. That is their record.

(Time expired)

Senator FAULKNER—Madam President, I ask a supplementary question. Given that a royal commission has cleared the Labor Party on the matter that Senator Hill chooses to compare the Liberal Party GST scam in Queensland with, what is the government going to do to address the conflicting claims between Mr Macfarlane on the one hand and Mr Galtos and Mr Jaeschke on the other? The truth is that Mr Macfarlane’s claims in the parliament of yesterday—his defence—were completely unravelled by Mr Galtos on television last night.

Senator HILL—What credibility does Senator Faulkner have? Remember that he was the one who came in here and accused the Baillieu family of rorting: ‘Call in the police; get at those Baillieus.’ What he did not tell the parliament was that he had been dead for 20 years. Senator Faulkner accuses anyone and everyone of rorting when there is no evidence whatsoever. Even a dead man he accuses of rorting when he thinks he can get some short—

Senator Faulkner—I rise on a point of order, Madam President.

Senator HILL—Oh!

Senator Faulkner—That is all very interesting but my question goes to Mr Macfarlane’s misleading of the House of Represen-
tatives. Who is right: Mr Macfarlane, on the one hand, or Mr Jaeschke, the former state director of the Queensland division of the Liberal Party, or Mr Galtos, the former state president of the Queensland division of the Liberal Party, on the other hand? That is the issue for Senator Hill to answer and he can avoid it all he likes, but at the end of the day the Senate is entitled to an answer to my question about Mr Macfarlane’s defence being completely unravelled by Mr Galtos on television last night. I ask you, Madam President, to direct the minister to answer the question I asked.

Senator Alston—On the point of order, Madam President: is it proper for Senator Faulkner to object to Senator Hill canvassing the Baillieu issue when he was making a claim that Senator Faulkner had defamed the Baillieus, when Senator Faulkner himself said—I am not sure that Hansard picked this up—‘If you can’t get a live one get a dead one’? To say that is an absolute invitation to stay down in the gutter with Senator Faulkner and to canvass that issue. He can’t have it both ways. If he thinks it is good enough to boast about his defamation, it is good enough for him to cop it, and he should not be entitled to change the subject.

Honourable senators interjecting—

The President—Order! There is far too much shouting on both sides of the chamber and far too many comments that are distracting for anybody answering. I am sure the minister is aware of the question that he has been asked, but it would be helpful if others did not shout and make interjections—on both sides.

Senator Hill—The point I was making, and I think it is a valid point, is that Senator Faulkner does not come to this with clean hands. He has got form. He lost his credibility years ago. When he condemned the Baillieus for rorting when they were dead, he demonstrated that he was not interested in the truth. All he wanted to do was to sling around the rubbish and hope that a little bit stuck. Where was the Labor Party when Mr Keating as Prime Minister was running his pig farm? (Time expired)

Honourable senators interjecting—

The President—Order! The Senate will come to order so that question time can proceed.

Refugees: Norwegian Ship

Senator Brown (2.47 p.m.)—My question on immigration is to Senator Ellison. I ask: is it true that the government spent less than a million dollars in the last year helping to ameliorate the miserable conditions of more than a million Afghan refugees in Pakistan while spending $120 million on detention camps here in Australia meant to house the few of these people who get here? Has it not got its priorities back to front? Secondly, I ask about the ship carrying refugees, including Afghan refugees, off Christmas Island. Why has the boat ramp at Christmas Island, the only boating outlet, been closed, inconveniencing Christmas Islanders? Is this to stop media boats from launching from Christmas Island to go and see what the conditions are on the ship?

Senator Ellison—The question of what the harbourmaster does or what the local authorities do on Christmas Island is a matter for the minister for territories. In relation to the closure of the port, I suggest that he should address that question to the appropriate minister.

In relation to the other question, this government has continued the policy of detention for those people who enter this country illegally, and I stress that those people who enter this country illegally are not refugees per se; they are people who claim to be refugees. That question is then determined whilst they are held in detention. There are no refugees being detained in this country because, once they are found to be refugees, they are released, and I think that that ought to be made very, very clear. The expenditure of funds in relation to how we keep those people in detention is very important and has attracted a good deal of public inquiry and comment in this very chamber. Senator Brown would be the first one to comment if we did not provide adequately by way of food, shelter, education and medical resources for those people who are held in detention. Therefore, we have had to expend moneys in that regard.
As for the funds that we may or may not be spending overseas in relation to Afghani refugees in Pakistan, I will have to take that question on notice, but this government stands by its record in the way it has dealt with those people who have illegally entered Australia.

Senator BROWN—Madam President, I ask a supplementary question. Which other countries, if any, has the government approached to take the refugees who are aboard the *Tampa*? Has the government got any measurement of the damage being done to Australia’s international reputation by this stand-off in which Australia washes its hands of responsibility for these poor people aboard that ship while insisting that other countries such as Indonesia and Norway determine who will have the heart that this government does not have and take them?

Senator ELLISON—The Minister for Foreign Affairs made it very clear that Australia has been in communication with the Norwegian and Indonesian governments in an effort to resolve this matter as soon as possible and as humanely as possible, and we are taking steps in that regard. I stand by my earlier comments in relation to this matter. Australia has on stand-by humanitarian assistance that may or may not be required by the people on board the MV *Tampa*, and those resources are available—

Senator Brown—On a point of order, Madam President, I did specifically ask the minister which other countries besides Norway and Indonesia had been approached with a view to taking these refugees by the Australian government.

The PRESIDENT—There is no point of order.

Senator ELLISON—That is a question which really should go to the Minister for Foreign Affairs as to any other communications which have been made by the Australian government to any other country. I am not aware of those.

Goods and Services Tax: Queensland Liberal Party

Senator McLUCAS (2.52 p.m.)—My question is to Senator Hill representing the Prime Minister. In the interests of the Prime Minister’s new policy of transparency, I ask: is the minister aware of Mr Macfarlane telling the House yesterday that former Queensland Liberal state president, Con Galtos, was one of the two head office people who constructed the GST scam by requesting that tax invoices for the Costello dinner be forwarded to them as early as 21 November last year? Is the Leader of the Government aware of comments by Mr Galtos last night in which he absolutely denies Minister Macfarlane’s version of events, claiming that the first he knew of the GST—

Government senators interjecting—

The PRESIDENT—Order! Senators on my right, I need to hear the question and the minister to whom it is being addressed needs to hear the question.

Senator McLUCAS—Is the Leader of the Government in the Senate aware of comments by Mr Galtos last night in which he absolutely denies Minister Macfarlane’s version of events, claiming that the first he knew of the GST scam was in January this year? Who is telling the truth here: Mr Galtos or Minister Macfarlane, in his fifth version of his involvement in this scam?

Senator HILL—There is no new policy of transparency. This government has always been transparent. We have always believed in public accountability. What we are so disappointed in and what most Australians would be disappointed in is that, after nearly six years of opposition, the Labor Party thinks that this is the biggest issue around the country. It is a good way to avoid debates on education and health. I thought health was going to be the big issue. Last week, it was Mr McMullan who took over from that weak Mr Beazley and said, ‘No, roll-back is not going to be the big issue; the big issue is going to be education.’ The following day, he said, ‘The big issue is going to be education.’ I do not mind if it is taxation policy—let us have the debate on taxation policy. I do not mind if it is health—let us have the debate on health; let the Australian people see the alternatives on health. I do not mind if it is education—why can’t we have a debate on education? Why can’t we hear the Labor Party’s alternative for education? Because, of course, it does not have an alternative. After
nearly six years, it does not have an alternative. Three wasted questions today on this subject—

Senator McLucas—Madam President, on a point of order: I recognise that the minister does not want to answer these questions, but small business people in Queensland—

Government senators interjecting—

The PRESIDENT—Order! Senators on my right will come to order.

Senator Kemp interjecting—

The PRESIDENT—Senator Kemp!

Senator McLucas—My point of order goes to the issue of relevance.

Senator Robert Ray interjecting—

The PRESIDENT—Senator Ray, I am trying to hear Senator McLucas’s point of order.

Senator McLucas—I recognise that the minister does not want to answer these questions. However, small business people in Queensland do want to know about tax avoidance and the Liberal Party, and I ask you to direct the minister to answer my question.

The PRESIDENT—Minister, I draw your attention to the question.

Senator HILL—In the point of order, the issue was raised as to what the small business people want to know about. I will tell you what the small business people want to know about: they want to know about interest rate policy, because they remember when Labor was in government that small business interest rates were up around 20 per cent. That is what they want to know about.

Honourable senators interjecting—

The PRESIDENT—Order! There is far too much noise in the chamber. Government senators interjecting—

The PRESIDENT—Order! Senators on my right: your leader is supposed to be answering a question and there is far too much noise.

Senator HILL—Small business people are interested in the $12 billion that has been cut off income tax rates. They are interested in the cuts off capital gains tax; they are interested in the alternative of lower taxation, which is the Howard government’s alternative.

Senator Chris Evans interjecting—

The PRESIDENT—Senator Evans, you are shouting.

Senator HILL—I was being told what small business is interested in in Queensland. I will tell the honourable senator what they are interested in: taxation policy—they want lower taxes; interest rates—they want to keep low interest rates. I will tell you what they want more than anything: they want to remain in jobs, because they remember that when Labor was in government there were one million people unemployed. All of us remember Mr Keating’s policy to keep pushing up interest rates until small business went broke, until we had record bankruptcies and until there were a million Australians unemployed. That is what small business people remember. Small business people want to know: does the Labor Party have any positive alternatives? Labor does not. That is what small business people are concerned about.

I have said before on the issue of the Groom FEC that this government has referred the matter to the taxation commissioner and asked for a full audit. The Prime Minister has said that he believes that the audit should be made public. The best thing that this Senate could do in the interests of all Australians is to start to debate some of the important issues of the land.

Senator McLucas—Madam President, I have a supplementary question. I note that the minister did not respond to my question about who was telling the truth: Mr Galtos or
Minister Macfarlane. Is the minister also aware that the former Queensland state president of the Liberal Party, Con Galtos, said last night that he was aware of the GST scam operating in at least two other electorates, including a golf fundraiser? What action has the Prime Minister taken to assure himself that these scams are not additional to the ones—

Government senators interjecting—

The PRESIDENT—Order! Senator McLucas has the call.

Senator McLucas—What action has the Prime Minister taken to assure himself that these scams are not additional to the ones that the Federal Director of the Liberal Party, Lynton Crosby, admitted to yesterday, namely, the GST underpayments in the electorates of Lilley and Leichhardt?

Senator Hill—How disappointed the small business people of North Queensland must be in Senator McLucas. When they are interested in issues of tax, interest rates and inflation—the things that affect their viability and business—she wants to talk about golf fests, apparently.

Honourable senators interjecting—

The PRESIDENT—Order! The level of shouting is such that I cannot hear the answer which is being delivered.

Senator Hill—She asks what action the government intends to take. I remind her again that the Prime Minister has referred the matter to the Commissioner of Taxation and asked that there be a full audit and that he has said that he believes the results of that audit should be made public.

Senator Jacinta Collins—How many branches?

Senator Hill—Okay, very game today is the Labor Party. How are we going with the Victorian division of the ALP? Has it come clean yet? Has it offered to be audited itself yet? Has it cleared up the Bracks matter? No, Madam President, it is all too difficult. My advice to Senator McLucas is: have a go at the real issues for small business. (Time expired).

Political Donations

Senator Ferris (3.00 p.m.)—My question is—

Senator Conroy interjecting—

The PRESIDENT—Order! Senator Conroy, you are out of order.

Senator Ferris—My question is to the Special Minister of State, Senator Abetz. Will the minister inform the Senate of the importance of the full disclosure of donations to political parties? Is the minister aware of any alternative approaches to this issue?

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left will come to order.

Senator Abetz—I thank Senator Ferris for her question. The Howard government appreciates the importance of, and remains committed to, a transparent disclosure system for political donations. It is regrettable that the Labor Party does not share this commitment. There was some fanfare last month when Senator Faulkner belatedly announced that the Labor Party would disclose the sources of funding to the McKell Foundation. The fanfare of course was ridiculous, given his previous defence of these types of scams. The welcome but overdue announcement amounted to an admission of guilt. The McKell Foundation is a slush fund enabling Mr Brereton’s white shoe show to travel the world and embarrass Australia. Perhaps that is why its money men do not like it to be identified. One can appreciate their embarrassment.

When Senator Faulkner announced that the McKell Foundation would finally come clean, no-one was more surprised than the foundation’s head, Mr Paul Mansfield. The Sydney Morning Herald described Mr Mansfield as ‘taken aback’ by Senator Faulkner’s announcement and quoted Mr Mansfield as saying ‘some people don’t want their philanthropy to be known’. How interesting! Who would not want their philanthropy to be known? Perhaps people like Mr Salazar, a Filipino once charged with murder who laundered $25,000 of foreign donations to the Australian Labor Party. The same issue of the Sydney Morning Herald reported that Mr Mansfield had agreed to the McKell Foundation disclosing all as early as 14 July. But recently the Sydney Morning Herald
reported that, rather than revealing the sources of its funds immediately, as had been agreed and promised, the McKell Foundation now intends to convey the information to the Australian Electoral Commission first. And guess what, Madam President: in the normal course of events, the AEC will not release the list of donors until February next year—well after the next election. How convenient but also how very shonky. So why this sudden reversal? The article quotes Mr Mansfield as saying that public disclosure at this point is not possible because he has ‘101 other things to do’ and he cannot ‘walk and chew gum at the same time’. Yet, previously, it was possible to have full disclosure by the very next day. So what has Labor’s McKell Foundation got to hide? Just how dirty is the money being used by Mr Brereton to fly him around the world to embarrass Australia?

As with Labor’s electoral rorting in Queensland, as with the Markson Sparks fundraising rorts, as with the $36 million Centenary House rort and as with the McKell rort, the usually prolix Mr Beazley is strangely quiet. Hasn’t the ticker to call in the auditor to check the books of the McKell Foundation and to publicly disclose everything, Mr Beazley’s management of his own party in all these areas shows a lack of ticker, a lack of moral courage and a lack of moral leadership, which means that he is not fit to run his own party, let alone this nation.

Senator Vanstone—Madam President, I have a point of order. During the minister’s reply, Senator Collins, I believe, said it was disgraceful a minister of the Crown coming out with this kind of—I will not say the word but it rhymes with ‘trap’ and it begins with C. I do understand—and I had a discussion about it with Senator Ray recently—that political language in the back rooms can often be very tough, but there has to be a limit and I would not have thought that that language was appropriate in the chamber.

Senator Vanstone interjecting—

The PRESIDENT—The word that I understand has been given is not appropriate in this chamber. I myself did not hear it, which is not surprising, given the level of noise in the chamber at the time.

Senator Jacinta Collins—Madam President, when I am speaking I do not expect you to be shouting across the chamber. Senator Collins ought to withdraw any word that is unparliamentary, if it was used.

The PRESIDENT—Order! Senator Vanstone, you are out of order shouting across the chamber like that. Order!

Senator Schacht—Use some rhyming slang then to tell us what it is.

The PRESIDENT—Senator Schacht, you are out of order. I called Senator Collins and she is making an explanation.

Senator Jacinta Collins—I was about to indicate that I cannot categorically deny that I used that word. It is a word I have been known to use in language and I will not deny that in the heat of the moment it did come out of my lips. However, I will also indicate that members on the other side and members in the press gallery have misreported interjections I have made in the past. But, if Senator Vanstone believes that she heard an unparliamentary remark that she is attributing to me, it was not my intention and I withdraw it.

Honourable senators interjecting—

The PRESIDENT—Order! The Senate will come to order. The level of noise and sledging which has been going on today is unacceptable by any standard, and the Senate will come to order.
Senator Hill—Madam President, I ask that further questions be placed on the Notice Paper.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Environment: Management of Radioactive Waste from Oil Sludge

Senator MINCHIN (South Australia—Minister for Industry, Science and Resources) (3.09 p.m.)—Senator Allison asked me a question on 23 August concerning the management of radioactive waste from oil sludge. I seek leave to incorporate a response in Hansard.

Leave granted.

The response read as follows—

SENATOR ALLISON asked the Minister for Industry, Science and Resources, upon notice, on 23 August 2001:

My question is to the Minister for Industry, Science and Resources. Is the minister aware that naturally occurring radioactive oil sludge from the Esso oil rig is proposed to be dumped in a municipal waste site just outside Sale, Victoria? Does the minister have a view about the appropriateness of land based disposal of this radioactive material? Has the government considered requiring this material to be reinjected into spent oil fields, as is done in parts of the UK and the US?

Madam President, I ask a supplementary question. Minister, this is not a waste repository; this is a municipal dump where this radioactive material is proposed to be put. Would the minister also look at the question of oil rig workers in Western Australia who are being exposed to high levels of radioactive scale from oil rigs? Is it not time for a national approach to properly dealing with this naturally occurring radioactive waste from oil drilling?

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

The Honourable Senator is not correct if she is suggesting that oil sludge waste from Gippsland oil rigs are a danger to the public, or that it is proposed to dump the sludge in a municipal dump. She is also not correct in asserting that this material would be disposed of down-well in the UK and the US. Finally she is not correct in asserting that workers in Western Australia are in danger from contact with radioactive materials produced with petroleum production.

There is a level of background radioactivity in all substances. The radioactivity level of the oily waste produced in Gippsland is comparable to that of granite used in, for instance, kitchen bench-tops. The Australian Nuclear Safety and Technology Organisation (ANSTO) in 1986 assessed and surveyed the oily waste going to the Dutson Downs waste management facility. ANSTO found minimal levels of radioactivity and as a result the Victorian Department of Health advised Esso in 1987 they had no interest in regulating the waste. In 1999, Esso Australia Pty Ltd (Esso), in cooperation with the Victorian Department of Human Services, the Victorian Environment Protection Authority (EPA), and Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) conducted comprehensive assessments of risk from naturally occurring radioactive materials. The Victorian Radiation Advisory Committee (RAC) concluded that the activities of Esso do not present a radiological hazard to workers, the general public, or the environment. In fact, it represents less than 1% of Australian and internationally accepted limits for such exposure.

The Dutson Downs waste management facility employs landfill disposal of the sludge produced by petroleum operations. The landfill disposal method has been assessed by ARPANSA. On the basis of a review of this report by the RAC, the Victorian Department of Human Services accepted in November 2000 that the level of naturally occurring radioactive materials from Esso operations is very low in concentration and that landfill disposal will eliminate any hazard to human health or the environment. They have issued a notice of exemption to Esso for the disposal by landfill of solid waste.

The Dutson Downs waste facility is not a municipal dump. Dutson Downs is licensed by the EPA as a prescribed waste facility. It is licensed to take oily waste, not radioactive materials. Nor is it intended to become a nuclear waste repository. To further improve the integrity of the waste, the operator of Dutson Downs, Gippsland Water Authority, proposes to establish a waste stabilisation plant for the treatment of oily residue wastes. Treatment of the waste in this plant is needed to reduce the hazard associated with oil contamination (not radiation) prior to disposal. Further, the treated waste will only be disposed of in a dedicated specially lined cell to further reduce any potential hazard from oily contamination. In other words, this upgrade has nothing to do with the level of radioactivity.

NORM waste of the same level as that produced in Gippsland would not be reinjected in the UK or US. Only much higher radiation level material is reinjected.
The safety of Western Australian workers is not at risk. Australian petroleum safety legislation for offshore exploration and production requires that potential hazards are identified, assessed and adequately managed. Geological conditions in the main Western Australian petroleum producing regions do not present major management problems. The risk potential from naturally occurring radioactive materials accumulating to dangerous levels in petroleum operations in Western Australia is considered to be very low. Where radioactive scale is known to accumulate, routine measuring is carried out to monitor and assess the risk. This material usually has a very low level of radiation, less than that of a sport or diver’s fluorescent wristwatch. There have been no reported safety incidents related to management of radiation in the petroleum industry in Western Australia.

Finally, with respect to a national approach to dealing with the regulation of naturally occurring radioactive materials from the mining and mineral processing industries, this is a matter for the Minister for Health and Aged Care. However, I am advised that ARPANSA is currently working with states and territories to revise relevant Codes of Practice.

The new Code of Practice and Safety Guide “Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing 2002”, currently being drafted, deals with the mining and mineral processing of ores for the production of uranium and thorium, but may also be applied to other mining and mineral processing operations, such as those in oil and gas operations.

In addition, a fundamental principle of the regulation of oil and gas operations is that they not present a hazard to workers, the general public, or to the environment. Regulatory processes in place ensure that all risks are identified, assessed and adequately managed.

**Goods and Services Tax: Queensland Liberal Party**

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.09 p.m.)—I move:

That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Hill) to questions without notice asked by Senator Ludwig, the Leader of the Opposition in the Senate (Senator Faulkner) and Senator McLucas today relating to taxation and a Liberal Party fundraising dinner.

Last Thursday I reminded the Senate that it is not so much the offence as the cover-up that gets you. The example I drew was Watergate. In Watergate the cover-up led to the dismissal of President Nixon. The missing 9½ minutes of the Watergate tape was part of the cover-up that implicated him. The cover-up will be what gets Minister Macfarlane. Mr Howard’s refusal to sack his Minister for Small Business after Mr Macfarlane yesterday gave his fifth different explanation of his knowledge of the Liberal Party GST scam is nothing short of an absolute disgrace. Mr Macfarlane yesterday told parliament that he had been told of a plan to defraud taxpayers by a member of his federal electorate council, Neville Stewart. Since the scam was first made public by Labor on Thursday, Mr Macfarlane has now given not one, not two, not three, not four but five different explanations as to what happened in the scam. So now we have the situation of so many stories, so little truth. Let me just go to what those five different explanations are. Last Thursday Mr Macfarlane told parliament:

I am not aware of anything untoward that has been done in the FEC.

That same night he said:

The matter was drawn to my attention by the Treasurer’s Office in early March and I subsequently raised the issue with the president of the Groom FEC.

Earlier in the day he said ‘I am not aware of anything’ and then later that same day he said that the matter was ‘drawn to my attention in early March’. The third example of where he contradicted himself: a short time after he had given that explanation he appeared on the 7.30 Report and said that the issue had been discussed at the 19 December meeting of the FEC in his home. He said then:

The methodology was raised at an FEC meeting which I partially attended—I think, from memory, in early December, but it may have been earlier than that.

First he did not know, then he said that he knew in March, and now he admits that the FEC had discussed the methodology. That is the third version of his response. Then last Friday night he issued a further statement that revealed that he had been told of the scam in a telephone call by Mrs Margaret Watts on 18 December. Remember: did not
know, then in March, then at the FEC, now on 18 December 2000. He said:

On 18th December 2000 I received a telephone call from Margaret Watts expressing her concern about the process proposed by the Queensland Division for settlement of the account for the fundraising dinner held on 23rd November. Not only did he know about it but he had received from the treasurer of that Liberal Party branch a concerned inquiry about this whole scam. The full ramifications of what was involved had been drawn to his attention. But then he topped it: there is a fifth explanation. Yesterday he told parliament that Neville Stewart had told him of the scam some time in December. What did he say? He said:

The account was paid by Mrs Watts on behalf of the Groom FEC the day after the dinner. The account was paid in full, including the GST. Subsequently, in December, I understand from a discussion that I had with Neville Stewart, a member of the FEC and Queensland state executive, that accounts over $2,000 were to be paid by the Queensland division of the Liberal Party. I understood from the discussion that the arrangements were based on advice received from the Queensland division.

Dobbs the Queensland division in. The fifth different version. Which story is correct? When did he find out? Was it December? Was it February? Was it March? Who told him? Was it Mrs Watts, Mr Costello or Neville Stewart? (Time expired)

Senator BRANDIS (Queensland) (3.15 p.m.)—Try as he might, Senator Cook has failed to make any case against the Minister for Small Business. He has failed entirely to contradict the minister’s explanation that he had no participation in the arrangements in relation to the GST—that he had no participation or culpability whatsoever. Let me point out to the Senate what the audit of the affairs of the Queensland division of the Liberal Party has revealed. I refer to the press release yesterday by Mr Crosby to which opposition senators have referred. Over the six months from 1 October 2000 to 31 March 2001, which is the period during which these events allegedly occurred, there were some 700 transactions by the Queensland Liberal Party involving tens of thousands of dollars. Of these, there were three minor transactions, other than in Groom, involving two Liberal Party entities which could be likened to the transaction within the Groom FEC.

Let us put that in perspective in two ways. First, those two entities, out of the 303 entities in the Queensland division of the Liberal Party, were responsible for a shortfall of a total of $105—all of which has been paid—in both cases due to a misunderstanding of the GST arrangements.

Senator Robert Ray interjecting—

The DEPUTY PRESIDENT—Order, Senator Ray! If you wish to speak, you can put your name on the list.

Senator BRANDIS—How that could be possibly parlayed by our Labor Party friends into a scam beggars belief.

Senator Cook—It is corrupt!

Senator BRANDIS—It is not corrupt, Senator Cook.

Senator Cook—It is corrupt.

The DEPUTY PRESIDENT—Order, Senator Cook!

Senator BRANDIS—Senator Cook, dishonest men lightly allege fraud against honest men. You have fallen into that trap. You are behaving like a dishonest man.

Senator Cook—It is corrupt.

The DEPUTY PRESIDENT—Order, Senator Cook!

Senator BRANDIS—Senator Cook, dishonest men lightly allege fraud against honest men. You have fallen into that trap. You are behaving like a dishonest man.

Senator Ray interjecting—

The DEPUTY PRESIDENT—Order, Senator Ray!

Senator Conroy interjecting—

The DEPUTY PRESIDENT—Order, Senator Conroy!

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! Senator Ray and Senator Conroy, will you come to order please. Senator Cook, I do believe I heard some language that was unparliamentary. Will you please withdraw it.

Senator Cook—If I have transgressed against standing orders, Madam Deputy President, I apologise to you for doing so and withdraw those words.

Honourable senators interjecting—

The DEPUTY PRESIDENT—Senator Hill, Senator Ray, Senator Ferguson and Senator Conroy, we will have some order and silence before I call Senator Brandis again. Senator Brandis, please address the chair.
Senator BRANDIS—Thank you, Madam Deputy President. That is one of the ways in which this can be seen in perspective: three irregularities out of 700 transactions, involving $105.

Senator Cook—They were corrupt.

Senator Conroy—You’ve got form on tax, George.

The DEPUTY PRESIDENT—Senator Cook and Senator Conroy, will you please—

Senator Ferguson—Withdraw again.

The DEPUTY PRESIDENT—No, it was different language, Senator Ferguson.

Senator Cook interjecting—

The DEPUTY PRESIDENT—Order, Senator Cook! I do not need assistance or interjections from either side.

Senator BRANDIS—The second way in which this can be seen in perspective is by comparison with the conduct of the Australian Labor Party. As Senator Hill observed in his answer to Senator Cook’s question earlier in the day, the biggest financial and political scandal in this country in recent years has been the Centenary House scandal, a scandal in which the Australian Labor Party, through its controlled entity, John Curtin House Pty Ltd—

Senator Conroy interjecting—

The DEPUTY PRESIDENT—Order, Senator Conroy! We will come to Centenary House.

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

Senator BRANDIS—The Australian Labor Party has in the course of a 15-year lease short-changed the Australian taxpayer by $36 million. An irregularity in the Queensland division of the Liberal Party of $105, because of three transactions out of 700, compared with a rip-off of $36 million by the Australian Labor Party over an uncommercial lease. Where is the perspective there? How can opposition senators with any sincerity or with a straight face seek to defend that transaction?

As I said to the Senate on Thursday afternoon, as Mr Crosby said in his press release yesterday and as Mr Macfarlane said in his statement to the House of Representatives yesterday, as soon as the irregularity was brought to the attention of the proper officers of the Queensland division of the Liberal Party in relation to Groom, it was immediately corrected. It was an irregularity born of nothing more sinister than a misunderstanding of obligations under a new law. The $76 outstanding was paid at once. There is no outstanding liability, there has been no fraud and there has been no corruption, as Labor senators have alleged. An irregularity was discovered and corrected in a timely fashion. Would that the Labor Party would in a timely fashion correct more than the irregularity in relation to Centenary House.

Senator CONROY (Victoria) (3.21 p.m.)—I also wish to take note of the answer to the question about the Queensland Liberal Party’s GST fraud and cover-up. Why can’t the Liberal Party just tell the truth on this? Why can’t they just admit that these transactions were simply a scam to avoid the GST? They tried hard to mask that this is a systematic attempt to defraud the Commonwealth. That is what this is. What do we actually know happened, as opposed to what they want us to believe? There are two options here. Either the Queensland Liberal Party—and I hope you pay attention, Senator Hill and Senator Brandis; we know you are a bit of an expert on tax matters, Senator Brandis, so we want to make sure that you actually pay attention this time—

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

Senator CONROY—They were trying to justify claiming the $826 as an input tax credit—this is option 1—from the payment that they made to the Picnic Point caterers, being a service purchased by them in the course of their putting on the Costello dinner of 23 November 2000. This is if the Queensland Liberals want to try this particular line, in which case the GST on the $18,240 income from the ticket sales must be remitted to the ATO. We ask: where is the evidence that you have done this? The Liberal Party statement of 24 August 2001 says that you
remitted only $826 to the ATO. But we say that this falls some $832 short of the $1,658 you ought to have paid if the Queensland division was running this. And, even if you did pay that real shortfall, the question then is: what was this strange payment of $8,264 by the FEC of Groom to the Liberal Party—

Senator Mackay—that is a little odd.

Senator CONROY—it certainly is odd, Senator Mackay—and the issuing of a very strange tax invoice by the Queensland Liberals on 23 January this year? Note that this was some considerable time after the function was held and audited and accounted for. This is a scam that even the Liberal Party’s own Groom auditors would not swallow. As Minister Macfarlane indicated yesterday, the Liberals cannot use option 1 because they know that the Queensland division did not run this function. So option 1 is out.

So what have we seen? This is the defence, Senator Hill and Senator Brandis, that you have been trying to get away with in the last few days. We have seen that the characterisation of the scheme involves the Queensland Liberal Party making some rather odd—to use the official technical tax term—‘supplies’ to the Groom FEC. Under this option, the Queensland Liberal Party are trying to justify claiming an input tax credit for the money they paid to the Picnic Point caterers, because the service was actually a rather peculiar input into their own business. While most businesses might have inputs like wheat, leather or computers to provide such outputs as bread, shoes and IT consulting, the Queensland Liberals seem to do it rather differently. They purchase catering services to provide a service they describe in the tax invoice that they themselves have issued on 23 January as ‘A service net costs of Picnic Point function’. Given that the price they charge for this service was actually the price they paid to the Picnic Point caterers less the GST, you would have to say that it was not about netting costs at all. How very odd, Senator Hill, how very contrived—

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

Senator CONROY—and how very much like the kind of transaction that would fail foul of division 165 of the GST law as being a scheme to avoid the GST. That is what this is about, Senator Brandis.

Senator Hill—Why did they pay the GST?

Senator CONROY—They did not pay it! This is about avoiding. This is about a contrived tax scheme set up to cover this up. It is a contrivance and the Taxation Office is on notice that this is a contrivance and will be looking at it. But the truth is that, when the Queensland Liberal Party issued that invoice in January, they were not really providing a taxable supply at all, were they, Senator Hill? One of the key features of a taxable supply under section 95 of the GST law is that it is made in the course or furtherance of an enterprise that you carry on. Can the Liberal Party seriously tell us that they are in the enterprise of providing a cost netting service—and at a loss to boot? That is where the fraud is, Senator Hill. Go and have a look at the GST act. (Time expired)

Senator FERGUSON (South Australia) (3.26 p.m.)—It is very interesting that Senator Conroy commenced his remarks by talking about a ‘scheme to systematically defraud the public’. In over 700 transactions, there were three or perhaps four minor irregularities. Some scheme, Senator Conroy!

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

Senator FERGUSON—Three or four minor irregularities which have since been rectified. Senator Cook started off his contribution by talking about fraud, Watergate and defrauding taxpayers. I am not surprised that Senator Cook would start off that way, because if any people are champions at defrauding taxpayers it is Senator Cook and the Labor Party. They are the greatest defrauders of taxpayers that we have seen for a considerable amount of time.

Senator Cook—Untrue! That’s a lie!

The DEPUTY PRESIDENT—Order, Senator Cook!

Senator FERGUSON—He worries about three minor transactions and a total amount of $180-odd—
Senator Cook—that is an outright lie and you are a liar!

The DEPUTY PRESIDENT—Order, Senator Cook! Senator Cook, come to order, please!

Senator FERGUSON—that the taxpayers of Australia, he says, have been defrauded of, which has been rectified, and yet he continues to support—

Senator Cook—You are a liar!

The DEPUTY PRESIDENT—Order! Senator Cook, your language was unparliamentary. Would you please withdraw.

Senator Cook—If I have said anything unparliamentary, Madam Deputy President, I withdraw, but the truth is that he is a liar. The allegation he made against me just now is a lie, an absolute lie.

The DEPUTY PRESIDENT—Senator Cook, would you please withdraw unconditionally.

Senator Cook—I withdraw unconditionally.

The DEPUTY PRESIDENT—Thank you.

Senator Cook—I raise a point of order, Madam President. Would you ask him to withdraw the lying allegation he has made against me. That is also unparliamentary.

The DEPUTY PRESIDENT—Senator Ferguson, I think that there is some language that you may need to withdraw, too.

Senator FERGUSON—if you could point out the language, Madam Deputy President, I would withdraw it, but I am not quite sure what I said that was unparliamentary.

The DEPUTY PRESIDENT—Senator Ferguson, I think that there is some language that you may need to withdraw, too.

Senator FERGUSON—if you could point out the language, Madam Deputy President, I would withdraw it, but I am not quite sure what I said that was unparliamentary.

The DEPUTY PRESIDENT—it was something along the lines that senators opposite were the greatest defrauding of the taxpayers. That is unparliamentary.

Senator FERGUSON—Madam Deputy President, I will clarify it. I said Senator Cook and the Labor Party were 'champions at defrauding the taxpayer'. Those are the exact words—I have got them written down here.

The DEPUTY PRESIDENT—Senator Ferguson, I think I would like those withdrawn too, thank you.

Senator FERGUSON—Madam Deputy President, I withdraw, but can I say that Senator Cook suggested that the Queensland Liberal Party was defrauding the taxpayers and you did not ask him to withdraw that. I am suggesting that the Labor Party are the champion defrauders of the taxpayers. Can you please explain to me what the difference is?

The DEPUTY PRESIDENT—Senator Cook was not talking about a member of this place, the other place or any other parliament but an entity.

Senator FERGUSON—Neither was I, Madam Deputy President. I would just highlight the fact that the Labor Party are the champions at defrauding the taxpayers of Australia. If they do not believe they are, then perhaps they should explain to us why they would defraud the Australian taxpayers of $36 million over 10 years as far as Centenary House is concerned. The present Auditor-General has been trying to get the rent reduced to reasonable levels but the ALP have repeatedly refused to reduce the amount. At the Auditor-General’s last attempt in April this year, the Labor Party said they would do nothing to reduce the rent and would not renegotiate the lease. So they are defrauding the Australian taxpayers to the extent of some $36 million on a rent which is above and beyond the market rent currently payable in Canberra. They are ripping off the taxpayers to the tune of $36 million. It is not just the $36 million; it is the fact that the rent is over and above what the normal rent would be. The money goes straight out of taxpayers’ wallets and straight into the coffers of the Labor Party. If that is not defrauding the Australian taxpayer, I do not know what is.

We hear Mr Beazley and Mr Crean committing themselves to cost-cutting. They constantly and self-righteously talk about cost-cutting. If they were as good as their word, they would immediately renounce this shonky deal with Centenary House and renegotiate that lease. The $36 million could be well put towards their costly and chaotic
policy of roll-back, if that is what they want to do with it. The $36 million they are defrauding taxpayers of could produce—to use Mr Beazley’s figures—over 2,000 heart bypass operations or nearly 3,000 hip operations or 432 new portable classrooms. Where are Labor’s social concerns now? Where is their feigned compassion when it comes to defrauding the Australian public? We all know that there is no truth. They are using this for a very short-term political gain and, in doing so, are proving themselves to be just what they are: not genuine at all in their attempts at looking after the Australian taxpayer. If the lease on Centenary House were a test of Labor’s supposed commitment to cost-cutting, would they immediately renegotiate it? I am sure we are all waiting for the Labor Party’s response.

If they want to talk about transparency, how about we move on to Markson Sparks, who have been a generous supporter of the Australian Labor Party. They bankrolled the Queensland ALP to the tune of more than $175,000. But that pales into insignificance when you talk about money raised and given to the New South Wales ALP—nearly $900,000. Senator Faulkner wants these things to be transparent but, as we heard today from Senator Abetz, in fact none of them will be. There could hardly be a donation from Mr Markson. To the best of my knowledge, Markson Sparks have a paid-up capital of $100. So it would be pretty interesting to see how the Labor Party could in any way suggest that that is anything but a cover-up of money that is donated to them.

If Senator Cook and the Labor Party want to talk about defrauding taxpayers, they want to look in their own backyard and think of the $36 million that they are defrauding Australian taxpayers of, instead of coming in here and making a song and dance for three days about three minor irregularities in some 700 transactions which amounted to less than $180. (Time expired)

Senator McLUCAS (Queensland) (3.33 p.m.)—I also rise to take notice of answers from Senator Hill today about the actions of the Liberal Party in avoiding their tax responsibilities, especially in the state of Queensland. Senator Hill was called on over five times today on points of order on the issue of relevance. I know that Senator Hill does not want to answer questions about the Queensland Liberal Party because it is not a very pretty sight, but people in Queensland want to know what occurred—over a long period, it would seem—in this party branch in avoiding its responsibilities under the new tax system. We know now that three Liberal party units and the state branch have been engaged in a tax avoidance scheme to avoid their responsibilities as taxpayers—responsibilities that they have forced upon the Australian community in such a radical way over the last 12 months. The Liberal Party have designed this new tax system, and it is interesting to note the people who have worked out a way around it.

This scam has already directly involved the Minister for Small Business, Mr Macfarlane, the former state secretary of the party, Mr Graham Jaeschke, and the membership of the Groom FEC. Mr Con Galtos was implicated by Mr Macfarlane, but last night Mr Galtos denied Mr Macfarlane’s version of events. Today we find out that Senator Ian Macdonald is the Prime Minister’s proxy member of the executive of the state branch of the Liberal Party. It might be useful and enlightening for the Senate for Senator Macdonald to come back and tell us what he knows about these scams, and this tax avoidance scam, in particular, by the Liberal Party of Queensland.

Many significant identities must have had some knowledge of this tax avoidance scheme. We know that Mr Macfarlane knew—after five attempts of trying to tell us. Mr Jaeschke knew about the tax avoidance scam. Mr Costello knew. Mr Neville Stewart knew. Mr Con Galtos knew, but only since January. We want to know what Senator Macdonald knew—the PM’s representative on the state executive of the Queensland Branch of the Liberal Party. We would also like to know what Senator Brandis knew. I would like to know if it is true, as Queensland Liberal Party sources are reporting—that Mr Stewart, along with Senator Brandis and Mr Santo Santoro, a good friend, I understand, of Senator Brandis—were the ar-
chitects of the GST scam implemented not only in the Groom FEC but also in a branch in the federal seat of Lilley and, lo and behold, in the federal—

Senator Hill—Madam Deputy President, I rise on a point of order. I believe I heard the senator suggest that Senator Brandis had been involved in a scam. I think that is a reflection upon him and should be withdrawn.

Senator Cook—On the point of order, Madam Deputy President, I did not hear that reflection made. I heard a question posed: we want to know what Senator Brandis knows about this scam. That is what I heard. That is entirely in order. In fact, if we got answers to questions we put to the government in question time, perhaps we would know the answer to that as well. If we got open disclosure and full transparency on this matter, if all the facts were put on the table, we would know the answer. Therefore, it is entirely in order for the senator to pose that question in her speech.

Senator Ian Campbell—On the point of order, Madam Deputy President, if you were to accept Senator Cook’s submission to you, you would have to accept that a question to Senator Cook that said, for example, ‘Did Senator Cook know about Paul Keating’s fraudulent activities in relation to a piggery and tax fraud in relation to not remitting tax returns on a number of occasions?’ does of course reflect on Senator Cook—when you ask how much he knew about it. It is an imputation against a senator and it should immediately be withdrawn. If you do not have those rules to protect senators, the place reduces to anarchy.

Senator Cook—On that further point of order, Madam Deputy President, of course that would be a ridiculous proposition, because no such thing occurred with respect to Mr Keating.

Senator Ian Campbell—You’re not allowed to speak twice. It’s not a point of order. Sit him down.

The DEPUTY PRESIDENT—Order! This is a further point of order.

Senator Cook—I know that this is not what the Liberal Party want people to believe, but that is the truth of it. That would be an untrue allegation and therefore it would be an improper reflection. This is not an untrue allegation. It is a proper thing to ask.

Senator Ian Campbell—It is unparliamentary.

The DEPUTY PRESIDENT—I did not hear what Senator McLucas is alleged to have said and therefore I am not able to say whether it was unparliamentary. Senator McLucas may know whether she has made any comments that were unparliamentary. If she has, I would ask her to withdraw them.

Senator McLucas—On your ruling, Madam Deputy President, as I said, I was asking a question. I asked whether Senator Brandis and Mr Santo Santoro were the architects of the scam that was being implemented in the FEC. It is a question.

The DEPUTY PRESIDENT—Thank you. I would warn all honourable senators to be very careful with imputations.

Senator McLucas—Thank you, Madam Deputy President.

Senator Ian Campbell—I raise a point of order, Madam Deputy President. Senator McLucas has now made it quite clear that she has impugned the reputation of Senator Brandis by asking a question. It is like the famous Harry Truman question: ‘Does he do it to pigs? Let him deny it.’ It is entirely inappropriate to call the attention of all honourable senators to the risk of impugning a senator when in fact one senator, who has been drawn to your attention, has in fact impugned the reputation of another senator. It is absolutely unsatisfactory to draw the attention of all senators to a breach of standing orders that has been, in my submission to you, caused by one senator, who is on her feet at the moment. I ask you to call her to order.

Senator Cook—On the point of order—the rather loud and slightly hysterical point of order that we have just heard—Madam Deputy President, you heard this argument a moment ago and you ruled on it. After you ruled on it, this point of order was taken, which is a repeat of the former point of order on which you have ruled. It would now be inconsistent to reverse yourself. The volume of the point of order should have nothing to
do with the quality of the argument. The argument has already failed. Just to further make that point, at the conclusion of question time, Senator Vanstone took a point of order about alleged comments made by another senator. When that senator said that they did not make those comments, Senator Vanstone shouted across the chamber in a manner which will be recorded in *Hansard*, ‘Let her deny it; let her deny it.’ Of course, Senator Vanstone was never called to order. I would suggest, Madam Deputy President, that this has been dealt with.

Senator Ian Campbell—Were you the architect of the Centenary House rort?

Senator Cook—Madam Deputy President, I think there is a senator who is out of order in the chamber and should be brought to order. I complete my point of order by simply summarising: you have ruled on this already; let us get on with the debate.

The DEPUTY PRESIDENT—I have ruled. I did not hear the original statement. I have given a general warning about reflecting on other members of this place and the other place and imputations. I ask Senator McLucas to continue her remarks.

Senator McLucas—Thank you, Madam Deputy President. It is clear that this scam has been used by a larger number of party units in the Liberal Party in Queensland. Mr Crosby yesterday identified that the FEC of the seat of Leichhardt has also been involved in these activities. Mr Entsch, the member for Leichhardt, was on radio this morning in Cairns. On ABC radio, he said that it was not very much money and that we were not talking about cattle stations.

We are not talking about a little bit of tax evasion here. It is either tax evasion or not. You cannot be a little bit wrong. When it comes to devising an elaborate scheme to evade paying their fair share of the GST, I am sorry, you are in or you are out. The FEC of Leichhardt has been caught in this event just like the others. The second point I wanted to talk about is the issue that Senator Hill raised today, talking about the fact that the audit has occurred as a direct result of intervention by the Prime Minister. This was directly refuted by the member for Leichhardt, Mr Entsch, on radio today when he said, ‘No, subsequent to that apparently the tax office, when it comes to Queensland, said that it wanted to do an assessment on a range of different types of organisations to see how they are dealing with the GST and how they are complying with it, et cetera, and the Liberal Party actually put their hand up.’ That is the lie, I am afraid. *(Time expired)*

Question resolved in the affirmative.

Refugees: Norwegian Ship

Senator BARTLETT (Queensland) (3.44 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Justice and Customs (Senator Ellison) to a question without notice asked by Senator Bartlett today relating to the government’s decision to refuse a Norwegian vessel carrying asylum seekers entry to Australian territorial waters.

My question concerned the current urgent situation of a boatload of hundreds of asylum seekers anchored outside Christmas Island who have been refused entry to Australian waters. Without suggesting that the previous topic of debate was not important, we have had calls for a minister’s resignations for the last week or so over a matter of possibly a few hundred dollars in non-GST payments.

Senator Cook—A principle of tax avoidance.

Senator BARTLETT—An important principle, but nonetheless we now have a situation of hundreds of asylum seekers in extremely urgent need. We have an unprecedented situation in terms of the law of the sea. We have a very grave signal that is being given by Australia to other countries around the world about how to treat asylum seekers. In my view, if we are talking about ministerial responsibility and ministerial resignations, this is a much, much, much more serious issue and there is a much more crucial principle at stake.

Let us not kid ourselves that we would be acting the same way if this boat had anybody else on it other than a boatload of asylum seekers from the Middle East. If this boat were carrying 100 people who had been rescued from a passenger liner, Australia would not think twice, and yet they have used this
subterfuge, this extremely technical and highly dubious interpretation of the Law of the Sea to refuse entry to over 400 asylum seekers—men, women and children. Already I have managed to get about five different legal opinions from people with expertise in the Law of the Sea saying that this is at best dubious and at worst a clear breach of our international obligations under the Law of the Sea.

In question time today, the minister refused to answer whether or not the captain of the boat was given any indication by Australian officials that he would be able to land at Christmas Island. Certainly, that has been reported to be the case. But he refused to answer whether or not the boat was actually closer to Christmas Island than any other port. There certainly have been reports that that was the case as well. There is little doubt that this is a significant breach in terms of our obligations under the Law of the Sea and it sends a very serious signal, not just in terms of treatment of asylum seekers but in terms of people who are in need of rescue at sea.

We have had comments already from people such as the Maritime Union and others who work in this area regularly that this will send a very clear signal to people in the future not to pick up people who are in distress at sea. Who would want to stop to pick up people who are in distress at sea if they are going to find themselves in the sort of situation that the captain and crew of this Norwegian tanker have found themselves in? They did the right thing; they did the humane thing; they rescued people who almost certainly would otherwise now all be drowned. Four hundred or more men, women and children, including a number of pregnant women, would all be drowned now if it were not for the actions of this Norwegian crew and this skipper. Their reward for that is to find themselves in the middle of this disgraceful international tug of war and Mexican stand-off about which country can be the most hard-hearted.

We are now in a race to the bottom around the globe to see who can be the nastiest, meanest and most hard-hearted towards asylum seekers. That is the extra tragedy of this situation—that it not only sends a dangerous precedent in terms of the Law of the Sea but it is sending a very dangerous signal about how asylum seekers should be treated. Obviously, this is not the first situation where a boatload of asylum seekers has got into trouble anywhere around the world. Indeed, I saw that one got into trouble off the coast of Italy just a few days back. If we are going to get into a situation where countries say, ‘It is not our problem. Go somewhere else,’ whilst the boat merrily sinks in the middle of the ocean, then it is going to be a very dangerous situation that we face in the future in terms of what are, without doubt, people who are fleeing—in many cases—persecution and who are suffering enormously. It is an incredibly serious situation and it is an incredibly dangerous precedent that has already been set.

Certainly, the Democrats, along with everybody else, hope that a solution can be found to this situation as immediately as possible, but I think a lot of the damage has already been done by the actions of the Australian government. Let us look at many of the people who have been criticising the government for their response, including just recently the Archbishop of Adelaide, Archbishop Philip Wilson, who has pointed out that this is a human problem and that the Christian reaction to this situation would be to care for and assist these people in need. Let us recognise that it is not just a legalistic argument; this is an issue of humanity. As Andrew Clennell said in the Sydney Morning Herald today, it may or may not be legal what the government has done, but it certainly is very dubious morality that is involved here. I think it is that principle that we should be putting high on the agenda.

(Time expired)

Question resolved in the affirmative.

PERSONAL EXPLANATIONS

Senator BUCKLAND (South Australia) (3.49 p.m.)—I seek leave to make a personal explanation.

The DEPUTY PRESIDENT—Do you claim do have been misrepresented?
Senator BUCKLAND—No, I have not been misrepresented. I wish to make a statement.

Leave granted.

Senator BUCKLAND—I wish to make a personal explanation in relation to comments I made last night in the adjournment debate. I inadvertently said:

It seems to me that Ms Thompson is spending a lot more time looking for jobs for herself than Centrelink spends looking for jobs for the unemployed in South Australia.

Ms Thompson is the South Australian Premier’s chief of staff. What I should have said and meant to say was that Ms Thompson is spending more time looking for jobs for herself than the Job Network spends looking for jobs for unemployed people in South Australia. I apologise to the Senate and I thank them for the opportunity.

Senator BRANDIS (Queensland) (3.50 p.m.)—I claim to have been misrepresented by Senator McLucas and I seek leave to make a personal explanation.

Leave granted.

Senator BRANDIS—The first knowledge or awareness I had of any of the allegations made by Labor senators in relation to the GST liability of the Groom FEC or of any issue relating to alleged avoidance of GST obligations within the Queensland Liberal Party was when the matter was raised in question time by Senator Ray last Thursday afternoon. The suggestion that I had any earlier knowledge or awareness of these matters or involvement in them is absolutely false. I note that not a shred of evidence has been produced by Senator McLucas to support the innuendo she has made against me. I invite her to produce and table any evidence she may have implicating me or to withdraw her innuendo.

PETITIONS

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

Telstra: Privatisation

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

The petition of the undersigned shows our concern that:

1. the Howard-Anderson Government plans to fully privatise the Australian people’s 50.1 percent share of Telstra as stated in the Government’s own 2001 Budget papers;
2. a fully privatised Telstra will focus on profits not people; and
3. services will suffer under a fully privatised Telstra, particularly in outer metropolitan, rural and regional Australia.

Your petitioners request that the Senate oppose the Howard-Anderson Government’s plans to fully privatise Telstra.

by Senator Hogg (from 71 citizens)

Petition received.

NOTICES

Presentation

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

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 19 September 2001.

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

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the administration of AusSAR in relation to the search for the Margaret J be extended to the last sitting day in March 2002.

Senator Herron to move, on 30 August 2001:

That the Senate—

(a) notes that the Australian flag was first flown on 3 September 1901;
(b) recognises the unique history of our flag, in that it was the first in the world to be chosen through an open public competition;
(c) further notes that the Australian National Flag is the only one to fly over an entire continent;
(d) commends the Commonwealth Government for its program of supplying Australian flags to community groups and associations, and urges it to make further efforts to ensure that all Australians are educated about the story of our national flag over the past 100 years; and
(e) encourages the Government and people of Australia to make particular efforts to fly the flag on 3 September 2001 in honour of its centenary.

Senator Hill to move, on the next day of sitting:
That the Senate—
(a) notes that this year marks the 50th anniversary of the alliance between Australia and the United States of America under the ANZUS Treaty;
(b) reaffirms the commitment of Australia to that alliance, recognising its fundamental importance to this nation's ongoing security;
(c) recognises that the alliance has significantly contributed to peace and security in the Asia Pacific and beyond;
(d) expresses its profound gratitude to the men and women of both nations who have served together throughout the world in defence of freedom and in the pursuit of peace and prosperity for all;
(e) acknowledges that this is an alliance between two peoples forever committed to democracy, and its foundation stones of freedom of speech, freedom of the press, and the independence and authority of the rule of law; and
(f) affirms its beliefs that the alliance will continue playing a vital role in a changing world, building a prosperous and secure future for our two nations, the Asia-Pacific region and the global community.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.51 p.m.)—I give notice that, on the next day of sitting, I shall move:
That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:
Family and Community Services Legislation Amendment (Application of Criminal Code) Bill 2001,
Health and Aged Care Legislation Amendment (Application of Criminal Code) Bill 2001,
Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001,
Innovation and Education Legislation Amendment Bill (No. 2) 2001,
States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001, and the
I also table a statement of reasons justifying the need for these bills to be considered during these sittings and seek leave to have the statements incorporated in Hansard.
Leave granted.

The statements read as follows—

FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

Purpose of the Bill
The Criminal Code has general principles that will apply to all Commonwealth offences from 15 December 2001. Some offences will require adjustment to ensure that after that date they operate in the way they were originally intended.

Reasons for Urgency
It is critical that the Bill receive passage in the 2001 Spring Sittings so that the adjustments are made prior to the commencement of the Criminal Code in December 2001.

(Circulated by authority of the Minister for Family and Community Services)

HEALTH AND AGED CARE LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

Purpose of the Bill
The Bill will adjust offence provisions in legislation in the Health and Aged Care portfolio to ensure they operate as intended when the Criminal Code applies to them from 15 December 2001.

Reasons for Urgency
When the Criminal Code commences on 15 December 2001, the provisions contained in the Code will govern the interpretation of all Commonwealth offence provisions. It is therefore essential for offence provisions in the Health and Aged Care portfolio to be updated by that time, so that they are in line with the Code.
INDUSTRY, SCIENCE AND RESOURCES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

Purpose of the Bill
The purpose of the Bill is to amend portfolio legislation containing criminal offences to ensure that there is a smooth transition to the application of the Criminal Code Act 1995. The Criminal Code contains general principles of criminal responsibility which will apply to all Commonwealth offences.

Reason for Urgency
The Criminal Code is scheduled to apply to all Commonwealth offences on 15 December 2001. It is critical that all necessary harmonisation adjustments to portfolio legislation be made by that date.

INNOVATION AND EDUCATION LEGISLATION AMENDMENT BILL (No. 2) 2001

Purpose of the Bill
The Bill will:
- implement the Postgraduate Education Loans Scheme (PELS) as announced in Backing Australia’s Ability;
- give the Minister discretion to impose a cap on the aggregate level of student debt under the Higher Education Contributions Scheme, the Open Learning Deferred Payment Scheme and PELS;
- allow higher education institutions more flexibility in using electronic communications;
- and make technical adjustments to funding levels in the Higher Education Funding Act 1988 (HEFA).

Reasons for Urgency
Passage is required as early as possible in the Spring sittings to ensure that the legislative framework for PELS is in place in time for the scheme to commence at the beginning of the 2002 academic year.

Wool International Amendment Bill 2001

Purpose of the Bill
The Bill will allow the final cash distribution to shareholders and winding up of WoolStock Australia Ltd (formerly the statutory authority, Wool International) as soon as practicable after the last stockpile wool is disposed of, rather than after the end of the financial year in which the last stock-
A pile of wool is disposed of, as is currently required.

**Reasons for Urgency**
The wool stockpile is projected to be sold down during the first quarter of the new financial year (ie between July and September 2001). There is currently a requirement under paragraph 22P(2)(b) of the Wool International Act 1993 for the final cash distribution to WoolStock Australia Ltd shareholders to take place “as soon as practicable after the end of the financial year in which the last stockpile of wool is disposed of”. This would mean that the earliest the final distribution could take place, given the current selling projections, would be after July 2002. The intention was to ensure that the final distribution to shareholders would be based on the final set of audited financial accounts for WoolStock Australia Ltd, following the end of the financial year in which the last wool was sold. Given the expected timing of the last sale, WoolStock Australia Ltd has now advised that this provision would delay the final distribution and winding up considerably (between 8 and 10 months, depending on the exact timing of the final sale).

The Bill will allow the final cash distribution to shareholders of WoolStock Australia Ltd to proceed as soon as the final accounts are prepared, audited, approved by the Board, and shareholders notified of the intended distributions. This will also avoid an unnecessary delay to the end of WoolStock Australia Ltd’s role as stockpile liquidator. WoolStock Australia Ltd’s shareholders are largely the woolgrowers that contributed to repaying the significant debt associated with the accumulation of the wool stockpile.

(Circulated by authority of the Minister for Agriculture, Fisheries and Forestry)

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

That the Senate—

(a) notes:

(i) the United Nations (UN) report citing Australia as one of 15 countries holding more than 80 per cent of the world’s closed-canopy forests (forests where the treetops shade more than 40 per cent of the ground), and

(ii) that less than 13 per cent of Australia’s 35 548 500 hectares of closed-canopy forest is protected; a smaller percentage than Venezuela, Bolivia, Colombia and Indonesia;

(b) urges the Government to meet the UN’s call for remaining closed-canopy forests to be protected from further logging or vegetation clearance in Australia; and

(c) calls on the Government, by example and assistance, to act swiftly to help protect the closed-canopy forests in developing countries like Papua New Guinea, Indonesia, India and China, including Tibet.

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

That the Senate—

(a) notes the Federal Court’s decision in the Hindmarsh Island bridge case; and

(b) welcomes the vindication of the Ngarrindjeri women and congratulates all those who have supported them in their opposition to the bridge on Aboriginal heritage and environmental grounds.

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

That the Senate calls on the Government, by 5 pm on 29 August 2001, to inform the Senate of the exact map coordinates of the site at which the Norwegian ship, the *Tampa*, rescued more than 400 people from a sinking boat between Christmas Island and Indonesia in the week beginning 26 August 2001.

**LEAVE OF ABSENCE**

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

That leave of absence be granted to Senator Payne for the period 28 August 2001 to 30 August 2001, on account of parliamentary business overseas.

**BUSINESS**

**Consideration of Legislation**

Motion (by Senator Ian Campbell) agreed to:

That government business notice of motion No. 2 standing in his name for today, relating to the consideration of legislation, be postponed till a later hour.

**Government Business**

Motion (by Senator Ian Campbell) agreed to:

That government business notice of motion No. 3 standing in his name for today, relating to a reference of a bill to the Joint Standing Committee on Electoral Matters, be postponed till a later hour.
Senator Brown—I would be very grateful if Senator Ian Campbell would inform the Senate, or at least inform me, before those two notices of motion are brought back onto the agenda.

NOTICES

Postponement

Items of business were 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 18 September 2001.

General business notice of motion no. 1010 standing in the name of Senators Bourne and Bartlett for today, relating to Australia’s joint defence facilities, postponed till 29 August 2001.


General business notice of motion no. 1015 standing in the name of Senator Brown for today, relating to a United States-Australia free trade agreement, postponed till 29 August 2001.

BUSINESS

Consideration of Legislation

Motion (by Senator Ian Campbell) agreed to:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the following bills, allowing them to be considered during this period of sittings:

Disability Services Amendment (Improved Quality Assurance) Bill 2001


BALTIC NATIONS: INDEPENDENCE

Motion (by Senator Calvert) agreed to:

That the Senate—

(a) notes that:

(i) ten years have now passed since the Baltic nations of Estonia, Latvia and Lithuania re-established total independence from the Union of Soviet Socialist Republics, which had, as the result of a secret pact between the regimes of Joseph Stalin and Adolph Hitler, forcibly and illegally occupied the Baltic countries for half a century since World War II.

(ii) during those 50 years of Soviet occupation the Australian Government gave significant support to the Baltic peoples at international forums and during bilateral contacts with other countries and was, in August 1991, among the first to give formal recognition to the Baltic nations upon their re-establishment of independence, and

(iii) since the restoration of independence the Baltic nations have demonstrated their commitment to democracy, human rights and the rule of law and have actively pursued full integration into global and European political, economic and security organisations; and

(b) in this year of Australia’s Centenary of Federation, congratulates the Baltic peoples on their achievements and expresses a sincere hope that the independence of Estonia, Latvia and Lithuania will never again be threatened.

COMMITTEES

Community Affairs References Committee

Meeting

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

That the Community Affairs References Committee be authorised to hold a public meeting during the sitting of the Senate on 28 August 2001, from 5 p.m. till 7 p.m., to take evidence for the committee’s inquiry into nursing.

Superannuation and Financial Services Committee

Extension of Time

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

That the time for the presentation of the final report of the Select Committee on Superannuation and Financial Services on prudential supervision and consumer protection for superannuation, banking and financial services be extended to the last sitting day in March 2002.

HEARING AWARENESS WEEK

Motion (by Senator Stott Despoja) agreed to:
That the Senate—

(a) notes that:

(i) 19 to 25 August 2001 was Hearing Awareness Week,

(ii) the theme for Hearing Awareness Week in 2001 was ‘It’s Caption Time’, and

(iii) legislative requirements now ensure that all programs broadcast on the ABC, SBS and commercial networks, between 6 p.m. and 10.30 p.m., are captioned, providing access to the 1.7 million Australian who have a hearing impairment; and

(b) looks forward to future advances in captioning.

TELECOMMUNICATIONS: SINGTEL

Motion (by Senator Brown) agreed to:

That the Senate calls on the Government to release details of security arrangements made with the Government of Singapore to protect Australia’s interests after the takeover of Optus by SingTel.

TELSTRA: DOCUMENTS

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

That there be laid on the table by the Minister for Communications, Information Technology and the Arts, no later than immediately after motions to take note of answers to questions without notice on 18 September 2001, the Telstra document, or series of Telstra documents, containing substandard plant reports and known as the E71 database, which Telstra undertook to prepare at the estimates hearing of the Rural and Regional Affairs and Transport Legislation Committee on 7 June 2001 and which, according to Telstra Director of Finance, John Stanhope, is being provided to the Minister’s office during the week beginning 26 August 2001.

Senator MACKAY (Tasmania) (4.00 p.m.)—by leave—To provide some background in relation to this, on 22 February 2001 during Senate estimates I first asked Senator Alston and Telstra to provide the committee with the E71 database. The response from Mr Stanhope at the time—and I quote from the Hansard—was: ‘Okay.’ He also indicated that there were about 10,000 to 20,000 E71s—that is, faults in the network. Subsequent letters between Telstra, me and the Clerk of the Senate followed regarding Telstra’s failure, under the cover of commercial-in-confidence, to provide the information on notice. The Auditor-General’s report on the use of confidentiality provisions in Commonwealth contracts came out on 24 May. Recommendation No. 1 states:

... contractual provisions ... should be disclosed to Parliament and its committees unless there is sound basis for their confidentiality.

I subsequently asked Senator Alston and Telstra during budget estimates on 7 June, based on advice from the Clerk of the Senate and the ANAO report, to explain the use of commercial-in-confidence. Telstra agreed during that hearing to provide the database with what they regarded as commercial-in-confidence information blanked out. A letter from Telstra’s Director of Finance and Administration, John Stanhope, on 14 June followed to confirm that, indicating that the information would be provided ASAP. Since then, my office has been dealing on a weekly basis with the Telstra government relations officer, Graham Murphy. We are cognisant of the fact that this was a big exercise. However, last week on Thursday, 23 August Mr Murphy told my office that he had been instructed to cease direct discussions with my office and that we were to deal with the minister’s office with regard to any matters. He also indicated that the database would be provided to the minister’s office in the next week—that is, this week.

We now are amending an order to provide Telstra with yet some more time to get the database in order. Telstra wrote to me on Wednesday, 22 August, indicating that they were ‘migrating to the new Total Order Management System, TOMS’ and that therefore the database would not be forwarded to the minister’s office until this week, as opposed to last week’s initial deadline. We re-stated in our correspondence that we wanted the original E71 database—that is, the faults database.

I am also aware that Telstra have renamed E71 as CNIs—customer network improvements. I am now suspicious about why all this has taken so long. We gave Telstra and the minister the benefit of the doubt in relation to the complexity of the information. What we were only recently made aware of
was that the entire database was being changed and that the way in which the information was being presented was being changed. Labor have been pursuing this since February of this year, and Telstra only advised us on 22 August that a total change to the database was occurring. A total of almost six months has been spent trying to get this information, which, according to Telstra’s estimates alone, concerns between 10,000 and 20,000 faults on the network—most of them in rural and regional Australia and many of them dating back to 1995. Out of deference to the Democrats, we have extended the deadline to the next sitting week, but at that point, depending on the views of the Democrats, we will be insisting on the information and we will be insisting on having it in its original form, not in a contorted, Orwellian form which seems to have occurred over the last couple of months.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.04 p.m.)—by leave—I welcome the reasonable position that has been taken by the Democrats in relation to this. The way in which Senator Mackay has just described this issue to the Senate is an exaggeration and a beat-up of the issue. Firstly, I think we should make it clear that the so-called E71 database is in fact not a record of service faults; it is a very detailed record of Telstra assets which require maintenance. There is a very significant difference, and I will point it out to the Senate and to all those people who are listening to the broadcast or in the chamber today to this fascinating area of public policy that Senator Mackay has been pursuing.

For example, the database that she refers to includes a whole range of jobs—assets requiring maintenance—which have absolutely no impact on service levels to anybody. I will give you one example of that: a cracked pit lid—in other words, a cracked lid across a telecommunications pit. They are the sorts of things that you will see from time to time if you are walking along a footpath, pushing a pram or even riding a bike. This database includes things such as cracked pit lids which need to be repaired. They are things that Telstra will put into the database, I am informed—I am not an expert on these cracked pit lids or any other maintenance issues in relation to Telstra’s assets. They make a very good point that there is a range of items within this database which a sensible person would ensure were fixed but would fix as they were going past there to do something else. There are also matters that require earlier attention.

The point should also be made that the government have put in place a legislative and regulatory scheme that ensures the fault repairs on the Telstra network—in fact, on all telecommunications networks, because we no longer have just the one network, which Labor seemed to be happy with; we now have 83 carriers in Australia providing competition to Telstra: competition to improve their services, competition to repair their faults more quickly and competition to install new services where they are required. But not to rest on that, we have also introduced something the previous government never contemplated—that is, the customer service guarantee. Where a fault does occur, you are guaranteed under law that that fault will be fixed on time and that, if it is not fixed on time, a charge against Telstra will be made and compensation paid to the person who is affected by the fault repair—and that is not only for fault repairs but for installations.

In the context of this search for the database, which the government has always made clear it will comply with it, Telstra has made it clear and Senator Mackay has actually made that clear in her statement here today if you go back to look at it. But I think even she will respect the fact—certainly the Democrats do—that this is an enormous database and it requires an enormous amount of work to put it into a form to comply not only with the questions from the estimates committees but also the return to order. I think this pursuit is for basic political purposes rather than any intrinsic interest in Telstra’s asset maintenance program.

The reality is that the Australian Labor Party’s policies in relation to Telstra were founded back in the 1950s. What you would have under Labor is diminished competition
and diminished shareholder values not only for the government shareholder of the majority share in Telstra but also for the private shareholders. The Labor Party want to go back to the good old 1940s and 1950s when the government ran everything, including the telephone.

Most people, particularly in regional and rural Australia, remember those good old days when the PMG ran the telephone company. Instead of having calls all around the world for very low rates, which you have these days under the competitive regime, after a few minutes the operator would come on and say, ‘Senator Mackay, your four minutes is up. Would you like to extend?’ Those were good old days, when you had to pay a whole load of money. Senator Mackay would be ringing grandma in England and the pips would go—‘beep, beep, beep’—and you would say, ‘Gee whiz, those pips are coming up. We’re going to have to pay for some more minutes.’

The Australian people know that a competitive regime has worked very successfully for Australia and that the Australian Communication Authority’s independent audit shows that Telstra’s fault repair and service provision have improved significantly. The customer service guarantee is working. I think what is important for other people to know—and this is the saddest thing about the Australian Labor Party—is that, as in most areas of policy for the Australian Labor Party, their leader is actually a self-styled policy wonk. He is a self-styled intellectual policy wonk and there is nothing sadder in politics anywhere in the world to have a policy wonk who has not got a policy, because I just have to ask: what are you left with? The sad thing—

Senator Mackay—Madam Deputy President, I rise on a point of order. I am not quite sure what the minister is referring to but I suspect it may be a reflection on Mr Beazley and I ask that it be withdrawn.

The DEPUTY PRESIDENT—If I understood what the word was, I would be able to rule on it.

Senator Mackay—Wonk is a newbie, isn’t it?

Senator Ian Campbell—Al Gore went around saying he is a policy wonk.

The DEPUTY PRESIDENT—This was going to be a short statement, Senator Campbell. If you would like to continue.

Senator IAN CAMPBELL—Thank you, Madam Deputy President. I will. There is nothing sadder than a policy wonk without a policy and in telecommunications the Labor Party opposite just do not have a policy, and that is a sad thing. An alternative government putting itself forward for election should have a policy on telecommunications. They only have a policy on the ownership of one of the telecommunications companies in Australia.

Senator ALLISON (Victoria) (4.12 p.m.)—by leave—The Democrats support general business notice of motion No. 1014, as amended, standing in the name of Senator Mackay. I just want to briefly explain why we were not prepared to support the notice of motion in its original form, that is, with the production date of 30 August. This return to order requires the Minister for Communications, Information Technology and the Arts to produce to the Senate a series of documents which I understand number well over 2,000. The documents contain substandard plant reports and are known as the E71 database and they relate to the question taken on notice by Telstra during estimates in June this year.

My office has spoken to Telstra about the delay in the production of the documents and Telstra has provided me with an explanation which does not seem unreasonable. In matters like this and without evidence to the contrary, I feel obliged to accept Telstra’s explanation at face value. Senator Mackay may be of the view that Telstra has been delaying the production of documents for a variety of reasons and that may well be true, but I do not have any evidence of it.

During discussions on this return to order I put a compromise position to Telstra, the minister’s office and Senator Mackay’s office, and that was that the documents should be produced by Tuesday of the next sitting period—Tuesday, 18 September—and that is just 2½ weeks away.
The concern that I conveyed to Senator Mackay’s office was that if we, the Senate, impose an unreasonable timetable on the minister for producing these documents he will simply return to the chamber on Thursday and explain his inability to produce the documents. The basis of his answer will be the unrealistic time frame set under the order. Telstra and the minister’s office were prepared to accept the 18th and in fact Telstra gave my office a commitment that it would ensure that the documents were with the minister’s office in sufficient time for them to be produced on the 18th. I understand that the outcome is not an optimal one for Senator Mackay, but I assure her that the Democrats are not knowingly concurring in any sort of cover-up by Telstra or by the government.

Question resolved in the affirmative.

MATTERS OF URGENCY

Refugees: Norwegian Ship

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 28 August 2001, from Senator Bartlett:

Dear Madam President

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

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

The Government’s decision to refuse entry to the Norwegian vessel The Tampa carrying asylum seekers, and the need for the Government to honour its international obligations concerning the rights of refugees, and allow the asylum seekers into Australia to receive medical attention and be assessed for refugee status.”.

Yours sincerely

Andrew Bartlett
Democrat Senator for Queensland

Is the proposal supported?

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

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

Senator BARTLETT (Queensland) (4.15 p.m.)—I move:

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

The Government’s decision to refuse entry to the Norwegian vessel The Tampa carrying asylum seekers, and the need for the Government to honour its international obligations concerning the rights of refugees, and allow the asylum seekers into Australia to receive medical attention and be assessed for refugee status.

This is indeed an urgent matter, and I think it is quite appropriate for the Senate to be debating it. This is an unprecedented situation and I think one that is a very dangerous step in what is undoubtedly a very contentious area of public policy. It is worth noting commentary from the UN High Commissioner for Refugees spokesperson that has just come through on the wire stating that this is the first time that Australia has refused accommodation to people rescued at sea. Whilst we certainly hope that indications and reports that are coming through that Indonesia may accept these people do bear some fruit, I think the damage has already been done, firstly, regarding the precedent in relation to rescuing people at sea and refusing them entry into a nearby port where they quite clearly could be dropped off, and, secondly, I think because of the obvious situation that if this was any group of people other than asylum seekers there is no doubt that this issue would not be arising. Quite clearly, this government is acting purely because of the nature of these people. Again I think that sends a very dangerous signal and sets a very dangerous precedent in terms of where Australia is going in relation to refugee issues.

Of course, we have the added situation of the Minister for Immigration and Multicultural Affairs this afternoon—probably around about now—tabling new legislation in the House of Representatives which seeks to further restrict the definition of a refugee. I think that again sends a very dangerous signal to the rest of the world about how we address and deal with refugees and asylum
seekers. It generates great concern on the part of the Democrats and many other people in the Australian community who believe that there is not just an obligation but indeed a real necessity to ensure that public policy measures are informed by morality and humanity and that we do not adopt the policy approach, the political approach, that involves a race to the bottom with other countries around the globe to see who can be the most hard-hearted, who can treat asylum seekers the harshest, as some sort of suggested way to stop them from arriving here.

This minister has done any number of things in the last few years—many of them, although not all, supported by the opposition—to make life very difficult for refugees and asylum seekers, and he continues to try to make it harder and harder for them. He has said repeatedly that our unique approach of mandatory detention is in part a disincentive to people, that it is trying to send a message to them that they should not come here. Yet obviously that is not working. The whole policy approach of this government in relation to the treatment of asylum seekers and refugees is clearly not working. It is not reducing the number of people coming here; it is increasing antagonism within the community, it is increasing the suffering involved for the people and it is increasing the cost to the taxpayer. We now have this latest situation where we are sending an increasingly dangerous message to seafarers about how they should react to boats in distress. It does evoke some concerning analogies. A few years ago, I recall, there was a barge loaded with toxic waste sailing around the United States trying to find a port that would take that cargo, but no port would take it. I think we have reached the unfortunate situation where the government has stopped them coming in and is sending them back. We are now going to be in the situation where those people in the community who hold such views will be saying, ‘Well, if you can do it with this boatload of people, why can’t you do it with the other boats that arrive? They also have Indonesian crews; they also come from Indonesia; what is the difference? Why don’t you stop them? Refuse them entry and send them back.’ Again it sets a very dangerous precedent, as the UNHCR itself has noted.

I think we should have much more empathy for these people. The absence of empathy was famously entitled ‘the genesis of evil’ in the Nuremberg trials. We really do need to examine where we are going before we go further down what is a very dangerous path. I do not think we want to have an election played on the race card. We have had debate about people putting One Nation last on their how-to-vote cards. There is not much point putting them last on how-to-vote cards if we are going to adopt their policies at the same time. We do need to heed calls from church leaders and from other community organisations around the country to ensure that we do have a more humane approach to this issue and that we do not simply approach it from the point of view of seeing how hardline and how hard-hearted we can be, and how miserable we can make life for people who have already suffered enormously.

Senator FERGUSON (South Australia) (4.21 p.m.)—It is very strange to hear Senator Bartlett talking about people going down a dangerous line. Having read his motion, I think it is possible that Senator Bartlett and the Democrats are going down a dangerous line when they use such inflammatory language as ‘hard-hearted’ and ‘Nuremberg trials’ and all of the other things that only serve to inflame and incite the wrong attitude amongst opinion in Australia. I can tell you, Mr Acting Deputy President, although you
would already know it, that Australia has a record in relation to caring for refugees which I think everybody in this Australian parliament should be proud of. There is no nation in the last 50 years that has been more generous or more decent towards refugees than Australia. We need not look at just recent times; we ought to look back 50 years, which was before Senator Bartlett was born and about 20-odd years before his leader was born. Many of our Australian citizens today came here through the refugee program, and they came through the proper process.

Senator Bartlett talks about us being ‘hard-hearted’. I wonder what he means when he says that we ‘further restrict the definition of refugee’. In fact, in recent times the definition of ‘refugee’ has expanded in Australia—it has become much softer. Whereas some 20-odd years ago the department of immigration were the final arbiters in determining whether or not a person was a refugee, now they can appeal to the courts and there is a far wider definition of ‘refugee’ than there was some 20-odd years ago. To talk about further restricting the definition of ‘refugee’ is just nonsense.

Senator Bartlett talks about boats at sea. He talks about this boat as though everybody on board it is a genuine asylum seeker. We do not know who is on this boat. All we know is that it has come from Indonesia, it was heading towards Australia, but it got into some serious difficulties. Senator Bartlett’s motion says that the boat is carrying asylum seekers—he is assuming that, to start with. He says:

… the need for the Government to honour its international obligations concerning the rights of refugees, and allow the asylum seekers—

again, he is presuming that everybody on board that boat is an asylum seeker—

into Australia to receive medical attention and be assessed for refugee status.

Senator Bartlett should really stick to the facts so that we really know what has happened in this situation. In fact, in most of the elements that he is talking about, the Australian government is already doing many of these things. I understand that there is going to be an amendment to this motion which likely sets things down in a much more orderly fashion. Hopefully, the Australian government will achieve all the things that will be proposed.

The real point is that this Norwegian freighter rescued 434 unauthorised arrivals from their disabled vessel on Sunday, 26 August—that is a fact. Having rescued the individuals, the freighter was proceeding to the Indonesian port of Merak at the direction of the Indonesian search and rescue authority—that is a fact; that is where it was proceeding. We understand that the freighter subsequently turned back to Christmas Island at the insistence and the threatening of the rescued individuals. So people are rescued on the high seas on their way to Indonesia—

... to where the boat was travelling—but, at the insistence of those individuals, the boat turns around and heads for Christmas Island.

The government has requested that the *Tampa*, the Norwegian freighter, not enter Australian territorial waters and continue on its way to Indonesia. Australia is continuing to seek the assistance of the Norwegian and Indonesian governments to secure an acceptable solution for all concerned. That is the way it should be treated, not like the motion that Senator Bartlett puts up or that the Democrats support.

The Democrats would let everybody into Australia, regardless of who they were. Anybody who wants to come to Australia should not be mandatorily detained, according to the Democrats. We should let them all in and see what happens after they get here. Whether they are processed after they get here or whether there is some form of process, we simply do not know, but they would let anybody in. In fact, both the government and the opposition have a policy of mandatory detention so that these people can be processed, so that we can sort out, from amongst those people who are coming into Australia, who are genuine refugees and who are not. That is where the Democrats fall down. They take it on face value that everybody who applies for asylum in Australia is a genuine refugee. In fact, we know that simply is not the case because, if it were the case, we would not have the numbers of applications rejected that have been rejected over the past few years.
When he talks about applications for refugee status, it is interesting to note that the UNHCR, in their own assessment of Afghans who are attempting to seek refugee status in Australia or anywhere else, assessed that only about 14 per cent of the people who apply for refugee status from Afghanistan are actually refugees. Compare that with Australia’s record with regard to people from Afghanistan who come to Australia under the guise of asylum seekers and who apply here for refugee status. Australia accepts some 84 per cent of people from Afghanistan as refugees, as against the assessment of the UNHCR that only 14 per cent of those who apply are genuine refugees. So anybody who suggests that Australia is not meeting its human rights obligations in relation to people who are attempting to seek refugee status as asylum seekers in Australia certainly has a lot to answer for.

Amongst other things, the urgency motion talks about asylum seekers receiving medical attention. Australian personnel are already being flown to Christmas Island by Hercules aircraft to provide humanitarian assistance—such as food, water, medical supplies and safety equipment or any of the things that may be required. There is a doctor on Christmas Island who is available to provide medical assistance. What more do they expect us to do for these people? The government is currently trying to source a helicopter with winching capacity to transfer any necessary supplies or other assistance from Christmas Island to the Tampa if necessary and, as well as that, the HMAS Arunta has been directed to proceed there with all possible speed to render any further assistance that might be necessary.

We have a container ship—the Tampa is a container ship—that is berthed in international waters off Christmas Island and it is suggested that this container ship should go into Christmas Island. It simply cannot. There is no provision on Christmas Island for receiving container ships. People would have to be transferred from the high seas in barges—that is the only way that anybody could get on there—and the nearest place that can accept the container ship is the Indonesian port. That is the nearest point of possible disembarkation, and they can get there within 12 hours. It is only because the captain was forced that they came back towards Christmas Island. I have been advised that Christmas Island does not lend itself to receiving a container vessel. Vessels cannot come close to the island or any of the points at which food or other material for sustenance could be received. People could only be carried off in barges and it is quite an unsuitable destination.

We heard Senator Bartlett talking about the terrible conditions that people are living in our detention centres. As a member of a committee that has visited each of our detention centres, I would describe the conditions as spartan—and so they should be. He says that we are sending out a disincentive for people to come. I think we should be sending out a disincentive for people to come through illegal channels. All they are doing is taking the place of genuine refugees who do not have $US5,000 or $US10,000 to pay a people smuggler to get here. There are people in camps overseas who are going through the proper process. At some stage last year, that processing was suspended because of the numbers of people coming here. We hope that that does not happen again, because there are people going through the proper processes who should receive some priority—not people who have the money to pay criminals to get on boats and come to Australia. It is important that we remember that when we are thinking about the whole situation of arrivals coming into Australia.

It is most important that there is a disincentive for people to try to come to Australia this way. There are proper channels. We need to bear in mind that, among those seeking asylum, we have people with criminal records, people who are security risks and people who are simply circumventing the normal migration channels in order to come to Australia. It is not fair that people who should go through the normal processes are short-cutting, coming to Australia by unauthorised means and seeking to receive proper attention and due care from the Australian people. I want refugees that come to this country to be genuine refugees and to come through the proper process so that we can
show them the compassion we have always shown over the last 50 years as an Australian parliament. (Time expired)

Senator BOLKUS (South Australia) (4.31 p.m.)—by leave—I move:

Omit all words after “the Tampa,”, substitute:

carrying asylum seekers, and the need for the Government to:

(a) coordinate a process with the United Nations, Norway and Indonesia to manage a resolution to the current impasse in accordance with international law;

(b) provide interim assistance for the humanitarian needs and safety of asylum seekers and the crew on board; and

(c) acknowledge the humanitarian acts of the Norwegian Master and his crew, and for the international community to follow their compassionate lead.

The opposition cannot support the Australian Democrats’ position, which is a simplistic response to an enormous problem. We cannot do what they want. We say to them and to the government that we do not walk away from this issue. We acknowledge that—just as the government says that Indonesia and Norway have to sort it out—Australia also has a responsibility in this area. I speak with a degree of bemusement that this issue has been raised by the Australian Democrats. Following on from what Senator Ferguson said, for quite some time, particularly under John Coulter, the Democrats were a single issue migration policy party. They did not have—and probably still do not have—a balanced immigration policy. Essentially, their view was that they would defend asylum seekers who came by boat, but under former Senator Coulter they had a view that a wider migration program was contrary to the interests of Australia because of the environmental impacts.

Our view is that you have to have a balanced migration program. It is important for our social and economic development. It needs to be balanced and needs to accommodate all elements—family, economic, refugee and humanitarian—not just asylum seekers. To be fair and balanced, it has to be fair for all. It has to provide access for all and acknowledge that different driving forces mean that a country like Australia needs migrants and that migrants can find a future in this country.

This matter of urgency is not the simple issue that the Australian Democrats would like us to believe; it is riddled with a diverse range of issues confronting this country. It goes to national sovereignty, it confronts our legal system, it raises issues of international relations—regional and in a wider sense—and it goes to our international reputation. An issue like this needs to be debated in the community and not just on talkback radio programs. The debate needs to be informed, otherwise we will go down the wrong road and find ourselves in policy turmoil with situations that we will not be able to handle. Driven by talkback radio and the talk jocks, we will find ourselves in an impasse and not able to get out. That is why there needs to be a better understanding of the issues in the community than we have had so far.

I indicate to the Prime Minister and to the Minister for Immigration and Multicultural Affairs, Mr Ruddock, that taking cheap passing shots at the opposition and at parliament because some of the government’s legislation has not been passed by this parliament is not the way to handle this issue. It is a complex issue. We need to send the right messages out to the rest of the world. By bagging the opposition and by bagging parliament, not only does the Prime Minister demean his position but also he blurs the messages that he sends to the rest of the world.

I speak on this issue with a degree of experience, having had to confront similar problems in the past as minister for immigration. We handle them somewhat differently. I had an influx of boat people before Christmas one year in numbers that we had not seen in Australia before then—apart from the Vietnamese influx in the mid-1970s—numbers which have been surpassed by recent events. I was able to draw on the experience of people like Chris Conybeare, Dennis Richardson—currently head of ASIO—Mark Sullivan and experienced staff,
and we were able to handle the issue differently. I suggest to the minister that he needs to look at that experience and handle this issue differently. Yesterday, Kim Beazley backed the government. The Labor Party takes that position because, as Kim Beazley says, it is legally and technically correct. But we are also concerned about Australia having a responsibility for the health and safety of those on board—not just the potential asylum seekers but also the crew. There are issues in this debate that have been ignored. In recent months, watching the debate continue and watching the minister handle the issue, I have become more frustrated by the way he has handled this problem. The problem now facing Australia is greater than it needed to be because the minister has botched the broader issue of asylum seekers.

Our most recent influx has come predominantly from the Middle East, but Middle East asylum seekers and refugees in this country are not a new problem. I can remember going to places like Jordan, Syria, Lebanon, Egypt and Israel and being confronted by migration officers with story after story about the sorts of abuse that people were being subjected to in surrounding countries. There were people from Iraq, Iran and Sudan who were seeking access to Australia. From Muslims to Copts, there were people wanting to come here. What was our response then? Our response then was to do two things: to increase the number of people who could come through an orderly process from the Middle East and to ensure that there was quick access. I was confronted with stories of young, professional medical women who were dragged overnight out of the countries in which they were—occasioning risk to our migration officers—because they were going to be raped. I heard the story of a leading boxer in one country who was going to have his hands cut off. But our people went in, our people made themselves available and our people helped him get out.

There is a legitimate need for people to come from the Middle East, and I think there is a legitimate demand on government to ensure access to our offshore orderly processes. I have a painting in my office which was given to me at the end of 1995 by a refugee from Iraq. I will not give it away—it was important to him and it is important to me as a token which continues to remind me of those days—but I cannot bear to look at it and I turn it the other way, because it is this painter’s depiction of life in the community from which he came. It is a pretty ugly, das-tardly depiction of what this person had to go through and what his family and friends had to go through. You are looking at a painting with disembowelment and with all sorts of acts of torture perpetrated on people. He was just one person who came to Australia and has made a life for himself here. That person and that painting are continual reminders to me that we really have to ensure that when we deal with people in these circumstances we acknowledge there is a human element.

Philip Ruddock has not met that challenge. What has he done? He has cut down the actual numbers available and he has cut down regional access. He has presented a biased picture of the people who are actually coming here. As a former minister, I say to him: don’t raise the bar too high for yourself. You have raised the bar too high already. There are individual stories that the Australian public needs to be told, individual stories that people carry with them which have driven them to come and seek refuge in this country. As the minister says, 85 per cent are genuine refugees. But don’t let the debate be hijacked by your rhetoric about the 15 per cent that are not. Let the public know about some of the real stories about the 85 per cent that are. Educate the public. Let them feel as if they are part of the humanitarian response to the savagery in some parts of the Middle East. How can we go to war, for instance, against Saddam Hussein and call him a tyrant but not acknowledge that there are victims of his tyranny and that those victims are seeking assistance from Australia? Provide the resources. Try and stem the flow of illegal boat arrivals in Australia by accommodating this in the way we used to accommodate it offshore in the Middle East, and don’t make the access so difficult. Immediate access is so important for some of these people. You cannot have an 85 per cent approval rate under our government’s ‘hands off from ministerial intervention’ system without
having some genuine cases come to Australia.

We need to have a much more balanced debate. If we were to have a much more balanced debate, we would be able to better handle the situation we have now. In the current situation, we have to keep in mind that relations with Indonesia are important. From my experience, we used to have ongoing, almost weekly, contact. We had mechanisms and structures in place. We had early notice. We had assistance from the Indonesians. We worked cooperatively. The relationship with Indonesia is important, and the way we have confronted them over the last 48 hours does not help. In fact, you could say that we are provoking a collapse in that relationship by shunting the problem off to the Indonesians.

John Howard went to Indonesia a few weeks ago. A fickle gallery decided that, because he delivered a block of King Island brie to President Megawati Sukarno, relations were back on a footing. It is going to take more than a block of King Island brie to get them back on a footing after the last 48 hours. We cannot underestimate the importance of those relationships, relationships which are critical generally and critical when it comes to boat arrivals. The foreign policy implications are also critical. We need to have ongoing good relations with the UNHCR. We need to be able to select people abroad. They have offered assistance in the last 12 hours or so. We do not want that organisation to feel as if they have been set up or double-crossed by the Australian government. In that context, relations with Europe are important. Norway may feel offended at the moment, and they have an impact that ripples through the Scandinavian countries and through the rest of Europe. We must acknowledge that we need to ensure that our relationships with them are an important plank of our status and credibility in Europe. As I said, there are foreign policy implications, but the international image is also affected.

At the end of the day, we have a problem in this country, and it cannot be treated in the way the Australian Democrats are asking us to, not just in respect of these people but in respect of the people who have come over recent months. Do we send the failed asylum seekers back to tyrants like Saddam Hussein? That is question No. 1. Do we send the 12-year-old kid who was on the Four Corners program the other week back to Saddam Hussein and his tyranny? We must ask not only, ‘Do we send them back?’ but ‘Can we send them back?’ Iraq will not take them back, and if they did would we be satisfied that they would be safe? The government has tried other countries in the region as staging posts. Can we send them there and then work out where they go thereafter? Those countries have quite rightly said that is not on. Airlines, of course, do not take people without adequate documentation, especially if no country will receive them. I think it is important for the immigration minister to keep that end game in mind. What does he do with failed asylum seekers?

It is okay to go on talkback programs—as he and the Prime Minister would like to do—and respond to that feeling in the community which basically says, ‘They’ve got no right to be here, let’s shunt them off pretty quickly,’ but this is a problem that Phillip Ruddock may not be around to handle in a few months time. However, it is a problem that the Australian people have to face. Where will we send those people who are left in detention—those 15 out of 100 asylum seekers—who do not pass? Will John Howard send this 12-year-old back to Iraq, back to Saddam Hussein? That is a real live issue that we will have to confront. Will he send the parents? What do we do? When do we stop passing the parcel with these people? This is not a theoretical question and it is not a rhetorical question. This is a real live question that immigration ministers in this country have been facing for quite some time, but now we have it on a much bigger magnitude. It is a real live issue that the Minister for Immigration and Multicultural Affairs and the Prime Minister have to confront in the interests of Australia.

The government needs, as I suggested, to have those resources offshore to stem the tide and draw the line clearly between those who are bona fide and those who are not. But, at the end of the day, let us acknowledge in all our rhetoric that, on the basis of 15 per
cent, we will be left with some thousand or so people who will not have a place to go to or an airline to take them; we will be basically caught with them. How do we educate our public? How do we make them more aware of the fact that those real live situations will be here for us to handle? We should not do it in the way the Australian Democrats suggest; we should do it internationally in cooperation with UNHCR and countries like Norway and Indonesia. I commend the opposition amendment to the Senate.

Senator EGGLESTON (Western Australia) (4.46 p.m.)—I agree with Senator Bolkus that the issue of people coming out of the Middle East is very important. We all have to think very carefully about the issue and consider its implications as well as the fate of the people involved. The Minister for Immigration and Multicultural Affairs, Mr Philip Ruddock, has done an excellent job in perhaps one of the most difficult of government portfolios. I have nothing but praise for the way in which he and the Department of Immigration and Multicultural Affairs have handled the avalanche of people who are coming to Australia from the Middle East in particular.

Australia has an outstanding record with respect to refugees. From back in the 1930s to the post World War II era, Australia has accepted large numbers of refugees. At the present time, I am told, there is somewhere around 23 million people in the world who have left their home countries. That is an enormous number of people. Australia can proudly say that it has played its role in looking after its share of the refugees of the world. But Australia is a quite a small country with limited resources. We have a population of only 19 million, and there is only so much we can do.

Australia has an intake quota of 10,000 refugees per year who come through the assessment processes of the United Nations, the Red Cross and other such agencies. When people come through those assessment processes, they are screened for health, criminal records and political associations. Some of the people who claim to be refugees of course are not refugees. Some of them are criminals, some of them are spies, some of them are political agents of repressive regimes, some of them have health problems that we would not want to have in Australia and some of them are not who they claim to be. Sometimes they claim to be citizens of a country but they bring no documents to Australia, although they obviously needed them to get onto an aircraft or a vessel to come to Australia. In fact, they come from a country other than the country they claim to be from, and they claim refugee status because of persecution in the country they falsely claim to come from. So there is much to be said for the process of assessing refugees in an orderly way.

The extra people who are coming in via the back door, through Indonesia and on the boats, are not going through that process. This group of people on the Norwegian boat off Christmas Island are an example of that. These people were on a boat in the Indonesian search and rescue zone. They were six hours from Merak, an Indonesian port on the south side of Java, when they were picked up. It would have been very easy for the master of the vessel to take them back to Indonesia but, under duress, he was asked to take them to Christmas Island, which he did. The point has to be made that these people have never entered Australia. There is no question, therefore, that Australia has any legal obligation to them. There is no question of our having an international law requirement to admit them to this country or to assess their claims of being refugees. These people have come from Indonesia and, under international law, they should go back to Indonesia. Nevertheless, Australia does recognise that the 430-odd people on this boat do need food and medical attention. Arrangements have been made for food and medical attention to be provided to the people on the boat for as long as they remain in the waters around Christmas Island.

We have to ask ourselves why these people come to Australia in this way. They come to Australia because our assessment system for refugee status is easier than that in the camps run by the United Nations High Commissioner for Refugees or the Red Cross. In Indonesia, only 14 per cent of Af-
ghanis are assessed as refugees against United Nations criteria. When these same people come to Australia and they have gone through a process of assessment in the detention centres, and then into a series of legal appeals that are available to them under the Australian legal system, the percentage that are assessed as refugees rises to 85 per cent. Australia is a country where it is pretty easy to get refugee status compared with many other countries in the world, because our legal system has extended the criteria of the United Nations.

People also come here because Australia is a country with a good social security system and a good education system and it is an ideal place to live. But, as I said at the beginning, Australia is a country with limited resources. We have a fine record in terms of looking after refugees. We have done our bit. We have a quota of 10,000 a year, and we simply cannot have an open-ended policy of admitting people who come through the back door, through Ashmore Reef or through Christmas Island, and letting them be assessed with the expectation of remaining here as refugees. Australia, as we know, with the influx in recent weeks has just about reached the end of its resources. It is time we gave consideration to how we are going to deal with this.

I understand the Indonesians have acknowledged that they have certain responsibilities to the people who are entering their country and claiming to be refugees on their way to Australia. I endorse Senator Bolkus’s view that more should be done to assess these people offshore and a different methodology should be used. I believe the United Nations High Commissioner for Refugees has a bigger role to play and I would urge the United Nations to do that. Australia is doing its bit. The minister has done a great job, and I think that in this case these people should be returned to Indonesia after they have received appropriate medical care and attention, if that is needed.

Senator McKIERNAN (Western Australia) (4.54 p.m.)—I am pleased to be joining in this urgency debate this afternoon. I am sorry we are having an urgency debate. I agree it is a debate we have to have and it is indeed urgent. It is urgent because there is a ship anchored off Christmas Island, an Australian territory. But it is also urgent because the detention centres in Australia are in a state of crisis and it is urgent because of the large numbers of people who are seeking to enter this country illegally, particularly over the last week or so. I would like to have seen Senator Bartlett in the chamber because I want to respond to a few of the matters that Senator Bartlett addressed in moving the urgency motion.

Before I do that, can I give the chamber a bit of good news. While I have been sitting here listening to the debate, I have had some good news about a family that I and my office have been working desperately hard to get into Australia. I am talking about the wife and children of Salah—I will not use the surname of the person because he is already in this country—who, as the debate went on here, have been issued with tickets out of Syria to enter Australia and join their husband and father. Salah entered Australia in March of last year as a refugee after 2½ years of trying. It took 2½ years to get him in, and when we finally got him into Australia as a refugee, to be reunited with his sister who had previously entered into this country as a refugee—they are of Iraqi nationality; they are Kurds—he did not know at that time if his wife and children were alive or not or, if they were alive, where they were. Through the good offices of the International Red Cross, his family were found in Syria and after his residency was sorted out he returned and joined them briefly to ensure that they were okay when he found out they were alive. Now they have been issued with tickets.

Although in Australian law there is a right for refugees to be joined by their family members if they were indeed family members at the time of the grant of refugee status, the wife and the five children aged six to 16 were not going to be granted refugee status in this country because there was no room for them. Why was there no room for them? Because others who have got the resources and got the funds to pay people smugglers got here and jumped in front of the queue. For those who say there is no queue, I direct
their attention to that particular constituent of mine with whom we have been working for four years to get him and his family into this country. I would ask them to join me when Veyan, the sister—again I am not using the surname—sits in my office with tears flowing out of her eyes, not only for this brother and sister-in-law and her nieces and nephews but for her other brothers in other parts of Europe, having fled in desperate straits and with no ability to work. I would ask them to join me with them and tell them that there is no queue and that those who have the resources to pay the people smugglers can jump to the head of it and have their cases put first.

We have an urgent situation on our hands at the moment. It is a situation that I do not believe is of Australia’s making. I am only going on news reports because I have no entry into either the minister’s office or the offices of the UNHCR or of the two other governments that are involved in the issue we are dealing with at the moment. As I understand it, there was a boat making its way to Australia which got into trouble. There was a ship in the vicinity, the master of which exercised his responsibilities under the international Law of the Sea and went and rescued those 400-odd people. He rescued them; he took them from the water and gave them temporary sanctuary on board his vessel. Then what happened? As the ship’s master—as I understood what he said on radio yesterday—steamed to a safe port, his ship was diverted. Who was it diverted by? By the very people he had rescued, whose lives he had just saved, who determined, ‘Uh, oh, we don’t want to go where you want to take us or where the international Law of the Sea directs us to. We want to go where we want to go.’ I am not saying that that is an act of piracy, but I do know that when a ship is apprehended on the high seas and control is taken away from its master it does verge on piracy. The master, as he was reported on radio yesterday and today, was fearful for his vessel and for members of his crew. I think, as is in the amendment to this motion moved by the Australian Labor Party, he is indeed to be commended for his humanitarian act.

This debate is urgent for a number of other reasons as well, none the least being that there are a number of human beings on the high seas who are, it would seem, in need of care and protection. But what are they? Are they refugees, asylum seekers or migrants? A number of senators who have entered into this debate, including the mover of the motion, Senator Bartlett, need to understand what we are talking about. They also need to address the definitions we are talking about in this matter. In recent times I have been very pleased to talk with the Reverend Professor James Haire from the National Assembly of the Uniting Church of Australia. He provided me with a policy paper entitled ‘Asylum Seeker and Refugee Policy Paper’. On page 2 of that policy paper Reverend Haire gives a definition of a refugee and an asylum seeker and explains the difference between migrants and asylum seekers. I am grateful that a church group has done this, because all too often in the debate that has raged on this subject—certainly during my service in this parliament—there have been great mix-ups and misunderstandings, including by church groups, about the various terms that are used. If an individual such as Sadiq Elmi, who featured very prominently in an inquiry of the Legal and Constitutional References Committee last year, puts his hand up and says, ‘I am a refugee,’ there are many in our community, including church groups, who say, ‘That person is a refugee because he says he is a refugee.’ There are laws that determine whether a person is a refugee or not a refugee and there are also conventions of the international world that go to these determinations as well.

Reference has been made in this strange urgency motion debate to some of the comments that have emanated from the Prime Minister and indeed from Minister Ruddock. In particular, Senator Bolkus talked of the minister trying to divert attention to legislation that is before the chamber and his getting the Australian Labor Party to debate it. I
think he is referring to the Migration Legislation Amendment (Judicial Review) Bill 1998 [2001], which was adjourned in this very chamber on 2 December 1998. It still has not been brought on for debate. The minister has the gaff and the audacity to seek to divert public attention away from this urgent matter which is confronting Australia, Norway, Indonesia and, indeed, the UNHCR on to the Australian Labor Party, yet it is the Australian Labor Party who have moved an amendment that actually puts some sense into the urgency motion that has been moved by my colleague Senator Bartlett. (Time expired)

Senator BROWN (Tasmania) (5.04 p.m.)—At the moment, there are over 400 men, women and children just like us, with warm hearts and hope for the future of their lives, being tossed on very rough seas and in extraordinary circumstances. They have come from frightful circumstances and are seeking asylum in this country, but they are being turned away. They are being turned away under the glare of international publicity which will do nothing but bring discredit to this wonderful nation of ours. The Prime Minister and Mr Beazley, who stood at his side, washed their hands of their responsibilities and said, ‘This is a matter for Indonesia or Norway, not us,’ even though the boat is moored nearest to our territorial waters at the moment and it was our authorities who asked the Norwegian ship to go to the assistance of these people. The Prime Minister and Mr Beazley, who stood at his side, washed their hands of their responsibilities and said, ‘This is a matter for Indonesia or Norway, not us,’ even though the boat is moored nearest to our territorial waters at the moment and it was our authorities who asked the Norwegian ship to go to the assistance of these people.

Senator McKiernan has just spoken about piracy. I thought that pirates were people who made others walk the gangplank. Here we have desperate people who felt like jumping overboard if they were not able to proceed to Australia—and they are being labelled pirates. What an extraordinary vilification of good-hearted people who would become good citizens of this great country of ours if given a go. We are in a country which has a very tiny number of asylum seekers compared with comparable countries in Europe and North America, but by the big parties fuelling the fear and the vilification of these human beings, who are no different from us, a great deal of unnecessary fear in the community has arisen. I think that Australia has turned its back on a whole suite of good values for which we have in the past been rightly famous. (Time expired)

Senator FERRIS (South Australia) (5.06 p.m.)—Senator Bartlett’s urgency motion before the Senate this afternoon addresses four major issues: (1) his claim that the government has refused entry to the Norwegian vessel the Tampa; (2) his claim that the government is failing to honour its international obligations regarding refugees; (3) a claim that asylum seekers should be able to come to Australia to receive medical attention; and (4) that they should be assessed as refugees. Senator Bartlett is grossly misinformed in the intent of his motion. Let us have a look at the facts. The Tampa rescued 434 passengers and crew from their disabled vessel north-west of Christmas Island last Sunday. It was then proceeding to the Indonesian port of Marek but was allegedly turned back to Christmas Island at the insistence of the people it had just rescued. The government has requested that the Tampa not enter Australian territorial waters and for it to continue on its planned route to Indonesia. Australia is continuing to seek the assistance of the Norwegian and Indonesian governments to secure an acceptable solution for everybody, including the Indonesian crew.

In his second point Senator Bartlett claimed that Australia does not accept its international obligations. What we do not accept is that our immigration policy should be run by people smugglers. We have never denied entry to genuine refugees. We are trying to ensure protection for those who are genuine refugees over those who are not. This government’s action today will protect the integrity of our immigration laws and the sovereignty of our country. The third point that Senator Bartlett’s motion raises is the need for asylum seekers to have access to Australia to receive medical attention. Let Senator Bartlett be assured that all humanitarian assistance has been offered to Captain Rinnan, including the services of the doctor at Christmas Island. The master of the ship has not asked for any particular security at this stage; however, Australia has despatched HMAS Arunta to the area and is seeking a helicopter with a winching capacity to trans-
fer any necessary supplies or offer other assistance from Christmas Island to the *Tampa* if it is found to be necessary.

Senator Bartlett’s final point relates to whether Australia is meeting its obligations in relation to assessments for refugee status. It is important to understand that in this year alone almost 3,700 people have arrived in Australia illegally by boat, compared with 2,939 for the whole of last year. So we have already exceeded the number for the whole of last year. An extra $22 million has already been allocated to provide 3,100 extra places in three new emergency detention centres around the country. As well, more than $15 million has already been spent on judicial action, and there are another 200 people awaiting the outcome of refugee appeals processes.

Senator Bartlett appears to think that our processes are not efficient enough. Does he realise that 80 per cent of applicants for refugee status are given their primary decision within 15 weeks? But, Senator Brown, the workload is growing, it is overwhelming and the backlog is also increasing, and today we have another potential 438 illegal migrants with as many as 900 more likely to come here in the next few weeks. Senator Bartlett might also like to spare a thought for the 1,500 residents of Christmas Island, who in the past month alone have had to cope with an extra 850 people arriving on boats. Their community has grown by 50 per cent in four weeks with no increase in community facilities.

Let us get the facts about this latest immigration issue on the table. The boat carrying these people was only 90 kilometres from the coast of Java when those people were rescued from their sinking vessel—75 nautical miles from Christmas Island and well outside Australia’s territorial waters, which extend over 12 nautical miles out to sea from Christmas Island.

The resolution of this very difficult humanitarian problem will come about as a result of careful and sensitive negotiation primarily between Norway and Indonesia, from where these people and their crew sailed, and not from an emotionally charged debate in this chamber. Unfortunate suggestions by Senator Bartlett contained within this motion that we have failed to honour our international obligations or that we would refuse to provide medical attention are particularly unhelpful when they reflect neither truth nor substance. I note that the opposition has moved an amendment to this motion which suggests that the government:

... co-ordinate a process with the United Nations, Norway and Indonesia to manage a resolution to the current impasse in accordance with international law.

I am not quite sure where Senator Bolkus has been during the last few days. If there is any doubt that Minister Ruddock has worked day and night on this issue to do exactly that, then I wonder what Senator Bolkus thinks he has been doing. The suggestion that we should ‘provide interim assistance for the humanitarian needs and safety of asylum seekers and crew on board’ is very clearly under way. My speech and the contributions of others today in this place and in the other place have outlined the humanitarian offers that we have on the table: HMAS *Arunta* on its way, a helicopter on its way, supplies available for the ship and a doctor at Christmas Island. Senator Bolkus’s amendment that we ‘acknowledge the humanitarian acts of the Norwegian Master and his crew’ leaves me breathless. What have we been doing for the last couple of days if we have not been acknowledging the work of the crew? We have stood by to assist the captain at every opportunity. (Time expired)

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats)

(5.13 p.m.)—First of all, how can this not be an emotional debate? We are talking about sparing a thought for the lives of more than 438 people on a ship that may be in grave danger, of which there are at least 26 women, two who are actually pregnant, and at least 43 children? I do not begrudge any senator or member of the community who gets emotional in this debate. But, when we are talking about sparing a thought, let us spare a thought for the captain of that Norwegian freighter, let us spare a thought for the fact that we do not have a national strategic, compassionate, tolerant approach to some of these issues, particularly in relation to asy-
lum seekers and refugee cases in this country, and let us spare a thought for the precedent that we may be setting today in relation to international law, our obligations under various treaties and maritime law as well.

As for Senator Ferris’s claim that Senator Bartlett is claiming that the government has turned this ship away, the truth is that the Prime Minister has declared that Australia will not allow the Tampa, that Norwegian freighter that has rescued more than 400 boat people stranded off Christmas Island—

Senator Ferris—How can we turn it away when it is not even in Australian waters? Stick to the facts, Natasha. It is in international waters.

Senator STOTT DESPOJA—I will talk about international waters, quite happily. But he has actually said that the Tampa is not docking. They are not even allowed to apply for asylum seeker status on Christmas Island. The government can mount as many technical and legal arguments—that it likes in order to justify this unprecedented response. But we have been seeking advice from international experts in maritime law and, as Senator Bartlett said in his opening remarks, this government has mounted a technical, dubious subterfuge in an attempt to avoid dealing not only at worst with this issue but also at best its international obligations. (Time expired)

Senator BOLKUS (South Australia) (5.15 p.m.)—by leave—After discussions with the government, they have indicated that they are prepared to support our motion if we change the words ‘asylum seekers’ to the words ‘those rescued’. We are prepared to accept that. So I seek leave to amend my amendment.

Leave granted.

Senator BOLKUS—I amend my amendment as follows:

Omit “carrying asylum seekers”, substitute “carrying rescued persons”.

Paragraph (b), omit “asylum seekers”, substitute “those rescued”.

Question put:

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

The Senate divided. [5.20 p.m.]

(The President—Senator the Hon. Margaret Reid)

AYES

Abetz, E. Bishop, T.M.
Bolkus, N. Brandis, G.H.
Buckland, G. Calvert, P.H.
Campbell, G. Campbell, I.G.
Carr, K.J. Chapman, H.G.P.
Collins, J.M.A. Conroy, S.M.
Coonan, H.L. * Cooney, B.C.
Crossin, P.M. Denman, K.J.
Eggleston, A. Ferguson, A.B.
Ferris, J.M. Forshaw, M.G.
Gibbs, B. Gibson, B.F.
Harris, L. Herron, J.J.
Hogg, J.J. Lightfoot, P.R.
Ladwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mackay, S.M.
Mason, B.J. McGauran, J.J.J.
McKiernan, J.P. McLucas, I.E.
Murphy, S.M. Patterson, K.C.
Ray, R.F. Reid, M.E.
Sherry, N.J. Tambling, G.E.
Tchen, T. Troeth, J.M.
Watson, J.O.W. West, S.M.

NOES

Allison, L.F. Bartlett, A.J.J. *
Brown, B.J. Cherry, J.C.
Greig, B. Harradine, B.
Lees, M.H. Murray, A.J.M.
Stott Despoja, N.

* denotes teller

Question so resolved in the affirmative.

The PRESIDENT—The question now is that the motion of urgency, as amended, be agreed to.

Senator HARRADINE (Tasmania) (5.23 p.m.)—by leave—Could I explain that— it is my own fault—I was not aware until three-quarters of an hour ago of this urgency motion. It was printed on the red and, obviously, I didn’t read the red. I do apologise that I was not able to speak. One thing that I would like to say, however, in 30 seconds, is that my concern with this incident is that some of the statements that are coming out are rousing prejudice against all asylum seekers, for
whom we have international obligations both in law and in convention. I think there is one higher law that we all need to bear in mind and that is the law of charity.

Question resolved in the affirmative.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 3695

Senator O’BRIEN (Tasmania) (5.25 p.m.)—by leave—After my short statement, I will seek leave to incorporate a document in Hansard.

Senator Patterson—I will need to see the document.

Senator O’BRIEN—Sure, I understand that. In relation to question on notice No. 3695, the Minister for Transport and Regional Services, through Minister Ian Macdonald, supplied certain legal advice to the Senate and, in relation to that advice, a comment was made about advice which the Clerk of the Senate, Mr Evans, had previously provided. Mr Evans provided me with his view on that aspect of the advice which he asked that I incorporate in Hansard. Subject to the government perusing this document, I seek leave to incorporate it in Hansard.

Leave granted.

The document read as follows—

he/let/13362
24 August 2001
Senator K. O’Brien
The Senate
Parliament House
CANBERRA ACT 2600
Dear Senator O’Brien

Margaret J—Opinion by Mr R Orr

The answer to your question on notice No. 3695, relating to the search for the Margaret J, includes an opinion by Mr Robert Orr, QC, Deputy General Counsel of the Australian Government Solicitor’s Office.

This opinion contains a bizarre misinterpretation of an advice which I provided, and I would like to put a correction on the record.

The principal significance of Mr Orr’s opinion is that it refutes the claim by Mr K H Bell, QC, that if documents were placed before the Senate committee they could not then be examined before the coroner. This strange notion was also the subject of the advice of 3 July 2001 which I provided to the Rural and Regional Affairs and Transport Legislation Committee and which was released by the committee. In this connection, Mr Orr’s conclusion is correct and Mr Bell’s, as I pointed out, is incorrect.

Mr Orr, however, refers to an advice which I provided to the Economics Legislation Committee, and which was published by that committee in June 1998, relating to the sub judice convention as it applies in the Senate. Mr Orr refers to my advice in the following terms:

He suggested that it could not operate in relation to civil proceedings; previously it had been accepted that whilst the convention operated most strongly in relation to criminal proceedings, it could operate in relation to civil proceedings.

As I have indicated, this is a bizarre misinterpretation of my advice. Nowhere in that advice is it stated that the sub judice convention does not operate in relation to civil proceedings, and there is nothing in the advice which even remotely suggests such a proposition. Perhaps Mr Orr has confused my advice with something else he has read, but I do not know of anybody who has advanced such a proposition.

Mr Orr also makes a general allegation that my advice in some way sought to change the interpretation of the sub judice convention. This allegation is also without foundation. My advice is based on rulings and authoritative statements in the Senate going back over many years.

As Mr Orr’s opinion will be included in the Senate’s Hansard by virtue of its inclusion in the answer to your question on notice, I request that you seek some suitable opportunity to incorporate this response in Hansard.

Yours sincerely
(Harry Evans)

BUDGET 2001-02

Consideration by Foreign Affairs, Defence and Trade Legislation Committee

Additional Information

Senator COONAN (New South Wales) (5.27 p.m.)—On behalf of the chair of the Foreign Affairs, Defence and Trade Legislation Committee, I present additional information received by the committee relating to hearings on the budget estimates for 2001-02.
COMMITTEES
Finance and Public Administration
References Committee

Report
Senator GEORGE CAMPBELL (New South Wales) (5.27 p.m.)—I present the final
report of the Finance and Public Administration
References Committee on the government’s information technology outsourcing
initiative, entitled Re-booting the IT agenda in the Australian Public Service, together
with the Hansard record of the committee’s proceedings and documents presented to the
committee.

Ordered that the report be printed.

Senator GEORGE CAMPBELL—I seek leave to move a motion in relation to
the report.

Leave granted.

Senator GEORGE CAMPBELL—I move:
That the Senate take note of the report.

On 29 November 2000, the Senate referred
the matter of the government’s information
technology outsourcing initiative to the Fi-
cance and Public Administration References
Committee. The committee has tabled two
interim reports, in April and June this year,
that detail a number of instances where it has
experienced difficulties in obtaining relevant
documents to assist it in conducting its in-
quiry. In the early stages of this inquiry, it
became clear to the committee that public
accountability would be a major theme in its
examination of the initiative.

This final report, Re-booting the IT
Agenda in the Australian Public Service,
provides a necessary chronology of events, a
serious critique and a series of practical,
forward looking and necessary recommen-
dations. While examining the immense detail
of the whole-of-government outsourcing of
IT, above all the committee’s focus has been
directed to an examination of the efficient,
effective and ethical use of Commonwealth
resources.

This report reflects not only upon the
Commonwealth’s use of Australian taxpayers’ money to achieve certain outcomes—the
policy objectives of the initiative—but also
upon Commonwealth departments’ and
agencies’ accountability to the parliament for
those outcomes. This includes public ac-
countability for the management of IT con-
tracts designed to deliver quality IT out-
comes, as well as the transparency of those
contracts and all other processes involved.

The implementation of whole-of-
government IT outsourcing was an ambitious
undertaking and the initiative introduced
substantial risks in its own right. While the
committee’s report to the Senate reveals a
series of problems and shortcomings and is
critical of many aspects of the initiative, it
also acknowledges the positive outcomes.
The committee has endeavoured to produce a
forward looking report with practical rec-
ommendations to improve all aspects of fu-
ture IT outsourcing.

Outsourcing, competitive tendering and
contracting are not new concepts. Govern-
ment administrations in Australia and over-
seas have built up a wealth of experience as
they adapt to the dynamic IT marketplace
and look for more effective and efficient
ways of procuring the goods and services
they require. With the government’s IT
outsourcing initiative, however, the commit-
tee found that planning—the most funda-
mental axiom of procurement on this scale—
was inadequate for the task. Lack of plan-
ning influenced all levels of the initiative’s
administration. The lack of early research,
analysis and adequate consultation meant
that, from the beginning, cracks appeared in
the process. No records were retained to re-
cord a benchmark against, to evaluate whether
and, if so, to what extent, the policy ob-
jectives were achieved.

The whole-of-government initiative is a
matter of the greatest public interest. It has
attracted favourable and unfavourable sub-
missions and some valuable evidence. When
the cracks began to appear, the government
and the responsible agencies in the Finance
and Administration portfolio, DOFA and
OASITO, did not take heed. It required the
Auditor-General’s report No. 9 of 2000-01 to
draw out and make public the deficiencies in
the implementation of the initiative. It re-
quired an independent review conducted by
Richard Humphry AO to pull the govern-
ment back and to instil better order into the process. It recommended that agencies take back control of their own IT destinies, in accordance with the responsibility they hold under legislation.

The committee makes 22 recommendations, and I will summarise some of them here. The committee has recommended that recommendation 10 of the Humphry review regarding agencies with distinctive data security needs, such as the science agencies, and agencies with high security needs, such as the Australian Federal Police, be extended to apply to the evaluation of the implementation risks of all other agencies. Another recommendation is that, for future IT outsourcing contracts valued over $10 million, agencies contract the services of both a probity auditor and a probity adviser and that their roles involve separate and distinct tasks. The probity auditors are to keep accurate records and provide sufficient information to allow for proper parliamentary scrutiny of the audit process and for probity auditors’ reports to be made public.

The committee recommends that the Commonwealth adopt an open and transparent methodology for estimating cost savings for IT outsourcing. In developing this methodology, all relevant Commonwealth agencies, including ANAO and DOFA, are to be consulted, and a common methodology adopted. It also recommends that any future requests for tenders and contracts entered into by a Commonwealth agency include provisions that require contractors to keep and provide sufficient information to allow for proper parliamentary scrutiny, including before parliamentary committees, of the contract and its arrangements.

There are recommendations that the government act immediately to remove barriers, such as onerous requirements, including financial guarantees, that hamper the participation of SMEs in the initiative; that agencies consider releasing an invitation to register interest as part of a pre-qualification phase of the tender process with follow-up public information seminars and briefs; and that tender documentation should clearly identify, at the very least, the relative importance of the separate evaluation components of IT outsourcing—technical, corporate, financial and industry development. They should also indicate the evaluation criteria given top priority within each of these components. Further recommendations were that all RFTs for IT outsourcing which contain clauses allowing the Commonwealth broad discretionary rights—for example, to exclude a tenderer from the process—also include a clause which places a clear and definite obligation on the Commonwealth to provide in writing the reasons for such decisions, and that for any future tender process for IT outsourcing, the evaluation plan be finalised and approved before the RFT is issued.

Other recommendations are that DOCITA investigate the feasibility of publicising and marketing intellectual property rights registers in current contracts under the initiative, as well as details of intellectual property held by agencies that are not outsourced, with a view to maximising returns on Commonwealth intellectual property, and that the government review the Commonwealth Procurement Guidelines with a view to making them more explicit and detailed for agency heads operating on behalf of one Commonwealth in a devolved environment and less likely to broad and uncertain interpretation. Further, it recommends that officers performing duties in relation to the procurement of property or services be required to ‘act in accordance with’ rather than simply ‘have regard to’ the core policies and principles and must make written records of their actions and reasons, that the government reintroduce mandatory competency standards for all officers undertaking procurement functions, and that, consistent with the Department of Finance and Administration’s policy responsibility for Commonwealth contracting and procurement, competency standards and training be developed by that department. This is to be done in consultation with the Public Service and Merit Protection Commission to ensure consistency with the Australian Public Service values.

Another recommendation is that the government consider establishing a centre of IT outsourcing expertise in the Department of Communications, Information Technology and the Arts, concerned with the technological and industry development side of IT
outsourcing but not necessarily the tendering and contracting process.

The committee proposes that the role of a service unit in DOCITA would be far different from the OASITO model and be more consultative and helpful than the service unit now established in DOFA. It would have broader horizons on IT and would establish and form the hub of a network between IT outsourcing units in Commonwealth agencies. Further, it would assume an education and training role in IT outsourcing, with its focus on IT planning for the future. Finally, the committee recommends that the government give serious consideration to introducing legislation that will provide a greater degree of transparency in Commonwealth contracts by making them publicly available.

The committee heard from the public and private sectors, from agencies—involved and not involved—and from industry. In the light of their evidence, the committee has focused its recommendations, some of which I have just mentioned, on strategic improvements to the many facets of outsourcing, including probity and contract management, data security, intellectual property, and succession planning—the next major challenge. It focuses on privacy issues, on savings or value for money IT services, on transparent and measurable industry development, and on assistance to the Australian Public Service to more productively and successfully outsource their IT requirements in a truly devolved environment.

The committee reminds the Senate that $1.2 billion of public money has already been committed under the initiative and that the process of outsourcing the Commonwealth’s IT is yet to be completed. The committee reminds all parties to this initiative that, in all processes, public accountability—accountability to the parliament—is paramount. The committee calls on the government to move IT outsourcing forward in the Australian Public Service and to assist agencies and private industry to reboot the initiative by implementing these recommendations.

May I, on behalf of the committee, express our appreciation to the committee secretariat for its role and commitment in producing this report under very difficult circumstances, and in many circumstances lacking cooperation from many of the departments directly involved in it. Despite all of that, it has been able to put together a comprehensive report which, if followed by the government, should improve considerably our IT outsourcing agenda.

Senator EGGLESTON (Western Australia) (5.37 p.m.)—The Howard government’s IT outsourcing initiative has been an outstandingly imaginative and groundbreaking step in public policy with respect to government IT services. The Humphry review signalled a change in direction for the government’s IT outsourcing policy. For example, responsibility for the policy’s implementation has been devolved to agency heads, who are responsible for choosing the most appropriate outsourcing model and also determining if they want to group together in a cluster. This has meant that Re-booting the IT agenda in the Australian Public Service, the report of the Finance and Public Administration References Committee we are discussing tonight, has, to a significant extent, been looking at the initiative as it once was and not as it currently is.

The reflections on the role of the Office of Asset Sales and Information Technology Outsourcing, OASITO, are no longer relevant, because the initiative is no longer a centrally managed process and OASITO no longer has a role to play. Additionally, many of the criticisms made by the majority members of the committee have been made in both the Humphry review and the Auditor-General’s report No. 9, The implementation of whole-of-government information technology infrastructure consolidation and outsourcing initiative. Given all of this, the necessity for the committee to conduct this inquiry must be questioned.

The Minister for Finance and Administration, the Department of Finance and Administration and OASITO are all criticised in the majority report for failing to cooperate with the committee, including failing to provide the committee with various documents that it requested. The minister, OASITO and DOFA have not been motivated by a desire to deliberately frustrate the committee in the course
of its inquiries, but, while recognising their accountability to the parliament, have been motivated by a legitimate desire to protect the interests of the Commonwealth. The minister, OASITO and the department have provided the committee with voluminous amounts of material, and there were good reasons, including public interest immunity, commercial in confidence grounds and a risk of litigation, why the committee was not given access to certain documents or was given documents with parts blanked out.

In a broad sense, the IT outsourcing initiative has benefited the Commonwealth government through cost savings and facilitation of access to improved technologies, thus enabling the delivery of services more efficiently and effectively to the Australian people. The initiative also played a key and a positive and constructive role in promoting industry development in the IT sector. The initiative has resulted in six significant achievements. The first is cost savings. The Humphry review found:

... there is broad agreement that, in the aggregate, the Initiative has delivered significant savings, however there is a divergence of opinion as to the precise quantum.

The Auditor-General found that the initiative had delivered cost savings to the government. Whilst there has been controversy over the methodology in calculating the savings and the overall quantum of savings, what is not in doubt is that in the aggregate the initiative has delivered considerable cost savings to the Commonwealth.

The second benefit is industry development. The industry development component of the initiative has been a tremendous success. It has created opportunities for companies which simply would not have existed but for the initiative and provided a valuable stimulus to the development of the IT sector in Australia. In general, the contractors have not only met their ID targets but exceeded them by a significant margin. The ID component of the initiative has created opportunities for small to medium business enterprises and has created jobs in regional Australia. The government has listened to the concerns that have been expressed about inhibitors to SME involvement and is currently working on a relevant action plan.

Third, the initiative has freed agencies to concentrate on their core function. IT is not a core function of government agencies, and the initiative has freed up agency resources to concentrate on what they do best. Fourth, contractually defined and improved service levels are another outcome and benefit of this initiative. The service agreements that have been concluded with the contractors contain specified service levels that the contractors are required to meet as well as allowing the levying of service credits or financial penalties where contractors fail to meet these minimum levels of service. The contractors have a direct incentive to meet these service levels, because if they do not it will have a direct impact on their profitability. Under the in-house arrangements, IT staff were paid irrespective of service levels, so there was not the same incentive, or even imperative, to improve service levels.

The fifth benefit was access to specialised skills and knowledge. Agencies have been able to access skills and knowledge which had not been available to them in house. In addition, there have been improved opportunities for former public sector IT employees. A substantial number of former agency IT employees have been employed by either the prime contractors or one of their subcontractors. This has opened up opportunities previously unavailable to these employees, including working for a company whose core business is IT.

The minority report puts on the record an alternative view of the government’s IT outsourcing initiative. I commend it to the Senate.

Senator LUNDY (Australian Capital Territory) (5.44 p.m.)—It is not surprising that the government is trying to characterise Rebooting the IT agenda in the Australian Public Service, the report of the Finance and Public Administration References Committee, as a political report. This is very unfortunate, because this report has the character of an analysis. Whilst the findings are justifiably scathing of the coalition, the recommendations are constructive and work towards an improvement in what has been—I
think there is a general consensus outside Minister Fahey’s office—an absolute deba-
cle.

It is not a new issue. As you would know, Mr Acting Deputy President, it has been go-
ing on now for many years. We have evi-
dence in this report showing that the gov-
ernment were told five years ago that they
were embarking upon a path that would
eventually come undone, that the experi-
ces overseas at that time—five years
ago—showed the government that they were
not going to achieve the savings and they
were not going to be able to effectively ad-
minister this in accordance with their prom-
ises.

This report does not attempt to provide an
alternative approach to IT outsourcing.
Rather, it addresses the coalition’s initia-
tive and its operation under the current govern-
ment. What it identifies is that there are still
many potentially fatal flaws, or further fatal
flaws, in the coalition’s initiative that will
continue to damage both the growth pros-
pects of Australian SMEs seeking to partici-
pate in government tenders and the ability of
government agencies to strategically control
and use information technology to improve
their operations’ efficiencies and service de-
livery to the citizens of this country. There is
a need for further action and I join with my
colleague Senator Campbell in commending
the recommendations in this report for their
immediate consideration.

I recognise that, for example, the govern-
ment are still consulting on the best type of
industry development model to be associated
with IT outsourcing, but I note that they have
been doing this since the Humphry review
came down in January and still have no an-
swers. They have been leading industry
along by the nose, waving a carrot in front of
their face, saying, ‘We have got a better way.
We have got a better way.’ But they still have
not put any cards on the table and we still do
not know what the government have in mind
as far as industry development is concerned.
I encourage the IT industry to assert itself
and make demands of this government to get
their act together and to provide at least
some certainty in what is a very difficult pe-
riod around elections, with a potential slow-
down in IT procurement anyway. That does
have a devastating and immediate impact on
IT businesses that are trying to do business
with government.

This report recommends a strengthening
of the role of the Department of Communi-
cations, Information Technology and the
Arts, in its coordinating role for IT policy.
That is absolutely necessary. At the moment,
there is some policy guidance in the National
Office for the Information Economy and
there is a little bit in the department and there
is a little bit over there in Industry. In fact,
there is no cohesive approach from the coa-
lition about what drives ICT industry devel-
opment. What is needed very specifically is a
high level of coordination and some political
leadership to get the focus on that industry
development right and actually use procure-
ment as an active and meaningful tool to
boost and support local industry.

Perhaps the most telling evidence of this
government’s failing with respect to IT
outsourcing is their pitiful response to this
long-term inquiry. Their minority report
reads like a cut-and-paste of Minister Fa-
hey’s media release web site. He is unrepent-
ant. Despite volumes of evidence, the gov-
ernment’s opening line describes the initia-
tive—as we heard from Senator Eggleston—
as ‘outstanding, imaginative and ground-
breaking’. I say it is outstandingly ideologi-
cal, imaginatively incompetent and ground-
breaking short-sighted in its approach and
continuation.

There are several important themes that
are drawn out in this report. One, as Senator
Campbell mentioned, is the issue of trans-
parency and probity. Not only this report but
the previous interim reports into account-
ability in a commercial environment, emerg-
ing issues and case studies demon-
strate that this whole IT outsourcing has ex-
posed a shroud of secrecy around the way
this government does business with the pri-
vate sector. Time and time again, the com-
mittee made formal requests for information
relating to the contracts and the service lev-
els required and the way those contracts were
evaluated. Yet there were barriers and fences
put up at every step, dating right back to last
year—in fact, dating back to before this in-
We had to work through the Senate officers and rely on our rights under parliamentary privilege to gain access to information which should have been available to the committee in a timely fashion. It is very surprising that the government representatives stand up and say, ‘Everything is out there on the public record.’ It took months. This report could have been tabled back in May when it was initially flagged. It was not, because we have had to fight tooth and nail for information that should have been available to the committee, if not on the public record then at least available to the committee in confidence to assist our deliberations on this matter.

It is only reasonable that the conclusion we draw from this is that the government has something to hide. So the issue of transparency and accountability has provided lessons not just for the procurement of ICT—information and communication technologies—but in fact for procurement generally and the way that government does business with the private sector. The findings of both this report and the interim reports and related investigations by the Australian National Audit Office point to a new paradigm, a new environment, where government accountability must be improved.

Another significant area of focus of this report is the issue of industry development. One aspect of that is that the committee has exposed the sham of regional jobs. Again, Senator Eggleston, in speaking to the government’s minority report, talked about regional jobs—pressing that hot button out there about what is so good about this. They have been completely discredited about the merits of their outsourcing program and regional jobs because, as this report says, if you take away Canberra and Adelaide and Newcastle from qualifying as regional—as they do in the government’s current calculations—you are left with barely 100 jobs that have been created outside major cities. If you take the Gold Coast out of that, you are down to about 24 jobs. The whole concept, the whole sell of this government about the regional aspects of their industry development associated with this is so weak, and it has been exposed.

Another important element of this is in-house expertise. I turn to the report and mention, particularly, the evidence of an international expert in IT outsourcing, Dr Wilcox. His researchers found that there is a massive lack of innovation as a result of IT outsourcing. He suggested that knowledge of the business is needed to spur innovation but that suppliers often do not have the required level of knowledge and that, in his opinion, they get so buried in the business at hand that they forget to innovate. More than anything else, this report highlights the need for strategic control by agencies and departments to make sure that they extract the most out of innovation and work on building strategic partnerships with the private sector to extract the best possible value for taxpayers’ money. Again, this is in defiance of the government’s approach to IT outsourcing.

There are also critical issues in relation to the cultural change required in agencies and departments that tend to be risk averse. They tend to go with the big contractors rather than take a risk with a smaller supplier who might be more innovative. There is also a need to remove barriers for participation for SMEs. Finally, this report demonstrates that this government has an inability to administer its own departments. The attempt to centralise IT outsourcing had the wheels completely fall off it, and this pile of reports is testimony to that failure. It has been a challenge because of the level of obstruction, and I think that the lessons learnt from that will go on to guide—certainly—Labor’s policy development in the area of strategic sourcing of information and communication technologies. We will certainly put the findings of this report to good use in that regard. I commend the report to the Senate and I very sincerely thank those in the secretariat who put in very long and difficult hours trying to collate and prepare the information for inclusion in this report.

Question resolved in the affirmative.
Legislation Committees

Reports

Senator COONAN (New South Wales) (5.55 p.m.)—Pursuant to order and at the request of the chairs of the respective committees, I present reports from five legislation committees in respect of the examination of annual reports tabled by 30 April 2000.

Ordered that the reports be printed.

Senator COONAN—I advise the Senate that the Community Affairs Legislation Committee and the Finance and Public Administration Legislation Committee will not be presenting reports, as no annual reports were referred to them in the period. The Economics Legislation Committee is due to report on 19 September 2001.

MARITIME LEGISLATION AMENDMENT BILL 2000

Report of the Rural and Regional Affairs and Transport Legislation Committee

Senator COONAN (New South Wales) (5.56 p.m.)—On behalf of Senator Crane, I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the Maritime Legislation Amendment Bill 2000, together with the Hansard record of the committee’s proceedings and documents presented to the committee.

Ordered that the report be printed.

COMMITTEES

Legal and Constitutional References Committee Report

Senator McKIERNAN (Western Australia) (5.57 p.m.)—I present the report of the Legal and Constitutional References Committee on the Management arrangements and adequacy of funding of the Australian Federal Police and the National Crime Authority together with the Hansard record of the committee’s proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator McKIERNAN—I seek leave to move a motion in relation to the report.

Leave granted.

Senator McKIERNAN—I move: That the Senate take note of the report.

I am pleased to table the report of the committee into the Management arrangements and adequacy of funding of the Australian Federal Police and the National Crime Authority. The inquiry was referred to the Legal and Constitutional References Committee in October 2000. It was considered necessary because of the need to examine more closely the management and funding of Commonwealth law enforcement. The inquiry was prompted in part by the refusal of the government to provide information by Mr Tony Ayers AO that assessed the issues of the management in the Australian Federal Police in 1998.

Essentially, the committee was asked to determine the current capability of both agencies in terms of: the management of resources, including staff and information technology; the resourcing of the AFP and the NCA; the relationship between the new AFP certified agreement and the AFP budget management; the appropriateness of any performance indicators used to measure the effectiveness and efficiency of the AFP and the NCA as agencies and of their individual operations; any mechanisms for long-term strategic law enforcement policy decision making and oversight of Commonwealth law enforcement priorities, operations and budgets; the recommendations of, and the government’s response to, the Ayers report; and whether the requirement the government placed upon the AFP after the Ayers report to find $50 million in internal savings has in fact been achieved and, if it has, if this was at the expense of operational capacity.

The focus of the inquiry on determining the capacity of the AFP and NCA to meet their specific objectives meant that the committee relied on a small number of witnesses. With their great assistance, the committee has been able to put forward a detailed response on most of the terms of reference.

As mentioned above, one of the terms of reference the committee was charged with by the Senate was to examine the recommendations of, and the government’s response to, the Ayers report. Unfortunately, the committee was hampered by the attitude taken by the government. The then Minister for Jus-
tice and Customs indicated that, because the Ayers report was a cabinet document, it could not be made available for purposes other than cabinet deliberations. The minister did release to the committee the summary of findings, the milestones section and some appendices. However, it would have been more helpful if the committee had been allowed to see the full report—if necessary, with any classified material deleted.

In evidence to the committee, both agencies recognised that the government’s budgeting climate dictated a limitation in resources and a trend towards inflexible tied funding. The challenge for law enforcement agencies is prioritising resources in an environment that sees new types of crime emerging. The committee found that the AFP’s experience with funding over the last few years has been very different from that of the NCA. The AFP was not required to make the same savings in running costs as the NCA during the 1996-97 period. The AFP received funds to enable it to increase and reprofile its work force and to purchase new equipment. The AFP had more flexibility in moving tied funds and in borrowing against future years. Funding of the AFP’s reform program will now be part of its base funding instead of being tied, as it had been up until this year. It also appears that the AFP has received funding towards its certified agreement on a more generous basis than that of other agencies. It is encouraging to see from the NCA’s forward estimates that its general funding situation will improve and that one of the financial problems presented by the secondment of large numbers of police to the NCA is being addressed.

It is commonly argued that, because of its nature, police work is difficult to measure and cost. It is against this backdrop that the committee considered any performance indicators for the AFP and the NCA. Overall, the committee was impressed by the ongoing effort of the AFP ‘to develop and enhance its performance measurement tools’. In respect of the NCA, the committee suggests that the performance indicators of the NCA have really been only quantitative measures that do not provide real information on the effectiveness and efficiency of the agency. In this sense, there are no actual performance indicators for the NCA other than statistics. The committee recommends, to address this problem, that the NCA implement its proposed integrated performance measurement framework as a matter of urgency.

The committee also examined other resourcing issues such as staff numbers and information technology in relation to operational needs. Generally speaking, these arrangements improved over more recent years. The committee does note concern with the current internal and external complaints system of the AFP. The committee found that this system was complex and could work unfairly against employees. For this reason, the committee recommended that the procedures for dealing with complaints and allegations be examined with a view to their being simplified and made more transparent and to ensuring that employees are not disadvantaged by the use of administrative instead of disciplinary processes.

The committee also examined the certified agreement for the period 1999-2002, a period that marks a transitional period for the AFP. The essential feature of this agreement is a more flexible use of both people and time to achieve better outcomes. Overall, it would seem that sworn officers have received considerable benefits in training, opportunities and payments.

From the onset of the inquiry, the material given to the committee indicated that there are no adequate mechanisms for long-term strategic law enforcement policy and oversight of Commonwealth law enforcement priorities, operations and budgets. This was also supported by one of the findings from the Ayers inquiry which identified ‘a need for a separate review of the Commonwealth’s criminal intelligence effort’. This review has not been undertaken. Different mechanisms for making long-term policy decisions and overseeing priorities, operations and budgets were suggested to the committee. The National Crime Authority emphasised its belief that a whole of government response was needed:

The real question in Australia is whether or not this country, at federal or state level, has a whole-of-government approach to what is an increasing
area of interest to all of us, and that is the rise of organised crime ... commentary [on organised crime] will, to some extent, touch on that in the sense of what might be described as a convergence of interests. That is what is lacking in the Australian context. At the federal level and elsewhere, there probably is not the sophistication in bringing together the law enforcement and aligned interests that have an interest in the issues, like organised crime, that affect our lives.

After deliberations, the committee has made the following recommendations:

Recommendation 3
The Committee recommends that the Government examine the best means of providing a point or body for the effective peak management and coordination of the Commonwealth law enforcement effort, and work to its expeditious implementation.

Recommendation 4
The Committee recommends that, in light of recommendation 3, the party responsible for the effective coordination and oversight of the Commonwealth law enforcement effort develop, and regularly update, a quantified estimate of the ‘criminal environment’, into which law enforcement bodies provide input.

Finally, I want to thank my colleagues who served on the committee during the inquiry—particularly my deputy, Senator Marise Payne, who particularly assisted by attending every one of the hearings of the committee. I must also mention the staff of the secretariat of the Senate Legal and Constitutional Committee, and I refer to Saxon Patience, Sonia Hailes, Yvonne Marsh, Mr Noel Gregory and Dr Pauline Moore. We had some difficulties in dealing with the inquiry because of pressures from our sister committee, the legislation committee, and other work that the Senate gave to us. I tried to ensure that, on this occasion, the Senate Legal and Constitutional References Committee would stick to its deadlines. I know I made some not-so-good friends within the secretariat by the imposition of very stringent timetables—

Senator Ludwig—An understatement.

Senator McKIERNAN—But we did deliver on this occasion. Thank you, Senator Ludwig, for your assistance, as well.

Question resolved in the affirmative.

NOTICES
Withdrawal
Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (6.07 p.m.)—I withdraw government business notice of motion No. 3 proposing the reference of the Commonwealth Electoral Amendment Bill 2001 to the Joint Standing Committee on Electoral Matters.

MIGRATION LEGISLATION AMENDMENT (IMMIGRATION DETAINES) BILL (No. 2) 2001
First Reading
Bill received from the House of Representatives.

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

Bill read a first time.

Second Reading
Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (6.07 p.m.)—I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill is an integral part of a range of strategies the government is introducing to promote safety and security at immigration detention facilities.

It will:

• introduce a power to conduct a screening procedure in relation to a detainee;
• introduce a power to strip search immigration detainees; and
• apply search powers in state and territory legislation to immigration detainees held in a state or territory prison or remand centre.

The new screening and strip search powers are necessary to address the increasing problem of detainees hiding weapons, or other things, capable of inflicting harm or aiding escape.
Such items may be hidden on their person, in their clothing or other possessions.

Examples include razor blades and sharpened pieces of wire hidden in thongs, bandages and other items of clothing.

These weapons endanger the safety of all detainees, staff and other persons at immigration detention facilities.

This year there have been major disturbances at the Woomera, Curtin and Port Hedland immigration reception and processing centres.

These disturbances have led to serious assaults on detention centre staff and have caused extensive damage to property.

The new powers are even more necessary in light of recent escapes from the Villawood detention centre.

Currently, the Migration Act only permits a pat down search of a detainee.

There is no power to require a detainee to reveal the contents of their pockets or present a piece of clothing for examination where an officer believes that there may be a weapon concealed in that clothing.

The use of metal detectors is not always successful in revealing these weapons or things, particularly if they are small - such as razor blades; fashioned from non-metallic materials like glass, hardened plastic or wood; or secreted on the body.

Things fashioned by grinding glass for use as a cutting blade, or by shaping plastic or wood to a sharp point, can be just as dangerous and harmful as weapons or things made from metal.

The existing frisk search power in the Migration Act is insufficient for the purpose of providing a safe and secure environment for detainees and staff.

This has serious consequences for the Department’s ability to manage immigration detention in a lawful, responsible and effective way and it potentially places detainees and staff in harm’s way.

The new search provisions in this bill strike a reasonable balance between preserving a detainee’s dignity and privacy and providing a safe environment within the detention facilities for all.

A detailed outline of these new search powers was given when the Migration Legislation Amendment (Immigration Detainees) Bill 2001 was introduced in the Parliament.

Searches of a detainee or his or her clothing will not be conducted as a matter of routine.

It is a measure of last resort, to be used only in exceptional circumstances.

In addition, a strip search of a detainee will not involve the removal of more items of clothing than is reasonably necessary to determine whether there is a weapon hidden on the detainee.

A draft protocol regarding the exercise of the new search power will be settled in conjunction with the Attorney-General.

The draft protocol will be incorporated into written directions pursuant to section 499 of the Migration Act.

It will provide operational guidelines for the power, which will be binding on all officers.

The bill also puts beyond doubt the ability of state and territory authorities to search immigration detainees held in state or territory correctional facilities in accordance with relevant state and territory laws.

This will ensure that state and territory search powers can be consistently applied to all persons being held in these facilities.

In summary, the bill is an important part of the government’s strategy designed to ensure that immigration detention centres are safe for all persons within them – be they detainees, visitors or staff.

While the legislative powers to manage detainees are being strengthened, great care has also been taken to build in reasonable safeguards against misuse.

I commend the bill to the chamber.

Senator McKIERNAN (Western Australia) (6.08 p.m.)—The Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001 has been separated from an earlier bill that was introduced in the other place. After some approaches by the opposition we got the government to agree to separate them. In some weeks past, we have dealt with the earlier parts of the bill, which of course dealt with the increase in penalties on persons who escape from legal custody.

This particular part of the bill is very useful legislation and legislation to be commended because it is an example of what can be done in this place through the cooperation and involvement of parties in the development of legislation that is going to be of assistance not only to those persons who are particularly impacted by the legislation in the
The purposes of the bill are firstly to provide for the power to conduct strip searches of detained asylum seekers, or even persons who have exhausted the asylum seeker processes and who are held in detention, as a means to safeguard the working conditions of officers who work in those detention establishments and whose job is to guard the detainees and also protect other detainees from those who might wish to do harm to those who are held in detention as well. It also provides for—and this was something that gave the members of the opposition a real cause to think—the ability to strip search young people—children as young as 10 years old. That weighed very heavily on our minds when we were determining our attitude to the legislation as it is proposed.

We weighed up a number of factors and took into account that over the past 18 months to two years there have been a number of riots, disturbances, protests and escapes from immigration detention centres: from Woomera in South Australia, from Curtin and Port Hedland in Western Australia and from Villawood in New South Wales. These disturbances resulted in several officers and detainees sustaining some very serious injuries and there was substantial damage done to public property. The actions by some detainees have cost Australian taxpayers many millions of dollars. I am not in the position at this point in time to go into the reasons why those actions occurred. I know that there are some charges before the Australian courts against some of the alleged offenders who have taken part in the disturbances and I do not want to canvass too much more on that.

It must be remembered that while these disturbances were taking place individuals’ safety was being endangered, be it the safety of the guards who were working in the establishment or that of other detainees in the establishments where the persons were detained. Also, one has to remember that there is a community in some instances in very close proximity to the detention facilities. For example, in my home state of Western Australia, in Port Hedland there have been actual en masse escapes which did cause very grave concern within that community. In Villawood, we have also seen escapes into the housing areas which are in the immediate vicinity. Even in remote Woomera the detainees who escaped en masse on one particular occasion were able to get themselves into town, where they remained for quite some period of time.

We are really concerned about the escalation of violence in Australia’s detention facilities and we certainly had this uppermost in our minds when we were considering how we would deal with the provisions that the minister was suggesting ought to be put in place. We considered the bill in very grave detail and, as I indicated in opening my commentary this afternoon, the bill has been split. We are grateful that the minister did that, and we are very grateful for the consultations that were held between the opposition and the government. We arrived at a position which I think is a very useful way of protecting individuals, be they the officers who work in the facilities or indeed the detainees.

We considered in detail the provisions of the bill and consulted widely with others before arriving at our position on it, because we do have concerns about what possibly could have been routine strip searching and other searching that may have occurred. We have sought during the course of the consultations to put in guidelines or to make sure that guidelines are established that will ensure there is no abuse of the extended powers that will be included in the legislation.

Following our consultations we approached the government with a number of amendments and measures that the opposition believed would establish a process whereby the seriousness of the search and the need to prevent abuse of powers were reflected in the process leading to a strip search being actually conducted. We also discussed who would authorise a strip search, who should be present when a strip search was being conducted and who should be aware of strip searches happening. The following measures have been agreed to by the government and are now reflected in the legislation: an amendment providing for strip searches to be conducted only after an ob-
jective assessment is proven, that is, following the conduct of conventional searches which are limited to passing through a metal detector, scanning by a hand-held metal detector or a conventional frisk or pat-down search or other intelligence that is available to officers; an amendment providing that authorisation for a strip search must be given by a DIMA—Department of Immigration and Multicultural Affairs—Senior Executive Service officer of at least acting deputy secretary level or above; an amendment providing that in the case of a minor being strip searched the permission for a strip search must be given by a magistrate; and an amendment providing the detainee with the option of having another person of their choice present as a witness during the conduct of the strip search.

The Senate would know that on a number of occasions I have visited detention centres around Australia and that in fact I was in the Curtin Detention Centre in January of this year with the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade a day or so after a major disturbance occurred in that facility. I witnessed the various weapons that had been available for use in the disturbance that occurred there prior to the committee’s visit. One would not need to strip search an individual to determine that an individual was carrying some of the weapons. We saw legs of tables and chairs and other pieces of furniture which had been dismantled in order to provide weapons. We saw other more devious means of manufacturing weapons, some of which were described by the minister when he was preparing the ground for the introduction of the bill. In my parliamentary life I have seen other weapons manufactured by individuals in detention. In my most recent visit to the Curtin Detention Centre outside Derby in Western Australia I was told of an incident where the assistant DIMA manager of the facility had her safety put in jeopardy when she was threatened with the blade of a safety razor. I was told that the blade had been removed from the razor and inserted into the thong that the detainee was wearing when he went for an interview with the assistant manager. This young woman found herself in the circumstance where the detainee was between herself and the door, stopping others coming in as well as stopping her leaving. The blade was actually hidden in the thong that he was wearing. Her safety was very seriously in jeopardy. Thankfully, neither she nor the detainee were harmed in those circumstances. I hope that the legislation that hopefully will pass this chamber in a very short time will help to address such circumstances as those.

There is great difficulty with our detention centres at the moment, not only regarding what has been mentioned so far but also regarding ongoing matters. We heard the news today about the Woomera facility being on amber alert. There are great concerns about further disturbances there. We have also heard in the media today of further hunger strikes, including by young people, in the Curtin Detention Centre in Western Australia. I do not think that the strip search powers that are being addressed in this legislation will overcome those matters, but something must be done about the circumstances that we find in our detention centres at the moment. The problem is continuing to grow, as we have heard in earlier debates. More and more people are coming to this country: we have had something like 1,000 people arrive in the last week or so. These people need to be held while they are being processed to determine whether or not they are in need of Australia’s protection.

Not everybody who comes to Australia claiming refugee status is found to be in need. I suggest that that may be one of the reasons why we are having disturbances in our detention facilities. Some people who have had their claims for refugee status rejected have gone to the Refugee Review Tribunal and again been rejected. Indeed, I know of other cases where people have gone to the courts and have also been rejected. I know of instances where people in our detention facilities have exhausted all administrative and legal processes that are open to them and are now awaiting removal back to their home countries, but they will not cooperate with the authorities in order to get the paperwork done that will facilitate their removal from Australia.
It is all very well for those persons who ring my office to complain about inaction by government and inaction by opposition regarding people held in detention. One cannot just load people into a Hercules aircraft or into a much larger aircraft and send them back to a country in the Middle East. You just cannot do that. There are international regulations and laws covering the removal of people and the landing of people. For example, we would not like it if people claiming to be Australians being held in another country—I will not name a country—were then removed from that country back to Australia, landing in an aircraft with no landing permission. That would not be a circumstance we would comply with, and it is not something we would do to others.

It is also said that, because in many cases the last port of embarkation of these people before they arrive in Australia is Indonesia, that is the place to which they should be sent back. I would not think that the Indonesian authorities or governments at a national or a local level would take too kindly to us, the Australian parliament, authorising the removal of individuals without papers back to their country simply because those individuals claimed that their last port of embarkation was that country.

We are dealing with a very complex problem. I must say that the complexity of the problem is not improved by some of the rhetoric emanating from the minister’s voice in some recent times. We do have a difficulty and, as is being practised right here and now, the opposition are cooperating with the government to address these problems in what is considered to be the best way forward. We are cooperating; we have supported most of the legislation that has been brought into the parliament, and most of it has indeed been passed. Where we are being consulted on the legislation in the beginning or during the process, the legislation has been improved, just as this legislation that we are dealing with now has been improved.

The rhetoric that is coming from the minister is not helping in most circumstances. Some pressure has been put on the opposition parties—and, I dare say, on the smaller parties within the chamber—to pass legislation. They are not talking about this legislation; I know the legislation they are talking about. Let me read to the Senate a copy of a letter that I received today. I will not give the names of the individuals because I have not sought their permission to give their name, but they are constituents of mine from Western Australia. It is dated today, 28 August, and it says:

Dear Senate Member,

I feel compelled to email you regarding the very serious situation with the influx of refugees into Australian waters.

Being a fourth generation Australian it was my ancestors who fought to keep Australia a free country and Christian country for our families. All the deaths of our ancestors in war, I feel now is in vain and our rights as citizens of Australia are being compromised by the influx of refugees.

My main concern is the type of refugee, Muslim coming into a Christian country. It is their belief they will go to paradise if they kill a Christian. This puts all Australian Christians in a very uncomfortable position in our own country. These people are radical and terrorists and I am not comfortable with the amount of them coming in which brings a new wave of violence and terrorism to Australia.

I demand as a fourth generation Australian that we protect our country and families from these illegal refugees and send them back to where they come from.

Please use your say as a Senator to help pass legislation to stop this for good.

That is the type of correspondence coming into my office, and this is just one example. Mr Ruddock ought to be ashamed of himself and, indeed, the government ought to be ashamed of itself for eliciting that type of response from the community. It is shameful. I reject the references that are—

Senator Patterson—You know that’s not true. That is very unfair.

Senator McKIERNAN—It is very true, Parliamentary Secretary. In the rhetoric that the minister has been going on with in the past few days, he has blamed the Labor Party for not passing the judicial review legislation, which has sat idly on the Senate Notice Paper since December 1998.

Senator Patterson—But you’re not going to support it.
Senator McKIERNAN—It has not been brought on for debate or discussion. And if we pass this legislation that we are currently debating, it will not mean one iota and it will not stop one unlawful arrival coming into this country. And what do we get? What the minister is doing is inflaming the community, and for that the minister and, indeed, the government have to be ashamed. Not only are constituents taking it up, but look at what candidates for the Liberal Party are doing and at the various pamphlets and literature that has been circulated, for example, in the seat of Dickson in Queensland, in the seat of Gilmore by the member, Mrs Gash, and also in the seat of Fadden, which is held by Mr Jull. The propaganda that has been peddled by those people really is verging on xenophobia and building it up in our community. Where is it coming from? It is coming from what used to be known as the ‘oval office’, because nothing that happens with his government happens without the approval of the Prime Minister, Mr Howard.

We know of Mr Howard’s attitude to people who come from Asia. That has been put on the public record in previous times. That needs to be put to bed. There is no room for that type of racist attitude in Australia in the third millennium, in 2001. There is no need for it, and the government and the minister ought to be condemned for filling the community with this racial hatred. There are other parties in the Senate who can do that and do that well—perhaps even better than the minister.

Senator BROWN (Tasmania) (6.28 p.m.)—We in Australia are seeing 438 people in a boat off our shores at the moment, which brings this piece of legislation into very great focus. The latest news to hand is that, according to the Indonesian Ambassador, those people will not be given the ability to go ashore in Indonesia. The Australian government, backed by the opposition, has said that the people on the Tampa, the Norwegian ship, should not be allowed to land on Christmas Island or on Australia proper. The Prime Minister has washed his hands of the fate of these people, with Mr Beazley standing at his side, by saying that it is a matter for Norway or Indonesia. So the numbers are now reduced, if what the Indonesian Ambassador has said is correct, down to Norway being the one noncommittal country. Without expecting that the people will be shipped to the other side of the planet to escape this callous rejection of them from the shores of Australia or of our northern neighbour, we have to have a good look at what this particular incident is doing to us. I will come back to the people on the ship in a moment.

What is it doing to this country which has such a proud reputation for being multicultural and for going to the aid of people who are in difficulty? This country recently took an extraordinary risk in putting in a huge amount of human effort and resources into assisting our near neighbour East Timor in its moment of tragedy. This country has a reputation, in which it glorifies—and I like to be an Australian who thinks this way—for being a country of a fair go and a country, therefore, that respects all human beings as deserving of a fair go. That reputation is now being tested. You cannot have that sort of philosophy ending at a border drawn somewhere against people on the other side.

The world is looking at this ship with these poor people aboard, and it is wondering where the humanity is that is going to give them succour. It is seeing that Australia, the country these people wished to get to, has turned them down and said that it is up to Indonesia, a much poorer country with great recent internal difficulties and without the clear line of authority and ability to move on behalf of the national interest, I would submit, that the incumbent government here in Canberra has. But the Howard government, in the wake of five years of increasing harshness and implied vilification in many cases of people coming to our shores, has turned its back on these people and said that Indonesia might be a country with greater humanitarian reception for them. Indonesia, for the time being, has said no, and Norway is left, in the Prime Minister’s estimation, as the next country which should take these people. The reality is that he is wrong. Yesterday, he met rapidly with his cabinet when the news broke of the rescue taking place between Christmas Island and Indonesia—and let us not forget in a situation of quite
d let us not forget in a situation of quite consider- able domestic political embarrass-

Senator Patterson—Talk about the people smugglers who got them into this situation.

Senator BROWN—and decided that the ship should turn around. Having asked the captain of the ship to take the people on board, he then said ‘But you can’t come here,’ when those people said, ‘We want to land in Australia.’ Australia now stands indicted because of the action of the Prime Minister and his cabinet, which action was highly motivated not by the interests of the asylum seekers but by domestic political expediency in the run-up to the election. In doing so, the nation’s reputation is going down in the eyes of the whole world. In the coming days this incident, which has now become an international incident and which is playing on the television screens of people right around the planet, will do this nation enormous harm.

On this occasion the asylum seekers are no different from those taken ashore in recent months and recent years, except for one fact: we have a government going to an election badly needing a distraction. In doing so, it is prepared to play to the basest motive of fear in the people. That fear is being played up, and the interjection which came just a moment ago from the government member opposite shows how easily words are used—quite improperly—to impugn those people on the boat and to make us fearful that there is some sort of immediate threat to our own wellbeing from their presence on that ship. That is patently not so. When you get a political situation like this and a government that has decided that, for reasons of its own, it can use these people as pawns in the run-up to an election, all manner of principle and fair dealing goes out the window, and that is what is happening in this situation. The Prime Minister is even prepared to allow Australia’s reputation as a fair, honest, welcoming and humane country to be shoved down for an immediate base political purpose. It is disgusting that the Prime Minister and the cabinet made that decision yesterday. As the people on the Tampa, including the captain and his crew, get used as hostages for the Prime Minister’s political advancement, as he sees it, the rest of the world will count us down as a nation. I object to that. Neither I nor the Greens will be part of it.

My office—like everybody else’s office, I have no doubt—has had a huge reaction to what is going on off Christmas Island at the moment. We have had angry calls, and we have had some calls during which the phone should have been put down much faster. But, fortunately, I have got tolerant staff who try to give people a hearing. But, in my case at least, the preponderant calls are coming from good-hearted Australians who say, ‘We don’t want to be party to this increasing incarceration of people seeking asylum in our country,’ or their being turned back in their tracks almost as an echo of the policy performance put forward by One Nation’s Pauline Hanson just a couple of years ago and seen then as so despicable. That is what our government is doing now and, very sadly, that is what our opposition is endorsing in this case. I thank the people who are of a different thinking out there in the electorate. I thank those people from all walks of life, religions and philosophies who are saying: ‘We will not be part of this. This is not the Australia we want. This is not the set of principles we want to see when it comes to dealing with people, including women, children and men, in distress on the high seas just off our coastline.’

Let me talk about these people for a moment. There are, as we comfortably sit or stand here tonight, 1.2 million Afghani refugees—our mind is concentrated on some 400 at the moment but there are 1.2 million of them—in refugee camps in Pakistan in deplorable conditions that none of us would want to see our families in. If we were able to alleviate their suffering, then the diaspora that is coming from that huge body of people might not be occurring. But in a country which is rich by any standards less than $1 million has gone from this government to help those 1.2 million people suffering in despicable circumstances in the last year. In that same time, $120 million has been spent in detention centres very little different from jails here in Australia for people like them
who have managed to make it to our shores without appropriate papers.

Instead of going and trying to turn the tap off, the government—and the opposition—is putting a finger on the nozzle at the other end. It has got its priorities wrong. Its meanness of spirit in denying its obligation to help people like those Afghani refugees in despicable circumstances is part of the problem. The body politic in this country must share some of the blame. We are not an isolated country. We are not an island to ourselves anymore. We have a government that, above all, promotes globalisation, because it wants to make money out of being in the global community. But when it comes to the movement of people, rather than money, it draws the line, because in these circumstances money is more important than people. That is what it is about. That is where we are at.

I have heard from the opposition today about how these people, the refugees, including Afghans, are displacing other people who want to come to this country. One thing is being overlooked here. It is very easy to say: ‘They are queue jumpers. They are getting in in front of other people who could come here on humanitarian grounds’—

taint so. Let me read a letter dated yesterday from Mr Bert Gray from Beacon Hill to the Sydney Morning Herald. He says:

In defending his punitive treatment of asylum seekers, Mr Ruddock claims that he is giving priority to the millions of refugees in camps in countries of first asylum. Yet Herald correspondent Christopher Kremmer (Herald, June 16) reported that of the 1.2 million refugees in Pakistan, only 450 had been referred by the UNHCR to Australia last year, and the number this year is likely to be 600.

Given the often desperate conditions in these camps, can Mr Ruddock explain why the number of off-shore humanitarian places for refugees was slashed from 15,000 in 1995-96 to 5,700 in 2001-01?

We have cut the number of humanitarian refugee places, and I will tell you how we have balanced that: by increasing the number of so-called skilled and wealthy people able to buy their way into this country. It is not other humanitarian refugees whose places these asylum seekers coming in boats to this country are competing with; it is wealthy migrants being afforded entry into Australia in greater proportions than ever before in recent history. I do not wish for them not to come here, but I do believe that the government should stop this quite false argument and vilification that the people being denied here are queue jumpers. The government itself, through its own policy, has closed the door on thousands of humanitarian refugees coming to this country.

When I turn to the specific bill in hand, what we have here is a piece of legislation to allow strip searching—

Senator Patterson interjecting—

Senator BROWN—I am sorry? The member opposite, Senator Patterson, does not want to repeat that interjection. That is for her. But this legislation does allow for strip searching of asylum seekers from the age of 10 upwards who find themselves in detention centres in this country. My first point on this matter is that those detention centres ought not be working in the way that they are. They are essentially jails. Countries taking a far greater burden of asylum seekers—comparable countries in Europe and North America—have not found them necessary. But that is the reaction of this government and this opposition. Because of this mentality that people coming to this country—women, children and men—fleeing desperate circumstances are criminals until proven otherwise, we have created a system where we receive them into jails. The treatment in those detention centres then leads to a cycle of violence and psychological despair. We are going in the direction of the American prison system which, as reported yesterday, contains two million people. I am very familiar with the lockdown situation in the United States, which defies all human dignity, including that of those who have created it. It is very similar to the Port Arthur asylum treatment of over 150 years ago.

What I warn against here is the increasing repression within these detention centres of people who are already distressed coming to our shores. Here we have strip-searching, with provisions—and we will go into those in the committee stage. I have been in jail as a result of peaceful protest in Tasmania and I
faced repeated strip searches in jail. That is okay for me, because I knew where I was, I knew that I was close to home and I knew that there were people around and that it would not be long before I got out of jail. But this indignity, without the required specification—I will get to that in the committee stage—is another step towards making these prisons places of inhumanity which Australia in future will look back on with the most deep and dire regret. I will not be part of this increasing criminalisation of asylum seekers and the harshness with which they are received on to the shores of this great nation. I oppose this piece of legislation.

Senator HARRIS (Queensland) (6.48 p.m.)—I rise to speak on the Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001. This bill has come before us at a very opportune time—while the majority of loyal and thinking Australians are in support of the government’s action being presently taken in relation to the illegal shipment presently sitting in international waters off Christmas Island. Australians are now becoming very aware of the overwhelming numbers that are going to arrive illegally on our shores. This is creating a great deal of heat out in the community. While this bill is not aimed at addressing this problem, it is, however, directed at increasing the ability of the relevant authorities to maintain a safe environment for both the detainees and the detention centre staff. I emphasise that the government and this Senate have a duty of care—a responsibility—not only to the members in those detention centres but also to those who are given the authority to administer them. This bill goes towards providing a safe environment for both the detainees and the detention centre staff within the detention centres. The conditions that presently exist within these centres are severely lacking and are presently leaving both inmates and staff in potentially very difficult circumstances.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! It being 6.50 p.m. it is now time for consideration of government documents.
young people in developing their career and enterprise skills.

We are living in what we all call today a global economy. Australia has no choice but to move forward and embrace the rest of the world. But to reap the future benefits of open markets and free movement in goods, services and information, we have to lay the necessary groundwork today. Educating and training the next generation of Australians to take full advantage of future opportunities is an essential part of that long-term project.

More than at any other point in her history, the Australia of the future will need a well-educated, highly skilled and flexible workforce. The next generation of workers will have to be enterprising and innovative—responsive to the changing world. We need to help our young people today acquire the key skills, but in a globalised world this of itself will not be enough. We also need to help them acquire enterprising attributes that will take them all through their future work life. We need to ensure that they embrace the concept of lifelong learning and that they acquire the capacity to develop and manage their own lives and careers in a world where the only constant is change.

As we expect our young people in the future to be innovative, so do we in the government need to be innovative today in finding the ever different and fresh ways of preparing young people for their adult life. This is where initiatives like Go Career come in. By getting out to schools and local communities, by sharing the good news stories about young people who have made successful careers through enterprise and career education activities, the participants in and supporters of Go Career can encourage and inspire young people and their parents. When people see the Go Career brand they will know that it is associated with a quality enterprise and career education activity, whether it is vocational education programs in school, career advice, employability skills, work placement or school based New Apprenticeships.

Go Career obviously benefits our young people, but it also benefits Australian businesses. By getting involved in the training of young people who are still at school, businesses will enhance their skills base, and this in turn will help them to become more productive and will improve their bottom line. As well, of course, businesses will be putting something back into the community. There are already well over 50,000 businesses participating in enterprise and career education activities nationally. But the initiative could do with another 50,000. There are over 153,000 young people engaged in these programs plus nearly 6,000 young people in school based New Apprenticeships, an option that was virtually non-existent three years ago. But there is still scope for further progress and expansion.

Schools too have a very important role to play in this initiative by encouraging students to participate in various programs. It is a firm belief of the Howard government which I strongly share that in this and other educational initiatives school authorities should play a crucial role in cooperation with community organisations and businesses in building partnerships and social networks that help students make the transition from school to the wider world.

Education and training have been two areas of public policy which, for all its rhetoric, the Labor Party has much neglected while in government. This is the state of affairs the Howard government made a strong commitment to remedying. Mr Beazley speaks of his Knowledge Nation, but it is the Howard government that has put in place real programs that help our children and young people to obtain decent education and therefore a good start in life. While Mr Beazley cooks up his meatballs and spaghetti diagrams, the Howard government has delivered and served the main course.

Labor’s sorry legacy in education was schools where one-third of children could not read and write properly. Labor’s legacy was the neglect of apprenticeships and vocational education, and that meant ignoring the needs of 70 per cent of young people who do not go on to tertiary education. In opposition, Labor’s tune has not changed—the Australian people are still waiting for realistic, workable policy alternatives from Labor. Instead, Mr Beazley serves out some warmed up class warfare rhetoric and the politics of
envy against non-government schools and offers meaningless stunts such as his Knowledge Nation fiasco. Meanwhile, under the Howard government, the total Commonwealth education budget has reached and passed $11 billion a year. This represents a 15 per cent real increase in Commonwealth expenditure between 1994-95 and 2000-01.

Senator Ludwig—You normally do not read. Dr Kemp wrote that for you.

Senator MASON—Government schools are estimated to have received an additional $1.9 billion from 1997 through to 2000 above what they would have received if funding had been held at Labor’s 1996 levels, Senator Ludwig. In 2000 there were 42,000 more students in higher education than in Labor’s last year in office. To help children in our primary schools, the Howard government has set up the National Literacy and Numeracy Plan, which will assess children’s literacy and numeracy skills at the end of years 3 and 5 and, if necessary, take early remedial action, which I am sure, Senator Ludwig, you agree with. To that end, the Howard government will spend almost $869 million over the next four years.

In the area of vocational training, the Howard government too has shown great initiative. The government will spend $2 billion over four years for New Apprenticeships initiatives, including $1.5 billion in incentives for employers to take on new apprentices. Over the next three years it is expected that 425,000 young people will become apprentices as a result of the completion of a new round for contracts for New Apprenticeships centres. These are the sorts of practical programs that are bringing tangible benefits to young Australians. No empty rhetoric, just real outcomes. The Go Career initiative is a perfect example of this down to earth, commonsense approach to education and training. The best legacy that any government can leave is to ensure the future wellbeing of its people. I am proud to be a part of a government that understands this challenge and acts on it for the good of our young people and therefore for the future good and prosperity of Australia.

International Year of Volunteers

Senator LUDWIG (Queensland) (7.00 p.m.)—As all members of this chamber will be aware, the year 2001 not only marks the celebration of the Centenary of Federation; it is also marks the celebration of the International Year of Volunteers. Indeed, it is very appropriate that our Centenary of Federation and the International Year of Volunteers should share the same year. The Centenary of Federation serves to celebrate the strength of purpose and unity that Federation has brought to Australia. It has been a period in which we, as a nation, have acknowledged the contributions made by Australians from all walks of life to our communities and to the nation as a whole. The International Year of Volunteers is an ideal way to specifically recognise the contributions made by those thousands of volunteers who contribute much personal time and effort to our communities both in the cities and in regional and remote Australia.

In Australia, the International Year of Volunteers aims to meet a number of objectives: to recognise and celebrate the outstanding contribution volunteers make to a strong, cohesive Australian society; to have community, business, the media and government work together to build an Australian society that encourages and nurtures a culture of volunteering; and to support Australian communities in their engagement in valuable and productive voluntary activities. These are laudable goals and worthy of all our support. Indeed, can you imagine an Australia without volunteers? These tireless workers are everywhere you look. They are the coaches of our local soccer, football and cricket teams; they are leaders of the local Scouts and Girl Guides; they are the parents at the markets, cooking hamburgers to raise money for the local P&C; and they are also the retired couples who help support the local hospital auxiliary. As I stated earlier, volunteers are everywhere we look, carrying out countless numbers of valuable tasks.

I digress for a moment to talk about my parents-in-law. My mother-in-law, who is currently the president of the auxiliary at the QEII, was only this year recognised for her volunteer work of some nine years or more...
as a working member of the local hospital. The auxiliary has put a considerable amount of money and individual effort into ensuring that the hospital runs well. It has supplied equipment over and above what would normally be supplied to doctors. The auxiliary is a hard-working committee, and the award recognises not only Marjorie O’Keeff but also the many other people who have helped and assisted at the QEII.

Recently, I had the great pleasure of visiting the towns of Pittsworth and Oakey, in my home state of Queensland, in order to present International Year of Volunteers certificates to a number of very worthy recipients. The presentation ceremonies sought to meet the goals of the International Year of Volunteers by publicly recognising the outstanding achievements of volunteers in Pittsworth and Oakey. They served as a focal point for these communities and were well supported by local businesses, councils and community organisations. I was very pleased with the support given to the International Year of Volunteers by the councils of Pittsworth and Oakey. My personal thanks goes to the Mayor of Pittsworth, Councillor Ros Scotney, the Deputy Mayor of Oakey, Councillor Peter Langton, and Councillors Annette Frizzell and Di McIntosh of the Oakey Shire Council. Their support made the presentation ceremonies a real community event. The people who received International Year of Volunteers certificates were an excellent representation of all those volunteers who largely go unrecognised and unthanked by our communities. A hearty round of applause was certainly overdue for all the work that they do for their local community.

In Pittsworth, I presented certificates of recognition to Mrs Nell Smith for her long-standing and continuing work with the Society of St Vincent de Paul, to Mr Hugh Smith for his restoration work at the Pittsworth Historical Village, to Mrs Maureen Rushton for her extensive work with the local ambulance committee, to Mrs Maureen Hill for her ongoing work with the elderly and disabled of Pittsworth, to Mr Alan Phipps for his tireless work with sporting youth, to Mrs Patricia Montgomery for her 30-year involvement with the Girls Friendly Society, to Helen Arthy for her work with the Pittsworth and District Care Association, to Mrs Karen White for her work with the St Stephens Parish Council and P&F, to Mrs Clare Neale for her longstanding work with local basketball, to Joan Muir for her work with the Yallambie retirement home and youth in the Millmerran District, and, finally, to Mr Alan May for his work with troubled youth and the environment.

Later that day, I had the opportunity to travel to Oakey where, again, the volunteers were recognised. I presented certificates of recognition to Mrs Betty Speed for her 15 years of service to the local CWA, to Mr David Coombes for his work with junior rugby league, to Mr Kevin O’Neill for his extensive and ongoing work with the Lions Club, to Mrs Fay Telford and Mr Bruce Weedon for their work with the Oakey Historical Museum, and to Mr Roy Grundy for his restoration work at the Jondaryan Woolshed. I had the opportunity to talk to Mr Grundy at length about the Jondaryan Woolshed—a particularly worthy undertaking which he had committed a considerable amount of his time and effort to, which should be recognised. I also presented certificates to Rosemaree Price for her work with the Westbrook Progress Association, to Mr Frankie Cleary for his longstanding involvement with the local branch of the Queensland Arts Council, to Davis Grundy for her dedicated service with the local SES, and to Mr Neil Hollindale for his work with junior cricket.

As I stated earlier, these award recipients are a good representation of all those volunteers who go largely unrecognised and unthanked by our communities. My only wish is that all those who volunteer their time, effort and skills to the betterment of our communities could also be publicly recognised. However, this would be an almost insurmountable task, given the large numbers of volunteers within our communities. We can only hope that the general recognition given to volunteers during the International Year of Volunteers goes some way to rewarding all those who do so much for our society. In closing, I would also like to thank Leeann King, the Labor candidate for
Groom, who, on my behalf, did the vast amount of groundwork necessary to bring these presentations together. It was Leeann King’s strong links to the communities of Pittsworth and Oakey that made these events a true success in recognising the volunteers of these close-knit communities.

C.E.W. Bean Foundation

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.07 p.m.)—Last night I had the pleasure and honour of speaking on behalf of the Australian Labor Party at the inauguration of the C.E.W. Bean Foundation, which will not only celebrate our first official war correspondent and official war historian but recognise all those Australian war correspondents who have distinguished themselves in many conflicts. Their contribution constitutes some of the best of Australian journalism over the years.

It is appropriate and welcome that the foundation that bears Bean’s name encompasses not just war correspondents but also depicters and recorders of war—artists, camera operators and photographers as well as writers. This foundation will undertake commemorative activities and commission works to assist community understanding of the role of the war correspondent. I understand that in due course we will see books, exhibitions and documentaries produced with the support of the foundation.

As I have indicated, the foundation’s objectives are meritorious and the potential scope of the Bean Foundation’s activities is broad. Tonight I would like to talk about one example I mentioned briefly in my speech in the House of Representatives chamber in Old Parliament House last evening. I referred to Charles Bean’s great friend Will Dyson. Dyson grew up in a Ballarat family of exceptional creative talent that befriended the even more exceptionally talented family of Lindsay artists and writers—Norman, Lionel, Percy, Daryl and Ruby. Ruby became Will Dyson’s wife.

Dyson and Ruby ventured to London, where Dyson’s powerful cartoons made him a sensational overnight success. By 1916, he was famous and had a contented family life with Ruby and their small daughter. Ruby was not only a talented artist herself but a woman of rare beauty and radiant personality. Theirs was obviously a marriage of mutual devotion. But in 1916 Dyson volunteered to leave all this behind and immerse himself in the horror, the squalor and the danger of the Western Front in order to provide an artistic record of what Australian soldiers were doing.

He took this step at the end of a period when the Australians had sustained 28,000 casualties in seven weeks in and around Fromelles and Pozieres. This was not August 1914, with its delusions of ‘Get in quick because it’ll be all over by Christmas’. Two years later, there were no such illusions. Dyson knew what he was getting into. Yet he felt impelled to volunteer as a result of sincere, high-minded nationalistic feelings. As he put it when writing to offer his services, he wanted ‘to interpret in a series of drawings, for national preservation, the sentiments and special Australian characteristics of our Army’.

Dyson accomplished this with outstanding success. He spent two years at the Western Front as Australia’s first ever official war artist. He perhaps remains Australia’s finest ever official war artist. He was wounded twice. The Australian War Memorial ultimately received 270 Dyson drawings, and Bean envisaged a special Dyson gallery at the Australian War Memorial. Moreover, Dyson’s published writing about the war was as brilliant as his drawings.

In 1919, Ruby died suddenly of Spanish flu. Dyson was never the same again after the combined impact of her death and those draining years on the Western Front. He died in London in 1938 and was buried with Ruby in a joint grave that embodied the connection between two of Australia’s most significant creative families. However, this joint resting place of Will Dyson and Ruby Lindsay in London’s Hendon Cemetery is and has long been an unmarked grave. The headstone that used to identify them was dismantled for safety reasons in 1969, when the cemetery authorities ruled that it was deteriorating so dangerously that it had to be removed altogether. It has never been replaced.
Those familiar with Dyson’s career, especially what he did for Australia at the Western Front, are surprised and not a little dismayed to learn that he has ended up in an unmarked grave. Recent endeavours to rectify this unsatisfactory state of affairs have been disappointingly unsuccessful. Approaches have been made to the Prime Minister’s office, the Australian War Memorial, the Department of Veterans’ Affairs, the Office of Australian War Graves, the Australian High Commission in London and the Black and White Artists Association—all to no avail at this stage, as I understand it. Here, surely, is a real opportunity for the Bean Foundation, with its aim of pursuing proper recognition of Australian recorders of war, to fill this lamentable vacuum by ensuring that an appropriate headstone is reinstated and that Bean’s friend and talented colleague will no longer lie in an anonymous grave.

C.E.W. Bean brought fair-mindedness to his craft. As I said last night, no politician could ask any more of a journalist. His diaries show that he was aware of his preconceptions and sought to compensate for them. Although he used kinder euphemisms for the cruel truths of Australian retreats and self-inflicted wounds, he nonetheless included them in his *The Official History of Australia in the War of 1914-18*.

Perhaps most importantly, like every great journalist and historian, he was a great writer. He was conscious of his audience and he wrote in order to be read. He told neither only the worst nor only the best of what he saw and he demonstrated to generations of Australian war correspondents, indeed to journalists of all kinds, that the responsibilities of the press in a country with a free press can be met with diligence, conscientiousness and constant self-scrutiny.

It is a great thing in this year of the centenary of Australia’s Federation that we are establishing a Bean Foundation to simultaneously honour courage under fire, creativity in the most trying circumstances, application to task and, above all, the critical importance of reporting the truth, however uncomfortable that truth might be to people in authority or the nation’s preferred image of itself. I hope the foundation can do something to right this terrible wrong in relation to the last resting place of Will Dyson, who was such an outstanding war artist and such a fine Australian.

**Senate adjourned at 7.17 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:


**Tabling**

The following documents were tabled by the Clerk:

- Migration Act—Direction under section 499—Direction No. 21.
- Native Title Act—Recognition of Representative Aboriginal/Torres Strait Islander Body 2001 (No. 3).
Product Rulings—Addendum—
PR 1999/98.

Indexed Lists of Files
The following documents were tabled pursuant to the order of the Senate of 30 May 1996 as amended 3 December 1998:
Indexed lists of departmental and agency files for the period 1 January to 30 June 2001—Statements of compliance—
Agriculture, Fisheries and Forestry portfolio.
Australian Trade Commission.
Environment and Heritage portfolio.
Public Service and Merit Protection Commission.
Treasurer’s portfolio.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Carers Allowance  
(Question No. 3604)

Senator Chris Evans asked the Minister for Family and Community Services, upon notice, on 12 June 2001:
(1) As at 22 May 2000, how many individuals in receipt of the Carers Payment were also in receipt of the Carers Allowance but had not received either the Domiciliary Nursing Care Benefit or the Child Disability Allowance at 30 June 1999.
(2) How many individuals who were eligible for the Carers Allowance when it was introduced on 1 July 1999 were still not receiving the allowance by 22 May 2000.

Senator Vanstone—The answer to the honourable senator’s question is as follows:
(1) According to Centrelink records the number of customers in receipt of both Carer Payment and Carer Allowance as at 22 May 2000, who were not in receipt of Child Disability Allowance or Domiciliary Nursing Care Benefit at 30 June 1999, was 17,510.
(2) It is unknown how many individuals who may have been eligible for Carer Allowance at 1 July 1999, had not applied for the payment by 22 May 2000.

Pension Deferral Scheme  
(Question No. 3650)

Senator Sherry asked the Minister for Family and Community Services, upon notice, on 27 June 2001:

With reference to an article in the of 25 June 2001, concerning a letter by the Minister for Community Services, Mr Anthony, relating to the pension deferral scheme introduced in 1998. The article notes that just 3,000 have taken up this option:
(a) can the Minister confirm whether this figure is correct; and
(b) what is the budgetary impact of this scheme.

Senator Vanstone—The answer to the honourable senator’s question is as follows:
(a) As at 31 March 2001, 3,673 people had received bonuses
(b) A total of $6,529,045 had been paid out in bonuses to people who deferred claiming Age Pension and remained in the workforce.

Loss of Fishing Boat Margaret J  
(Question No. 3695)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 July 2001:
(1) When was the Minister or his office first provided with a briefing on the circumstances surrounding the search for the fishing boat, the Margaret J, lost off the Tasmanian coast in April 2001?
(2) (a) On how many occasions has the Minister or his office been provided with briefings on this matter; and (b) in each case, when was the briefing provided or when did the briefing take place?
(3) How many legal opinions relating to the proposed Senate inquiry or the coronial inquiry into the circumstances surrounding the search for the Margaret J were sought by: (a) the Minister or his office; (b) the department; (c) the Australian Maritime Safety Authority (AMSA); or (d) any other agencies?
(4) In each case: (a) who requested the legal opinion; (b) when was the request made; (c) to whom was the request made; and (d) when was the opinion provided?
(5) (a) Have all legal opinions relating to this matter been referred to the Minister or his office; if not, why not; if so, in each case, when was the legal advice provided to the Minister or his office; and (b) can a copy be provided of each of these legal opinions?
(6) (a) When was the legal advice provided by Mr Bell QC to AMSA provided to the department; and 
(b) on what date was it referred to the Australian Government Solicitor?"

Senator Ian Macdonald—The Minister for Transport and Regional Services has provided 
the following answer to the honourable senator’s question:

(1) The Department first provided a briefing to the Minister’s office on this issue on 2 May 2001.  
AMSA first provided a briefing to the Department on 13 May 2001 for Minister Macdonald’s 
attendance at the Senate Estimates hearing. The Department provided this Senate Estimates brief to 

the Minister’s office on 16 May 2001.

AMSA provided a Question Time briefing (QTB) to the Department on 15 May 2001 for the 

Minister. The Department provided this QTB to the Minister’s office on the same day.

(2) Records indicate the following briefings for the Minister, about AMSA’s involvement in the Margaret J 

search, were provided by AMSA to the Department, which were then provided to the 

Minister’s Office:

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<td>13 May 2001</td>
<td>Senate Estimates Briefing</td>
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<td>15 May 2001</td>
<td>Question Time Briefing</td>
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<td>4 June 2001</td>
<td>Updated Question Time Briefing</td>
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<td>27 June 2001</td>
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(3) AMSA obtained a joint legal opinion from Mr Kevin Bell QC and Ms Debra Mortimer.  
The Department obtained a legal opinion from Mr Robert Orr QC, Australian Government Solicitor’s Office (AGS).

(4) (a) AMSA requested its legal advisers, Clayton Utz, to brief Senior Counsel, Mr Bell QC, to provide the legal opinion.  
The Department’s legal opinion was requested by Dr Greg Feeney, First Assistant Secretary, Cross-Modal and Maritime Transport Division.

(4) (b) AMSA requested Clayton Utz to brief Senior Counsel on 8 June 2001.  
Dr Feeney requested this legal opinion from AGS on 27 June 2001.

(4) (c) The request was made by AMSA to Clayton Utz and by Clayton Utz to Mr Bell QC and Ms Mortimer.  
Dr Feeney’s request for this legal opinion was made to Mr Robert Orr QC, Deputy General Counsel, Australian Government Solicitor’s office.

(4) (d) AMSA received a copy of the joint legal opinion of Mr Bell QC and Ms Mortimer dated 26 June 2001 from Clayton Utz on 27 June 2001.  
The Department received draft advice from Mr Orr on 29 June 2001, and his finalised legal opinion on 3 July 2001.

(5) (a) AMSA did not provide a copy of the legal opinion by Mr Bell QC direct to the Minister or his Office.  AMSA was advised by the Department that it had provided the opinion to the Minister’s Office on 27 June 2001.  
Mr Orr’s legal opinion was provided to the Department on 3 July 2001. While preparing advice for the Minister based on this opinion, the Department was informed on 6 July 2001 of the Senate Committee’s decision to defer reconvening until early September 2001.  
The Department provided a copy of Mr Orr’s opinion to the Minister on 30 July 2001 in the context of providing advice on this Question on Notice.

(5) (b) A copy of the legal opinion from Mr Bell QC and Ms Mortimer has been provided to the Senate.  
A copy of the legal opinion from Mr Orr QC is attached.
(6) (a) AMSA provided a copy of the legal opinion from Mr Bell QC and Ms Mortimer to the Department on 27 June 2001.

(6) (b) AMSA referred the public interest immunity aspect of the legal opinion by Mr Bell QC and Ms Mortimer to the Australian Government Solicitor on 27 June 2001.

Your ref: LG0601872
Our ref: 01028885
3 July 2001
Mr Greg Feeney
First Assistant Secretary
Department of Transport and Regional Services
GPO Box 594
CANBERRA ACT 2601
Dear Mr Feeney

Margaret J—Senate Inquiry


2. We understand that the Committee has announced an inquiry into the search and rescue operations conducted in relation to the Margaret J, a fishing vessel which disappeared off the coast of Tasmania on 12 April. The bodies of the occupants of this vessel were subsequently recovered. We also understand that this loss of life will shortly be considered by a Tasmanian coronial inquiry.

QUESTIONS AND SHORT ANSWERS

(1) Q Does the Committee (or the Senate) have the power/right to require AMSA to provide the documents before the coronial inquest is completed?
A Yes. But we note that the Senate has not sought to enforce against officials demands for evidence or documents in the face of a Ministerial refusal to provide them on the grounds of public interest immunity.

(2) Q Is it better practice for AMSA to seek to provide the documents to the Senate Committee after the coronial inquiry has been concluded, in order to avoid unnecessary publicity?
A The Government and the Senate recognise that there will be some instances where documents should not be provided, and questions not answered, generally where these fall within accepted categories of public interest immunity. The Government and the Senate also recognise that where a matter is sub judice, that is before a court, it may be inappropriate to produce relevant documents and answer relevant questions. It would be open to the Government to argue before the Committee that its inquiry should be delayed until after the coronial inquiry, or that it should not ask for production of the documents, or that the documents should be taken as evidence in private.

(3) Q Would the production of documents presently in the possession of AMSA to the Senate Committee have the effect of limiting the ability to produce those documents subsequently in a court or tribunal?
A No, provided copies of the documents were produced to the Committee, the originals or other copies could be provided to the Coroner.

(4) Q Would that same production have the effect of prejudicing in any way the use or value of those documents or of the information in those documents in subsequent court or tribunal proceedings?
A The production of a copy of the documents to the Committee would not prevent production of the originals or another copy of the documents to subsequent court or tribunal proceedings. But, as the sub judice convention recognises, production to the Committee, and in particular publication, may inappropriately influence subsequent court or tribunal proceedings, in particular jurors, magistrates, witnesses or other parties. It would be open to the Government to argue before the Committee that its inquiry should be delayed until after the coronial inquiry, or that it not ask for production of the documents at this time, or that the documents should be taken as evidence in camera, so as to prevent any inappropriate influence.
(5) Q Would your advice on the preceding two questions differ if the relevant Senate Committee proceedings were held in camera?

A The risk that the coronial inquiry would be interfered with would be significantly reduced if the proceedings were held in private.

Powers

3. The Committee clearly has power to require persons to attend before it and to order the production of information and documents to it, by virtue of Senate Standing Order 25(15). A failure to comply with a Committee's order can amount to an offence within the meaning of the Parliamentary Privileges Act, and can be punishable by the Senate, as opposed to the Committee, by fine or imprisonment.

4. Although a Legislation Committee has the power to require persons to attend or to produce documents, it will usually proceed by way of request to witnesses to attend or produce documents.

5. There is no legal requirement to comply with a request from the Committee. However, it is usual to comply with a request in the absence of some claim by the Government that the information should not be disclosed.

6. A Legislation Committee sitting in estimates does not have power to receive documentary or other evidence in private. Senate Standing Order 26(2) provides that evidence of the estimates is heard 'in public session'. References Committees and Legislation Committees exercising non-estimates functions can take evidence in private.

7. The Senate has not sought to enforce against officials demands for evidence or documents against a ministerial refusal to provide them on the grounds of public interest immunity. The Senate has also recognised that officials can refuse to answer questions pending an opportunity for a minister to make a claim of public interest immunity.

Public interest immunity

8. The procedure for making a claim of public interest immunity, and the kinds of information and documents which may be the subject of such a claim, are discussed in the Government Guidelines for Official Witnesses before Parliamentary Committees and Related Matters (last issued in November 1989). Generally, the kinds of information which could form the basis of a public interest immunity claim include documents or information obtained in confidence from other governments, material disclosing any deliberation or decision of the Cabinet or of the Executive Council, and material disclosing advice or recommendations given in the deliberative processes of government where disclosure would be contrary to the public interest.

9. The Guidelines provide in part, and relevantly to this case:

Scope of public interest immunity

2.32 Documents - or oral evidence - which could form the basis of a claim of public interest immunity may include matters falling into the following categories that coincide with some exemption provisions of the FOI Act:

(e) material relating to law enforcement or protection of public safety which would, or could reasonably be expected to:

(i) prejudice the investigation of a possible breach of the law or the enforcement of the law in a particular instance;

(iv) prejudice the fair trial of a person or the impartial adjudication of a particular case;

(vi) prejudice the maintenance or enforcement of lawful methods for the protection of public safety; and

2.33 In addition the following considerations may affect a decision whether to make documents or information available:

(b) court orders or sub judice issues: where the provision of information would appear to be restricted by a court order, or where the question of possible prejudice to court proceedings could arise, the Attorney-General’s Department should be consulted although decisions on the application of the sub judice rule are for the committee to determine, not witnesses.

10. It would be necessary for there to be an examination of the particular material for the purposes of determining whether any or all of it could be the subject of a public interest immunity claim. But
we note that these parts of paragraph (e) may be relevant to the documents in question. But in the absence of such relevance, it is unlikely that it could be said that the documents fall within the accepted categories of public interest immunity. As paragraph 2.33(b) notes, it is also necessary to consider whether production of the documents may be subject to the sub judice convention.

Sub judice

11. As a general rule, the House and the Senate (and a committee) will not engage in discussion of a matter where to do so could involve a substantial danger of prejudice to proceedings before a court, unless it considers that there is an overriding requirement to do so as a matter of public interest. This self-imposed restriction is called ‘the sub judice convention’.

12. According to the House of Representatives Practice (3rd edition, 1997, pages 481-485) the convention is that, subject to the right of the House to legislate on any matter, matters awaiting adjudication in a court should not be brought forward in debate, motions or questions. This is particularly so where a person will be subject to prejudice in those proceedings. The consideration of what amounts to prejudice by the Select Committee on the Procedure of the House of Commons puts the view that it covers the possible effect on members of the court, the jury, the witnesses and the parties to any action (quoted in House of Representatives Practice at page 483). Such prejudice will be particularly acute in criminal proceedings, but as the discussion in the House of Representatives Practice indicates (at page 484), it will also arise in relation to civil proceedings, and indeed royal commissions.

Where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons the House should be restrained in its references.

13. According to Odgers’ Australian Senate Practice (9th edition, 1999, pages 219-225) the rationale for the sub judice principle is that a parliamentary debate on a matter before a court could influence the court and cause it to make a decision other than on the evidence and submissions before it. Such a danger could arise from a canvassing of the issues before the court or a pre-judgment of those issues. The danger of prejudice to court proceedings is much greater where a jury is involved in the proceedings, because judges are unlikely to be influenced in the formation of their judgments by public or parliamentary debate. But it is recognised that the danger may exist in other cases.

14. In response to an order for production of documents by the Senate relating to the waterfront dispute in 1998, the Government refused to produce the documents on the ground that the documents were relevant to actions pending in the Federal Court between the parties to the dispute (Senate Hansard, 28 May 1998, pages 3378 - 3380).

15. However, advice by the Clerk of the Senate suggested that this apparent invocation of the sub judice convention was not well founded (Senate Economics Legislation Committee Hansard, 2 June 1998, pages E124-8). The Clerk of the Senate provided an opinion dated 1 June 1998 in relation to the statement in the Senate by the Minister for Communications, the Information Economy and the Arts in relation to the operation of the sub judice convention in that case. In that advice the Clerk seemed to suggest that the convention did not operate as broadly as had been previously thought. He suggested that it could not operate in relation to civil proceedings; previously it had been accepted that whilst the convention operated most strongly in relation to criminal proceedings, it could operate in relation to civil proceedings. He suggested that the convention operated less strongly where there had been significant publicity in relation to a matter; previously this had not been seen as a central issue, indeed it was in matters of high controversy and publicity that the convention was most relevant.

16. Generally, in our view, it is appropriate for the Government to argue that the convention should be maintained in relation to civil proceedings where it is possible that the parliamentary process could influence or interfere with those civil proceedings, in particular where the proceedings are concerned with issues of fact or findings relating to the propriety of the actions of specific persons.

Coronial inquiry

17. The nature of the coronial inquiry is therefore relevant. The Coroner is part of the Tasmanian Magistrates Court. In this technical sense the Coroner is a court. Further, traditionally, coronial functions are exercised by courts. However, the Coroner does not determine civil or criminal li-
ability. Rather the inquiry is investigative in nature. But a coronial inquiry can have significant consequences. Section 28 of the Tasmanian Coroners Act 1995 states:

**Findings, &c., of coroner investigating a death**

28. (1) A coroner investigating a death must find, if possible –

(a) the identity of the deceased; and

(b) how death occurred; and

(c) the cause of death; and

(d) when and where death occurred; and

(e) the particulars needed to register the death under the Births, Deaths and Marriages Registration Act 1999; and

(f) the identity of any person who contributed to the cause of death.

(3) A coroner may comment on any matter connected with the death including public health or safety or the administration of justice.

(4) A coroner must not include in a finding or comment any statement that a person is or may be guilty of an offence.

Thus whilst the Coroner cannot make a finding of guilt, nor a finding that a person may be guilty of an offence, the Coroner may make a finding that a person, or group of persons, contributed to the cause of death. In our view the coronial proceedings will therefore be concerned with issues of fact or findings relating to the propriety of the actions of specific persons.

17. If there was concern that the production of material to the Committee may affect the Coroner, or witnesses to the coronial inquiry, or parties to that inquiry, it would be open to argue before the Committee that its inquiry should be delayed until after the coronial inquiry, or that it not ask for production of the documents. Whilst such an argument would be outside the recent formulations of the Clerk of the Senate of the sub judice convention, it would be within other traditional formulations of the convention. The decision of the Chair of the Senate Committee would be based on balancing the apprehended prejudice to the coronial proceedings against public interest in the matter and the freedom of the Senate to inquire into matters of public interest.

18. The Committee may also hear and take evidence in private. If there was concern about the production of material to the Committee in public, the Committee could be asked to take the evidence in private. The Committee is able to do so.

**Use of material presented to the Committee before the Coroner**

19. You have asked whether the production of documents to the Committee would have the effect of prejudicing the use or value of those documents, or of the information in those documents, in subsequent court or tribunal proceedings. This question arises from an advice which suggests that production of documents to the Committee would mean that those documents are not available to the Coroner. If this was the case, there would be very significant potential for production to the Committee to interfere with the coronial inquiry. But in our view it is clear that the production of copies of existing documents to the Committee would not prevent the production of the original documents, or other copies, to the Coroner.

20. Section 16(3) and (4) of the Parliamentary Privileges Act are particularly relevant for present purposes and provide as follows:

(3) In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of:

(a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;

(b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or

(c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament.

(4) A court or tribunal shall not:
(a) require to be produced, or admit into evidence, a document that has been prepared for the purpose of submission, and submitted, to a House or a committee and has been directed by a House or a committee to be treated as evidence taken in camera, or admit evidence relating to such a document; or

(b) admit evidence concerning any oral evidence taken by a House or a committee in camera or require to be produced or admit into evidence a document recording or reporting any such oral evidence, unless a House or a committee has published, or authorised the publication of, that document or a report of that oral evidence.

The production of documents to the Committee will be proceedings in Parliament. The Coroner is at least a tribunal.

21. Section 16(3) thus sets out the prohibitions on the use of parliamentary proceedings. The Explanatory Memorandum to the Parliamentary Privileges Bill provided a further exposition of s.16(3)(b)-(c) as follows:

(b) attacking the credibility, motives, etc of a person on the basis of proceedings in Parliament
This would prevent, for example, a member's speech in debate or a parliamentary witness's evidence being used to establish their motives or intention for the purpose of supporting a criminal or civil action against them, or against another person. Thus a member's statements outside Parliament cannot be shown to be motivated by malice by reference to alleged malice in the member's statements in Parliament.

(c) drawing inferences or conclusions to support a criminal or civil action
This would prevent, for example, a jury being invited to infer matters from speeches in debate by members of Parliament or from evidence of parliamentary witnesses in the course of a criminal or civil action against them or another person. Thus a member's speech in Parliament cannot be used to support an inference that the member's conduct outside Parliament was part of some illegal activity. This would not prevent the proving of a material fact by reference to a record of proceedings in Parliament which establishes that fact, eg, the tendering of the Journals of the Senate to prove that a Senator was present in the Senate on a particular day.

22. In relation to a submission prepared for the Committee, where this has been directed to be treated as evidence taken in camera, s.16(4)(a) would prevent this being produced in other proceedings, including to the Coroner. However the documents in question would not fall in this class.

23. Further, s.16(4) will prevent asking questions about the production of documents to the Committee. If a witness before the Committee produced documents to it, that witness could not be questioned before the Coroner in relation to that production. The prime example, in relation to answers to questions, is that if a witness answers questions before the Coroner, that witness could not be cross-examined in relation to any different answers they may have given before the Committee.

24. In relation to documents already in existence and provided to the Committee, if the originals are produced, and no copies kept, then physically the documents could not be produced in another place, including to the Coroner.

25. But generally the Committee takes copies of documents, leaving the originals and other copies with the department or agency. There is nothing in the specific terms of s.16(3) or (4) which prevents these originals, or other copies, being produced to the Coroner and admitted into evidence before the Coroner. There is nothing in the explanatory memorandum which supports the view that the Act prevents production of such documents to a court or tribunal, including the Coroner. There is nothing in the case law on parliamentary privilege, and its development in s.16 of the Parliamentary Privileges Act, which supports the view that the privilege or the Act prevents production of such documents to a court or tribunal, including the Coroner: see R v Murphy (1986) 64 ALR 498; Prebble v Television New Zealand Ltd [1995] 1 AC 321; Laurence v Katter (1996) 14 ALR 447; Rann v Olsen (2000) 172 ALR 395; Amann Aviation Pty Ltd v Commonwealth (1988) 81 ALR 710; New South Wales Branch of the Australian Medical Association v Minister for Health and Community Services (1992) 26 NSWLR 114. There is nothing in Odgers’ Australian Senate Practice or the House of Representatives Practice which supports this view. There would be very significant public policy arguments against this view: if disclosure of pre-existing documents to a Committee prevented disclosure to a court or tribunal, this would in effect subvert any civil or criminal proceeding, and thereby in effect remove liability for any relevant actions.
26. We note that the decision in O’Chee v Rowley (1997) 150 ALR 199 that privilege could be claimed in relation to documents in the hands of a member of Parliament, which had been used by the member in the course of parliamentary business, and which were sought in a discovery process by a plaintiff in proceedings against the member for defamation in relation to statements made outside the Parliament. It may be that if copies of the documents were provided to the Committee, and the Coroner sought to require production of the documents by the Committee, that issues of parliamentary privilege will arise. But this would not affect documents in the hands of others.

27. Rather, this material all supports the view that if a witness before the Committee gives evidence about a prior event, say the ‘x event’, that witness cannot be questioned in proceedings before the Coroner about the giving of the evidence about the x event to the Committee. Therefore, as noted above, a witness who answers questions before the Coroner in relation to the x event, cannot be cross-examined on the basis of different answers they may have given to the Committee in relation to x event. But it has never been suggested that the witness cannot be asked questions before the Coroner in relation to the x event.

28. So it is in relation to production of documents. If a witness before the Committee gives a copy of a pre-existing document in relation to the x event to the Committee, that witness cannot be questioned in proceedings before the Coroner about the giving of the document to the Committee. But they can clearly give the original document, or another copy, to the Coroner, and be asked questions about that document.

29. Please let me know if we can provide any further assistance.

Yours sincerely

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