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SITTING DAYS—2001

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Wednesday, 29 August 2001

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

BUSINESS

Government Business

Motion (by Senator Ian Campbell) agreed to:

That government business notice of motion No. 1 standing in the name of the Leader of the Government in the Senate (Senator Hill) for today, relating to the 50th anniversary of the alliance between Australia and the United States of America under the ANZUS treaty, be postponed till a later hour.

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:

- Family and Community Services Legislation Amendment (Application of Criminal Code) Bill 2001
- Health and Aged Care 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

MIGRATION LEGISLATION AMENDMENT (IMMIGRATION DETAINES) BILL (No. 2) 2001

Second Reading

Debate resumed from 28 August, on motion by Senator Boswell:

That this bill be now read a second time.

Senator HARRIS (Queensland) (9.31 a.m.)—I rise to continue my speech on the Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001. We have seen over the past few months in centres such as Woomera, Curtin and Port Hedland the increasing willingness of illegal criminals to hold both other inmates and centre staff to ransom with the increasing use of threats, violence and rioting. Considering that these people are here illegally and by no stretch of the imagination by invitation, it needs to be made abundantly clear that Australia will not be intimidated by this and that it is willing to use all means at its disposal to quell such unsavoury and undesirable uprisings.

In relation to the situation that we have off the Western Australian coast at present, I think we need to put on record very clearly that some of the people who are aboard that ship may have been in safe havens for up to five years accumulating the funds that they needed to pay the people smugglers to get them to Australia. Under those circumstances, I do not believe that anyone can claim that these people are refugees. Some of them may have been duped by the people smugglers and been shown boats tied up at wharves and had it indicated to them that they would be travelling on them only to find themselves walked across the deck one at a time to a rust bucket tied up on the other side and set sail for Australia. So, yes, we do have compassion for these people who have been literally taken for a ride by the illegal people smugglers. We also need to put on record that some of these people have paid between $A16,000 and $A40,000 to be on those boats. We need to look at this in the context of this legislation that is going to provide for the custodians of these illegal criminals when they arrive here in Australia. We have a duty of care to them.

With the problem of the increasing numbers of arrivals and the origins of these illegal migrants arises the tendency of these people to use less acceptable means of persuasion when the circumstances do not suit them. The inmates of these centres have to have explained to them in no uncertain manner that the use of violence and the use of weapons will not be tolerated. This bill goes part of the way at least towards helping to mitigate the problem of hidden weapons that have the potential to be used for self-harm, against others or in a riot situation.
The authorisation by senior officers to issue search orders to be carried out when an officer judges that the circumstances warrant and the process of obtaining this search order are commendable. The need to have all parties involved in the obtaining of this order removed from each other instigates a level of remoteness between the authorisation and issuing of the order that will ensure impartiality.

The aim of these measures is obviously the care and responsibility for everyone within the centres. The provisions within proposed section 252B, which incorporate dignity and privacy issues and set limits as to what level of search is acceptable by stating the criteria necessary before a search can proceed, give recognition to Australian standards of human decency and will allay any concerns about impinging of basic human rights. Proposed section 252B of the bill recognises the differences between searching adults and searching minors between the ages of 10 and 18. This proposed section ensures that the age of these young people is taken into consideration and puts in place provisions relating to this. The sensitivity of this search scenario also stipulates that the officer be of the same sex, thus helping to alleviate any unnecessary embarrassment that may arise.

There is, however, one section that appears to be overlooked within the bill, and that is the potential for desperate people to manipulate the system and use children under the age of 10 as a means to hide weapons. I have no doubt that this is an avenue that will be exploited and I would suggest to the government that it may have a future problem there. This bill will enhance the abilities of staff at detention centres to hopefully be able to limit the opportunities for people to endanger all within a centre. This bill will assist in curbing unacceptable behaviour within these centres, and this is obviously of necessity.

The bill enhances the ability of detention centre management to discourage undesirable actions by detainees to hide weapons for future use and at the same time incorporates the principles of respect for human dignity and safety for all involved. The bill also incorporates guidelines for auditing the actions that will be taken, so limiting the opportunities for abuse. The bill requires that, when a search is instigated and carried out, the Senate receive a report on the number of times this has been implemented. I strongly support the government on its stand with this bill and on the direction it now appears to be taking over the highly contentious issue of illegal migrants.

In conclusion, I would like to quote Exodus 23:3, which says, 'Do not follow the majority when they do wrong or when they give testimony that perverts justice.' I think we need to take that into account in our deliberations in relation to this bill. And Leviticus 19:15 says, 'Be honest and just when you make decisions in legal cases. Do not show favouritism to the poor nor fear the rich.' I think this is part of the problem that we are facing in this highly emotive situation with these boat people. We do not need to look at them as being rich or poor; we need to very clearly assess where they are and what they have done to actually get to that point. It is only then, when we look at those instances and we remove the emotions and look at the reality of the situation, that we will find an answer to this perplexing question.

Senator COONEY (Victoria) (9.40 a.m.)—Years ago when I was a schoolboy we had a sports master—it is so long ago that I can mention his name—called Steve Hart who used to train us. He used to make general invitations for people to come down and see him at his house. If you were the centre half-forward in the football team or indeed in any position on the goal-to-goal line, he would make you welcome. But there was one boy that I was at school with called Philip Ryan—I can mention his name now, because it is so long ago—who used to turn up in response to the invitation and got very bad treatment indeed. What he did not know was that, although there was this general invitation to come to his house to enjoy his hospitality, he did not want the result of that
kudos, which was that he would have to get everyone that he invited and not just some.

Unfortunately our immigration policy has become like that, because we have made a general proclamation in section 36 of the Migration Act 1958 which says:

(1) There is a class of visas to be known as protection visas.

(2) A criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the Refugees Convention as amended by the Refugees Protocol.

Let us go to those instruments. The first is the convention relating to the status of refugees of 28 July 1951, and that is affected by the protocol relating to the status of refugees of 31 January 1967. According to those protocols, there is a definition of what a 'refugee' is. It is a definition that is often put forward in this chamber and in the community as a whole. Australia says—and I think Australia ought to be given great credit for this—'We will take people who are refugees who claim that status on the shores. If they do that, we will accede to it, because we are good international citizens and we have signed the convention and the protocol.'

There are other provisions in these two instruments I want to refer to which say that these instruments can be denounced. Article 44 of the 1951 Geneva convention relating to the status of refugees says:

(1) Any Contracting State may denounce this Convention at any time by a notification addressed to the Secretary-General of the United Nations.

The same is said in the 1967 protocol relating to the status of refugees. Article 9 of the protocol says:

Any State party hereto may denounced this Protocol at any time by a notification addressed to the Secretary-General of United Nations.

What we really want to do is denounce these two instruments, but because we want to be seen as a good international citizen—because Australia is a place of compassion—we will not denounce them. So we have legal obligations under our domestic law—the Migration Act and in particular section 36 of that act which incorporates these instruments—which require us to give succour to refugees who come to our shores and claim that status. We very reasonably want to take that position, but we also want to take up a position where not too many people come: we want only the centre half-forwards and the goal-to-goal line; we do not want the others who do not quite make the team and are not people that we really like. So, even though our invitation extends to that group, we do not really want them.

So we say, ‘Look, how can we keep the law as it is but, nevertheless, not accept the consequences of what that law says?’ What we do is build detention centres to keep people in and we say—this was particularly true earlier on and it is still true to a great extent—that we want them there so that we can process these people to see whether they are genuine refugees. This is a very proper process. If somebody is not a genuine refugee but uses the cloak of being a refugee to come here, that person ought to be condemned and dealt with appropriately, because the status of 'refugee' is a very serious matter. We give protection to refugees so they are not shot, persecuted or otherwise disadvantaged and, if somebody wants to use that status as a disguise for something else, we should have no sympathy for them. But if they are refugees then we have to apply the law. We are concerned about that, so we take people into detention and we see whether or not they are genuine refugees and whether they have diseases which might be communicable to the population.

Those are legitimate reasons, I suggest, for having people in detention, but it is not legitimate to have people in detention to punish them for coming and claiming protection under our law as set out in the Migration Act incorporating these conventions. That is not a legitimate exercise, because we are then using detention not as a means of keeping people in a confined space while we work out what should happen to them but as a means of punishing them to stop them from using the provisions of our law. If people are refugees, then we ought to apply our law to them as it is written and not punish them for coming here to discourage them from making a claim according to the provisions we set out. We cannot, in other words, set up a
scheme and then discourage people from using it. It is better to get out and denounce the treaty and say, ‘Righto, that’s the end of it, our hospitality is exhausted and that’s that.’ Unfortunately, that has to be given consideration because what is occurring here contains real corrupting and corroding elements to our civil society.

We have already curtailed the cover of our courts because of our immigration system and there is the suggestion that the courts be curtailed even more because of this system. The courts are being brought into disrepute by careless and florid criticisms of them for simply doing their work. The situation is becoming serious. Unless we preserve the court system and preserve the integrity and reputation of the judges we will be in trouble. The judges deserve their reputation—we have a magnificent legal system—and yet those judges are brought under attack simply to obtain an end that we have not got the political courage to face. What do I mean by that? Because judges apply the law and because we do not like the way that they apply the law, we criticise them even more—we do not change the law—and we take away the judicial oversight that there should be in any decent society.

It is not only in this area that we tend to criticise the victims; it is also in the area of social security that we tend to blame the person who is the victim, the person who is receiving the pension. We tend to prosecute them. So it is not just in the area of immigration that this happens but in other areas as well. I think it is a dangerous tendency that is occurring in the community and one which, as legislators, we ought to be moving to reverse. Because we lock people up and detain them, we get a reaction from them that anybody who is locked up might have. We keep having to pass laws that become more and more draconian and that create more and more offences. People who have not committed offences in the first place are put in the situation where an offence is created. People who talk about queuejumpers, we call them ‘queuejumpers’, we call them ‘economic refugees’ and all this without really looking at each individual case. People are on the high seas and we say, ‘They could be this. They could be that.’ We make little suggestions here and there. We degrade their humanity. They are not people any more. They become queuejumpers and illegal immigrants. This includes children who, I would have thought, did not have much say about the matter.

We are now in a situation of deciding whether we are going to follow our own laws, whether we are going to adhere to the conventions to which we have signed up. That is the sort of issue we have before us. The problem is this: if we are going to have the laws we do, if we are going to have section 36, if we are going to have an adherence
to the convention and the protocol, we have to see that we carry out the consequences of those laws in a proper, decent and civil way. If we are not, I suggest we look at the whole program again. I have great sympathy for refugees. How you feel about something is a matter of choice. If you do not have great sympathy for refugees, so be it. You do not always have to act in a moral way. There is no legal compulsion to do that. If you are like me, and have great sympathy for refugees, you are likely to get to the point where you say, ‘If we have laws in reference to them, why don’t we carry them out?’

This legislation seems not to be a significant piece of legislation on its own. It says that in prisons you should be able to strip search people. That is a reasonable proposition. But when you start asking why it is that these people are in prison and why it is that it has come to this, you become more concerned about what is going on. I would like a civil society which is run according to the law. The law is made by this parliament. International conventions are brought into operation by domestic legislation. The Geneva convention and the protocol to that convention have been brought into domestic law by this parliament. That is something we have created. In my view, we cannot then criticise people who use our law, who come here on the basis that we have a particular set of laws. We cannot, decently in any event, have a legal system, a rule of law, and then not only criticise people for using it but punish people for using it. I think that is an absurd and an unfair position to reach.

We hear a lot of criticism of the Department of Immigration and Multicultural Affairs. It is parliament’s laws that they have to carry out. It is our laws that the department have to operate. They have to do two things: first, they have to run a refugee program according to the act; secondly, they have to keep people locked up until they are determined to be a refugee, and that is an impossible decision.

I will just close on this. Refugees are not made by decisions; refugees are made by situations. We do have refugees locked up. It is an absurd proposition to put that a refugee does not become a refugee until somebody declares him or her to be a refugee. A refugee is made by the situation in which people are placed in their own country. The last thing I want to say is that it is an absurd proposition to say that people do not become a refugee until they are told that they are. (Time expired)

Senator BARTLETT (Queensland) (10.00 a.m.)—I speak on behalf of the Australian Democrats on the Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001, which, as other speakers have said, relates to increasing the powers for guards in detention centres. It raises some very important issues in terms of basic human rights and also in terms of the powers that should be provided to people who are managing, running and operating detention centres. There is also the broader issue, which is unavoidably linked to the issue dealt with in this bill, and that is Australia’s mandatory detention regime.

There is some argument to be made that it is important to have adequate powers to ensure the safety of not just staff but detainees themselves. The Democrats are sympathetic to that argument. But we need to look at the context in which these extra powers are being introduced, and that is a context where there is enormous, widespread, wide ranging criticism about how our detention centres are run at the moment as well as criticism of the absurdity of our policy of mandatory detention.

Any decision relating to increasing powers of guards in detention centres has to be put in that context. The Labor Party themselves, along with the Democrats and many others in the community, have considered that the situation in our detention centres is sufficiently concerning that we should be having an independent judicial inquiry. Malcolm Fraser, amongst others, has called for such an inquiry. The range of concerns are so significant, the number of unanswered questions is so great, and the allegations from detainees and from staff and others about what actually happens in detention centres are so significant that many, including the Labor Party, believe we should be having an independent judicial inquiry.
In such a context, when there are already so many question marks hanging over how things operate at the moment, it seems absurd, from the Democrats’ perspective, to be supporting legislation that increases the powers for guards in detention centres. Surely we need to clear up and clarify the existing situation before we give further powers to people who are running detention centres. There are sufficient concerns about how they are utilising the powers that they have at the moment.

In that context, the Democrats believe it is completely inappropriate to support legislation that increases these powers to conduct strip searches on immigration detainees, including to children as young as 10, as well as powers to conduct screening procedures and apply search powers in state and territory legislation to immigration detainees held in state or territory prisons or remand centres. Again, I think that last extra power highlights that any suggestion that our detention centres are now not equivalents of jails is just subterfuge. We are even equating the powers of the guards in detention centres with those in state or territory prisons or remand centres.

It is important to note the criticisms of our approach on detention. We have thousands of people now in immigration detention centres around Australia in situations that are generating incredible pressure. This bill is in some ways being portrayed as a response to the rising tensions in our detention centres. Yet it is just one more step in a whole range of measures over the last few years by this government to crack down more and more on asylum seekers and on people who, as Senator Cooney quite rightly just pointed out, are indeed refugees. We now have many refugees imprisoned in Australia, some for quite long periods of time.

When you generate such an enormous pressure cooker situation, when you put people in a pressure cooker environment and turn up the heat, it is not surprising that you get upheavals and disturbances. To suggest that you respond to such a situation by turning the heat up even further is an absurdity. It highlights the insistence of this government in refusing to acknowledge the failures of their mandatory detention policy and basically going further and further down the wrong path. It is a path that is leading to immense suffering and trauma for many people, including refugees, as has been documented in a number of media reports in recent times—indeed, stretching back quite a while now.

It is also increasing antagonism out in the Australian community through the continued demonisation of these refugees and asylum seekers. And it is, of course, costing the taxpayer millions and millions of dollars—hundreds of millions of dollars—unnecessarily. That is being used as a way of again increasing resentment towards asylum seekers and refugees when this level of expenditure is a direct result of the government’s insistence on having this unprecedented level of mandatory non-reviewable detention, a regime that is unparalleled elsewhere in the world and that has come under heavy criticism from UN agencies and human rights groups in Australia and internationally. It is important to emphasise that. The government from time to time point to the United Nations High Commissioner for Refugees as somehow supporting their approach in relation to asylum seekers, yet there have been any number of criticisms made about our mandatory detention regime.

We must recognise that the problem of asylum seekers, the problem of displaced people—which we are seeing in graphic detail at the moment with the situation off Christmas Island—is an international problem. It is not specific to Australia. We are not getting bigger waves of people than anywhere else; indeed, in proportion to many other countries, our numbers are relatively small. To suggest that somehow Australia needs to be more and more hardline and more and more tough to ensure that we are not seen as some sort of soft touch ignores the reality of the situation. People are not coming here because we are an easier touch than everybody else. They are going everywhere else as well, and whilst there are varying degrees and varying approaches in different countries about how to deal with these issues, nowhere else has some of the approaches that Australia does in terms of its
harshness, particularly in relation to our detention centre regime and our system of mandatory detention.

Again, I think that is the context in which this bill needs to be recognised, because it is an extreme response, an inhumane response and one that, in the Democrats’ view, will almost inevitably lead to the sort of distress and disturbance that is presenting itself in our detention centres from time to time. I do not know if senators recall a movie called *Ghosts of the Civil Dead*, which highlighted a private prison establishment in the US and the inevitability of extreme upheavals when pressure-cooker tactics are applied to people in a prison-like environment. It was a maximum security jail that was portrayed in that film and I am not suggesting that this is an exact equivalent, but the fact is that denying people freedom, imprisoning them, having prison-like environments, does provide the same opportunity and the same almost inevitability, particularly when you add on to that the trauma that many of the people in the detention centres have already been through, the trauma they are experiencing in there, their isolation and their disconnection from family and often from other people.

There is certainly a lack of certainty about what is actually going on and about what the future holds for them—in some ways, much more uncertainty than for people who are in prison. These people in our detention centres have not been convicted of any crime, have not even been charged with any crime and yet they have an incredibly stressful concern for their future and uncertainty about their future. At least people who are in prison are sentenced to a term. They know how long they are going to be there and when they are likely to be able to get out. They have some idea of what their future holds. People in detention centres often do not. It is important not to underestimate the sort of distress that that can generate in people.

You do not respond to these sorts of scenarios by turning the heat up further. It is about time we looked at how other countries approach the issue of unauthorised arrivals of asylum seekers, particularly some of the models in Europe. Sweden is one particularly good example. People there are allowed out into the community after initial assessment. Obviously, you have to assess security and health concerns, but then you have people out in the community in a monitored sense and you provide them with ongoing assistance and information about what is actually going on, what their rights are and what their future might hold. That system, I believe, has proven to be quite successful, not just in terms of people who are judged to be refugees but also those whose applications are refused and are then deported.

We need to look at some of those approaches that are far more humane, that reduce the heat much more, that cost less for the taxpayer and also generate less resentment from the community. We need to accept the reality that a significant proportion of people that we are currently locking up in detention centres will end up being released into the Australian community as members of the Australian community. We do not want them ending up in the community in a circumstance where they are seen with great hostility by the community that they are now part of and the society that they are now part of.

To that extent I would like to commend the *West Australian* on an article it published yesterday. I think, by Steve Butler, which highlighted in a more personal sense the reality of the experience of some Afghan refugees and the constructive contribution they are now making to the economy and the community in the north of Western Australia, providing a useful labour force at the end of the pruning season in a vineyard there. I think when we have more opportunities to look at this from a human angle, rather than from some sort of blanket condemnatory, demonisation approach, then we will avoid some of the unfortunate levels of antagonism that are appearing in the community. Again, it is a worldwide problem, a worldwide issue, and it will not be solved and it has not been solved by simply cracking down harder and harder. That again is the context in which we need to look at this piece of legislation.

When the approach of mandatory detention is clearly not working, then you do not address the failure by cracking down further.
and further. I think it is appropriate to draw attention to the comments of Mr Chris Sidoti who is a former Human Rights Commissioner. When he was Human Rights Commissioner, he conducted a number of very critical examinations into specific incidences in our detention centres. He is renowned for his work in human rights and is assisting the federal government at the moment in human rights work with people from Burma, in a contentious but interesting exercise. He has shown by his involvement in that that he is willing to work with the government where he thinks a positive outcome can be made, despite some of the dangers involved in that work. But he has been unequivocal in his commentary on and condemnation of our policy of mandatory detention. He has called it ‘bloody-minded, unnecessary and a costly failure that violated human rights,’ and I think that sums it up very succinctly.

So if we have a policy of mandatory detention—which unfortunately is still supported by both Labor and the coalition—that is clearly a costly failure, that is unnecessary, that is bloody-minded, that does violate human rights, then let us recognise that. Let us change our approach and go down a different pathway. These policies deliberately put in place by the government, with the support of the ALP, are costing taxpayers millions of dollars and are not working. We are in breach of our human rights commitments by adopting and pursuing this policy of mandatory detention, and I do not think any amount of legal sophistry can overcome that reality. As Mr Sidoti said:

In most cases it’s ... unnecessary. There will always be some who need to be detained for reasons of public security or public health, but we don’t have any opportunity for case-by-case assessment.

We just lock everybody up—unequivocally and without review—indefatibly. Apart from the human rights concerns with that policy, it is simply not working. The government has said, time and time again, ‘We are doing this because we are showing that we are not a soft touch. We are doing this because we are sending a message.’ Refugees and asylum seekers should not be pawns in the efforts of governments around the world to send messages to each other about who is the toughest.

The message that we are supposedly sending through our mandatory detention regime is clearly not working, because people are arriving despite it and, as the government likes to portray, the numbers are increasing—although the numbers are still not equivalent in proportion or in totality to those with which many other countries are having to deal. Even by the government’s own criteria, this policy is not working. This is demonstrated when you add their insistence on mandatory, non-reviewable detention to some of their other ongoing efforts such as an extraterritorial interception agreement between Australia, Indonesia and the UNHCR, which sees people en route to Australia detained and processed but does not offer the same procedural safeguards as we see in Australia.

They have made efforts to limit access to the courts, which would make it the only area of administrative law with such limitations, despite the fact that it is the only area of law where an incorrect decision can cost people’s lives. I do not think we should forget that basic fact. They have made unilateral efforts to limit obligations under the refugee convention, and more legislation was introduced just yesterday in relation to that. They have refused to cooperate with the UN human rights monitoring bodies, and they have made a range of changes to visa conditions for refugees, which are deliberately aimed at making their lives as unpleasant as possible.

All of these harsh actions are part of trying to send the message that we are not a soft touch. We are not a soft touch, and we are clearly a harder touch than plenty of other countries. But people are still arriving here, and that is because of what they are fleeing. That is the reality, and that is what I think we need to continue to remind ourselves of. The Democrats oppose the Migration Legislation
Amendment (Immigration Detainees) Bill (No. 2) 2001. We believe that, in a context where we have so many question marks over how our detention centres are operating presently, it would be inappropriate to further expand the powers of guards in detention centres. Indeed, there is currently, as I am sure the government is aware, a matter before the Federal Court in New South Wales regarding allegations of assaults at one of our detention centres. There are ongoing concerns about the circumstances surrounding that incident and, indeed, the ability to adequately and properly ensure scrutiny of those allegations through the legal processes.

I will ask the minister a couple of questions about that circumstance in the committee stage because it relates to the legislation in terms of how things are happening in our detention centres at the moment, the sorts of safeguards in place for people when they make allegations of misconduct and the sorts of mechanisms in place for ensuring that adequate cooperation is in place. Surely, if we are expanding the powers for people in detention centres to areas such as strip searching, we are expanding the potential for people to raise complaints about those powers being improperly exercised. We have to make sure that adequate processes and safeguards are in place when complaints are made—particularly in circumstances such as the case in Sydney—and when actual court proceedings are undertaken in relation to allegations of assault or other inappropriate conduct. Without wanting to hold up the legislation indefinitely, I will ask a couple of questions of the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs in the committee stage of the legislation.

It is an important issue. It is one where, I think, political leadership is needed to recognise the reality of the situation and to try to find a response that will not just link into and play on short-term political opportunities, but will actually explore mechanisms and options for finding positive solutions to a difficult issue. There is no magic solution that will stop people arriving, whether in Australia or in other parts of the world. We need to work with the reality of the situation rather than keep our head in the sand and just make life harder and harder for people, many of whom have already suffered enormously.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.20 a.m.)—I am filling in for the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs, Senator Patterson, who has had to attend an Executive Council meeting. She will be taking the committee stage of the debate. Having listened to Senator Cooney this morning, to Senator Bartlett just then and having been given some notes on the contributions of other speakers, I want to say a few words in concluding the second reading debate on this bill.

Nobody disputes that state-sourced persecution is horrific, that it is extensive around the world and that civilised societies should seek to do what they can to assist those who are persecuted. They do that in a number of different ways, in particular, by seeking to use the international mechanisms available to deter the states that engage in such practices from continuing to do so—in some instances with some success and in some instances without success. In addition, we are part of an international response to the refugee issue—to those who are seeking to escape that persecution—in terms of the international convention. Australia, under successive governments, has accepted its responsibilities under the convention because we believe that doing so is part of a humanitarian international response to this particular issue.

Australia has been generous in its response to the issue of refugees over the years. As you know, Madam Deputy President, we have a policy of setting a number of places that we believe Australian society can absorb on an annual basis under our humanitarian program, which includes refugees and some other categories of people who are in humanitarian need. We have been taking about 12,000 a year in an orderly way under that program since this government has been in office. If there is an undershoot for some reason in one year, this government has been prepared to make up that undershoot the following year. So this year, for example, it
is believed that the intake under our humanitarian program will be about 13,500.

The first issue is that we accept that it is important that Australia be part of a civilised international response to these humanitarian tragedies. However, in relation to those who arrive on our shores unlawfully, we also have a sovereign responsibility to the Australian people to protect our borders. We do not believe in open borders in Australia. It is not open to anyone to enter Australia and take up residence. That has been the view of successive governments as well. Listening to Senator Bartlett on behalf of the Australian Democrats, my interpretation of what he was saying is that the Democrats would support an open border—that basically anybody who arrives in Australia is entitled to stay. That is certainly not the position of the Australian government.

If people arrive in Australia unlawfully, then we believe we have a responsibility to Australian citizens to deal with these unlawful arrivals as unlawful non-citizens under the Migration Act. When the Labor Party was in government and it was faced with increasing numbers of unlawful arrivals, the Labor Party believed there was no real alternative but that they should be detained whilst they were processed. Unlawful arrivals were occurring and basically disappearing into the Australian community. To allow that to occur was a failure of government to meet its responsibility to Australian citizens, so the law was changed.

The law was changed in 1992 and remains that, if somebody arrives unlawfully, they are detained. Senator Bartlett was suggesting that they are detained indefinitely. That is not the law. They are detained until their status is determined. If they are found to be illegal, they are deported. If they are found to be entitled to a form of visa, which may be refugee status, if they are found to be a refugee in terms of the international convention that we are a party to, then they are released into the Australian community. But on the occasions when there are a large number of unlawful arrivals there can develop something of a backlog, and the processing is not always easy. We do not know the background of these people who are arriving. In some cases they have been demonstrated to have criminal backgrounds. It is difficult to source information. We do have a responsibility to Australian citizens to ensure that those who are released into the Australian community are genuinely refugees in terms of the convention. That is this government’s policy. It has been the policy of previous governments and we are going to maintain it.

I thought it was the position of the current Labor Party but, listening to Senator Cooney, I am not too sure because he was expressing the process of detention as being a punishment. In other words, he seemed to be saying that at least his part of the Labor Party—it is the same old Labor Party sending up multiple messages, I suspect—are indicating that these people are being held in detention because of some desire of the Australian government that they be punished. We have no wish to punish these people. Our responsibility is to determine, when they arrive unlawfully, what their status is and whether they are entitled to be released into the Australian community. That is the position we intend to maintain. We intend to maintain an orderly humanitarian program. We intend to accept our reasonable share of this international responsibility.

This legislation is not really about whether or not there should be within Australian domestic law an obligation to detain. This legislation is about processes that are needed to ensure safety and security within the establishments in which these people are being detained. What we have seen is that, without an increase of powers in relation to searches and the like, people—whether they are detainees or whether they are staff—are being put in an unsafe position. That is intolerable. We have a responsibility to act in the circumstances that have become apparent. We therefore bring this legislation to the parliament today to introduce a power to strip search immigration detainees. Nobody wants to do that. But if, for the security of those who are within the establishments—whether they are detainees or whether they are staff or whether they are visitors—it becomes a necessity to strip search detainees, the government should have the power to do so. The bill also introduces a power to conduct a
screening procedure in relation to a detainee. It also applies search powers in state and territory legislation to immigration detainees held in a state or territory prison or remand centre.

So this legislation is an example of this government acting to protect Australia’s long established immigration laws, this government maintaining the law as it stands to detain an unlawful arrival and this government acting to ensure that those who do arrive unlawfully are kept in a humane environment in which their personal safety is protected. That is this government respecting those individuals, whether they have arrived unlawfully or not. On that basis I would urge the Senate to support this legislation to enable the government to continue to manage this difficult problem in both a humane and an orderly way.

Question put:
That this bill be now read a second time.

The Senate divided. [10.35 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes......... 47
Noes......... 8
Majority....... 39

AYES
Abetz, E. Bishop, T.M.
Boswell, R.L.D. Buckland, G.
Calvert, P.H. Campbell, G.
Carr, K.J. Chapman, H.G.P.
Collins, J.M.A. Conroy, S.M.
Cook, P.F.S. Coonan, H.L. *
Coomey, B.C. Crossin, P.M.
Crowley, R.A. Denman, K.J.
Eggleston, A. Evans, C.V.
Ferguson, A.B. Ferris, J.M.
Forshaw, M.G. Gibson, B.F.
Harradine, B. Harris, L.
Herron, J.J. Hill, R.M.
Hogg, J.J. Kemp, C.R.
Knowles, S.C. Ludwig, J.W.
Lundy, K.A. Mackay, S.M.
Mason, B.J. McGauran, J.J.
McKiernan, J.P. McLucas, J.E.
Murphy, S.M. O’Brien, K.W.K.
Patterson, K.C. Ray, R.F.
Reid, M.E. Sherry, N.J.
Tchen, T. Tierney, J.W.
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. Lees, M.H.
Murray, A.J.M. Stott Despoja, N.

* denotes teller

Question so resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator BROWN (Tasmania) (10.39 a.m.)—I would like to ask the minister a few specific questions about the strip search process that is inherent in this legislation. Firstly, would the minister give an outline of what is or is not allowed in a strip search of a man, woman or child? Where is the line drawn in protecting that person’s privacy and, indeed, their own sense of decency?

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.40 a.m.)—I will answer by saying that, as is always the case with bills that I am taking through, my staff ring each of the honourable senators and offer a very detailed briefing, because it is difficult to get on top of the very detailed legislation as it is going through. Senator Brown was offered that briefing and did not take it up—maybe because he was busy or whatever—and I regret that, but it was offered. If the honourable senator refers to 252B—rules for conducting a strip search—in the Migration Act 1958, schedule 1, the rules are detailed in (1) (a) to (k). They are very detailed in the bill tabled before the house. A strip search of a detainee will mean:

... a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:

requiring the detainee to remove some or all of his or her clothing; and

an examination of that clothing and of the detainee’s body.

However, a “strip search” does not include an examination of the detainee’s body cavities.
Senator BROWN (Tasmania) (10.41 a.m.)—Let me firstly respond to Senator Patterson’s asseveration about sending somebody around to discuss the matter with me. I thank the government for the documentation, which is quite detailed, but it is the function of a parliament to publicly debate and discover detail which goes onto the record for the people whom we are serving. I am not now, nor will I be in the future, in the business of simply having concerns met in a private briefing when they should be publicly debated in this forum. I have the information and, what is more, I have read that information in great detail and I understand it, and I am on top of this legislation. It is from that point that I now want to question the minister.

The minister said that body cavities cannot be searched and she has also said that people can be partially or wholly stripped for a search to take place. What I asked the minister about is the zone in between. I noticed that gloves can be given to the searching officer who is about to take part in the search. To what degree is that searching officer able to make contact with the body of the person being searched? What are the limitations on that bodily contact being made by this officer—with or without gloves—approaching somebody in a strip search?

Senator Patterson—The bill says: only as necessary to undertake the search.

Senator BROWN—Exactly, and that is where the lack of information is. Did Senator Patterson’s officers, who were coming around to give me detail on that point, have an answer or not? That is an unsatisfactory response. What are the limitations on an officer who has been given the authority to strip search a person in a detention centre, so far as bodily contact is concerned? You will understand, Chair, that this is a very delicate matter. A person’s whole sense of modesty and privacy is involved. From the notes themselves, the government is aware that a strip search can be a matter of very great embarrassment to a modest person in a detention camp. I remind the chamber that we are dealing here with boys and girls as young as 10 years old. It is quite proper that we understand this in this chamber, so that officers who are involved in this process further down the line and, indeed, those who are subject to it know where the boundaries are.

I want to know from Senator Patterson what instructions are given to a person who is laying their hands on the naked body of another person without that person’s permission—we will have cases without permission—to ensure that that involvement is minimised to the essential. There is nothing in the papers that I have seen which outlines where the boundaries are drawn. I am asking that the parliamentary secretary not give us terms such as ‘the least amount necessary’ or ‘what is required’ but to specify where the boundaries are drawn in a strip search process so that an officer does not go beyond that which she claims is necessary when laying hands on the naked body of a person in a detention centre.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.45 a.m.)—I want to emphasise that the search power is a measure of last resort—first of all, we have to be reminded of that—and it is to be used only in exceptional circumstances. It will not involve the removal of more items of clothing than is reasonably necessary to determine whether there is a weapon or other thing hidden on the detainee—and, as I said before, it does not authorise a search of the body cavities of the detainee. I also remind honourable senators that the search must be undertaken by a person of the same sex as the detainee. That is important to note. There are some draft protocols and I will just read one of the parts that is relevant:

2.1.2.1 An officer authorised to conduct a strip search must comply with the requirements contained in section 252B of the Migration Act, which provide that:

1. a strip search of a detainee must be conducted in a private area (s.252B(1)(b));
2. a strip search of a detainee must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search (s.252B(1)(e)); and
3. a strip search must not involve the removal of more items of clothing, or more visual inspection,
than the authorised officer conducting the search believes on reasonable grounds is necessary to determine whether there is hidden on the detainee, in his or her clothing, or in a thing in his or her possession, a weapon or other thing capable of being used:

. to inflict bodily injury; or
. to help the detainee, or any other detainee, to escape from immigration detention (s.252B(1)(j)).

2.1.2.2 In addition to the requirements in section 252B of the Migration Act, an authorised officer must not do any of the following during the conduct of a strip search:

. request the detainee to adopt certain postures or positions during the strip search that compromise the privacy and dignity of the detainee;
. take a photograph of a detainee when he or she has been stripped;
. pass on personal information about the detainee, except in accordance with the disclosure and use of personal information under the Privacy Act 1988 (Privacy Act) as outlined below.

Senator BROWN (Tasmania) (10.48 a.m.)—I want Senator Patterson to answer my question. There is a big gap here between allowing the removal—and that includes the forced removal—of somebody’s clothes and saying that the officer cannot be involved in a cavity search. What I want to know from the minister is: where are the rules for that in-between zone handling of a person who is being strip searched? To me, a visual search is totally adequate in this circumstance, but I note that gloves are being offered, and indeed a paper smock may be offered, to some people who are being strip searched. What I want to know is: can the examining officer lay hands on the private areas of the person and, if so, under what circumstances? It is a very, very important matter. It is not specified in the legislation; it is not specified in the draft rules, but it will involve people and their dignity, and indeed officers, in very real circumstances. It is up to the parliamentary secretary to tell this chamber what the rules are in this situation.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.49 a.m.)—I reiterate that the person conducting the strip search is permitted only to search to a level reasonably necessary to determine whether a person has an item that they can use to injure somebody or to escape. If the person conducting the strip search were to go beyond that, they would be subject to normal criminal law.

Senator BROWN (Tasmania) (10.49 a.m.)—Through you, Chair, to Senator Patterson: what are the circumstances in which a person may be involved in the search of the external genitalia of people who are being strip searched?

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.49 a.m.)—I reiterate that the draft protocol states that, during the strip search, the person conducting the search is not to request the detainee to adopt certain postures or positions that would compromise the privacy and the dignity of the detainee. I think that answers the question.

Senator BROWN (Tasmania) (10.50 a.m.)—The question was, explicitly: is a strip search officer in any circumstances able to come into manual contact with the genitalia of a person being searched?

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.50 a.m.)—I will repeat the guidelines—the protocol—which state that the person conducting the search cannot:

... request the detainee to adopt certain postures or positions during the strip search that compromise the privacy and dignity of the detainee.

I think that if they were to do what Senator Brown is suggesting, they would be compromising the privacy and dignity of the detainee.

Senator BROWN (Tasmania) (10.51 a.m.)—I take that as the parliamentary secretary saying that search officers may not come in direct contact with the external genitalia of anybody being searched, and I want that on the record. That is not in these draft guidelines, but we now have that on the record. The second thing is that Senator Patterson has said that a person being searched
may not be asked to adopt certain postures which would create embarrassment. I ask the minister: what are those certain positions that are being prohibited?

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.52 a.m.)—Again, I reiterate the guidelines of the protocol, that the person undertaking the search must not request the detainee to adopt postures or positions during the strip search that compromise the privacy and dignity of the detainee.

**Senator BROWN** (Tasmania) (10.52 a.m.)—I ask: what are those postures? If they cannot be enumerated, can the parliamentary secretary give an example of the postures that are prohibited under these rules; otherwise, there are no postures that are prohibited and it is a matter of judgment for the officer. That is totally unfair to the officer and it is totally unfair to the person being strip searched. This may be an embarrassing moment in our debate, but I assure you it is far more embarrassing for officers and for people who are undergoing a strip search process if these matters are not made clear. The government has determined to say that there are postures that are prohibited. I think it is incumbent on the government to indicate what those postures are or to give an indication of the nature of those postures. I ask the parliamentary secretary: can she give a further indication of what is meant by prohibited postures in this strip search situation?

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.53 a.m.)—The person searching the detainee cannot ask the detainee to present their body in such a way that is not reasonable for determining whether the person has on their person an object that can be used to injure themselves, to injure somebody else or to escape from detention. That is what the protocol says. If the officers stray beyond that, the normal criminal law will hang over their heads very strongly.

**Senator BROWN** (Tasmania) (10.54 a.m.)—I will help the parliamentary secretary: in a strip search situation is it or is it not allowable for either the officer involved before a standing person who is stripped naked to bend over or for the officer who is standing to require a person who is being stripped to adopt any posture other than standing straight up and down?

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (10.55 a.m.)—Only if it is reasonably necessary to determine whether the person has on their person an object with which they can injure themselves, injure another person or escape from detention.

**Senator BROWN** (Tasmania) (10.55 a.m.)—That is all supposition. The whole procedure here is not whether or not a person is carrying a weapon; it is whether the officer has an assumption that the person is carrying a weapon. And that does not have to be a proven assumption. They have to have a real feeling that the person may in some way be hiding a weapon. Weapons here involve things like pins and very small objects indeed. These rules are not allowed in civil society; we have gone far beyond that. We are talking about people with few rights in detention centres who are nevertheless, just like us, human beings with dignity. This issue is going to be mightily embarrassing for those people who are strip searched, some of whom we know will be innocent, and it is going to be embarrassing for any officers who are worth their salt as well. I think we need to be very clear about it. When the rules say that there are postures that you shall not ask a person being searched to undertake, they should say what those postures are—they should go much further.

To me, it would be an embarrassing thing to have a person who comes from a very modest religious background stand naked before any other officer. That is a posture that should not be allowed, but it is quite clearly allowed under these rules. I am asking the parliamentary secretary: where beyond that can a strip search officer go? It is not fair to be prudent and refuse to discuss
this matter in this chamber but to leave it to people who are caught up in a private situation between an officer and a person who is being searched. I think we need to be very clear about it. I am opposed to this legislation, but what I want to make very clear here is that we do not allow a situation where an abuse of these laws can ever occur, and I think it is coming. We all know that if you are going to put through laws like this, you have to absolutely minimise the potential for abuse.

A lot of thought has gone into the draft rules that tell officers what they can and cannot do when they are searching somebody. But when it gets to a situation where you cannot ask people to adopt certain postures, the very nature of setting out a guideline like this should be explicit, but there is no explicit guideline to the officer. What I am asking the parliamentary secretary is: can she tell the chamber what is intended by the restrictions on posture that are indicated but not made explicit under the guidelines?

Senator McKIERNAN (Western Australia) (10.59 a.m.)—The series of questions that Senator Brown has addressed to Senator Patterson was of great concern, of great moment, to the Australian Labor Party when the first piece of this legislation was brought into the other place some weeks ago. Our concerns on the matters that were raised caused us to enter into dialogue and negotiations with the Minister for Immigration and Multicultural Affairs to seek ways and means of allaying our concerns and to seek to put protective measures into the legislation to overcome some of the concerns of the sort that Senator Brown is addressing questions to here.

We had, as I indicated in my speech in the second reading debate yesterday, a very fruitful dialogue which resulted in a number of serious amendments being moved in the other place as part of the legislation that we are addressing in this place. Not only did we enter into dialogue and discussion with the government but we talked to a number of other people who have got an interest in this matter and we took advice on that. We canvassed their views and we listened to them, just to ensure that we ourselves were adopting a proper position on this matter and to ensure that the proper safeguards were being put in place. When the amendments were put to us we were comforted by what was being put forward and put into the legislation that the safeguards are properly in place.

The comfort is not only to us but also to some of the advocates who have been around the scene of refugees, of asylum seekers, who have been part of the debate on detention policy in Australia for a number of years. One of those people is the President of the Independent Council for Refugee Advocacy, Ms Marion Le, who has been around for quite a number of years and has assisted in the formulation of policy on these matters to an immeasurable extent, I would say, not that I have agreed with everything that Ms Lee has put forward over the years—we do have differences on a number of matters—but her opinions are certainly valued, even if they are not acted on on all occasions.

On the matter that Senator Brown was addressing Senator Patterson on, I just want to add these few words which were reported not directly to us in confidential briefings or questioning or discussion or dialogue with Ms Le and other representatives of the Independent Council for Refugee Advocacy but in the West Australian newspaper on Saturday, 11 August. I will just quote part of that:

Independent Council for Refugee Advocacy president Marion Le said the conditions made the legislation reasonable and worthy of support. 'There is probably enough safeguards there,' she said. 'That is probably a good measure because it is protective rather than invasive.'

We endorse the views that are publicly put on the record by Ms Le and support the legislation to the extent that the protocols on strip searching will be abided by, we believe.

Senator HARRADINE (Tasmania) (11.02 a.m.)—I have been listening carefully to what has been said. I can tell the chamber that I had no intention of voting for this legislation as it was first introduced into the House of Representatives. But, as Senator McKiernan has said, there has been considerable progress, and discussions took place not only between the Labor Party and the government but between others and the government. Also, you will have noticed that I
did vote for the second reading on this occa-
sion and, again, I have been listening to what
has been said. I do acknowledge and am very
grateful for the time spent, the work done
and the information given by the officers of
the department. But, again, one has to finally
make up one’s own mind about the situation.

I ask the Parliamentary Secretary to the
Minister for Immigration and Multicultural
Affairs how the officers are going to take
into account cultural and religious sensibili-
ties when undertaking the strip searches. I
acknowledge that this is an extreme situation
and that there is a need for legislation such as
this for the protection of the detainees and
others within the detention centres, but we
all understand that detainees come from all
sorts of places and all sorts of cultures and
they may, because of that fact, have different
sensibilities. I am just wondering what
training is going to be given to the officers
about the nature of these sensibilities in the
various cultures in the countries from which
the detainees come. Could the parliamentary
secretary advise what training the officers
have in that respect.

Senator PATTERSON (Victoria—Par-
liamentary Secretary to the Minister for Im-
migration and Multicultural Affairs and Par-
liamentary Secretary to the Minister for For-
eign Affairs) (11.06 a.m.)—Can I say, first of
all, that Senator Brown implied when I first
raised the issue of a briefing that we were
trying to do something behind closed doors
and not on the public record, and I thank
Senator Harradine and Senator McKiernan
for indicating that that is not the way that the
government is behaving when it has consul-
tations. In opposition, when I was shadow
minister I used to spend quite a considerable
time in Senator Tate’s office going through
legislation and trying to understand it in de-
tail. Sometimes my concerns were un-
founded and I then did not have to raise them
in the chamber. When I had an explanation
that I thought was satisfactory—because I
had some misunderstanding, I did not under-
stand how it was linked to another law or
what other powers would be able to be in-
voked—I was able to be convinced that it
was not of concern, and that saved an enor-
mous amount of time in the chamber.

Often you can work in conjunction with
ministers who are reasonable and sometimes
agree on amendments. In this case Minister
Ruddock—I have to say, as his parliamentary
secretary—is eminently reasonable. As a
result of the briefing that took place with
Labor Party people and with others who
availed themselves of that briefing, we saw
amendments put before the House of Repre-
sentatives. When I was in opposition, some
failed to acknowledge contributions by oth-
ers—Senator Richardson always acknowl-
edged when you assisted with amendments;
others were less gracious—but Minister
Ruddock acknowledged, when bringing in
government amendments, that they were as a
result of consultation. That is the way par-
liament should work. It is parliament work-
ning at its best when the government puts up
legislation and people with other experience,
looking at it more broadly and asking the
‘What if?’ questions, put forward suggestions
to make the legislation more appropriate,
more workable or more acceptable across
party lines. I appreciate that and it should be
put on the record. It is not that people are
briefed to keep them quiet or to do some-
thing underhand and off the public record; it
is to facilitate what is going on in the cham-
ber.

Senator Brown indicated that the detain-
ees have limited rights. They do have access
to the Human Rights and Equal Opportunity
Commissioner, to the Ombudsman, to the
state police who could investigate a com-
plaint, and to the Immigration Detention Ad-
visory Group—which the minister has set
up—which has access at any time to immi-
gration centres and, if necessary, to state
child welfare authorities. Senator Harradine
asked me a question about the training that
officers will have. In answer indirectly to his
question and also in answer to Senator
Brown concerning the authorisation of a strip
search, a strip search is authorised:

(i) if the detainee is at least 18—

.........

the Secretary, or an SES Band 3 employee in the
Department (who is not the officer referred to in
paragraphs (b) and (c) nor the authorised officer
canducting the strip search), authorises the strip
search because he or she is satisfied that there are reasonable grounds for those suspicions ...

(ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.

A parent must be present at the strip search of a child between 10 and 18 if reasonably available. There was a fairly loose comment that children as young as 10 can be strip searched. We need to state that there are different rules for children between 10 and 18. With respect to the question that Senator Harradine asked, the draft protocol, which will remain the subject of section 499, directions and operational orders, begins:

All detainees must be treated with respect and dignity when exercising the powers in sections 252A and 252B of the Migration Act.

Further, the protocol says on page 21:

A training program will be developed specifically for officers nominated as potential authorised officers for the purpose of conducting a strip search. This program is likely to include the following segments:

i. legislative requirements;
ii. civil rights and liberties;
iii. grounds for conducting a strip search;
iv. role of officers involved in conducting a strip search;
v. pre-conditions for a strip search;
vii. procedures for conducting a strip search;
vii. procedures relating to items retained during a search;
viii. record keeping; and
ix. reporting.

I may need to look at the draft protocol again, and it may be appropriate—and I will talk to the minister—to have another point which mentions cross-cultural training for all officers in detention centres. We need to be reminded of cross-cultural issues and that not all detainees are asylum seekers. Sometimes we get the terminology and concepts slightly confused. People who are detained for reasons other than those of asylum seekers may be waiting for the processing of a departmental, Federal Court or High Court determination of their claim. For many of them, for cross-cultural reasons, it would be inappropriate to have someone of the opposite sex strip searching them. I am very conscious of this.

Before I got into parliament, I was searched at an airport in a way that I found, frankly, terrifying. I was herded into a room by a person at gunpoint. I had never had this happen to me. There was a mother with a young child behind me who was more frightened than I was, I think because she had a child with her. I indicated that I was going to stay in the room while she was being strip searched by a female but with a male standing in the room with a gun. I understood her distress. I resisted and stayed in the room. I did not think I was going to be shot—I do not think I was being a martyr or great heroine. I was not strip searched, but I was subjected to a search of my body with my clothes on which was less than comfortable. I would not like to think that we are passing legislation that would subject people to an inappropriate search—and we are not—or to a search which does not take into consideration their culture. The draft protocol says that officers will be trained in civil rights and liberties. I am advised that that will include civil rights and liberties given their religious and cultural beliefs. One of the major ones would be the fact that it would be totally inappropriate to have a male searching a female or vice versa, given the cultures of the many people who are in detention. We have clearly stipulated that officers of the same sex must be involved in the searching. I hope that answers Senator Harradine’s question.

Senator BARTLETT (Queensland)

(11.15 a.m.)—I would like to ask the Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs a couple of questions. Before I do so, I should reiterate that, in relation to the legislation, I did—as I expect she would know—receive a briefing on this from some of her officers and do appreciate that. They did outline in sufficient detail for me the way the process is likely to work and the nature of the protocol. The draft protocol, of course, has been tabled as well.

The Democrat concerns with the legislation and our opposition to it—and, I suppose I should also put on the record, the work of the ALP in at least modifying some of the
more dangerous aspects of this bill as it originally stood—relate, as outlined in my speech in the second reading debate, more broadly to further expanding the powers of guards in detention centres at a time when there is already, in my view, a sufficient cloud over how they are exercising their powers at present and also over the adequacy of the processes of following up complaints that may be made by detainees and others when those powers may allegedly be used inappropriately. For that reason, I would like to ask the parliamentary secretary a couple of questions in relation to a case at the moment before the Federal Court in Sydney. I expect that she is aware of it or that some of her officers are aware of it. I am obviously not asking her to comment on the specifics of the court case because, as I understand it, it is still running. It involves a number of Chinese detainees who have made allegations of assault by ACM guards at the Villawood Detention Centre. There have been ongoing concerns raised about a few aspects of this case and I would ask the parliamentary secretary to answer a few questions that I have relating to this either now or else on notice.

Concerns have been raised that there have been deliberate attempts to ensure that the ACM guards in question were rostered on in states other than New South Wales so that they would not be available for police to interview when they were conducting their investigations. I would like to get an assurance that that has not been the case and that that sort of practice is not able to happen.

I would also like to get some indication of the role of DIMA. As I understand it, the minister and the department are correspondents in the case along with ACM. A request has been made a number of times that the people making the allegations be given temporary criminal justice visas, either by the New South Wales government or by the federal Attorney-General, to ensure that they are able to remain in the country until police investigations, Human Rights and Equal Opportunity Commission investigations and any civil proceedings are completed. I know that in the past we have had circumstances where a human rights commission investigation was under way and the person making the allegation was removed from the country before they had a chance to be properly interviewed. I would want to get an assurance that, both in this case and in other allegations that may arise, people who make allegations will be able to be kept in the country until investigations, whether it is police or human rights commission, are completed, because we are talking about the sorts of powers that are being bestowed in this bill. It is quite feasible—obviously, all of us hope that it does not occur—that a complaint may be made in relation to these powers being exercised inappropriately by a detainee. The Democrats would like an indication that anyone who makes such complaints will be able to have them adequately investigated by an independent authority, whether it is the commission or whether it is a police authority.

In relation to the specifics of this current court case in Sydney, has the federal Attorney-General or the federal minister considered ensuring that temporary criminal justice visas are available for those detainees that are wishing to stay? As I understand it, a few have already been sent back to China. I would like to know whether it was in each case the fact that people were willingly removed and made a request to be sent back or whether the department removed them despite this ongoing court case and the ongoing investigations, and in such cases whether the department satisfied itself that all investigations—particularly the police investigations—had been fully completed in relation to the persons involved.

Those are just a few questions that I would like to have answers to in relation to that particular case, because I do believe that it links back to the broader issue of what happens when powers are inappropriately used. That is one of the reasons why there have been concerns raised by many people over quite a period of time. We need to be assured that there are adequate processes in place, that those complaints can be properly investigated, that they are not kept hidden and that the people that make them are not shunted out of the country as quickly as possible before they can be properly investigated.
Senator **PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.21 a.m.)—I have read this and I wanted to just mention it for Senator Brown, who will pick it up, I am sure. With regard to a child between 10 and 18, if the detainee’s parent is not readily available, if it is not acceptable to have the parent or it does not apply—that is, the person is not there—another person, other than an authorised officer, who is capable of representing the detainee’s interests and who, as far as is practicable in the circumstances, is acceptable to the detainee is required to be there. So, if the parent or guardian of a young person between 10 and 18 years is in immigration detention with the detainee and is readily available at the same place or, if that is not acceptable to the detainee, then a person, other than the authorised officer, who is capable of representing the detainee’s interests, as I said, as far as is practicable in the circumstances, and who is acceptable to the detainee is required to be there.

With regard to Senator Bartlett’s long series of questions, I have to say that it is stretching the friendship slightly because we are talking about strip search in detention centres, and now we have gone on to particular cases. I have not come to the chamber with briefings on every case in every detention centre in Australia. It was alleged that a number of detainees were assaulted by ACM officers at Villawood. These allegations were reported to the New South Wales police. They then conducted an investigation into the alleged assault. The investigation into the alleged assault is close to being finalised, and no charges have been laid at this time. The detainees have commenced civil proceedings in the Federal Court in relation to the allegation of assault, and proceedings have been adjourned until 18 October 2001. I am not prepared to comment further on this incident because it is a process under legal action. The questions on where officers were and when are very detailed. I do not have the answers to them here. I will take those questions on notice and alert the minister to them. That is all I can do at this stage. We are, as I said, discussing a very detailed piece of legislation about strip searches in detention centres.

Senator **BARTLETT** (Queensland) (11.24 a.m.)—I recognise that. But, as I stated, it is relevant, when we are giving extra powers, to link it back to ensuring that adequate processes are in place if complaints are raised about those powers. A further question, which is not specific to the case I raised but is germane to any future allegations that may be raised on the exercise of these or existing powers, relates to the government giving a commitment to ensure that people who make these allegations are able to remain in the country whilst sufficient investigations occur. It has happened in the past that people have been deported before the Human Rights and Equal Opportunity Commission, for example, have had an opportunity to properly interview the person making the allegations. We need to ensure, particularly if it is a police matter, that, through the issue of temporary criminal justice visas or through a commitment from the government, people will not be removed from the country before adequate investigations are conducted. That is a generic question that goes to the safeguards involved in the exercise of all the powers, including the new powers that are going to be provided today to detention centre staff and guards.

Senator **HARRIS** (Queensland) (11.25 a.m.)—Senator Bartlett has raised some issues about people exercising their legal opportunities within our courts. Senator Patterson says that that is part of a different bill. We need to be mindful that these people do use the court system as a means of delaying their deportation. In relation to the main issue of strip searching, we have to consider that an extensive range of materials can be used for producing weapons. At the small end of the scale they can be used to intimidate and at the worst end of the scale they can be turned into quite lethal weapons. The materials available are not necessarily metallic. It would be extremely difficult to screen those materials to detect whether a person is carrying such an object. For that reason I believe it is important that these officers have the ability to carry out the searches when required, whether it be ini-
tially in the form of a pat down and, if something is discovered, then going to a strip search. There is a real need for officers in the detention centres to be able to ensure both their safety and that of the detainees.

In support of the government’s position of placing all illegal entry criminals into detention centres, we have to take into consideration that this process could be used to, firstly, bring people in who will facilitate the sale of drugs within Australia and, secondly, bring people in who could be used as plants to carry out espionage. I fully support the government’s position that anybody who enters this country in an illegal form needs to be detained because of those two major issues.

I will speak specifically to two briefings I received on this bill. I thank Senator Patterson’s and the minister’s officers for providing me information on illegal arrivals. They very succinctly and clearly addressed some issues of concern that I had. One of the issues I raised in my second reading contribution was about how the government was going to ensure that minors—that is, children under that age of 10—seeking to visit one of these detention centres do not become the vehicle for taking unauthorised objects into these centres. The minister’s officers were able to satisfy us that they had reasonable processes in place that would take that into consideration.

The briefings also went much further in relation to the Australian government’s actions to stem, to the best of their ability, the tide of these illegals at the source. It was through that process that I believe we attained the most benefit from the briefings. We only have to look at the figures. If we look at the years leading up to 1998-99, the figures for illegal boat arrivals were well under 1,000. If we then look at 1999-2000 and 2000-01, they have exceeded 4,000.

We definitely have a problem in that the people smugglers who are outside Australia are having quite a substantial impact on determining what is going to be the make-up of our Australian population. That is totally unacceptable to the Australian people. It is clearly indicated in polls that up to 95 per cent of the Australian population support the government in the actions they are taking.

With those few words, I indicate that Pauline Hanson’s One Nation support the government’s bill.

**Senator Brown** (Tasmania) (11.32 a.m.)—What a ringing endorsement for the government’s policies from One Nation there. I want to return to the matter I brought up earlier regarding the potential in strip searches for people’s modesty to be infringed. I thank the minister for the assurance that there will be no touching of external genitalia in the course of those searches. I wonder if she could give a commitment to the chamber that that will be entered clearly and explicitly in the draft guidelines that we have been shown. Secondly, I would like to ask Senator Patterson about the officers who can authorise a strip search under this legislation—how many of them there are and where they are.

**Senator Patterson** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.32 a.m.)—I did not have a chance to reply to a question that Senator Bartlett asked, so I would like to go to that first. The question was about removal. We are obliged under the legislation to remove if there is no lawful entitlement to a visa. It is open to law enforcement authorities to seek a criminal justice stay certificate to deal with the issues that he raised. If the hypothetical situations he raised occurred, it is open to law enforcement authorities—state law enforcement authorities, for example—to seek a criminal justice stay certificate. That is the answer to Senator Bartlett’s question.

I was always taught that it was unhygienic to put words in other people’s mouths. Senator Brown has done that. The prohibition for search is that officers will not be able to search body cavities. The other question that was asked concerned the people who were entitled to undertake a strip search. It is outlined in the legislation, which says that an authorised officer under the Migration Act may conduct a strip search under certain conditions. Two things control who can be involved. Section 252A, ‘Power to conduct a strip search’, subsection (3)(c) says:
... (i) if the detainee is at least 18—the Secretary, or an SES Band 3 employee in the Department (who is not the officer referred to in paragraphs (a) and (b) nor the authorised officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions ...

It is not possible to give Senator Brown a figure of how many SES officers there are: today there might be one number; tomorrow, because somebody retires, there might be another number. But I think that gives the level of involvement: it is either the secretary or an SES band 3 employee of the department who can authorise the search. Hopefully, that will partly answer the question; it is not possible to give exact numbers.

Senator BROWN (Tasmania) (11.36 a.m.)—According to the annual report of the Department of Immigration and Multicultural Affairs for 1999-2000, as of 30 June last year there was only one SES band 3 employee in the department. Does this mean that there are only two people in the country—the secretary and that employee—who are able to authorise these strip searches? If that is not the case, could the minister give us the facts?

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.38 a.m.)—At the risk of losing my cool—and I will not—Senator Brown did tell me that he was fully on top of this legislation, which is a public document. If the honourable senator goes to 252A, 'Power to conduct a strip search', he will see that it reads:

(4) An authorisation of a strip search given for the purposes of paragraph (3)(c):

(a) may be given by telephone, fax or any other electronic means; and—

If the fax works like my one at home it might take a bit longer, because it seems to be very spasmodic—

(b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.

I think that is clearly stated. How long will it take to make the telephone call? To my knowledge, and given the way the officers in the department work, they are usually available 24 hours a day on their mobile telephones. They are an amazing group of people. I want to say here, and I say it often publicly, that the departmental officers of the department of immigration have been through what must be the most demanding time in the history of the department other than probably immediately post-World War II. They have had the Olympic Games, and for four or five years before the Olympic Games departmental officers were focused on the Olympic Games. We were congratu-
lated by people who came and were able to go through the airport smoothly. Athletes commented that, compared with other places, where it took hours, here they were processed and through within 20 minutes to half an hour.

I went to the Olympic Games in my capacity as parliamentary secretary to both Ministers Ruddock and Downer and people commented on the officers. I sat with my heart in my mouth at most of those events, hoping that all the procedures they had put in place would work, because at previous Olympic Games we have seen problems when terrorists have come into the borders of the country hosting the Olympic Games. That did not happen, and much of that is due to the Customs officers, the AFP officers, the Immigration officers and other public servants working in concert to ensure the safety of the athletes and the people visiting. That is the first point.

The second point is that at the same time as we were preparing for the Olympic Games we had the largest humanitarian effort in Australia's history onshore, with 4,000 Kosovars and 1,500 East Timorese brought here and accommodated within a week—notice—a couple of days notice, actually. Officers came from behind their desks and were flown, at short notice, to Darwin. There was very little accommodation for them. Not one of them did I hear complain. They believed it was their role and their duty to implement the government's policy. It was not always easy in the safe havens—and as patron of all the safe havens, I went around them—and the positive attitude of the departmental staff and the way they worked with the Defence Force and other state governments was exemplary.

Then we had the increase in the unauthorised arrivals and the need to expand detention centres. Again, the department responded with an enormous sense of responsibility and commitment. I think it needs to be put down here again—because people forget—that all these things happened about the same time. I was led onto that because I was talking about the secretary and the SES Band 3 people and about how they are available to the minister and to me at very short notice. I think I was entitled to be distracted on that because they do a fantastic job.

To answer the question that Senator Brown asked me—and I think I should be allowed the indulgence of going off the track, because other people have done it—the senior officer or magistrate approving the strip search must be satisfied that there are reasonable grounds for conducting the search, and a strip search can only be conducted by an authorised officer, as I mentioned before. As I said too, the senior departmental officer approving the strip search cannot conduct the search. As I said, the person who is authorising it must be satisfied that there are reasonable grounds for those suspicions.

**Senator BROWN** (Tasmania) (11.44 a.m.)—The minister earlier said that the strip search would not be able to trespass on the person's body so far as manual contact with external genitalia. I asked the minister if that would be written into the guidelines for officers involved in this and she has demurred now from saying so. I wonder if she could clear the air. Does she stand by the statement earlier to the chamber that such an infringement of a person's body would not be allowed and, if so, why is she not committing herself to having it written into the guidelines?

**Senator PATTERSON** (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.45 a.m.)—Madam Chairman, let me say again, very clearly, that I will go back through the Hansard. I do not believe that I said what Senator Brown said that I did. If I did say it or if he interpreted it in that way then that is not the correct interpretation. What I said was that there was prohibition on an officer searching body cavities.

**Senator BROWN** (Tasmania) (11.45 a.m.)—Then what is the situation with a strip search officer and a person who is being strip searched regarding external genital contact? Is it allowed or is it not? If it is allowed, under what circumstances is it allowed?
Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.45 a.m.)—The legislation clearly sets out that when the person is undertaking a strip search they should only undertake a search of the person when they have evidence that it is reasonably necessary and that they are not entitled to search body cavities.

Senator BROWN (Tasmania) (11.46 a.m.)—The Parliamentary Secretary to the Minister Immigration and Multicultural Affairs has backtracked. If she is going to say ‘only when it is reasonably necessary’, she needs to tell the chamber where. She is suddenly being overtaken by her prudery, which is an affront to this debate. We are dealing with real human beings—women, children and men—who are going to be strip searched and I, as a legislator, want to know where that boundary is. Just to say, ‘Well, a prohibition on internal cavity searches is on and, short of that, the officers have to make the judgment themselves,’ is not good enough, as far as I am concerned. I say this remembering that gloves are to be given to the search officers where they deem to wear them. I, for the life of me, cannot see why a genital search would be required—but if that is going to be the case and the government wants that to be the case then I think the parliamentary secretary should give an example or should say why it is necessary.

Let me be quite blunt about this. Strip searches are very invasive. The parliamentary secretary has referred to an incident which caused her and a woman who was with her a great deal of worry, and that did not involve a strip search. I ask her to exercise her imagination such that it had gone to a full strip search. We are given guidelines which say that it is up to the officer to determine whether outer clothes or underclothes will be removed. I could, but I will not, ask the parliamentary secretary what the rules are in terms of going from outer garments to undergarments; it is being left to the officers involved. Now I am asking about bodily contact, and we have the parliamentary secretary demurring to even being able to talk about it. I think it is very wrong of legislators to expect officers to draw lines on crucial matters like this. It is up to us to be very clear about it. Otherwise, you will find that things can go wrong, and when they do the fault goes right back to the government. The opportunity for drawing the line now is being ducked.

I ask the parliamentary secretary to clear the air on this matter. If she does not, there is a very crucial flaw built into this legislation. It is bad principle to say that an officer in the department at some detention centre, in circumstances which are obviously going to be quite tense, ought to make judgments and ought to know where to draw lines, but that a parliamentary secretary who has spent weeks—if not months—learning this legislation cannot make that judgment and give it to the chamber here and now in this relaxed circumstance. That is wrong. It is bad process, it is bad legislation and it will potentially lead to an infringement of good administration. We should be very clear about this, and now is the time to be clear about it. I do not like getting up and asking these questions, but this is not my legislation. I am concerned for innocents who are going to find themselves on the wrong side of this legislation—be they the examining officers or the people being examined. It is pretty poor that we cannot have the parliamentary secretary giving us much more explicit guidelines in the matter.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (11.50 a.m.)—If I can reiterate, the safeguards for the new strip search power have been modelled on the Commonwealth Crimes Act 1914 provision relating to strip searches. I think we would agree that these are rules that have been applied to Australian citizens and people whose behaviour someone has had a suspicion about. Section 3ZI of the Crimes Act 1914 talks about children under 10 years old, but with regard to the sorts of questions that Senator Brown is asking, it says that a strip search:

(g) must not involve a search of a person’s body cavities; and
(h) must not involve the removal of more garments than the constable conducting the search believes on reasonable grounds to be necessary to determine whether the person has in his or her possession the item searched for or to establish the person’s involvement in the offence; and

i) must not involve more visual inspection than the constable believes on reasonable grounds to be necessary to establish the person’s involvement in the offence.

The Crimes Act 1914 does not specifically go into the detail that Senator Brown is asking for in the legislation, and I think that most reasonable people would say that what you subject people within Australia to under the Crimes Act ought to be a reasonable guideline. The Migration Legislation Amendment (Immigration Detainees) Bill (No. 2) 2001 includes the same rights and the same expectation that you cannot ask a person to take off more clothes than is reasonably necessary and you cannot inspect a person in a way that is more than reasonably necessary. We do not go into absolute detail in the Crimes Act, and I think that is why Senator Harradine, the opposition and the government have decided that it is reasonable to base this aspect of the legislation on that act. As I keep reiterating, it is a power of last resort.

Senator McKIERNAN (Western Australia) (11.52 a.m.)—As I indicated before in the previous intervention, we had concerns in this area. We directed those concerns to the minister and the government. Our concerns were alleviated by the amendments that were put into the legislation. We took cognisance of the provisions in the Crimes Act that govern strip searching of those who are suspected of committing offences in this country, where there is considered to be a need for a strip search, as a measure of last resort.

We also took cognisance of the provision in the Customs Act for strip searching, and the protocols that surround the Customs Act. I think the good Senator Brown would be aware that in recent times this chamber has considered legislation which went into a lot more detail than just strip searching. The forensic bill that the Senate looked at went to the taking of bodily samples, which was a lot more invasive than the provisions of this legislation.

The opposition is opposed to going into more definitions than what is contained in this bill. It would be absolutely ludicrous to go to the extent of detailing, when an officer is conducting an examination, whether the officer can bend on one knee or two knees or whether the back needs to be bent or to be straightened, or to apply similar provisions to the detainee when they are under examination. We are quite satisfied that the concerns that we took to the minister and to the government on the invasiveness of strip searching have been addressed.

As I indicated previously, we also took our concerns to others in the community who have views that are not always aligned with those of the Australian Labor Party—not people whom we would expect to say yes to us—and we asked them about their concerns. One of those individuals is quite prominent and certainly could not, by any stretch of the imagination, be seen to be a supporter of the Labor Party in dialogue and discussions on the matters that are before the chamber. I have read into the record how her concerns have also been alleviated.

I make a plea before I sit down. Let us stick to this legislation. Let us have no more deviations from it. Debate on it has taken a considerable amount of time here this morning. I am only standing to address this matter. I have a number of other pieces of work that need to be done which I cannot do while I am sitting here. I make a personal plea: let us have no more deviations from the provisions of the bill. If there are going to be deviations, I think we will have to go back to the standing orders and point to the particular measures that are contained in the bill.

In that sense I am not saying in any way, shape or form, Senator Brown, that your questioning has been deviating from the provisions of the bill but I think the parliamentary secretary will agree that there have been a number of deviations.

Senator BROWN (Tasmania) (11.56 a.m.)—I would point out that we are not dealing with constables here; we are dealing with officers in detention centres, a good many of them part of the privatised set-up that is involved there. They are entirely different circumstances. This legislation crosses
a lot of boundaries that have been set in the past. I am opposed to it.
Bill agreed to.
Bill reported without amendment; report adopted.

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

PERSONAL EXPLANATIONS
Senator BRANDIS (Queensland) (11.58 a.m.)—I seek leave to make a personal explanation.
The ACTING DEPUTY PRESIDENT (Senator Chapman)—Does the senator claim to have been misrepresented?

Senator BRANDIS—Yes.
Leave granted.

Senator BRANDIS—I refer to a statement made during House of Representatives question time yesterday by the member for Fraser, Mr McMullan, in which an allegation was made in relation to me about the so-called ‘Groom GST scam’. The allegation was in substance the same as that made by Senator McLucas concerning which I made a personal explanation yesterday. I note that when the member for Rankin, Mr Emerson, raised this matter in the House of Representatives last night, he did not suggest that I had any involvement.

I repeat in relation to Mr McMullan’s allegation what I said in relation to Senator McLucas. 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 any involvement in them whatsoever is absolutely false.

Yesterday I challenged Senator McLucas either to produce and table any evidence to support her serious allegation or to withdraw it. I note that she has produced not a shred of evidence to support the allegation. That does not surprise me, for the allegation is fiction; it is a barefaced lie. I make the same challenge to Mr McMullan: produce and table any evidence to support your allegation or withdraw it. As I said yesterday, only dishonest people allege fraud lightly or without evidence. If Senator McLucas and Mr McMullan cannot produce evidence—and they cannot, because their statements are falsehoods—then they must retract them and apologise.

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000
OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH EMPLOYMENT) AMENDMENT BILL 2000

In Committee
Consideration resumed from 27 August.

SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

The CHAIRMAN—The committee is considering the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2000. The question is that the bill, as amended, be agreed to.

Senator JACINTA COLLINS (Victoria) (12.01 p.m.)—by leave—I move Labor amendments Nos 1 and 2 as circulated on sheet 2349:
(1) Schedule 2, item 55, page 61 (line 29), omit “5%”, substitute “1%”.
(2) Schedule 2, item 55, page 61 (after line 30), at the end of the item, add:
(6) An employee may make an application for further amounts of compensation under subsection (5) only if Comcare has made a final assessment of the degree of permanent impairment of an employee constituted by a hearing loss at least 3 years before the further application is made.

As senators will recall, on the last occasion we were dealing with No. 5 of the opposition’s amendments, and we deferred further consideration there. Following the discussion that occurred in the committee stage on that last occasion, we have responded to the government’s criticism of our position at that stage, where we were proposing to delete a
provision that would require an additional five per cent hearing loss in order to claim for hearing loss after an initial application has been made. The intent of that amendment was that it would allow a further claim for hearing loss to be made at any time. Subject to the criticism that Senator Campbell made on that occasion, we undertook a review of similar provisions in other state jurisdictions, and the two amendments that I have just moved reflect reform that occurred in Queensland under the Beattie government in 1999. Further to the debate on this issue on the last occasion, the useful things that I think these amendments deal with are a couple of criticisms.

I understand that one of the government’s criticisms was that administrative problems arise if you allow claims to occur at a one per cent level in an uncontrolled manner. This is why we have moved amendment (2) here, which indicates:

An employee may make an application for further amounts of compensation under subsection (5) only if Comcare has made a final assessment of the degree of permanent impairment of an employee constituted by hearing loss at least 3 years before the further application is made.

It is our view that that three-year break which applies in Queensland, will deal with any significant administrative problems that might arise from people making claim after claim in this area.

The other significant concern raised by the government relates to the measurement of one per cent of hearing loss. It is claimed that it is hard to indicate whether the loss is one per cent or two per cent and that the differences can be somewhat blurred. What we are seeking to do with these amendments is to ensure that a worker who ends up with an additional four per cent hearing loss, for instance, is not permanently disadvantaged. If we accept the government provisions here, under the five per cent proposal you could have a worker whose hearing loss does not deteriorate any further than an additional four per cent but who is in a position where they can never make an additional claim. You can say one per cent is difficult to measure, but we do not believe that four per cent or three per cent is and we do not believe that workers should be permanently disadvantaged on the basis of that. We have not just plucked these proposals out of the air; we have looked at where recent reform has occurred in relation to hearing loss in this area, and that is in Queensland. Senator Murray might appreciate my drawing to his attention the last occasion that the Senate relied on Mr Beattie’s reforms, when the Democrats supported the government proposal of a three-month probation period, which Mr Beattie had introduced in Queensland. I hope the Democrats will support us on this occasion, also relying on the Beattie government’s approach.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.05 p.m.)—This is a very important issue because hearing loss is a very important issue; as I recall, the Senate passed a motion yesterday relating to Hearing Awareness Week. As the son of a former ear, nose and throat surgeon, I have had a long understanding of these issues. My dad actually owned his own hearing testing booth, so I have a better understanding of these issues than most others. The government proposal requires that a person suffer a further five per cent hearing loss before they can receive any further compensation payment. This further threshold of five per cent is proposed as it is the threshold at which further hearing loss can be effectively assessed. This is the nub of the matter. It is not a figure that has been plucked out of the air; it is a figure we have taken advice on from the National Acoustic Laboratories. I think most people would agree that theirs is the most expert advice available, and their advice is that, if the threshold is any lower than five per cent, it is difficult to medically determine whether a person has actually suffered a further hearing loss. The National Acoustic Laboratories’ advice to the Safety, Rehabilitation and Compensation Commission is that the threshold should be five per cent. Both the commission and the government have accepted this advice. If a lower threshold is set, not only would the level of hearing loss be more difficult to determine and the potential for error be greater but there would also be a significant increase in
administrative costs, which would surely outweigh the benefits.

Senator MURRAY (Western Australia) (12.07 p.m.)—I am sure the Senate was very pleased to discover the professional antecedents of the parliamentary secretary. I have always thought that doctors have to look into many strange and unpleasant places, and I have always thought that ears are probably better than many. I will not comment further on his choice of profession. Senator Collins, you were slightly wicked about Premier Beattie. He has many admirable characteristics. I do not agree with everything he does and I agree with many things he does. I particularly do not agree with him on land clearing.

Not to detain the Senate, the Australian Democrats were delighted when the government agreed to drop the rate to 10 per cent and we thought that the opposition’s adjustment to five per cent was warranted. It was, in fact, the substantive amendment. We think this further set of amendments does not advance the cause, given the nature of the government’s remarks or observations. We accept the government’s view and, therefore, we will oppose the amendments.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.08 p.m.)—For the record, the further explanatory memorandum relating to the government’s amendments was circulated in the chamber on 27 August.

Amendments not agreed to.

Bill, as amended, agreed to.


SAFETY, REHABILITATION AND COMPENSATION AND OTHER LEGISLATION AMENDMENT BILL 2000

Bill reported with amendments; report adopted.

Third Reading

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

FAMILY ASSISTANCE ESTIMATE TOLERANCE (TRANSITION) BILL 2001

Second Reading

Debate resumed from 22 August, on motion by Senator Tambling:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (12.11 p.m.)—I indicate at the outset of the debate that the opposition will be supporting the Family Assistance Estimate Tolerance (Transition) Bill 2001. I also wish to speak at some length about the issue that this bill seeks to address. I particularly wish to highlight the government’s inability to formulate, administer and implement policies to support families.

This bill is technical in nature. It amends provisions in the Family Assistance Administration Act that deal with the waiver of debts. The amendments will allow the government to introduce a disallowable instrument and this will give effect to the government’s announcement that it will waive the first $1,000 of debts accrued by families following the introduction of the new family tax benefit and child-care benefit payment system in July last year. Though the disallowable instrument is yet to be tabled, we understand that only debts attributable to parental and dependent child income estimation, as well as shared care, will be included in the $1,000 waiver. Further, it is a one-off waiver, applying only to overpayments in the 2000-01 financial year. The government has estimated that some 400,000 families will be affected by the waiver and $220 million in revenue from debt recovery will be forgone.

In outlining the opposition’s position on this bill, I wish to refer to the second reading amendment which has been circulated in the name of Senator Evans. I now move that amendment:

At the end of the motion, add:

“but the Senate condemns the Government for:

(a) bungling the design and implementation of the Family Tax Benefit (FTB) and Child Care Benefit (CCB) payment systems;
(b) attempting to hide the scale of the FTB and CCB family debt problems;

c) failing to articulate any comprehensive measures to fix the long-term problems of FTB and CCB family debts;

d) claiming that the family debt backflip and the resulting $1000 waiver will come at no net budgetary cost to the taxpayer, and;

e) failing to adequately compensate families for the impact of the GST”.

I turn to address the points noted in our second reading amendment. This bill, and the waiver it will ultimately provide for, is the culmination of a sorry saga for the government. After repeated denials of any problems with the family tax benefit and child-care benefit system introduced as part of the ANTS package, we now have a massive backflip from the government.

It is important to be clear that this bill and the $1,000 waiver it will facilitate have nothing to do with the government’s genuine concern for families. It is clearly all about political expediency. The government simply does not care that their new family benefit system acts as a debt trap for families. If they were so concerned, we would be here today debating amendments to the income estimation system. What the government do care about is how families will vote in the forthcoming election. The government have been inept at formulating policies for families. A closer examination of the new family payments and child-care benefit system provides further proof. The new system is flawed in design. Like any benefit, the level of assistance provided to families is determined by income, with lesser benefits made to those with greater means.

The new payment system introduced by the government as part of the ANTS package relies on calculating family benefits based on an estimate of income in the current financial year. Around March of each year, families are asked to estimate their future income for the forthcoming financial year—that is, more than one year in advance. Under the new system, at the end of the tax year the payments made on the basis of the estimate—and any updates—are reconciled with actual income over the course of that year. If actual income exceeds the estimated income, a debt for any overpayment is raised. Under the previous system, family and child-care payments were based on the previous year’s taxable income—the base tax year—and there was no reconciliation that could then give rise to a debt. A small number of families could elect to provide a current year estimate. Importantly, the family payment system allowed a 10 per cent buffer between the estimated and actual income upon reconciliation. This buffer, which has been abolished with the new system, gave some leeway for families when their income fluctuated.

With the new system, all families must provide an income estimate and there is a zero tolerance policy when it comes to the end of year reconciliation. As a result, far more families are increasingly being drawn into the debt net. Lower income families—those who must claim their benefits fortnightly rather than on an annual basis—are most at risk. This group is more likely to have fluctuating incomes due to the fact that many of them are involved in part-time or casual work or need to work overtime to improve the income they receive. It violates all principles of social equity and justice that those whose work patterns are the most precarious are also those at greatest risk of accumulating FTB and CCB debts.

The government cannot claim that it was not warned. The history of this saga goes right back to the introduction of the new tax system family assistance legislation. In June 1999, the shadow minister for family and community services made the following remarks in relation to family income estimate debts during the second reading debate:

Provisions in this bill can make things only worse as all families applying for assistance will be required in the future to estimate their income and not to go on their past taxable income. Currently, many families elect to base their assessment on previous tax returns. For many, this is the safe option. Surely, as a result of these changes, more families will unwittingly incur debts.

At that time the government denied that that was the case. As far it was concerned there
was, and would be, no problem. Labor has since issued a number of press releases and statements highlighting this issue and other flaws in the FTB and CCB system. At every step the government has denied the existence of any problems. For instance, in a press release dated 5 April 2000, Senator Newman, the previous Minister for Family and Community Services, said:

Australian families should not be scared by Labor fear campaigner Wayne Swan in his attempt to claim that increased debts will be raised by Centrelink under the New Tax System.

She went on to say:

Of the 2.1 million families to receive FTB part A, around 1.75 million will not have their rate affected by an under or over-estimate of income. Of the remaining 350,000, few are expected to incur a debt because of the improved system.

How wrong was the then minister. The current Minister for Family and Community Services has continued to run the government’s line, strenuously denying that there were any problems. In a press release dated 18 April 2001, Senator V anstone—and I note that that press release is apparently no longer on Minister Vanstone’s web site—asserted:

The suggestion that many low income families might face overpayments of $1000 or $2000 is ridiculous ...

She says further:

Low-income families have been the big winners under the new scheme ... comments to the contrary are self-serving in the extreme and serve no purpose but to scare low-income families away from a scheme that can greatly assist them.

That air of denial continued during the last sitting weeks before the winter recess, but then new information came to light. A leaked document from the Department of Family and Community Services showed the government had been busily making preparations to claw back family payments from up to 500,000 families after they lodged their tax returns this year. Families were to have the money stripped from their tax refunds without warning. If their tax refund was insufficient to cover the debt, families were to be sent bills for the outstanding amount. Contingency plans to deal with the debts have been detailed in the memo for Centrelink and the Family Assistance Office. The measures that are being pursued include the formation of a national command and control group, Saturday morning office openings, flying squads, a boost in call centre staff above the levels during the introduction of the GST, delays to tax return processing to moderate the impact on Centrelink, instructions to avoid normal work and the cancellation of staff leave.

These revelations pointed to the size of the problem, but the minister continued to deny that plans were being made and argued strongly that all overpayments be repaid. On 27 June 2001, just a few weeks back, the minister said in this chamber:

The people who understand about getting no more than you are entitled to are the families who are in need. I do not think that they are going to be unhappy, if they have been overpaid, to pay it back into the till.

She went on:

... if a family understates its income and as a consequence has received higher benefits that it would otherwise have been entitled to, it will have to pay that money back.

Three days later—and just two weeks before the Aston by-election—the Prime Minister announced another backflip, another rollback, by this government. The government, through the measure that we are debating today, would waive debts of up to $1,000. This would apply to some 400,000 families who would otherwise have received debt notices this year. It was a clearly a grand political fix.

This was a last minute decision. All the facts point to that. No government would have taken the steps that it had put in place to recover the debts if it had any plan to waive them in the first place. But I can understand why the government would not want hundreds of thousands of families being hit with massive debts during an election campaign. Let me explain why. The government had previously argued that families would understand that they had overpayments and would be happy to repay money. While the government’s disallowable instrument has not been tabled, internal Centrelink memos confirm that families will be able to obtain waivers of up to $2,000 in total—that is, up to $1,000 for FTB and an
additional $1,000 for CCB. It beggars belief that 400,000 families would accumulate debts of up to $2,000 deliberately. It beggars belief that the government would waive debts of this magnitude if it was convinced that the families were receiving payments to which they were not entitled.

What the government’s backflip confirms is that the family payment system is generating erroneous debts for families. The system is flawed because it raises retrospective family payment and child-care benefit debts for periods of the year when families were actually entitled to the benefits. The government is having difficulty in coming to terms with this. Indeed, its only advice to families, to keep Centrelink updated on income changes, is flawed because debts may still accumulate. Families who complied with all their obligations to advise of changes in income are still candidates for debts. The system is simply not responsive to fluctuations in income.

The situation is best put by a Mrs Bryant who wrote to the opposition about her family’s situation. Mrs Bryant had been at home raising her children for the last seven years, but in April 2001 she was offered three months casual work. She immediately notified Centrelink of the change to her family’s annual estimated income. However, because her income earned over the three months would be taken as an amount earned over the whole tax year, she was required to repay benefits received from July 2000 to April 2001. Mrs Bryant asks a simple question and comments:

Where is the incentive for me to work? It seems I will be working to pay back social security $2400.

Perhaps the Minister for Family and Community Services might be kind enough to provide an answer to Mrs Bryant.

The estimation system—and the annual income reconciliation—as it currently works is bad public policy. We know that the new family payment system is unable to recalculate payments to ensure there is no net debt at the end of the year. The government’s announcement to waive debts up to $2,000 this year, an election year, does not fix the systemic problems that will saddle average families with debts next year and the year after. The coalition is sitting on a family payment system that is a debt trap, and it is refusing to do anything about it. We ask: why does the coalition want to place ordinary, struggling families deeper in debt? Maybe the minister would like to articulate the government’s strategy to fix this problem. There has been none forthcoming to this time. This is the key point: after debate on this bill concludes, we will still have a family payment system that will trap families next year. This bill offers no substantive or corrective changes to address long-term problems. The government seems to think it is fair to ask families to carry the risk and to pick up the tab for its flawed design and administration of the FTB and CCB payments system.

Taxpayers will also question the government’s handling of this matter. The backflip has financial implications for all of us. New staff were employed to collect the debts, but most will not be required. Perhaps the minister could advise the Senate how many staff were trained only to be let go. How many staff were diverted from normal work to devise debt recovery procedures for debts that will now be largely waived? What did all of this cost? The minister might also outline the government’s plan to utilise some of the remaining staff to make personal phone calls to people who have debts waived. Apparently people need to be personally advised of the government’s generosity. Apparently it matters little that no lasting solution has been found. Apparently it matters little that the government’s advice to families, that they will be immune from debt so long as they update their income estimates, is erroneous.

In light of the government’s mismanagement of this issue, it defies belief that the backflip comes at no net cost to the taxpayer. The government estimates that $220 million in debt recovery will be forgone, yet it argues that there is no underlying cost because the government overestimated outlays in the last financial year. This is difficult to accept. The government knew that there would be substantial debt recovery well before the 22 May budget. Indeed, Senator Vanstone told ABC Radio on 2 July that she knew about
the issue as early as February. We know the government’s decision to not recover the debt took place after the budget. It is not mentioned in the budget papers. To put it bluntly, the government knew about the issue well before the budget. It took the decision not to collect the money after the budget was tabled. Perhaps the minister could explain to the Senate why the budget almost certainly included the additional resources for the debt recovery operation but did not attribute any savings associated with the recovery of money.

If we are to accept the government’s explanation, then the following admission must be made. In a world of accurate income estimates, families would have received $220 million less in GST compensation than the government has budgeted for. So the government overstated the GST compensation in the new payment system by more than $220 million. This is 10 per cent of the total compensation claimed by the government. In other words, the government has paid families 10 per cent less than they were promised as compensation for the GST. It is little wonder that many families are telling us that the GST has placed them under greater financial pressure.

In summary, as I said at the outset Labor will support the bill because it takes the immediate pressure off most, but not all, families who have been unwittingly caught in the government’s debt trap. However, I have moved the opposition’s second reading amendment to highlight the bungling in the design and implementation of the family tax benefit and the child-care benefit payment systems, the attempts to hide the scale of the family debt problems with FBT and CCB, the failure to articulate any comprehensive measures to fix the long-term problems of FTB and CCB family debts, the claim that the family debt backflip and the resulting $1,000 waiver will come at no net budgetary cost to the taxpayer and the failure to adequately compensate families for the impact of the GST.

Labor has been arguing for a long time that we need to fix the government’s flawed income estimation system, a system that has seen families in receipt of family tax benefit and child-care benefit accrue substantial debts. These debts will be partially waived, but the government has not fixed the fundamental problem. In the absence of any change to the method of estimating income, families will be at risk next year and the year after that. I would ask the minister to state for the public record how many families will have their debts fully waived, how much revenue has been lost from the public purse and how many families will still receive debt notices after accumulating debts in excess of $1,000? Labor supports the bill, but it does not get to the heart of the matter. A future Beazley Labor government will be more interested in removing the debt trap from the family payment system than in simply buying some political time.

Senator BARTLETT (Queensland) (12.30 p.m.)—I speak on behalf of the Australian Democrats on the Family Assistance Estimate Tolerance (Transition) Bill 2001. I, firstly, should indicate that the Democrats will be supporting the bill, although I do have one amendment that I will move in the committee stage which will address an issue that I think is worth addressing by this bill. I should also address the opposition’s second reading amendment. As I will outline in this speech—and, indeed, as I have outlined via questions and speeches in this chamber in the past—the Democrats also have concerns with how the family tax benefit and child-care benefit have been designed and implemented and with the impact they are going to have on many Australians in terms of inadvertent overpayments. For that reason, we are quite supportive of the bulk of the opposition’s second reading amendment—the parts of it that actually deal with the substance of the bill at hand.

However, the second reading amendment does have a final item to do with the compensation aspect of the GST which I think, firstly, goes outside the main scope of the legislation and, secondly, makes a statement that the jury is still out on the adequacy of compensation of families for the GST. That issue is broader than just whether or not someone supported the GST; it goes to what its impact has been and the adequacy of the compensation measures. I think there have
been differing assessments of that, and further assessment of that needs to be undertaken over the course of the next six or more months before such a statement could be made. So I will seek to amend Labor’s second reading amendment simply by deleting part (e).

This bill follows up the government’s announcement recently that the amount of $1,000 will be waived from overpayments of family tax benefit which have occurred because recipients failed to correctly estimate their taxable income for 2000-01 or because of shared care arrangements, which is a new arrangement in relation to many aspects of family payments. A waiver of $1,000 also applies to child-care benefit debts where families underestimated their combined taxable income. It is worth emphasising that it is a difficult business for many people to try to estimate their income, and this is why many people are likely to get into overpayment difficulties inadvertently.

The family tax benefit and child-care benefit arrangements were introduced from 1 July of last year along with the new tax system arrangements. They represented a significant change in the way in which payments for children were administered. Prior to 1 July of last year—indeed, going all the way back to 1984—family payment, family allowance and family assistance were based on the previous financial year’s taxable income. In limited situations where circumstances had changed, current year estimates were used as the basis for entitlement with adjustment once taxable income was known. While this was a genuine effort to link the family payment with the current circumstances, it had one very clear outcome: families experienced significant difficulty in estimating in advance their taxable income for a financial year.

Indeed, I recall from my own experiences as an employee of the Department of Social Security back in 1989-90 the number of people who had difficulties in relation to overpayments. As a social worker in that role I occasionally came to meet and speak with people who were faced with that difficulty. Quite clearly, from my experience, almost without exception people found themselves in that difficulty without any intent to rort the system or any of those sorts of pejorative claims; they had merely fallen foul of the complexity and difficulty that was part and parcel of the way that the system operated.

Notwithstanding how the system did operate at that time, there was a 10 per cent leeway given in the estimate. Many families could not do manage to estimate their income even with that 10 per cent inaccuracy leeway. As a consequence, many debts were raised and families found themselves having to repay thousands of dollars. This is the situation that many Australians will shortly find themselves in—that is, owing thousands of dollars of family tax benefit because of complex changes to payments to families.

The 1 July 2001 arrangements certainly simplified the range of payments to families, and that aspect is welcome, but it had a barb the tail in that it required all recipients who wished to receive payment fortnightly to estimate their taxable income for 2000-01 and they were required to provide this information in March 2000. The requirement to accurately estimate total financial year income some 16 months in advance is difficult at best, impossible at worst and likely to be beyond even some of us. It was certainly difficult for disadvantaged Australians moving in and out of casual employment, those earning overtime, those with limited English or literacy skills or those whose socio-economic factors render them vulnerable to multiple economic changes at any time. Indeed, some of us in this chamber or in the other place may well find our income levels dramatically reduced in a few months time as a consequence of job loss. This highlights the difficulty of predicting what one’s future income is likely to be.

The legislation, for the first time, removed the ‘date of event’ assessment. When a person or partner started a new job or returned to work, the total taxable income from that job was applied retrospectively to the beginning of the financial year. How can a person possibly know retrospectively to the beginning of the financial year. How can a person possibly know in March 2000 that after the birth of a child not yet conceived a person might return to work in April 2001 and, furthermore, provide an estimate of that income at that time? The reality is that many Austra-
lians were unable to estimate their annual taxable income accurately, let alone factor in unforeseen events.

In addition, the impact of the changes to the family tax benefit were not well understood by many recipients, and in my view departmental publications did not make this adequately clear. I recall alarm bells ringing when constituent inquiries to the Democrats made it clear that the message had not been effectively communicated to recipients that a valid estimate must be not only given but also regularly updated throughout the year. In my view this requirement was simply not communicated to many parents, who now find themselves penalised by its outcome.

This is especially the case for shared care payments. This was an issue debated in this chamber and concerns were raised even before the payments came in around, I think, April or May 2000. Senator Evans and I both raised concerns with the then minister, Senator Newman, about how this would operate with the new shared care arrangements. For the first time, from July last year non-resident parents who had care of their children for 10 per cent or more of the year could claim a share of family tax benefit. It was well established prior to that date that at least 30 per cent care was the minimum standard for payment.

While the legislation was supported by all parties in this place, I think its implementation, that aspect of the change, was not clearly recognised at the time, as was raised subsequently by Senator Evans and me in this place. For that, I guess we can bear our own responsibility for not properly assessing it at the time and recognising that this change was part of the many other changes that were being brought into play. But it was crucial and we certainly got undertakings at the time that the changes would be not only monitored closely to see what the impact would be—because there were not any clear assessments done of what the potential impact would be—but also very clearly and effectively communicated to recipients.

We believe that has not occurred adequately. Some separated parents were not told that their partner who had care of the children for alternate weekends had only claimed family tax benefits, resulting in an overpayment to the primary parent. Historically, if the non-resident parent could not claim FTB because of income, the primary parent could claim the full rate of FTB. This was no longer the case from last year, but in my view this received only a vague reference in departmental publications. Publications such as Assistance for families by the department certainly did not make clear the impact of the new legislation. It was only after concerns were raised earlier this year by the Democrats and others that a flurry of activity began, with the department sending out letters about shared care and estimates in a last effort to better inform Australians of the significant changes that had been occurring up to six months earlier. By then it was already becoming too late: families had begun to accrue debts, unbeknown to them.

In the view of the Democrats it is not a valid defence to argue that families could wait until the end of the year and claim family tax benefit retrospectively against their actual taxable income. That is simply not practical for many people. Payments to families have been made fortnightly since the late 1970s and, prior to that, monthly in the old days of child endowment. Families live on this money; it is generally not saved or put away for later. The reality of today’s economy is that families rely on family tax benefit to provide for the day-to-day needs of their children, including food, clothing, accommodation and education—needs which cannot be held off until the end of the next taxation year.

No person likes to receive a debt notice from Centrelink or from anybody else, I am sure. This government has regularly labelled persons who have been overpaid as ‘rorters’ and ‘cheats’, totally disregarding the fact that, even with the best effort, it can prove impossible to estimate one’s income to the nearest dollar and thereby avoid a debt. The values of family tax benefit overpayments are included in the debt figures regularly publicised by the department. Failure to accurately estimate taxable income because of unforeseen events or circumstances is not a crime. It is certainly not cheating or rorting the system; it is for many people simply un-
avoidable. Stigmatising social security recipients who inadvertently act in this manner is frightening and demeaning to Australians and completely unwarranted in the view of the Democrats. So it is entirely appropriate that consideration be given to families who have inadvertently fallen into the trap of misunderstanding the major changes in legislation that occurred last year.

I turn now to the $1,000 waiver, which is the centrepiece of this legislation. A debt of $1,000 will arise if a person or family underestimated their income by $3,300. Allowing for unforeseen events such as return to work, increased hours, higher duties, overtime, drawing down on superannuation, lump sum employer payments and harvest yield and crop return, it seems that $3,300 is likely to be on the lower scale of the estimate inaccuracy spectrum. Historically, I recall many appeals to the Administrative Appeals Tribunal where rural families in particular, being understandably unable to predict the weather and therefore the crop yield or wool clip, ultimately received more taxable income than they had estimated. It seems more than mere coincidence that the $3,300 estimate leeway provided by this bill aligns with the 10 per cent leeway for estimates allowed by the previous legislation and removed by this government last year. Perhaps it is time for the government to consider reintroducing a 10 per cent leeway for estimates in the legislation.

The impact of the $1,000 waiver for family tax benefit and child-care benefit is not consistent. While the Democrats acknowledge that a waiver of $1,000 will apply to each family tax benefit and each child-care benefit, for child-care benefit only one waiver of $1,000 will be made, regardless of the number of children in the family. Families with more than one child in child care may incur a greater debt for the same level of estimate inaccuracy simply because they have more than one child. This legislation and, I understand, the draft regulations do not allow for this variation, with the result that families with children in child care are effectively penalised for having more than one child. The government might claim that families in this situation receive a higher rate of fee relief. However, this overlooks the reality that the family would also pay more child-care fees.

The one payment of $1,000 is also inconsistent as it applies to shared care assessments. A common pattern of shared care in separated families—that is, alternate weekends and half of school holidays—equates to about 30 per cent of shared care. This can result in a debt of about $1,000 to the primary parent for one child, and this will be more if there is more than one child in the family. So the Democrats call on the government to fairly consider families in these situations where one payment of $1,000 is not commensurate with a debt that will be greater in families where there is more than one child and to consider increasing the waiver proportionately.

As I indicated at the outset, there exists an anomaly between the A New Tax System (Family Assistance) (Administration) Act 1999 and the Social Security Act 1991 in relation to the waiver of debts arising from administrative error. Given that this legislation deals with debts, I think it is appropriate to move an amendment to address this issue. I have circulated an amendment to bring these two elements of legislation into line, and I will speak to that amendment later in the committee stage. I reiterate that the Democrats are supportive of the opposition’s second reading amendment, apart from part (e). I move to amend the opposition amendment as follows:

Delete part (e).

Debate interrupted.

MATTERS OF PUBLIC INTEREST

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

Faulkner, Senator John: Alleged Smear Campaign

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (12.45 p.m.)—Almost three weeks ago, Senator Faulkner came into this chamber late on a Thursday evening when many senators had already left Canberra and made an extraordinary statement or, more accurately, confession. After bagging Sena-
tor Heffernan and me, he told the Senate and then the media about an ‘argy-bargy’ he had had with Sydney Water over the extension of a sewer main from his private property to an adjoining undeveloped and unsewered lot. Senator Faulkner’s statement raises many more questions than it answers. Senator Faulkner said:

When the house was partly demolished and open to the weather, Sydney Water insisted that I put the sewer main under my house to connect a vacant block of land next door.

This statement suggests that Senator Faulkner did not approach Sydney Water prior to commencing his renovations in respect of the sewerage precautions that he needed to take. But Sydney Water’s interest in this matter should be totally unsurprising to Senator Faulkner, given that he had already engaged the services of a professional builder who would be very familiar with Sydney Water’s requirements.

Senator Faulkner should make clear what advice he received on this matter from all sources, including in the course of applying for any building permit before the renovations commenced. In his statement to the Senate, Senator Faulkner also said that he paid:

... $3,000 for the sewer pipe to go under my house so that my renovations could go ahead.

This is not surprising, given that Sydney Water’s guidelines clearly state that ‘you will be responsible for meeting the cost of your building-over-sewer precautions’. But Senator Faulkner also told the Senate:

At the end of this particular argy-bargy, I had to pay a lot of money for five metres of sewer pipe to run under my house to a vacant block of land.

This is a totally different situation. Here Senator Faulkner is referring to a sewer extension to an adjoining vacant lot. For the uninitiated, it seems that Sydney Water’s normal policy is to insist that, when renovations are made to a home sewer, the sewer pipe is at the same time extended to at least the boundary line of an adjoining unsewered lot to make it sewer ready. This means that, if the adjoining block is subsequently developed, the sewer line can be connected quickly and relatively cheaply. This is a sensible policy based on Sydney Water’s experience that, if the sewer line ceases under the renovated property, all sorts of difficult and expensive access issues can arise later, involving major disruption to garden layout and buildings obstructing the sewer pathway.

A number of documents have been provided to me regarding this matter. One of these documents refers to an application by Senator Faulkner’s plumber for the disuse of the sewer, meaning that Senator Faulkner would not have to pay any extension costs. However, this document also makes clear that Sydney Water denied this request for a disuse because of the overriding importance of extending the sewer to the adjoining lots owned by Energy Australia.

Another document is a 28 August letter sent by Sydney Water to Senator Faulkner’s representative at his private residence. The letter refers to two issues: namely, the need to protect the sewer main from the weight of renovations and the need to address the likelihood that the two unsewered blocks would require a point of connection to the sewer. The letter attaches three options to resolve these issues. Option 1 extends the sewer to the adjoining lot at the cost of Senator Faulkner. Sydney Water would recover these costs and refund Senator Faulkner when the adjoining lots were developed. In addition, the sewer main and part of the vent line on Senator Faulkner’s property would be concrete encased, the former at the cost of Senator Faulkner, while the memo does not say who would pay for the latter.

Option 2 disuses the sewer on Senator Faulkner’s property at his cost. A new point of connection and maintenance rodding would be provided and the house line connected all at Senator Faulkner’s cost. The existing vent line would be relocated at Senator Faulkner’s cost and Senator Faulkner would have to get written agreement from Energy Australia for the disuse, which would mean extremely expensive servicing of the adjoining blocks in the future involving two manholes and 16 metres of sewer through Senator Faulkner’s and the next door property. Option 3 extends the sewer to the adjoining lot. This would be initially paid for by Senator Faulkner, but he would be reimbursed by Sydney Water if it was found that
the extension was commercially viable for Sydney Water. Sydney Water would again recover the cost from the future developers of the adjoining lots. As with option 1, the sewer main and part of the vent line on Senator Faulkner’s property would be concrete encased at his cost.

The first point to be made in relation to the options is this: Senator Faulkner would have to pay up front for any extension. If such an extension was commercially viable, Senator Faulkner would be reimbursed by Sydney Water under option 3. If option 1 were taken up, Senator Faulkner would only be reimbursed when future development occurred. The second point is that any disuse of the sewer was not considered to be sensible by Sydney Water because of the future costs and impacts involved. This is confirmed in a Sydney Water file note dated 28 August which states that, while the applicant was initially advised that the sewer could be disused, from a site visit it is clear that the land is quite steep and sewer serviceability would definitely be out of the question. This file note states that a minor five-metre sewer extension would be the most feasible to provide a connection to the adjoining lots. Nevertheless, the file note states that the owner should seek written advice from Energy Australia stating that the disuse of the sewer would not have any effect on any existing or future use of the land.

The next document is a file note of a 29 August meeting with Senator Faulkner’s representative. It states that the owners’ main concern is the cost of servicing future development and why this condition should be placed upon them. The file note states that the possibility of a Sydney Water contribution was raised and the conditions on this explained. Senator Faulkner or his representative was to contact Energy Australia about the possible future development of the adjoining lots. Sydney Water was to run a rough calculation for a possible contribution under a so-called minor extension contribution policy.

On 30 August, Senator Faulkner received a letter from Energy Australia, stating that it had no plans to change the usage of its properties and no requirements for sewerage provision. In effect, what this meant was that it was not possible to demonstrate that an extension to the adjoining lots was a commercially viable proposition for Sydney Water. It also meant that a disuse, regardless of the later major cost and disruption that it would cause, remained a possible option.

So what was the end result of all this, in Senator Faulkner’s words, ‘argy-bargy’? The end result is outlined in another crucial Sydney Water document titled ‘Executive Summary’ dated 1 September 1996 although printed out on 17 September. The overview of that document refers to the:

... design and construction of 7.5 metres of sewer main at a cost of $7,900 located within—

Senator Faulkner’s address—
in order to service adjacent unsewered lots owned by Energy Australia capable of future development.

The customers are listed as ‘Mr John Faulkner (Federal MP) and Energy Australia’. The reason given is:

A lead-out constructed now would be the most cost effective approach to providing a service to possible future development of the adjoining land. It is quite likely to be the most cost effective solution for Sydney Water and the owner of—

Senator Faulkner’s property—
due to the need to relocate the ventline and the associated reconnection costs. An alternative option potentially commits any future developer(s) of the two unsewered blocks to extremely expensive servicing at a future date, likely to involve two access chambers and 16 metres of sewer main to be laid through—

Senator Faulkner’s and the other sewered lot.

In other words, the disuse option had been rejected and an extension or lead-out was being provided. So who was paying for this and on what basis? The document makes absolutely clear that the extension was being paid for entirely by Sydney Water to the tune of $7,990—rounded up to $8,000. There were no other financial contributors to the project. The document lists the aims of the capital project as:

The document states:

It is recommended that option 1—a contribution of $7,990 for the lead-out to be paid to ...

And then lists the contractors. The internal Sydney Water utilities business submission for a capital item or project refers to the capital investment criteria. The boxes titled ‘Meeting Regulatory Requirements’ and ‘Earning 7% target return’ are not ticked, but the box titled ‘Service Charter Requirements’ is ticked. Another document demonstrates that the total Sydney Water budget for this project increased from zero to $8,000, while a further document states that in relation to option 1, the cumulative net present value by 2026 is minus $4,092, the benefit-cost ratio is no higher than 0.61, and the internal rate of return is a mere 0.1 per cent. All of these figures assume annual sewer rates for the adjoining lots of $272, despite the fact that none of the documents indicate that any sewer has actually been connected to these lots or indeed that there was any likelihood of doing so.

So we have a situation where, in the three days between 28 August 1996 and 1 September 1996, Sydney Water rejected the disuse option and both the extension options they had previously put to Senator Faulkner—options where Senator Faulkner as the owner of the renovated lot would pay up front for the extension. Instead, Sydney Water opted for a variance of the original option 1, where rather than Senator Faulkner paying up front and being reimbursed upon the development of the adjoining lots, Sydney Water paid the entire capital cost up front and would recover costs from any future development of the Energy Australia land.

Sydney Water’s own figures demonstrate this was not a commercial proposition. The Energy Australia letter to Senator Faulkner states:

Energy Australia has no plans to change the usage of its substation property and accordingly does not require you to provide any sewerage provisions for Energy Australia’s adjoining property.

In other words, there is no likely recovery by Sydney Water of its capital costs. The end result is that Sydney Water expected—presumably based on its practice and past experience with many owners undertaking renovations—that the owner would bear up-front responsibility for the cost of the extension works, in this case, $8,000. As a result of ‘argy bargy’, which Senator Faulkner admits engaging in, Sydney Water appears to have completely capitulated and allowed Senator Faulkner off scot-free. Why? Wouldn’t many other ordinary citizens like to secure such an outstanding result? How loud does a senior member of parliament have to yell to bring about the desired result?

Three weeks ago, Senator Faulkner told the Senate that he paid a lot of money for a sewer pipe to run to a vacant block of land. While I do not dispute that Senator Faulkner may have paid for the concrete encasements on his own property, none of the documents demonstrate that he paid a cent for the lead-out or extension to the adjoining lot. Senator Faulkner puts this serendipitous result down to ‘frustrating argy bargy’ with bureaucracy. I am sure that anyone in the chamber who knows Senator Faulkner can only imagine what a man renowned for his short fuse and his endless and unremitting capacity for personal abuse could mean when he refers to ‘frustrating argy bargy’. The whole affair has an odour about it akin to Senator Faulkner’s unventilated sewer. Senator Faulkner, who has spent his entire parliamentary career in the gutter, now has some very serious questions to answer about his own sewer. What exactly does his reference to ‘frustrating argy bargy’ with bureaucracy mean?

The ACTING DEPUTY PRESIDENT (Senator Crowley)—Senator Alston, I ask you to withdraw that last comment, please.

Senator ALSTON—Madam Acting Deputy President, I withdraw it. Did he use his public position to exert political influence for private gain? Whom, if anyone, did he talk to in the New South Wales Labor government to get this result? Was there a political fix? Did the man who threatened Senator Eggleston at a Senate estimates committee threaten or abuse anyone at Sydney Water? Who did he put the weights on at Sydney Water? Did he go to the top, even possibly to the board? Did he contact the ministerial section of Sydney Water and, if so, why? And why did Senator Faulkner tell the Senate that he paid a lot of money for a sewer
pipe to run to a vacant block of land when the documentation clearly shows that this was not the case? It is time that a man who has spent much of his time in the gutter asking questions of others started answering some important questions himself.

The ACTING DEPUTY PRESIDENT—Senator Alston, I have asked you to withdraw that reference. Would you withdraw it again, please.

Senator ALSTON—I withdraw that reference. Senator Faulkner told the Senate three weeks ago that he had ‘documents, letters and receipts concerning all aspects of this matter’. He told the Senate that ‘anyone who wants to see these documents is welcome to come to my office and go through them’. I think he excluded Liberal Party people. It is now time that Senator Faulkner laid this material on the table of the Senate. It is time that Labor’s spokesman for public administration was accountable for the public administration of this matter. It is time that the man who insists upon open and transparent government applied the same rules to himself that he applies to others. I seek leave to table the documents I have referred to in this speech.

Leave granted.

Tasmania: Forests

Senator BROWN (Tasmania) (12.57 p.m.)—I draw the chamber’s attention to the strategic opportunity presented by the coming together of several new factors to achieve a win-win outcome in the longstanding forest debate in Tasmania by immediately ending old-growth logging and moving the forest industry into downstreaming the plantation estate. These factors present a gloomy outlook for the woodchip industry. Most recent is the loss by Gunns Pty Ltd of a $30 million contract to supply woodchips to Indonesia; the call by the conservation movement to downstream the existing $1.8 million cubic metre plantation estate already available in Tasmania, and I note there that we need plant not one new tree; the call by Premier Bacon’s Tasmania Together group for an end to old-growth logging of high conservation value forests; and the election of Mr Bob Cheek as the new Liberal leader in Tasmania with his stated preference for logging plantations before native forests—a position, which you will remember Madam Acting Deputy President, the Senate agreed with just two weeks ago. Finally, there is the passage through the Senate of the amendments to the Financial Services Reform Bill 2001 to make it compulsory for companies to disclose where they stand on ethical environmental and labour issues.

So why do the government and the opposition continue to support the logging of high conservation value forests when this win-win solution is staring them in the face? And why did Mr Cheek in Tasmania fall back into the logging line in less than a day after he announced the most popular change in direction that the Liberals in Tasmania have had since losing office? Clearly, the answer lies in the entrenched political power and the influence of the native forest based companies in Australia and their close ties to the big political parties, particularly at the state level but also federally. This extends way beyond the acceptance of political donations.

It has to be noted that support for native forest logging has been the career path for many union officials into the Tasmanian Trades and Labor Council, the TTLC, into the ACTU and into the parliaments. Equally, retired politicians have made their way into the boardrooms of the very companies from which their parties accepted donations while they were in office. This cosy club of old-boy networks and chambers of commerce and the swinging doors of politics and boardrooms, with ready access and political appointments to the Forestry Corporation of Tasmania, the forest practices boards and advisory committees, add up to huge political support for the native forest logging industry long after it has ceased to be significant in either financial or employment terms.

While it may puzzle outsiders as to why the Labor Party in Tasmania is even more gung-ho in its support for logging native forests than the Liberals, a quick look at the politics of the 1990s in Tasmania and the current Labor government tells the story. Nine out of 15 of the current Bacon government’s members were part of the 1989 Labor-Green Accord. They chose handing the
forests over to the logging companies through resource security legislation in 1991 rather than remaining in office, and they put the fortunes of the export woodchipping company Gunns, with Robin Gray amongst those at its helm, before the public interest as expressed through Tasmania Together's outcome.

To see why so many Tasmanians are now calling for a royal commission into the forest industry and into what is believed to be institutionalised corruption in Tasmania, it is necessary to go back to 1989. While the debate about the power of the Hydro-Electric Commission in Tasmania dominated politics in the 1970s and the early 1980s, by 1984 the future direction of Tasmania's forest industry had replaced the dams issue as the focal point in the conservation debate. By 1989 it dominated the state election campaign and emerged as the backdrop to a royal commission established subsequent to that election in May 1989 to inquire into the events, facts and circumstances leading to and surrounding the attempt to bribe a member of the House of Assembly in Tasmania.

In 1988-89 the Wesley Vale pulp mill controversy—which I want to expand on—divided Tasmania, and the forest industry lost the issue. Until then, it had enjoyed political support from both Labor and Liberal parties, local governments, unions and business organisations and believed that it did not need public support since its political influence was secure. The politics surrounding the withdrawal of Noranda, the Canadian company, from the project and the project's collapse highlighted to North Broken Hill and the forest industry the need for a greater public relations effort and the need to secure its political influence into the future.

After the collapse of the mill proposal in March 1989 Premier Gray called a state election. He lost; his majority was gone. Labor won 13 seats and the Green Independents, of which I was one, won five, making a majority of 18. The Labor Party and the Independents formed the Labor-Green Accord and, before the parliament was recalled after the election, Mr Gray's office organised a supposedly spontaneous campaign of citizens calling for a second election. Advertisements were placed in all Tasmanian newspapers and a petition was written seeking signatures supporting the call for that second election. The report of the royal commission into an attempt to bribe a member of the House of Assembly and other matters in 1991 records on page 28: The deception which attended the placement of the advertisement and petition was deliberate ... In truth the plan for it was conceived by Gray and executed by his chief advisor Tronson. The deliberate intention was to obscure the true facts by giving a false message to the community so that those who might be prompted to respond would not and could not know that it had its origins in the Premier's Office and in the Parliamentary Liberal Party. It was simply another mechanism for helping to assist in undermining the Accord and in generating support for another election.

The Premier's office organised meetings with businesses interested in maintaining Mr Gray and a majority Liberal government in power. Mr Mark Addis informed Mr Gray that the Forest Industries Association of Tasmania had budgeted $40,000 for the second election campaign, believing that a Gray government would do better for the interests of the forest industry. However, just as the campaign for that second election was progressed, Anthony Aloi was arrested for attempting to bribe Mr Jim Cox, a Labor member of the parliament, to cross the floor and so prevent the Labor-Green Accord from taking power. On page 76, the royal commission reported:

According to the evidence of Aloi, Rouse opened their conversation with a reference to the state of Tasmanian politics, a matter with which Aloi was not familiar. Rouse told him that he, Rouse stood to lose a lot of money. It is worthy of mention here that Rouse and members of his family had a substantial shareholding in ENT which in turn, had a 42% interest in Gunns Kilndried Timber Industries Ltd, which company held timber concessions and marketed a variety of timber products in Tasmania. The push for a second election collapsed in the midst of the bribery scandal, and the Labor-Green Accord assumed office. That royal commission was established into the bribery affair. Edmund Rouse, the Managing Director and Chairman of ENT, Examiner North-
ern Television, and Gunns Kilndried Timber Industries Ltd, was found guilty and imprisoned. David McQuestin, ENT’s managing director, was found not to have been unlawfully involved as a principal offender in Rouse’s crime but—and I quote from page 810 of the royal commission:

It need hardly be added that McQuestin’s compliance with Rouse’s direction constituted a glaring breach of the requisite standards of commercial morality given his position as Managing Director of ENT. Accordingly his involvement was highly improper.

During the royal commission, the evidence on the Forest Industries Association of Tasmania’s campaign was revealed. The royal commission found that Robin Gray’s ‘conduct and behaviour fell far short of the standards of propriety and of the conduct and behaviour which his position and the circumstances demanded of him’. That quote is on page 77. On page 98 we read:

For Rouse the Green Independents represented a threat to the commercial interests of ENT and of the Rouse family particularly because of the company’s timber interests. For Gray, they represented a threat to the maintenance of the two party system of politics in Tasmania and, in particular, to the implementation of those developmental policies for Tasmania’s natural resources which Gray and his Party had sought to further during his Premiership.

Once in government, the Labor Party itself sought to facilitate the interests of the forest industry through the Forests and Forest Industry Council, established to sort out the forestry and conservation stand-off once and for all. David Llewellyn, as Minister for Forests, appointed an executive of the Forests and Forest Industry Council which included Paul Lennon and Evan Rolley. The conservation groups walked out of the process once it became clear that the purpose was to secure forestry for industry rather than conservation. Out of this discredited process came resource security legislation. At the same time Michael Field made the formerly public sector Forestry Commission a government business enterprise and retained its $272 million debt to that point, and throughout the 1990s the Greens argued for that debt to be serviced by Forestry Tasmania rather than the public purse, but neither the Liberal Party nor the Labor Party was prepared to do so.

As a GBE, Forestry Tasmania is untouchable. It was excused from freedom of information legislation. It is not accounted for in the budget estimates of the Tasmanian parliament. It is not a publicly listed company, and therefore its books cannot be scrutinised by shareholders at an annual general meeting. It can hide the true picture of its native forest operations as it fails to differentiate in its books between native forests and plantation activities. The activities of the forest industry in Tasmania are conducted under a Forest Practices Code which is overseen by a board but is not independent of the Forestry Corporation. In fact, the chair of the Forest Practices Board is a director of Forestry Tasmania.

In 1991 Labor introduced resource security legislation to give industry guaranteed access to the forests and do away with sovereign risk. The Greens indicated that they would bring down the government if it proceeded. Labor Premier Michael Field proceeded. The Greens moved a successful no confidence motion. Field then relented and announced that the legislation was dead, in order to save his government. His forest minister, David Llewellyn, however, campaigned with the forest industry for the bill’s reintroduction, knowing full well that such action would precipitate a further no confidence motion and the end of the Labor government.

At the same time, Mr Jim Bacon, then Secretary of the TTLC, negotiated an extraordinary deal with the opposition leader, Robin Gray. He sought Liberal Party protection of the Labor government from the Greens’ no confidence motions until Christmas 1991 so as to secure the safe passage of the bill through both houses of parliament. This was in spite of the fact that such a deal post-Christmas would inevitably result in the fall of the Labor government, an election and almost certain re-election of a Liberal government.
Wednesday, 29 August 2001

With the passage of the bill passing in the assembly 30 votes to five, the Labor government lost the confidence of the Green Independents and an election was called for January 1992. Labor lost. A Liberal majority under Ray Groom’s leadership formed the government. Gray had lost the Liberal Party leadership only a month before the election was called. Premier Groom, with the support of the forest industry, then introduced the most draconian anti-forest protest laws in Australia. They were enthusiastically defended by the Labor Party, especially Mr Lennon and Mr Llewellyn. These loyalists made forest protests a criminal offence with heavy financial penalties, including compensation to the woodchip companies. They effectively prohibited the community from taking any action in its own forests. These laws were so bad that they have now been repealed, not because of their unjust nature but because they infringed national competition policy as they were deemed to give Tasmanian industry a substantial unfair advantage over its mainland counterparts.

Mr Bacon entered the parliament in the 1996 election and promptly took over the leadership from Mr Field, who retired. Mr Bacon appointed Lennon as his deputy. Between 1996 and 1998, the Regional Forest Agreement was negotiated and that was signed by Prime Minister Howard at the end of 1997. The Liberal government under Tony Rundle was a minority government and was constantly under pressure from Labor, with taunts about the Green tail wagging the Liberal dog.

Hence, any moves towards protecting forests under the RFA were constantly criticised by Labor as going too far. It was pressure from the Labor opposition in Tasmania, the TTLC and the timber industry which prevented the Liberals from having the room to move to protect forests. As bad as the RFA was when it was announced, Paul Lennon, then opposition deputy leader, said it had gone too far and protected too much and that the Labor Party would not have protected the Savage River rainforest in the Tarkine wilderness, for example.

Labor constantly goaded the Greens to bring the Liberals down because of the RFA, but there was little point as the Labor Party had already announced its intention to adhere to the RFA or renegotiate it into a worse position for forest protection. Labor remained in opposition and was destined to be there forever in Tasmania as long as the Greens were in parliament, so to secure power Labor needed to remove the Greens since it would not win a majority under the existing electoral process. While it could have won more seats than the Liberal Party, Labor had backed itself into permanent opposition by vowing never to work with the Greens or take minority government again. The only option for Labor was to change the rules to eliminate the Greens.

On the back of popular sentiment to reduce the number of politicians in Tasmania, Labor embarked on a campaign to change the Tasmanian Constitution and the electoral system. It succeeded with the support of the trade unions, the Tasmanian business establishment, the Liberal Party and the Legislative Council—all of which understood the ramifications for the Greens and democracy. The change to the Constitution was not put to the people in a referendum; it was made by a two-thirds majority of both houses. Once the changes were secured, an election was called immediately and, as predicted, Labor won a majority and the Greens lost all their seats, with the exception of Peg Putt in Denison. Paul Lennon became Minister for Forests, David Llewellyn was made Minister for the Environment and Primary Industry and all bases were covered from the forest industry’s perspective. What more could the industry want than a Premier, Deputy Premier, Minister for Forests and minister for environment all with a track record of unswerving support for the industry?

I ask that the remaining notes I have plus the table which I have circulated be incorporated into Hansard. (Time expired)

The ACTING DEPUTY PRESIDENT (Senator Crowley)—I understand that Senator Forshaw was concerned that he had not seen the documents.

Senator Forshaw—I have seen it. What is he trying to do with it?
The ACTING DEPUTY PRESIDENT—Senator Brown has sought leave to incorporate the rest of his paper. Is leave granted?

Senator Forshaw—Through you, Madam Acting Deputy President, I ask Senator Brown: are you seeking to incorporate the remainder of your speech, because I understood you ran out of time?

Senator Brown—That’s right, and the table.

Senator Forshaw—And you are seeking to incorporate the table that you provided us with a copy of. Just before we determine our position, I would like to know the source of the table. Is this some document that can be sourced from somewhere, or is it one that Senator Brown has drafted or had prepared? Could you explain it?

Senator Brown—I had it prepared in my office. It is largely covered by the speech that I have just made, but it is a who’s who of the forest industry in Tasmania now and a who’s who from 10 years ago. It is a simple statement.

Senator Calvert—Madam Acting Deputy President, I too was rather confused by this document. When I first looked at it, I thought it may have been sourced from Tasmania’s Who’s Who, because that is the way it is headed. I am pleased that Senator Brown has explained that this document has been put together by his own office. I will grant leave for it to be incorporated, but I think the point should be made that this is something that Senator Brown put together; it is not something that came from an official version of Tasmania’s Who’s Who.

The ACTING DEPUTY PRESIDENT—I understand that you are seeking leave to incorporate the table. Is leave granted for the incorporation of the table? Is leave granted for the incorporation of the table? There being no objection, leave is granted.

The table read as follows—

<table>
<thead>
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<tbody>
<tr>
<td>Edmund Rouse</td>
<td>Chairman of Gunns Kilndried Timber Industries Limited in which ENT Limited both directly and indirectly held a large shareholding.</td>
</tr>
<tr>
<td>David McQuestin</td>
<td>Managing Director of ENT Limited Director Gunns Kilndried Timber Industries Limited.</td>
</tr>
<tr>
<td>John Gay</td>
<td>Managing Director Gunns Kilndried Timber Industries Limited Managing Director Gunns Limited Director Department of State Development Chairman Gunns Limited Director since 1988</td>
</tr>
<tr>
<td>Bill Paisley</td>
<td>Director North Broken Hill Peko Limited Director Gunns Kilndried Timber Industries Limited</td>
</tr>
<tr>
<td>Mark Addis</td>
<td>Executive Director Forest Industries Association of Tasmania (FIAT) Secretary of Department of Infrastructure, Energy and Resources. Appointed by Bacon government.</td>
</tr>
<tr>
<td>Jim Bacon</td>
<td>Secretary of Tasmanian Trades and Labor Council (TTLC) Premier</td>
</tr>
<tr>
<td>Paul Lennon</td>
<td>Former TTLC Secretary Appointed by David Llewellyn as Deputy Chair of Forest and Forest Industry Council. Replaced Ken Wriedt as Labor MHA Franklin in 1990: Member Forest Protection Soci-</td>
</tr>
</tbody>
</table>
The ACTING DEPUTY PRESIDENT—Is leave granted for the inclusion of the rest of Senator Brown’s speech?

Senator Calvert—I have not seen it, but I presume that it is in the same vein. I presume it sums up the history lesson we have just had on Tasmanian Green politics, given by Senator Brown. I grant leave. However, I do not believe it is factual.

The ACTING DEPUTY PRESIDENT—I understand that there is no serious objection to leave being granted. Senator Brown, leave has been granted.

The statement read as follows—

Add to that the Secretary of the Department of Infrastructure Energy and Resources, a crucial position given the Basslink debate and the proposal for woodchip furnaces to generate so called “green energy”, and a Forestry Corporation immune from budget scrutiny exempt from Freedom of Information legislation and blissfully free from any independent scrutiny of its practices. Not to mention the Managing Director of Gunns being also a Director of the Department of State Development.

Gunns would have taken all that into account when making its decision to buy North Forest Products and become the monopoly owner of the woodchip industry in Tasmania exporting approximately six million tonnes of woodchips per annum. Gunns knew it could count on bipartisan political support for native forest logging, for unconstrained supply, for native forest furnaces and any amount of government subsidies including a bargain basement royalty of seven dollars per tonne for old growth forests.

Whilst this situation may appear cosy, it is neither ethical nor sustainable. It is extremely vulnerable to boycott, community protest and adverse publicity as the community continues to mobilise to challenge the replacement of the Hydro-Electric Commission with Forestry Tasmania as the de facto government of Tasmania.

Refugees: Norwegian Ship

Senator BARTLETT (Queensland) (1.15 p.m.)—I rise to speak during this session of matters of public interest on an issue that has obviously dominated public interest, public opinion and media interest considerably over the last couple of days and that is, of course, the current humanitarian crisis offshore from Christmas Island involving more than 400 people—a number of whom are undoubtedly asylum seekers, if not all of them—including 40 or more children and a number of women, including pregnant women, and men.

We have already debated the topic to some extent in this chamber over the last day or so, but, because of its importance and because it is a potential watershed in not just political public policy in this area but potentially public opinion on the issue of displaced people, boat people, asylum seekers, refugees—whichever title you wish to use—it does really need as much scrutiny, as much examination and as much debate as possible. I very much fear that we may be going down a very dangerous path—in fact, I fear we have already passed over some lines that we cannot step back from, even if the government were now to change its position and allow this boatload of people into Australia.

Firstly, I think it is worth emphasising that, whatever opinion people have about the best way of managing our borders, the best way of managing asylum seekers, the best way of dealing with unauthorised arrivals—which is a matter of worthwhile public and policy debate—I do not believe that 430-odd men, women and children should be used as pawns in forcing that debate to occur or trying to shape that debate in a particular direction. We can continue to have the debate without having the immediate suffering that is occurring as we speak. As far as I am
aware, there has been no change and no break in the impasse that has been in place now for a couple of days. We need to make sure that we are not using this situation for political purposes. It is a difficult issue and it needs to be debated in a way that accepts the reality of the situation rather than just blankly condemning people as criminals, as we have been hearing from some of the One Nation representatives, or blankly condemning people as somehow unworthy because they happen to have used money to pay people smugglers. Many refugees over the course of this century have had to utilise resources to escape persecution, whether it is paying off somebody to get across a border, paying off someone to get false documents, paying off people to get transportation or even legally paying people to be transported somewhere away from danger. That is not a new phenomenon, and I really think we need to acknowledge that that is not now suddenly occurring. Similarly, the nature of Australia’s control over who enters its territory outside its own immigration processes is an appropriate issue for debate.

Minister Hill, in a debate on a slightly different matter this morning, totally misrepresented the Democrats’ view of how we deal with this issue by suggesting that the Democrats supported open borders—basically letting anybody in who wants to come and letting them stay. That is certainly not our view and, as far as I am aware, it is not the view of virtually anybody in the community. We are saying that you deal with unauthorised arrivals in a managed way. That is not the same as saying, ‘Open borders; let everybody in and let everybody stay.’ You have to ensure that people who may be fleeing persecution have their claims properly tested, and that is why it is crucial that Australia maintain a regime that does ensure that those claims are properly tested. The simple fact is that, if you do not have a proper regime for assessing that, you are putting our country in a situation where we may be sending people back to face death, imprisonment or torture. I do not believe the majority of Australians want to be responsible for or would support that position.

I know it is certainly fashionable in some talkback radio circles, particularly at the moment, to praise the suggestion of sending people back out to sea, of sending them back where they came from. But, if you do that without any proper process in place to ensure that the fate of these people will be properly considered, you are potentially sending people to face death. I think we need to put the debate in that context. When it is put in that context, I think it does shape people’s opinions differently. That is why it is important that we give more consideration to even the rationale that is being used. This morning, the Prime Minister again said that the reason we have been refusing to allow the asylum seekers to get ashore in Australia is to send the message that we are not a soft touch. To conduct your whole program of managing people’s arrivals in Australia through a policy that is based on sending messages to people elsewhere in the world is a ridiculous approach. It is also one, quite frankly, that has not worked.

This government has been saying that for some years now it has been sending messages about how tough we are. It is clearly not stopping people coming here, and that is because of the reality of what they are fleeing. People do not sacrifice their life savings and send their families into significant debt simply to endure an extremely risky voyage—potentially risking their lives in that circumstance—to get put into a detention centre in Australia for a prolonged period of time and then to get sent back again, as does occur to people who are not genuine refugees. That happens now, and that is why it is not inappropriate to allow asylum seekers into Australia in this circumstance. Their claims will be assessed. Those who are not genuine would be sent back. The fact that a majority of people who arrive here are assessed as refugees highlights the reality of the desperate situation they are fleeing. People do not go through all of that simply because they think they might like to live in Australia because it is a nice place. It simply beggars belief that that could be a realistic scenario that would inform people’s choices to take such desperate actions.
Again, it is crucial that we put the debate in this context. I urge the government to reconsider their approach—not just in terms of this particular issue. I note on the AAP some stories about the boat heading to Christmas Island. I am not sure precisely what that means. That is obviously something that is just occurring, so there may be something changing in the situation. Certainly, a significant humanitarian crisis has been generated unnecessarily.

Whilst I do not think it is necessary for us to get into arguments about what is Australia’s responsibility and what is Indonesia’s responsibility, I certainly personally urge Indonesia not to take such a negative approach to people in distress who are rescued at sea, as well. That is not an approach that should be supported at all. I urge them to take a different approach in relation to this current situation and future circumstances. But Australia should not be simply engaging in a stand-off to see who can be the most hardline and who can be the most inhumane, and that is the situation we are now putting ourselves in.

In terms of the message we are sending to the world, Mr Howard may think we are sending a message that we are not a soft touch and that message is going to people smugglers and it will stop people coming here. Clearly that is not going to happen. People are fleeing all over the world. Many other countries get greater numbers than Australia does, despite not having the harsh mandatory detention regime, despite having some visa conditions that are not as harsh and restrictive as ours. That is simply not a reality. The message Australia is sending to the world—and people have probably seen some of this on BBC World News—is ‘Australia refuses to accept refugees’. I have had emails from people in Canada, North America and other parts of Europe who have seen this incident reported in the news headline stories. That is the way it is reported: ‘Australia turns back boat loads of refugees’. That reflects appallingly on Australia and also sends a very dangerous signal in terms of the international debate on this issue. It is an international issue and there are obviously people in parts of Europe and in other parts of the world who also try to urge that we refuse to accept refugees, that they be sent back out to sea and that they not be rescued and those sorts of suggestions. It actually gives extra support and heart to some of the extreme elements, not just in Australia but in other parts of the world, to argue a similar line: ‘Australia turns back a boat load of refugees; why isn’t the rest of Europe doing it? Why isn’t North America doing it?’ That is a dangerous message and that is the message that is getting through loud and clear on news broadcasts around the planet. It is not getting through to people in the back blocks of Afghanistan, but it is getting through to all of the developed world, and people on the back blocks of Afghanistan who are fleeing are still in a sufficiently desperate situation that they will still continue to flee. It is not what is pulling them here; it is what is pushing them away from where they are. Again, I think that reality needs to be recognised.

This is a difficult issue. It is one that occasionally makes people prone to be emotional, and perhaps I may have been guilty of that myself in terms of strong language because it is a very crucial issue. It is a fundamental humanitarian human rights issue and it really says a lot about us as a nation. As I said at the start, it may have a very significant impact on the future direction of policy and political debate, on public opinion and, indeed, on the lives of many refugees who are already part of the Australian community. There are many reports coming through of increased antagonism towards refugees who are now in the Australian community and I think that can be only increased if some of the rationale currently being put forward for this recent action continues.

Again, the Democrats strongly urge a change of approach in relation to this issue. These people should not be used as pawns in any political activity, whether that is domestic or international. I urge people in the general public to consider the issue more broadly. It is a difficult issue and it is not one to which there is any simple solution. None of us have an immediate solution that can prevent people from arriving on our shores. We need to recognise that and recognise that it is an ongoing matter. It is a global issue,
and we must try to engage with it in a constructive sense. It is not going to be solved by seeing who can be the nastiest and meanest and harshest. I support and welcome the calls from many community organisations and particularly church groups and church leaders—Christian leaders around the country—who have called on the government to take these people in to ensure that they do not remain in this humanitarian crisis situation one minute longer than necessary. I urge that any claims they may have for refugee status be properly assessed, and the Democrats join in that. Certainly, we do urge others in the community who share a similar view to make their views known. It is important that we do stand up for a basic humane and humanitarian approach in relation to difficult issues, even if there may be other short-term approaches that may seem more politically expedient.

I note the many letters to the editor in a range of newspapers and I have just been reading through the ones in the _Age_ newspaper, for example. There are a lot of very positive letters that recognise the basic humanitarian aspect of this situation, that simply point to the basic principle that is involved here and that highlight the dangerous message about people not wanting to rescue others in the future.

We are at a potential crossroads in this country at the moment in terms of how we deal with this issue. The Democrats certainly call on not just other political parties but the community at large to ensure that we maintain an approach that is based on humane principles and the recognition of basic human rights. A lot of people talk about the Christian heritage of our nation, and this is a fundamental tenet of the Christian approach to people, as some of the letters in the newspaper and statements from church leaders today have indicated. We need to ensure that that approach is kept firmly in the front of our minds when we consider how to deal with what is a difficult issue.

Refugees: Norwegian Ship

Senator _McGAURAN_ (Victoria) (1.30 p.m.)—I wish to respond to Senator Bartlett’s address to the Senate, on behalf of the Democrats, in relation to, as he said, the very difficult situation we have off the shores of Christmas Island at the moment after the Norwegian ship rescued some 438 asylum seekers. I welcome most, if not all, of what Senator Bartlett said. It is probably the first time that he has come into this chamber since this incident and spoken in such moderate terms—and we accept that.

We know this is a very difficult situation. The government is doing all within our management skills to keep it out of the hands of the likes of One Nation and those who would seek to exploit this very difficult situation. That is something we do not want. We do not accept some of the emails that are coming our way. We do not accept the talkback callers who are of the extreme—and, again, I say we do not accept the One Nation position. Therefore, it is a delicate situation and one that needs to be managed, and we are doing that. Australians can rest assured that the Prime Minister, the Minister for Foreign Affairs, Mr Downer, and the Minister for Immigration and Multicultural Affairs, Mr Ruddock, are managing this situation by the hour. Mr Ruddock has cancelled an overseas trip to South Africa because he wants to manage this situation, and Mr Downer has also cancelled an overseas trip. They and the Prime Minister have their hands on this situation. So rest assured that we are managing this most difficult international problem by the hour.

Strictly speaking, we are within our international rights to act the way we are, to take the position we are taking. It is a three-way pull between Indonesia, Norway and Australia. Under international law, the next home for that ship is Norway, but in practical terms, the next port capable of taking that ship is in Indonesia. To that end, we have called upon Indonesia, and we are discussing this in diplomatic terms with them, to accept the Norwegian ship and the 438 people aboard.

Senator Bartlett mentioned that this will become a statement for future refugees. I can assure Senator Bartlett that the government has received information that there is a flood of boat people on the way—there are several thousand more to come. That is a fact and it should not surprise him at all, given the rec-
ord of how many boats have arrived over the last 10 years. Just last year, 75 boats came to our shores, while the numbers for the previous years were 42, 13 and 13 before that. Most of those boats were from China. We have since negotiated with that country to prevent that flow and that has been successful—and we think we can do the same with Indonesia, which is basically the calling point for these refugees before they come to Australian shores. Let us not forget that this is an organised criminal activity—not these 438 boat people, of course; they have to pay the organised people smugglers. What could be more detestable than that? So it is true that the future lies in going to the source of these countries to prevent these people from falling into the hands of these organised people smugglers.

Let us not forget that there are refugee camps which Australia accepts refugees from. There are camps in Iraq, Kenya, Sierra Leone and the Sudan from which Australia accepts, under its humanitarian program, refugees who are properly processed. That is why we say that these boat people are queuejumping, because there are equally worthy cases sitting in these camps in Iraq, Yugoslavia, Kenya or Sierra Leone whom Australian officials can properly process.

Australia has a humanitarian program which is recognised as one of the most generous in the world. We accept 12,000 refugees or thereabouts each year under our humanitarian program. Per capita, that is one of the most generous programs in the world, and it is recognised as such by the United Nations. Further to that, Australia has often accepted refugees on to its shores under safe haven visas. For example, many would remember that last year or the year before Australia accepted refugees from Kosovo and East Timor who were in extreme crisis at the time. So we have nothing to be ashamed of or to hide from in regard to this country’s generosity to genuine refugees. We have a very proud record.

Further to that, when people come to these shores we have programs in place at the migrant centres, such as the English speaking program and the resettlement programs, so they are well and truly looked after. That is why I reject the emotive language that the detention centres are a prison—that we throw them into prison and throw the keys away until we can ship them off. That is far from the truth. These detention centres are set up for many reasons, and who could object to them? One is as a matter of security to process those who come to our shores on boats. We have an obligation to our own public, as a matter of security, to process those who come onto our shores. Why shouldn’t we? Amongst them could well be undesirables, if not war criminals possibly. We have a duty to our own citizens to process who is coming to our shores, as a matter of security.

The matter of health is another reason we need to set up these detention centres. In regard to health, it is an obligation to our own citizens, our own public, to process those who come on our shores illegally—some may or may not bring diseases, but we need to know. We need to set up these detention centres for the illegals because, practically, we need to process them in one spot. What is the alternative? Has anyone thought of what the real alternative would be? I know Minister Ruddock at the moment is looking at the Swedish system of home detention for, perhaps, exceptional cases. There is always the exception and we should be able to be flexible enough to respond to that, particularly where women and children are concerned. But, as a general principle, the detention centres are, for all those reasons—security, health and practical processing—a recognised and accepted form of behaving. No one has yet come up with a better alternative. Surely home detention for thousands upon thousands of illegals would reach the absurd. As I said, the current detention centres are full to bursting at the moment, and the government have announced that, due to this stress, further detention centres will be put in place.

They are the few words that I wanted to say to Senator Bartlett, who has quite rightly spoken on this issue several times presenting the Democrats’ case. I know that this particular time he has moderated his words on this issue. He has told the Senate that he may have been a little emotive about it himself. It
is an emotional issue. But I want Senator Bartlett to be assured that we are not going to fall into the hands of those extremists who wish to exploit this issue.

We know that our position does have the overwhelming support of the public. That is because we have been able to explain to them the hard, cold facts and the common-sense behind the government’s position, and we believe that the public totally support the government’s approach. We know that this is still an unresolved matter but, rest assured, the government are by the hour monitoring this situation. The real solution to this situation is that in Indonesia common-sense will prevail and, from that, we will be able to strike an accord and a future agreement with Indonesia on future illegals and boat people coming across to our shores. We know only too well that Indonesia is a port of call before they head off to Australia. There is a tide of illegals to follow—we know that through information or intelligence—and Australia has a duty to protect its shores.

Parliamentary Libraries: Conference

Senator CROWLEY (South Australia) (1.41 p.m.)—I want to take a short time in the Senate to talk about the opportunity I had last week to speak at a library conference in Boston. The conference, which was sponsored by the IFLAI, the International Federation of Library Associations and Institutions, was a very major conference. People told me 4,000 and people told me 5,000, but certainly there was a significantly high number of delegates to this conference. The library conference included people from all sorts of libraries: public libraries, school libraries, junior libraries, senior libraries, university libraries, specific purpose libraries that are associated with businesses or with special areas of information, high tech knowledge and so on, and of course parliamentary libraries. It was in the role of being a member of a parliamentary library committee from our parliament and also a user of parliamentary libraries that I accepted the challenge of contributing at this conference.

One of the things that amazed me was the very significant number of representatives from parliamentary libraries who were present, including people from the United Kingdom, New Zealand, Canada and the Library of Congress, and some of our state colleagues—I believe from Queensland and Victoria. I do not have the definitive list of all those participants, but there were lots of people there, interested in deliberations about the status of parliamentary libraries and where they will go in the future. I was first of all pretty taken aback to discover that many parliaments—not just in emerging democracies or countries, but in well-established Western countries—do not have parliamentary libraries. In some of those countries, they are establishing committees to look at whether or not they need a parliamentary library. We Australians are a bit shy about saying that we are the best, except if it is cricket or football or ballet or singing or high technology—

Senator Jacinta Collins—Netball.

Senator CROWLEY—Absolutely. And we are extremely good at all sorts of medical research and so on. We are not shy and we are very pleased to be good at it, but I sometimes think we do not realise how well we are assisted by this parliament. We certainly do not go around recognising that we have one of the best parliamentary libraries in the world, and we should. That is one of the things I can tell you all from this conference: that we are up there with the Library of Congress and perhaps the Canadian parliamentary library. Firstly, we should be aware of that; secondly, we should be very proud of it; and, thirdly, we should be concerned to make sure that the excellent library to assist parliamentarians in this place continues.

As I say, I was a bit surprised at how many parliaments did not have libraries; indeed, some parliaments are now establishing committees to have a look at the issue. A library’s importance is based on it being not just a collection of information or access to information, not just a collection of books or online information, but also a research and analytical tool. That is one of the very precious things about our library: it does give you that research and analytical capacity look at the information. People have said, ‘Well, now that we all have computers and are able to surf the net and get anything we want at any time, we don’t need librarians.’
Indeed, my thought is that we need them more than ever before. We have an overdose of information. Politicians—to say nothing of the school children I see in the gallery and, indeed, all members of the community—are being flooded with information, and it is very important that we have assistance to hone the important facts or arguments in a whole area of knowledge. So I think the case is made that librarians are needed more than ever before.

Librarians do need to have research and analytical skills, and that is a very critical talent for our librarians. Again, Australia can be very proud of our Parliamentary Library and the talent our staff have. Librarians work with politicians and they also do excellent work with committees. The arrangement in Australia is that sometimes the research expertise in the library is lent to committees—and this has happened with a committee inquiring into public hospitals that I chair. Paul Mackey from the library, who is an expert on health, was able to assist the library in its work—and that is fantastic. In Canada they do it in a slightly different way, and there is quite often discussion between Canada and Australia about the best way to have the research ability of our libraries assisting our committees.

In this parliament we are looking at significant decisions and laws about such issues as euthanasia, cloning and genetic engineering, to name just a few, about which most politicians do not have much information and about which very serious decisions are made. It is very important that politicians are assisted to find the facts in order to get proper, adequate, up-to-date, informed, factual and nonbiased information. That is what we are asked to produce in this place. Before we look at a political addition to any of those things, we do need the hard facts. Politicians are now being asked to look at very complex issues and, no matter how well educated they might be, they cannot expect to be up to date with the latest scientific information or the latest technology. So, as I say, not only because of the flood of information but also because of the high expertise in this information provision, we are assisted by our library.

Finally, I would say that it is very important—and, again, other parliamentarians were interested in this—that we have a Library Committee with parliamentarians on it to keep an eye on the budget and to ensure that we do have a library that continues to contribute to the best services that politicians can provide. We are the law makers, and we have to represent the people’s views. We also have to represent the facts about these issues when we are debating these issues and making laws, and so we do need to have access to good, reliable and up-to-date information. But it is also important that we have a Library Committee that is sufficiently resourced, sufficiently staffed and sufficiently held to account for how it spends precious dollars. Certainly I make no apology for being a member of the Library Committee. Indeed, I think it is very important, and I urge other parliaments to consider whether they could establish a parliamentary library committee.

Last year—or was it this year?—one member of the executive government, a minister, introduced a proposal that all requests from politicians through the library to his department should then come back through his office. This might have been to check how much work and pressure were being put on the department; it might have been anything. But from the ripple that became a roar through the parliament from every politician on all sides of parliament, that minister very quickly knew that that process could not continue. That process has not continued, and one of the reasons it has not—and one of the reasons our Speaker and President could act so quickly, wisely and usefully in this matter—is because of the all-party, across-party and unanimous support for the principle that the value of our library and its independent access to data must be preserved at all costs. I was terribly chuffed actually at being part of a parliament that knew that so clearly and was in a position through its committee to do that.

I spoke as a user of library services. This was rather interesting because many of the people there were providers of services, and they found it quite interesting to know how their services were received. I hope I represented more than just my view of this par-
You can see that I am a bit of a promoter of it, and I would be a barracker for it. I am very pleased to have had the opportunity to go. I learned a huge amount about the challenges confronting libraries, and they are challenges not only for parliamentary libraries but for all libraries: the increasing cost of technology, the increasing access to a huge amount of information and the problem of how you store a lot of the information. With technology changing, as it does every year or two, we now have information stored on discs to be read by machines that are no longer in existence. We actually have the cost of 'migrating the storage of data'—I believe that is the new language we use—from year to year so as to keep up with computers to the point where some people are returning to microfiche so that they can then put that directly onto digital storage.

We are dealing with very high costs in libraries. We are dealing with decisions that need to be made, I believe, to maintain our parliament—because, in the end, what the Parliamentary Library provides to parliamentarians in this place contributes to that precious thing called democracy. I believe it is very important that we should see what we might do in other conferences to encourage all parliaments to have libraries with research and analysis skills so that that precious thing called democracy will be encouraged and not disadvantaged.

The findings lend support to the contention that it is not only extremely vulnerable groups such as the homeless who are severe casualties of the breaching regime.

Does the minister agree with the Salvation Army that the problems caused by the government’s breaching policies are becoming widespread and that the 189 per cent increase in breaching activity over the last 12 months is putting pressure on emergency relief agencies?

Senator VANSTONE—Madam President and Senators, I apologise for not being here on time. I take it the senator’s joke about the third breacher has to be a joke because I do not think she could possibly imagine that when someone is breached by Centrelink it is because they are a minute late for an appointment. It is a much more serious topic than that, Senator, and a much more serious process that is entered into before people are breached. There are a couple of things that are perfectly clear in relation to this matter. One is that, if the Labor Party were ever to return to government, they would have—they certainly did have when they were in opposition—a much softer approach to people who were getting more welfare than they were otherwise entitled.

The opposition consistently complain about this government’s breaching regime, and we have said all along, and we continue to say, that we will continue to breach people who do not do the right thing. We want welfare recipients to have every dollar to which they are entitled but not to more. We have a better system than Labor had because, under the previous system, Madam President, as you know, any breach resulted in a non-payment period. Now, most breaches when they occur result in a rate reduction period and a non-payment period is imposed only if a person breaches the activity test three or more times in two years.

The senator in her question raises quite specifically a differentiation between breaching people who are disadvantaged—that is, the homeless or people who might have some sort of mental illness at the time, or some other specific difficulty—and asks me to focus quite directly on the breaching of other people—that is, people who do not
have such disadvantages—and that is precisely where the difference falls. I think there is agreement—I certainly know that Senator Bartlett thinks we should be doing as much as we can for people who are disadvantaged—that we are trying to do everything we can for those people, and, as heartless as I think the Labor Party can be, I actually believe that the Labor Party believes that we should be doing everything we can for those who are disadvantaged in terms of the breaching program. So where the difference lies between all of us is in regard to those people who are not disadvantaged.

I want to make it clear that we—this government—think that the Salvation Army do a fantastic job. We have included them in the social coalition that we have been building; we have invited them on many occasions to give us good policy advice and to coordinate other community sectors giving us that advice. But I do not think you should make generalisations about this particular report. Taxpayers do expect the government to ensure that the payments go to those who are entitled to them and not to others. The Salvation Army themselves—as you might not have mentioned, Senator; I do not know, through you, Madam President, that the senator understands—have made it clear that this is a picture, a snapshot in time, and it is easy for people to get a misunderstanding on that basis.

Senator Crowley—There is a great increase, Minister.

Senator VANSTONE—Yes. I acknowledge the interjection: there is a significant increase because this government will not pay out other taxpayers’ money to people who are not entitled, to people who consistently refuse to come to interviews. The Salvation Army themselves—as you might not have mentioned, Senator; I do not know, through you, Madam President, that the senator understands—have made it clear that this is a picture, a snapshot in time, and it is easy for people to get a misunderstanding on that basis.

Senator Crowley—No, for small breaches, Minister. Check it out.

Senator VANSTONE—We will pursue those people who consistently refuse to come to interviews, who consistently refuse to do that which they are expected to do so that they end up being breached. It is clear from Senator Crowley’s interjection that a Labor government did not and would not.

Senator WEST—Madam President, I ask a supplementary question. I take it the minister does not agree with the Salvation Army report commenting that the approach of this government is that breaching the unemployed is cost shifting. I ask: is it fair that the emergency relief agencies have to not only put up with the burgeoning demand produced by the Howard government’s breaching policies but also have to pay the Howard-Costello GST on the emergency assistance they provide?

Senator VANSTONE—Senator, there are a number of assumptions in your question that the government does not endorse. People who supply emergency relief—with, incidentally, assistance from this government, but acknowledging the separate sources they also get income from—do so as carefully as they can. There has been a claim by a number of agencies that when they help people pay their electricity bills they would rather not have to pay the GST on that, that they would like an exemption for that. That is a policy issue we can discuss. But let us not move away from the key policy issue that you have raised, Senator, and that is: should people be entitled to welfare who do not meet the obligation that the rest of the community do? Your party supported this level of breach penalty when the legislation went through but now you seek to pretend that you had nothing to do with it. If you check the votes, Senator, your party did have quite a bit to do with it. You can nod your head in disagreement or boredom or if you have forgotten what happened, but you did support it. (Time expired)

Rural and Regional Australia: Government Policy

Senator McGAURAN (2.07 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Will the minister advise the Senate on how the coalition government is building stronger regions and delivering improved services to people living in rural and regional Australia? Is the minister aware of any alternative policies?

Senator IAN MACDONALD—I thank McGauran for that question and also for the work he and other Liberal and Na-
ional Party members of parliament have done towards the policy announcement which Mr John Anderson, the Deputy Prime Minister, has announced today. The Howard government’s commitment to rural and regional Australia has been three-phased. The first phase of our commitment to rural and regional Australia required the government to get the big picture right. We had to have the capacity to help regional areas by addressing the financial and economic fundamentals, including reducing Labor’s excessive debt of around $90 billion, by reducing interest rates from around 20 per cent under Labor to around seven and eight per cent now, and reducing business costs, particularly on exports, which are the lifeblood of regional areas. We also had to fix the tax system. That was the first phase of our commitment to rural and regional Australia and we have completed that.

The second phase was more targeted assistance to rural and regional Australia and we were able to do that because we had the economic fundamentals correct. As the economy improved, we were able to embark upon programs like Regional Solutions, rural transaction centres, Networking the Nation and assistance in rural health. Those are programs that we have been able to specifically target.

Today at the National Press Club, the Deputy Prime Minister announced our Stronger Regions, a Stronger Australia program. That initiative of the government provides for a new sustainable regions program—$100 million over the next four years, to involve a planned integrated approach to structural adjustment involving the CSIRO and other researchers. Mr Anderson also announced, on behalf of the Howard government, that inspection and associated AQIS charges for rural exports would be reduced by 40 per cent, and that will benefit substantially meat, grain, horticulture, dairy, fish, organic and live animal industries.

As well, the government today announced a regional business development analysis which will be an action plan to deal with impediments to growth in the regional business environment. This is the sort of action that the National Farmers’ Federation, the local government associations and the Institute of Chartered Accountants have been asking us to take. Today Mr Anderson also announced enhancements to National Competition Policy which will strengthen the public interest test to ensure interests of rural and regional communities are fully addressed. As well, we find that there is a lack of knowledge in rural and regional Australia of some of the government’s activities and the initiatives that are available, so we have also announced a program to raise the awareness of access to government information.

I am asked if I know of any alternative proposals. I have not got much time, but you do not need much time to talk about Labor’s alternative proposals. It seems the only proposal Labor has is to roll back everything. Where are they going to fund roll-back from? It can only be from programs currently in existence. I fear, as a regional Australian, that the roll-back will be in the area of regional programs. Labor have consistently opposed Networking the Nation. (Time expired)

Centrelink: Breaches

Senator DENMAN (2.11 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. Is the minister aware that the report Stepping into the Breach, released by the Salvation Army today, claims that 84 per cent of those seeking emergency assistance, who have been breached, do so because they are unable to pay for basic food or medication? Does the minister believe it is acceptable that people go without food or medication simply because they have failed to answer a letter or have even failed to receive the letter in the first place?

Senator VANSTONE—I thank the Senator for the question. I will have a close look at the Salvation Army report. I am sure that everybody who is interested in this issue will. But, Senator, it is a mistake for you to hold out a view to the community that people go without food or medication simply because they have failed to answer a letter or receive the letter in the first place?
not advise Centrelink. Putting aside the people who are disadvantaged—we have some pilot projects working on that issue; we are working on a project with Hanover on those issues—because we all agree that people who are disadvantaged need some extra help. Let us take someone who is not in that category. You say that they had a benefit reduction—perhaps not a benefit withdrawal, but a benefit reduction—simply because they did not reply to a letter. Has it occurred to you, Senator, that there is a possibility that people move house but do not advise Centrelink of their change of address? Therefore, as you say, they may not get the letter.

I would be pleased to hear from you what you think Centrelink should do when they try to contact someone who does not answer a letter, when they go around to the place or ring up and the person is no longer there. You would say, I suppose, ‘Keep paying the payment.’ Would you come back here two years later if the person was no longer entitled and we had kept paying them, and say, ‘You should have done a better job’? Yes, I’ll bet you would. The easiest and most sensible thing to do when someone does not reply and other efforts have not produced a result is to impose a first breach. As you know, Senator, under the previous government if you had a breach it was full on and you lost your payment. At least we have staggered that, and we are grateful to your party for agreeing to that process and to agreeing to the levels of penalties. I think you can understand that people do move house, not so much people who are selling a house and moving on but people who are renting for a short term. It might be students who go home in the holidays. There is a whole range of reasons that people might move, and they do not always remember to tell Centrelink.

I do not know any Australian who would say that if you cannot find the person, if you cannot locate them, ‘Just keep sending them the money.’ Other taxpayers would say, ‘No, have a benefit reduction.’ When there is a benefit reduction, people who have changed address but who have failed to notify Centrelink come in pretty quickly to notify their change of address. It might be helpful to have a sensible debate on this, because that is what we ought to have when we are talking about the people who are most disadvantaged. It might be helpful for Senator Denman to acknowledge that people are given the opportunity to explain, as this always gets forgotten. It might also be helpful for the senator to acknowledge that people have the opportunity to wipe clean their slate by engaging in Work for the Dole. In that context, Senator Denman, I invite you to give me the supplementary question or another question on that very issue, because I have had the opportunity to check the *Hansard* that was misused in here by one of your colleagues recently.

Senator DENMAN—Madam President, I ask a supplementary question. Minister, do you believe it is unfair that a person is punished because they are unaware of the rules?

Senator V ANSTONE—I thank the senator for the question. People are not punished because they are unaware of the rules. People might have a benefit reduction because they have failed to respond to Centrelink letters. I think that is fair, because people will pretty soon come in and indicate what the problem is—that they have moved house or that there is some other genuinely acceptable reason. I highlight for Senator Denman the surveys we have done that show that even the community that has been breached extensively supports breaching. It is not only the general community that supports it but also the community that is breached. If Labor has a policy to end breaching of people who do not respond to Centrelink letters, I would be very happy for them to publish that policy. I would be particularly happy for them to publish it in areas where there are blue-collar workers who are earning their salaries and are sick to death of previous governments who let people breach and did nothing about it. (Time expired)

Senator Chris Evans—All you want to do is look at opinion polls but not explain the increase!

The PRESIDENT—Order! Senator Evans, you are out of order.
International Trade: Economic Policies

Senator GIBSON (2.17 p.m.)—My question is to the Minister for Industry, Science and Resources, Senator Minchin. Will the minister advise the Senate of how this government’s strong economic and industry policies are helping to create an internationally competitive, export oriented Australian economy? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Gibson for his question, and I acknowledge his strong support for Australian industry. Today, Australia celebrates the lowest current account deficit outcome in the past 21 years. The Treasurer announced today that the current account deficit for the June quarter was $3½ billion or 2.1 per cent of GDP. This is the lowest quarterly outcome since the March quarter of 1980, lower than it ever was in the 13 years of Labor government. Even more significant, in the June quarter we had the largest quarterly trade surplus since 1959—when these quarterly measurements began—and, in full year terms, we have had the lowest current account deficit since 1979-80. We have had only the third trade surplus in the past 20 years and we have had—a most pleasingly for an industry minister—a 10 per cent increase in exports of elaborately transformed manufactures.

Senator Cook—We never had the dollar at 50c! We never traded down!

Senator MINCHIN—This did not come by chance. Senator Cook interjects about the 50c dollar. The Labor Party had flexible exchange rates and never achieved a result like this in their 13 years. This is a result of our reforms, which have made the Australian economy much more internationally competitive. We removed Labor’s tax on exports—the wholesale sales tax—and replaced it with a GST which, of course, does not apply to exports. Even Mr McMullan, who the Labor Party rolls out whenever they want to work out which way they are heading, concedes that the GST is good for exports. It shows what can be achieved with good economic management. We have achieved the lowest unemployment in a decade, we have got interest rates down to record lows and we had the courage to take on the union bosses on the wharves to deliver good outcomes and remove the drag on exports that was there. We have reformed workplace relations so that Australian businesses can be internationally competitive and, as my colleague Senator Ian Macdonald alluded to, this morning the Deputy Prime Minister, Mr Anderson, announced that we will be reducing by 40 per cent the AQIS inspection charges on our $24 billion worth of agricultural exports.

I was asked about the alternative policies from Labor. It is a remarkable fact that after 5½ years in opposition they still do not have any clear plan for Australian industry on how they will develop policies to make Australian industry internationally competitive. In fact, it is the complete opposite. At every step of the way they have opposed us on every reform that we have introduced to make Australian industry more internationally competitive. Worse, of course, is that, if they were in office, they would attempt to roll back everything we have done to help Australian industry become much stronger and more competitive. The reforms that we have produced that have delivered this 21-year record outcome on the current account deficit would be rolled back. The roll-back on workplace relations reform will be the worst thing.

Senator Cook—You want to drive the dollar lower! Is that your policy?

Senator MINCHIN—We hear Senator Cook, and I congratulate him for taking on Doug Cameron—Senator George Campbell reincarnated—on free trade, on the floor of the Labor Party National Conference. But the free trade credentials of Senator Cook and his colleagues are rendered useless because Labor will tie the hands of Australian industry, with their roll-back of our workplace relations reform, by handing the power over to the unions. What are we going to get from Labor? How will ‘noodle nation’ make Australian industry more internationally competitive? How will rolling back the GST make Australian industry more internationally competitive? How will increasing income tax to pay for the roll-back of the GST make Australian industry more internationally competitive? Today’s result on the cur-
rent account deficit is fantastic. It is the result of our economic reforms and it will all be at risk if Labor ever gets the chance to govern this country again.

Centrelink: Breaches

Senator CROSSIN (2.21 p.m.)—My question is to Senator Vanstone, representing the Minister for Family and Community Services. Is the minister aware of the following statements in the report *Stepping into the breach*, released by the Salvation Army today? The report says:
The Salvation Army is dismayed by some media treatment ... of the issue of breaching, in particular the tendency to conflate breaching with welfare fraud.
It further says:
... breaches are not about social security fraud—they relate to infringements of often complex rules and/or increasingly tight activity test requirements ...
Does the minister agree with the Salvation Army or does she believe that any non-compliance, however innocent, should be punished?

Senator VANSTONE—I thank the senator for the question. You are at least, by asking that question, allowing for a more sensible debate than, frankly, some of the questions that have come from your side of the chamber have done in the past.

You ask me whether I agree that a breach is necessarily fraud. No, I do not agree with that, and I understand the Salvation Army does not agree with that either. In fact, I do not know anybody who does think that a single breach—or three in a row, for that matter—is necessarily fraud. I have not made that claim. But I do agree that, in the pool of people who are breached, there will be some who have set out to deliberately take more money from other taxpayers than that to which they were entitled. There will be some people who deliberately do that. There will also be people who, for one reason or another, have not done it deliberately.

That then takes you to the question of the degree of commitment people have to comply with the rules. For example, the person who gets a number of letters and fails to respond I would not describe as a fraudster, but I would so describe someone who thumbs their nose at every hardworking taxpayer and says, ‘Look, I can’t be bothered following the rules. I just can’t be bothered. If you breach me, I’m going to go and say that you have stopped me being able to live in my rented accommodation.’

I do think that a breach need not be a fraud. I think a breach can be a fraud. But I do quite particularly believe that taxpayers expect the rules to be complied with. I think you are being very hard in raising this issue, with respect, in terms of the role that Centrelink plays, because every government charges a bureaucracy with making sure the rules are complied with. I think it is a very hard task that Centrelink undertakes on behalf of taxpayers, and it is very unfortunate for people to come in here and disparage a commitment to making sure that every dollar of welfare to which people are entitled is paid but that money that is not entitled to be paid is not paid.

For you, Senator, and others to run down a commitment to that system amazes me. Nothing would please me more than your party putting out a policy that indicates that you do not care if people breach the social security laws—that you do not care if people do not show up for appointments, do not look for the right number of jobs or do not reply to letters. If that is your policy, you put that out.

Senator CROSSIN—it is unfortunate that the minister did not understand the question, which actually went to non-compliance and whether or not those people should be punished. My supplementary question is this: is the reason the minister is unwilling to accept that her government’s breaching regime has gone too far related to the fact that breaching in fact saves $258 million a year?

Senator VANSTONE—I do not think I can put it any more clearly and in any less politically aggressive way—if you want to have a rational debate about this—than to say that we believe that welfare recipients should get every dollar they are entitled to. We are spending additional moneys to try to help those people who are disadvantaged. The example I used recently was that some-
one who has a mental disability will not always give that explanation to a counter person as a reason as to why they have not shown up at an appointment. It is not always easy for Centrelink to get this right. But, if the proposition you are putting in relation to people who breach—who do not show up to the right number of interviews, who ignore letters from Centrelink, who do not apply for the appropriate number of jobs—is that the Labor policy is to change that and to say to those people, ‘It’s okay; you won’t have to comply with these requirements,’ I invite you to publish that policy.

Refugees: Norwegian Ship

Senator BARTLETT (2.27 p.m.)—My question is to the minister representing the Prime Minister. I draw his attention to the statement just made in the House by the Prime Minister that he has directed Special Air Service personnel to board and take control of MV *Tampa*, an action that has been supported by Mr Beazley. Can the minister confirm the statements made by Kris Janowski, the spokesman for the United Nations High Commissioner for Refugees, that this is the first time Australia has refused accommodation to people rescued at sea and that they are concerned that there are refugees amongst these people? Given that Mr Howard has also just told the House that nobody is lacking in compassion towards genuine refugees, how much longer will these people be left to drift simply so the Prime Minister can send a signal to the world that Australia is not a soft touch?

Senator HILL—The facts up until very recently are well known. A boat load of people left an Indonesian port and were rescued or taken on board by a Norwegian freighter. The captain intended to return with them to the Indonesian port, which, as I understand it, was also the closest port to the place at which they were taken on board. Then, under various types of duress, he was forced to sail towards Christmas Island. If the honourable senator is suggesting to the Senate that in those circumstances Australia should be obliged to take such individuals on shore or within our jurisdiction, that is not a view shared by this government. The position of the government is that the Norwegian vessel should have returned the individuals to the port from which they embarked—that is, the port in Indonesia. The captain of the vessel, the *Tampa*, was informed that his vessel was not permitted to enter Australian territorial waters.

What has happened more recently has been covered, I understand, by a statement by the Prime Minister in the House of Representatives. The captain of the *Tampa* relayed a medical distress call this morning. Australia reiterated its previous advice that there was no basis for a distress call and that the Australian authorities were working with all possible speed to get medical supplies and a doctor to the vessel. Australia advised the *Tampa* again that it did not have authority to enter Australian territorial waters. Notwithstanding this advice, the *Tampa* entered the 12 nautical mile limit which is Australian territorial waters. Australia reiterated that it would take all necessary action to maintain the integrity of its borders, including our territorial waters, in accordance with appropriate legislative powers. As a result, at about 12.45 p.m. Eastern Standard Time, Australian soldiers boarded the vessel to enforce the lawful direction of the Australian government and to deliver medical and other humanitarian assistance. I understand that the Australian doctor on board the vessel is of the view that there is not a medical emergency that would require an evacuation, which I think is very relevant to this issue.

Senator BARTLETT—Madam President, I ask a supplementary question. I appreciate the background the minister has provided, but I still ask him to answer the question. Is this the first time that Australia has refused accommodation to people rescued at sea who have turned up on Australia’s shore? How much longer will these people be left to drift, simply so that the Howard government can send its message to the world, if no other country is willing to accept them?

Senator HILL—We accept that there are serious humanitarian issues involved in this matter and, while I am not sure what the honourable senator means by a refusal of accommodation, what I have said is that Australia is not prepared in these circum-
stances to admit the freighter to Australian territorial waters. What Australia has offered to do is to provide medical assistance if it is necessary and also to provide supplies. That medical assistance is now on the freighter. If it has not occurred already, I understand that supplies will be ferried to the freighter by helicopter in the very near future. So Australia is responding to the humanitarian need. Australia is providing medical support, food and other supplies but, in the circumstances of this particular matter, Australia is not prepared to allow the ship to enter our territorial waters.

DISTINGUISHED VISITORS
The President (2.33 p.m.)—I draw the attention of honourable senators to the presence in the President’s gallery of a parliamentary delegation from Japan, led by Mr Takao Fujii. On behalf of honourable senators, I welcome you to the Senate and trust that your visit will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE
Centrelink: Breaches
Senator BUCKLAND (2.34 p.m.)—My question is directed to the Minister for Family and Community Services, Senator Vanstone. Is the minister aware that the report Stepping into the breach, released by the Salvation Army today, claims that around 11 per cent of those seeking assistance from the organisation who have been breached by the government have been forced to turn to crime to survive? Does the minister agree with the Salvation Army’s assessment that the government’s welfare policies are forcing people to commit crime?

Senator VAStONE—I have seen a range of commentators suggesting that some people nominate having turned to crime if they have not had sufficient income. Some people indicate that, if they do not believe they have the appropriate amount of welfare income, that is what they do. I am not familiar with the methodology or the circumstances of all the surveys that have been done but, if you ask me the simple question, ‘Do you agree that the government’s policies in relation to breaching turn people to crime?’ my answer is, ‘No, I do not.’ I will tell you why, Senator: if someone has a reasonable excuse, they are not breached. The people who do not show up for interviews and do not respond to letters and choose not to go to the appropriate number of job applications and get breached do not have to be in that position. As you know, Senator, we have moved to a staged process before we go to a complete breach, and that is a process that your party agreed with and we are grateful for that support—in fact, I think there was support from all parties for this breaching mechanism and for the level of penalty.

So, first of all, I say that people who comply with the requirements obviously do not get breached. I do not think you can blame the government if people choose not to comply. There will be occasions when people will not be able to meet these requirements and they will have a good reason and then they are not breached. If they are breached and they want to wipe their record clean, they can do so by nominating for Work for the Dole. In any event, I do not believe that dissatisfaction with your level of income is an appropriate explanation for turning to crime. Let me check exactly what the Salvation Army said. I have no doubt that some people happily nominate that as what they have done, but if you ask whether I think that is appropriate or a necessary consequence of the government’s legislation, no, I do not.

Senator BUCKLAND—I thank the minister if she would check those things for us. Madam President, I have a supplementary question. Does the minister agree with the Salvation Army’s assessment of the current breaching regime:

Far from being a reassuring saving for the tax paying citizens of Australia, breaching is shifting the personal and public costs elsewhere—to the homelessness and health sectors, and the justice system.
Senator VANSTONE—I have already indicated in this place a number of times—not just today but on previous days—the commitment the government has to doing everything it can to help the people who are disadvantaged: the homeless, for example, who are very hard to find in order to send the appropriate letters to, and the people who have a mental disability and who do not always want to front up at the front counter and offer their status as a public explanation to someone whom they have never met before as to why they did not meet with a requirement. There are difficulties for Centrelink—for anybody—in dealing with these people and dealing with them fairly. We have set up a number of pilot programs in some of the highest breaching areas to try and assist these people. From I think around the middle of June this year, Centrelink has gone on what they call ‘third breach alert’ to try and contact people who have had their second breach to make sure that we do everything we can to stop them getting the third. So I think we are doing everything we can to assist those who are disadvantaged. We have a research program with the Hanover people in Victoria, for example. (Time expired)

Commonwealth Funded Benefits

Senator HARRIS (2.38 p.m.)—My question is to the Minister representing the Minister for Finance and Administration. Minister, what action has the government taken to limit the generous taxpayer funded payments to former prime ministers and governors-general? As the aggregated figures are hidden within many departments, will the government make the individual expenses open and publicly available to the Australian people within six months of the end of the financial year? Are the services provided as an act of grace at the discretion of the Prime Minister?

Senator ABETZ—I will have a look at the detail of Senator Harris’s question and will get back to him with any detail, if that is appropriate. There has recently been a review by the Auditor-General in relation to entitlements. We as a government have indicated that we will be responding to that report. I indicate to Senator Harris that I do not think it is a very clever game for parliamen-tarians to talk about entitlements when, of course, we all get entitlements. Indeed, Senator Harris, being an Independent or an individual senator of one party in this place, is the beneficiary of a particular entitlement: he gets an extra staff member. The Australian people ought to know that, Senator Harris. So before One Nation tries to claim some moral high ground on this issue, let the Australian people know that the individual One Nation senator gets an extra staff member. It is very difficult to argue this to the Australian people, and I understand that, but it is an entitlement, it is an appropriate entitlement, and that is the way that these matters have been determined.

Our previous prime ministers do play an important role within the community. I know that is not a popular view, but they do still play an important and vital role within the community. Lots of previous governments have determined, rightly or wrongly, that it is appropriate that previous prime ministers be provided with office space and staff so that they can continue their community work.

Senator Robert Ray interjecting—

Senator ABETZ—Senator Ray mentions former Prime Minister Fraser; so, indeed, I could mention former Prime Minister Gough Whitlam, who I believe was the architect of many of the misfortunes that this nation has had to suffer over the past 20 or 30 years. I might have a similar view about former Prime Minister Keating. But, at the end of the day, they were supported by the Australian people, they held the high office of Prime Minister of this country and I believe it is appropriate that they be given, within limits, certain benefits so that they can continue their work within the community.

I know it is one of the favourite sports in Australia to go pollie bashing and especially ex-pollie bashing. But, at the end of the day, I believe that we need a sensible bipartisan approach to this issue. Those who get special entitlements because of their particular status in this place, such as One Nation, I do not think should be the first to be throwing stones in relation to other people’s entitlements.
Senator HARRIS—I thank the minister for his answer. Madam President, I have a supplementary question. Would the minister inform the Senate how many former prime ministers and governors-general are receiving Commonwealth funded benefits? What are the benefits and entitlements provided to each former prime minister and governor-general? Will the government commit to cease payments to the former prime ministers and governors-general and redirect the funds back to the Australian taxpayers?

Honourable senators interjecting—

The PRESIDENT—The question is directed to Senator Abetz, and other senators ought not to be contributing.

Senator ABETZ—Senator Harris is on very dangerous ground and I think he knows that he is. I will encourage Senator Harris to show some national leadership by forgoing the $40,000-plus extra staff member that he gets by virtue of being an individual senator in this place. If he shows that sort of leadership in relation to his own office, we might consider the situation in relation to former prime ministers and governors-general. Of course, the greatest source of money that we could get for the Australian people is from Centenary House: $36 million being ripped off the Australian people. For Mr Beazley’s information, I still have that 50c in my pocket so that he can make that phone call to stop the leaks.

Goods and Services Tax: Queensland Liberal Party

Senator COOK (2.44 p.m.)—My question is to Senator Hill in his capacity as Minister representing the Prime Minister. What action has the Prime Minister taken in response to the revelation last night that the former Queensland state Liberal Party president and Liberal candidate for Ryan, Mr Bob Tucker, has confirmed that his by-election campaign earlier this year rejected the use of the GST input tax credit scam, as was put in place in Groom and a number of other electorates in Queensland? Has the Prime Minister satisfied himself that Mr Tucker was not rorted out of the preselection for the seat of Ryan because he had rejected the GST input tax credit scam being foisted on him by Liberal Party tax fraudsters?

Senator HILL—There is one thing that we can be confident of and that is that there are still no policies on the side of the ALP. There are no policies and there are no issues of substance that they wish to raise in this place. We were told that health was going to be the big issue. We got about two questions on one day and then they abandoned it, probably because they recognised that the record of this government in relation to both public and private health is an exceptionally good one. They told us the big issue was going to be education, but it is the same story: when it comes down to the substance, they do not want a debate on education, because the record of this government in relation to public and private education has been a generous one.

Similarly, taxation was going to be the big issue because they were going to roll back the GST, but of course they did not want to explain how they were going to roll back the GST or how they were going to pay for it. We got a hint from Senator Conroy that the answer was going to be that they would put up income taxes instead. This was an embarrassing debate for the ALP and so they abandoned it. So what are they left with? They are left with no issues of substance. There are no criticisms of this government in its application of policy or in its administration of programs. All the Labor Party can talk about is the Groom FEC of the Liberal Party. How pitiful after nearly six years of opposition! I said yesterday—

Honourable senators interjecting—

The PRESIDENT—Order! There is too much noise in the chamber and conversations are being conducted much too loudly.

Senator HILL—What I said yesterday was that there is an issue relating to a very small number of GST transactions of the Liberal Party in Queensland—we think about four transactions out of about 700 transactions. We understand that the GST has been paid. Nevertheless, the Prime Minister, to ensure transparency and proper accountability, has asked that there be a taxation audit—that the Commissioner of Taxation conduct...
an audit—and has said that he wishes to see the results of that made public. That really is the end of this matter. If Senator Cook can wait until the Commissioner of Taxation reports, he would have more time to concentrate on some issues of policy development, because time is running out. If the Labor Party is not going to develop policy soon, it will simply have nothing to go to the Australian people with. Six years of inaction—what a disappointing record! Six years of delivering no alternative for the Australian people; six years of being unable to debate the major issues facing this land. A lazy opposition like that really does not deserve to be competitive in a federal election, and unless Senator Cook brings himself back to the issues at hand, the major issues of this nation, his side will simply have no chance.

Senator COOK—Madam President, I have a supplementary question through you to the minister. Isn’t that the serial killer’s defence: ‘I saw 500 people and I only murdered two of them; what are you complaining about?’ Isn’t it correct that the shadowy figures who developed the GST scam for the Queensland Liberal Party are the very same shadowy figures who are currently undermining Mr Tucker in his preselection bid for Ryan?

Senator HILL—If it were not for the fact that Senator Cook was the minister in the Labor government who said that the budget was in surplus when it was $10 billion in deficit, he would be asking an economics question today. He would be asking about the current account. He would be asking about the record good figures that have been announced today or what Senator Minchin said in answer to the first question. He would be talking about the balance of goods and services, which is the largest surplus on record—the real achievement of sound economic management. Why doesn’t he want to talk about economics? Because, of course, again there will be the contrast between this government and the failed government of Mr Keating. These are the issues the Australian people are interested in: whether they have got jobs, whether their taxes are low, whether their health care is adequate and whether they are getting good education; and the sooner the Labor Party comes back to it, the better. (Time expired)

Regional Australia: Telecommunications

Senator MASON (2.51 p.m.)—My question is to Senator Alston, the Minister for Communications, Information Technology and the Arts.

Honourable senators interjecting—

The PRESIDENT—Order! I need to hear the question that is being asked.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on my left! Senator Mason, to whom are you addressing the question? Start it again, please.

Senator MASON—My question is to the Minister for Communications, Information Technology and the Arts—

Senator Carr interjecting—

The PRESIDENT—Senator Carr, I have just drawn the attention of the Senate to the noise that is going on, and it makes it impossible to hear when you keep shouting.

Senator MASON—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister advise the Senate of how the government is delivering on improved telecommunications services in regional Australia? Is the minister aware of any alternative strategies and what would be their effect?

Senator ALSTON—That is a very important question from Senator Mason, and I know, having recently been on an extensive regional tour of Queensland, he understands what is going on out there in the real world. The facts are that we have not only introduced significant competition that has resulted in some 70 carrier licences being issued and a number of regional telcos starting to emerge but also put in place some very important policy building blocks. We have the universal service obligation, which has been enhanced with the digital data service capacity. There is also the standard telephone service, which has been tightened, the customer service guarantee, which is a world first—a very important initiative—and Networking the Nation.
I was very interested and very pleased to see Senator Mackay listening to Mr Anderson extolling the virtues of our regional telecommunications policy. I commend her for taking notes as assiduously as she did. The tragedy is that it is a bit late in the day to be learning these things. You should have known them. You should have been out there barracking for them. You should have been espousing these policies. But in fact that is not what has happened at all. We topped up the $250 million for Networking the Nation to $420 million. There are over 600 projects—616 at last count. What has happened? All we are told by people like Mr Tanner is that these are not the sorts of things Labor will do. And poor old Senator Schacht, who I suppose has gone off to the retirement village a bit prematurely, was the one out there in 1998 who was actually promising to close down Networking the Nation and to put the money back into consolidated revenue. In other words, there was no sense of thinking, ‘We will use it for other purposes,’ or, ‘We have a bunch of other alternative policies.’ No, it was all about how little they could do for regional Australia. That is the tragedy of it. We are out there delivering—all the way to Boulia, Senator Boswell—untimed local calls to 80 per cent of the land mass.

Senator Faulkner—Crystal clear, wasn’t it, and the great thing was that it only cost you 18c. In fact, I think I paid. For a lifetime these people have been deprived of the opportunities that are available in metropolitan Australia, and they are starting to get them. They understand that very much. Whether it is providing continuous mobile phone coverage on national highways, whether it is building advanced networks that have very significant multiplier effects or whether it is providing services to remote islands and communities, in all sorts of ways we have been out there delivering the goods. What regional Australia simply does not understand is why the Labor Party will not sign on to any of these policies. We conducted an inquiry into the adequacy of telecommunications services, we responded with a package of $163 million—and who has not signed on to it? Who has come up with an alternative approach? They are just not interested. That is the tragedy. The Labor Party have an exquisite dilemma: two to three months out from a federal election and here they are being led by a broken-down cocker spaniel with a serious heart condition—no ticker—and a rottweiler as his deputy. What chance do they have? With no policies, no leadership and no interest in regional Australia, they will get what they deserve in the very near future.

Senator Faulkner (2.55 p.m.)—My question is directed to Senator Abetz, the Special Minister of State. Can the minister confirm that the Department of Finance and Administration rejected requests from staff of members of parliament and their representatives for direct negotiations on a new certified agreement for eight months after the earlier agreement had expired? Can he confirm that DOFA have now offered a pay rise of 3.2 per cent over 12 months that is not backdated? How does the minister justify this risible offer when the average increase for APS agencies is approximately 4.1 per cent per annum?

Senator Abetz—I thank Senator Faulkner for his question. A proposal for the next certified agreement has now been circulated. Meetings with staff to discuss the draft offer started this week on Monday, 27 August, and they will continue. There will be meetings in various states and telephone hook-ups in relation to staff of members of parliament in other states. The government’s approach is to reach agreement with employees on a certified agreement that covers both electorate staff and personal staff up to adviser level. The outcomes that we hope for will be consistent with the government’s policy parameters for agreement making in the public sector.

Yes, it is true that a figure of 3.2 per cent has been floated, but I also remind Senator Faulkner that, as a result of the extensive consultation that took place previously, one of the things that staff members wanted was that there be more flexibility in the bands—the A, B and C categories—that apply to staff members. In fact, as part of the proposal...
there will be this extension and flexibility in the bands that will also have a substantial financial benefit above and beyond the 3.2 per cent that Senator Faulkner so conveniently only referred to. If Senator Faulkner had been honest with his question, he would have referred to the whole package and he would be encouraging his staff members to sign on and to agree to it.

Once again, we have the Leader of the Opposition in this place doing the hackwork of the CPSU. Really, that is all that the Labor senators in this place are: the hired hands of the trade union movement, but usually on more money than the trade union officials that they represent. At the end of the day this will be industrial democracy, and staff members will be able to vote for or against the certified agreement and they will be able to determine whether or not they believe the agreement is appropriate. Sometimes these certified agreements get accepted; sometimes they do not. Of course, from my point of view I hope that this one will be accepted. It has been the product of a lot of work, a lot of consultation, and further work and consultation is taking place as we speak.

Senator FAULKNER—Madam President, I ask a supplementary question. Does the contempt that the government’s representatives have shown to the staff of members of parliament in the lead-up to and during the current negotiations on a new certified agreement reflect deliberate government policy? If it does not, could the minister explain to the Senate what the situation is and why this contempt has been shown?

Senator ABETZ—I would have thought that the master of contempt was Senator Faulkner. Indeed, Senator Faulkner is the one person in this place who knows how to show contempt, especially to you, Madam President, when you try to have order in this place. Senator Faulkner has based his question on a false assertion. He is trying to denigrate the public servants of this nation by slurring them in coward’s castle and claiming that they are dealing with the members of staff in a contemptuous manner. I reject that assertion, as I would invite the Australian people to reject all of the assertions of the Leader of the Opposition.

Trade: Free Trade Agreement

Senator CHERRY (3.00 p.m.)—My question is to the Minister representing the Minister for Trade, and it concerns the report released today by DFAT on the advantages of a US-Australia free trade agreement. Is the minister aware that the authors of the report, the APEC Study Centre at Monash University, gave exactly the opposite advice in a Productivity Commission report last year when they said:

Australia has little bilateral leverage and efforts at bilateral leverage rarely result in significant reductions in trade barriers.

How does the minister reconcile the upbeat assessment by the APEC Study Centre with its downbeat assessment last year and with a recent report by the Canadian Centre for Policy Alternatives that 10 years of free trade with the US increased trade but also saw a reduction in average incomes, rural incomes and employment? Will the government be assessing all of the costs of free trade before the Prime Minister arrives in Washington desperate for a photo opportunity?

Senator HILL—That sting in the tail was really quite cruel, I thought, and very disappointing.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Hill has the call to deal with—

Senator Vanstone interjecting—

The PRESIDENT—Senator Vanstone, it is Senator Hill’s question.

Senator HILL—Anyway, I will overlook the cruel sting in the tail. The government’s position is that a more open market has to be to the benefit of Australian exporters. We are very proud of the export achievement of Australia under the Howard government as illustrated by the figures that have been released today. It goes to show that when you have a government that is export friendly—a government that looks at what is inhibiting the cost of exports, such as the costs of transport, and addresses it, as this government did in the reduction of diesel excise in relation to road transport; a government that looked at the difficulty on the wharves and tackled it and now has in place a regime which is turning over a record number of
containers; a government that restructured the taxation system so that it benefited exporters by the removal of taxes off exports—you see the sorts of benefits that we have witnessed in the accounts figures today that demonstrate that we are exporting strongly, and that has to be to the benefit of all Australians.

We, therefore, believe that if we can add to that a more open market, if we can negotiate that either on a bilateral basis or on a multilateral basis, that has to be of benefit to the Australian economy and therefore all Australians as well. That is obviously the position of the government; it is not the position of the Australian Democrats. Nevertheless, in this instance we are confident that we are right and we will continue to pursue the opportunity of a free trade agreement with the United States.

Senator CHERRY—Madam President, I ask a supplementary question. Thank you, Minister, for that answer. Can the government assure the Senate that the Prime Minister will not cave in to pressure from the US to soften our quarantine standards as the price for removing trade barriers on lamb, as advocated this week by 34 US farm groups and two senior US senators? Can the government assure the Senate that the Pharmaceutical Benefits Scheme, the Foreign Investment Review Board and the local content rules on Australian broadcasting will not be on the table for discussion? Given that none of these issues were canvassed in the DFA T paper on implications of free trade, will the government be commissioning further research from more lateral researchers before committing Australia to any irreversible policies on free trade?

Senator HILL—My advice is that the government commissioned two studies on the implications for Australia of a FTA to promote public consideration of the issue. The first was released in June and showed potentially significant economic gains. The second, by the APEC Study Centre, was released today, as we have heard. My advice is that it showed that there would be other wide ranging benefits from an FTA, including attracting US investment and facilitating linkages with best practice in the world’s most dynamic economy, and that an FTA would complement our multilateral and regional trade priorities and strengthen our relationship with the United States. Contrary to what Senator Cherry says, it seems that the studies that have been commissioned tend to confirm the wisdom of the government’s initiative in this regard, and the government will be continuing. Madam President, I ask that further questions be placed on the Notice Paper.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Superannuation: Colonial First State First Home Owners Grant

Senator KEMP (Victoria—Assistant Treasurer) (3.06 p.m.)—Madam President, last week I received two questions, one from Senator Sherry and one from Senator Ludwig, and I seek leave to incorporate the answers in Hansard.

Leave granted.

The answers read as follows—

Senator Kemp—On 21 August 2001 (Hansard page 26038) Senator Ludwig asked me a question without notice concerning:

Can the Minister confirm that an individual who owns their house through a personally controlled superannuation trust is able to access the first home owners grant of $7,000 or $14,000 when they purchase another property directly and claim that is their first home?

The Assistant Treasurer has provided the following information in answer to the honourable senator’s question:

I am advised that, under the current investment rules complying superannuation funds, including self managed superannuation funds, cannot purchase homes for their members to reside in where it would result in more than 5 per cent of a fund’s assets being in-house assets.

I would note that the Australian Labor Party voted against the introduction of this rule. Where a self-managed superannuation fund purchased property before the current superannuation investment rules commenced, being 11 August 1999, they are subject to the rules applying at that date, provided that a lease or lease arrangement was in place and the lease continues or is renewed and there are no gaps between lease renewals.

Only individuals are eligible for the FHOS. Superannuation funds are not eligible.
On 21 August 2001 (Hansard page 26034-26035) Senator Sherry asked me:

Is the Minister aware of an article in the Bulletin of 14 August reporting that the Australian Prudential Regulation Authority, APRA, has approved investments by the Colonial First State superannuation fund in Colonial’s own wholesale geared share fund? Can the Minister explain why Colonial First State is able to invest in an in-house fund that borrows money to purchase shares despite an explicit prohibition on borrowing by superannuation funds in the Superannuation Industry (Supervision) Act? Why has APRA approved this high risk investment, an investment that is deliberately structured to prevent any tax compensation being paid to investors in the event of a capital loss?

The Minister for Financial Services and Regulation has provided the following information in answer to the honourable Senator’s question:

The Superannuation Industry (Supervision) Act 1993 (SIS Act) was designed and implemented by the Keating Labor Government. It places sole responsibility for the prudent management of superannuation savings on trustees. It does not require superannuation funds to invest in particular asset classes. Trustees are required to formulate an investment strategy which must have regard to particular matters. These include the risk and return of the fund’s investments, expected cash-flow requirements, the diversification and liquidity of investments, and the ability of the fund to discharge its liabilities. Trustees can be expected to consider a wide range of investments in the interests of their members.

The SIS Act also contains investment restrictions, designed to limit the risks associated with fund investments, to ensure that superannuation savings are preserved until retirement, and to prevent lenders from acquiring a claim over fund assets ahead of members. These restrictions include a limit on in-house investments and a prohibition on borrowings by superannuation funds, with limited exceptions. Significant civil and criminal penalties apply where a trustee breaches these restrictions.

Superannuation funds can invest into other entities that borrow, unless the investment involves a related party transaction. The issue is one of providing an appropriate balance between allowing diversified investments and avoiding the risks involved in direct gearing. However, such an investment has the potential to reduce the security of members’ entitlements, and it would be expected that the trustee has considered this matter in the fund’s investment strategy.

The Australian Prudential Regulation Authority (APRA) is responsible for the supervision of superannuation funds. I am advised that contrary to allegations in the Bulletin of 14 August, APRA has not ‘approved’ investments by the Colonial First State superannuation fund in Colonial’s own wholesale geared share fund. APRA does not approve individual investments made by trustees of regulated superannuation funds. APRA does, however, examine during inspection work the processes by which trustees meet their obligations. This may include examination of how the trustee formulates and gives effect to an investment strategy; complies with the in-house assets provisions of the SIS Act; and complies with APRA’s Superannuation Circulars, including Circulars which relate to borrowing by superannuation entities and investments.

APRA Superannuation Circular II.D.4 provides guidance on the restrictions that apply to borrowing of monies by superannuation funds. Except in limited circumstances, section 67 of the SIS Act prohibits borrowing by trustees of regulated superannuation funds. Trustees are not, however, prohibited from investing in broadly-held geared trusts or other corporate structures.

The Minister for Financial Services & Regulation stated on 26 August 2001: “I have requested from APRA that I want them to come to me ... with a list of the powers that they need to better supervise superannuation in Australia and they’re coming to me in the next week or two with the final proposal and we will be responding as quickly as we can.”

The Opposition have resisted the Government’s attempts to make superannuation safer.

For example, the Opposition moved amendments to the Financial Sector Legislation Amendment Bill (No. 1) 2000 (now the Financial Sector Legislation Amendment Act 2001). The amendments halved the strict liability penalties for two offences relating to lodgment of annual returns by trustees of superannuation funds (sections 36 and 36A of the SIS Act); and an offence relating to the provision of information requested by the Regulators (section 254 of the SIS Act).

The Government introduced legislation into the Parliament that would have given employees greater choice as to the superannuation fund into which their superannuation contributions were paid. However, the Democrats and the Opposition opposed the legislation.

The Superannuation Legislation Amendment Act (No. 4) 1999 (SLAA 4 1999) amended the SIS Act to tighten the investment rules for superannuation funds. The investment rules are designed to...
reduce risks to superannuation savings and ensure that superannuation is preserved for retirement income. The changes were needed to preserve the integrity of the investment rules. The Opposition also opposed this policy change.

**Centrelink: Breaches**

Senator CHRIS EVANS (Western Australia) (3.06 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Family and Community Services (Senator Vanstone) to questions without notice asked today relating to welfare entitlements and the report of the Salvation Army, *Stepping Into the Breach*.

The minister in answering one of the questions said that it was important that we had a sensible debate about these issues. I am the first to agree, and that is why I was rather disappointed when she started by saying that by asking these questions Labor was running down the system and attacking the Public Service and implying that we were supporting fraudulent behaviour by raising questions raised by the Salvation Army in this important report.

Of course, what we were trying to do was to get a very sensible debate going about the breaching policy applied by this government. The minister refuses to address that key issue, because what we know is that the number of breaches that have been imposed on people in receipt of welfare benefits has increased this year by 189 per cent. There has been a massive increase in the number of breaches imposed on people, a massive increase in the penalties and therefore, as the Salvation Army and ACOSS are telling us, a massive increase in the number of people who are fronting up to charitable organisations, soup kitchens and emergency relief centres saying, ‘I can’t pay my bills and I can’t feed my kids because I have been breached as a result of the government’s policy.’

We want a sensible debate about that because the Salvos and others are telling us it is having a huge impact on ordinary Australians. Families are not meeting their needs and we want to concentrate on what has gone wrong. What is it about the government’s breaching policy: is it a deliberate policy that they are trying to be harsher on people on benefits or is it in fact one of those things that has just happened, that inadvertently the system has gone wrong? I suspect it is a deliberate policy, but if it is not then let us focus on what has gone wrong. But what we do know, what the Salvation Army and others are saying to us, is that it is having a huge impact on Australian families in receipt of welfare. It is having a huge impact on the services that charities run as they have to respond to increasing demand.

As I said, the Salvation Army report points out that 84 per cent of people could not afford food or medication as a result of being breached, 63 per cent had difficulty paying gas, electricity, water or phone bills as a result of being breached and a large number, 62 per cent, had had housing difficulties through an inability to pay rent, et cetera. Of course, one of the most disturbing aspects was that 10.9 per cent—close to 11 per cent—indicated that as a result of breaching they had resorted to crime to pay food bills, for medication or shelter. The Salvation Army is saying that this is the practical impact of this policy. We have had a massive change in the way breaching policies are applied. We have seen people losing any entitlement to benefits, even though 40 per cent of those rulings are actually overturned on appeal as having been wrongly applied. So we have got a massive increase in breaching, a massive increase in the disruption toAus-
The Salvation Army are saying that, while we might be saving a bit in social security—whether that is fair or not—we are moving the costs into the criminal justice system, the emergency relief system and the housing system as people have to cope and find alternative ways of staying alive. If we cut off their social security, they have to find another way of staying alive. The charities are carrying that burden and they are very distressed about what they are seeing as the impact on their clients. What the Salvation Army ask for at the very least is a review of the severity of breaching penalties. I ask the government to respond to that call by the Salvation Army and to respond to the call from ACOSS and let us have a sensible debate about what its breaching regime is doing to Australian families reliant on welfare, because what the Salvos and others say is that people are suffering.

**Senator KNOWLES (Western Australia)** (3.11 p.m.)—Here we are sawing sawdust again. This is the same debate that we had last week and I will make very many of the same points that I made last week about this issue of breaching. Senator Evans is walking out yet again. I wish he would actually stay for a little while, because last week there were so many people who made contact who said, ‘Why is Senator Evans getting this so wrong again and again and again?’ This whole issue of breaching is just an absolute and utter exaggeration by the Labor Party. They know it because they know their history. They know what the situation is compared to what it used to be.

**Senator Crossin**—Is the Salvation Army wrong?

**Senator KNOWLES**—We have a Canary sitting over there who will not stop yapping long enough to listen. It is a shame because, if she would stop long enough to hear what is going on, she might actually say something sensible in the end. Let us get this issue of breaching into perspective: there is a breaching system where someone is breached if that person fails an activity test three times in two years.
that people using the safety net really deserve it.

The best form of welfare is a job. It is not making sure that people are stuck on welfare forever, which is what the Labor Party did by having over one million people out of work. Over 10 per cent of this population was out of work under the Labor Party and they seem to be proud of it. There are now less than six per cent of people out of work and they still keep criticising, criticising, criticising. This opposition can do nothing but carp and criticise. It is about time that they looked at the positives. It is about time that they looked at how many more single parents have jobs now than they ever had under a Labor government and how low income workers are better off under this government than they ever were under a Labor government.

So let us start telling the truth in this matter of breaching. Three breaches in two years is not unreasonable, and there are circumstances where someone, if they do not want to be breached, can go onto a Work for the Dole program. What is wrong with that? Senator Crossin sits there and shakes her head. She was not here when the Labor government was in office and she will not be here next time around, either.

Senator CROSSIN (Northern Territory) (3.16 p.m.)—What an embarrassing indictment of the Salvation Army by Senator Knowles. She stands up today and says that their report is incorrect. The report is simply highlighting aspects of our community that this government chooses not to accept or acknowledge. She had nothing complimentary to say about the hard work that the Salvation Army do in our community. What a terrible thing it is to have a government senator stand up and slight, in the way that she did, the work of the Salvation Army.

What we need to do today in taking note of the answer from Senator Vanstone is to highlight the unilateral punishment that this government wants to impose on those people in this community who are trying to find themselves a job. This government is not about reciprocal obligation, where there is a two-way street, where the government assists in return for as much effort as a person on unemployment benefits can give; this is a government that is about unilateral punishment. It is interesting to note that this is now the second report that we have had before this parliament on this issue and the second report we have seen in the last fortnight in the media—last week, of course, the report coming from ACOSS.

This government, of course, is happy to ignore breaches of the tax law by its own party in Queensland when it comes to the efforts in fundraising of the FECs of its own branches, but it is very quick to punish the vulnerable in our community for even the most minor of breaches of the Centrelink guidelines. But why are we surprised? It is another example of hypocrisy coming from this government. It is another example of dual standards. It wants to ignore the tax breaches and the activities in Queensland, but it is quick to jump on the backs of and punish poor welfare recipients in this country.

The Salvation Army, in releasing today their report Stepping into the breach, have shown the consequences of this government’s policies on these vulnerable people. It showed that 25 per cent of all those on unemployment benefits were asking the Salvation Army for emergency relief and were doing so because they had been found to have breached the guidelines and were punished very quickly by this government. As a result, we have had a massive cost shifting to the community who have to pick up the failed programs of this government. That cost shifting places a massive burden on organisations like the Salvation Army and St Vincent de Paul. The Salvation Army find that, number one, they are under increasing stress with the increase of people who are coming through their doors, people who, despite what Senator Knowles says—and she wants to belittle these people—cannot afford food, who cannot afford gas, electricity or water, who cannot afford medicines and who, rather than turning to crime, turn to reliable organisations in our community like the Salvation Army that they know will be there for them. So the Salvation Army are increasingly under stress and pressure with these increased numbers, yet they are one of
those organisations that is being hit hard with having to pay the GST on basic human services that they provide in the community. Unlike the FECs in the Queensland Liberal Party, who are on about rorting the tax system, trying to avoid as much as they can, organisations like the Salvation Army are buckling under the weight of this government and its policies.

We have a government that has unilateral punishment and no reciprocal obligation. It is happy to ignore tax breaches happening in its own branches in Queensland, but it punishes very quickly those who are vulnerable in our community for even the most minor of breaches of Centrelink. In closing, perhaps there is one other thing that the Salvation Army could do for this minister, and that is buy her a watch—give her a watch, in fact, out of one of their second-hand bins—so that we do not have to put up with a minister who continually comes to question time late, who continually misunderstands the questions that are asked and who continues to want to ignore reports, such as those put out by the Salvation Army and ACOSS, that clearly highlight that this government has a problem in trying to assist the most vulnerable in our community. (Time expired)

Senator EGGLESTON (Western Australia) (3.22 p.m.)—What a lot of nonsense to criticise Senator Vanstone for not understanding the reports that come to her; of course she understands. She understands that we have a much more sympathetic and understanding approach to people who breach than did the ALP who simply cut off their payments without any kind of warning. Senator Vanstone is a sensitive, caring person who is doing her best in a very difficult area. She has certainly brought in a system which is sensitive to the needs of people receiving welfare payments and social security benefits.

Senator Crossin made some criticism of the government’s attitude to the Salvation Army and implied that we do not appreciate the work of the Salvation Army. I assure you, Senator Crossin—just before you leave the chamber, although you have made it to the door so that you do not have to listen—the government acknowledges and appreciates the fantastic job that the Salvation Army does in the community. I think the ALP should be concerned about making any generalisations of government attitudes to the Salvation Army or about misrepresenting the contents of their report Stepping into the breach. The Salvation Army made it quite clear in their report that this survey only represented a brief snapshot in time and that no broad and general conclusions could be drawn from it. The fundamental issue here is that Australian taxpayers—the members of the community who work, who generate the income which government spends in part on social security—expect the government to ensure that unemployment payments only go to those who are genuinely unemployed and who are in need of support.

One of the very first things the government did when we came to office was to start doing audits on people on social security. We found that there were huge numbers of people in receipt of social security benefits, which they obtained during the 13 years of the Labor government, who should not have been on them. In the early days of this government, Senator Newman was able to recover on a weekly basis millions of dollars that was being wrongly paid to people who were in unlawful receipt of social security benefits. These people were rorting the system. They were just ripping off money which they were not entitled to, and the ALP had not instituted any system of audit or any system of review of people on social security. So once you got your benefit, you could stay on it for life, and that became a kind of career option.

We have instituted reviews and, as far as this question of breaching goes, have adopted a very reasonable approach. In the view of most people in the Australian community, it is very reasonable that people who are on social security should meet obligations in exchange for support from the rest of the community. It is reasonable to apply sanctions to those who refuse to comply, but the sanctions system we have introduced is much fairer than the sanctions which existed under Labor. Under Labor, any breach at all resulted in a non-payment period. A non-payment period under the Howard govern-
ment is only imposed if a person breaches the activity test three times in two years. That is a pretty generous threshold, and it certainly does not cause unreasonable hardship. We have done a lot of things to improve things, and there is more improvement in the pipeline which will make this system fairer and more equitable for everybody in the community, including the people who have breached social security. The ALP has got this completely wrong. The government system of penalties for breaches is much fairer than it has ever been, and the Salvation Army in particular deserve to be congratulated on the work they do for the community, but their report should not be misinterpreted in the way it has been by the opposition in this case.

Senator CROWLEY (South Australia) (3.27 p.m.)—Senator Knowles did say that we have been through this debate many a time in this place, and that is true. We have listened to the same misrepresentation of the previous Labor government time and time again. For the record, Senator Eggleston, the Liberal government did not invent pursuing people to ensure that they were receiving the right payments. Many a time Minister Brian Howe audited the social security payments and many a time he found significant numbers of people who were falsely claiming payments, and those payments were ceased. I think it would be much better if we tried to pursue this debate, as was proposed by Senator Evans, in a reasonable way, but we will not while you stick to your side and say the misrepresenting things that you have just said.

The point is that the Salvation Army, a pretty honourable and reliable lot, have come out with a report that tells us that this government’s breaching policies have led to a 189 per cent increase in unemployed people being fined over the last 12 months. That is nearly 350,000 people who have been penalised for errors like failing to answer a letter on time. I know of some people who have complained about this to my office. One person was actually breached because she was attending a part-time job. She had gone to work and was unable to contact Centrelink and was breached. There ought to be some way in which people are allowed to make some attempt to explain before the axe falls. Forty per cent of the breaches that have been recommended or imposed on the unemployed have been subsequently overturned or revoked. In other words, they have been found to be an error by the department. The people who lost their money have then had to start the whole process again and contact Centrelink and make the case for why they were wrongly fined. Those things are a big hassle for, and harassment of, people at any time. Forty per cent were wrongly breached.

I am appalled at the minister’s response. If she were serious, she would say, ‘Wow, those figures really are something. We will go away and look at them to see if there is not a way in which we can ensure that at least the 40 per cent are not breached and then put back on to their payments.’ But the minister seemed to say that the Salvation Army were about as useless as the Labor Party, and that I think is extremely offensive, not only to the Labor Party but particularly to the Salvation Army who have the hard evidence of what happens to people who are breached. They finish up asking the Salvation Army, St Vincent de Paul and the Smith Family for help.

The Salvation Army is not out there making up these figures; it is actually out there backing up what happens as a consequence of the breaching and fining of people and the loss of income for people on those benefits and payments. I note that Minister Vanstone is not telling us that her government, the mean Howard Liberal government, has actually cut its funding to charities in a very significant way over the last five years.

Senator Faulkner—Mean and tricky.

Senator CROWLEY—Mean and tricky. I will come to the tricky bit. Thank you, Senator Faulkner. This mean mob have actually cut the funding to these charities and at the same time provided for them an opportunity to do much more work because the government is breaching people and fining people who now need more opportunity than ever to get assistance from the Salvation Army, St Vincent de Paul, the Smith Family and all the other charities. How can anyone
say that the Salvation Army report should be thrown aside or ignored? The report says, ‘Hey, government: did you know there has been a 189 per cent increase in the number of people being fined over the last 12 months?’ That is 350,000 people, I should remind the minister. And 40 per cent of those people have been found to have been wrongly breached—that is, their breaching was quickly overturned.

Senator Faulkner says that this is a mean and tricky government. Yes, it is. While it is requiring the charities to pay GST on the assistance they give these people, it is this same party, this same government that has scams to avoid the GST in its Liberal Party branches in Queensland. I think it is very important for the community to know that this government is snaky and tricky about its own GST, but that it will be down like a tonne of coals on poor people, even if they fail to answer a letter in time, and then it will require them to pay the GST, or the charities to pay it on their behalf. ‘Mean’ is not the word for it; neither is ‘tricky’. They are a very horrible mob and they do not really care about the unemployed.

Question resolved in the affirmative.

Refugees: Norwegian Ship

Senator BARTLETT (Queensland) (3.32 p.m.)—I move:

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

I ask the Senate to take note of the answer given by Senator Hill to the question I asked regarding the current situation with the MV *Tampa* off the coast of Christmas Island, and particularly the very recent events with the order by the Prime Minister, supported by the opposition leader, for the SAS to board and take control of this vessel to ensure that it does not allow anyone to disembark from the vessel. This is obviously a very serious situation, as I think people from all perspectives will acknowledge. Again, I think it makes the precedents that have already been set go that one step further.

It is of great concern to the Democrats that the initial, in our view inappropriate and incorrect decision of the government and its further insistence to dig itself in on its hard-line approach has now led to this particular outcome where the good Samaritan in this circumstance, the captain of the vessel who actually rescued over 400 people who would otherwise have drowned, is the one who is having his ship boarded by Defence personnel and being turned around, despite his assessment that the conditions on board are now becoming intolerable.

In response to the direct question which I twice put to the minister, he refused to answer whether this was the very first time that Australia had refused assistance to people rescued at sea or refused people the opportunity to disembark in Australia after being rescued at sea. As I said yesterday, nobody is kidding themselves that the response would have been the same had these people been rescued from a cruise liner or had it been perhaps an adventurer on a yacht which had run aground. Clearly, the response has been taken because the people rescued are asylum seekers. That is the only reason. It is not to do with where they were rescued; it is who they are and where they are from. That I think is a very dangerous precedent.

The minister also refused to answer what I think is becoming the crucial question: how much longer will this situation go on for? If Indonesia refuses to yield—certainly I hope they will yield because clearly these people need to be removed from this desperate situation—will we continue to engage in this stand-off purely for the reason, as the Prime Minister has said before, of sending a signal to the world that we are not a country of easy destination?

The Prime Minister said in his statement today in the other place that a country has a right to decide who comes here and under what circumstances. That is absolutely true, and the Democrats completely support that. There are mechanisms in place to ensure that people are not able to stay in this country unless they have a right to do so. If they have claims for asylum, those claims are assessed,
and if they do not meet the requirements they are deported. That is the way in which we have decided as a country to deal with people coming here. What we have now is a completely new scenario where the government is saying that we are not even going to allow people to enter our waters, that we are going to turn them back. It is worth harking back to the 1970s when Vietnamese boat people were departing in great numbers. They, too, were in similarly unseaworthy vessels and had to be rescued. Some places would not take them. A significant number of vessels ended up not being rescued. There was a massive increase in the number of vessels that ignored assistance requests. Who knows how many lives were lost in that circumstance? Is that the situation that we are going to be faced with again?

Because of that circumstance, in the early 1980s the executive committee of the UNHCR—with which Australia had a proud history of involvement—drew up some guidelines which included that the widespread practice of disembarkation should be at the next convenient port of call. In this instance, it is clear that Christmas Island was closer by a significant distance than the Indonesian place that has been mentioned. It may not be a port but obviously people can disembark there as they regularly do, so to use that excuse is legal sophistry. Obviously it was the captain’s choice to pick that particular port.

It is a very dangerous precedent to go away from those obligations and guidelines established by the UNHCR, as well as, of course, the practice in relation to the rescuing of people at sea. We are digging ourselves further into a hole in relation to this issue. I agree with one thing the opposition leader said: we do need cool heads on this issue, and cool heads, I think, need to recognise that we do not need to leave 400 or more asylum seekers circling around in the ocean indefinitely, simply so that we can maintain some matter of pride.

The DEPUTY PRESIDENT—Order! Senator Bartlett, your time has expired. The time for the debate has expired.

Question resolved in the affirmative.

NOTICES

Presentation

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

That the Senate notes with concern the adverse effects, particularly on small business, of the Government’s botched implementation of its goods and services tax policies.

Senator O’Brien to move, on the next day of sitting:

That all documents in the possession of the Rural and Regional Affairs and Transport Legislation Committee from the Australian Maritime Safety Authority and its constituent bodies in relation to its inquiry into the administration of AuSAR in relation to the search for the Margaret J, not previously published by the committee, be published.

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


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

That the provisions of the Migration Legislation Amendment Bill (No. 6) 2001 be referred to the Legal and Constitutional Legislation Committee for inquiry and report by 18 September 2001.

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

That the Senate—

(a) recognises and celebrates the centenary of the Australian National Flag which occurs on 3 September 2001;

(b) honours the ideals for which our national flag stands, including our history, geography and unity as a federated nation;

(c) notes that this is the world’s only national flag ever to fly over one entire continent;

(d) acknowledges that our flag has been Australia’s pre-eminent national symbol in times of adversity and war, peacetime and prosperity;

(e) recognises that our flag now belongs to the Australian people and has been an integral part of the expression of our national pride; and
(f) expresses its respect for the Australian National Flag as a symbol of our profound achievements as a federation; our independence and freedom as a people; and our optimism for a common future together.

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

That the Senate notes that:

(a) 3 September 2001 is the one hundredth birthday of the Australian flag, which has united and inspired the Australian people in times of war and peace, despair and triumph;

(b) the focal point of the national celebrations will be a re-enactment of the first raising of the Australian flag at the Royal Exhibition Building in Melbourne;

(c) celebrations in the National Capital will be presided over by His Excellency the Governor-General, with a presentation of the Australian flag to the oldest-known war veteran; and

(d) the Australian flag which flies in the Senate chamber is a proud symbol of the Australian people.

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

That the Senate—

(a) notes that the sixth annual Phil Botha Memorial Fun Run takes place on 5 September 2001 to raise money for Canteen, the Youth Cancer Support Group;

(b) recognises that cancer inflicts enormous pain and suffering on our community, and that money is needed to fund research and treatments;

(c) notes that the run has raised significant amounts of money to support people suffering from cancer;

(d) notes that the run is a relay of 120 kilometres in length; and

(e) asks each senator to give his or her financial support to this worthy cause.

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

That the Senate notes that 3 September would be an excellent date for this nation to begin the process of finding a new flag with an entirely national motif reflecting Australia’s special and independent place in the world.

COMMITTEES
Selection of Bills Committee
Report

Senator CALVERT (Tasmania) (3.40 p.m.)—I present the 13th report of 2001 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator CALVERT—I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE
REPORT NO. 13 OF 2001

1. The committee met on 28 August 2001.

2. The committee resolved to recommend—

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

<table>
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<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation committee</th>
<th>Reporting date</th>
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<tbody>
<tr>
<td>Commonwealth Electoral Amendment Bill 2001</td>
<td>Immediately</td>
<td>Finance and Public Administration</td>
<td>18 September 2001</td>
</tr>
<tr>
<td>(see appendix 1 for a statement of reasons for referral)</td>
<td></td>
<td></td>
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<tr>
<td>Aviation Legislation Amendment Bill (No. 2) 2001</td>
<td>Immediately</td>
<td>Rural and regional Affairs and Transport</td>
<td>23 October 2001</td>
</tr>
<tr>
<td>(see appendix 2 for statement of reasons for referral)</td>
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(b) the provisions of the following bills be referred to a committee as follows:

<table>
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<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation committee</th>
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</tr>
</tbody>
</table>
Bill title | Stage at which referred | Legislation committee | Reporting date
--- | --- | --- | ---
Motor Vehicle Standards Amendment Bill 2001 | Immediately | Rural and Regional Affairs and Transport | 25 September 2001

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

- Customs Tariff Amendment Bill (No. 4) 2001
- Health and Aged Care Legislation Amendment (Application of Criminal Code) Bill 2001
- Migration Agents Registration Application Charge Amendment Bill 2001
- Migration Legislation Amendment Bill (No. 5) 2001
- Parliamentary Service Amendment Bill 2001
- Taxation Laws Amendment Bill (No. 4) 2001
- Wool International Amendment Bill 2001

The committee recommends accordingly.

3. The committee deferred consideration of the following bills to the next meeting:

- Constitution Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001
- Superannuation Legislation Amendment (Indexation) Bill 2001

Bill deferred from meeting of 7 August 2001

- State Elections (One Vote, One Value) Bill 2001
- Australian Citizenship Legislation Amendment Bill 2001
- Commonwealth Inscribed Stock Amendment Bill 2001
- Disability Services Amendment (Improved Quality Assurance) Bill 2001

Bill deferred from meeting of 21 August 2001

Appendix 1
Proposal to refer a bill to a committee
Name of bill(s): Commonwealth Electoral Amendment Bill 2001
Reasons for referral/principal issues for consideration
To gain a better understanding of the purposes of the legislation and to allow affected parties the opportunity to put their views to the committee.
Possible submissions or evidence from:
Liberal Party Federal Secretariat, Liberal Party state divisions, ALP National Secretariat, Malcolm Mackerras, Rolf Gerritson, Antony Green, Professor John Warhurst (ANU)
Committee to which bill is referred:
Finance and Public Administration Legislation Committee
Possible hearing date: For the committee to determine
Possible reporting date(s): 24 September 2001
(signed) Kerry O’Brien

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s): Aviation Legislation Amendment Bill (No. 2) 2001
Reasons for referral/principal issues for consideration
Insufficient information in Explanatory Memorandum to gain understanding of bill
Ensure independence of IASC will be maintained.
Explore proposed framework for new aviation security (very little information provided in EM) that will substantially be contained in the untabled regulations.

Confirm on Hansard, government commitment that any residual FAC employee entitlements will be protected by Commonwealth will repeal of FAC Act.

Compare proposed aviation security system approach with CASA’s aviation safety system approach.

Possible submissions or evidence from:
Department of Transport and Regional Services

Committee to which bill is referred:
Rural and Regional Affairs and Transport Legislation Committee

Possible hearing date:
Possible reporting date(s): 23 October 2001

Kerry O’Brien

Appendix 3
Proposal to refer a bill to a committee
Name of bill(s):
Motor Vehicle Standards Amendment Bill 2001

Reasons for referral/principal issues for consideration
Scrutinise the draft regulations (as yet, not tabled, but the government has confirmed they will be available for the committee)
Impact on small business and local manufacturing industry

Possible submissions or evidence from:
MTAA, AAIMA, FCAL, NRTC, Toyota, Honda, VICAA, DOTRS, DISR

Committee to which bill is referred:
Rural and Regional Affairs and Transport Legislation Committee

Possible hearing date:
Possible reporting date(s): 23 October 2001

Kerry O’Brien

NOTICES
Postponement

Items of business were postponed as follows:

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 30 August 2001.

General business notice of motion no. 1016 standing in the name of Senator Bartlett for today, relating to detention centres and asylum seekers, postponed till 30 August 2001.

General business notice of motion no. 1018 standing in the name of the Chair of the Rural and Regional Affairs and Transport Legislation Committee (Senator Crane) for today, relating to an extension of time for the committee to report, postponed till 30 August 2001.

COMMITTEES
Economics Reference Committee
Extension of Time

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

That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of Australia’s stock exchanges be extended to 19 September 2001.

UNITED STATES-AUSTRALIA FREE TRADE AGREEMENT

Senator BROWN (Tasmania) (3.42 p.m.)—I ask that general business notice of motion No. 1015 standing in my name for today, relating to the United States free trade agreement proposed by the Prime Minister and calls on the government to rule out certain considerations, be taken as a formal motion.

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

Senator O’Brien—Yes.

The DEPUTY PRESIDENT—There is an objection to this motion being taken as formal.

Suspension of Standing Orders

Senator BROWN (Tasmania) (3.43 p.m.)—Pursuant to contingent notice, I move:

That so much of standing orders be suspended as would prevent Senator Brown moving a motion relating to the conduct of the business of the Senate, namely a motion to give precedence to general business notice of motion No. 1015.
Senator O’Brien—We will agree to a suspension.

Senator Brown—The opposition is indicating that it will agree to the suspension for further debate, so I will wait until then for further debate to expedite the matter to the house.

Question resolved in the affirmative.

Procedural Motion

Motion (by Senator Brown) agreed to:
That general business notice of motion No. 1015 may be moved immediately and have precedence over all other business today till determined.

Motion

Senator Brown (Tasmania) (3.44 p.m.)—I thank the Senate and move:
That the Senate—
(a) notes that the Prime Minister (Mr Howard) will be discussing a United States-Australia free trade agreement with President Bush in Washington D.C. on 10 September 2001; and
(b) calls on the Australian Government to rule out any consideration of relaxing Australia’s media content, media ownership, Foreign Investment Review Board rules or changes to the Pharmaceutical Benefits Scheme in any such free trade agreement.

This is a very urgent matter. The urgency is not that a free trade agreement is going to be signed by Prime Minister Howard when he gets to Washington on 10 September or that he wants to get negotiations under way for a free trade agreement as part of a highlighted friendship between himself and President George W. Bush in the run to the federal election, but that every Australian has a stake in what he is doing. Many Australians are concerned about the way in which our nation has been at the forefront of reducing barriers and allowing foreign investment into the country under circumstances which are less favourable than those we would find in many other parts of the world. When it comes to a US-Australia free trade agreement, it would surely be appropriate if, before discussing it with President Bush, the Prime Minister discussed it with his own people and got an indication from the Australian nation—and not least from the business community, particularly the high employment areas of small business—of what people think about it.

The scanty information that has been coming to the fore about this process is interesting. It is being promoted by the Australian government rather than the US government, but the US embassy in Washington has been hard at work getting many multinational corporations on side. Quite recently, at a function at the embassy, more than 20 multinational corporations, many of them household names, backed this movement for a free trade agreement. But, at the same time, the government of the United States indicated that it is not going to give Australia concessions when it comes to our primary produce and that the very big subsidies enjoyed by the US farming sector are going to stay intact if there is a US-Australia free trade agreement. Isn’t that extraordinary? Already, this free trade agreement is tilted against Australia. The negotiating base begins with the US agricultural sector protecting its interests—which must be to the detriment of the Australian agricultural sector—on things like wool, wheat, lamb, beef and so on, but we go cap in hand to Washington to see whether the multinational corporations there can invest in our economy on terms no less favourable than for home-grown industries.

Amongst the matters of concern that I have, as a Green, is the quite obvious requirement by the US, if we have a free trade agreement, that we remove our current laws which prevent foreign media ownership. This will open up the private media in Australia to foreign ownership—particularly US foreign ownership—as never before. The same may be said about media content. I think there would be many senators who would be concerned because the media content rules, few as they may be, help to foster culture in Australia and, indeed, to retain something of the Australian identity against the huge pressure from Hollywood and Times Square to flatten world cultural identity. Who is it in the Australian community who is welcoming foreign media ownership and the removal of the controls which give Australian cultural identity an advantage
stake in the media—including television—in Australia?

What about the Foreign Investment Review Board? We recently saw it prevent a takeover by Shell of our gas resource on the North West Shelf. Will these rules apply to a US company after the Prime Minister has negotiated a free trade agreement with the Bush administration? The answer is no. The Foreign Investment Review Board rules will no longer apply as far as the United States is concerned.

I move on to the pharmaceutical benefits scheme. There has been a lot of controversy about that in recent times. Did you know, Madam Deputy President, that there are 40 million Americans who cannot afford to get pharmaceuticals which are critical to their wellbeing? They cannot afford it because medicines in America are so extraordinarily expensive. They do not have a health scheme like ours. But if you are going to have an open free trade arrangement between countries, it means there will be no barrier on one side that is greater than the barrier on the other side. I would like the government to say in the course of this debate whether Mr Howard, when he gets to the rose garden on 10 September, is going to say to President Bush that our pharmaceutical benefits scheme is not up for negotiation. If it is good enough for President Bush to say, ‘Well, farm tariffs are not up for negotiation,’ it is surely good enough for Prime Minister Howard to defend this nation’s interests and say, ‘Well, neither is our Foreign Investment Review Board, our pharmaceutical benefits scheme or the ownership of the Australian media.’

I ask whether the Prime Minister has issued any extensive analysis of what a US-Australia free trade agreement is going to mean to business, to the arts, to rural and regional Australia or to the community as a whole in this country. If he has, I have not seen it. It seems to me that he is much keener on talking about the shape of Australia’s future with the President of the United States than on talking about it with the people of Australia. I am not one who is about to support that.

What about the quarantine functions we have to protect ourselves from imported species—exotic species—and diseases? I can tell you about that. If we have a US-Australia free trade agreement, there will be no restriction on such things as apples, salmon, lamb or chicken—or, for that matter, tuna—coming into this country from the United States except under the same rules that we apply to them.

Senator Calvert—Rubbish! Quarantine laws will still apply.

Senator BROWN—Senator Calvert opposite has said rubbish to that. He is one of those senators who voted for the World Trade Agreement, you will remember, Madam Deputy President, back in 1996. That exposed Tasmania to the importation of salmon against our interests. Senator Calvert did that back in 1996. Now, when I am warning about a US-Australia free trade agreement, there he is at it again, screaming, ‘Rubbish!’ He should think a little bit about this, because it is a very serious matter. Senators who have not learnt from their failure to participate and protect their electorates in the World Trade Agreement process might think again in 2001 as Prime Minister Howard heads for Washington.

I do not know what Prime Minister Howard has in mind. Nor do you, Madam Deputy President. Nor do the Liberal Party members opposite. He has not told them either. And certainly members of the opposition do not know. But this is a hugely important matter. If I have anything to do with it, it will be an electoral issue.

Senator Calvert—It’s a stunt.

Senator BROWN—Senator Calvert says it is a stunt. I presume he is referring to Prime Minister Howard’s trip to the White House. One can see that, in a pre-election situation, it may be a stunt by Mr Howard. But I take it a bit more seriously. I think it is a very important matter. For those who do not know much about the matter, I refer them to an excellent article by Brian Toohey. He had one in the Financial Review and one just last Sunday in the Sun-Herald. In a light-hearted way, Mr Toohey begins the article by saying:
When John Howard arrives in Washington next month, he clearly expects American political leaders to offer him a wonderful electoral gift called a free trade agreement.

Before the Australian Prime Minister gets too carried away, though, he would do well to remember he is dealing with people whose forebears purchased Manhattan for a handful of beads, cloth and trinkets.

President George Bush will have no trouble offering a few trinkets if Howard agrees to talk about what the US means by free trade. For Bush, a free trade agreement will end price caps on drugs supplied under Australia’s Pharmaceutical Benefits Scheme ... and slash our stringent quarantine rules.

I happen to think that Mr Toohey is right—that that is the mind-set in the White House, that we are dealing with a country which has, in terms of investment flow, 10 times the clout of Australia and more than 10 times the population.

I ask honourable senators opposite to take this matter seriously. This is an extremely important motion. We will be coming back to visit this in the years ahead. If a Howard government is re-elected on 17 November, there is no doubt that the foot will be put on the accelerator in joining the multinational corporations of the United States to think of Australia in a new light, without the investment and the other checks and balances that we have in the national interest down the line when it comes to a free trade agreement.

Finally, I read in one report that the Australian government itself had said that it does not want environmental or labour considerations taken into account when formulating a free trade agreement. Honourable senators opposite will be able to tell us whether that news report was correct or not. If it is true, what the heck does Mr Howard think he is doing going to Washington and saying that Australians are not concerned about workplace or environmental safeguards in terms of a free trade agreement—that we do not want them taken into account? The Australian people will think differently, I can tell you—very much so.

This is a bilateral trade agreement which, if it is brought in, will have enormous ramifications for everybody in Australia, for every hectare of Australia and for every workplace in Australia. My purpose in bringing this motion before the Senate is to set in train a debate which will involve the people of Australia so that we do not just leave it to Mr Howard, talking over the phone and, on 10 September, in direct conversation with the President of the United States, whose interests are entirely different from those of the average Australian.

Senator O’BRIEN (Tasmania) (3.59 p.m.)—The opposition cannot support the motion in its current form and I therefore move:

Omit all words after “That the Senate”, substitute:

(a) notes:

(i) that the Prime Minister (Mr Howard) will be visiting Washington D.C. on 10 September 2001 to discuss trade issues, amongst other things, and

(ii) Australia’s essential national interest in the multilateral trading system and in regional economic forums; and

(b) calls on the Prime Minister to:

(i) encourage the Bush Administration to use all its influence to bring about the launch of a new multilateral trade round at the World Trade Organization meeting in Doha in November 2001,

(ii) commit Australia to working closely with the United States on a reinvigorated Asia Pacific Economic Cooperation agenda that promotes and facilitates economic growth in the Asia-Pacific region, and

(iii) ensure a proper process of analysis and consultation, including with community groups, with regard to his proposal to pursue a free trade agreement with the United States.

I understand that the amendment has been circulated in the chamber. The situation is that, as Senator Brown went through the issues he saw in the discussion of a free trade agreement with the United States, he added to the list he has placed in his motion. For that reason alone, to enumerate in this motion particular items, and not others, is not an adequate way to treat this very serious issue. Indeed, it is difficult to enumerate all of the issues with a free trade agreement.
But I did not want to talk about the prospective agreement so much as to comment on how the government has handled this matter. The Howard government has completely botched the handling of this proposal. The idea of proposing a bilateral free trade agreement with the United States was conceived by cabinet last November. However, since then we have had no public statement either from the Prime Minister, who seems to have taken personal responsibility for it, or from the Minister for Trade, Mr Vaile. The government has shown no leadership on this important national interest issue and no debate about the implications for the community and for particular industry sectors has occurred. There has been no consultation with those sectors, and there has been no discussion with our other major trading partners who, I might say, account for the other 90-odd per cent of our international trade. This is a completely unsatisfactory situation. The first thing the government needs to do is make the case on this issue. It needs to provide some leadership. As it stands, the Australian community has a right to be cynical about whether or not this is simply a photo opportunity stunt for the Prime Minister’s visit next week to Washington. Frankly, it is too important an issue to be handled in this way. It is not enough to commission two academic reports on the issue: what status do these reports have, and what is the government’s formal response to them? We do not know the answers to those questions.

The opposition has considerable sympathy for the issues raised in Senator Brown’s motion and, as I implied earlier, we agree that the sectors identified in it have a right to be concerned about how the government has handled the issue. However, we believe that the amendment I have moved goes more directly to the main issues at stake here. Under the terms of this amendment, the Senate would call on the Prime Minister to encourage the Bush administration to use all its influence to bring about the launch of a new multilateral trade round at the November World Trade Organisation meeting in Doha, the Prime Minister would commit Australia to working closely with the United States on a reinvigorated APEC agenda that would promote and facilitate economic growth in the Asia-Pacific region and the Prime Minister would ensure a proper process of analysis and consultation, including with community groups, with regard to his proposal to pursue a free trade agreement with the United States, before simply running off and, as I said, engaging in what amounts, in the view of many people in this country, to a trip to the United States for the sake of a photo opportunity in the rose garden with President George W. Bush. Again, I urge the Senate to support the opposition’s amendment to this motion. I indicate that, while we support many of the sentiments expressed in Senator Brown’s motion, it is deficient, and support for our proposition is a much more balanced position for the Senate to take.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (4.03 p.m.)—On behalf of the government, I would like to indicate firstly that the coalition is very pleased to support the amendment which has been moved by Senator O’Brien. We think it is a more constructive suggestion than Senator Brown’s motion, as it stands. We support a number of the concerns raised in Senator Brown’s motion. I will get into trouble with my Whip if I support everything that Senator Bob Brown has said in relation to this, because we do not: we think some of the concerns he has raised, although serious issues, are matters whose raising, it is probably fair to say, borders on scaremongering in relation to this, and unnecessary scaremongering—

Senator Bolkus—Do you think it is necessary sometimes?

Senator IAN CAMPBELL—I beg your pardon?

Senator Bolkus—Do you think scaremongering is necessary sometimes?

Senator IAN CAMPBELL—That is a good question, Senator Bolkus. The sort of scaremongering that has gone on, particularly around the antiglobalisation protests, is stirred up by rhetoric such as Senator Brown’s. But he raised in his speech and raises in his motion some serious issues in relation to Australia’s media content laws,
media ownership laws, foreign investment review processes and the PBS. It is important that the government makes it quite clear to the Senate that, although we are aware of some large US pharmaceutical companies that do not like aspects of the PBS, firstly, we believe that those concerns are unfounded and, secondly, I think it should be noted for the record that the US administration has not raised the PBS as a matter of concern with the Australian government at all. I think it has been raised by Mr Toohey in an article recently and it has now been raised again by Senator Brown in his motion and in his speech today. In addition, the government strongly supports the Foreign Investment Review Board and its screening processes. They are certainly not on the agenda. Equally, we regard the cultural objectives which I referred to—media content, media ownership—as important parts of Australia’s regulatory regime, and we do not back away from them at all.

I think the bigger issue is the importance of pursuing free trade—certainly moving towards freer trade with the world’s largest economy. I think it is very important that the objectives of pursuing free trade with the United States are well understood. When Australia’s Deputy Prime Minister, John Anderson, was asked a question at the Press Club today, he very eloquently and effectively made the point that a number of the changes that have occurred internationally and have been part of what is becoming a cliché called globalisation have failed within the domestic area of Australia because the policies have not been well enough explained or communicated to the Australian people or understood by them. For people who want to, it is possible to scare the citizens of Australia about the impact of increasing international trade agreements and a range of other issues that are not so much a matter of policy as of reality. The massively increasing level of world trade and the advances in communications that have ensured that information and ideas developed here in Australia in one second can be communicated to the opposite side of the globe and form part of a trade in goods and services almost instantaneously constitute a revolution. This is a reality opposed to some sort of international conspiracy or policy.

Having said that, Senator Brown made a remark about the World Trade Organisation legislation that passed through this place in 1996. The point that Deputy Prime Minister Anderson made about that in his National Press Club address today was that that was something that came into the parliament and to which Australia signed on without a lot of communication with the people of Australia at the time. So it is possible to create a campaign to undermine the fairly noble objectives of trying to create freer trade. It is clearly in Australia’s advantage to have freer trade with a nation like the United States of America.

The point made last night by Mr Oxley on the Lateline program, in an interview between Tony Jones, the compere, Alan Oxley and Ross Garnaut was that, in fact, trade barriers between the United States and Australia are very low by international standards, and that has been of great benefit to Australia. I think most people who are in the business of exporting would be very pleased to ensure that we had better market access for our agricultural products and for a range of our other products into the United States market—described by Senator Brown as being a nation of 10 times our size, an affluent nation and a consumer nation with a lot of similarities to Australia. So it is a fantastic market for us to get access to. There are significant benefits.

I accept Senator Brown’s point that we need to engage in a dialogue with the Australian people. These are issues that should be talked about. It is a very positive thing for there to be a national discussion and debate about trade issues, and the government will be very much a part of doing that. Free trade with the United States is an issue that the government has been pursuing, as Senator O’Brien said in his contribution to this debate. To conclude, we will support the amendment to Senator Brown’s motion.

Senator CHERRY (Queensland) (4.10 p.m.)—The Democrats will be opposing the Labor Party’s amendment and will be supporting Senator Brown’s original motion. It is disappointing to see the Labor Party seek-
ing to amend this motion today and to see in
the wording of their amendment that they
appear to have learnt very little from the last
15 years of trade and economic reform de-
bates in this country. In the amendment I
noticed in particular that the Labor Party
calls on the Prime Minister to commit Aus-
tralia to working closely with the United
States on a reinvigorated APEC agenda that
promotes and facilitates economic growth in
the Asia-Pacific region. There is still no
mention of environmental standards, human
rights standards, labour protection standards
or all the other things that have been missing
from the last several rounds of multilateral
trade negotiations, which is why, by and
large, they have failed under political pres-
sure. It seems that Labor has still not learnt
that worldwide the trade agenda has moved
on from multilateral free trade towards the
consideration of community interests.

Within this country, we are seeing a rejec-
tion of national competition policy at a local
and regional level because it failed to address
the social, environmental and general com-
unity development issues that had been
ignored in that agenda. At an international
level, the rejection of free trade by a growing
number of ordinary consumer and citizen
groups reflects that same thrust and that
same agenda. It was quite amusing to see
John Anderson at the National Press Club
today talking about the need to moderate
national competition policy but still not see-
ing that free trade is letting down his con-
stituency. I will draw the attention of the Na-
tional Party and Senator McGauran, who I
can see in the chamber, to the reports on
Canada’s experience with 10 years of
NAFTA and free trade with the US. In par-
ticular, a report released early this year by
the Canadian Centre for Policy Alternatives
shows that, whilst Canadian exports to the
US rose sharply under NAFTA and free
trade, farm incomes fell, the average per
capita income fell and employment fell over
that 10-year period.

Senator O’Brien—It had nothing to do
with commodity prices at all.

Senator CHERRY—It had an awful lot
to do with the whole free trade agenda and
the change in the interface between imports
and import content into exports, and a whole
range of other things. Also, the fact is that
the United States will never agree to de-
regulation of its agricultural protection sub-
sidies. I noticed also that, in their joint letter
to George Bush, the Chairman of the United
States Finance Committee and the deputy
chair said:

We should pursue a free trade agenda with Aus-
tralia if there are economic benefits for the United
States.

The economic benefits will come only if
Australia dismantles some of the protections
mentioned in Senator Brown’s motion. For
that reason, I think it is very tragic and very
sad that we are accused by Senator Ian
Campbell of scaremongering for simply
raising these issues, when these are the
things DFAT is ignoring. Their paper, which
was released today, was supposed to be on
the implications of a free trade agreement. It
does not mention these issues. All they could
think of in their paper as a downside, a dis-
advantage, of their free trade agreement is
that it is not a multilateral agreement. That is
the only thing they could think of. As the
Minister for Trade has said, our broadcasting
laws, foreign investment laws, drugs laws,
motor vehicle tariffs—all of Adelaide—are
on the table because of a free trade agree-
ment with the United States. None of that has
been considered in this debate and it is tragic
that the government has not been prepared to
put those issues into the debate for discus-
sion. So we will be supporting Senator
Brown’s motion today and will be opposing,
with great disappointment—

Senator O’Brien—The motion does not
mention the car industry.

Senator CHERRY—The motion does not
mention the car industry, but the whole de-
bate has not covered the car industry.

Senator O’Brien—That is what I said is
the problem with the motion.

Senator CHERRY—Put the car industry
in the motion and we will be very happy.
You are taking out of the motion some very
important considerations that the government
has not considered and you are putting in
some very stupid considerations that the
government should not consider—in par-
ticular, the fact that economic growth is the only objective of trade policy, when there are so many other things that need to be considered. With those few comments, I will sit down. I indicate that we will be opposing the amendment.

Senator HARRIS (Queensland) (4.14 p.m.)—I rise to indicate that Pauline Hanson’s One Nation also supports Senator Brown’s original motion and opposes certain parts of Labor’s amendment. I believe the balance lies between the two motions. If we look at Senator Brown’s motion it is in the form of protecting the status quo within Australia. It would be inept for this government to enter into any arrangements with the United States in relation to a free trade agreement that did not, at the very least, protect the situation that we have at the moment, that is, in relation to our Foreign Investment Review Board or the pharmaceutical benefits scheme.

I take Labor’s point that we should not restrict the areas that we should protect, and I believe that Labor’s amendment does go to opening up the area that could be protected. However, Labor’s amendment also notes Australia’s essential national interest in the multilateral trading system and in regional economic forums, and that is the point at which I cannot support Labor’s amendment. Labor is progressing multilateral trade agreements that, as the Australian people are very well aware, have been extremely detrimental to the economy of Australia. Labor’s amendment also goes on under paragraph (b) to say:

... commit Australia to working closely with the United States on a reinvigorated Asia Pacific Economic Cooperation agenda that promotes and facilitates economic growth in the Asian-Pacific region ...  

We definitely support the promotion of economic growth within this region, but I do not believe we should in any way commit Australia to an APEC agenda. We should be committing Australia only to an Australian agenda as part of that economic growth. If we commit ourselves to APEC’s agenda, we are bringing ourselves under the influence of all the nations within the Asia-Pacific region. We are part of the world; nobody is talking about putting up protection barriers and shutting out the rest of the world. We are clearly saying that it is not for the benefit of, and in the interests of, Australia for an Australian elected government to progress the agenda of an agency—in this case, APEC—that is housed outside of Australia. With those two concerns, I indicate to the Senate that I will not support Labor’s amendment, although I believe it does open up the areas that should be protected. But because it promotes both of those issues—the WTO and the APEC agenda—I believe Senator Brown’s original motion, restricted as it is, seeks to protect the rights of the Australian people and our economy.

Senator BROWN (Tasmania) (4.19 p.m.)—This amendment, of course, guts the original motion. It is the Labor Party joining with the Howard government—and let me quote the relevant part—to call on the Prime Minister to:

... ensure a proper process of analysis and consultation, including with community groups, with regard to his proposal to pursue a free trade agreement with the United States.

There you have Labor ticking off the proposed US-Australia free trade agreement and once again providing no alternative to the Australian people. Up this end of the house, the Democrats, One Nation and the Greens are agreeing and saying, ‘At least let the public interest be fostered by there being a different point of view in the parliament.’ But Labor cannot rise to that. I will tell you why: if they win the election in November, they will be the next ones to go to Washington to carry on with this process which threatens Australian agriculture, manufacturing, the environment and the workplace. They will be there to follow it up. It is a very telling debate; it is a very telling moment. That is why in a moment we are going to see the government join the ALP in supporting this amendment to take out the specific call in my motion for Prime Minister Howard to rule out any consideration of relaxing Australia’s media content, media ownership, Foreign Investment Review Board rules or changes to the pharmaceutical benefits scheme in any such free trade agreement. Senator Cherry and Senator Harris have said
that there are other things at stake here, and
of course there are. I just picked four out of
many. You name it—car manufacturing will
be threatened by this. It will not be protected
by the Labor amendment.

Senator O’Brien—We don’t rule out any
consideration of your motion.

Senator BROWN—Mr Acting Deputy
President, in their eyes, the Labor Party do
not rule out anything—and they are not go-
ing to because they are economic rationalists.
They support the multinationals in the way
that they treat national economies around the
world. They were the people who originally
moved in this direction with the World Trade
Organisation and the consequent legislation
back in the early nineties. So it is very im-
portant that we have the smaller parties
closer to the people right across the spec-
trum, as we are at this end of the chamber at
least saying, ‘Let the people of Australia
know this is coming and we’ll provide an
alternative to Mr Howard going cap in hand
to President Bush over this matter in the run-
up to the election if the Labor Party wins it.’
I oppose the amendment.

Amendment agreed to.

Original question, as amended, resolved in
the affirmative.

CLOSED CANOPY FORESTS

Motion (by Senator Brown) not agreed
to:

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—I thank the Democrats
for their support in that motion.

HINDMARSH ISLAND BRIDGE

Motion (by Senator Brown) agreed to:

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.

REFUGEES: NORWEGIAN SHIP

Motion (by Senator Brown) agreed to:

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

MATTERS OF URGENCY

Sexuality Discrimination Legislation

The ACTING DEPUTY PRESIDENT
(Senator Hogg)—I inform the Senate that
the President has received the following let-
ter, dated 29 August 2001, from Senator
Greig:

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 fol-
lowing is a matter of urgency:

Given the recent public statements from both
Prime Minister John Howard and Opposition
Leader Kim Beazley, expressing their opposition
to discrimination against gay and lesbian people,
and noting the absence of comprehensive Com-
monwealth laws to redress this, the necessity for
Parliament to enact national laws against sexual-
ity discrimination.”

Yours sincerely

Senator Brian Greig

Australian Democrats Senator for WA

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

The ACTING 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 GREIG (Western Australia) (4.26 p.m.)—I move:

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

Given the recent public statements from both Prime Minister John Howard and Opposition Leader Kim Beazley, expressing their opposition to discrimination against gay and lesbian people, and noting the absence of comprehensive Commonwealth laws to redress this, the necessity for Parliament to enact national laws against sexuality discrimination.

In recent days, as stated in my letter, both the Prime Minister and Mr Beazley have said that they oppose discrimination of gay and lesbian people. This is not the first time that both leaders have said this, but it is the first time that their comments have gained such prominence in the media. However, in doing so, it struck me that both leaders were being exceptionally hypocritical, and that is the issue I want to address here today.

To be fair, exactly what Mr Howard said when he was asked recently on public radio by some students what his views were should be noted. He said, firstly, that he was strongly opposed to the concept of gay marriage—a concept, I hasten to add, that has never been advocated by any gay or lesbian group in Australia or by me and a concept that is not indicative in my motion. However, having thrown up that red herring, he went on to say:

Consistent with that view, I don’t think people should be penalised or discriminated against if they are homosexuals.

The media then went to the Leader of the Opposition, Mr Beazley, and asked him what he thought. Amongst other things, he said that same sex couples should be recognised under laws that apply to heterosexual couples. He said that he reckoned it was a reasonable thing that all normal laws that apply to the operation of couples for things like their superannuation arrangements should give recognition to gay couples. That is what Mr Beazley told the Seven Network a couple of days ago. Hypocrisy, I would cry, given that both leaders have repeatedly opposed, blocked or frustrated all attempts at ending this discrimination—even very recently on a range of superannuation issues.

As it happens, Australia has no Commonwealth or federal laws to address sexuality discrimination and remains one of the very few Western countries in that situation—Canada, New Zealand, Britain and South Africa all having such laws in place. The United Nations Human Rights Committee provided the opportunity in 1994 for the then Labor government to enact these laws when it came down with its finding in the Toonen case, being the case where Tasmanian resident Nicholas Toonen took his claim of discrimination to the United Nations Human Rights Committee in relation to Tasmania’s antigay laws, but by implication Australia’s antigay laws.

The UNHRC responded by saying that, yes, Australia was in breach of article 17, arbitrary interference with privacy, but the committee went further. It stated that, as far as it was concerned, article 2.1 of the UN Declaration on Human Rights, which provides a schedule of circumstances and status that is protected by the UN Declaration on Human Rights, includes sex—that is, gender—in terms of those groups of people who must not be discriminated against. In its view, the committee said that ‘sex’ ought to be interpreted by the Australian government as including sexual orientation. With that marvellous opportunity to introduce national antidiscrimination laws on those grounds, the ALP sadly chose not to do it and squibbed that opportunity. To date, the Commonwealth has failed to protect Australian citizens from sexuality discrimination, despite having both the mandate and authority to do so. Australian law experts agree that there is international precedent and jurisprudence and a need for such laws and has argued that this discrimination ought to be ended.
It is interesting to note that Nicholas Toonen, that wonderful Australian who changed international law through his activities in Tasmania and then internationally, now resides in New Zealand. It is worth explaining why. As it happens, Nick Toonen established a long-term continuing relationship with his Filipino partner. When he sought to allow his Filipino partner to come here and live as an Australian citizen, he discovered Australia’s antigay immigration laws and the hurdles that are placed in front of same sex couples trying to immigrate here. As a consequence, he and his partner now live effectively in political exile in New Zealand—an indictment of our country.

So what is needed in sexuality discrimination laws? Many people, including me, would advocate—and my motion proposes—that we can address discrimination in areas like employment, housing and the provision of goods and services in the same way as most states and territories have already done, including through various forms of legal recognition for relationships in such matters as superannuation, property settlement, wills and estates, hospital visits and coronial rights. Despite that, Mr Howard and Mr Beazley both have acted or voted against such rights and their rhetoric is hugely hypocritical. Neither party will support the Democrats’ sexuality discrimination bill or allow time to even debate it.

The issues which most affect gay and lesbian people in same sex couples are superannuation, taxation, social security, immigration, aged care, the Australian Federal Police, veterans’ affairs, the defence forces and the Commonwealth Public Service, amongst others. To flesh out a few of these issues, let me explain some of them. In the Defence Force, for example, personnel are required to relocate every two years to other Australian bases. If they are married or have a de facto partner, the department pays for the relocation and provides accommodation for that couple. That is not the case in a same sex relationship. But, worse still, if one partner in a same sex couple is a member of the Defence Force and they are working overseas under dangerous circumstances and are killed or injured, their partner is not formally notified, they are not entitled to any superannuation death benefits or compensation and they are not even entitled to grief counselling.

There has been much debate on superannuation, some of it misguided, but we understand that there is no automatic right for same sex partners to leave their superannuation contributions to their partners in the event of their death, and surviving same sex partners are specifically denied death benefits and reversionary pensions. In immigration—I have touched on this a little—the antigay administrative hurdles greatly limit the opportunity for same sex partners to come to Australia. The entrance quota—that is, the number of same sex couples allowed to emigrate here—is smaller and tighter than it has ever been.

There is a lot of hysteria and misinformation about the notion of gay marriage. I make the point repeatedly that my motion and my argument have nothing to do with that. Only today, Minister Kelly released guidelines to deal with sexuality discrimination and homophobia in sport but will not answer the question why the government will do nothing about sexuality discrimination and homophobia within government policy and legislation. While the government is attempting to address homophobia on the sporting field and youth suicide related to sexuality through its comprehensive youth suicide and sexuality related problems policies, these are simply band-aids on symptoms and do not address the underlying causes. We need comprehensive national antosexuality discrimination laws much the same as the ones that currently exist in Queensland, New South Wales and Victoria and will hopefully exist soon in my home state. But federal laws must mirror, and not contradict, those laws at a state level so that all citizens can be treated equally and fairly. (Time expired)

Senator HILL (South Australia—Minister for the Environment and Heritage) (4.33 p.m.)—This motion, moved today by the Australian Democrats, calls for national laws against sexuality discrimination. I emphasise ‘sexuality’ discrimination as opposed to ‘sexual’ discrimination. In the Commonwealth parliament, we have passed legisla-
tion in relation to sexual discrimination—that is, between the sexes—but we have not passed any in relation to sexuality discrimination. Having said that, the position of the government is that we nevertheless condemn discrimination in all its forms. We advocate a tolerant and fair-minded society and a respect for the sexual preferences of individuals.

The issue, however, is how we should within our federated system deal with issues of prejudice on the basis of sexuality. You will be aware, Mr Acting Deputy President, that most of the states and territories have already legislated to protect against discrimination on the basis of sexuality. I understand that there is legislation in New South Wales, Victoria, Queensland, South Australia, Tasmania, the Northern Territory and the ACT that prohibits discrimination on grounds such as sexuality, lawful sexual activity and sexual orientation. I understand the legislation varies from state to state, but that is not surprising. That is often the case with our federation, with a range of sovereign governments. I am also advised that Western Australia has announced its intention to draft similar legislation prohibiting discrimination on the grounds of sexuality.

Already the states have substantially moved in this area. The issue is whether, if there are still gaps, it is the appropriate role of the Commonwealth government to seek to cover the field. Apart from that argument, if there are gaps in the sense that there are matters that relate to federal powers and responsibilities, the issue is whether the Commonwealth has responded, or should respond, legislatively to those gaps. The approach of the coalition has been that we do not leap in to seek to cover the field where we might perceive some shortcoming in a piece of state legislation. We genuinely believe that each tier of government should accept the responsibility that it has. It is one thing to encourage the states to adopt certain standards with their legislation in areas that are their responsibility; it is another thing to attempt to cover the field through Commonwealth legislation. On that basis, we have not been supportive of an all encompassing national law passed by the Commonwealth.

In relation to matters that fall within the Commonwealth's responsibility there has also been action in this area. I remind the Senate that government amendments to the superannuation law, which commenced in May 1999, now allow trustees to accept binding death benefit nominations from members. These amendments allow the trustee to pay death benefits to a person nominated on the beneficiary form where that person is a dependant of the deceased member or his or her personal representative.

The government has also recently introduced the Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998, which would facilitate same sex couples to choose a fund that accepts binding death nominations. That bill, I might remind honourable senators, was defeated by the Democrats and the opposition. However, we remain committed to its passage.

As well as the Commonwealth having passed laws that take into account same sex relationships, there are Commonwealth laws that protect against discrimination on the basis of sexuality. The Workplace Relations Act contains a range of provisions intended to help prevent and eliminate discrimination, including on the basis of sexual preference. The Workplace Relations Act provides that it is unlawful to terminate a person's employment on the ground of their sexual preference. Again, discrimination in employment on the ground of sexual preference has been declared as a basis for complaint under the Human Rights and Equal Opportunity Act of 1996. Complaints can be made to the Human Rights Commission about discrimination on the ground of sexual preference in employment or occupation or about Commonwealth acts or practices that may breach human rights, which would include discrimination against someone on the basis of their sexuality, and the commission will attempt to conciliate the complaint and reach a settlement between the parties. If this is not possible, the commission can prepare a report to the Attorney-General that is tabled in the parliament. HREOC can also investigate and attempt to conciliate complaints that an act or a practice of the Commonwealth breaches
a human right, which can include discrimination on the ground of sexuality.

Apart from that, there has been further debate as to whether there should be change in relation to the superannuation law. I remind the Senate of the report by the Senate Select Committee on Superannuation and Financial Services on the Superannuation (Entitlements of Same Sex Couples) Bill 2000, tabled on 6 April 2000, which makes a number of related recommendations, including the establishment of an IDC to examine same sex issues across the Commonwealth. The government is considering this Senate report and will report back to the Senate on all of the recommendations in due course.

So what I am saying is that on a case by case basis, where the issue of discrimination on the grounds of sexuality falls within an area of Commonwealth responsibility, this government has accepted to address that particular issue and to assess whether the relevant piece of Commonwealth legislation adequately covers that matter. We do not believe in covering the field. Therefore, we are not supportive of a national law against sexuality discrimination. Rather, we accept the states’ laws in that regard in relation to Commonwealth matters that fall within our jurisdiction. We address it on an issue by issue basis.

Let me conclude by saying that this debate has been to some extent confused with the debate in relation to marriage. The Commonwealth constitutional interpretation of marriage is that marriage is ‘a union of a man and a woman, to the exclusion of all others, voluntarily entered into for life’. That definition is reflected in the Marriage Act and the Family Law Act. It is the view of the Australian government that that is the appropriate definition, and should remain so. Having said that, it does not mean that we do not recognise that the rights of same sex couples should be respected. They should be respected and we should endeavour to see that they are not disadvantaged in any way as a result of their sexual preference.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.43 p.m.)—The opposition will support this urgency motion that stands in Senator Greig’s name. The position of the Labor Party is clear. We strongly oppose discrimination against gay and lesbian people, as we oppose discrimination against anyone else. The Labor Party’s platform on this matter is unambiguous:

Labor supports legislative and administrative action by all Australian governments to eliminate discrimination, including systematic discrimination, on the grounds of race, colour, sex, religion, sexuality, disability, genetic make-up, political or other opinion, national or social origin, property, birth or other status.

We recognise the right of all Australians to live and work in an environment free from vilification or harassment, and will provide an accessible and effective means for all Australians to protect themselves from such behaviour.

Finally, another plank of the Labor Party’s platform:

Specifically, Labor supports the enactment of legislation prohibiting discrimination on the grounds of a person’s sexuality.

The Labor Party strongly believes that meaningful steps should be taken to address the systematic discrimination against gay and lesbian people. That is why we have not supported the piecemeal—and sometimes I have described them as grandstanding—amendments to legislation that have at times been moved by Senator Greig on behalf of the Australian Democrats. We believe that those amendments have been attached to legislation that is completely unrelated to this important issue before the chamber. I am pleased that Senator Greig has twigged that piecemeal amendments will not address the injustices and discrimination that both the Australian Democrats and the Labor Party aim to rid Australia of.

It is fair to say that the Labor Party has been on the front foot on this matter, introducing legislation in relation to superannuation rights for same sex partners. When the Labor Party first raised the issue of equal superannuation rights for same sex couples, some thought that this was not a mainstream issue—some thought that this was quite an obscure issue. But an injustice to any individual, to any section of society, is an injustice that undermines our society as a whole. The member for Grayndler, Mr Albanese, introduced the Superannuation (Entitlements
of Same Sex Couples) Bill 1998. We are disappointed that the government will not allow that bill to be properly debated. The Labor Party would prefer a full debate and vote on the bill, but it appears to be something that the government seems determined to prevent.

Labor’s bill in relation to equal superannuation rights is not about introducing special rights for gay and lesbian couples. It is about introducing equal rights—rights that every other Australian worker would be entitled to expect. Since introducing that bill, we have seen a groundswell of community support for law reform. The issue of recognition of same sex relationships has received coverage on programs as diverse as the ABC’s *World Today* and Mike Gibson’s morning radio show on Sydney radio station 2GB—I do not want to show all my prejudices in relation to what I might or might not listen to on the radio. I even noted that the *Australian Financial Review* columnist, Mr Christopher Pearson, not—it is fair to say—noted for his radical or Labor supporting views, has also written a column supporting Labor’s bill.

The community concern at the discrimination currently suffered by people in same sex relationships saw the Body Shop join this campaign. The Body Shop distributed information and collected signatures on petitions calling for Labor’s bill to be debated and put to a vote. I should acknowledge that the launches of the Body Shop campaign in Sydney and Melbourne were attended by coalition MPs. I do not normally quote the Body Shop in debates in the Senate, but today I will. I am not going into the question of their motivation, nor, might I say, am I promoting the Body Shop. I do not happen to own shares in the Body Shop. The Deputy Clerk is pleased to hear that, but she would have known that because she would have examined my pecuniary interest return. Let me quote the Body Shop:

Why is The Body Shop involved?
Our mission statement reads:
‘To passionately campaign for the protection of human and civil rights.’ We believe that current laws discriminate against same sex couples and that it is important for politicians to address this issue now! Not because we have a ‘gay and lesbian agenda’, as some would accuse, but because equality in the law for all Australians is significant to all Australians.

I have quoted that because the Body Shop, on this occasion, got it right. That statement is spot on. Dealing with discrimination is not about a gay and lesbian agenda, special rights or gay marriage. It is about treating people fairly and equally. Equal rights regardless of sexuality are, in my view, as fundamental as equal rights regardless of class, gender or ethnicity. In the view of the opposition, it is vital that the government show the same level of bipartisan support that we recently saw in the New South Wales parliament where the Legislative Assembly carried—without dissent—support for same sex rights in the Property Relationships Legislation Amendment Bill. Only three members of the Legislative Council—Mr Nile, Mr Oldfield and Mr Tingle—opposed the legislation in that chamber. This is a step forward. Here we have a situation where the Labor government and the Liberal opposition in New South Wales supported the legislation in both chambers. They appear to be ahead of their conservative colleagues in this parliament.

The opposition will support this motion moved by Senator Greig. We are pleased that the motion addresses the need for comprehensive Commonwealth laws against discrimination. As far as the Labor Party is concerned, I will finish by saying this: we will work with all parties and groups that support meaningful change in the way I have outlined to the law in this important area.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (4.53 p.m.)—Could I say at the outset that the National Party does not persecute or deny respect to those who enter freely into a minority lifestyle, but we do not want to promote it. We do not want to promote it to our children as an equally valid or acceptable way of life. We have before us an urgency motion that says, in effect, that the Leader of the Opposition, Kim Beazley, and the Prime
Minister, John Howard, express their opposition to discrimination against gay and lesbian people. It further says:

... and noting the absence of comprehensive Commonwealth laws to redress this, the necessity for Parliament to enact national laws against sexuality discrimination.

I listened very carefully to Senator Greig's speech, and Senator Greig acknowledges that he chose his lifestyle. I do not challenge that. That is his right. I have never, to my knowledge, discriminated against him or done anything either to Senator Greig or Senator Brown. That is their life; that is the way they choose to live. The National Party accepts that. But where we have a difference is that, when I listened to Senator Greig's maiden speech some time ago, it struck me that one of Senator Greig's missions in coming into this place was not just to acknowledge that he chose this particular way of life but to say to the Senate, 'I want to normalise this way of life. I want to condone this way of life. I want to use this parliament of Australia to move legislation that will show, if the Parliament of Australia accepts this and registers laws, that it will condone it and normalise it.' That was what I thought the main point in his maiden speech was about.

I say to the Senate that many people on the opposite side, in the Labor Party, will be put in a very embarrassing position on this. I am very pleased to say the National and Liberal parties are not going to vote for this. But if the Senate, overall, does vote for it—and it looks as though that is the way it will go—the Senate fails in its duty if it allows a single interest group to dictate the legislative agenda. This motion is all about Senator Greig trying to impose a social agenda which is not acceptable to the majority of Australians.

As my leader, Senator Hill, has said, I can remember debating the sex discrimination legislation when I first got into this place. That legislation very clearly says that discrimination is not acceptable in Australia. You cannot choose a person on their sexuality when you are choosing a person for a job; you cannot dismiss a person on their sexuality. So I would have thought we had comprehensive antidiscrimination laws. But every time there is a bill going through Senator Greig gets up and tries to tack on an amendment. I say that what he is doing is very clear: he is trying to use this parliament to do that. If this parliament, which is the highest office in the land, condones or accepts this way of life we are clearly saying to the people of Australia, 'If it is good enough for the parliament of Australia to pass laws, it is good enough for us to accept that this is a right for our children, if they choose to go this way.'

I say to Senator Greig and Senator Brown, with absolutely no malice because I have no malice, that this is not what the Australian people want. This is a lifestyle that a minority group have chosen, but do not push it onto all Australians. If that is the way that you choose to live, the majority of Australians accept it. They do not discriminate against you. They do not say, 'You are a homosexual so we are not going to vote for you.' You are both in the parliament, so you must be accepted. The Australian people do not vote on those things. Some would, but you have been chosen for the parliament. You have both disclosed your chosen way of life. But please do not try and use this parliament to condone a way of life that is not accepted by a majority of people. There is no discrimination against you in this parliament.

We have antidiscrimination laws that are effective. We have passed those laws. If we choose to vote for this, we start to get ourselves on the slippery slide, and no-one knows where we will end up. It is the same with the euthanasia debate. You start to move a little bit, then you move a little bit more, and then you have every piece of legislation that comes through having an amendment tacked onto it that condones this particular way of life.

It is clear to me that this motion will be passed. The Democrats will support it; they have always supported it. Up until now, the Labor Party have not supported it. Senator Bolkus, you have always knocked the Greig amendments back any time they have been tacked onto a piece of legislation—and Senator Greig acknowledges that—up until today. It appears that today you have changed your policy on these issues and you
are going to support this motion. Clearly, in the event of our losing government and your taking over government, with a combination of the Labor Party and the Democrats, we will have amendments that condone or normalise this way of life tacked onto legislation going through this parliament.

The National Party has to oppose this motion because it undermines the primacy of the family unit. If we support this motion, we start to get on the slippery slide. Senator Greig, I have listened to your speech. You acknowledged that you were not pushing for same sex duos to marry and adopt children. I accept that. But where do you stop once you start?

Senator Greig—Adoption is a state issue.

Senator BOSWELL—Adoption is a state issue. If you are after the adoption of children—and Senator Greig has said that he did not push marriage, but adoption is a state issue, so I presume that he is looking for adoption of children—and then have access to reproductive technology, you are undermining the family: the basic unit of society. People elect us to go into the parliament and oppose this. We want to cherish families—and marriage between men and women—and we see them as the essential building blocks of this society that the nation must be committed to and protect and defend. We believe that adoption of children in same sex couples is basically wrong. The family is a very special unit. We have to enshrine marriage, protect it and uphold it in the face of those who would want to downgrade it. Accepting this motion is the start. Where is it going to end? No-one knows. If we pass this motion, we are sending a message. (Time expired)

Senator BOLKUS (South Australia) (5.03 p.m.)—I rise also to support this motion. I make it clear from the start to Senator Boswell—and I have got to say that his contribution was a rather sad one; having known him for quite long time and knowing that he has been here for a long time, it is unfortunate that he is still using the same old arguments that we have heard quite often—that we made a commitment in 1994 in our national platform to support legislation and admin action against discrimination on the grounds of sexuality. We recommitted ourselves to that in our national platform in 1996 and have done it since. We are committed to the sort of action that this motion before us today embodies. For us, this comes within a long tradition of promoting action against discrimination, whether it is on the basis of race, sex, colour or creed. We have been at the forefront of sponsoring legislation on those grounds. Can I say to Senator Boswell before he leaves: every time we have done that, every time we have introduced legislation against discrimination, it has been Senator Boswell and his old trogolodytes in the National Party who have come in here with the slippery slope argument—'once you get on the slippery slope'. The fact is that we have legislated consistently over the years and that slippery slope that Senator Boswell is concerned about has not led to the dire consequences that he fears.

The other part of Senator Boswell's contribution that I found offensive was the way he has tried to personalise this issue in respect of Senator Greig and, to a lesser extent, in respect of Senator Brown. That does not help public policy formulation. It does not help policy debate. The issue we are talking about here is bigger than one that could be personalised in respect of Senator Greig, and I hope he found Senator Boswell's assertions in this area as offensive as I did. Senator Boswell claimed that Senator Greig is pursuing a social agenda not acceptable to many Australians. The fact is that in this national parliament we have a responsibility to all Australians. We have got to recognise the reality of life in this country. There are minorities and there is discrimination against those minorities. Senator Boswell would have us basically legislate to recognise a majority culture, a majority lifestyle, and have it imposed on the rest of us. That is not a long bow to draw from what he was saying, because that in essence is what he was asserting.

We are an enormously diverse country, including religion and culture. We have black and white and every shade in between and we have diversity of lifestyle. It is the responsibility of this parliament to actually generate mature debate and not fall into those stereotypical arguments that we have
had from the National Party again today, arguments which basically demean the minority groups in our community. To personalise them is also a way of demeaning not just the arguments but also those who propose protection for minority groups in our society.

Let me say to Senator Boswell and anyone else listening: this is not a question of promotion; this is a question of recognition and a question of respecting our fellow citizens. The sorts of activities that we are talking about protecting here are not my cup of tea, but I do recognise that we have a responsibility in this place in building a civilised society to respect lifestyles, cultures and diversity within our society. To demean continually those who propose these sorts of policies, to threaten and to run the scaremongering campaigns based on the slippery slope argument are things that this parliament should have long gotten out of.

As I said, we made our initial commitment in respect of discrimination on sexuality in 1994. In 1995, in response to the Toonan situation, we both proposed and passed the human rights sexual conduct bill of that year, protecting the rights of people in their own bedroom. Subsequent to that, in 1996, when Senator Spindler left this place, we did have before us a live piece of legislation—the Sexuality Discrimination Bill. The Senate spent quite a long time addressing that legislation—dissecting it and having a public inquiry in respect of it. In fact, it was a long inquiry and an exhaustive one, and the work done in that inquiry by people like Senator McKiernan should not be underestimated. It was an inquiry that actually raised the issues that are still of concern to people today—the issues that I am sure have driven the motion before us this afternoon.

What we did in that inquiry, in crossing the country to take advice, was to not just focus on the principle of antisexuality discrimination legislation but look at where the Commonwealth had responsibility and determine what sorts of issues were the most sensitive ones that had to be addressed. I assumed some responsibility for that legislation in 1996 because we felt that there were areas of Commonwealth law and Commonwealth responsibility that had to be addressed by the national parliament. We felt an obligation to protect people of transgender status and to protect people who were going through gender reassignment. All those issues were important.

At the same time, we felt an obligation to address some of the issues of concern that people had had over the years. For instance, the roles and responsibilities of religious schools was one issue raised at the time in the deliberations of that committee. The problem of religious schools and their employment policies was addressed to the extent that at the end of the process the legislation was recognised as having been developed in such a way that it would have allowed adequate exemptions for not just Christian schools but also Islamic schools. There was a mythology spawned by some senators on the other side about transgender in sport. It was recognised during that committee process that that was one of the issues that needed to be addressed. It was an issue that was addressed in a way that basically recognised that sporting organisations had and have a capacity to exclude those whose physiology gives them an unfair advantage. That mechanism was appropriate to handle that particular issue.

We have had a range of issues raised over the last five years in respect of this broader discrimination issue. One of the most important ones raised over that period and during that committee process was the question of superannuation. Superannuation was an ongoing concern to an ever growing number of Australians. It is a critical area that was addressed initially in the legislation sponsored by Anthony Albanese, the member for Grayndler, in the House of Representatives. In introducing a bill to make the government confront the issue, Mr Albanese said:

I have argued throughout this debate that my bill is not about introducing special rights for gay and lesbian couples. It is about introducing equal rights, rights that every other Australian worker would be perfectly entitled to expect. This private member’s bill allows for a gay or lesbian worker to properly provide for their surviving partner and children in the event of their death, which is a perfectly reasonable expectation for any couple. As the legislation currently stands, gay and lesbian couples are clearly discriminated against.
That was the driving force—and that is the driving force that I think has pushed Labor over intervening years—in respect of this legislation: not special treatment but recognition. As we said in 1996 in respect of the Sexuality Discrimination Bill, we are in the business of eliminating discrimination on the grounds of sexuality in Australian society. We believe that all people are entitled to respect, dignity and equitable access to participation in society, regardless of their sexual preference, and we are committed to protecting and promoting the human rights of gay men and lesbian women. It is an argument that drove that inquiry’s deliberations and it is an argument that I think should drive our considerations now. In saying that, I do recognise that there are a lot of people in the community who do not want this sort of recognition and protection given to minority groups. If we are in the business of legislating only for the majority, then we are not doing our job in this place.

In the deliberations on the legislation we went on to look at the provisions of state and territory legislation in this area. We found that it was not consistent and not sufficiently widespread with respect to state and territory laws. At that stage, there were two jurisdictions that did not have prohibitions on discrimination on sexuality. Now we have one—and gladly, with WA intending to legislate, we could overcome that particular problem. But there is inconsistency, and that inconsistency is not irrelevant, particularly when you are talking, for instance, about the impact of national markets and policies that are run nationally by organisations that may in fact discriminate against the people we are concerned about here.

We need to recognise that Australia is becoming more of a national community and a national market. Legislation needs to be consistent because of the fact that so many different organisations operate across states. Having inconsistent legislation—inadequate legislation in some circumstances—is not the most efficient way to go. We have had the argument consistently from the other side of politics that this is an issue best left to the states, but that is their tired old formula. It is a formula that I think the public is getting sick of. I suppose it is the first commandment of Howard’s prime ministership; it is the first commandment of Senator Hill’s approach to a whole lot of issues, particularly the environment. The fact of the matter is that we cannot keep flicking these issues off to the states. That is an abdication of national responsibility. We support this motion before us today.

Senator BROWN (Tasmania) (5.13 p.m.)—I congratulate Senator Greig on this motion and I am very pleased to see that it may well get through. I also want to congratulate a 12 year-old student named Nick Robinson who brought the matter up on Triple J’s talkback classroom segment a week or so ago. He and his fellow students talked with Mr Howard in a way which showed the change of attitude that has come with a new generation—a relaxed and easy attitude towards subjects that were once taboo and damaging.

I do not feel that we should be too harsh in responding to what Prime Minister Howard had to say or, indeed, what Senator Boswell has just had to say, because to a degree we are all captive of our own background and our own cultural as well as genetic make-up. It is very hard to escape from that and I would hate to be involved in reverse discrimination. Prime Minister Howard himself very often very subtly expresses the views of the 1950s and did so when he was questioned by Nick Robertson about the matter of homosexuality. He began by talking about the disappointment he would feel if, in a hypothetical case, a child of his were to be homosexual. That is a genuine, honest answer, but the message that goes to the girl in Geelong who is finding out just now that she is lesbian or to the boy in Toowoomba or Broome or wherever who is finding out he is homosexual is that the leader of the country is disappointed in you because of your sexuality. That is a very deeply damaging message and we have got past it. We need to be able to say to people, ‘Look, celebrate your left-handedness, celebrate your brown hair, celebrate your sexuality, be it heterosexual or homosexual, celebrate your talent, your own make-up, in its magnificent diversity as part of the natural spectrum.’ That
applies to homosexuality as much as it does to any other part of one’s characteristics. We have to get away from the message to youngsters that, if they are one of the one million or so Australians who happen to be homosexual, they should in some way or other think that that is a matter for anything other than celebration—the same as sexuality if you happen to be heterosexual.

That is the interesting part about this debate. I was talking to young people about this recently and was quite pleasantly astonished to find that they just do not feel that it is really an issue—that is, an attitude difference towards people on the basis of their sexuality. I know that that is not universal, but the very fact that youngsters chatting amongst themselves—bright, intelligent young Australians—feel that way shows what a sea change there has been in just my lifetime. I celebrate that, that is a great thing; it is just fantastic. It is making a huge difference to the right to be happy that so many young Australians have been denied in the past because they discovered that they were not heterosexual.

On the matter of discrimination, I think that we should end it wherever it applies in the statute books. It is as simple as that. A growing number of Australians feel the same way. When it comes to a partnership between same sex couples, whether or not they have children, is that any different to a partnership between opposite sex couples in terms of the investment that people put into it, the benefits they get from it and the contribution that that partnership of itself, let alone the individuals, makes to the wider society? Of course not. So things have changed mightily for the better. Congratulations to the young Australians who saw this as an issue worthy of bringing up when they chatted with the Prime Minister and congratulations to him for his response. *(Time expired)*

**Senator HARRADINE** (Tasmania) *(5.18 p.m.)*—The Senate has before it an urgency motion which notes the absence of comprehensive laws against sexuality discrimination. I presume that means that the motion seeks comprehensive laws against sexuality discrimination. The parliament, through its committees, has had a number of submissions before it, and these submissions from various groups have expressed concern about employment discrimination, about violence and harassment and about superannuation. Let me make it perfectly clear that I oppose and have opposed for many years unfair discrimination in employment. It goes without saying that I reject and vigorously oppose violence and harassment.

On the question of superannuation, you have got to be careful that you do not discriminate against persons in a similar position, the only difference being that they do not have sex together. You could, for example, have two workers who die. Both were employed in the same place. One worker had a homosexual partner. The other worker lived with his brother—or it might be two sisters living together—and that person was dependent upon the worker for shelter. Under a proposed automatic rights scheme for superannuation to go to the homosexual partner, the relative of the deceased worker would get nothing. It would be a real twist in sex discrimination, would it not, if a person were denied these rights just because they did not engage in homosexual sex with the other person?

What is the homosexual lobby agenda? I have been trying to work that out since I heard about this motion. It seems that, whilst they do not seek homosexual marriage, they want to make it compulsory that homosexual couples be recognised and treated the same as those who are married. That is what this is about and that, of course, undermines the importance of marriage in our society and undermines the importance of having children in our society. If everyone were homosexual, there would be no family. They want to make it compulsory that the homosexual lifestyle be taught to our schoolchildren as desirable and as equally valid as marriage—let Senator Greig deny that—and they want to lower the age of consent. That increases the vulnerability of those adolescents who are in a confused state of mind, especially those who experience temporary homosexual tendencies—and that is not unusual. What about a pastor in a pulpit? Is he going to be tackled by the proposed laws that are being suggested by the homosexual lobby group?
Does he run a legal risk if, from the pulpit, he condemns homosexual practices and quotes the Bible in his support of his condemnation? That has happened in Canada.

(Time expired)

Senator GREIG (Western Australia) (5.23 p.m.)—In the three minutes I have remaining, it is very difficult to respond to all the things raised in the debate. I thank those senators who contributed, both for and against. I think this debate is important. I will recap by touching on a few things. Senator Hill’s contribution was perhaps as audacious as it was disingenuous. He argued, essentially, that this was a state issue—effectively ignoring the fact that there was a raft of Commonwealth discrimination, much of which he did not address. He did mention that superannuation might be addressed sometimes by gay and lesbian superannuants leaving their superannuation to a trustee, but he failed to mention there are tax imposts and other discriminatory practices that take place in that, and he failed to mention that that did not fix anything in relation to death benefits or reversionary pensions.

He accused the Democrats of sinking the super choice bill which would have allowed, he argued, this discrimination to end, thereby promoting the repugnant argument, in my view, that market forces should determine human rights. Wrong. We specifically voted against that legislation purely on the grounds that the government would not accept a simple human rights amendment relating to same sex couples. He went on to say that the Workplace Relations Act included unfair dismissal provisions for gay and lesbian people. True. That happened because the Democrats amended it to do so. What he failed to point out was that unfair dismissal is the only aspect of employment relations that deals with this form of discrimination, not others. He also said that his government was looking at a whole-of-government approach. I point out that the Attorney-General said exactly the same thing at the last election and has done nothing since.

I thank Senator Faulkner for his contribution, although it was wrong of him to accuse me of making piecemeal amendments to the legislation rather than addressing it in a wholesale fashion. I point out, once again, that we Democrats have introduced a wholesale bill—the Sexuality Discrimination Bill 1995—which has been on the Notice Paper since 1995 and which Labor today will not support nor allow time to debate. He promoted the Anthony Albanese superannuation bill but again failed to point out that it is simply one part of one section of the Sexuality Discrimination Bill 1995.

Senator Boswell effectively argued that gay and lesbian people choose to be so. I utterly refute that, both from a psychological point of view and from a personal point of view. This is not about choice, and therefore discrimination against gay and lesbian people on the grounds of sexuality is as repugnant as racism or antisemiticism. Senator Harradine raised a number of issues which time really does not allow me to respond to other than to say that he is wrong. This is not about marriage; it is not about age of consent. I would argue that the discrimination promoted through policy breeds much of the homophobia and violence to which he says he is opposed. I thank senators for their contribution. I think it is important that this Senate does send a strong message to the parliament, to the House of Representatives and to the Australian community that this discrimination is not acceptable and that it should be addressed and must be addressed with overarching national comprehensive sexuality discrimination laws which mirror the states and which do not contradict the states.

Question resolved in the affirmative.

Senator GREIG (Western Australia) (5.27 p.m.)—Pursuant to standing order 154, I move:

That the resolution just agreed to be communicated by message to the House of Representatives for its concurrence.

Senator HARRADINE (Tasmania) (5.27 p.m.)—I do not know the reason that this ought to be transmitted to the House of Representatives. The House of Representatives members will no doubt consider the matter if it is referred and if they have time. They have plenty to do with their time. This is a very important issue, and I would like to see the House of Representatives deal with the
matter in a manner that gives people time to debate the issues in full. Senator Greig did not have time, as he said, to respond to some of my issues. I challenge him to deny that the homosexual lobby group’s agenda includes the compulsory teaching of our children in schools that the homosexual lifestyle is equally as valid as marriage. That is on their agenda.

Senator Greig—Mr Acting Deputy President, I rise on a point of order. Senator Harradine has not made clear what particular standing order he is using to make this speech and has not sought leave to speak.

The ACTING DEPUTY PRESIDENT (Senator Watson)—He is just debating the motion you put forward.

Senator HARRADINE—I ask Senator Greig to deny that. Let the people of Australia say whether they would like that—that is, that the homosexual lifestyle be taught to our schoolchildren as desirable and valid. Does Senator Greig say that promiscuity or sex outside of marriage, for example, should be taught to our children as being a desirable and valid lifestyle? Is that what is being said? I certainly know lots of people with homosexual tendencies. Lots of people going through adolescence do have homosexual tendencies. They might have a crush on a mate at school or something like that, but very often they grow through that. But should we have this lifestyle taught to our children compulsorily on the grounds that if it is not taught to our children compulsorily it is discrimination? The Labor Party have to face up to this. I did not interpret the Labor Party’s policy as meaning that, but does it? These things need to be considered very carefully indeed.

On the question of access to IVF for lesbians, again this is a matter of great concern amongst the community. There is a great deal of angst in the community about that, particularly as the rights of the child should be pre-eminent in all of these considerations. Their best interests should prevail. It is not that you should have a person say ‘I want a child’ like they say ‘I want a new car’. The pre-eminence of the rights of the child and their best interests should prevail. What we have to ask ourselves is whether it is in the best interests of a child to be denied from the word go their right to know who their father is and their right to be cared for by their father. That is what this means. Let us face it: that is what this means. I for one believe in fatherhood, and what is being proposed in respect of the access of lesbians, for example, to IVF is the denial from the word go of the child’s right to know who their father is and their right to be cared for by that father—as well as by the mother, of course. We are dealing with very important issues here. I actually support the motion that it go to the House of Representatives so there will be a decent old discussion about it. Let us get out into the open what this means and let us see what the agenda is. It will not be denied by Senator Greig.

Regarding the adoption of children, again, the best interests of the child must prevail. Senator Greig in the previous debate talked about what is happening in Canada. He mentioned Canada in an approving way. But what was the recent case in Canada? A pastor who happened to be speaking from the pulpit expressing opposition to the homosexual lifestyle—and I deliberately say ‘homosexual lifestyle’ to distinguish it from being a reference to a person with homosexual tendencies—quoted biblical passages to support what he was saying. Legal action was taken against him and it was then found that he could not do that. Is that the way people want to go in this country?

There are lots of other areas that I would like to discuss at the present moment but this is obviously not the time nor the place. I support this motion going back to the House of Representatives, and I will be very interested to hear the debate there if time is given to it.

Senator ROBERT RAY (Victoria) (5.36 p.m.)—I will make two brief comments. Firstly, the House of Representatives no longer need to deal with this message. They changed their standing orders a few months ago because that inveterate sender of messages, Senator Carr, did it once too often, so no matter what we do today this will not get much of a mention. Secondly, Senator Harradine—it has been rare for me to criticise you—in all the time Senator Carr has been
here and sent messages down, until this moment he did not realise he could make a 20-minute speech. You have let the cat out of the bag and we are all going to pay a horrible price!

Senator CARR (Victoria) (5.36 p.m.)—I join with Senator Ray. I draw his attention to the fact that, as I understand it, a notice of motion has been given in the House of Representatives to change its standing orders. I am not altogether convinced that that has been carried, so it may well be there is a need for this motion to go forth. Of course, now that Senator Ray has drawn my attention to this omission on my part, I think it would be only too kind of me to take up this matter for him.

Senator CALVERT (Tasmania) (5.37 p.m.)—Whilst we will not oppose this motion—because we can count—we reiterate that we oppose the original motion. But we will not oppose this motion of Senator Greig’s.

Senator GREIG (Western Australia) (5.37 p.m.)—I do not propose to speak at great length, but Senator Harradine did throw a few rhetorical questions to me and I take this opportunity to reply. The one which most offends me is the accusation that there is some kind of agenda, either from myself or ‘the homosexual lobby’, whatever that is, to promote or encourage homosexuality in schools. I want to reiterate the point that you cannot promote or encourage something as innate as a person’s sexuality.

What is happening in some schools, to their great credit, is antidiscrimination and antihomophobia education. Interestingly, most of that is being done in Senator Harradine’s home state of Tasmania, which I would argue leads the world in terms of the way it addresses discrimination and harassment against gay and lesbian people in schools. In fact, the education department has issued a directive to all of its state schools that this form of training and antihomophobia education is compulsory, and I applaud that.

I also make the point that the Howard coalition government is the biggest spending government on programs for the prevention of youth suicide related to sexuality. Prime Minister Howard has spent more than any previous Labor government on addressing youth suicide related to sexuality, and has initiated a range of wonderful, largely rural-based programs aimed at reaching young gay and lesbian people and teaching them that their sexuality is valid, that they are not second-class citizens, that they ought to have human rights and equality and they should not live in fear and isolation, and I applaud that.

The principal pilot program for the project and its funding again is based in Senator Harradine’s home state of Tasmania. I would encourage him to have a close look at that and I would ask him the rhetorical question: if he is so fearful of what he calls education and promotion, why then is his home state leading the way in this? Of course, the answer to that is because there has been tremendous community debate in his home state of Tasmania on this issue and that has led to wonderful community education and excellent parliamentary responses.

I am pleased that my home state appears to be on the verge of also adopting antidiscrimination laws and same-sex couple laws. In the event that that happens in the comprehensive way that is proposed, that too would include curriculum changes that would deal with sexuality education and antihomophobia training in schools. That too is a wonderful thing. It is very damaging and very wrong for people like Senator Harradine—he is not the only one—to continue to promote the myth that sexuality, and homosexuality in particular, is some kind of lifestyle choice, as if people wake up one morning and say to themselves, ‘Gee, I think I would like to be discriminated against in social security, taxation, immigration, superannuation, Commonwealth defence forces, employment, housing and provision of goods and services. I would like to make myself vulnerable to abuse and vilification. I would like to make myself subject to verbal abuse, harassment and violence at much greater rates than anybody else. I would like to expose myself to the possibility of being hugely more at risk of suicide than other people. Yes, I will sud-
It is patently ridiculous. I repeat the words of, I think, Justice Michael Kirby, who has been very brave in this area, and has argued that discrimination on the grounds of sexuality is as morally repugnant as racism and anti-Semitism. I would echo that. In principle, what I am trying to do here today through this legislation—and I paraphrase the wonderful words of Martin Luther King Jr during the civil rights movement in America—is to say, ‘Judicial decrees may not restrain the heart, but they can restrain the heartless.’

Question resolved in the affirmative.

COMMITTEES
Scrutiny of Bills Committee
Report

Ordered that the report be printed.

Senate Community Affairs Reference Committee
Additional Information
Senator O'BRIEN (Tasmania) (5.42 p.m.)—On behalf of Senator Crowley, Chair of the Senate Community Affairs Reference Committee, I present additional information received by the Community Affairs Reference Committee, relating to its inquiry into public hospital funding, in the form of 53 postcards expressing wholehearted support for Medicare and our public hospital system.

Employment, Workplace Relations, Small Business and Education Legislation Committee
Additional Information
Senator CALVERT (Tasmania) (5.43 p.m.)—On behalf of Senator Tierney, Chair of the Employment, Workplace Relations and Small Business and Education Legislation Committee, I present additional information received by the committee relating to hearings on the budget estimates for 2001-02.

PARLIAMENTARY ZONE
Proposal for Works
Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (5.43 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to the design and siting of the exhaust flues, a change of tree species, changes to the walkway design and staircourt, and the external lighting design of Commonwealth Place. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator HEFFERNAN—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and siting of the exhaust flues, a change of tree species, changes to the walkway design and staircourt, and the external lighting design of Commonwealth Place.

FAMILY LAW LEGISLATION AMENDMENT (SUPERANNUATION) (CONSEQUENTIAL PROVISIONS) BILL 2001

TREASURY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL (No. 3) 2001

First Reading

Bills received from the House of Representatives.

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (5.45 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the Notice Paper. I move:

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

Question resolved in the affirmative.

Bills read a first time.
Second Reading

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (5.46 p.m.)—I table revised explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

FAMILY LAW LEGISLATION AMENDMENT (SUPERANNUATION) (CONSEQUENTIAL AMENDMENTS) BILL 2001

The Family Law Legislation Amendment (Superannuation) (Consequential Provisions) Bill 2001 will make amendments to relevant tax legislation to ensure that appropriate tax treatment is applied to superannuation interests which will be split pursuant to the Family Law Legislation Amendment (Superannuation) Act 2001. The Family Law Legislation Amendment (Superannuation) Act is another landmark in the Howard Government’s ongoing reform of family law.

Under the Act, couples will for the first time be able to divide their superannuation interests on marriage breakdown in the same way as their other assets.

This Consequential bill will amend the Income Tax Assessment Act 1936 so that:

- the non-member’s entitlement will be treated as a separate eligible termination payment;
- the undeducted contributions, concessional, post-June 1994 invalidity, CGT exempt components and the untaxed element of the post-June 1983 component will be split on a proportionate basis to the overall split; and
- the non-member spouse’s benefit will be assessed separately against his or her own reasonable benefit limit.

The Consequential Bill will also amend the Income Tax Assessment Act 1997 so that:

- capital gains or losses that may arise from the creation or forgoing of rights when spouses enter into a binding superannuation agreement or where the agreement comes to an end will be disregarded;
- the current CGT exemption for payments made from a superannuation fund or an approved deposit fund will be extended to non-member spouses; and
- CGT rollover relief will apply to in-specie transfers between funds with fewer than five members.

In addition, the Consequential Bill will amend:

- the Small Superannuation Accounts Act 1995 to provide for accounts held within the Superannuation Holding Accounts Reserve (SHAR) to be split;
- the Superannuation Contributions Tax (Assessment and Collection) Act 1997 to ensure that, if a surcharge assessment is issued after a split but in respect of a period prior to the split, then the fund that holds those surchargeable contributions for the member spouse will be liable to pay the surcharge. If no fund holds those surchargeable contributions for the member spouse, then the member spouse will be liable to pay the surcharge;
- the Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection) Act 1997 to that ensure payments to a non-member spouse will trigger payment of the surcharge debt account by an unfunded defined benefit scheme (or the member in a constitutionally protected fund) if the benefit payment would have triggered payment of the debt account if made to the member spouse;
- the Superannuation (Unclaimed Money and Lost Members) Act 1999 to apply the same protection and rights to the non-member spouse that are currently given to the member spouse; and
- the Family Law Act 1975 to widen a regulation making power inserted in that Act by the Family Law Legislation Amendment (Superannuation) Act, and also to make some other minor consequential amendments.

Full details of the measures in this bill are contained in the explanatory memorandum.

TREASURY LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL (No.3) 2001

The purpose of this bill is to make consequential amendments to certain offence provision in the legislation administered by the Treasurer to reflect the application of the Criminal Code Act 1995 to existing offence provisions from 15 December 2001.

The bill is the last of the portfolio bills on this subject and proposes consequential amendments to the Corporations Act 2001, the Financial Sec-

The Treasury Legislation (Application of Criminal Code) Bill (No.2) 2001 has previously been introduced and would make amendments to the range of taxation legislation, the Superannuation (Resolution of Complaints) Act 1993 and aspects of the Trade Practices Act 1974 that required consultation with the States. This bill provides for amendments that clarify the physical elements of an offence and corresponding fault elements (where these fault elements vary from those specified by the Code) and specify whether an offence is one of strict or absolute liability. In the absence of such an amendment, offences previously interpreted as being one of strict or absolute liability would be interpreted as not being one of strict or absolute liability. In addition, any defences to an offence are being restated separately from the words of the offence. Use is being made of this opportunity to convert penalties expressed as dollar amounts to penalty units.

The amendments to the Trade Practices Act 1974 in this bill make a technical amendment to the penalties for a contravention of the consumer protection provisions. The amendments do not change the status of the offences but simply ensure that the penalties that currently apply will continue to apply following the application of the Criminal Code.

The bill does not change the criminal law. Rather, it ensures that the current law is maintained following application of the Criminal Code Act to Commonwealth legislation.

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

Ordered that the bills be listed on the Notice Paper as separate orders of the day.
The Family Assistance Office is working closely with families to help them with their estimates for 2001-02. If a family has both an FTB overpayment and a CCB overpayment, the $1,000 tolerance will apply to each overpayment. Some customers may have more than one FTB overpayment or more than one CCB overpayment subject to the $1,000 tolerance. For these people, any tolerance amount remaining from the first overpayment will apply to the second. Any family that still has an excess payment after the $1,000 tolerance may have it recovered by adjusting their future payments.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.49 p.m.)—I thank Senator Heffernan, and I thank senators for their contributions to the debate. I understand that there are differing issues and differing opinions in relation to this matter and, in particular, to the difficulty that some families have faced in the first year of this new system. Some people want now what they see as longer term solutions and do not accept that, in fact, the difficulty that was faced in the first year will not be faced in the following year. We can have that debate, and no doubt we will do so. Since this is an election year, I am pretty confident that Senator Evans and others will take quite appropriate political opportunities to make their points, and so will Senator Bartlett. That debate, I think, is for another day. This debate is about giving legislative approval for a $1,000 waiver on the first $1,000 of an FTB overpayment and the same for the CCB. I thank senators for their contributions. We have disagreements, I am sure, and I have no doubt that we will continue to have them.

The ACTING DEPUTY PRESIDENT (Senator Watson)—The question is that Senator Bartlett’s amendment to Senator Forshaw’s amendment be agreed to.

Question resolved in the negative.

The ACTING DEPUTY PRESIDENT—We now move to Senator Forshaw’s amendment. The question is that Senator Forshaw’s amendment be agreed to.

Question resolved in the negative.

Senator BARTLETT (Queensland) (5.52 p.m.)—I move the amendment standing in my name, which has been circulated for a day or two:

(1) Schedule 1, page 3 (after line 5), before item 1, insert:

(1A) Subsection 97(2)  
Repeal the subsection, substitute:

The Secretary must waive the administrative error proportion of a debt if the debtor received in good faith the payment or payments that gave rise to the administrative error proportion of the debt.

The amendment relates to the waiver of debts which have arisen solely due to administrative error. Of particular concern to the Democrats is the requirement that not only does good faith have to be currently present but also the person must suffer severe hardship. It is important that we recognise that debts which are the subject of this amendment are those which are not the fault of the recipient. In a perfect world, we would not have administrative error; however, complexities of the legislation, administrative processes and human nature mean that administrative error does occur. People are sometimes paid more than their entitlements, and the question to consider is whether it is reasonable to recover those moneys.

This is not a debt where recipients have failed to comply with legislation. The intention of parliament is clearly that the mere presence of administrative error alone is not sufficient grounds for waiver. This legislation requires that good faith must be present. This test of good faith is not an easy one; indeed, it is one which successive Federal Court judges have had difficulty in defining. A person can be unaware that they have received moneys in error and may still not pass the good faith test. But we should not lose sight of the fact that we are talking about
recipients who are totally absolved of any wrongdoing in these debts and have no knowledge that they are not entitled to the moneys. Indeed, if the person has a notion that they are not entitled, the test of good faith is not met. Administrative debt waiver is not a windfall; we are talking about moneys that people have received in the legitimate understanding that they were entitled to them.

The family payment, which applies under the Family Assistance Administration Act, is about money for raising children. As I said earlier in this debate, it is used for the day-to-day needs of raising children, including housing, food, clothing, education and medical needs. The income test for family tax benefit means that parents who need financial assistance in raising their children receive it. This means that people have often spent the overpaid moneys on the care of their children. There will often be difficulties in having to repay those moneys, and a degree of going without.

Reminding ourselves that these debts we are dealing with under this amendment are entirely the fault of the agency that made the payment, the Democrats submit that there should be no requirement for the person to demonstrate hardship in their repayment. We do not support the keeping of moneys for which there is no entitlement, but the department and agency cannot use the hardship waiver requirement as a risk management device. I do believe—and I think recent reports by the Auditor-General would reinforce the fact—that there needs to be greater attention to practices and procedures in order to reduce administrative error rather than simply allowing it to happen, safe in the understanding that the hardship rules will enable the moneys to be recovered. This amendment is being moved because the bill relates to family payments and indeed to debts and debt waiver. We think it is an appropriate one to address this particular aspect of the existing act and I commend the amendment to the Senate.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.55 p.m.)—I indicate that the government does not support that amendment. I understand in principle what Senator Bartlett is getting at. He says there are different regimes and therefore they should be the same. I think that because they are different they should not be.

The program differences do make it very, very difficult to align family assistance and social security waiver provisions. That is because social security is a basic means of support for customers, whereas family assistance provides additional help with the costs of raising children. People on what I hope everyone here would regard as quite high incomes can get family assistance. Another point of difference is that family assistance arrears provisions are much more generous than for social security. Up to two years arrears of family assistance can be paid. The reasonable corollary of that is that overpayments should generally be recoverable over the same period. My advice is that your proposed amendment would basically waive all administrative error debts received in good faith. I do not think that is sustainable in the context of the differences between these two systems.

The severe financial hardship test actually gives an advantage to family assistance customers over social security customers if recovery is sought within six weeks of the administrative error. In that case, a social security overpayment must be recovered, but a family assistance overpayment can be waived if there is severe financial hardship. This is a matter you might care to have looked at in other parliamentary forums for the future if you do not accept what the government says in this context. I am very happy that we are putting a reasonable case and would therefore of course be happy to have the matter looked at.

Senator CHRIS EVANS (Western Australia) (5.57 p.m.)—I indicate that when this issue was last debated the government provided assurances that the issue of admin error debts would be investigated. I think we had a discussion about how it was going to be handled and there was a discussion about a process to examine the application of these provisions. I have not heard how the government and Senator Vanstone are proceed-
ing with that investigation. I am interested to see if the minister has anything to tell the Senate today about how that is going.

I suppose the key issue for us is that we are inclined to support the principles that underpin the Democrat amendment, but we do recognise the point Senator Vanstone makes about broadening the waivers that apply under the family assistance act—and also, to be frank, that this bill is one that is urgently required to prevent families being faced with quite large debts and, we think, quite unreasonable debts. We do think there is a need to fix this problem in a longer term way rather than just for this year. I suspect whoever is in government next year will want to do that. I am not sure the government’s confidence about the system being maintained will continue. I accept that this is just a one-year fix, but I suspect the political imperatives that drove the fix this year will drive the need for a more long-term solution as well.

In any event, our concern is to make sure that the bill is passed and families are not faced with those debts. As I say, I have some sympathy for the issues Senator Bartlett is raising. We have had this discussion before in the context of other bills, but we do not want to provide the mechanism whereby supporting this amendment would cause delay and a debate about the costs of the measure, et cetera, and would frustrate the legislation being passed.

We are not going to support the amendment on this occasion. Again I flag our interest in the issue and our concern about the administrative debt issue. I would be interested if Senator Vanstone has anything to say about what is happening more broadly about that debate. But, as I say, on this occasion, because of the need to have the legislation passed and what we see would be a potential for the bill to be delayed because of a fight about the costs of administrative debt waivers, et cetera, we will not be supporting the amendment on this occasion.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.00 p.m.)—I have no desire to delay this debate but, just to respond to Senator Evans, the officers here did not have knowledge at the time—and still do not have—of that area. It is just because it is these particular officers: I am not saying that they are not playing with the full cards in the deck, but they are not the ones who would know about any review, so I cannot give you any information on that. One of them has gone out to make a telephone call and come back and has still not been able to get that information, but I will get it for you. I will look back to when the commitment was made and what has happened. I am just indicating that we have tried and that these officers are not able to help me in that context.

Amendment not agreed to.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

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

First Reading

Bill received from the House of Representatives.

Motion (by Senator Vanstone) agreed to:

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

Bill read a first time.

Second Reading

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (6.02 p.m.)—I move:

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

Bill read a first time.

The speech read as follows—

In January this year, the Prime Minister made the most significant set of policy and funding announcements in support of innovation that have ever been made in Australia.
The Government’s Innovation Action Plan, Backing Australia’s Ability, is not some vague set of high-minded pronouncements or an unfunded wish-list. It is a well thought-out, comprehensive and, most importantly, fully costed and funded package of initiatives that will deliver demonstrable benefits to Australia. It commits an additional $2.9 billion over 5 years for science, research and innovation, including an additional $1.47 billion to be provided through the university sector. The pay-off from this commitment will be seen for many years to come in Australia’s R&D and overall economic performance.

A key principle of Backing Australia’s Ability is improving access to post-graduate coursework opportunities in our universities in order to further develop Australia’s skills base. The resulting initiative, the Postgraduate Education Loan Scheme (PELS), is the primary focus of this bill. PELS is designed to encourage life-long learning and to help Australians upgrade and acquire new skills to keep at the forefront of their professions. It will improve access to postgraduate coursework study by providing interest-free, income contingent loans similar to HECS. The loans will mean that students will no longer be prevented from participating in postgraduate studies because they are unable to pay the tuition fee up-front.

It is expected that the loans provided under this Scheme will amount to some $995 million over the next five years and will assist around 240,000 students in their aspirations to undertake further advanced education.

It is the Government’s intention that this Scheme commence at the beginning of the 2002 academic year. The announcement of the Scheme in January generated significant interest in the university community and amongst potential students. The hotlines in my Department have received many inquiries from students and universities about postgraduate loans. Even the Government’s most vociferous critics admit that PELS will significantly improve access to postgraduate coursework education.

Unfortunately these plans have been jeopardised in this Parliament by the action of the Opposition and Democrats in the Senate and their efforts to frustrate the Government’s legislative program. These actions have created confusion and uncertainty in the higher education community.

Unless this measure proceeds smoothly through Parliament this time around there is a real possibility that many thousands of students expecting to have access to interest-free loans in Semester 1 of 2002 will be disappointed. I call on both Houses of Parliament to understand the damage that might be done if there is further unnecessary delay in the passage of this measure and to give it the most expeditious consideration.

The Government will commence a formal review of the impact of the Postgraduate Education Loan Scheme (PELS) two years from its date of implementation. Terms of reference will be detailed closer to the time of that review. In the interim, statistical data will be collected on the Scheme and will be published annually through the Triennium Report and the higher education statistics collection, and will include data on the take-up of PELS, for example by institution, age, gender, equity group, courses undertaken and fee levels.

The bill will give the Minister the discretion to impose a cap on the maximum amount of debt students can accumulate under HECS and PELS. This measure is an important protection that may be necessary to discourage a minority of students building up an imprudent level of indebtedness and to provide a damper on potential fee increases within the sector.

I have made it clear, however, that this provision is simply to provide for a contingency and one the Government believes is unlikely to arise. For that reason there is no immediate intention to exercise the discretion provided by the bill. Further, any exercise of the discretion would be through an instrument disallowable in the Parliament.

The Opposition has signalled that it opposes a single cap that applies to both schemes and may propose an amendment that would restrict the cap to PELS debt only. This means that a student who proceeds to postgraduate coursework and takes out a PELS loan would have two debts to manage. This proposal would impose an unreasonable burden on the taxpayer in the form of significantly higher implementation costs for the Australian Taxation Office. It also ignores the objective of addressing students’ total indebtedness, not just indebtedness deriving from PELS. Such an amendment would therefore not be acceptable to the Government.

Other provisions in the bill will make it easier for universities to operate in an electronic environment consistent with the requirements of the Electronic Transactions Act 1999.

The bill contains two further measures that will add some $40 million to university operating grants over 2001, 2002 and 2003. The bill increases the Commonwealth’s contribution to university superannuation schemes by around $6 million in both 2002 and 2003 so that beneficiaries in the State/Commonwealth jointly funded university super scheme in Victoria can convert the benefit to a lump sum on retirement.
The bill also increases university operating grants by a total of $27.6 million in 2001 to account for the higher than anticipated success rate of universities applying for funding from the Higher Education Workplace Reform Programme. I have been particularly pleased with the response of universities to this offer, which shows that the majority have committed to making reforms to their workplace and management practices.

Finally, I would like again to request that all parties act to expedite consideration of this bill. If we are truly concerned with innovation in this country and with ensuring that we have highly skilled people for our industries, then we should give potential postgraduate students certainty about the availability of PELS from the beginning of next year. I am prepared to commit to this objective and I urge Members and Senators to do likewise.

I commend the bill to the Senate.

Senator CARR (Victoria) (6.02 p.m.)—This bill provides for the establishment of the Postgraduate Education Loans Scheme, more commonly known as PELS. This scheme was announced in last January’s innovation statement. That statement was ambitiously called Backing Australia’s Ability, but I think it might have been more appropriate to call it ‘Backing down before the election’. It was designed to try to make us all forget just how much damage this government has done to education and to try to convince Australians that this government and Mr Howard himself have finally realised how stupid it was to steal from the future by cutting funds from education, from training and from research.

We have seen how the Howard government began its attacks on education in its very first budget. What it tried to do from the very start in 1996 was to take money from the universities every year. It is still trying to do that. In 1996, Commonwealth university funding was $4.875 billion. According to the answers that we were able to extract from the department during the Senate estimates process, by 2002 this will have fallen to $4.223 billion. This adds up to more than $3 billion taken from public funding of universities. The minister has begun circulating a so-called fact sheet on higher education which once again lives up to his reputation for using statistics to present a totally misleading picture. For example, his fact sheet claims that universities are enjoying record revenues. We all know, from his own department’s figures—from DETYA’s figures—that the Commonwealth’s contribution has been cut every year under this government. The Commonwealth’s funding for universities will be some $652 million lower in 2002 than it was in Labor’s last year in office. In 2000, the number of Australian students at our universities fell by more than 3,000. The so-called extra 2,000 student places announced in the innovation statement mean that it will take years to repair even last year’s damage.

Last Friday, the minister was at it again. He made a detailed announcement about these places and, needless to say, we saw the usual razzle-dazzle and the various arms of the propaganda machine were put into action. Of course, when you look at the detail of the ministerial announcement last week, you see the stark reality: the so-called new university places add up to less than three per cent of what was previously cut away. I will demonstrate that by drawing the Senate’s attention to a few basic statistics. In 2002, if it were not for this government’s funding cuts, there would be some 25,525 more places in New South Wales; there would be 21,832 more places in Victoria; there would be 14,643 more places in Queensland; there would be 8,108 more places in Western Australia; there would be 5,825 more places in South Australia; there would be 1,578 more places in Tasmania; there would be 494 more places in the Northern Territory; and there would be 2,395 more places in the Australian Capital Territory.

While the government was announcing extra funding for research in the innovation statement, it was proceeding to reduce the research training places at most Australian universities. This year, there have been some 3,500 fewer research training places Australia-wide, thanks to the government’s white paper on research. The University of Western Sydney lost 50 per cent of its research training places; Edith Cowan and the RMIT both lost 46 per cent; Victoria University lost 37 per cent; Swinburne lost 35 per cent; Ballarat lost 41 per cent; Deakin lost 43 per cent—and the list goes on. Dr Kemp likes to talk
d the list goes on. Dr Kemp likes to talk about his hit list, and this is a breathtaking example of a hit list consisting of newer and regional universities which this government itself has targeted. Labor has already announced a policy to restore some of these places. Unlike the government, we do not believe that excellent research can take place in only a few selected institutions. There has to be a broad spread of research effort.

The Howard government has targeted postgraduate students for particularly harsh treatment in its savage cuts to higher education. In 1996, when it cut some 21,000 university places, institutions were forced to make the cuts as far as possible in the postgraduate coursework areas. A total prepared by the Council of Australian Postgraduate Associations, based on DETYA material, shows that funded postgraduate coursework places will have fallen from 41,315 in 1996 to 15,292 by 2002, while fee paying places will have risen by 32,112—an increase of 160 per cent. The vast expansion of full, up-front fee paying has not impacted uniformly on postgraduate course enrolments. What is of most concern is that some of the key disciplines have experienced significant falls. For example, enrolments in the sciences have fallen by 25 per cent between 1996 and 1999, according to CAPA analysis, based on this DETYA material. Enrolments in education went down by 16 per cent and those in engineering have fallen by 19 per cent. This, of course, is all very bad news for the future of Australia. We need to support and encourage lifelong learning and the upgrading of skills throughout the work force and throughout people’s lives if Australia is to meet the challenges facing it.

Having created a situation where significant numbers of Australian students are being frozen out of postgraduate study because of the up-front fee regime, the government, as part of its innovation statement, announced the Postgraduate Education Loans Scheme. To the extent that PELS should improve access for postgraduate students, Labor is prepared to support it, but we recognise that the scheme was set up by the government in circumstances which are far from ideal. One of our concerns is that the incentive to the scheme provides for universities to lift their fees. Of course it is no surprise that universities would be casting around for more revenue. I have already mentioned the $3 billion which this government has cut from Commonwealth funding to universities.

Professor Ian Chubb, the Vice-Chancellor of the Australian National University and head of the Australian Vice-Chancellors Committee, told a Senate inquiry into higher education on 17 July: Australia is failing to keep pace with developments in other OECD countries ... those ones with which we would normally compare ourselves. There are about 13 of those, and we are slipping behind. We acknowledge that the government in recent times in Backing Australia’s Ability ... in the federal budget recently ... begin to at least slow down our rate of departure from OECD averages. We still think that there is much more that needs to be done.

But Australian university students already pay their fair share of higher education costs by international standards, and Professor Chubb acknowledged that. They should not now be called on to fill the holes created by this government’s cuts to higher education funding. So Labor does not support higher fees.

We note that the government has agreed to a review of PELS after two years and the publication of relevant statistical data in the meantime. This will help to monitor the impact of the scheme on participation in postgraduate courses and on fee levels. However, a Beazley Labor government will conduct a full review of PELS to look at the effect it has had on fee levels and on participation in postgraduate courses, particularly by groups such as women, indigenous Australians, people from lower socioeconomic backgrounds and those from regional and rural Australia. Within that, there will also be an examination of the effect of these measures on people from non-English speaking backgrounds.

Labor’s other concern relates to the power given by this legislation to the minister to allow him to set a limit on student debt, covering both HECS and PELS. This means that students who begin postgraduate study with a substantial HECS debt due to their course choices or because they have been unable to pay their HECS up-front would be significantly disadvantaged compared with other
students. We do not accept that this is a fair approach and we do not accept the government’s argument—as stated in the minister’s second reading speech—that this poses an unreasonable burden on taxpayers in the form of a much higher implementation cost for the Australian Tax Office. As the shadow minister has already made clear, however, we are not prepared to jeopardise the introduction of PELS and the access to loans it provides, given the likelihood of only a few remaining sitting days in this 39th Parliament, by seeking to amend this present bill. If Labor is elected at the next election, we will legislate to restrict the minister’s power to set a debt limit in respect of PELS only.

When this bill was debated in the House of Representatives, the minister made a claim which was quite extraordinary, even for him. He claimed that the reason people were finding access to postgraduate studies difficult was that the federal parliamentary Labor Party had deregulated fees for postgraduates. The fact is that the Labor government ensured that there were significant numbers of HECS liable places available for postgraduate course study. As I explained previously, it was the Howard government which removed those places. In 1996, fee paying places made up some 22 per cent of domestic postgraduate course places; this year, fee paying places account for 63 per cent of the total. That is the difference; that is why many potential students are being locked out of postgraduate education.

On the subject of Dr Kemp’s outrageous claims, I would like to turn to the so-called fact sheet which the minister distributed last week. This fact sheet—or it might more accurately be called a fantasy sheet—claims that university enrolments are at a record high. It does not mention the Howard government’s own record achievement in actually reducing the number of Australian students at university. In the year 2000, there were 3,278 fewer Australian students at universities than there were in 1999. This is quite an achievement! The fantasy sheet also says that the government will provide an additional $1.3 billion in research funding over the next five years, but fails to say that this is less than the $2 billion that has been cut from the support for business investment in research and development. As usual, one needs to take claims made by Dr Kemp with a very large grain of salt—and perhaps a deal more than that.

Returning to the bill, this legislation also appropriates $27 million for universities that have met the government’s requirements under the so-called workplace reform program. Labor does not think it appropriate that institutions should be forced to carry out John Howard’s long-cherished IR agenda in relation to getting the funds they need to operate. I now formally move Labor’s second reading amendment which has been circulated in my name:

At the end of the motion, add:

“but the Senate condemns the Government for damaging Australian universities through massive funding cuts, and reducing opportunities for Australian undergraduate and postgraduate students, in particular by:

(a) cutting Commonwealth funding for universities by $3 billion since 1996, thereby reducing student places by 81,500;

(b) overseeing a reduction of 3,278 enrolments of Australian university students in 2000;

(c) cutting the number of research training places by 3,336; and

(d) cutting HECS postgraduate coursework places by 60% since 1996”.

I might just take the few remaining minutes available to me to speak in support of the second reading amendment. I draw the Senate’s attention to the greatest advocate for it—that is, Dr Kemp himself. Dr Kemp has previously been condemned because of his gratuitous abuse of critics within higher education. I refer to his recent insulting and abusive letter to vice-chancellors. The Australian Vice-Chancellors Committee appeared before a Senate inquiry in Sydney. On behalf of that committee, Professor Chubb, who I think appeared on the day with four of his colleagues at various points, pointed out that the Australian education system was in crisis. In response to that a letter from Dr Kemp was sent to Professor Ian Chubb and circulated to all his colleagues, which was quite
clearly a blatant attempt to intimidate those vice-chancellors who had had the temerity to draw attention to the obvious facts that are facing higher education in this country.

What was quite disturbing about this was not just that the minister saw fit to abuse the vice-chancellors in this way but that the minister did so in terms which were quite clearly wrong. What is seen here is a letter making claims which are just not up to scrutiny, as we saw more recently with the so-called fact sheet that the government has distributed—for instance, with regard to the OECD figures and to the percentage of monies paid for education by the Commonwealth as part of GDP. Australia stands at 1.2 per cent, which is lower than the OECD average of 1.3 per cent and below countries such as Canada, the United States and Scandinavia.

The minister further compounded what could only fairly be described as a deliberate misinterpretation in a letter to Professor Chubb in which he spoke of the various payments made by the government with regard to higher education. He failed to acknowledge that the six per cent cut in 1996 to higher education was a real cut—and I quote from Professor Chubb’s response:

This referred to the 6% cut announced in 1996. This was not a decline in per EFTSU funding but a real cut to the actual funding level of some universities that had no or little growth in the forward estimates.

On such issues as student satisfaction and staff-student ratios, again Professor Chubb was obliged to draw Dr Kemp’s attention to the facts. He was able—I think, quite effectively—to do that and to indicate, for instance, that these are quite consistently misrepresented by the minister.

The minister also sought to misrepresent the situation with regard to staff-student ratios, where the figures increase—and Dr Kemp has failed to acknowledge this—by 20 per cent. There has been a 20 per cent increase in staff-student ratios. All this points to what I would argue is very strong evidence of a decline in quality in higher education that has come about as a direct result of this government’s higher education policies. Not only do the vice-chancellors of this country, along with hundreds of submissions to the Senate inquiry, point to the crisis in Australian higher education, but the quality of Australian education is under serious threat—in fact, in decline—as a result of this government’s actions.

This government has quite clearly made a mess of higher education in this country. It has endangered higher education to the extent where I think the minister ought to be condemned for its ill-directed policy of cutting funding, which has reduced educational opportunities for Australian students and which has seen a reduction of some 3,000 in the number of enrolments at Australian universities. That in turn has seen the number of research training places cut and the number of HECS postgraduate course places cut. The situation is such that opportunities that are available for Australians to enjoy the benefits of higher education have declined as a direct result of this government’s funding policies and its ideological obsessions, to the point where I think it only reasonable that the vice-chancellors draw to our attention that Australian higher education is indeed in crisis.

For that reason, I commend the second reading amendment that is before the chamber and trust that we will be able to attract the support of the Democrats for that position and perhaps draw, once again, this government’s attention to its failings. I trust that, in the dying days of this parliament, the government might be able to once again appreciate just how wrong it is that it has pursued these policies which have caused such damage and such lost opportunity to the Australian people, which are having such a severe impact on this country and which of course will take such a long time to repair. The real tragedy of the current situation is that the government has caused damage which will take a long time to repair, and only a Labor government will be able to begin the recovery process, work on it and see that the damage is put right.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (6.22 p.m.)—I acknowledge Senator Carr’s remarks. I have just seen his second reading
amendment, and I am wondering whether some of the points raised in the second reading amendment might equally apply to the Australian Labor Party—in particular, paragraph (d) which talks about ‘cutting HECS postgraduate coursework places by 60 per cent since 1996’. Perhaps a useful amendment to that second reading amendment would be to acknowledge that it was the former government, the Australian Labor Party, that was responsible for deregulation of postgraduate courses in the first place. I think that both Labor and this government have a lot to answer for in relation to opportunities for not only postgraduate students but also undergraduate students. As we know, the former government was responsible for the introduction of fees and charges in their current form, the Higher Education Contribution Scheme, thus we believe, if not denying access, certainly hindering access for many Australians, particularly those from disadvantaged backgrounds and those who have traditionally been underrepresented or unrepresented in higher education. The Democrats believe that good sense has prevailed, and the original innovation and education bill is now coming back to this chamber in coherent chunks. We are particularly looking forward to the debate due for tomorrow on the states grants issues.

The Innovation and Education Legislation Amendment Bill (No. 2) 2001 contains two additional measures to those discussed in June. Firstly, it increases the Commonwealth’s contribution to university superannuation schemes in Victoria and, secondly, it increases university operating grants for the higher education workplace reform program. The Democrats have no problems with the first of these. In relation to workplace reform, the reform adjustment simply reminds us that this government continues to ignore the very serious issue of internationally uncompetitive wages for academics and the increasing casualisation and deprofessionalisation of academic and general staff which, of course, are causing significant damage to our universities. Rather than addressing these major problems, the government remains obsessed with imposing its industrial agenda on universities for a nominal increase in operating grants. There are some important questions on the issue of coercion in pressing this agenda, and I suspect I do not need to remind senators that this matter is currently before the courts.

I should also point out that there is a certain irony—yes, another one—in the opposition supporting this bill today and thus contributing to the government’s attack on academics. The money is desperately needed by universities, a fact that the Labor spokesman in this chamber, Senator Carr, has just made clear, so it will be very interesting to discover whether or not the opposition intends to insist on such strings if it should form government in the coming months. I would like to see a changed position from a Labor government if there were to be one.

The key measure in this bill is the introduction of the Postgraduate Education Loans Scheme, otherwise known as PELS. In his second reading speech, the minister has taken up the opposition’s foreshadowed amendment speech to initiate a formal review of the impact of HECS.

Honourable senators interjecting—

Senator STOTT DESPOJA—Mr Acting Deputy President, I have said that I will wind up my remarks if the government needs to bring on a debate, but I would appreciate some silence or at least minimal chatter so that I can at least hear myself speak.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—You comment is noted, Senator Stott Despoja.

Senator STOTT DESPOJA—Thank you, Mr Acting Deputy President. I mentioned that the minister took up the opportunity to initiate a formal review of the impact of PELS two years from its date of implementation. This is a sensible modification, and the Democrats acknowledge the government’s shift on this matter. Mr Acting Deputy President, at least I was saying good things about the government on that point, so I am sure they wanted to hear them. Nevertheless, the Democrats are opposed to the introduction of PELS in the current policy mix, so we will not be supporting the bill in this form. PELS is the government’s response to market failure in domestic post-
graduate course work, a failure brought about by poor government policy.

The ACTING DEPUTY PRESIDENT—If the discussions and the negotiations that are going on could be conducted away from the table, it would be helpful in the conduct of the business of the chamber.

Senator STOTT DESPOJA—Thank you, Mr Acting Deputy President. I was saying that PELS is a poor response by this government in response to market failure in domestic postgraduate course work. It is a failure that was brought about as a result of poor government policy and the removal of a substantial number of funded places for postgraduate course work students. I acknowledge that is a point in the second reading amendment moved by the opposition.

But the key characteristics of this failure are: evidence that the high cost of fees and the removal of HECS places are barriers to participation in postgraduate course work, particularly for students in those designated equity groups; a decline in domestic postgraduate course work enrolment of more than 12 per cent between 1997 and 2000; and alarming drops in enrolment of more than 20 per cent in particular disciplines, notably agriculture, science and education—key disciplines, the Democrats would argue. In a speech on 15 April 2000, the Prime Minister made a rather fascinating comment. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

BUSINESS

Hours of Meeting and Routine of Business

Senator HILL (South Australia—Leader of the Government in the Senate) (6.29 p.m.)—by leave—I move:

That, on Wednesday, 29 August 2001:

(a) the hours of meeting shall be 9.30 am to 6.30 pm, and 8 pm to adjournment;
(b) consideration of government documents under standing order 61 not be proceeded with;
(c) the routine of business from 8 pm till the adjournment shall be government business only; and
(d) the question for the adjournment of the Senate shall not be proposed till a motion for the adjournment is moved by a minister.

This is an unusual process at this time of day, but these are unusual times. The government has formed the view this afternoon that it should seek the passage tonight in the parliament of legislation to protect Australia’s borders. That draft legislation has now, I understand, been given by the Prime Minister to the Leader of the Opposition, Mr Beazley, and it is the government’s intention to introduce and proceed until passage with that legislation in the House of Representatives tonight and then bring it to the Senate and seek passage in this place as well. This legislation obviously relates to the circumstances of the Norwegian ship which has, against the instruction of Australian authorities, entered Australian territorial waters, and it reasserts certain powers particularly in relation to the removal, if necessary, of the ship.

I have tried to contact Senator Harradine, unsuccessfully, and left a message on his answering machine. I regret that I was not able to contact anybody until Mr Howard had spoken to Mr Beazley. I have similarly tried to contact Senator Brown and left a message on his answering machine. So if they got their message they know what is going on; if they have not they may not, and I regret that. For senators who had other arrangements for tonight, I regret that also, but we do believe that it is of paramount importance that this legislation be dealt with tonight, and that is why the government wishes the Senate to sit to deal with it.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.31 p.m.)—Can I, first of all, indicate in this brief contribution that I will be limiting myself to certain process issues. I can indicate to the Senate that Senator Hill rang me some few minutes ago and indicated the government’s intentions on this matter. I have had an opportunity only for the briefest of conversations with the Leader of the Federal Parliamentary Labor Party, Mr Beazley, and I can confirm, as Senator Hill has indicated to the Senate, that Mr Beazley has in his possession a draft bill that I understand goes in general to the issues as explained by Senator Hill to this chamber a few moments ago.
In my conversation with Senator Hill I indicated to him that clearly on a matter like this all political parties—but I can, of course, speak only for the Australian Labor Party— have internal processes, and I think Senator Hill appreciated that this legislation has not been seen by me or by the Federal Parliamentary Labor Party and obviously there would need to be, and I think there is, an understanding that before matters are finalised our internal processes need to take place. I think I am not putting words into your mouth, Senator Hill, if I can publicly indicate that you accept that principle in relation to this or any legislation.

Senator Hill—Yes.

Senator FAULKNER—Thank you for that acknowledgment. The decision that the Australian Labor Party has at this point as I speak is whether we cooperate with the government to allow the Senate to sit tonight to deal with the matter that Senator Hill has indicated needs an extraordinary degree of legislative priority. That is what I am indicating, on behalf of the opposition, that I am agreeing to. The Labor Party is cooperating with this approach. I suggested to Senator Hill in the phone call he made to me that the sensible way of dealing with this matter would be for a motion to be prepared and if it were agreed certainly the opposition would be granting leave and that is what is occurring at this point.

I would reinforce with Senator Hill the need for all senators to be apprised of what is occurring in this chamber tonight. The government should undertake the most strenuous effort to contact non-government senators. We do not expect you to take any efforts at all on behalf of the opposition—that is our responsibility—but there may be other senators, and Senator Hill has named Senator Harradine and Senator Brown, to whom there is a real responsibility here.

Senator Coonan—Senator Brown is here.

Senator FAULKNER—I am sorry, Senator Brown, I was not aware that you had come into the chamber.

Senator Brown—I came in to find out what was happening.

Senator FAULKNER—Join the club. I was making the point, Senator Brown, that the government ought to make a serious effort to have contacted you and Senator Harradine in this extraordinary circumstance that we find ourselves in. It is on that basis that I have indicated that not only would we give leave for this motion to come forward but in terms of the process outlined in the motion—for the reasons that the Leader of the Government in the Senate, Senator Hill, has outlined—the opposition will be agreeing to the motion before the chair. We will be voting accordingly within the next 13 minutes to allow the Senate to sit tonight to debate this issue.

But I do reiterate that we have our own internal processes in which to consider the legislation that has been provided to the Leader of the Opposition and, obviously, we would reserve our right to do that and reserve our right to take any decision on this bill that we deem appropriate. But the issue before the chair at the moment is whether we give the government an opportunity to allow the Senate to sit and bring forward this legislation. It would be churlish not to, even though I have not seen the legislation, and we are not going to be churlish about this. That is the immediate decision to be made, and it is made with the support and the cooperation of the federal opposition.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (6.37 p.m.)—Certainly the Australian Democrats have given leave to the government to bring on this extraordinary motion this evening. But, in relation to supporting the motion before us and the variance in sitting hours, we do not believe it is churlish to oppose it. We would like to have had more information, as I am sure is the case for everyone in the Senate, about the legislation that is being contemplated and indeed debated. The preference of the Australian Democrats is not to support this motion before us until we have a stronger argument and justification from the government as to why this needs to come on tonight.

I understand from the comments of the Leader of the Government in the Senate that there is a draft bill available. I do not know if
it is actually in circulation, but I do acknowledge that the Manager of Government Business made it clear that the government and, I think, the Prime Minister were going to attempt to contact my office and also other senators to outline the circumstances. I agree with Senator Hill that this is an unusual circumstance. It is indeed a very unusual process. That is why the Democrats would have preferred more information about the policy matter being debated, as well as about the process that was about to be pursued.

I am curious about and I ask the government whether this is in relation to legal and technical matters. Is this a case of retrospective justification for actions that we have seen over the past 48 hours in relation to the asylum seekers on the Norwegian vessel *Tampa*? Is this a case of retrospective legality that we are dealing with tonight? Is this legislation necessary tonight in order to do what Senator Hill has outlined, and that is to ‘protect our borders’? Forgive me, Mr Acting Deputy President, but that makes it sound a little like we are at war. I was not aware that our borders were in need of protection.

When the government refer to the need to reinstate some policy—or some legal provision, I presume—and reassert certain powers, I would have hoped that they would have made it a little clearer in their opening remarks what they were referring to. While this is an extraordinary and unusual situation, both in process and policy terms, that we are confronted with this evening, I would like a little more justification or information as to why it is so urgent that it must be done now. It may be the case that the government have to justify and need some legal protection for action that they either have undertaken today or are about to undertake, in which case I would appreciate that being made clear to the Senate.

The Australian Democrats recognise the numbers in this place. Senator Faulkner has indicated, on behalf of the opposition, that they will be supporting the motion before us. Like everyone else in this chamber, I am unaware of the position of the other non-government senators in this place—Senator Brown and Senator Harradine, presuming Senator Harradine has been contacted and is aware of the situation before us. But we are not aware of, and therefore cannot be convinced of, the need for urgency for the sitting times tonight and the possible introduction of a bill and passage of that bill through both houses tonight when we do not actually know specifically to what that legislation refers.

If there is a good case for urgency, we look forward to hearing about it from the government. Like Senator Faulkner, we in the Democrats also have internal processes, and I have not had an opportunity to talk with my colleagues. My colleagues are aware that we are having this debate only now and they are not aware of the policy content. So, if I can issue a request, a plea, to the government, it is that we have some argument, some justification and some policy specificity in relation to the need for this debate tonight.

I certainly hope that this is not policy making or legislation on the run. I certainly hope that it is not simply a belated attempt by this government to justify its actions of the past 24 to 48 hours. I certainly hope that it is not a political beat-up by the government in order to compound or increase support for actions that the Prime Minister has taken over the past 48 hours in relation to the asylum seeker issue, particularly in relation to the deployment of Defence personnel, in order to stop asylum seekers from entering Australia and being assessed and applying for asylum seeker status. And I certainly hope that this is not a knee-jerk political reaction that is policy making on the run.

I would like to hear from the government some justification as to the urgency for this debate now and for an extension in the sitting hours this evening. But, having said that, I recognise that Labor will be joining with the government to support the motion before us. I acknowledge Senator Brian Harradine, who is entering the Senate now. I will be curious to hear what he as an honourable senator and what Senator Brown on behalf of the Greens have to say on this matter, but certainly the Democrat preference is not to support the motion before us. I reject any
notion put forward by the opposition leader in this place that it is churlish not to. I think it is an extraordinary and unusual debate, and I want to hear some justification from the government as to why we are dealing with and confronting such an extraordinary and unusual process.

Senator BROWN (Tasmania) (6.43 p.m.)—The government is in a shambles now over the Prime Minister’s action to turn back the asylum seekers just two days ago. In trying to address the potential illegalities of its own actions—in trying to cover the failure of its own actions—it now finds itself required to change the hours of sitting of parliament to get what is effectively an emergency sitting of parliament. The Prime Minister is leading this nation deeper into international opprobrium in the way in which he is handling what has now become a crisis.

Let us not have any doubt about this. Prime Minister Howard has led Australia into the greatest crisis of international reputation that this nation has seen for decades in a matter of two days, and he has done it, I believe, because of political expediency, because he felt that domestically it would be a good thing for him in the run to the election. The terrible thing about this is that Her Majesty’s opposition has become the Greens and the Democrats, because the Labor Party is failing to provide opposition on a matter as important as this. The humanitarian reputation which this nation holds true to its own bosom is being ripped apart by the government’s actions while the opposition stands lamely by.

I am not going to block leave here. The matter is too important for that. We have huge responsibilities on our shoulders. But, prima facie, the government has got itself into a mess; it has sent military personnel—men and women—into this situation without having done its homework first, and now it wants the parliament to do the homework afterwards. What a deplorable situation! What a shambles the Howard government has got this nation into over the 438 people on this boat! With difficulty we have been handling these boats, but this one the Prime Minister turned back and it is this one that this nation is being damaged by.

It is the failure of the Prime Minister to be able to relate to the people on the ship that is causing the damage. He has put his interest before theirs and so we have this shambles. What a deplorable situation for this nation of ours! What a failure of leadership! What a failure of foresight! When cabinet made this decision a little over 48 hours ago it should have known what the consequences would be. But now the Howard government is into damage control to the point where the national parliament is being suborned to try and cover up for the government’s failure to see what was coming down the line. Well, so it has to be, but I can tell you that it is a failure of process of the highest order by the government. Internationally, Australia is now coming under enormous condemnation by commentators and people right around the world because of Prime Minister Howard. That the parliament should now be being called to sit an extraordinary hour to cover up for the failure of his foresight shows the degree of his own failure of leadership.

Senator HARRADINE (Tasmania) (6.47 p.m.)—I know that this vote has to take place by 10 minutes to seven. I just want to indicate that, as I understand the standing orders, we will need at 8 o’clock, when we come back, to delete the cut-off time. We can debate the issue again then. I would most respectfully request the government to provide us with a draft copy of the bill by then.

Senator Hill—As soon as I get hold of it I will pass it on.

Question put:

That the motion (Senator Hill’s) be agreed to.

The Senate divided. [6.52 p.m.]

(The President—Senator the Hon. Margaret Reid)

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AYES

Abetz, E.     Bishop, T.M.
Boswell, R.L.D.  Brandis, G.H.
Buckland, G.    Campbell, G.
Campbell, I.G.  Carr, K.J.
Chapman, H.G.P. Conroy, S.M.
Coonan, H.L. * Cooney, B.C.
NOES

Allison, L.F.  
Brown, B.J.  
Greig, B.  
Murray, A.J.M.  

* denotes teller

Question so resolved in the affirmative.

Sitting suspended from 6.56 p.m. to 8.00 p.m.

WOOL INTERNATIONAL AMENDMENT BILL 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) (8.00 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Wool International Amendment Bill 2001 will expedite the final stage in the decade-long task of selling down the wool stockpile, winding up the company charged with its management and will maximise the surplus equity returned to it shareholders.

The legislation to privatise Wool International in 1999 provided for the final distribution to shareholders to follow the preparation of the final financial year audited accounts for WoolStock Australia Ltd.

The Board of WoolStock Australia has advised the Government that the last wool in the stockpile is likely be sold down in the near future, possibly as soon as the first quarter of 2001/2002.

This amendment will enable WoolStock Australia to bring forward its winding up and final cash distribution to shareholders, without requiring the conclusion of these processes to be after 30 June 2002. The shareholders of WoolStock are essentially those woolgrowers that met much of the burden of the debt associated with the stockpile in the very difficult years for the wool industry between 1993/94 and 1995/96.

The effect of this amendment is that woolgrowers will get their final payment flowing from their shareholding considerably earlier than would be possible under the current legislation, and because the overhead costs of maintaining the company until after 30 June 2002 can be reduced, there will be cost savings which will maximise the surplus equity to be returned to shareholders.

The timely fashion in which the stockpile has been sold down since WoolStock Australia took over its management is a very strong reflection on the success of the Wool International privatisation. It is also a reflection on the excellent job WoolStock Australia has done over the past two years.

I thank Mr Donald McGauchie and the members of the WoolStock Board for their important role in selling down the stockpile. Shareholders have already received two payments, with a third distribution expected in coming months. They will reap further benefits of this excellent work when they receive their final distribution payment after the remaining wool is sold and the necessary procedures taken to determine the surplus equity in WoolStock.

Debate (on motion by Senator Denman) adjourned.
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) (8.01 p.m.)—I move:
That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

It is one of a series of Government bills designed to apply the Criminal Code on a portfolio-by-portfolio basis.


Some offence provisions in my portfolio’s legislation predate the Criminal Code and there is a possibility that the application of the Code will change their meaning and operation.

The purpose of the bill is to make all the necessary amendments to offence provisions to ensure compliance and consistency with the general principles of the Criminal Code.

Specifically the bill will amend offence provisions in the Higher Education Funding Act 1988 and the Student Assistance Act 1973. However, the offence provisions, as amended by the bill, will not change in operation or meaning.

The bill harmonises offence provisions in Education, Training and Youth Affairs legislation in several ways.

Firstly, the bill makes it clear that the Criminal Code applies to offence provisions within the portfolio legislation.

Secondly, the bill clarifies the physical and fault elements of offences. This will improve the efficient and fair prosecution of offences.

Thirdly, the bill amends my portfolio’s legislation to remove unnecessary duplication of the general offence provisions in the Criminal Code.

Finally, the bill amends certain offence provisions to expressly provide that they are offences of strict liability—that is, an offence where the prosecution does not need to prove any fault on the part of the defendant. If an offence is not expressly stated to be one of strict liability, then the prosecution will be required to prove fault in relation to the physical elements of the offence. The amendments in the bill are necessary to ensure that the strict liability nature of certain offence provisions is not lost after the application of the Criminal Code. Without these amendments, the offences would become more difficult for the prosecution to prove and perhaps unenforceable.

I would like to emphasise that the bill does not create any new strict liability offences.

The Criminal Code is a significant step in the reform of our system of justice, and the harmonisation process will bring greater consistency and clarity to Commonwealth criminal law. It is important that the amendments in the bill are made prior to 15 December 2001 to ensure that there is a seamless transition.

I look forward to the bill receiving the support of the opposition.

I commend the bill to the Senate.

Ordered that further consideration of this bill be adjourned to the first day of the 2002 autumn sittings, in accordance with standing order 111.

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

Second Reading

Debate resumed.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (8.02 p.m.)—I will continue my remarks from earlier. I was in the midst of talking about market failure in relation to this government and education policy, and I was drawing the Senate’s attention to an extraordinary statement made on 15 April 2000 by the Prime Minister who said:

We believed that every problem could be solved by the unrestrained operation of market behaviour and some naive notion that trickle-down eco-
nomics from that unrestrained operation would
solve every problem.
To an extent, PELS, along with other mea-

sures in Backing Australia’s Ability, can be
understood as the closest we are likely to get
to an admission from the government that
their naivety and their simple-minded beliefs
about markets have been enormously de-
structive in terms of higher education. I say
that I am continuing these remarks because I
was interrupted earlier by the extraordinary
change in proceedings in relation to the bor-
der protection bill that is coming on tonight.
I will save that debate for a later hour.

In relation to PELS and broader policy
considerations, in its own terms PELS is
quite a clever proposal. The Democrats are
the first to acknowledge, as we did in Janu-
ary when the statement regarding Backing
Australia’s Ability was made, that it will en-
able some students who are currently unable
to access a postgraduate course to do so.
Hence, the response of the sector that PELS
is better than nothing if it is the only support
or relief for lifelong learning that the gov-
ernment is willing to provide. However, we
are obliged to look at the broader policy
context. The submission by CAPA to the
Senate inquiry into PELS pointed out that:
At the most basic level, PELS misses the point.
The crisis in postgraduate coursework education
is not primarily a function of student liquidity; it
is a function of a deregulated, market based fee
regime.
The primary concerns that the Australian
Democrats have with PELS are, firstly, that it
is premised on postgraduate education being
solely a private benefit for the student; sec-
ondly, it avoids the real problem of insuffi-
cient funded places; and, thirdly, it cannot
overcome the substantial cost differentials
among disciplines. PELS is conceptually
quite different from HECS. While both are
income contingent loans, HECS is also a
private contribution to a publicly funded place, which explicitly recognises that there
is a considerable public benefit from higher
education. PELS, on the other hand, simply
advances the full cost of tuition and thus as-
sumes a private benefit only.

Full fees in conjunction with a substantial
drop of HECS places have led to a declining
number of students in disciplines with little
or no private benefit. The Democrats believe
that students in such disciplines are not likely
to enrol just because they can get a loan.
Thus, a real problem is falling enrolments in
disciplines such as education, nursing and
science where there is considerable public
benefit but not necessarily private benefit.
These issues remain unaddressed by PELS.
The representative of the Australian Vice
Chancellors Committee told the Senate in-
quiry into the original bill that:
... we agree that we do need a better mix of HECS
and fee paying in a range of these postgraduate areas ... That broad policy position is one we have
argued. It is not one, at this stage, that the gov-
ernment has chosen to address ...
The government’s persistent failure to seri-
ously tackle the massive distortions of mar-
kets in education is actually playing quite a
significant part in my party’s rejection of
PELS. Senators will be aware that universi-
ties are still required to offer a HECS place
for initial vocational entry qualifications in
nursing and in education. However, there is a
serious anomaly whereby an increasing
number of vocations including psychology,
social welfare, museum studies and librar-
ianship require a postgraduate qualification
for initial vocational entry. Yet universities
are not provided with, or required to offer,
HECS places in these disciplines. PELS, of
course, does not address this policy madness.

In 1990, the government introduced the
relative funding model. This is a weighting
scheme that explicitly acknowledges that
different disciplines have different delivery
costs. Science and engineering, for instance,
need expensive laboratories and, say, hu-
manities and law do not. Differential HECS
works on a similar basis, although the inclu-
sion of law in the top band is predicated, of
course, on potential private benefit. I think
we are the only country in the world that has
this bizarre mix of predicted or future earn-
ings plus course costs in trying to determine
where courses fit in certain tiers. However,
PELS does not and cannot take cost of deliv-
ery into account as it simply relies on mar-
kets. This will create enormous problems in
high cost areas with high industry and/or
public benefit but comparatively low private
benefit—for example, in science and in some areas of engineering.

Quite simply, PELS locks in a full cost recovery, full fee system that actively discriminates against students in the sciences because necessarily they will be charged higher fees than students in disciplines with lower delivery costs. The Democrats will continue to insist that PELS must be accompanied by supplementation to universities for postgraduate course work places in high cost and/or high public good areas, including science and engineering.

It is bizarre that just one week after Science Meets Parliament Day we have a government initiative that once again sadly ignores the strategic significance of science and engineering in our future. Sadly, this is yet another example of this government’s incoherent approach to innovation and to the knowledge economy. The government claims that PELS is designed to encourage lifelong learning and to help Australians upgrade and acquire new skills to keep at the forefront of their profession, but the real policy message of PELS is to say that the government no longer has significant responsibility for or interest in lifelong learning after undergraduate study. This is certainly out of step with changing employment patterns and the need I guess not only generally in Australia but globally for a more flexible labour force.

I think it is also important to see the market failure in postgraduate course work in the broader context in terms of the crisis in our university system. Postgraduate fees are an increasingly important part of university income and provide some cash flow in an environment where the cutbacks in public funding by this government have created serious problems in our universities. Dr Kemp makes much of the fact that since the cutbacks in public funding to universities that were announced back in 1996 by his predecessor, Senator Amanda Vanstone, total revenues going to universities have increased, and we have acknowledged publicly before in this chamber that indeed those revenues have increased. However, the increased resources from private sources have not replaced diminishing public resources and they have not gone into the core activities of teaching, learning, scholarship and, of course, fundamental research. Rather, the increased revenues from private sources have primarily gone into marketing, recruitment of international students, offshore campuses and commercial research.

This reflects the changes in universities whereby they are doing additional activities to their core teaching, learning and research functions. So, despite increased total revenues, the decline in public funding has resulted in course closures, cost shifting to students, increasing staff-student ratios, cutbacks to libraries and significant casualisation of the academic labour force. This damage has been particularly acute in the core enabling disciplines of physics, chemistry, mathematics, philosophy and history, and of course everyone would agree that these disciplines are crucial for an innovative culture, for critical thinking and for innovation in Australia.

Therefore, for this government to simply look at the total revenue and then divide it by the total number of students, to show an increase in funding for students, is a gross distortion designed to mislead and obfuscate what is really happening in our university sector. It is not good enough for the government and its apologists to simply throw their hands up in the air and say that it is each university’s own decision as to how they allocate their resources. What they manifestly fail to grasp is that public funding delivers varied types of educational and research goods to those from private sources. While there is an overall increase in revenues for universities, the fundamental public good functions have been seriously damaged by this government’s insistence on marketisation. And why? Because, as the Prime Minister has acknowledged, this government has been obsessed with a naïve belief in unrestrained markets. I should note that postgraduates well know the consequences of this government’s naïvete.

In my opening remarks in this debate, I mentioned that the Democrats had some sympathy for the second reading amendment moved by Senator Carr on behalf of the opposition, but I did suggest that it would be more appropriately worded if it included the
role of the Australian Labor Party in relation to the deregulation of the postgraduate sector when they were in power. I thought it was interesting to see Dr Kemp on a news program this evening trying to justify this government's blatant cost shifting from the public sector to the private sector in the form of schools funding and, of course, now we have Dr Kemp and his colleagues trying to argue that there is sufficient funding—in fact, increased total revenues—to universities as a consequence of this government’s activity when in fact our university systems are in crisis.

They require more resources—$100 million immediately, as identified in the report by the Australian Vice-Chancellors’ Committee that came out in December last year. Not only that, we also need to address the issue of academic wages. Once again I point to the changes in this piece of legislation that will have an impact on the work force and industrial relations, particularly for those academics. I find it extraordinary that the Labor Party will actually be supporting those changes, particularly with their purported concern not only for education generally and academics specifically, but also for good industrial relations practices. I will be curious to hear in the committee stage, I presume from Senator Carr, how his party justifies support for some of the changes in the legislation that is before us.

The Democrats do not support PELS in its current form. We believe that it is a shortsighted approach by this government. Although we do acknowledge that it may give relief to some students—we recognise the numbers in the chamber; it will be passed—we urge the Labor Party, should they enter government after the next election, to seriously reconsider their position on PELS. If they are committed to income contingent loans-type systems, perhaps they could model a postgraduate system along the lines of HECS that might actually genuinely give more opportunity to those students wanting to pursue postgraduate course work in the current framework. I reassert the Australian Democrats’ strong commitment to publicly funded education and, of course, accessible education at all levels, and hence our concern with any form of fees and charges, once again acknowledging that this may bring some relief but it is not a good enough response. We expect more from this government, particularly in those key disciplines to which I have referred.

Senator CROSSIN (Northern Territory) (8.14 p.m.)—I rise tonight to speak on the Innovation and Education Legislation Amendment Bill (No. 2) 2001 and to remind the Senate that this is a reintroduction of a change in the way in which postgraduate education will be offered to people around this country. It reintroduces the postgraduate education loans scheme which was previously introduced into the Senate through the Innovation and Education Legislation Amendment Bill 2001.

As we know, when that bill was introduced some months ago, it was an omnibus bill which sought to incorporate a number of other measures, including measures in that bill to fund schools. It was an adjustment to the SES funding. It was to look at establishment grants and it was money for literacy and numeracy. When the omnibus bill was introduced and debated in this Senate—if I remember rightly, in the early hours of the morning in the last week of June—it was the first time that a bill had been introduced into the Senate that included a combination of higher education and schools funding activities.

The Australian Labor Party and the Democrats objected to a number of measures in that bill, and to the way in which this government tried to sneak through some of those provisions by wrapping that bill up in a nice neat little parcel, pretending they could disguise its contents in that way. That bill was rejected by the Senate and the Senate made the government split the bill into its three separate areas. We are dealing tonight with the second of those bills. Last week in this place we dealt with the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2001, which looked at the literacy and numeracy funding aspects of that bill.

This is a bill which predominantly seeks to reintroduce the Postgraduate Education Loans Scheme, or PELS, as it has now be-
come known throughout the industry. The PELS scheme is intended to provide loans to Australian students for non-research postgraduate courses. These loans will cover the full fee and will be repaid through the tax system in the same way as the HECS debts. I sit on the Scrutiny of Bills Committee and today we had a look at the reintroduction of this bill. The Scrutiny of Bills Committee made comments this morning in its meeting that this is just another one of those ways in which a government seeks to use the tax system, through the students providing their tax file number, as a gateway into ensuring that this loan is paid back.

It was the view of the Scrutiny of Bills Committee this morning that there are occasionally times when this is needed, and there is probably no other way in which to assess and monitor the repayment of these loans, but we did note that, when the tax file number system was first used and introduced into this parliament, there was a guarantee that that would be a one-off and it would never be used again in that way. But we have gradually seen over the years—and members of the Scrutiny of Bills Committee this morning made comment about the fact—the way in which the tax file system is gradually being used more and more by governments. Nevertheless, we know that the Postgraduate Education Loans Scheme will provide around $995 million in loans over five years and it is anticipated that it will assist around 240,000 students. The planned start date is 1 January next year.

This bill provides me with an opportunity once again to talk about the chronic state of the higher education industry in this country. I am a member of the Senate Employment, Workplace Relations, Small Business and Education References Committee currently conducting an inquiry into the higher education system in this country and looking at whether universities have the capacity to meet Australia’s future needs. On 17 July at a committee hearing in Sydney, we had that classic statement from Professor Ian Chubb that this was a sector that was ‘in crisis’—his words, not mine. This admission by Professor Ian Chubb, representing the peak body in this country, the Australian Vice-Chancellors’ Committee, was alarming proof on their part that Australia’s higher education system was in serious decline.

He provided evidence to the committee that the Australian Vice-Chancellors’ Committee had some serious concerns and reservations about what was happening in that industry in this country. They are concerned that, of the $2.9 billion promised by this government for investment in higher education and research, under this bill 60 per cent of that will not be provided until at least year 4 or 5 of the plan—that is, the Backing Australia’s Ability plan. This bill emanates from that statement in January and, while that statement does—as I say—commit to $2.9 billion, most of that money is not realised until the end years of that plan.

Commonwealth funding in the higher education sector has fallen every year under this government, under this Prime Minister and under Minister Kemp’s oversight of this area. For example, in 1996 the funding for this sector was $4.875 billion. By 2002 that funding will have reduced to $4.223 billion. So, in total, we have seen nearly $3 billion slashed from public funding for Australia’s universities since this government came into office in 1996.

In addition to that, we have seen $2 billion taken from incentives for private research and development. This adds up to a record $5 billion taken from universities and from private research, development and incentives, $5 billion from the higher education sector since this government came to office in 1996; yet the government had the audacity to announce an innovation statement in January known as Backing Australia’s Ability after they had ripped the spine out of Australia’s higher education system during the first four years of office. So it is no wonder that the Australian Vice-Chancellors’ Committee admitted to the Senate Employment, Workplace Relations, Small Business and Education Committee conducting an inquiry into what is happening in higher education that this system is in crisis. What did Professor Chubb have to say during that week in Sydney? He said things like there had been a slow and steady decline in funding—we know that, as the evidence is
there—and that universities had been forced to substitute public funds with private funds. In the inquiry, we have heard evidence time and time again of universities establishing private arms, private operations, or even private universities in the case of Melbourne IT Ltd. Evidence has been gleaned through this inquiry that in order to establish those private arms—which is done to attract more students—public funds are being used to substitute for those operations.

The Australian Vice-Chancellors’ Committee went on to say that any assistance to pay salaries for the staff is appalling. The Innovation and Education Legislation Amendment Bill (No. 2) 2001 provides $27.6 million in 2001 to fund pay rises for academic staff at universities—universities which have met the requirements of the government’s workplace reform program. I remind the Senate of the workplace reform program, which was released back in 1999 by the Minister for Education, Training and Youth Affairs, Dr Kemp. It was first mooted in Minister Kemp’s well-known and renowned leaked cabinet document that this government would provide two per cent in funding to universities that signed up to certain conditions in their workplace bargaining operations. In other words, if universities, during renegotiations of their enterprise agreements, could sign on to at least nine of the 14 conditions, they were entitled under the workplace reform program to get assistance with staff salaries.

We know now that the National Tertiary Education Union Australia has taken this government to court. The union is trying to prove that the government have breached their own Workplace Relations Act 1996 because the government are coercing universities to sign on to at least nine out of 14 conditions of service—conditions that should be incorporated into enterprise bargaining agreements and conditions that may not even be in a log of claims provided by the universities or by the unions but conditions that the universities are forced to look at and will have to look at. Because the sector is being starved of funds to assist university salaries, the universities will have no option, and have had no option, but to look at these conditions and try to incorporate them into their enterprise bargaining agreements. The National Tertiary Education Union is in court trying to prove that that act in itself has the government breaching its own Workplace Relations Act.

What hypocrisy this is on behalf of the government. They trumpet flexibility in the workplace and they try and trumpet the idea that workplaces should be entertaining enterprise bargaining negotiations on a case-by-case basis. Members opposite stand up on the other side of this chamber and lambast the Australian Labor Party for supporting, in particular, pattern bargaining where there is a demonstrated case that that should be happening. On one hand, they criticise the use of pattern bargaining and coercion by the unions but, on the other hand, they believe that it is okay for them to say to their universities, ‘Here’s a bucket of money to help you pay for salary supplementation, but you are going to get that money only if you can prove to us that you have nine out of these 14 conditions in your enterprise bargaining agreement.’ If that is not pattern bargaining, what is? If that is not coercion, what is? I say to the National Tertiary Education Union: good on you for trying to prove that this government have breached their own Workplace Relations Act. On the face of it, it would certainly seem to those people who have any knowledge of industrial relations that that is the case.

Let me go back to the Australian Vice-Chancellors’ Committee’s evidence before the committee. Professor Chubb, on behalf of the AVCC, said that staff are working harder and that resources are diminishing. The question put to us throughout the inquiry was: as universities are public institutions and are classified and valued as public institutions, what is the responsibility of the Commonwealth government if universities are to be held in high esteem and are to be recognised as public universities?

Standards are being maintained in universities but at the expense of the quality of the experience. This will not last. How much longer can staff and students in those universities, under the funding cuts that the Commonwealth government have inflicted on this sector, exist in overcrowded lecture rooms
We heard time and time again during this inquiry that university libraries have up to $1 million less each year to spend on resources. Equipment is outdated not only in computer areas but also in medicine, dentistry, veterinary science and engineering. We have a chronic situation that is turning into a bottleneck.

No doubt the current policy position needs to be reversed. That has been said to us time and time again by academics, by the vice-chancellors, by postgraduate students and by students in the sector. In fact, it is interesting to note that per student the Singapore government funds the Singapore university four times the amount of any university here in Australia. The university system is under strain and really can no longer be expected to carry out the function that the Australian public expects.

Last week, the Minister for Education, Training and Youth Affairs made announcements about university places. We had the announcement last Thursday that 2,000 places were to be allocated through the innovation statement—2,000 extra places for maths, science and information technology. And on top of that we had the 670 places that were set aside to be allocated for regional universities in booming economic areas. When I got to the web site and I scanned what was happening around the country, I could not help but notice the spotlight shining on the poor old Northern Territory University once again—the poor second cousin of the higher education industry in this country, which once again is being sorely neglected. This minister has turned his back again on this vital university in Darwin and Palmerston, an area of Australia that is growing faster than any other area. Palmerston is nearly 20 kilometres out of the Darwin CBD and now has a population of 20,000-plus, the fastest growing area in this country. We have a university that is just crumbling under the bad policies of this federal government.

The university tell me that they put in two submissions in the maths, science and information technology area. They were hoping for some of the 2,670 places for the regional universities. If the Northern Territory University is not a regional university, perhaps someone could clarify for me what would be. They got none—not two, not five, not 10, minuscule amounts compared to some of the places I see here of 50, 35 and 60. Charles Sturt University got at least 20 places in Dubbo for a regional university. None went to the Northern Territory University.

The university is currently undergoing a review of its financial situation and operations, a review that is being conducted by KPMG, supported by the Commonwealth government and the former Northern Territory government. I am sure the new Northern Territory government will continue this support of the Northern Territory University. In the meantime, the NTU misses out again.

If we did an analysis of what has been happening in higher education, we would see that Commonwealth direct funding for universities in 2002 will be $652 million less than it was in 1996. Without these funding cuts, the Northern Territory University would have 494 more places than it currently does. Not only does the Northern Territory University have to keep struggling without any assistance or recognition by the Commonwealth government, and be down 494 places because of cuts by this government since 1996, but, when there is a bucket of places out there to assist this university, it gets not one zack, zilch, zero. It gets nothing to assist it in its growth and its development.

We have in this country a situation where this government has turned its back on the higher education sector. There is a deliberate policy of privatising the university sector. I just wish the minister would come clean and be honest about that instead of pretending that everything is fine and that we do value public institutions. The announcement last week confirms what every Territorian knows: that it is time for this government to provide a clear direction, particularly for regional universities. It is time for this government to restore public funding and to restore in the community—particularly in the Northern Territory—confidence that this government wants a university in the Top...
End of Australia and is prepared to inject the funds and inject the places that this university deserves.

**Senator BUCKLAND** (South Australia) (8.34 p.m.)—In rising to speak on the Innovation and Education Legislation Amendment Bill (No. 2) 2001, I must say that the thing that has somewhat confused me is what the government want to do with education. They talk about innovation and education. Innovation in itself is something that this government do not seem capable of understanding or implementing in any bill that they put before this Senate.

We need to be innovative if we are to move ahead in the new millennium that we face and to give our young people opportunities to use to the maximum our universities and higher education institutions. We need, too, to ensure that people who are involved in postgraduate studies, people who are involved in taking us through higher education and contributing to the nation in the future, have the opportunity to properly go about their studies, not fearing what this government is putting to them in the form of fees and restrictions to numbers.

I was somewhat taken by the submissions by Professor Chapman. In particular, he argued that the subsidies implicit in the PEL scheme will reduce the effective cost of students. He said this will increase the demand for postgraduate courses, which in turn will lead to pressure for universities to increase nominal fees. As the same tendency will apply to all universities, competitive pressures are likely to diminish the likelihood of fee increases.

In Whyalla, where I live, we have a university campus. It is a campus of the University of South Australia. At that campus, they are struggling with their allocation of fees and their ability to compete in attracting students from overseas and from other states. Yet they offer some very valuable and worthy education streams. They are constricted by their funding levels and the requirements put on students through the loan repayments schemes. I think this is something that needs to be addressed, if we are to move forward into this new millennium we have just entered. If we are being truly innovative in what we are trying to do in a world that is changing around us so quickly, with new technology, with a lot of energy being put into information technology, as far as funding for universities goes we are not moving in the manner in which we should be moving.

Professor Chapman identified three possible policy responses to what is being put: capping the total amount a student can borrow, capping the fee levels, or introducing a discount for up-front payments. All have merit, and we should examine each very thoroughly, but the cutting of Commonwealth funding for universities by $3 billion since 1996 does not go very far to assist with any of these alternatives to allow us to become the innovative and highly educated nation we need to be. We are isolated. We need the assistance of government in the area of universities. The whole idea of innovation in education is something we need to examine very thoroughly.

The government has adopted the least desirable approach to dealing with the question of payments. I think what hurts so many people in the higher education sector is the fact that the government, rather than looking at the best option, took the option that suited them better, without giving any real consideration to what our universities can deliver and what is in the best interests of university education for our young people and those who are doing postgraduate education.

By cutting funding to universities by $3 billion since 1996, the government has reduced the number of places by some 81,500. I think the amendment that was put forward by Senator Carr on behalf of the opposition is one that should be supported. It is unlikely to be supported by the government, but I think the rider that Senator Carr put on that amendment encapsulated all the nasties that can be found within the bill we are debating. The amendment takes in four very important components, adding the phrase, ‘but the Senate condemns the Government for damaging Australian universities through massive funding cuts’. That is not just Geoff Buckland or Kim Carr saying that, that is what the universities are saying. They are saying that they have been damaged by the funding cuts.
The government has overseen the reduction of 3,278 enrolments of Australian university students in the year 2000 alone. Nothing good can be said for a government that has the audacity to reduce the number of students by a grand total of 3,278, while cutting the number of research training places by 3,336 and cutting HECS postgraduate course work places by 60 per cent since 1996. To call it innovative is a joke. This Innovation and Education Legislation Amendment Bill (No. 2) 2001 is incorrectly named by suggesting innovation and education; there is no innovation at all in the government’s intentions. Its innovation was to cut funding to save money, once again dudding the universities of Australia. It is no wonder that the universities are so openly critical of the manner in which the government is handling this very sensitive issue. It is handling it with no thought to the future and with no thought to the work that is done in higher education facilities that contribute so much to the nation to which we belong.

The Innovation and Education Legislation Amendment Bill (No. 2) 2001 contains two new funding measures that will provide an additional $39.35 million for higher education grants in 2001-03, increases to universities’ operating grants of $24.589 million in 2001 and $2.499 million in 2002 to reflect new estimates of expenditure under the Higher Education Workplace Reform Program and an additional $6.131 million for superannuation expenses in 2002-03 to cover the Commonwealth’s liability from the Victorian government’s Beneficiary Choice Program, but it does not quite equate to the $3 billion that has been taken out of the system since 1996—there is a bit of a deficit there. This government stands condemned for overall reducing the contribution it makes to our university education scheme.

The workplace reform program provides $259 million over three years to fund pay rises for university staff if the universities implement sufficient reforms in workplace relations arrangements, management and administration. That is really a bit of a bribe: ‘You will get the money, but’—and it is the ‘but’ that counts here—‘you must implement significant reforms in workplace relations arrangements.’ How can you do that properly if, in fact, the workplace relations reforms need to be worked through with the staff? Even by doing that, the $259 million is insufficient to properly reward those universities that can make changes. It is, in fact, quite discriminatory against the smaller universities and the smaller campuses that cannot make the changes that can be made in the bigger institutions that can attract far more overseas students to their campuses.

So when the government talk about the workplace reform program providing additional money to universities, they are doing it only as a bit of the threat: ‘You have to make significant changes.’ Many of those changes will mean cuts in staffing numbers, cuts in programs and cuts in the amount of work and money that can be set aside for research programs to be carried out by postgraduate and other university staff. So there is nothing in this bill at all that does very much for the credibility of this government.

Whilst we may be supporting the second reading of the bill, with of course the amendment moved by Senator Carr, I think it is very difficult for some of us to swallow that there is discrimination against the smaller campuses in their ability to offer true and professional university education for our young people and those wishing to go on
with their education in later years. The last five years have seen an expansion of total non-overseas fee paying postgraduate students. It has grown from 10,839 equivalent full-time student units in 1995 to 24,000 equivalent full-time student units in 2000—an increase of 129 per cent. These students now constitute about a quarter of postgraduate places. But again that is nothing to be overly proud of.

The most popular courses for postgraduate fee payers are coursework masters programs and postgraduate diplomas. The full-time duration of these courses is generally one to 1 1/2 years for a masters degree and one year for a graduate diploma. The most popular subjects at the moment—and I suppose these are ones for which the universities cannot plan too far ahead because they are cyclic in their nature—are business, economics and law, followed by health, science, maths and computing. Last year, I was interested to be talking to one of the scientists, who is also a mathematician, from the Adelaide University. It is a crying shame that young people are moving away from maths as a preferred subject to study. Much of that can be because of the availability of courses with a genuine input from the government and the fact that it is not the sexiest course to be pursued by many of the young students today. It is one of those courses that needs the most attention, but attracting young people into the areas of maths and computing is not as easy as it could be.

Only just a few years ago I had personal experience of this with my son. He was very keen to study law and thought that that would be the way to go—and that is where I come back to it being a very cyclic thing—but, after talking to a number of solicitor and barrister friends of ours and being counselled by his school counsellor, he found that it was not in fact the way to go. By the time he would have finished—which would have been last year—there would have been an overload of young people looking for positions in legal firms where they could get a start, so he changed his career prospects and went into information technology. Again, that can go for so long.

I think the government are only pretending to be innovative, because I do not think they understand what innovation is. If they are serious, I think the government would in fact have been a little more forward thinking and made genuine funding available to the universities so that people are not faced with these great fees at the end of their studies. This bill, whilst it has a lot going for it—and I do not think it has everything going for it; it has quite a lot going for it in that there are some improvements—does miss the mark by not dealing with what has already been taken out of the system by this government since it has been in office. For those reasons, I would certainly be supporting the amendment put forward by Senator Carr.

Senator BRANDIS (Queensland) (8.53 p.m.)—It really is quite striking that the Labor Party should be adopting the opposition it does to the Innovation and Education Legislation Amendment Bill (No. 2) 2001 when the very point of the legislation is to improve access to advance equality of opportunity amongst students wishing to study for postgraduate degrees. At the moment, as you know, Mr Acting Deputy President, there is no provision for a Commonwealth subsidy by way of an interest free loan for students who wish to undertake postgraduate degrees. The very purpose of this legislation is to provide such a subsidy broadly on the model of the HECS scheme. The HECS scheme, as has been pointed out, was an initiative of the Hawke Labor government. The PELS scheme, which will extend similar principles to assist postgraduate fee paying students, merely takes up that same principle and applies it in substantially similar terms for the benefit of postgraduate students. I ask rhetorically: what is wrong with that? How can one possibly object to a scheme which provides a benefit for people wishing to study for a postgraduate degree and which gives them an entitlement that will improve their access to those degree courses where no such entitlement, no such facilitation of access, exists at the moment?

It really beggars belief that, for all the rhetoric with which our Labor Party friends so often entertain us about equality and equality of opportunity, they often set their
faces dead against those very principles. What do you say, Labor senators, to the student who today may wish to pursue a postgraduate degree and who may wish to improve their qualifications above the undergraduate degree level but who, under current arrangements which this government inherited from the previous Labor governments, has to pay a full fee component and has no assistance from the Commonwealth and who may for that reason be unable, because of their financial circumstances, to afford it? What do you say, Labor senators, to that student when you are setting your face against a proposal that would give that student an interest free loan not repayable until an unspecified date in the future and contingent upon capacity to repay at that time in the future and that will enable them to pursue that postgraduate course? If you support the HECS scheme, as presumably you do because your government introduced it, why do you deny the application of a similar benefit, structured on a similar method, for the benefit of postgraduate students? The Labor Party’s position, it seems to me, with great respect to them, is almost incoherent.

Let me, if I may, run quickly through the broad principles of this legislation. Its principle purpose is, as we know, to create an income contingent loans scheme for fee paying postgraduate coursework students. The scheme, which will be called the Postgraduate Education Loan Scheme—or PELS—was announced by the government in the Backing Australia’s Ability statement, a statement which, I might interpolate to say, was the greatest single investment in higher learning and research in one single policy initiative ever taken by any Australian government. That was an achievement of the Howard government. And now to enable more good postgraduate students to come into the system who for reasons of economic disadvantage may hitherto have been prevented from coming into the system, we are providing the support to enable them to take advantage of the Backing Australia’s Ability policy. Among other features of the legislation, the bill will give the minister the discretion to cap the total amount of indebtedness that an individual is able to accrue in aggregate under the HECS scheme, the Open Learning Deferred Payment Scheme and the proposed Postgraduate Education Loan Scheme.

May I explain the rationale for that. The experience throughout the life of HECS has been of many students incurring debts far beyond their capacity to repay, even when they reach the income threshold in the later years of their career. As a prudent measure, the legislation enables a cap to be placed on the extent to which students, many of whom of course are inexperienced in the management of their own financial affairs, are exposed to debt under the scheme. It is a protective and a beneficial measure.

Among other things, the legislation allows higher education institutions to accept electronic communications, including an electronic signature, consistent with the requirements of the Electronic Transactions Act, and to elect to communicate electronically with students without seeking the student’s agreement, provided the student has access to the appropriate technology and services. I think we all know, and I do not understand this to be controversial, that one of the greatest innovations in Australian higher education in recent years has been the explosion—not just the expansion but the explosion—of online services. I recently had the opportunity to visit in my own state the University of Southern Queensland, based in Toowoomba. The University of Southern Queensland is not only a national leader but a world leader—arguably the world leader—in distance education and in the provision and delivery of courses, not just within Australia but internationally, online and by electronic means. Last year that university was awarded the gold medal of the International Institution for Distance Education as being the most advanced and successful practitioner and deliverer of distance education in the world. That is something that Australia, and in particular my state of Queensland, can be proud of. It is the provision of facilities in that manner, the provision of facilities online, that is one of the many features of higher education that this legislation is designed to facilitate.

The Innovation and Education Legislation Amendment Bill (No. 2) 2001 provides for
the variance of the maximum amount of financial assistance payable to higher education institutions in 2001 to reflect revised estimates of planned expenditure under the Higher Education Workplace Reform Program. The bill also provides for the variation of the maximum amount of financial assistance payable to higher education institutions in 2002 and 2003 to reflect revised estimates of the Commonwealth’s overall superannuation liability resulting from the introduction of the beneficiary choice program in Victoria.

The last few features of the legislation that I have mentioned are, of course, not the core or centre of the legislation. The core of the legislation is an equity provision, the provision where none existed before of a scheme for interest-free loans to enable students to undertake postgraduate study. As I said before, and it cannot be said often enough, how can the Australian Labor Party oppose an equity measure? How can they in all conscience oppose a measure that opens the doors of postgraduate learning to all Australians, irrespective of wealth, financial circumstances or financial disadvantage? It enables people who want to take postgraduate courses to undertake those courses and fully indemnify the cost with an interest-free loan, a subsidy—there is no interest of course—and the principal is not even repayable until there is a capacity to repay in later years in the student’s career when they have an income level commensurate with the capacity to make the repayments.

In the minutes remaining to me, I want to turn more broadly to the question of the Howard government’s commitment to the higher education sector in this country. I speak as a member of the Senate Employment, Workplace Relations, Small Business and Education References Committee, which is, as honourable senators would be aware, currently conducting a major set of hearings into the funding of Australia’s public universities. The statement we heard from Senator Buckland earlier in the evening that university revenues have fallen during the life of the Howard government is simply false. It is not even correct to say that the Commonwealth contribution to the operating grant of Australia’s universities has fallen during the life of the Howard government.

The position is that during the life of the Howard government the Commonwealth’s university operating grants have remained stable in real terms at around $5.2 billion in constant prices. What has also occurred—and I suggest that in this we see the germination of a real revolution in Australian tertiary education—is the growth of funding from additional sources so that today Australian universities are enjoying record real revenues from all sources, not just from Commonwealth grants, in the sum of $9.5 billion this year, an increase of $1.24 billion in their revenue from all sources when the Labor Party last controlled the education portfolio. Why is this? The reason is that more and more revenue flowing to universities is being generated from collaborative research partnerships with the private sector and other private sources of university funding. In the Senate higher education inquiry we have heard so much evidence from universities, from industry and from academics from overseas universities that has tended to suggest that there is a great untapped potential in the university sector for revenue streams generated from private capital.

We have heard evidence of the economic miracle in Ireland—we heard this recently from one of our witnesses at our Sydney hearings—which has largely been driven by the Irish universities. That, in turn, has been driven by the establishment of collaborative research partnerships between industry and university faculties which have driven the Irish economy and have provided a golden age among Irish universities.

We have also heard evidence about the elite American universities, of which perhaps—and I have said this in the Senate quite recently in the debate on other legislation—Stanford University is the outstanding example. The great American universities, particularly in their science, applied science and engineering faculties, are long accustomed to collaborative partnerships with private capital, with private sector laboratories and private companies which have poured many hundreds of millions of dollars into individual American universities and under-
written financially huge swathes of university faculties in the elite American universities, Stanford in California being an outstanding example of that, of which our committee heard much evidence.

Australian universities are yet to accommodate themselves to the culture of collaborative partnerships with the private sector. They are yet to accommodate themselves to the culture that recognises that much of the great research and development work is done not in universities but in private laboratories. If one can marry the two, there are not only real synergies but tremendous opportunities for increasing the revenue flowing to the university sector from those partnerships.

Some bureaucrats—and, indeed, some vice-chancellors, I am sorry to say—in Australian universities are still locked into the old mind-set of dependency exclusively upon Commonwealth grants. That cannot continue. It cannot continue to be the case that, when one has rich opportunities for revenue streams from private capital, rich opportunities for revenue streams from the philanthropic sector, rich opportunities for revenue streams, for instance, from private laboratories and elite private research facilities, Australian universities turn their backs on the opportunities to grow increasing proportions of their funding from those sources and maintain this welfarist dependency so that they are maintained almost exclusively by Commonwealth grants.

There is so much controversy about Australian higher education, but we do well to remind ourselves that there are a number of things, a number of aspirations, that most parties in this chamber have in common. That is why it surprises me so much that the Labor Party would oppose an equity measure like this bill. We all are proud of our universities. We all believe that they ought to aspire to excellence both in teaching and in research. We all believe that universities should have more, not less, revenue to enable them to embrace more, not fewer, students to engage in more, not fewer, research projects. We all believe that the burden on students has to be kept as low as feasible. In particular, the burden on students has to be kept low so that any student, irrespective of the modesty of their economic circumstances, can aspire to and can earn the best education this country has to offer.

Notwithstanding the commonality of view between the government and the opposition on those three principles, we sadly still see this mind-set, as in so many things, sadly, the Labor Party stands for, the product of a blinkered social vision, which regards the introduction of private capital as something to which they ought to evince the deepest hostility and suspicion—the introduction of private capital as an additional revenue source for university teaching to be an evil thing, a corrupt thing, something that will deflect universities from the purity of their scholastic pursuit. We hear this all the time in particular from Senator Carr, whose ideological blinkers are perhaps more obvious than those of most.

What a tragedy it would be if, because of the dated, blinkered ideology and dogmatism of the Labor Party, Australian universities were to be mediocritised. What a tragedy it would be if they were to be deprived of the opportunity to aspire to the kind of excellence which European universities, universities in North America and, increasingly, Australian universities too have been able to embrace by embracing collaborative research partnerships with the private sector and bringing onto their revenue streams more and more private capital. What a tragedy it would be if, as a result of the Australian Labor Party’s opposition to this legislation, Australian universities were unable to provide equality of opportunity and freedom of access to postgraduate courses to the best and the brightest of our students, if the best and the brightest of our students—supported through their undergraduate studies through HECS, the Labor Party initiated scheme—were then to be denied the opportunity to reach their own level of excellence as postgraduate students because they could not afford it. It is to address that problem—essentially, as I said at the start, an equity problem—that this legislation has been introduced by the Howard government: to guarantee that no Australian student who wants to undertake postgraduate study, no matter how modest their resources may be, is denied the oppor-
tunity of doing so and thereby contributing to this nation’s pursuit of excellence. (Time expired)

Senator McLUCAS (Queensland) (9.13 p.m.)—I rise also to participate in this discussion on the Innovation and Education Legislation Amendment Bill (No. 2) 2001. Senators will remember that this bill originally came into the house as the Innovation and Education Legislation Amendment Bill 2001. I think it was a very good decision of the Senate—albeit made in the very early hours of the morning—that the mishmash of legislation that was contained in that bill originally was not appropriate.

Senators will remember that we eventually broke that bill into four parts that covered a range of issues. It is interesting to note that that bill originally contained ARC funding measures. It also had the section of the legislation that we are dealing with tonight—that is, the PELS legislation—as well as schools literacy and numeracy and the states grants capital works legislation. They were all compiled and rolled into one omnibus bill, which I do not think allowed for true debate of the variety of education issues that were packaged in it.

The government agreed with the Labor Party at that time and decided to break the bill into its separate parts. We have dealt with some of those pieces of legislation already, the literacy and numeracy section and the ARC bill, but there are two to go. One is the legislation we are dealing with tonight—that is, the PELS legislation—as well as schools literacy and numeracy and the states grants capital works legislation. They were all compiled and rolled into one omnibus bill, which I do not think allowed for true debate of the variety of education issues that were packaged in it.

Senator West—And at length.

Senator McLUCAS—At length as well. We know that Senator Carr always has lots to say about education, and we value the contribution that he makes. But we have moved an amendment to the bill tonight to add these words:

At the end of the motion, add:

“but the Senate condemns the Government for damaging Australian universities through massive funding cuts, and reducing opportunities for Australian undergraduate and postgraduate students, in particular by:

(a) cutting Commonwealth funding for universities by $3 billion since 1996, thereby reducing student places by 81,500;
(b) overseeing a reduction of 3,278 enrolments of Australian university students in 2000;
(c) cutting the number of research training places by 3,336; and
(d) cutting HECS postgraduate coursework places by 60% since 1996”.

This evening I want to address my remarks essentially to the second reading amendment. Since 1996, over $3 billion—that is a lot of money—has been stripped from higher education in Australia. Whilst this is a money bill—it does contain some funds—it does very little to peg back the attack that has been made not only on young people but on higher education per se in our country. This year is the first in a decade that we have seen the numbers of Australian students in higher education fall. That simple fact alone is something that this government has to recognise it is directly responsible for.

The other statistic that I find particularly disturbing is the fact that this year is the first one ever in which indigenous participation in higher education has fallen—and there is a direct reason for that. No only have the Abstudy rules been changed but there has been a lessening of people’s capacity to participate comfortably in an education system that is under so much stress that indigenous people, who do not naturally move towards higher education, are not being encouraged to be part of the education system.

Perhaps I could just digress for a moment. Indigenous leaders in our nation are saying a lot about what education means to their participation in our country. Noel Pearson, for example, is saying that the way forward for people on Cape York Peninsula is through their having good education. Education does not stop in grade 7, as it does for many people who live on Cape York Peninsula, Edu-
cation hopefully will go more and more to year 12 for those young people, especially since the state government is looking at some innovative secondary education programs on the western part of Cape York Peninsula. But for indigenous people to truly participate in our community and our society they need to have access to higher education. It is a true indictment of this government that indigenous enrolments in higher education for the first time in history have fallen.

The government talks about research and education in its Backing Australia’s Ability statement. But unfortunately this bill is simply make-up—it is Max Factor. It does little at all to remedy the cuts of over $3 billion that we have had in the last 5½ years. But I can understand why we have a bill like this at the moment. We know that we are probably less than three months out from an election. We also know that people in Australia know that their higher education system is suffering. So there had to be a response from this government. This government has brought in this piece of legislation in an attempt to salve that wound—to say to the Australian community, ‘Yes, we do care about education.’ I am sorry, but the people in the education sector and the parents of those young people who are in higher education will not be duped by such a poor go at remedying the hurt that has occurred.

This bill apparently is about postgraduate places and research, and the government, as I said, in its innovation statement is talking about their benefits. The reality is that it is reducing and continuing to reduce research training places. The recent white paper on research and research training places said that 3,500 places had been lost across Australia. We know that, of all of them, regional universities have been hit the hardest. For example, Ballarat has lost 41 per cent of its research places and James Cook University in my part of Queensland has lost 20 per cent of its places. The new places that have been announced recently do not make up for these losses. As I said earlier, with these recent announcements not only of the earlier issue but also of the places in regional universities, the government made a great fanfare of telling us about how it is caring for regional universities. I am sorry, but that is also politically driven. We know that this government has recognised that regional and rural Australia is not as enamoured of it as a government as it used to be and that there had to be a little bit of pork-barrelling in that area as well. I am sorry, but country people are not that silly.

The big cuts of 1996 happened right across the board—we all know that—but there were 21,000 university places lost in 1996. Universities had to respond in some way and they responded by cutting differentially the number of postgraduate places. This was most evident in postgraduate course work in the humanities, the arts and the general sciences. While a lot of focus in our community is on the technical and on the vocationally based, it is these general subjects, especially in the postgraduate area, that lead on to greater and greater knowledge and understanding. As a humanities student myself, I am disturbed that we are not valuing the humanities, the arts and the general sciences as much as the vocationally based learning and training that we are doing now.

I would like to share with the Senate some statistics which I think are quite relevant to this debate. In 2000 in Queensland there were 100,213 actual university places. There are 14,643 people who should be in universities today but are not because of the cuts in 1996—14,000 young people who could have been given a higher education but, because of those cuts and the continual inability of the government to remedy that situation, were not. We have now heard that next year the government is generously going to provide the state of Queensland with 825 places! We as a state welcome that—of course we do; it would be silly not to—but it is a little disappointing when you know that 14,643 could have been given a university education. It is no wonder that people who understand the education issue are very concerned.

I would like to move to James Cook University based in Townsville and Cairns. The actual number of students at James Cook at the moment is 8,576. There are 1,253 people who could have had an education at James Cook University had this government maintained the funding levels that the former
The campaign that we ran to establish a Cairns campus of the James Cook University was successful and it was established in 1989. I think it was, at the TAFE campus in the city area. Eventually that moved to the Smithfield campus. The effect of having academics and students working in the community of Cairns—a city of 100,000 people—was evident fairly immediately. Very quickly you could see that there was greater engagement, especially by young people, in local issues. We have a number of very significant environmental issues based around Cairns—Cape York Peninsula, the wet tropics area and the Great Barrier Reef—and lots of young people started to become involved and engaged in those issues. The change was very evident and remarkable.

There was increased knowledge brought to local debates. That occurred directly, I believe, out of having our university in the city. After a few years, we saw the benefit of having a university in the city when we started to have our graduates employed locally. A number of courses that the university operated had placements where young people would work in community organisations as part of their course work. I remember a great piece of work that was done when third year students did oral history with older people in our city. That was a great community building exercise. Action research activities were done, especially with community organisations. Over the last few years I have noticed, as I know our community has, that that participation—that reaching out of the university—has actually dissipated. There is more pressure placed on teaching staff to use their time in directly teaching and not in doing that broader education work that teachers are very good at.

We have had an ongoing enterprise bargaining process at the James Cook University that has resulted, unfortunately, in industrial action. It is one of the only campuses in Australia that has had to resort to industrial action in order to get some wage parity for our lecturing staff. I remember the library opening at the Cairns campus where there was a large demonstration against this government organised by the teachers and the staff in protest of funding cuts to regional
universities. Increased numbers of experienced staff are not being replaced on retirement. When a number of very experienced people in our history department—two in particular that I can remember—came to the end of their careers, they were not replaced. As I said, there has been less participation by academics in community life.

There has been restructuring of departments—this is a very concerning issue—for economic reasons, not educational reasons. The history and politics department has been collapsed into a broader humanities department. The history and politics department was one of the very first departments of the Cairns campus of the James Cook University and something which was very much valued by our community. We have also seen fewer courses offered on the Cairns campus, with students having to undertake a mixture of Cairns delivered courses and distance delivered courses from Townsville.

Concerningly, courses are increasingly being offered on weekends. Cairns campus has a lot of women students and this weekend option for course lecturing time is forcing students to make choices for the wrong reasons. Mature women students find it very difficult to attend lectures on the weekends due to family responsibilities. I know that there are students who are making choices about their education that are based on their ability to access the course and not their desired learning, and I think that is unfortunate.

James Cook University is a great university. It is the university that I went to and I am extremely proud of it, but it is a university that is under stress and it is a university that requires recognition of the funding constraints that it is under. It is a university that requires recognition of the quality of people we have as staff. We require recognition of our place in our community so that our university can truly participate in broader community life. I look forward to a time when there will be a government in this nation that will recognise the value of regional universities, and I hope that will be very soon.

Debate (on motion by Senator Hill) adjourned.

BORDER PROTECTION BILL 2001
First Reading
Bill received from the House of Representatives.
Motion (by Senator Hill) agreed to:
That this bill may proceed without formalities and be now read a first time.
Bill read a first time.

Consideration of Legislation
Senator HILL (South Australia—Minister for the Environment and Heritage) (9.34 p.m.)—by leave—I move:

That the provisions of paragraphs (5) and (7) of standing order 111 not apply to the Border Protection Bill 2001.

I will not speak for any length of time because I think the urgency of the matter is most appreciated. The point I want to add that has not been mentioned in this chamber before is that the Prime Minister—having listened to the Leader of the Opposition’s claim in the other place that the bill would put in place a long-term provision that, according to the opposition, is undesirable—approached the Leader of the Opposition and indicated that the government would accept a sunset clause of six months so that there could be no suggestion of putting in place something that was going to continue indefinitely. I understand that the Leader of the Opposition is not prepared to accept that compromise and it is therefore the position of the Australian Labor Party to oppose the Border Protection Bill 2001.

The government’s view is that it is important that the legislation be passed and that it be passed as a matter of urgency. We have the situation of the ship the Tampa being within Australian territorial waters and having been boarded. Medical provisions, food and other such provisions have been provided to the occupants of the ship. Nevertheless, it remains illegally within Australian territorial waters. Although the captain of the vessel has been told to move beyond Australia’s territorial limit, that has simply not occurred. Therefore, it will be necessary to take further action to protect the integrity of Australian borders. That action may need to be taken obviously sooner rather than later.
It is the position of the government that every step that it has taken so far has been within Australian law; it has been legal. The decision to occupy the ship in circumstances of its illegal entry after the ship had been told that it could not enter Australia’s territorial waters has been legal and any decision that might be taken to remove the ship would also be within the legal capacity of this government. Nevertheless, it is the view of the government that the matter should be put beyond doubt, and that is part of the purpose of this very urgent legislation. The other purpose is to ensure that such an action being taken in the national interest by the Commonwealth government is not obstructed by proceedings within Australian courts.

Honourable senators would know in these administrative law matters how often processes are delayed within the Australian court system. In these circumstances, we believe the duly elected government should be able to put into effect a decision that it takes to protect the integrity of Australia’s borders. We are faced with two issues: the issue of the illegal entry and the issue of actions that the Australian government might take to protect our borders. In these circumstances, and to put the matter beyond all doubt, it is the government’s view that this legislation should be passed and that it should be passed tonight.

It is a matter of great regret to the Australian government that in these circumstances the opposition has decided to obstruct the will of the government. Every now and again there are circumstances such as this when an opposition has a choice either to support a government in difficult decisions in the national interest or, alternatively, to obstruct the government in carrying out that function, albeit a very difficult function. In tonight’s circumstances, the Australian Labor Party has decided that it will not support the government in the action that it is seeking to take on behalf of the Australian people.

It is doubly disappointing to us that when the Prime Minister went back to Mr Beazley and said, ‘I am prepared to give you the assurance that there will be no long-term consequence from this legislation because I will put in place a sunset clause of six months so that the act will no longer apply after six months. By then there will be a newly elected government in Australia. They can make the decision whether to go to the parliament and to seek to have the legislation extended or changed or whatever,’ Mr Beazley refused that offer and will still not give to the duly elected government of Australia the legislative support that it believes is necessary tonight to carry out difficult actions in the national interest. That is particularly disappointing to us but it is a choice that was open to the opposition.

The opposition in these circumstances apparently believes that it can get some benefit through not supporting the government today in this difficult time, and so be it. That comes with the responsibility of being an opposition. There are difficult decisions to be taken by governments but in opposition there are sometimes difficult decisions to be taken too. It is always tempting for oppositions to say no to a government and try to, therefore, define a distinction, define a difference. But on some occasions, I would put to the Senate, it is in the national interest for the opposition to say, ‘In these circumstances, we recognise the government has been duly elected. It has a difficult task before it at the moment. It is taking difficult choices nevertheless it should be supported.’ However, this opposition—Mr Beazley and the Australian Labor Party—have not been prepared to do that tonight, and that is a matter of great disappointment to this government.

We have been told that the bill will be defeated in here tonight. The Labor Party will vote against it, and I have no doubt that the Australian Democrats will vote against it, because they even voted against time being made available tonight to debate the bill. It is clear that the bill will be defeated by a combination of the Australian Labor Party and the Australian Democrats. However, the government believe that it is their responsibility to put the legislation to the parliament and to seek the vote. It is never too late until the numbers are counted. I expect we will have a debate that will continue for some time tonight and that should allow some further time for the ALP to reconsider its position. On this occasion, we urge you to put your immediate electoral instinctive re-
actions behind you and join with the government and vote with the government to put in place this piece of legislation which will ensure that the government can act in the national interest and that this vessel that is illegally in Australian waters can be removed from Australian waters. On that basis I urge the opposition, the Australian Labor Party, to reconsider its position.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.43 p.m.)—I indicate that I will make some substantive comments on the Border Protection Bill 2001 in the second reading debate. The question before the chair is that of the cut-off motion. The opposition does not oppose the cut-off motion, will not be debating the cut-off motion and looks forward to an opportunity in a few short minutes to make some very substantive points about the substance of the bill.

Senator BARTLETT (Queensland) (9.44 p.m.)—Likewise. As the question before the chair is simply whether to exempt the Border Protection Bill 2001 from the cut-off, I will not refute some of the extraordinarily spurious claims made by Senator Hill. I am sure Senator Stott Despoja will do that with great flair in a short while. In relation to the cut-off, whilst the Democrats did not believe that this bill should be rushed through, given the extraordinarily significant changes that it seeks to make and some of the significant impacts it may have on legal rights, civil liberties and international law and like and should be given proper scrutiny, in the context of the decisions that have been made by the opposition I think it is best to get on to the substantive debate about the bill and examine some of the flaws within it as quickly as possible. So we will not be opposing the cut-off motion on this occasion for those reasons.

Senator BROWN (Tasmania) (9.45 p.m.)—I am normally the greatest defender of the cut-off because it was through Senator Chamarette in 1993 that the cut-off motion was brought into place to ensure that we did not see legislation being railroaded through this parliament. But the nation has a crisis on its hands, a crisis which has evolved from the Prime Minister’s office and out of the Prime Minister’s inhumane handling of the Tampa and the people who are aboard it. It is extraordinary how bad legislation can be when it is brought to cover up the mistakes that have been consequent upon that prime ministerial decision. This legislation is bad indeed.

However, with the recognition that, with Labor and the Democrats, plus the Greens, who are essential to the vote, the government will not get the legislation through the Senate tonight, I think it is important that it be disposed of and that the government be left to deal in other ways with any potential breach of the law that has occurred today under prime ministerial direction. If it is not a breach of the law, this legislation is a breach of the Constitution. It is quite unconstitutional legislation. I will talk about that on the second reading, but the sooner it is got rid of and the Prime Minister takes direct responsibility, without retrospective legislation like this, for his shambolic action and the damage it is doing to this nation of ours, the better.

I reiterate: this legislation is rushed. It has been brought in to cover up the Prime Minister’s decision, which now has the real question mark of illegality hanging over it. It is too open-ended and riddled with legal questions for a responsible Senate to allow it to stand anyway and, as I said, it is unconstitutional to boot. But we will develop that argument as the night goes on.

Senator HARRADINE (Tasmania) (9.47 p.m.)—Given the announcements or the indications that have been given by the opposition and other groups within the Senate, the result of which would mean that this legislation would not go through this parliament tonight, at least in an unamended form, and given the fact that the House of Representatives has now drawn stumps for the night and will not be sitting until tomorrow morning, I am wondering about this question of the cut-off. If the government wishes to proceed, I will vote to exempt this bill from the cut-off but during the debate there may emerge questions about the international law and things might emerge that normally would have been the subject of consideration by a legislation committee on reference of a bill.
The government will argue—and it has a valid argument, I suppose—for this legislation to protect the actions that have already been taken with respect to the *Tampa*. I am not in favour of the legislation so far as it affects other vessels that may or may not come here, but I think it would be desirable for the chamber to consider amending the legislation to redefine the term ‘ship’ to refer only to the *Tampa*. I just foreshadow that here tonight and I look forward to hearing from the government, the opposition, the Democrats, Senator Brown and Senator Harris, and whoever—

Honourable senator interjecting—

Senator HARRADINE—Yes, and Senator Boswell, of course. That may be a way around it. There may be some obligation for us to protect the actions that have already been taken in respect of the vessel *Tampa*. Whether we can fully consider that issue tonight remains to be seen, but I certainly will be voting for this piece of legislation to be exempted from the cut-off motion.

Question resolved in the affirmative.

Second Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.51 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

In a statement made earlier today the Prime Minister outlined the serious circumstances surrounding the entry of a Norwegian flag vessel MS *Tampa* into Australian waters surrounding Christmas Island. That vessel entered our territorial waters in defiance of a direction given by Australia. In the absence of firm action on the part of Australia, it could have led to the illegal entry of the persons on board into Australia thus undermining Australia’s control over its sovereign territory.

Those who enter our territorial waters contrary to an express direction from the Government should not be rewarded by being allowed to stay in our waters, or even worse, by having the opportunity to enter our land territory.

While the Government believes that there is appropriate legal authority at present for more abundant caution this legislation will ensure there is no doubt about the Government’s ability to order such vessels to leave our territorial waters.

Section 4 of the proposed bill enables an authorised officer to order a vessel that is outside the territorial sea to be taken outside the territorial sea. That order would cover all persons on board the vessel. A provision has been included to ensure that the order is effective even if the master of the vessel subsequently claims that the master was not on board the vessel at the time, or could not understand the order. Also, the bill provides authority for the ship to be taken outside the territorial sea if the master of the vessel refuses to comply with the order.

One of the difficulties facing Australian officers in dealing with vessels involved in people smuggling is that people on board often seek to avoid preventive action by jumping overboard. Also, it may be necessary for humanitarian reasons to take people off a vessel subject to the order for medical treatment. Section 6 of the bill authorises an officer to return such persons to the ship subject to a direction under section 4 of the bill.

The protection of our sovereignty, including Australia’s sovereign right to determine who shall enter Australia, is a matter for the Australian Government and this Parliament. Consequently, sections 4, 8 and 9 ensure that a direction given under section 4 and actions taken as a consequence of that direction will not be able to be challenged in the Courts. In particular the bill confirms that the persons on board a vessel at the time a direction is given will not be able to seek to delay their removal from the territorial sea by making a claim for refugee status under the Migration Act. However the Minister will have a non-compellable power to allow a claim to be made.

Also officers, and those assisting them, taking actions authorised by the bill will be protected from civil or criminal proceedings in respect of those actions.

It is important that this bill cover actions taken and to be taken in respect of the MS *Tampa*. Therefore the bill, on entry into force, will operate from 9.00am today.

As the Prime Minister noted earlier, this bill will confirm our ability to remove to the high seas those vessels and persons on board that have entered the territorial waters under Australian sovereignty contrary to our wishes. It is essential to the maintenance of Australian sovereignty, in-
cluding our sovereign right to determine who will enter and reside in Australia.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.51 p.m.)—The opposition will not be supporting this bill. This is a hasty, ill-conceived and ill-considered piece of legislation. Over the past 10 years, there have been 13,000 unauthorised entries into this country. Eleven thousand of those have occurred since 1996. Labor has consistently supported measures put up by the Howard government to stem this flow of illegal entries.

In relation to the current crisis involving the MV Tampa, the opposition has offered support for the Howard government’s action since the ship picked up 438 people in Indonesian waters on Sunday this week. We have supported refusing MV Tampa entry into Australian waters. We have supported the government’s efforts to return these people to Indonesia—although we question how vigorous the government has been in these efforts, given that the Prime Minister has not even seen fit to speak to the Indonesian President about these matters. We have supported the government’s action to board the ship when it moved into Australian waters off Christmas Island. Madam Acting Deputy President, let me make it clear that we are prepared to consider whatever legal action the government may wish to propose to deal specifically with the MV Tampa situation. But we are not prepared to support a sweeping change to the current legal framework for dealing with situations like that of the MV Tampa. This legislation is far too broad.

In particular, we are not prepared to support such significant legislation in the circumstances in which the government has placed the opposition. I will deal briefly, during my contribution to the second reading debate, with those circumstances. The opposition was given 40 minutes notice of the introduction of the Border Protection Bill 2001. No explanatory memorandum was made available. Members of the House of Representatives did not even have a copy of the bill. Even a cabinet minister—the Minister for Agriculture, Fisheries and Forestry, Mr Truss—made it quite obvious during debate in the House of Representatives that he had not seen the bill, and he certainly did not understand the implications of it. When the opposition dealt with the question in this chamber of ensuring that a procedural device could be put in place to allow this debate to occur tonight, I, as Leader of the Opposition in the Senate, had not seen a copy of the bill. No member of any of the opposition parties in the Senate had seen a copy of the bill.

Had the government seriously wanted the support of the whole parliament on the Border Protection Bill 2001, had the government taken seriously the role of the Australian parliament and had the Prime Minister been sincere in pronouncing that it is proper that the people’s representatives in this parliament take such weighty decisions as these, I think we would be entitled to expect even a cursory amount of consultation. Surely, we could expect the courtesy of proper consultation. We were not extended that courtesy.

We can only conclude, given the total lack of engagement with the opposition on this legislation, that we are dealing with another example—another desperate gambit from an unpopular Prime Minister about to face the electorate—of wedge politics. Make no mistake about what the Prime Minister, Mr Howard, is on about here. He is attempting to drive a wedge between the two major political parties on the most significant political issue of the moment. But, as Mr Beazley said, this is a wedge too far. Even in the brief period that we have had to consider the bill that is now being debated in the Senate, it is clear that it raises very significant legal issues, issues which require and deserve thorough and thoughtful consideration by this parliament—the sort of consideration that has traditionally been given to significant legislation by this chamber.

Under this bill very broad powers would be conferred on an unspecified group of people who would not be accountable even under criminal law. For example, it fails to specify a particular class of vessel to which it would apply. It seems to me that it could conceivably apply to an Australian vessel with an Australian crew and Australian passengers. It could apply, for example, to an Australian fishing boat or cruise ship which
might have rescued three or four boat people. It could apply to any vessel in any circumstance. You have to ask, ‘Is that what the government really wants with this legislation?’

Let me elaborate on some of the serious concerns we have. These concerns have been identified in only the very short amount of time we have had to look at this bill. These concerns have been identified in just a matter of hours. Let me take you to clause 3, ‘Definitions’. ‘Officer’ is extremely broadly defined. These people are empowered to make decisions with grave consequences. They have absolute discretion and absolute immunity. Does the definition of ‘officer’ include lowest ranking officers of Customs or even trainees or recent graduates of the AFP or state police forces? These are serious questions that need to be answered.

Senator Ian Macdonald—Move an amendment then.

Senator Faulkner—Take clause 4 of the bill. Subclause (1) empowers an officer ‘in his or her absolute discretion’ to direct the master of a ship that is within territorial waters and any person on the ship ‘outside the territorial sea’. What matters does an officer have to take into account in exercising this discretion? Would an officer have to take into account the seaworthiness of the vessel in making such a direction? Would an officer have to take into account the health and safety of the people on board the vessel in making such a direction? Would an officer have to take into account the circumstances which had led to the arrival of the vessel in Australian waters in making such a direction? These again are crucial issues. These are important questions.

Take subclause 4(2) of the bill, which makes it impossible to challenge in any court in Australia. Does the bill attempt to exclude the jurisdiction of the High Court to review actions? Does it? Perhaps Senator Macdonald might care to offer an opinion on that one.

Senator Conroy—Oh, yes, he’s so smart.

Senator Faulkner—Exactly. Subclause 4(4) of the bill provides that:

(a) there was no master on board the ship to receive the direction; or
(b) the master did not receive or understand the direction.

Does this mean that the order does not have to be communicated in a language understood by people on the vessel? Again, these are crucial issues. These are important questions.

Take clauses 5 and 6 of the bill. I ask this question: what does ‘reasonable force’ mean for the purposes of this bill? Who will decide what is reasonable, given that it can never be challenged in court? These are crucial issues, as I have said, and they are ones any parliament and any house of parliament worth its salt would address itself to. What are ‘reasonable means’? What are reasonable means for the purposes of the bill? Would it be reasonable for an officer to lock up the captain of a ship if orders were not complied with? Would it be reasonable for an officer to sedate the captain if orders were not complied with? Would it be reasonable for an officer to shoot the captain of the ship if the orders were not complied with? What does it mean?

Senator Abetz interjecting—

Senator Conroy interjecting—

Senator Faulkner—What does it mean to detain a ship?

The Acting Deputy President (Senator Calvert)—Order! I wish I could hear what you are saying. Would you tell your colleagues to keep quiet?
Senator FAULKNER—How can a ship be taken beyond the territorial sea of Australia? Does this mean that a person without experience in steering or driving a particular ship can drive it out of territorial seas? Does clause 6 of the bill mean that a person who is evacuated for medical reasons can be forcibly returned to the ship?

Senator Conroy—You get up and tell us. You’re the minister for justice.

Senator Abetz interjecting—

Senator FAULKNER—Who makes the decision as to when and how this person—

The ACTING DEPUTY PRESIDENT—Order! Senator Faulkner, I am sorry to interrupt your speech. Senator Conroy and Senator Abetz, I wish you would stop sledging across the chamber, because I am finding it very hard to hear Senator Faulkner, even though he has to shout.

Senator FAULKNER—I was speaking about clause 6 of the bill and whether it would mean that a person who is evacuated for medical reasons can be forcibly returned to the ship. That is the question I was asking.

Before I was rudely interrupted by Senator Abetz, I was going to go on to ask who would make the decision about when and how such a person would be returned to the ship. Clause 10 of the bill—and it is the real killer clause—states that this bill has effect ‘in spite of any other law’. Does this mean that no Australian criminal laws apply? Does this mean that an officer acting under this legislation cannot be held responsible for, let us say, manslaughter, if a boat sinks after being removed from international waters? What does it mean? The government does not know the answer to that question or to any of the other questions I have been posing. I would like to know and, since we have a legal expert in Senator Macdonald here with us, perhaps he could tell us. Does this mean that an officer acting under this legislation could not be held responsible for assault?

I acknowledge and admit that we have only had an opportunity for a cursory examination of this bill. There has not been time for a more exhaustive analysis of some of the weaknesses that no doubt are contained within this legislation. I want to repeat the words of the Leader of the Opposition, who said this a short while ago in the House of Representatives during the debate on the bill in that chamber:

What the opposition expected when the government handed across a copy of this bill was legislation that dealt specifically with the situation in relation to MV *Tampa*.

That was the expectation of the opposition. I believe it was probably the expectation of a majority of senators in this chamber. But we would also have expected that there would be an opportunity for a wider consideration and examination of other issues, and surely that is appropriate. But none of those opportunities has been provided. This is not that sort of bill. Those expectations were not met. This is a very different sort of bill. It is a bill that goes to the entirety of the legal regime which applies at the moment.

The opposition has urged the government to bring back a piece of legislation for the consideration of the parliament, if it is necessary—and I certainly believe it is possible that it is. I think some thorough briefings might be offered to those with an interest in these matters, but we believe that it would be appropriate for the government to bring back some legislation to deal with the specific situation and circumstances that we are now facing. The specific situation is that of the MV *Tampa*. We are certainly prepared to consider such a bill, but this is not such a bill, and it is for those and the other reasons I have outlined that the opposition will not be supporting the legislation before the chamber.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.11 p.m.)—That was a very poor speech from Senator Faulkner, considering he had four hours to prepare for it and yet produced no substantive argument against the legislation whatsoever. It should come as no surprise that the opposition brings no substantive argument against the legislation because what it has, rather, is a political argument. It wants to distinguish its political product from that of the government. It wants to take a political position that is different from the govern-
ment in order that it can present a different political product. It has been demonstrated—

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Order! The Leader of the Opposition in the Senate was heard in reasonable silence, and I would expect that the Leader of the Government would get the same courtesy.

Senator HILL—I understand that there is stress on the side of the ALP. This is a big decision tonight. This is a decision, for the first time in six years, to mark out a different product. But of all the issues for the ALP to decide to distinguish itself from the government on, this is probably the most inappropriate of all. Every now and again—but not too often, fortunately—governments have to take difficult decisions in the national interest when they deserve support from the opposition as well. In this instance, with the election approaching, the ALP has made a decision that it has given enough support for the time being and it now wants to take a different position.

It can do that, but what are the potential consequences of that? That is the issue. Let me just look at the circumstances we are facing. Australia has a generous and orderly humanitarian program. We allow some 12,000 individuals to enter Australia every year on humanitarian grounds. We do it because we are sensitive to the needs of those who are suffering from state based persecution and we are prepared to play our part within the international community to provide refuge for a reasonable number of such people. We all know that across the globe there are millions of such people who fit those categories today. What can be expected of Australia is that it accepts a fair share of the burden, and we believe that about 12,000 individuals per year is a fair share.

So we are not talking about those who have been prepared to seek entry to Australia as refugees or under some humanitarian category; we are talking about those who seek to enter Australia illegally. In this circumstance, we have an extreme case of it, because in this circumstance we have some 400-odd individuals who left a port in Indonesia bound for Australia. When their vessel got into trouble, they were taken on board by the Norwegian freighter; the freighter sought to return them to their port of embarkation in Indonesia, which was the nearest port and which was a port that was fully equipped to take the freighter, where they could disembark safely. And what happened? They applied duress to the captain of the ship and said that the ship must turn around and head for Australia. That is the circumstance in which the Australian government said, 'This freighter will not be allowed to enter Australia's territorial waters.' After a short while and despite the fact that it had been instructed not to enter, the captain of the vessel disobeyed that instruction and entered Australia's waters illegally. It is now in Australian territorial waters illegally and Australia has every right to return it to international waters. I see Senator Mackay shaking her head. If she thinks it is legitimate—

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Order! Senator Hill, address your remarks through the chair.

Senator HILL—If she thinks it is legitimate for captains on the high seas to be forced to travel to Australia with a cargo of illegal passengers, then she has a very different attitude as to what is appropriate and what is not. I remind Senator Mackay and others on the other side of the justification for the captain ignoring the lawful order of Australian authorities and breaching our territorial border: he said it was because there were seriously ill persons on board that required evacuation. When the Australian doctor entered the ship today, that was not found to be the case. It further justifies the Australian government's decision to say to the captain of that vessel, 'We are going to protect our sovereign rights and you are not going to be permitted to legally enter our waters.' The opposition might have a different view. I am not sure what their view on that is at the moment, because as of yesterday they were supporting the Australian government in that, but now they are all shaking their heads on the other side of this chamber. They now seem to be implying that they oppose the Australian government's
action in demanding that the ship stay outside of the territorial boundary of Australia.

Senator Cook—We never said that.

Senator HILL—Well, you are shaking your heads at the point. So that was legitimate.

Senator Cook—That is distortion.

Senator HILL—Okay, let us accept the point. The Labor Party want to reinforce that they believe it was legitimate for Australia to give an order that the ship not enter territorial waters. As of today, they said it was also legitimate when the ship breached that border for Australian authorities to enter the ship, and I assume that is still the case. Are they now saying that it is illegitimate for Australian authorities to return it to international waters? That is the point where they have drawn the line. They have decided that they want to distinguish their political product and apparently they are now saying that it has a right to remain in territorial waters. What was the point of what they were saying yesterday? This legislation ensures that Australia has the power in domestic law to do exactly what it did yesterday, apparently with the approval of the opposition, and to do exactly what it did today, apparently with the approval of the opposition, and that which it may wish to do in the future to return this ship to international waters. Perhaps that is now opposed by the opposition. This bill is seeking to—

Senator McKiernan—Mr Acting Deputy President, on a point of order: I have just seen an adviser approach you in the chair. That is not allowed. Advisers are not allowed on the floor of the chamber, and you should have instructed the adviser not to—

Senator Ian Macdonald interjecting—

Senator McKiernan—You should go and sober up. You have not been sober all day; you have not been sober all week.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator McKiernan is making a point.

Senator McKiernan—Mr Acting Deputy President, I ask you to exercise your authority and discipline the adviser. He has actually removed himself from the chair. What do you intend to do about that circumstance?

The ACTING DEPUTY PRESIDENT—It was a mistake on my behalf, Senator McKiernan. I wanted to send a message to my office and he was the closest person I could find. I am sorry about that.

Senator HILL—Mr Acting Deputy President, on a point of order: some might think it is a joke but there was actually a serious reflection made upon an honourable senator, which will appear in the Hansard, and I believe it should be withdrawn.

The ACTING DEPUTY PRESIDENT—Senator McKiernan, I hope you accept my explanation. I needed to get a message to my office and he was the closest person I could see.

Senator HILL—Mr Acting Deputy President, what about the reflection on the senator?

The ACTING DEPUTY PRESIDENT—Senator McKiernan, were you reflecting upon me or upon someone else?

Senator McKiernan—Mr Acting Deputy President, if I reflected upon you in any way other than in asking you to exercise your authority in the chair, I would withdraw the reflection on you. I do not believe I did that, but I am prepared to withdraw the reflection.

The ACTING DEPUTY PRESIDENT—The adviser approached the chair at my request.

Senator McKiernan—I accept your explanation.

The ACTING DEPUTY PRESIDENT—Thank you.

Honourable senators interjecting—

Senator HILL—There are some people drifting; it is quite interesting, actually. Here we have one of the most important pieces of legislation to be introduced into this place in a long time and there are some in the Labor Party who wish to turn it into a joke.

What I am saying is that, through this piece of legislation, the Australian government is seeking urgent endorsement from the parliament for the actions that it has taken to protect Australian territorial integrity and for the actions that it may take in the future to
protect that territorial integrity, whether those actions relate to the *Tampa*—the vessel that is illegally in Australian waters at the moment—or to other vessels, because it might have escaped the opposition, but it has not escaped most Australians, that what we are now seeing is a steady stream of illegals travelling down through Indonesia to Christmas Island, to Ashmore Reef or to other relatively close parts of Australia with the intent of illegally entering Australia. What the government is seeking to do is put a stop to it. The government is seeking the endorsement of the parliament, through this legislation, to ensure that it has within domestic law the power to effectively do that. Surely, a reasonable person would say that the Australian government should have all necessary powers to do what is necessary to protect the integrity of Australia’s borders. Is that what the Labor Party is arguing against in this place? If they are not arguing against it, why aren’t they prepared to give the government those powers here tonight? One can only assume, as I said at the outset, that it is because they want to distinguish their political position because we are coming close to the next federal election.

Politics is one thing, but this is a serious national issue. The government has responded firmly. It has responded expeditiously. It has done all that is reasonable in the circumstances to protect Australia’s borders, but it would surprise no-one in the country that circumstances like this may well repeat themselves over the next few weeks and the next few months. Every case will be different, and in every case the response might vary slightly. But the important thing is that the government has the power that is necessary at the time to act promptly and to act with confidence to ensure that its officials, when they are so acting, may not be threatened in the Australian courts for doing so. The next one of these events may well be during the next two up weeks of the parliament. The parliament will not be sitting. Is it unreasonable for the government to seek this power, therefore, whilst the parliament is sitting and to seek it not only in relation to the *Tampa* but for circumstances that may occur in the future? That is what the government is seeking from the opposition in this bill here tonight.

The image one gets from the opposition is that there is something extraordinary about this, that some massive new power, some frightening authority, is wanted. I reiterate to the Senate: the government believes that every action it has taken to date is within its lawful authority and the right to remove the ship is also within Australian lawful authority, but the advice to the government is that it should be put beyond doubt. All the government is seeking in this bill is to put the issue beyond doubt. And if the opposition, as it did yesterday and earlier today, supported the government in what it is doing, why is the opposition now going to oppose the government?

**Senator Conroy**—You lied to us, didn’t you? You lied to the Australian people.

**The ACTING DEPUTY PRESIDENT** (Senator Calvert)—Order! Senator Conroy, would you withdraw that implication.

**Senator Conroy**—I withdraw.

**Senator HILL**—If the opposition supports the government in doing what it has done to protect the integrity of the borders, why is the opposition now going to oppose a legislative change that puts it beyond doubt? There is only one possible explanation and that is that the political decision—

**Senator Bolkus interjecting**—

**The ACTING DEPUTY PRESIDENT**—Order! Senator Bolkus, you have been continually interjecting through this whole speech. I would ask you to refrain.

**Senator HILL**—If the opposition supports the government in doing what it has done to protect the integrity of the borders, why is the opposition now going to oppose a legislative change that puts it beyond doubt? There is only one possible explanation and that is that the political decision—

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**The ACTING DEPUTY PRESIDENT**—Order! Senator Bolkus, you have been continually interjecting through this whole speech. I would ask you to refrain.

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and decided: ‘We’ve gone far enough in the support of this government. We are now going to take a different position; we are now going to oppose the government being given the legal authority that it needs to put the matter beyond doubt.’ That is what we cannot understand. If the opposition says that it is not doing this for political reasons, then what are the reasons? If it supports what the government has done, why doesn’t it support putting the legal question beyond doubt?

Senator Robert Ray—What legal question?

The ACTING DEPUTY PRESIDENT—Senator Ray, you will have an opportunity to speak later.

Senator Kemp—Robert is speaking on a policy issue!

The ACTING DEPUTY PRESIDENT—Order, Senator Kemp!

Government senators interjecting—

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

Senator HILL—The next thing we will hear is that this is a Labor Party policy position—that finally, after nearly six years, they have defined a policy. At a moment of serious national interest, they have defined a position different from the government’s, the consequence of which of course is to put extra pressure upon the government in the difficult decisions that it must make in the days and weeks ahead. Senator Ray may ignore this, but the rest of Australia understand that there is a stream of illegal persons getting access through Indonesia and being used by people smugglers—perhaps the most grubby of all international criminals who use the unfortunates of this world—for their short-term financial gain to breach Australia’s immigration laws and to enter Australia illegally. That is what this government is seeking to respond to. It is against that that this government has taken firm but difficult decisions.

We have heard the criticism today of people being held in detention centres when they reach Australia, even though the Labor Party introduced that law in 1992. But of course come today, when the Labor Party is now wanting to start to distinguish its political position on immigration, a different attitude starts to develop. Tonight it has really come to the point of an opposition acting against the national interest. There will be an election in a few months, and the Australian people will be able to make a choice as to a government for the next three years, but for this three years Mr Howard and his government have been elected and Mr Howard will carry out the responsibilities that he has sworn to carry out in the best way possible in the national interest.

Part of that responsibility is to protect the national borders. The Australian government determined that this ship should not enter Australian waters, the ship entered Australian waters illegally, Australian forces took possession of the ship and the government wants to ensure that it has the power to remove the ship. It is at that point that the Labor Party take a different direction. So what do they want? Do they want the ship to remain in Australian territorial waters indefinitely? What do they want—the matter to get clogged up in the courts again? Already there is the threat of litigation and the threat of seeking injunctions in the courts.

Senator Robert Ray interjecting—

Senator Alston interjecting—

The ACTING DEPUTY PRESIDENT—Senator Alston, you are interjecting not from your own place. I have told you already once tonight: if you wish to interject, at least take your proper place in the chamber.

Senator HILL—There are already threats to seek injunctions in the Australian courts in an effort to thwart the Australian government’s action to remove this particular ship. What does the ALP want to do? Does it want to give comfort to those people?

Senator Robert Ray—No.

Senator HILL—Senator Ray, from his back row seat, says no.

Senator Robert Ray interjecting—

Senator HILL—Then the Labor Party can show it by supporting the government in here tonight and passing this legislation to ensure that third parties will not be taking
action in the Australian courts and obstructing the duly elected government in carrying out such actions as it deems reasonable in the circumstances.

The ACTING DEPUTY PRESIDENT—Senator Ray, on reflection, I believe the last interjection of yours was quite unparliamentary.

Senator Robert Ray—Rubbish, but I will withdraw it.

Senator Kemp—Share it, Robert. I want it in Hansard.

Senator Robert Ray interjecting—

Senator Kemp—Good on you, Captain Nemo! Get back in your submarine, Captain Nemo!

The ACTING DEPUTY PRESIDENT—Order! This is a very serious debate. I do not need to remind either side of this, and I would like to hear Senator Hill in some peace and quiet.

Senator Hill—What I said earlier today is that oppositions—and I have had a lot of experience of opposition, 13 years of it—every now and again have to put what they think might be their short-term political opportunity aside in the national interest. Every now and again, in the national interest, they have to be prepared to support the government, not just in getting up in the parliament and saying—

Senator Robert Ray interjecting—

Senator Kemp interjecting—

The ACTING DEPUTY PRESIDENT—Order! Senator Ray, for goodness sake, this is a very serious matter, and I would think the government has a right to put its position. There are too many interjections from both sides.

Senator Hill—It is not all that difficult after an action has taken place—such as an instruction from the government that the ship not enter illegally or, when the ship has entered illegally, that the government take action to board the ship—for an opposition to say, ‘Okay, we will endorse what you have already done in the national interest.’ The real test comes when you look at the attitude of the opposition to something that is prospective, something that needs to be done in the future to protect the integrity of the borders. This ship is in Australian waters illegally. The Australian government has the right to remove it or to have it removed. In that circumstance, the Australian government expects the opposition to support it. If there is an element of doubt in the domestic law—there is no doubt in the international law—the government expects the opposition to take the hard decision and say, ‘Yes, we will support the government in this circumstance prospectively because it is in the national interest.’

That is what we have sought of the opposition here today. We have made the point of urgency. Hard decisions have to be made in relation to the Tampa. I suspect hard decisions are going to have to be made in relation to other vessels in the weeks and months ahead. The Australian government wanted the support of the opposition. It is a matter of deep regret to us that we are not able to get that support. I can tell you that, whatever happens in this place tonight, the government will still do what they believe is right and they will continue to act in what they believe to be the national interest. (Time expired)

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Before I call Senator Stott Despoja, I would hope that senators on both sides would contain their noise so that we can hear Senator Stott Despoja with some benefit of decorum.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (10.37 p.m.)—I rise on behalf of the Australian Democrats to express our strong opposition to the Border Protection Bill 2001. I find it extraordinary that Senator Hill on behalf of the government has suggested that there is only one possible explanation, one possible reason, for people opposing the legislation before us today and that is, he is claiming, a political reason. What about the legal, moral, technical, constitutional and humane reasons for opposing the legislation before us?

Senator Bartlett—They don’t count for the government.

Senator STOTT DESPOJA—They do not count for the government, you are quite right, Senator Andrew Bartlett. I also want to
acknowledge interjections by Senator Andrew Murray, who said tonight, ‘Thank God for the Senate.’ Thank God for the Senate because this is the only chamber tonight that is seeking to preserve, seeking to uphold, the rule of law in this country. There are two key objections to this legislation. The first is that it attempts to grant arbitrary power to turn away vessels from Australian territory. The second is that it purports to prevent any person from applying for refugee status or attempting to access the courts to ensure that they have been dealt with in accordance with due process of law.

In what little time has been available tonight for public consultation, the Democrats have sought advice from experts in the field of international law. Dr Jean Pierre Fonteyne, the convener of the graduate international law program at the Australian National University, offered the following description of the bill this evening. He said:

It would undoubtedly elicit a deluge of protest from nations throughout the world. It is tantamount to an unrestricted arbitrary power on the part of the Prime Minister to order the departure of any vessel, including vessels exercising the right of innocent passage, on any grounds whatsoever. It is one of the most unlimited attempts to control passage through territorial waters that I have ever seen.

Senator Bartlett—A damning indictment.

Senator STOTT DESPOJA—It is an absolutely damning indictment, Senator Andrew Bartlett. Senator Bartlett, as our immigration and multicultural affairs spokesperson, will also be speaking on this legislation tonight. This is a completely inappropriate bill, and it is completely inappropriate for us to pass this bill, in what is an emergency session of parliament, without engaging in any consultation with the community or indeed with any other maritime nations around the world. The bill proposes an extraordinary grant of arbitrary power and should be rejected outright by this chamber tonight.

I note that Senator Faulkner has also added his concern about the lack of consultation with members of this and the other place. The Democrats feel very strongly that the lack of public consultation should be acknowledged as well. Senator Faulkner, on behalf of the Leader of the Opposition, has said that they had 40 minutes to examine the legislation. As I understand it, they got it at least an hour before the Australian Democrats did. We join them in their protests against the process that has been used tonight. But it did not take four hours to see the problems with this bill. It did not take an hour to recognise some of the fundamental flaws with this legislation and some of the extraordinary powers that this legislation seeks to grant this government.

The bill is indeed a repudiation of our international obligations. It is effectively a ban on refugees. Provided that the government can detect these boats in the first place, it seems likely that they will always exercise these powers to turn them away. That is our fear. We know that this is part of a much bigger, broader agenda by this government. This government claims that the ALP’s position on this legislation is politically motivated. I think that this legislation is better called the ‘Polls Protection Bill’. Do not think for a moment that we are under any illusion that the motivating factor behind this legislation is not a blatant political one on behalf of this government.

Senator Boswell interjecting—

Senator STOTT DESPOJA—Senator Boswell may say it is nasty. This is nasty law, Senator. This is bad law. Men, women and children fleeing oppression and terror will be sent back in a display of outrageous callousness. That is what this legislation allows and provides for. Under article 33 of the Convention Relating to the Status of Refugees of 28 July 1951 there is a prohibition in international law on states expelling genuine refugees from their territories. If these people are refugees, then their expulsion will be in violation of this international obligation.

It is perhaps the most repugnant aspect of this bill that it prevents any person on board one of these ships from applying for a protection visa. This has to be seen as an incredible violation of our obligations to consider applications for refugee status. But we have not seen concern expressed by this government throughout this debate this week. They have no concern about people being able to access the provisions that currently
exist. They want to turn these people away from even being assessed as genuine asylum seekers.

Our international obligations are reflected in the existing legislative regime, which requires asylum seekers illegally entering Australia to be processed according to law. If they are not genuine refugees—everyone in this chamber, I believe, agrees—then they should be sent home. If they are genuine refugees, then international law, domestic law and basic standards of humanity require that they be given the protection that they deserve. That is what this legislation is seeking to undermine.

Senator Murray—It is about supreme executive power.

Senator STOTT DESPOJA—Supreme executive power. That point is noted, Senator Andrew Murray. I move on to the rule of law at this point, which seems oddly appropriate, given your objection. This bill proposes to make some extraordinary actions taken by the government involving a military operation against unarmed civilians not subject to judicial review. It is a fundamental principle of law that action by any officer of the state must be subject to review in the courts, and that is the power that the government are seeking to remove with this extraordinary legislation tonight. Indeed, that principle is actually enshrined in our Constitution. Section 75(v) permits the High Court to examine all matters in which a writ of injunction, or mandamus, is sought against an officer of the Commonwealth. It is quite possible that such action could be taken in the High Court, notwithstanding the attempts of this bill to completely exclude judicial review. Our forebears had the wisdom to enshrine the rule of law in our Constitution. They did so precisely to guard against this kind of governmental excess. Only time will tell if it is effective.

Not only is this government unprepared to comply with their obligations under the law. This bill will make executive action immune from review by the judiciary. This is extraordinarily significant. It is absolutely astonishing that Senator Hill could stand up in this place and say that there was no substantive argument given against this bill, when it is one of the most damning pieces of legislation I have seen since I came into this place almost six years ago. There is a real possibility that the rights of those on board are being infringed. These are people within Australian territory who are seeking asylum. Our international obligations require us to consider their applications by the due process of law. In law, these people are no different from asylum seekers who land on the shores of Christmas Island. They are within Australian territory and must be dealt with according to the process of law.

We do not know the background of the people who are on that ship, the vessel *Tampa*, but it is quite possible that they have fled oppression and terror only to be further oppressed in the territory of a land that they, and of course most people throughout the world, thought was a free country. I have to admit, though, I think there are a number of nations around the world tonight—possibly even Afghanistan, certainly Norway and maybe even Indonesia—and certainly there would be bodies like the UN, who, as we speak, are perhaps questioning our commitment to a number of fundamental principles of law and human decency.

This is a bill designed to send a message. The message is not simply that we are tough on asylum seekers; it is that we are prepared to act as a bad international citizen. We are willing to act inhumanely against those who may be fleeing persecution, and we are prepared to do it without engaging the community in consultation. We are prepared to do it with four hours notice to the very body that Senator Hill has talked up tonight. He has talked proudly, strongly and reverently about the Australian parliament. He has so much respect for our deliberations and our decision making in this place that the Leader of the Opposition was given 40-minutes notice to
debate the bill—the Democrats much less than that.

There is also uncertainty as to what we are indemnifying against. What actions have been taken in this case? What actions are going to be taken in the future? Are we really prepared, with a couple of hours notice, to legislate to provide enormous powers and blanket immunities, without an investigation as to what exactly it is that we are authorising in this bill? This time it was a crack team of elite soldiers; who knows what it will be next.

The Democrats simply cannot and will not support this legislation. It is a repudiation of international law, of domestic law and of basic humanitarian standards. It is actually an attempt by this government to take advantage of a political opportunity, and it is not a reasoned, rational response to community concern about this issue. The shock jocks and some of the talkback radio stations are telling one story but, I believe there is strong, compassionate and tolerant concern among Australian citizens about this legislation. For a start I think there will be shock and horror among Australian citizens when they wake up tomorrow and understand what we have been debating tonight. There are many in Australia—and they have been contacting our offices by fax, phone and email to make it clear—who do not approve of the heartless, inhumane and obviously politically motivated way in which this government has dealt with the issue of the Tampa over the last few days. If passed, this bill will see our country condemned throughout the world. It would actually perpetuate the injustice that has been suffered by the asylum seekers on the Tampa in the past day.

The opposition in this and the other place have accused the government of wedge politics. I am glad that the Australian Labor Party are opposing the legislation before us. I commend them on what we believe is a belated response in this debate. We are not impressed with the bipartisan approach of recent days, and we have made that clear in this place and more generally publicly. We know all about wedge politics from viewing them in this place. We would argue that not only the government but also the Labor Party have been masters of triangulation and wedge politics as well. So we welcome their position tonight—however, with a caveat. I am concerned to hear that the opposition would consider measures or perhaps even amendments to this legislation if it has to pass—but it will not tonight, thank goodness. However, there is also the notion that there would be some kind of time limit or a restriction in terms of the definition as to what constitutes a vessel.

Senator Conroy—We have rejected the time limits.

Senator STOTT DESPOJA—Yes, they have rejected that. I acknowledge Senator Conroy’s interjection that they have repudiated, rejected, the six-month time line that I think was proffered by the Prime Minister this evening. But I think the notion of restricting this bill even to dealing with the Tampa is completely inappropriate. I acknowledge an amendment that has been circulated by Senator Brian Harradine which actually seeks to define a vessel as to once again deal only with the vessel the Tampa. I have that amendment here. It reads that ‘ship means the Norwegian vessel known as the MV Tampa’. Through you, Mr Acting Deputy President, to Senator Harradine: can I respectfully suggest that we do not believe this legislation should be passed tonight, but nor do we believe that this legislation should be restricted to the Tampa. I would argue that the Tampa is one ship that should surely be exempt. The captain of the Tampa picked up these people in good faith, they made the attempt to reach here in good faith, and we should not be changing the rules retrospectively. If this government wants to send a message, send it to those people who have yet to head off to this country. But do not stand here arguing for retrospective legislation, as we have heard tonight from the government, to punish those poor souls who are drifting on the ocean tonight. While we understand the purpose of Senator Harradine’s amendment, we still believe that it is inappropriate for the people on that vessel, the Tampa, as well as more generally.

Three days ago the government had a problem with a boatload of potential asylum
seekers who had been rescued at sea. The government has now managed to cause an international incident and still has a boatload of people with nowhere to go. The government directed the ship to the Indonesian port of Merak, rather than to Christmas Island. Commonsense would say that the closest port was where the ship would reasonably head, but commonsense has gone out the window through this debate; and we saw some evidence of that in the interjections and the rowdy debate that we have had in the last hour in this chamber. Commonsense has gone out of the window and the government has decided to look for simple solutions and, in this case, extreme solutions: send in the troops! Australian SAS forces have now boarded that ship and now the government is seeking the legal power to use military force on this Norwegian commercial ship, and potentially any other ship, should it pick up people lost at sea.

Senator Hill has characterised this situation as a ‘difficult’ one—it is a ‘difficult’ decision, he tells us. Actually, it is a simple solution: asylum seekers—tow ‘em out to sea! That is the position that this government has adopted. They are a problem; they are different; they were not born here. In fact, this government seems to be prepared to go to such great lengths to stop these people coming because it believes they have gone to such great risks to try and get here. Maybe that is a sign that these people are so desperate. Maybe they want to build new lives in this country—a country that they have identified as valuing a fair go—but the government has said, ‘No, tow them out to sea.’ Senator Hill says that this is a difficult position. Well, if we actually knew these people, if we actually knew their names, this would be a difficult decision. I think we would have a very different response if we knew the stories behind these potential asylum seekers.

In conclusion, I have said that the Democrats will strongly oppose this bill. We are vehemently opposed to the legislation before us because of the reasons I have outlined: it is a repudiation of international law, a repudiation of domestic law and an absolute renegeing on and repudiation of basic humanitarian standards. We believe that it is politically, and blatantly politically, motivated—as I said, it should be called the Polls Protection Bill! It is an attempt by the government to take advantage of a political situation.

The Australian Democrats have a proud and strong record in relation to multicultural issues and immigration issues. We knew that this government was pursuing policies that would be at home in a One Nation party room. One Nation have called for this kind of extreme response, such as turning away ships, to some of these issues and this government has cynically acquiesced to the kinds of demands that One Nation have put forward.

Up until now we have seen pretty much bipartisan support for legislation in relation to multicultural and immigration issues. Again, I reiterate the relief of the Democrats that the Australian Labor Party have opposed this legislation tonight. This government has placed itself above the law. It has effectively closed Australian borders to prevent people, including pregnant women and children, from applying for refugee status. It has produced legislation that is arguably unconstitutional in an attempt to justify its actions. This Prime Minister—our Prime Minister—has played politics with the lives of people and I think tonight has effectively put an end to the Australian tradition of helping the vulnerable in their hour of need.

This issue is no longer about the 438 people who are on board that ship—the 438 people who have been put at risk today by various government actions—but it is about those who may lose their lives in the future if their distress signals are ignored. This is a serious piece of legislation. It is inhumane. It is an abrogation of our responsibilities under international conventions and treaties, it is a repudiation of international domestic law and, most importantly, it is a repudiation of decency and standards of humanity in Australia today. My party will be strongly opposing the legislation and we are shamed by a government that would dare introduce it, especially with the process that we have seen tonight.

**Senator COOK** (Western Australia—Deputy Leader of the Opposition in the Senate) (10.57 p.m.)—This is a sad night for Australia and it is a sad night for this
lia and it is a sad night for this chamber that at this hour we are sitting considering legislation of this nature—legislation which is nothing short of a clumsy attempt to ambush the legislature with a bill which, despite its slim volume, has in it a degree of complexity which the government has not answered to this chamber about.

Before I go to the detail of the Border Protection Bill 2001 and put in the Hansard my distaste for the legislation that is before us, I want to comment briefly on the speech of Senator Hill. It followed the speech of Senator Faulkner. Senator Faulkner in his speech asked a series of at least 26 questions by my count as to the meaning of particular clauses in this legislation. Those questions went to important detail of clarification as to what executive powers officers would have and of what rank they would be, given that there is no legal appeal from what they do, and which acts of parliament are stood over by this legislation since it overrides all parliamentary acts—substantial questions that, on their merit, should have been answered. What did we get from the Leader of the Government in the Senate? Did we get any answers? We did not. We got what oddly enough in the circumstances sounded like the first speech of an election campaign, a speech meant to dramatise improperly and inaccurately differences between the government and the opposition in the treatment of illegal migrants. It was also a speech that tried to kick off an election campaign on what is a wedge political issue.

We are entitled, in this chamber, to answers and we are entitled to answers from the Leader of the Government in the Senate, not a harangue. This chamber really cannot vote for legislation for which there is no explanatory memorandum to explain what the meaning of it is and where there is no substantial second reading speech that does that either. The 26-odd questions that we asked are questions that ought to have answers. There is a big question here: why can’t the government answer those questions? Is it because they don’t know the answers, haven’t bothered to find out, or simply don’t care because this piece of legislation is nothing short of a political gimmick?

Senator Hill said that the government is seeking to put a stop to illegals. He made a big theme about that. We know this: the illegals on this particular vessel originate from Indonesia. We know that the only logical outcome for this issue now is for them to go back to Indonesia. But we know this too: this legislation does not solve that problem. Whatever else is said about this legislation, it does not fix the problem that is the issue of concern in Australia. It is a legislation that clothes the government with all sorts of powers which intrude on human rights but which does not solve the problem that it allegedly addresses. That is something that the government has not explained.

If the government was concerned, there would be an early answer to this simple question: why has the Prime Minister not spoken to the President of Indonesia, Mrs Megawati? If you wanted to solve this problem, rather than put yourself about Australia on talkback radio dramatising all these issues for electoral purposes, you would have picked up the telephone and spoken to the President of the country of the port of origin from which this vessel came and you would find a solution to the problem. But at this hour, with legislation that we are told is urgent, we know that, as yet, no head of government to head of government contact has been made at all, and that does not in any way demonstrate good faith on behalf of the government about solving the issue. Senator Hill never went to that question, Senator Hill stayed away from that question, and Senator Hill engaged in base politicking in his contribution tonight.

I want to also comment on the speech of Senator Stott Despoja, which we have just heard. I believe that it was an extremely good speech and I identify with many of the sentiments which she gave voice to in her typically controlled, logical, but somewhat passionate way. I think there is a fundamental question here given that we now know that there is a political agenda for the government. That fundamental question, which I would invite the Democrats to answer at some stage during this debate tonight is:
given the passion and conviction they have expressed in this debate, if we are now tipped into an election on a wedge political issue such as this, will they stand with the Labor Party in opposition and will they give us their preferences in the House of Representatives to show that there is a unity of view across those parties in Australia, or will they not? That is really the test of principle here: stand by the principle by acting for the principle, rather than saying, ‘The election changes it all; there are other issues. Let’s spray our preferences where we think we can get an advantage.’

There are some extraordinary things about this legislation. It is extraordinary in its scope: the absolute discretion given to an officer, which is a relatively undefined being in the service in terms of seniority or authority; and the provisions that arise from clause 10. Clause 10 is the clause of this bill which overrides every other act of this parliament, no matter what it is. Every other act is overridden by clause 10. You would think that there would be the courtesy of an explanation about what that means and how it is intended to apply, which acts of parliament are overridden, and why it is necessary to override those. We have no such explanation. What we have instead is a comment by the Prime Minister, by Senator Hill and by Mr Ruddock on the 7.30 Report tonight that—this may not be a perfectly accurate word-by-word quote, but this is the tenor of what they say and does not misrepresent their position in any way—‘We believe we are acting within the law.’ But they go on to say that we want to exercise ‘an abundance of caution’ and, in order to exercise an abundance of caution, this draconian legislation is necessary. ‘Draconian’ is my description of it, not theirs, of course. This draconian legislation is necessary. They say that this is an act in the national interest that ought to command unity across the political spectrum.

As we have heard here tonight, there has been no effort to generate the slightest bit of political unity in consultation or in briefings or in discussions between the leaders of the political parties. There has been no effort by the Prime Minister, for example, to brief the Australian Labor Party—as happens in times of national crisis on national security issues or on issues that threaten the sovereignty of this country. This country has a proud tradition of putting aside political differences in times of crisis and uniting to deal with that crisis. The government describes this as a crisis but does not observe any of those traditions about trying to build a coalition of unity in order to support them. What it says is: ‘We are acting within the law and we are quite appropriate to act within the law with what we have done. But this is a belt and braces bill. We want an abundance of caution. We want to put it beyond doubt.’

I am ashamed to say there is only one member of the Liberal Party in the chamber at this time. I do acknowledge that the Leader of the National Party is also here. Of the coalition, there are only two members present at this stage. I ask the assistant whip of the coalition, who is in her place now, to obtain an answer to this question: if the government believes that this legislation is necessary and necessary out of the need for an abundance of caution, will the government later tonight table the legal opinion that has been drafted by the department to advise the government that this bill is necessary, setting out the legal basis as to why it is necessary to enact this legislation? Will it do that? If the government does not do that—if it does not take an elementary step to explain itself and to proffer the legal advice on which far-reaching legislation of this sort is based—then it stands exposed for a political try-on and stunt which can damage the national interest and put Australia in a pariah camp internationally. If it is necessary for an abundance of caution, let us see the legal reasons. That is not a difficult ask. That is a reasonable ask, because Australians listening to this debate, reading their newspapers tomorrow and pondering the direction of this country will ask that question: ‘Why was it necessary?’ The government has an onus—since it is the proponent of this legislation—to answer that question not superficially, not with political rhetoric, not by kicking off a political campaign for an election but by simply producing the facts.

I do not want to speculate about what the government will do, but I can say that noth-
ing in their demeanour or in their actions taken to this point suggests that they have the slightest interest whatsoever in demonstrating the legal basis of their so-called need for ‘abundance of caution’. They do believe, and they have said it often enough, that they are acting within legal rights. If they are, they should be able to demonstrate those legal rights and point to the deficiencies where this legislation is necessary. It is important because, if this is a genuine crisis, the proper way to deal with a genuine crisis is with cool heads and deliberate consideration. The role of this chamber, in the Constitution, is that of a house of review. The House of Representatives, the other place, has made a decision about this legislation along party lines, but traditionally legislation comes here for review. The Constitution contemplated the role of this place, the Senate, in order that it conduct a review of legislation. It is not possible for this chamber to fulfil its constitutional obligation if the facts of this legislation are not adduced before it. If the government are not prepared to do that, then the government have no case. If the government will not do that, we can speculate as to why. Is it because they have no case or is it because they are ashamed of their case or is it because they simply are pulling a political stunt?

The opposition was given 40 minutes notice of this legislation or, you could say, of this ambush. There is, as I have said, no explanatory memorandum. We know that the Liberal Party room was briefed ahead of the opposition being notified.

**Senator Ferris**—Fancy that!

**Senator COOK**—Yes, fancy that. I take that interjection. Fancy that!

**Senator Ferris**—We are the government.

**Senator COOK**—‘We are the government,’ says the senator. Indeed you are! But if you want unity at national level then you are required to talk to the opposition in order to explain yourself, and you have not. You have manoeuvred this for political opportunism. Let me go back to the point. There are many members on the back bench of the government who are concerned about the direction of this legislation and the heavy-handed actions of their own leadership. I cannot prove this is right or wrong, but sources that have come to me have said that in the Liberal Party room the Prime Minister said that Kim Beazley would support this legislation—if that was said it was said without any consultation with Kim Beazley—and that the government acted surprised when we made our position clear. So it may well be that, even if it was briefed to the party room ahead of it being notified to the opposition as would be a due proper courtesy, the Prime Minister has misled his own party on this matter as well.

It is very important that the position of the opposition be made crystal clear here. We have heard from the Leader of the Government in the Senate an attempt to mislead this chamber as to the facts. Of course, that once again proves the basic thesis. This is being manipulated for political purposes. If it were not, the leader of the government here would have got up and made a speech that answered the 26 questions put by Senator Faulkner on the meaning of this legislation. But he did not; he ran away from that challenge. The position of the opposition has been outlined clearly and directly by our leader, Kim Beazley, in the other chamber and in the speech by Senator Faulkner here. But it is worth revisiting and re-emphasising. The position of the opposition is this: we believe there is not a national emergency that requires this legislation but there is a serious problem with which this nation must grapple. We do not require legislation of this order to resolve it. As I said earlier, this bill will not fix the problem. The problem will in fact remain in the real practical world outside this chamber.

The opposition believe that the serious problem that is there should be addressed, and it can be. We have backed the government at each stage of this event of the infiltration of these illegals through the ship the *Tampa* up to this point. If the government were honest, it would admit that. We believe that this ship should be turned away and taken to a neutral port, and if that could be done this would resolve the matter, and we will cooperate to achieve that outcome. That is what we will do. But we will not clothe this government with draconian and sweep-
ing powers that can override everything else on matters that have not been communicated to us and on matters that obviously those powers are not necessary for.

I want to conclude my speech on this point: go to the detail of this legislation. If anyone is at all concerned about this issue, look at the law that is being proposed to be enacted, and there are many sections of this bill that can be cited. In the legislation, section 10 says quite simply these very precise words:

Act has effect in spite of any other law,

And the clause reads:

This Act has effect in spite of any other law.

End of clause. That is all. It is a complete override of everything. Does section 10 include international law? Does this mean that Australian criminal laws do not apply? Does this mean that an officer acting under this legislation cannot be held responsible for what he does, because there is no legal appeal against any actions of an officer—even if they involve criminality or matters that deal with manslaughter or the loss of human life if a boat sinks after being removed from international waters—or about whether or not such actions are reasonable? Reasonable actions, designated by this legislation, are not admissible. Does this mean that officers acting under this legislation cannot be held responsible for what they do? Bear in mind that I have never ever seen a provision in any law in this nation which overrides completely every other law and removes the rights of individuals under every other law.

That is what we are being invited to enact tonight. And who are the people who have the power to do that? That is defined in this bill. They would be officers. But we do not know at what level or rank. Ministers do not necessarily take responsibility here. Senior officers do not necessarily take responsibility. But the power to override every other law in this country is vested in a person who may be an officer, and the level or responsibility of that person is indistinct and not spelt out in this legislation. Is it an officer in the Customs Service or in the police force of the Commonwealth or a state? Could it be a lance corporal in the defence forces? Could it be a trainee? Could it be someone at the Police Academy? These are the people, the undefined people, who have the power to override every other law in this country—total power. (Time expired)

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate and Parliamentary Secretary to the Minister for Transport and Regional Services) (11.17 p.m.)—We are debating the Border Protection Bill 2001. This bill has been designed to meet a very difficult and very serious situation. It is a matter of grave concern. There are many lives at stake. It involves human life and it is a very serious bill. It is one of those bills that comes along about every three or four years, in a crisis, for any government. Australia has a long-standing reputation as a compassionate country and it has taken in 600,000 refugees, who have resettled in Australia.

I want to go to the case in point now, the case of the Norwegian vessel Tampa. With this bill that we put before the house tonight we have offered the opposition a six-month sunset clause. What happened was that the Motor Vessel Tampa, in Indonesian waters, responded to a distress call and picked up 438 illegal immigrants in Indonesian waters. It should have gone back to the port that the people left from. That was the nearest port. But, under certain circumstances, the captain went to the territory of Christmas Island. Up until this stage, the government and the opposition were in agreement. The opposition agreed that the boat, the MV Tampa—and Senator Cook has just confirmed this—should have returned to Indonesia and should have discharged the 438 people on board back into Indonesia.

Up until this morning we were in agreement on that, even to the point that we agreed that the Tampa should be requested, ordered, to leave Australian waters. There was a bipartisan agreement on that proposition. We have a very difficult situation, as I have said, but tonight the bipartisanship has disappeared and I find it very difficult to understand why. If the government said this bill is going to be set in concrete and is going to go on for years, then I could understand there would be some circumstances that the oppo-
sition would not agree to. But what we are asking is that this bill go for six months and then sunset. At the end of six months, a new government is going to be elected, whether it is a Labor government or a coalition government. There is an election going to be called in two to three months—

Senator Sherry—Two to three days.

Senator BOSWELL—I do not think so, Senator Sherry. I am sure that you are incorrect when you assert that. But there are going to be times when this parliament is up. It could be up for three months for an election by the time we come back. There are 900 people coming down now on different types of boats and they are trying to seek illegal access into Australia. Australia has set aside 12,000 places for refugees and, weight for age, or population wise, we are probably the most generous resettlers of refugees in the world. So we have 900 people in boats coming down and we have 438 people floating around out there on a Norwegian vessel that even the Labor Party and Senator Cook and Senator Ray have acknowledged should be returned to the port of embarkation and into Indonesia.

Australia has played a very prominent role in the international situation that is now affecting many countries with the unauthorised arrivals of many people. We have a national responsibility, as a national government, to safeguard and maintain our sovereignty, and everyone acknowledges that. The Australian people have made that very clear. I believe people are now frightened for their sovereignty. People are alarmed that people can just come down and park at Ashmore reef—it is almost like an exchange station or a bus stop. You sail or motor the boat down, get the people out on Ashmore reef and an Australian boat picks them up and takes them in. We now have 7,000 people in Australia who are illegal immigrants.

The people of Australia are calling on this government to protect the sovereignty of Australia. We are trying to do that, and we were in agreement about that up until about 4 o'clock today. The government have introduced this legislation because we believe we have the legal authority at present, but, to err on the side of caution, it will ensure that there is no doubt about the government’s ability to order such a vessel to leave our waters without getting the response of some people that the boat was in our waters and that therefore there is some legal obligation on the Australian people for those people to be considered refugees.

Senator Sherry—It is retrospective law!

Senator BOSWELL—Yes, it is retrospective law as of 9 o'clock. It has 12 hours retrospectivity. You agreed with it at 9 o'clock this morning. We are taking it back 12 hours. If that is retrospective—

Senator Robert Ray—But you have always opposed retrospectivity! We haven’t.

The PRESIDENT—Just ignore them, Senator Boswell.

Senator BOSWELL—The Border Protection Bill 2001 confirms that the persons on board a vessel at the time a direction is given will not be able to seek to delay their removal from the territorial sea by making a claim for refugee status under the immigration act. That is what this bill seeks to do. This bill excludes anyone who is removed from the boat and has to be put back onto the boat or anyone who comes into Australian territorial waters on the boat from making a claim. I would not have thought that that was terribly unreasonable. We have 7,000 illegal refugees in Australia. We are at the breaking point. We are building centres in four or five different places now. There are 900 people on the way and there are 458 people on the MV Tampa. That is another 1,300 people who will have to be housed.

We have, as I have said, one of the most generous refugee intake rates in the world. But people who enter Australia not by applying for a visa but through international criminal gangs and other organisations involved in people smuggling compromise our ability to resettle refugees who are in camps now. I have tried to get some people in from the Balkans who are genuine refugees. They are sitting in a camp over in the Balkans and they are waiting to enter Australia. They are genuine refugees and they are being set back by the queuejumpers who are coming in illegally.
Senator Hogg—What about the 60,000 who come in through the airports?

The President—Order! Senator Hogg, you can speak at a different time.

Senator Boswell—Madam President, Senator Hogg just agreed with my point. My point is that we have 7,000 people here—whether they have come in through the airports or by boats is irrelevant. They are coming into Australia, they are queuejumping and they are doing it through illegal systems. What this government is trying to do—and up until 9 o’clock this morning, with the bipartisan support of the opposition—

Senator Robert Ray—But you didn’t ring us about this, did you?

The President—Senator Ray, you can have your opportunity to speak.

Senator Boswell—Senator Ray, I will respond to your interjection. We were briefed at 6 o’clock tonight and I think you were probably briefed at a quarter past six. Are we going to argue over whether we had a 15-minute start on you?

Senator Robert Ray—We weren’t consulted. You could have discussed it with us, rather than just told us what you were doing.

Senator Boswell—The fact is that you were consulted. But, if you believe Australia does not have the right to protect its sovereignty, go out there and speak to your blue-collar workers. I think you will find that you have disconnected from them once again.

Senator Robert Ray—That is what you are trying to exploit!

Senator Boswell—I do not want to exploit the situation. I have tried to remain calm.

Senator Robert Ray—Come off it! This is wedge politics here!

Senator Boswell—This is not wedge politics, this is merely protecting Australia’s sovereignty. If the Labor Party do not want to do that then that is okay; that is a political decision that they have to make. But the government has said that the MV Tampa was in Indonesian waters. The rescue was made in Indonesian waters, the nearest port was Indonesia, and the Tampa was heading towards Indonesia when it was turned around as a result of some form of duress and directed towards Christmas Island. You have agreed that we were right on the Tampa.

I put this question to you, Senator Ray and Senator Cook. Within two or three months, we will be going to an election. The time between the date the election is called and when the parliament returns will be three months, or it could be a little longer, with Christmas taken into consideration. What happens if there is another situation like this? What do we do? The government has said this legislation is required to stop—

Senator Robert Ray—Why?

Senator Boswell—I have told you why. To stop claims by people who have entered Australian territorial waters and then will seek refugee status. I believe that right is on the side of the coalition. The coalition is protecting sovereignty and the Labor Party does not want to accept that. The Labor Party says it will accept it in the case of the Tampa, but that if another case comes down in three or four months while the parliament is up fighting an election it will not accept that the case of the Tampa could be duplicated.

These boats are leaky. The people who come down in these boats know they are going to be destroyed when they come into Australia. They are the bottom end of the fishing boat market and people know that once they come into Australia they are going to be destroyed. They are very poor boats that come in here. The situation could repeat itself, with 900 people on the way in these boats. If the Labor Party says it is going to support removal of the Tampa but not of any other boat that comes into territorial waters, it is very difficult to see the logic of that argument. But that is an argument it can put to the people and the people will make a decision.

Senator Robert Ray (Victoria) (11.32 p.m.)—Mr Philip Ruddock has a very difficult job. He has to balance a whole range of international obligations, he has to run a whole department based on regulations and he has to try to impose, on the top of all that, a sense of fairness and decency. It is a diffi-
cult job. I am not sure there is a more difficult job in government.

There are at least two people in this parliament, Senator Bolkus and I, who at least have some insight into the pressures, the difficulties and the tensions that the Minister for Immigration and Multicultural Affairs must be going through today. I cannot at the moment think of a tougher job in government. It is certainly tougher than when I had it, because there were not a lot of boat people arriving in that period.

Minister Ruddock has an extremely tough job. The main job he has, along with his colleagues, is to protect the sovereignty of this country. That is a duty of government; it is an imperative of government. No-one has the right to enter this country against the wishes of the people of this country. It is something that distinguishes nationhood. Sovereignty is a key aspect of nationhood, and we can never abrogate it.

One of the problems we have had over the years is trying to get across the message of what is a definition of a refugee. The United Nations definition is quite clear but it does not seem to be understood very widely. It talks about individual persecution—not classes of people but individuals. Each decision has to be made according to the circumstances of the individual. Yet people constantly confuse that with humanitarian cases. They are nothing to do with refugees. The more we pervert the definition of refugee, the bigger disservice we do to real refugees, the bigger disservice we do to those most in need and the more we allow others to exploit them.

One of the great problems of course is that a lot of people agree in the macro what our approach should be to refugees. As soon as the micro case comes up, they disagree. In actual fact, you have to take the macro view in every case. I believe Australia has a very proud record on treatment of refugees, irrespective of who is in power. We have been taking, on average, 12,000 to 15,000 people for 20-odd years. Compare that with a lot of the prissy nations around the globe that go to international conferences and lecture everyone. We actually deliver on the ground. We have a terrific record in dealing with refugees, in assisting refugees and in helping them no matter where they come from around the globe—we do not distinguish. This country has nothing to be ashamed about when it comes to dealing with refugees.

But what we have seen emerge over the last few years is not boat people in the traditional way but people who have bought passage on a boat. A lot of those people are in difficult circumstances. We hear from the Democrats tonight that we have to be compassionate, that we have to admit the 438 people and process them. That is caffe latte compassion. Think about the million and a half people on the Pakistan border who have been expelled from Afghanistan and do not have the money to buy a passage. What about them? What about a bit of compassion towards those people? Are we really getting into a situation where we are saying you can buy your way into a compassionate position? I say no. I say we have to deal fairly with refugees.

Senator Brown—That’s the way the whole immigration thing works. You have to pay your way.

Senator ROBERT RAY—Senator Brown, you will have your say, but you have to have some compassion. The other day, you at least mentioned the amount of aid going to Afghanistan. Good for you. It showed you had thought about it. But we have to think about whether it is fair that someone who can fly to Denpasar, jump on a boat and expend $30,000 has a higher right than some impoverished family living in rotten conditions on the Pakistani-Afghan border? No. We have to think of those people. We have to think and fairly apply, because fairness is what we should be about.

In these circumstances, when you look at this case the Norwegian skipper did the right thing initially. He obeyed the international traditions of the sea and he went and saved these people. He was in waters for which Indonesia was responsible. His responsibility was to take the people he had rescued to the nearest port. Just remember, Australia’s responsibility in terms of territoriality and the sea covers 10 per cent of the globe. It is not as though we are scummy in regard to this.
That is where our responsibility lies. We are not responsible for those people rescued at sea in waters for which Indonesia is responsible.

If you say, ‘Well, can’t you make an exception here?’ then where do you draw the line? Do you draw it at 100 kilometres or at 20,000 kilometres? If we are liable, as the Democrats would have us believe, to accept these 438 people and process them, then we are liable to accept people from any part of the globe, be it the North Atlantic or the Arctic Ocean or anywhere. That, basically, is not a way to approach international relations. The skipper of this boat, we are told, was directed not to come into Australian waters. He did so. He should not have, but he did, and so the Australian government is absolutely entitled, that boat having rejected the instruction, to take control of that particular ship. In the end, we have no obligation to any of the people on board that boat other than the natural reaction to provide them with food, medical aid and any other sustenance we can. That is the duty of a humanitarian country, and that is what this country has done. The only solution—and you have to have a solution, and this legislation does not provide one, no matter how much of it you carry—is that these people have to return to Indonesia or be accepted by another country. You can pass as much legislation as you like, but it is not going to solve the problem.

Then we have the problem of consultation. People have bandied the word ‘bipartisanship’ around. Bipartisanship does not mean that the government and the opposition agree on everything. They agree on the broad principles and they try not to exploit the issues around that bipartisanship. We try to have a bipartisan immigration approach and a bipartisan defence approach, but that does not mean that we agree on every detail. But we have been put in the position today where this legislation came forward with 40 minutes notice. We had no consultation and no explanation. We still do not know what legal problems the government are confronting; they have made no admission as to fault. They just say they want to be backed up, and then they want to be backed up on some of the most draconian legislation ever introduced into this parliament.

I ask this question: have the government behaved legally in regard to this matter from start to finish? They say they have. I have no reason to doubt them. But, if they have, why is there a need for this legislation? No speaker from the other side has answered that. They have not explained that maybe there is some doubt about the legality of the SAS actions. If there were, we would of course want to back them up, if necessary retrospectively. However, so far they have not pointed to one breach of the law or potential breach of the law. If they were serious, why didn’t they pick up the telephone at 4 o’clock or 5 o’clock, when this was being drafted, and talk to the Leader of the Opposition or the shadow Attorney-General, bringing them into the process, showing them where the legal problems were and showing them the legal advice? None of that was done. Instead, we got a telephone call at 10 to six saying, ‘Could you please put this through the House of Representatives tonight? Could you please keep the Senate sitting?’ We agreed—naively, I suspect, because we did not know what was in the legislation, but of course we gave the government that opportunity—and then this legislation was dumped on us.

When you look at this legislation, there are things in it that you cannot accept. I hate to say it, but I am probably the most right-wing Labor person when it comes to immigration law, and yet I cannot stand this legislation; I cannot stomach it. Look at clause 10: ‘This Act has effect in spite of any other law.’ Which goose from A-G’s drew that one up? We know it wasn’t the Office of the Parliamentary Counsel. We know they pulled a couple of advisers over to draft this. No proper explanatory memorandum exists. They have notes to clauses. How is a court going to interpret this? The minister at the table might tell us later. How is a court going to interpret these draconian powers, when the explanatory memorandum is of little or no use to any court in this country? This is absolutely hopeless process.

Then you look at clause 2, which deals with retrospectivity. We have never had an
explanation as to why we need retrospectivity. Why is 9 o’clock today the crucial time? Has there been a legal error that the government have not told us about? The Liberal Party has opposed retrospectivity on principle and on moral grounds for years: why has it been so quick to rush to embrace it today? I wonder why. There has been no explanation about the need for retrospectivity. Why doesn’t the government come into the chamber and explain itself?

I will tell you what I think this legislation is about. I do not think it is about clause 1 or clause 2 or clause 3 or any of the others, right up to clause 8. I think those are all window dressing. I think they have all been put in there as distraction. I think this bill is about clause 9(1). That is what it is about. Why not be honest and say it? You may have difficulty if any of these people claim refugee status while in Australia’s territorial area. If that is the problem, the government should come clean and say it, and then we could at least debate that and make a determination on that issue. But the government will not say it. Have they really disguised that clause among a number of others because they do not want people concentrating on it? It is a difficult issue. Normally, if anyone is within Australia’s territorial area and claims refugee status, we have to process that claim. But it is pretty unfair if that applies in these circumstances where the skipper apparently has been under duress and has entered our territorial waters against the explicit and proper direction of the Australian government. If that is what this is about, why don’t you come clean and tell us about it?

I gave the government the benefit of the doubt about whether this was just a panic move or whether it was in fact practising wedge politics. I still do not know, but listening to Senator Hill’s speech tonight, where he accused us of product differentiation, led me to the conclusion that this is the most gross form of wedge politics that I have ever seen practised in this chamber. We are not into product differentiation. We are willing to support the government in defending the sovereignty of this country, to enforce international law of the sea and to back it up in its view of the perversion of the rescue provisions at sea by the ship coming into Australian territorial waters. The government happens to be right on all these things; the government happens to be right in not accepting the 438 people. Having got that far—and we were willing to give you support on all those matters—why introduce such draconian legislation? I cannot understand it, unless it is to say, ‘Look, we’re pretty disappointed that the opposition have backed this up this far. Can we take it a breach too far? Can we get them into a position where they finally baulk?’ Congratulations, Liberal Party! Congratulations, National Party! You’ve done it! For Senator Hill to come in here and say, ‘Oh, only one section of the Labor Party opposes this,’ I am here to tell him that that is errant nonsense. The totality of the Labor Party oppose this sort of draconian legislation. It is not a matter of Left, Right and Centre; it is a matter of decency.

I wonder how many people in the Liberal-National Party have fully read and comprehended this legislation. If they have they disappoint me greatly that they do not make greater objection, because it is stinking, lousy legislation that will rebound on them. Why the last minute offer for a sunset clause? If it was good enough at 6 o’clock to go into the future, why suggest at 7 o’clock that you are willing to accept the sunset clause? Why not make the legislation specific to these circumstances? Senator Boswell let the cat out of the bag. They want to grab any ship that comes within Australian territorial waters, especially one that could be sinking and can be towed back out to the other side. We cannot accept that. We all want to build an orderly refugee program, and the best way to do that is to allow people to queue orderly so that we can do the character and health checks and then a proper application of the criteria of whether they qualify for refugee status.

We all know the figures. We know that if you land in Australia on a boat and you go through all the processes you have about an 80 per cent chance of being accepted as a refugee. If you have exactly the same criteria applied to you by the UNHCR, it runs at about a 15 per cent success rate. Surely, there has to be something wrong with that system.
And, for those people without the money or with the respect for the law who queue orderly overseas, every time we accept a boatload of people who have paid to come to this country we betray those very people overseas, and we were not elected to do that. The one thing that you can say that is not an ideological difference between the political parties is a sense of decency in treating people. As much as we may try to do product differentiation on that, basically the people who are elected to this parliament have a decent attitude. We have to apply decency; we have to apply fairness. As I said before, the toughest role in government in which to do that is as immigration minister. Little wonder that 80 per cent of all death threats in government go against immigration ministers. They have a shockingly hard job. Mr Ruddock has had one of the hardest jobs of any immigration minister in the history of this country.

Senator Hill accuses us of product differentiation. I want to reject that proposition. We are still willing to try to come to solutions on these matters. We are still willing to discuss with government how you deal with it and how we can back you up in this crisis. But what we are not willing to do is to be played on a break, ambushed with legislation, pushed to the extreme, to the point where you know we cannot go beyond. We cannot accept clause 4, we cannot accept clause 10 and clause 9 is hard to swallow but nevertheless may have been swallowed by us because we understand the existing circumstances.

This particular issue should have been handled by way of negotiation and should have been handled by way of discussion. Instead, we are ambushed, we are accused of cynical product differentiation—which is absolutely wrong. We have asked the question: where are the legal weaknesses? No answer. Senator Faulkner and Senator Cook raised 26 specific questions. No answer. So when it comes to playing politics on this particular issue we have to question the credentials of this government. We did not question the way that they have handled this issue. To this point, they have handled it most appropriately, most fairly and in a principled way. Why go the extra step to exploit it and to employ wedge politics? It is very disappointing indeed.

Senator BARTLETT (Queensland) (11.50 p.m.)—I rise to speak also to the Border Protection Bill 2001. I do not necessarily agree with a large proportion of what Senator Ray said, but I do think that this legislation should, and I hope will, come back to bite the government in the incredibly draconian, incredibly wide ranging and incredibly ill-defined components that are contained within it. I think it is a bill that should be used in law schools for years to come—firstly, in that it is extraordinarily poorly drafted in the unbelievably wide ranging powers that it gives, without clear definitions or constraints, and also in highlighting the dangers of having an executive having absolute control over a parliament. If we had a situation where we did not have a house of review, where we did not have a Senate or where the Senate was controlled by the executive, as the House of Representatives is, we would have a situation with this legislation, with all its flaws that have been pointed out, where it would now be passing into law. It is an incredibly dangerous piece of legislation and it sets some incredibly dangerous precedents. Even in the context of the government putting it forward for consideration, despite it thankfully being voted down, it still sets some incredibly dangerous precedents.

The Democrats disagree quite strongly with the suggestions that Senator Ray has just made—and I note that he said he is amongst the farthest to the right in the Labor Party on immigration, so I am not suggesting his views are representative of all Labor Party policy. But we would certainly disagree with his suggestion that the government has handled this situation properly and well up until this point. We do not believe it has handled it well at all. We believe that it has in a sense led to a situation where it has now dug itself into a hole by producing this legislation. It certainly raises significant questions about whether what has been done to date is lawful. Otherwise, why go ahead with this legislation? It certainly raises questions about whether or not what the government is thinking of doing next in relation to this issue is lawful. Whether that is in terms
of removing ships from Australian waters or whether it is in terms of its treatment of the asylum seekers on board, it does raise those very significant, serious and genuine questions about the legality of what has actually happened to date and what may happen, or will be proposed to happen, in the future. It is now almost impossible to do anything other than seriously question the government’s motives in relation to asylum seeker issues and refugee issues more broadly. It may have been possible in the past, despite strongly disagreeing with their approach, to suggest that at least there was some possible component of good faith, but now I think it would be very difficult for any genuine observer of these issues to have any confidence in the motives of this government, other than absolute base politics, and this legislation reflects that absolutely.

The flaws in the legislation have already been outlined in detail by many of the previous speakers. Senator Faulkner, I think, went through the multitude of flaws in an excellent manner. It is only a small bill, but it is amazing how many flaws can get packed into such a small bill. Senator Stott Despoja highlighted the Democrats’ major concerns in relation to the legislation. It is incredibly dubious whether it is even constitutional to completely remove any opportunity for any access to even the High Court under any circumstances at all in relation to any action conducted by any officer. It is almost inevitably something that would be seen as unconstitutional in ruling out the ability of the High Court to review those actions.

The use of force that is authorised in the legislation is not prescribed in any clear way and does not give any confidence that reasonable force can be adequately defined and constrained. Many senators may have received an email from Dr Simon Evans from the Faculty of Law at the University of Melbourne—in a private capacity, I would add—who in the very short time available has gone through the bill and provided a significant number of concerns in relation to its contents. He is concerned about the lack of limitation on ministerial authorisation—that the minister or Prime Minister can authorise a huge number of people for the purposes of the act. Once authorised, a person is an officer and has absolute, unreviewable discretion to give a direction under clause 4—a direction that does not even need to be understandable to the person it is given to and the person does not even need to be there when the direction is given. An absolutely unbelievable range of power is provided there.

The authorisation can even be given just orally—a very dangerous practice indeed. It means that there might be no formal record of the decisions, the authorisation or the reasons for giving the authorisation. The officer’s discretion is absolute; it is not confined in any way. There are no preconditions to the exercise of the discretion and no standard is provided by reference to which the discretion is to be exercised. The officer is not required to consider whether the vessel is seaworthy, whether anybody is in need of medical assistance or whether the ship is indeed an Australian ship and the people may be Australian citizens. Such an unconfined discretion may be appropriate at the highest levels of policy formation, but it is inappropriate when it can be conferred on any employee of the department, any member of the Australian Defence Force or others as well. Those are just some of the concerns expressed by Dr Evans. He is also concerned about the fact that the officer’s discretion is not reviewable and cannot be called into question or challenged in any proceedings in any court in Australia. This is unbelievable stuff in terms of the absolute untrammelled power that it gives to the government of the day and any officer that it chooses to extend that power to.

There is no opportunity for ensuring that reasonable steps are required to ensure that the master of the ship understands the direction. The persons who can assist the officer to enforce that direction are not properly specified. Certainly the act ought to comply with Australia’s international obligations under the refugees convention, and the Democrats believe that there is a very dubious contention in relation to that issue. We think it is almost definitely a contravention of the refugees convention and almost definitely a contravention of the Law of the Sea.
in terms of the absolute, unreviewable discretion that is given through it.

Again, this bill needs to be put in the context of the broader agenda of this government in relation to migration issues, and this is why the Democrats have a position and a record very strongly different from the Labor Party in relation to many of these issues. That is because we have seen a continual practice of trying to increase ministerial power and to reduce the opportunity for review of that power and the opportunities for others to exercise legal review of decisions. In some ways, it is almost inevitable that, when you have that sort of ethic put into practice in legislation, you get an outcome that is as absolutely extreme and as absolutely draconian as this one is. I find it hard to believe that many on the coalition benches would actually support this legislation, because if it were passed it would make it virtually impossible for the government to resist future calls for other vessels that arrive to be towed back out to sea and to resist the talkback radio catchcry of 'Send them back', because they would have the power under this bill, assuming it was not knocked out for being unconstitutional, which it probably would be.

This bill would give them the power to turn any ship back. It is the dream legislation for the talkback radio shock jocks; it is the dream One Nation legislation. It is the implementation of One Nation policy in its absolute form. As I said in a debate on another issue yesterday or the day before, there is not much point in the Prime Minister trying to claim a virtue of putting One Nation last on how-to-vote cards when he adopts their policies so comprehensively and when he adopts the rhetoric along with it. Rather than showing political leadership and actually confronting some of the myths and distortions that are put forward, this sort of legislation comprehensively reinforces those myths, distortions and misunderstandings. I think it is a very sad day, and it sends a very concerning signal about the likely shape of the forthcoming political election campaign in respect of some of the issues that are likely to be debated.

It is appropriate to also look more broadly at the context in which this legislation has appeared. Obviously the Norwegian vessel did the right thing and rescued over 400 people who were in distress at sea and who probably would otherwise now be drowned in oceans to the north of Australia. That vessel has now found itself in the middle of an appalling international stand-off, and I think the actions by the Australian government should be condemned. To use people in this way in such a stand-off really should be condemned comprehensively. It may be great short-term politics, but it is generating a humanitarian catastrophe in the immediate situation and also sending out a very dangerous signal to future vessels in distress.

People have started to draw parallels with previous examples in history in the 20th century. Yesterday’s Canberra Times outlined the story of the St Louis that left Germany in 1939 with 937 people on board who were obviously fleeing persecution. They were refused entry at a number of ports and they sailed around the globe trying to find somewhere to disembark. That was not the only boat. The Strumer had 769 Romanians on board who were turned away. One boat, the Petchko, sailed down the Danube with over 500 people on board. They were refused entry at various ports and were not able to take food on board. At the end of a long voyage, with the ship broken down, driven onto rocks, left without water and in a shipwrecked capacity for a number of days, they were eventually picked up by a warship and sent to concentration camps. Those are examples from the 1940s about what happened when we adopted this approach of turning away people who were rescued at sea or who were fleeing persecution.

We can come to more recent history, of course. A number of people have pointed out the situation in the 1970s and 1980s of people fleeing from Vietnam. A very good letter in yesterday’s Advertiser stated that from 1997 to 1985 an estimated one million Vietnamese people escaped their country on tiny boats. It said that about one-third of them—that is, hundreds of thousands of people—
that is, hundreds of thousands of people—
died during their doomed journey to freedom
because their boat sank, they were attacked
by pirates or they simply starved. The letter
said that the most distressing part of it was
that many of them had their SOSs ignored by
the many commercial ships that passed
nearby. ‘Why?’ you may ask. Because the
ships’ captains knew that no country would
allow them to unload their human cargoes.
That was an inevitable outcome of the situa-
tion that developed when countries sent out
the message that they would not be willing to
accept people that they knew would be asy-
lum seekers and sent them on and said, ‘You
have to go somewhere else. It is someone
else’s problem. It is someone else’s responsi-
bility.’

That is why the Democrats take a funda-
mentally different view to not just the gov-
ernment but also the opposition on this im-
mediate incident. These people are obviously
off Australia’s shore. Indeed, now they are
currently in Australian waters. They are
clearly our responsibility, and if we set this
precedent of saying that asylum seekers res-
cued at sea will just be turned away and
someone else can worry about them, we will
inevitably get a return to that situation that
occurred with Vietnamese people in the
1970s and 1980s. That is why the precedents
that have been set in the last few days in so
many ways should be strongly repudiated.
Whether you are talking about international
law, whether you are talking about the inter-
national standing of Australia, whether you are
talking about a constructive way of
dealing with the global problem of asylum
seekers, whether you are talking about up-
holding a decent approach to humanitarian
situations in Australia or whether you are
talking about upholding domestic law, we are
setting some dangerous precedents and have
been going over some very dangerous
ground in recent days.

This legislation that we have been forced
to debate tonight in indecent haste absolutely
takes the cake. It is another precedent on
how far this government is willing to go in
breaching the fundamental rule of law, in
breaching God knows how many interna-
tional conventions and in overriding domes-
tic law as well. The bill itself specifically
states that it overrides any other law and that
it has effect in spite of any other law. That is
the length that the Australian government is
willing to go to, and supposedly this is being
done because of an urgent situation. It is ob-
viously an urgent humanitarian situation, but
you would think we were under some sort of
invasion from a foreign army to introduce
these sorts of powers.

It is an unbelievable level of overkill to try
to put this bill through in such an incredibly
rushed way, basically forcing an emergency
sitting of the Senate to consider what is sim-
ply mind-blowingly, astonishingly, draconian
legislation with no constraints in it whatso-
ever. It just sends the most amazing signals
about this government’s priorities and how
far it is willing to go. It also takes up one
more notch the signal this government is
sending to the international community, to
the Australian community, to anybody who
puts any sort of standing on a basic humani-
tarian approach towards people in difficulties
and people in need.

This legislation should be condemned ab-
solutely. The Democrats will certainly be
opposing it absolutely, and we welcome the
Labor Party’s equally strong condemnation
of the bill. We believe that it does indicate
that the government’s agenda is clearly, pre-
dominantly and totally politically driven. It
makes it all the more difficult to consider
with any degree of cooperation any legisla-
tive approach that they put forward in the
lead-up to the election, because clearly it sets
precedents in all sorts of ways that indicate
that this government has no respect for the
rule of law, no respect for the separation of
powers, no respect for the Constitution, no
respect for international law and no respect
for basic human conventions of decency.

It is a sad day when legislation like this
has been put forward. I hope in many ways
that it is studied closely for many years to
come as the sort of dangerous situation that
we can get into when short-term political
pressures are allowed to override considered
and calm consideration and assessment of
difficult political issues. I do agree with other
speakers that the issues that are being ad-
dressed in terms of both the broader issue of
asylum seekers and the immediate situation with the Norwegian vessel are difficult ones. There is no doubt about that. There is no easy solution and there is no instant fix to some of these broader issues but, gee whiz, when you get this sort of stuff put forward and suggest that this is the solution that is actually going to produce something positive, it really shows how far down the wrong path this government have gone. So many other things in their approach to immigration and refugee issues are clearly demonstrated to be not working and going down the wrong path, but this one goes so much further down than even I thought they would go. It deserves to be rejected absolutely, and it deserves to be held up as a benchmark of an all-time low of appalling legislation, politically driven rubbish that should be rejected for the trash that it is.

Thursday, 30 August 2001

Senator BROWN (Tasmania) (12.10 a.m.)—We are into the early hours of the morning, and I will be brief. On behalf of the Greens I reject the Border Protection Bill 2001 out of hand for the reasons that have been put forward in the debate. I just want to comment on three things: firstly, the way the government approached not just the opposition but other members of this house and the House of Representatives with this legislation. There was no due warning. We were asked to deal with the matter expeditiously and did so. I was under the impression that there must have been some difficulty as far as the Australian personnel on the ship were concerned and took the precaution that that being the case I should allow the usual processes to be put aside. How wrong I was. It turns out that in fact we are here to defend retrospectively any illegality that the Prime Minister and the government may have undertaken today. I will not be giving such largesse to the government when it brings further legislation into this place on this matter. One need only to look at clause 8 of this legislation to see how wrong it is and how against basic Australian principles it is. Clause 8 says:

Proceedings may not be instituted or continued by any person in any court to prevent a ship, or any persons on board a ship, being removed to a place outside the territorial sea of Australia pursuant to a direction given under section 4.

The legislation is clearly aimed to take away all legal rights. However, if we look at section 75 of the Australian Constitution, under the heading ‘Original jurisdiction of High Court’ it says:

In all matters—

(v) In which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth:

the High Court shall have original jurisdiction.

That is, if somebody wants to take objection to what an officer of the Commonwealth is doing, that matter will be dealt with by the court. How dare this government rush legislation in here tonight to try to override the Constitution! It would not be successful were we not to be turning this legislation down. But that is the intent of Prime Minister Howard and this government: to try through legislation to overrule a basic tenet of the Constitution when it comes to a person’s right to go to the High Court—very dangerous stuff, and a very dangerous attitude from the Howard government.

I just want to also draw attention to what happens when a different look is taken at what the Howard government has done as far as this ship is concerned. It was interesting to hear the Norwegian foreign minister being interviewed on Australian television tonight and putting forward the information that the ship that has taken aboard the refugees at the Australian government’s request is licensed to carry 50 people on the high seas. It is now in Australian waters with over 450 people aboard. It is illegal for that ship to be on the high seas with that many people aboard, yet we have the government of Australia, forcibly if necessary, requiring it to go into extraterritorial waters—in other words, to put itself in an illegal situation.

Remember that the complement aboard this ship was increased at the request of the Australian government. No wonder the rest of the world, and not least Norway, is looking on with horror at the circumstances regarding this ship. The Australian nation is taking a blow to its reputation, which I have
not seen in my political life over the last two decades. There has never been a situation as critical and as damaging as this to Australia’s reputation. That has come from the office of the Prime Minister, Mr Howard. What is happening damages every Australian.

The opposition, to its great discredit, has not been an opposition until this evening. I must compliment it on finally peeling off and saying, ‘Well, we can go so far with Prime Minister Howard, arm in arm, in turning our back on the humanitarian call that this crisis has put to all politicians’—and, indeed, all citizens in our country. But it took a draconian piece of legislation like this to have the opposition peel off for all the reasons we have heard tonight.

It is an enormous pity that this debate in Australia has been bereft of the usual debate between government and opposition. There has been no oppositional point of view because the opposition felt that the Howard way was the right way. They were taken right up the garden path and have now found that they have had to turn back at the gate—and, fortunately, they have done so.

We have not seen the last of this matter, but this has been an appalling 48 hours in Australian history. It will go down as a black period in Australia’s history. It has occurred in an era when the government professes globalisation but has been found to have no heart and no stomach, let alone any regard, for the spirit of international obligations to which we are a party.

Representing the Greens, as far as the motor vessel *Tampa* is concerned, I have opposed what has happened right from the first moment we heard about it; we were alone in our opposition at that stage, in that first 24 hours. We have been criticised for that. But it has been very heartening to have so many Australians call my office and offices of Greens around this country saying, ‘Thank God that some group has stood up for the humanitarian dimension that has been so lacking in the government’s and the opposition’s approach to the human beings who are aboard this ship tonight and who still do not know their destination’. They are still in limbo because of the actions of the Howard government. I oppose the legislation.

**Senator BOLKUS** (South Australia) (12.18 a.m.)—I also rise to oppose the Border Protection Bill 2001. At the outset, I indicate that I speak with some experience in this debate, being a former immigration minister, as Senator Ray mentioned earlier, and with some experience of this sort of problem. Save the 1974 Vietnam boat people influx, I think I had the first real major influx to contend with of some 1,500 boat people at the end of 1994, a figure that pales into insignificance with the current problem but one that presented all of us at that particular time with enormous challenges. I was minister between 1993 and 1996. I inherited a system with detention centres with long-term residents and a generation of court cases across the courts, across the country. I inherited an enormous number of asylum seekers—a record number, in fact. At Christmas 1994, as I was having dinner with my wife for her birthday, we had boat after boat after boat coming that night, the following day and that week.

As a former minister, I can understand the sorts of pressures that this government is confronting, and the sorts of pressures and factors that Minister Ruddock has to confront in this area. I also understand one of the most important imperatives in politics is that the immigration portfolio is one of the most sensitive. There is a further obligation on those involved in migration, and that is to act in the national interest. That sort of responsibility demands there be an obligation to reduce the heat, the passion and the political divide, and to act in the national interests and the longer term interests of this country. It demands unparalleled calmness and control. It also demands unparalleled fairness in the way that one acts and makes decisions. It is all about nation building and, as I say, it is not an easy task because there are continual pressures and continual demands from all parts of the immigration debate.

However, there is also the obligation to consult, and this is what I had to do with bill after bill when I was the minister. As immigration minister, I had a newly codified law and it was in need of amendment. As more and more issues and more and more challenges were thrown before us, we needed
more and more amendments. We did amend, and we did so in consultation with the opposition. We had amendment after amendment to confront challenges that were not there at the start of 1993. I have to say that Jim Short at the time was not the easiest person to consult with. He had an eye out for the opportunity, as you would imagine of people in politics. But he was taken seriously, he was brought into the discussions and he was consulted. When he suggested amendments, we also took those seriously.

I have to say that all the legislation I introduced and pursued in this place was passed, and all of it was upheld in the courts. It was not easy, but we had to consult and we had to accommodate different interests in this parliament. Some we could not accommodate, and Senator Harradine is a lasting testament to that. And of course some of the Democrat issues we also could not accommodate.

But in this portfolio you really have to play the game fairly, apply the laws fairly and set your priorities fairly. In that context, you really have an obligation to help those who want to come here as refugees and in humanitarian circumstances—if for no other reason than, in looking back at our history, it can be seen that those who have come here over the years as refugees have made enormous contributions to this country. They have not stagnated and have not been still-born in their citizenship of Australia. They moved on one after the other and contributed enormously. We have met social responsibilities but, as a nation, we have benefited from those whom we brought in in these circumstances.

We have done it well over the years because we have been able to work internationally and cooperatively with organisations such as the UNHCR and the International Office of Migration. We have had facilities overseas, we have been accessible overseas and we have had sufficient numbers overseas to ensure that the sorts of problems confronting us on our doorstep now were not on our doorstep over those years. It has been unfortunate that over recent years we have had a failure of policy in that the places have been reduced and access has been reduced in those areas where the pressure has been enormous.

Let us not deny the fact that there are some real refugee situations and problems in the Middle East areas from where these people come. As I said the other day, time after time I was confronted by Immigration officers in the Middle East region saying that they needed more places because there were real-life situations—people about to be raped, people about to be butchered. As a lasting testament to those situations, I have in my office a horrific painting which I invite any member of this place to look at as a reflection of the sorts of torture that people had to go through. We have failed in that respect and I think it is one of the reasons we have the problem now.

As a former immigration minister, I am a bit embarrassed by the situation that this government has put Australia in. It is not one of our finest moments. Not only are we letting down the Australian people, not debating the issue with them and doing this in a rushed environment, but we have been confronted in this place with a matter of urgency basically at the end of a political rifle. The government has basically said to us, ‘Either pass this legislation tonight’—in a mildly amended form, I must say—’or face the consequences.’ The Prime Minister is already out on the airwaves trying to ginger up those consequences.

This is not the way to handle an issue such as this. Making base political advantage out of an issue such as this—a difficult issue which raises all sorts of considerations—is not the way that Australia’s national interest is enhanced. This is not just an issue of turning people back. This is an issue that goes to our national sovereignty and national interest. It goes to challenging our legal system and it goes substantially to our international reputation and relationships. Those are relationships which people in this place may at first glance not see as important, but all along in my time as minister and, I am sure, in Mr Ruddock’s time as minister there has been a continuing obligation to work constructively with the organisations that we have disaffected in the last 48 hours.
Let me put one point on record from our side of parliament. As I said the other day, we do want a resolution. It is not in Australia’s national interest to have this impasse. We would like to see the impasse over, but I fear that this government has been guilty of building a house without a backdoor: there is no exit strategy and we are all locked in. As a consequence, we will be going through this particular problem for quite some time.

The fundamental question confronting us tonight is: does the government really want a solution? Has the government really been trying to get a constructive solution to this or has it merely been playing the issue for the wedge political issue that it is? Senator Hill, in one of his poorest, if not the poorest, performance in his some 20 years in this place, accused us of trying to take some political advantage. Yesterday when I spoke I made some comments which were not, you would say, totally supportive of asylum seekers. In those comments I asked the rhetorical question: do we as a nation send the failed asylum seekers from Iraq back to Saddam Hussein? Having gone to war with him, having accused him of tyranny, do we not acknowledge that there are victims of his tyranny? Do we not acknowledge that he cannot be trusted with those who may have sought to betray him? That led to a flood of phone calls to my office. Once again, they were deranged and ill informed, accusing me of all sorts of treasonous behaviour.

These are not the sorts of issues—this is not the sort of debate—that should be driving this particular policy formulation debate at this level. What is needed is a real, informed debate and consideration of all the issues driven by information and not by prejudice and ignorance. What I fear we have from this government is the latter. We have got the shock jocks running the shop and I do not think that leads to good policy.

Why do I say that I fear the government do not want a constructive solution? Well, it is either that or they have been totally inept and incompetent. Neither assessment is flattering for a national government. My fear is that the Prime Minister is playing politics with the national interest. It diminishes his reputation, although he does not seem to care about that when votes and his hide are at risk, and it diminishes his office and Australia’s reputation in the broader community. If you do not believe me on that, all you had to do today was tune into the BBC or CNN to see what sort of a pasting we have got. All you have to do is look at AAP wires tonight to see Norway’s foreign minister saying that Norway would be raising a breach of the International Law of the Sea with international institutions such as the United Nations, the Red Cross, the International Maritime Organisation and the UNHCR. Government senators might say, ‘So what.’ Well, ‘so what’ is not a responsible way to respond to that because at the end of the day, when we have to interact with the rest of the world, when we want the pressures of unauthorised boat arrivals taken off Australia, we have to work with the UNHCR in relation to our selection processes offshore, we have to work with the International Office of Migration in relation to people we want to send back and we have to work within the United Nations to set priorities. If we offend those organisations, if we are dragged up before them and if our reputation is tarnished before them, it is going to make it even more difficult to get us out of the morass that this government has driven us into today.

I also say this because I have had a look at the legislation. If this government actually wanted a solution tonight they would have handled this process differently, but they have not. On the international level, they should have been obliged to consult and to forewarn Indonesia and President Megawati Sukarnoputri. But did they? Of course they didn’t.

Let us try to look at it in a real politics sense. They did not speak to Norway either—another ally. What they did instead was to confront both those countries with a public act of defiance and a public act which was directly going to impact on those nations, on their reputations, on their citizens and on their interests. There had to be an obligation on this Prime Minister to forewarn and try to work the issue out before fronting those nations—particularly Indonesia, as our closest neighbour. This was the height of rudeness, the height of incompetence, the
height of ineptness. We do need an ongoing positive relationship with Indonesia for a number of reasons. But we fronted them publicly and did not give them an opportunity to be able to protect their reputation in responding to us.

On the domestic level we should have been consulted. What was the problem? What is the actual problem that is driving this legislation? What is the advice that the government have had? The government advisers are sitting in the box there. We have not had access to their advice. What is the advised solution? Have they told us where there is a gap in the power that is required? They haven’t. They have told us consistently over recent days that they have got all the power and that they are acting legally. If they have been acting legally for all that time, why do they need this legislation now? We got 40 minutes notice, without an explanatory memorandum, to look at what is quite definitely the most draconian piece of legislation ever to be raised in an Australian parliament. They asked for a blank cheque and there was no notice to us or to anyone in this place of what sort of impact that legislation would have on the rights of others.

Let us look at the legislation. Under this legislation any employee, not necessarily full time, of the department or the Customs Service or the AFP or a state police force or the Defence Force—we are talking about hundreds of thousands of people—will be given unbridled, uncontrolled and unregulated power over ships, not just the *Tampa* but any vehicle used for navigation. Fishing boats, prawn boats or any vessel that might be in the vicinity might be subject to the whim—I have to say ‘the whim’—of one of hundreds of thousands of Commonwealth officers. It is not just the Commonwealth officer, as defined in clause 3 of the legislation, but any person assisting that officer. Do they tell us who that ‘any person’ has to be? No. That person does not have to be an Australian citizen. There is no qualification at all. Any person can assist the officer in absolute discretion of power and get away with it, with no accountability. As I say, the sorts of vessels covered in the bill are wide ranging. Clause 4(2) states:

A direction ... must not be called into question, or challenged, in any proceedings in any court in Australia.

How does that sit against section 75 of the Constitution—the original jurisdiction of the High Court? We have got the legal boffins over there. Give us the legal advice; give it to us in writing. How does that sit against the Constitution? Will it be struck out as unconstitutional? I think that it is a fair bet that it will be. This legislation further states that any officer may use any reasonable means. What does that mean? I go to clause 5. This is a curious one. Clause 5 attempts to give this legislation some extraterritorial effect. I think it was Senator Brown who talked about the *Tampa* being authorised to have a certain number of persons on board—30 or 50, or whatever it was. But we now have close to 500. What we are saying is that our officers are going to be empowered by this legislation to have extraterritorial power. But that won’t work. Offerers know that it won’t work. They also know that, once our people went outside the territorial borders of Australia, they would be immediately subject to international law and laws of other countries—including the laws of Indonesia. So this is, firstly, unconstitutional and, secondly, totally impractical. Clause 6 makes reference to any ‘person assisting an officer’; that is anyone. Subclause 7(1) states:

Proceedings, whether civil or criminal, may not be instituted or continued against the Commonwealth in respect of action taken under section 5 or 6.

Once again, there is a conflict there with the Constitution—civil and criminal. Under clause 8, once again, there is an attempt to give territorial effect, territorial powers to Australian officers. Come on, you have got to be joking! Under clause 9, applications for protection visas are struck out. Clause 10 states:

This Act has effect in spite of any other law.

Do they reckon they can get away with that? This clause overturns the rule of law. It overturns the basic principles underlying our Constitution. It overturns instruments such as the Magna Carta. This government has come into this place giving us 40 minutes notice in asking us to accept it, to give it a blank
cheque. Then he says ‘maybe just for six months’. Come on, give us a break. When you go through clause after clause after clause, you see that this is, without doubt, the most undemocratic piece of legislation to come into this place.

This legislation is trying to take away the rights, for instance, of the Norwegian company. They might be mooting a compensation claim. Do you think you can take away their right to exercise control over their property under our Constitution and exclude the capacity for compensation under that Constitution? Once again, what we have got here is legislation, behaviour and conduct which would befit the likes of Mugabe. This legislation has been rushed into this place tonight. Basically, the gun is at our head saying, ‘Either pass this or I will be doing the talk jocks in the morning.’ This is not the way to legislate; this is not the way that you should be running any policy issue, let alone immigration policy.

This is a government that has built a house without a back door. Philip Ruddock has been raising the temperature on the asylum seekers, knowing full well at the end of the day that some 1,500 or so will be left in Australia, and he has got absolutely no idea what to do with them. He is shopping around the world trying to get countries in the region to take them off our hands as a staging post for them to be delivered back to Iraq. But they won’t cop it, because they are not silly enough, and they have made that very well known to him.

The bottom line here is that we do need to work cooperatively with our neighbours to solve this problem. I think that at the end of this particular process our most difficult problem is going to be to reconstruct relations with Indonesia. As I said earlier on, when I was the minister quite a number of boats came to Australia. But we had close contact with Indonesia, close cooperation—not just in the centre but also in the regions. They were critical of the process. They gave us warning, they warned their citizens against assisting. They basically cooperated as a good neighbour. Over the last few years that relationship has collapsed. Over this issue that relationship has been mortally wounded. As I said the other day, it will take more than a block of King Island brie from some obsequious looking Prime Minister from Australia to get that relationship back on track.

We have made them the bunny, publicly, in respect of this issue. We gave them no way of saving face. It was a bad, bad call. Norway is a country far away from Australia. The Prime Minister may not even know where it is. But you do not play pass-the-parcel with a country like Norway, or with any country, and then stop the music and tell them that they have the burden. This behaviour reflects badly on Australia. It is key-stone cop behaviour. It does our reputation no good. We have a longstanding problem or two here. Unfortunately, this legislation does not provide the answer to that problem. It does not provide an answer to what we do with failed asylum seekers; it does not provide the answer to what we do with the other 2,000 coming to our shores in the next few days. It is shabby; it is shoddy; it is undemocratic; and it needs to be rejected by the parliament. But it also needs to be understood by the Australian public for what it is.

Senator HARRIS (Queensland) (12.38 a.m.)—I rise to speak this evening on the Border Protection Bill 2001. It is a bill for an act to provide for the removal of ships from the territorial sea of Australia and for related purposes. I would like to comment briefly on some of the issues raised by the previous speakers. Senator Brown made a reference to citizens and their right to take their issues to the High Court. There is a fundamental flaw with that process in that the people of whom we are speaking are not citizens of this country. I uphold fiercely the right of any citizen of Australia to approach any court of jurisdiction within Australia but, clearly, these people are not citizens.

Senator Brown also raised the issue that it is illegal for this ship to be on the high seas carrying the number of people that it does. Several speakers have referred to the fact that it is licensed to carry approximately 50, and that at this point in time it is reaching approximately 500. I think we need to remember that this ship was perfectly service-
able when it brought those illegal immigrants from Indonesian waters to here. Suddenly we have the situation where it is quite acceptable and quite safe for them to have hijacked the ship that they are now on and to have travelled from Indonesian waters to Australian waters but, for some reason, which passes total logic, it is now unsafe and illegal for them to be taken back. We need to remove the emotive and political statements and look at the clear facts of this situation.

Senator Bolkus said that Australia is embarrassed. There may be a situation, if some action is not take, where Australia will become extremely embarrassed. Let me put a situation to the Labor senators, to the Democrat senators and to Senator Brown. Let us say that standing off our shores is a substantial commercial vessel with a considerable number of illegal passengers on it, that they trans-ship them just outside Australia’s territorial waters and that they put a 14-year-old in charge of a rust bucket to then make a run for this country. What will Australia do, if we do not take a stand now to stop this from happening? I believe this is the reality we are now facing. I am glad to hear that Senator Bolkus supports the fact that the Magna Carta has legal standing in Australia.

Senator Bolkus—I did not say that.

Senator HARRIS—Senator Bolkus, you clearly referred to this bill as having the possibility of overturning even the Magna Carta.

Senator Bolkus interjecting—

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Senator Bolkus, if you must interject, please do it from your own seat.

Senator Bolkus—Mr Acting Deputy President, I raise a point of order. In answer to Senator Harris, I did not in any way indicate that the Magna Carta has effect in Australia. I was claiming the principles—

The ACTING DEPUTY PRESIDENT—Senator Bolkus, you are claiming to be misrepresented and, as you should know, you should do it later.

Senator Bolkus—I want to finish my point of order.

The ACTING DEPUTY PRESIDENT—Are you claiming to be misrepresented or are you on a point of order?

Senator Bolkus—I want to raise a point of order.

The ACTING DEPUTY PRESIDENT—If you could wait until I finish speaking, Senator Bolkus, I would appreciate it.

Senator Bolkus—I was raising a point of order.

The ACTING DEPUTY PRESIDENT—You are not claiming to be misrepresented?

Senator Bolkus—No. My point of order—and it would assist Senator Harris in the debate to take into account my point of order—is that there is a distinction between having legal effect in Australia and having principles—

The ACTING DEPUTY PRESIDENT—Senator Bolkus, that is not a point of order. I do not think that Senator Harris needs a legal lesson tonight.

Senator Bolkus—I want to finish my point of order.

The ACTING DEPUTY PRESIDENT—that is not a point of order.

Senator HARRIS—Every country needs to be in control of its own sovereignty. This is the issue that we are facing in Australia. One of the most important sectors of the sovereignty of a country is its ability to protect its own borders; another is to control those entering and exiting its borders. Australia is a signatory to conventions relating to rescue at sea. This is where we need to clearly look at the facts.

I support the actions of the captain of the vessel Tampa. He has carried out his duty on the high sea. It is also interesting to note that the Tampa’s next port of call was Singapore, and therefore it would be quite natural for the captain to continue in that direction. I believe, from the information that I have been provided with, that at that point in time the people who this captain had rescued—he had gone to their aid—then made certain threats to the captain of that ship, under which he believed either he or his crew were
in danger and he turned the ship around and headed to Australia. So we have the people who had been rescued on the high seas then dictating to the captain of that ship where they were going to go.

I will admit that this bill is inelegant and untidy in some areas, and I will have questions for the minister during the committee stage. But I believe the primary purpose of the bill is to give powers to cover certain actions and directions by the government in the past few days. We have to look back quite a considerable time to find out when laws like this were brought in. I believe that originally some of these laws were brought in by Henry VIII. During the Second World War, Churchill’s government brought in similar laws. We need to look at what has happened. I am not saying that we are at war with anyone but I believe that for a government to need to take such a substantive position we need to look at the cold, hard facts. We need to look past the people, past the boats and the land and the shores and take a serious look at what has actually changed. When we look at what has changed, we need to look at the countries that these proposed political refugees have fled from. It is proposed that they may have come from places like Iraq, Iran, Afghanistan, Algeria, Indonesia and Pakistan. If we look at the immediate history in those countries, it is one of war-torn strife and, to some degree, civil unrest. But that has not changed over the last five years.

Now we need to have a look at the illegal boat arrivals within Australia over the last five years. If we go back five years ago, the total number of illegal boat arrivals was under 400. Four years ago, it actually dropped down to 250. Three years ago, it jumped from less than 250 to nearly 1,000. Two years ago, it absolutely skyrocketed to 4,000. That is what we need to have a look at, because the conditions in the countries that these people are claiming to come from have not substantially changed during that period, so there has to be another influencing factor that we are not looking at.

We do have a problem. We have a problem that possibly the government do not know about or, if they do know about it, they are unwilling to tell the Australian people. There is obviously an enormous organised force that can facilitate the jump from a little over three years ago of 250 people entering Australia to the over 4,000 that we have now. That is the issue that we need to address.

Yes, there are people on that Norwegian vessel at the present moment who need to have a decision made. That decision needs to be made quickly and it needs to be made on fact and not on emotive or political agendas. There have been polls taken in Australia that show up to 96 per cent of the Australian people support the government’s action in putting a stop to this illegal boat process.

I come back to the possibility that this chamber may, if it does not pass this legislation, be faced in the very short term with having these vessels, as I was saying earlier, standing off Australia in international waters and disgorging their illegal cargoes, who have paid considerable thousands of dollars to facilitate getting into Australia. Is it acceptable to call somebody a political refugee who has spent between one and five years accumulating enough money in a safe haven to pay to get onto one of these illegal boats and come to Australia? I do not believe that under any humanitarian system they could remotely be classed as political refugees.

Yes, there may be some people within those boats who may have genuine political refugee status, but we also need to be very mindful that they, along with the other people on those boats, made a personal decision to step onto the vessel and pay somebody to make an illegal entry into this country that has the effect of affecting our sovereignty.

Senator CARR (Victoria) (12.52 p.m.)—Tonight we were asked by the Leader of the Government in the Senate, Senator Hill, to consider our responsibilities. He indicated to us that he felt that the opposition, from time to time, had an obligation to defend the government’s position with regard to certain matters of national importance. This proposition requires careful examination. In my mind, as members of parliament we have undeniable responsibilities, and I am sure that every senator—particularly those in the parliamentary Labor Party—would hold the view that we have particular responsibilities...
to protect the interests of the Commonwealth and, of course, the Australian people.

This opposition have made perfectly clear again and again the strength of our position with regard to the need to protect the integrity of Australia’s borders. We take the view that there is an obligation to defend the sovereignty of this country. We take the view quite often in a whole range of areas that too little is done by this government to protect the sovereignty of this country from various international pressures and the various means by which our independence is taken from us. But I think it can be demonstrated by action and by deed that the Australian Labor Party have taken their responsibilities in these matters very seriously. However, we have done so on the basis that we are a country that believes in international law and that our responsibilities are to act within the law and within international agreements and to fulfil our obligations as a humanitarian country within the terms of the treaties and international laws to which we are bound.

It is on such grounds that we can also assess Senator Hill’s appeal to us to accept this government’s Border Protection Bill 2001. Senators Faulkner, Cook, Ray and Bolkus all have considerable experience as legislators, as ministers and as representatives of the labour movement. They reflect the full range of opinion and the full range of experience, one might say, within the Labor Party, and they all came to the same conclusion: consistent with international law, consistent with normal legal practice and consistent with our moral obligations, this legislation is unacceptable. I take the view, frankly, that this legislation is scandalous.

We have heard tonight from One Nation that we should seek to remove the emotive aspects from this debate and look at the clear facts. That is what I think Senator Harris said. Coming from One Nation, that is quite an extraordinary proposition. Pauline Hanson’s One Nation was the party that started so much of the discussion about intolerance, the challenges to multiculturalism and the challenges to our notions of diversity. These were all issues that led to the allegation that One Nation was essentially a racist organisation. Now we are told by One Nation that we should remove the emotive aspects from this debate. Frankly, that is a bit hard to swallow.

We are told that we should look at the opinion polls and consider what the opinion polls are telling us. I will take up the argument that Senator Hill put to us in a similar vein that we the opposition were seeking to differentiate ourselves from the government on these matters. Both Senator Hill and Senator Harris failed to acknowledge that, in some ways, the easy option for Labor was to take the so-called populist position, to argue the case that we should attack people who are coming to this country in desperate situations and who have been, in one way or another, subject to the recent barrage of propaganda by this government. That is the easy option. In my opinion, that is clearly the popular option. There is no doubt that John Laws and a whole range of other people would applaud that sort of approach. Frankly, the difficult position is the one that the Labor Party have adopted. The difficult position is the principled position: to look at what is actually happening with this legislation, to examine the detail of this legislation and to highlight how grossly inadequate and totally unacceptable the proposition that we have before us tonight is.

It is not just Senators Faulkner, Cook, Ray, Bolkus and me—and I expect Senator Conroy will make similar points tonight—and it is not just the range of opinion within the Australian Labor Party that is drawing attention to how grossly inadequate this government’s actions are. We are finding that within the government there are emerging views which would be more consistent with the liberal traditions of the Liberal Party. Once or twice, Senator Hill has come into the chamber and drawn attention to his views—his liberal views. Mr Acting Deputy President, you did not hear any of that tonight. Rather, you heard an appeal to authoritarianism, an attempt to stigmatise and an attempt to attack the Labor Party for taking the tough course of action.

As one example, we have heard from Petro Georgiou that the sorts of positions the government is taking in other measures, such as the definition of a refugee, would mean that Jews fleeing fascist Germany would not
be able to apply for refugee status. That is the sort of statement I saw on the front page of yesterday’s edition of the *Age*. I mix within the Jewish community in Melbourne and I know many stories about what circumstances led to people fleeing fascist Germany. There have been numerous occasions when people have put to me directly the consequences of following the policy which was followed in the 1930s and the 1940s throughout the world—which said that persons fleeing persecution, genuine refugees, were not to be accepted into a country. Those are the sorts of circumstances we have to be very cautious about. Many of the allegations that are made in that context need to be seen for what they are.

I come back to the proposition though. We are not saying that anyone who fronts this country’s borders is entitled to entry. We are not saying that. We are saying there have to be criteria, proper criteria, but not the sorts of propositions we are seeing before us tonight, which seek to retrospectively make legal what this government clearly believes is currently illegal. We have been told that everything that has been done to date is within the law. But then within the second reading speech and what passes for an explanatory memorandum we see concerns raised about the legal foundations of the government’s actions. I am left with no other conclusion than that the government deeply suspect that what they have done is illegal and that they have called on this parliament to retrospectively legitimise their actions.

Under those circumstances, we are entitled to ask a few questions about what the government is trying to achieve. We have not had an opportunity to discuss these processes in the normal manner. This is a very, very important piece of legislation, but we get 40 minutes notice. There are no committee processes to examine these questions; there is no device by which we can discuss with the government what these clauses mean. We have not had the opportunity to examine the legal advice or the position in terms of our international standing on these matters.

The normal processes that this parliament has seen fit to follow with other important pieces of legislation do not apply here. We have had a perfunctory second reading note and a document that purports to be an explanatory memorandum, which is nothing more than a collection of clause notes. We have not seen any serious attempt to engage in dialogue on these important questions. This is a contemptuous government. It is contemptuous of the opposition; it is clearly contemptuous of the parliament.

In that context, is it any wonder that we are saying that there are too many questions about this bill? There are too many fundamental issues yet unresolved. The opposition tonight has drawn attention to some 26 questions about this bill—26 propositions we say need further examination. Because of the appalling way this bill has been written, with the lack of definitions and the lack of precision as to who is affected, and by the actions of which people, clearly we are entitled to explore that matter a bit further.

Some 26 serious issues have been identified so far. I want to identify a few more. We have already heard that there are serious issues about the constitutional validity of this proposal. Senator Brown and Senator Bolkus have drawn our attention to subsection 75(v) of the Constitution. Other subsections of section 75 go to the issue of the powers of the High Court, powers which this legislation clearly attempts to subvert. There is clearly an attempt to subvert the High Court through this legislation.

It seems to me that there is a legitimate issue to be raised about whether or not this legislation is legal, in the sense of whether or not it is constitutional. I draw your attention to 75(i) and 75(ii), which go to the issue of the powers of the High Court in regard to treaties and the representatives of other countries, respectively; and 75(iii), which goes to the issue of the High Court’s powers in regard to persons suing the Commonwealth or being sued on behalf of the Commonwealth. There are other sections of the Constitution too. I can draw your attention to section 51(xxxi), where the acquisition of property on just terms is discussed. I would have to ask whether or not this bill is in contravention of those aspects of the Australian Constitution. Have these issues been considered? Has there been any proper examination
of the implications of this bill in regard to the Constitution? Whatever one says about the strength of the Constitution, there are a few rights within it—very few, but a few. Through this bill, the government seeks to abrogate its obligations under the Constitution.

What is the impact of this bill in regard to our obligations under international law? It is quite clear that the facts on these issues remain to be explored. We have the government’s explanation of what has happened, which is clearly at variance now with the position that is being put forward by the Norwegian government. I do not know who is right and who is wrong. Like other members of this parliament—certainly those on this side of the chamber—I have not had the opportunity to examine those issues. If we as a country are to be taken before international tribunals on these matters, I think we are entitled to know what the facts actually are. We should not have to necessarily rely upon the propaganda that has been distributed by this government to support a political agenda which is aimed at trying to divide this country on issues of race and multiculturalism, which are brought together around the issue of immigration, and in particular the question of illegal immigration, which is then highlighted through the whole issue of refugees.

We see it time and again. Throughout the history of this government, we have seen those questions coming forward. If we look at the legislative program proposed for tomorrow, what do we see? What priority is given to the bills? There is a two-year old bill on questions of migration again and questions of judicial review. Those sorts of questions are put forward and given priority over other quite important matters. I would have thought, such as the powers of the royal commissioner in regard to HIH. That is given a lower priority than this government’s attempt to promote these highly divisive matters which, one can only presume, are aimed at advancing a political agenda they see as beneficial to them in the run-up to a federal election.

I am very concerned about the aspect of this bill that goes to the issue of the rule of law. This bill states explicitly that it exempts from all laws this broadly defined group of persons, be they state or Commonwealth officials, be they in the police or the military. One presumes that that exemption includes military law. Does that allow for any discussion about what is reasonable within the law? Of course it does not, because it says there is no appeal to any court and no process to establish what is legal and proper and reasonable at law—they are irrelevant concepts. So, on the one hand, soldiers and seamen doing their jobs as directed by government, although they are not necessarily protected in regard to various other compensation measures if they are injured, are exempt, whereas in the same situation civilians who, through no fault of their own, become caught up in a situation like this have no recourse at law to protect their rights against any unjust or improper actions by someone who is presumed to be an authorised officer.

The bill says that officers can use reasonable force, but what is the definition of reasonable force? There is no restriction, so if a person needs to be belted they are belted, on the presumption that that is a legal act. There is no way of challenging that or any other form of violence that is seen to be reasonable, without definition. It is a self-defining concept and, frankly, if you exempt people from all the laws in this country, including military laws, you provide them with a situation where they essentially have the power of life and death over people, and I think you are entitled to ask a few questions about the implications of that. I do not care how good a soldier someone is or how well they are trained, I do not think that is a reasonable way to behave. It is certainly not reasonable to put our troops or our police in that situation. It is not fair to put state officials who are assisting them in that situation either, nor any other public official who is placed in those circumstances. There are serious legal and moral questions that remain unresolved by this bill.

We have provisions in here that seek to establish the power of a minister to act. There is no description of which minister or which department or of the administrative lines of authority. This is a gross abuse of power. It is totally inappropriate that meas-
ures like this have been brought before this parliament in an ambush, in an attempt to impose a political agenda to defend government actions which they clearly suspect are highly illegal—otherwise, they would not be doing this—and in an attempt to put us in a position where we accept the blank cheque: ‘Just sign here and let us do whatever we think is appropriate.’

So far as I am concerned, the cat has been let out of the bag tonight. Earlier in the debate we were told by one of the government senators that injunctions had already been sought. If that is true, what are the applications for injunctions about? What acts have already been undertaken by this government that need retrospective legal sanction? Are there people who have already applied for visas? Are there people who are seeking refugee protection? Has any of that sort of thing gone on? We do not know. There are many questions that are legitimately asked and to which we have not received any answers. Under those circumstances, it is unreasonable for this government to expect this parliament to accept on their word the necessity for this legislation. The plain English reading of the words on the paper indicates that we have got reason to believe that the government’s actions are improper. *(Time expired)*

**Senator CONROY** (Victoria) (1.12 a.m.)—Today will be recorded in history as one of the low points of democracy in our country. Today we are seeing a Prime Minister who is prepared to sink to new depths to keep his job. He is prepared to go to new lows to ensure that he can win the next election. What does this Prime Minister have to hide? We have asked today for a briefing from Foreign Affairs to get an understanding of the climate in our region, to find out what the capacity to find a haven for these refugees is. We have asked for a briefing from the Attorney General’s Department. ‘Explain to us,’ we have said, ‘what it is that is causing the problem that requires this legislation.’ We have had no reply. What have the government got to hide?

We have been accused of political opportunism tonight. That is a Freudian slip by those opposite to hide the fact that what they are about tonight is cheap populism. I appreciate the fact that Senator Harris has stayed to listen to the debate. Senator Harris’s supporters may think that the Border Protection Bill 2001 is an attractive proposition on the surface, but this bill is a fraud on Senator Harris and his supporters. It will not achieve any of the things it purports to achieve. It is a cheap political stunt designed to give the Prime Minister a boost with talkback radio jocks like Alan Jones and John Laws. It is a cheap stunt that will not achieve what they are telling Senator Harris and his supporters it will achieve.

I say to the government that, just because Mark Textor tells you this is going to go down well out there, it does not always work. Just in the last 14 days, we have seen the capacity of the Australian public to see through the wedge politics that have been employed by the conservatives in the Northern Territory, because nowhere have wedge politics and the horrors of the Textor style of politics been more demonstrated than in the Northern Territory, with mandatory sentencing, all of the racial issues, the divides and the wedges that the CLP—your brethren up there—have sought to perpetrate. To our delight on this side of politics, the public saw through it and rose above it. I think, in the end, when Australians understand what it is that you are trying to do, they will see through this and they will rise above it, and you will be judged harshly in the future.

The Border Protection Bill 2001 ‘seeks, for more abundant caution, to ensure that there is no doubt about the government’s ability to order ships to leave Australia’s territorial waters’, yet up to this point the Prime Minister has maintained that he has had the powers to protect Australia’s borders in the way in which he has described his actions to this point. The government keeps saying that everything they have done before 6 o’clock tonight is legal—that everything they have done to the *Tampa*, including the boarding and directing it to go out, is legal. So why do we need this so-called emergency bill? Why doesn’t the government want to consult the other parties? Why are they forcing this bill on tonight? Why are they trying to ram it through, when it is retrospective anyway?
You could debate this in a year’s time and set the date for yesterday at 9 o’clock in the morning. There is no need for this farce. You say you have all the powers now. You have backdated it. You do not need to push this through. This is a cheap political stunt designed to bolster your pathetically flagging fortunes. Senator Ellison, I hope that you take the time in your 20 minutes to address some of the issues raised today by Senator Faulkner, Senator Ray, Senator Carr, Senator Bolkus, Senator Cook, Senator Stott Despoja and those others who have raised issues.

The bill goes beyond abundant caution; it changes the policy, which so far Labor has supported. It changes the way in which refugees or potential refugees coming illegally to this country ought to be treated. It introduces changes that ought to be properly considered, not ambushed, as Senator Carr has described it. This government has not allowed the parliament the proper time to consider these changes. It does not need to rush this bill through in this disgraceful manner; it does not need to give the opposition 40 minutes. I suspect that even Senator Ellison has not properly considered this legislation. It is fraught with difficulties and can lead to absurd results.

My colleague Senator Faulkner has already suggested that this bill would permit a police officer, a Customs officer, a member of the Australian Defence Force or, in fact, any employee of the department to direct a master of an Australian fishing ship, fishing in the outer limits of the territorial sea of Australia, to take their ship outside Australia’s territorial waters and leave it there. This conclusion can be arrived at because the definition of ‘ship’ used in this bill is so broad. It follows because the powers given to the officers so defined in this bill are so broad. As I will explain later, these officers are able to exercise a discretion which is absolute. It can be exercised in any circumstances and, once exercised, it provides the justification for the use of force, and that direction cannot be called into question or challenged in any proceedings in any court in Australia. That is what this bill allows. This bill does not just apply to the case of MV Tampa but can apply to many other circumstances where legislation like this is just not appropriate. Let us look closer at some of the provisions of the bill. Under clause 4(1) it states:

An officer may, in his or her absolute discretion, direct the master or other person in charge of a ship that is within the outer limits of the territorial sea of Australia to take the ship and any person on board the ship outside the territorial sea.

The first thing to notice is that the officer is granted an absolute direction. Dr Evans from the Faculty of Law at the University of Melbourne has said:

Such an unconfined discretion may be appropriate at the highest level of policy formation. But it is inappropriate when it can be conferred (for example) on any employee of the Department or any member of the Australian Defence Force. It is particularly inappropriate given the consequences of the discretion and when no reason is apparent for not identifying preconditions and standards for the exercise of the discretion.

The second thing to notice is how that direction can be made. This is an important question as it has consequences for the enforcement of the rest of the bill. Must the direction be in writing? Can it be given orally? Can you just shout, ‘Oi! Clause 4 is in force.’ Can it be given from the Customs boat or Army boat as it idles next to the ship? Can it be given as the Customs boat is approaching the ship? Can it be given as the Customs boat is leaving port to locate the ship? All these possibilities are conceivable under this bill, as clause 4(4) says that a direction given under clause 4(1) is given even if there was no master on board the ship to receive the direction or the master did not receive or understand the direction.

How the direction is given has implications for clause 6, which permits an officer to return to a ship a person who:

(a) at the time when a direction is given ... in respect of the ship, is on board the ship; and
(b) later leaves the ship.

If the direction must be given in writing, clause 6 can be avoided by jumping off the ship before the officer has an opportunity to give the written direction to the master. If the direction must be given within earshot of the master of the ship, again clause 6 can be avoided by jumping off the ship before the
officer has had an opportunity to get within earshot of the master. This situation is ridiculous. This legislation is not clear and such legislation would not normally be presented to parliament in this form. The drafters should hang their heads in shame. It has not been thought through and will not achieve what the government and Labor up to this point have been seeking to achieve. But this bill is not just ridiculous in its drafting; it has implications which Australia has never morally signed up to, which may well be in breach of the international obligations and which may mean that, if any Australian ever finds themselves in need of assistance, that assistance may not be available.

Look at subclause 9(1). That provides that at any time in the future any application for a protection visa made by a person who is on board a ship at the time a direction is given in respect of that ship is not a valid application. Under this bill, a person can be turned back from Australian shores and then if they later make an application for a protection visa from their home country or another country—in accordance with what many would call the proper channels—it is not valid. There is no let-out clause if you go home or you are shoved back offshore. It is permanent. You are permanently ruled out, even if you go back and do the right thing. They could try again later, but, on a reading of this bill, it would not be a proper application. Only in limited circumstances, says the explanatory memorandum, would this not be the case. No more than just that, so we must presume that those circumstances are in fact just that: limited. Thus this bill provides that, if a person is forced to leave their country and would rightly be considered a refugee and if a direction is made under this bill to turn their ship back, they are thereafter banned from ever making an application for a protection visa. This is an immoral position. It is beyond what the current policy provides and needs to be considered in the context of Australia’s international obligations and human decency.

Let us look at some of the provisions of this bill. The bill provides in subclause 4(2) that a direction given under subclause 4(1) must not be called into question or challenged in any proceedings in any court in Australia; proceedings, whether civil or criminal, may not be instituted or continued against the Commonwealth in respect of action taken either to enforce a direction or to return people to a ship; proceedings, whether civil or criminal, may not be instituted or continued against an officer who takes action to enforce a direction or to return people to a ship; proceedings, whether civil or criminal, may not be instituted or continued against a person who assists in taking action to enforce a direction or to return people to a ship; and proceedings may not be instituted or continued by any person in any court to prevent a ship, or any persons on board a ship, being removed to a place outside the territorial sea of Australia pursuant to a direction given under clause 4.

These are extraordinary provisions. They exclude a role for the judiciary—a role granted to the judiciary under the Commonwealth Constitution—to protect people from the excesses of executive power. Senator Harris, I would have thought that one of your party’s overriding concerns would have been about excesses of executive power. I would urge you to reconsider your support for this bill. Such an extraordinary measure needs to be considered thoughtfully. I would like to know whether it is constitutional. I would think that such provisions in a bill of this size—a total of 11 clauses—are unprecedented. I cannot conceive that every circumstance calling for the exercise of the discretion allowed under this bill is so urgent, sensitive or involves issues of national security such that judicial review is inappropriate. That is the view of Dr Evans; it is also my view.

These provisions are all the more extraordinary when this bill also allows the officers authorised under this bill—who, as many of my colleagues have said, can range from a new recruit in the Army to a Customs officer to the secretary of the department—to use reasonable force to give effect to this bill. What is ‘reasonable force’ in these circumstances? Again, the explanatory memorandum is silent on this issue. At this time of the
night, I am not very hopeful that the government can, or will, tell me.

Another aspect of this bill needs further explanation if it is not to lead to unjust situations. Dr Evans, in his commentary on this bill, has said that any legislation that authorises the use of force against individuals ought to be scrutinised carefully to ensure that its provisions do not go further than is necessary to pursue the legitimate objectives of this legislation. And we have a parallel. We have just granted quite wide powers to ASIO officers. Some members of this chamber have been involved over a number of weeks in a very detailed discussion about the powers and exemptions for ASIO officers. The powers in this bill are much wider—much broader exemptions exist in this bill—and we got 40 minutes to look at it. The hypocrisy here is disgraceful! The government did the decent thing over the ASIO bill and yet seeks to score a cheap political point here. This bill goes too far.

Then there is clause 10, which many of my colleagues have already referred to. That clause simply says:

This Act has effect in spite of any other law.

That clause overrides everything this parliament and any earlier parliament has ever considered—on the basis of one evening’s consideration on which the government has not consulted with the Labor Party at all, not for one minute. The government has not even bothered to contact President Megawati in Indonesia. Further on this issue, the Prime Minister only contacted the Norwegian Prime Minister after the Norwegian government encouraged the Norwegian captain to take the boat into Australian waters.

This bill is about wedge politics, but it goes much further than that. Recently the Joint Committee of Public Accounts and Audit interviewed the Department of Immigration and Multicultural Affairs and Coastwatch to talk about some of the very issues that this bill pretends to address. Questions were asked of Rear Admiral Shalders, a Gulf War veteran who commanded a ship in the Gulf War. He was asked about the sorts of vessels that are being used to come to Australia. He said:

It does vary of course. We have had everything from very rickety small type 3 Indonesian fishing vessels through to inter-island ferries. As a general comment, the vessels of the Middle Eastern people coming to the north-west in the last 18 months were not seaworthy. In the majority of cases, certainly recently, we have been unable to either escort or tow those vessels back to safe haven. So, as a general comment, they are not seaworthy vessels.

That is what we will be faced with, and this bill allows us to tow unseaworthy vessels back out across the 12-mile limit and let them sink.

Senator Carr—And with people on them.

Senator CONROY—With people on them. What sort of country has this become? Irrespective of whether or not they are legitimately refugees, Senator Harris, this bill allows the towing of unseaworthy vessels. Even the vessel in the case at the moment, which we have offered to try to negotiate a solution to and which Senator Harradine is attempting to address, cannot carry this many people under maritime law. For Australia to tow this boat back across the line and leave it out there is to put it in breach of the law. It is not configured to carry 480 people, it is not safe for it to carry 480 people, and we want to tow it back across the line and just leave it out there. It is not safe for it to move. This is not a solution, Senator Harris, because they are going to be back next week and the week after. This is not a solution; this is a scam. It is about politics; it is not about solving this problem.

The department of immigration were questioned by my colleague David Cox about what this government has really done to solve this problem. What memoranda of understanding have they reached with our neighbours about helping to solve this problem? We have China, which the Labor Party delivered, and we have Papua New Guinea. Where is this special relationship with Indonesia? We have no understandings, no memoranda and no way to work through this with any of the countries that these refugees pass through to come here. This government has so destroyed our international relationship with many of the countries around us that we are not in a position to actually ne-
gotiate. After five years, there is nothing. (Time expired)

Senator HARRADINE (Tasmania) (1.32 a.m.)—At this time in the morning, I am not going to speak for very long. Almost everything that needed to be said has been said thus far. The Senate has a long and proud record as a house of review. It also has a long and proud record of upholding the rights of individuals, whether they be citizens or non-citizens of Australia. In respect of the exercise of its review powers, the Senate has been unable to do what it normally does with legislation coming before it, that is, legislation is normally referred to a legislation committee and consideration of the details of the legislation is given by those committees. This consideration was not available to us because of the perceived need by the government of the urgency of this particular measure to deal with the problem. But of course this measure deals not only with the immediate problem but also has sweeping application in respect of other vessels upon which there may be people who are genuine refugees. We have an obligation under the convention to which we are signatories to give shelter to those who have a well-founded fear of persecution if returned to their country of origin. We all know that. There is no need to point that out, except that we must always keep that in the back of our minds.

The government—and Australia, of course—is faced with a grave problem, that is, the problem imposed upon us by criminal gangs of people smugglers. In respect of the people on board this vessel, there is some suggestion by the government that a number or all—that has not been decided—have been manipulated by people smugglers and have come to Indonesia via Malaysia. One suggestion was that they did have papers. I do not know whether or not that is correct. But certainly a committee of the parliament would have been able to elicit that information from the government. I have not heard the government indicate to the Senate precisely how these people got to Indonesia—whether in fact they did get into Malaysia with papers and then came across to Indonesia and the papers are not about. One would have thought that, if persons were have thought that, if persons were eligible for refugee status, papers would have been very important to show where they came from and to indicate that they were able to claim refugee status because they did have a well-founded fear.

But, again, we have not been told that in this second reading debate. So one has to look then at why the government really does need to have this legislation. What are the acts that are being performed, and by whom, which require this legislation in order to give protection to those persons who have been directed by the executive government to do certain things in respect of the MV Tampa?

The opposition has indicated in this second reading debate that it approved and endorsed the actions of the government in respect of the MV Tampa. As has been indicated, this vessel did take on board or rescue those persons who were on a boat and the nearest port was the port of embarkation in Indonesia. It has been indicated that those people put duress upon the captain of the MV Tampa when he was taking them to that port of embarkation and he felt obliged to turn the vessel around and steam for Christmas Island. That being the case, the government took certain actions and, as I mentioned, these were endorsed by the Labor Party.

I would not vote for this legislation, as it applies globally. It applies to all future vessels. Surely, if it is suggested that the legislation be applied to all future vessels—and the definition of a ship in the legislation shows that that is the case—we do have time to consider that in the proper way and to exercise our role as a house of review adequately. So I would not agree with that. I did draft an amendment to the definitions clause, if this legislation got into the committee stage, to redefine the word ‘ship’ to mean specifically the vessel in question. We will not be getting into the committee stage. I do not intend to vote for the legislation, because I do not think the government has advanced reasons for why this legislation is required, why this retrospective immunity is required. I was hoping that the government might have been able to give that detail about the actions
that require this legislation. It is my intention to oppose the legislation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.41 a.m.)—As the Prime Minister said tonight, the Border Protection Bill 2001 is an unusual bill for unusual circumstances. In fact, to address Senator Harradine’s point about the process involved, the Prime Minister indicated that he was, unusually, seeking the authority and the support of parliament to facilitate the passage of this bill through both houses tonight. This is, as the Prime Minister said, a matter that is overwhelmingly in Australia’s national interest. That is the reason behind this bill tonight. This bill deals with a serious situation at hand involving the MV *Tampa* at Christmas Island and also with an increasingly serious situation in relation to the arrival of illegal entrants into Australia and Australian waters.

The Prime Minister also said today in support of the reason for this bill that, whilst the government believed that there is appropriate legal authority at present, there was need for abundant caution and that this legislation would ensure that there is no doubt about the government’s ability to order such vessels to leave our territorial waters. There you have the reason for this legislation, and that has been a point raised by many speakers tonight.

I will turn now to some of those points which have been raised by a number of speakers. What was common in the opposition speeches tonight was feigned moral outrage at the government’s position. Of course, when you look at what the government has done, it was simply to address what is in Australia’s national interest. When you look at what the Leader of the Opposition has said, however, on the subject, you see that it is indeed he who engaged in political point scoring when he said that in the last 10 years 13,000 people have illegally entered our territorial area and that the majority of those—some 11,000 of those—have done so during the time of this government. In fact, Senator Faulkner took that point even further, thereby turning the rate of illegal entrants into this country into a political point scoring exercise and detracting wholly from any moral ground that the opposition might have.

Senator Carr—You don’t think it has got anything to do with our relationship with Indonesia?

Senator ELLISON—The question of the relationship with Indonesia has been raised. Perhaps I can say that, as a result of that good relationship, we have avoided several hundreds of potential illegal entrants from coming to Australia. But the opposition is so narrow in its focus that it believes the problem only resides in Indonesia. It does not. In fact, in Cambodia we avoided some 250-odd people, I think it was, who were set to leave that country and come to Australia. Since February 1999, I think it is some 3,000 potential illegal entrants that we have avoided. So, when you have the Leader of the Opposition, Mr Beazley, talking about the rates of who has had more illegal entrants, he really does then throw away any moral high ground. When speaking on the *Sunrise* program in June, Mr Sciacca said, ‘It’s time that the government acknowledged that the domestic solutions are not working and that a fresh broader approach is clearly required.’ Here you have it, Mr Sciacca: a fresh broader approach to deal with the problem that you said needed to be dealt with.

Senator Cook asked for the legal advice that shows that this bill is necessary. As he knows, the government of which he was formerly a minister was not in the habit of tabling legal advice. But I can say in relation to his comments that the unauthorised arrival of a vessel in our territorial sea must be dealt with in a certain and expeditious manner. Such action would be thwarted if there were any uncertainty concerning the basis for this action or if the capacity existed for lengthy legal proceedings challenging those actions. That is why the government seeks to enact this legislation, and it would be irresponsible for that legislation to leave the Australian government open to such action.

Senator Faulkner described this bill as a sweeping change. The government have made it clear that we are attempting to deal with the current situation under existing powers. As I have just stated, we need the ability to do so in a certain and expeditious
manner. This bill provides that assurance. Like any other act, it would be administered and applied in a reasonable manner.

There have been many comments concerning the allegedly broad definition of an officer. It is true that a list of officers is set out in clause 3 of the bill. The bill, however, makes it quite clear that, before any of those officers can exercise these powers, they must be authorised by the Prime Minister or the Minister for Immigration and Multicultural Affairs. That provides a great deal of certainty in relation to the officer and its definition thereof contained in the bill.

It has also been suggested that the bill excludes the jurisdiction of the High Court. That is not only laughable but also untrue. Like any other piece of Commonwealth legislation, it would be read down to comply with the Constitution. The remedies therefore contained in section 75 of the Constitution are still available. In particular, I refer to section 75(v), which deals with writs of mandamus, prohibition and injunctive powers. I think that needs to be expressly stated for the record.

Some comment has also been made on the effect of clause 10 of the bill, which states that the act has effect ‘in spite of any other law’. We heard some grandiose statements being made by the opposition that this would override everything willy-nilly.

Senator Carr—That is what it says.

Senator ELLISON—This act does not entirely displace other laws but only those laws that would otherwise be inconsistent with the provisions of this bill.

Senator Carr—It means all other laws.

Senator ELLISON—I address those comments particularly, through the chair, to Senator Carr—

The PRESIDENT—Senator Carr, it is inappropriate to keep yelling in that fashion. Order!

Senator ELLISON—who does not want to hear or listen to what is sound legal advice. It would not override the laws relating to manslaughter, as suggested by Senator Faulkner. What he has suggested is not true. Any force mentioned in this bill must be reasonable. The meaning of the term ‘reasonable’ is quite clear. ‘Reasonable force’ means force that is not excessive and is proportionate to the circumstances. Senator Conroy, in his somewhat limited contribution, asked what that meant. I have just outlined that. I can tell Senator Conroy, through the chair, that this term of ‘reasonable force’ is no stranger to the law, as we know it. It has been employed in a variety of bills and acts of parliament and also in decisions turning on the question.

Senator Stott Despoja quotes an academic, J.P. Fonteyne, as suggesting that the bill is the ‘most harsh restriction of the right of innocent passage ever seen’. I must advise that Mr Fonteyne is not referring to this bill. He cannot be because he is referring to ‘innocent passage’. This description of the effect of the bill is completely misguided. What this legislation does is enable Australia to expel vessels from our territorial sea that are exercising passage that is not innocent. We saw that today in relation to the MV *Tampa* as it continued to enter our territorial waters, despite being advised not to. If one looks at the Law of the Sea convention, a vessel does not exercise innocent passage in our territorial sea if those on board intend to enter Australia illegally. Mr Fonteyne needs to have another look at this bill and realise what its intention is. This bill ensures that non-innocent passage will not be rewarded.

Questions have been raised about the consistency of the bill with our international obligations. The government is confident that any actions taken pursuant to the authority granted by the bill will be consistent with our international obligations. There will be circumstances in which vessels enter our territorial sea for unlawful purposes. The Law of the Sea enables us to deal with such unauthorised entry. As a sovereign nation, we have the ability, power and right to do so. The bill is designed to put those powers to deal with unauthorised entry beyond doubt as a matter of domestic law. This bill—again I stress to the Senate—provides certainty and a means of dealing with such incursions expeditiously.
The government is acutely aware of the need to meet our humanitarian obligations. Indeed, it was pointed out today by the Minister for Immigration and Multicultural Affairs that, when looking at the determination of refugee status, particularly in relation to Afghans, 84 per cent in Australia are successful as compared with other jurisdictions where it is as low as 14 per cent. Those figures are compelling and they demonstrate the generosity that this country displays in the way it determines refugee status—as compared with other jurisdictions that are nowhere near as generous as we are in determining that status.

This country has a long and proud tradition in dealing with refugees, which, I am pleased to say, has been acknowledged by all in this chamber and in the other place. Senator Stott Despoja also suggested that the bill is contrary to our refugee obligations. The fact of the matter is that persons on board these vessels may seek to use unwarranted claims to refugee status to prevent removal of the ship or themselves from waters immediately adjacent to Australia. For this reason, the bill imposes a bar on the making of refugee claims on persons on board ships covered by the bill. The bill, however, contains a power for the minister to lift that bar in similar circumstances to those set out in the existing provisions of the Migration Act where the minister considers this to be in the public interest. That is a desirable clause to have both in preventing people from making unwarranted claims to prevent this country from exercising its sovereign rights and at the same time in allowing the minister to exercise powers where there are circumstances in which those people should be allowed those claims.

I noted that during the debate the question was raised, ‘Why does this bill purport to act retrospectively?’ The time of the commencement of the operation of the act is purely related to the fact that actions have already been necessary to deal with the entry of the MV *Tampa* into our territorial waters, contrary to a direction from the government. As a result of that, it has been necessary in the national interest for this bill to commence from 9 a.m. on 29 August. As a responsible government, we have to provide certainty for the actions taken yesterday. I note that the Leader of the Opposition expressed his appreciation of the actions of the members of the defence services who acted yesterday in the national interest. We have to provide certainty in relation to yesterday’s events and we do so by this piece of legislation.

The question has been asked, ‘Why does the bill go beyond dealing with just the MV *Tampa*?’ The reasons for this have already been clearly stated by Senator Hill. Given the number of vessels coming to Australia, it is entirely possible that similar situations could arise in the immediate future. We need the ability to deal with those situations. In particular, I refer to the statement of the Minister for Immigration and Multicultural Affairs, Mr Ruddock, who has said that Australia has intelligence to hand that there are potentially just under 900 people who could be on their way in two or three boats to Australia. He has also stated that there are reports that another 2,000 are in Indonesia making arrangements with criminal syndicates to be smuggled to Australia. That is a serious situation for this country. We have been dealing with the Indonesian authorities and we have had cooperation, despite what the opposition has said in relation to that. Nonetheless, there is the potential for these people to come to Australia and breach our sovereignty and territorial waters.

We need to make it clear to those people smugglers and those whom they exploit that they will not gain free entry into our territorial waters. Statements of intent are not enough. It is important for this purpose to put the Commonwealth’s ability to act beyond doubt. This is an important message we must send to people smugglers. People smuggling is, as I said to the Senate, perhaps the third biggest criminal activity in the world today, and I rely on the comments of the head of Interpol who told me that as recently as June this year when he met with us. We have international criminal activity dealing with people smuggling and we have to send a clear message to those criminal syndicates who deal callously with their human cargo and have a callous disregard for human life that we will not tolerate that.
Senator Cook—Where is the law weak?

The PRESIDENT—Senator Cook, you have had your opportunity to address the chamber.

Senator ELLISON—The opposition cannot have it both ways. They cannot support us today in our actions in dealing with the MV *Tampa* and they cannot say that they express their support for the members of the defence forces who acted in our national interest and then turn around and say that they will not support the government in legislative powers which we need.

Senator Cook—Explain the weakness in the law?

The PRESIDENT—Senator Cook! There is an appropriate time to take the matter up again.

Senator ELLISON—They cannot explain their hypocrisy when we have Mr Sciacca, the shadow spokesman, saying that this government has not acknowledged its domestic solutions are not working and that a fresh, broader approach is clearly required. Well, here it is. Here is the fresh approach. Here is the broader approach. Here is the solution to the problem that we have at hand. But what will we get from Mr Sciacca? We will get no support from him, despite his calls for us to act. This is very important legislation.

Senator Cook—Don’t run away from the issue.

The PRESIDENT—Senator Cook, you are out of order to keep shouting. You are in contravention of the standing orders, which you know. There is an appropriate time to debate the matter further if you wish to do so.

Senator ELLISON—We do not for one minute doubt that the senators opposite would not let the facts get in the way of a good story. When you look at the statement that it would be illegal to send the MV *Tampa* into international waters with these passengers because of inadequate equipment, and that this defies the Law of the Sea, that is not true. The convention on safety of life at sea does not set out the equipment that should be carried by vessels. It does provide that vessels in circumstances of the MV *Tampa* will not be in breach of those regulations. In fact, no-one raised it when the MV *Tampa* was taking those people to the port at Merak in Indonesia. No-one objected to it. No-one said, ‘Well, look, it doesn’t have sufficient equipment to do that.’ In the circumstances, the MV *Tampa* acted in accordance with the Law of the Sea and picked up these people. There was no allegation made then that the MV *Tampa* was in breach of the Law of the Sea because it did not have sufficient lifeboats or could not accommodate the people on board. The situation is no different here in requiring that vessel to go back out to international waters from whence it came. This legislation is in the national interest of this country and it is a shame that those senators opposite do not recognise that.

Question put:
That this bill be now read a second time.

The Senate divided. [2.04 a.m.]

(The President—Senator the Hon. Margaret Reid)

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<tr>
<th>Ayes</th>
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AYES
Abetz, E.
Boswell, R.L.D.
Chapman, H.G.P.
Crane, A.W.
Ellison, C.M.
Gibson, B.F.
Heffernan, W.
Hill, R.M.
Knowles, S.C.
Macdonald, I.
McGauran, J.J.
Newman, J.M.
Tambling, G.E.
Tierney, J.W.
Vanstone, A.E.

NOES
Allison, L.F.
Bishop, T.M.
Brown, B.J.
Campbell, G.
Cherry, J.C.
Cook, P.F.S.

Alston, R.K.R.
Calvert, P.H. *
Coonan, H.L.
Eggleston, A.
Ferris, J.M.
Harris, L.
Herron, J.J.
Kemp, C.R.
Lightfoot, P.R.
Macdonald, J.A.L.
Minchin, N.H.
Reid, M.E.
Tchen, T.
Troeth, J.M.
Watson, J.O.W.
Bartlett, A.J.J.
Bolkus, N.
Buckland, G.
Carr, K.J.
Conroy, S.M.
Cooney, B.C.
Senate adjourned at 2.07 a.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:


Indexed Lists of Files

The following document was 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—

- Australian Electoral Commission.
- Commonwealth Grants Commission.
- Department of Finance and Administration.
- Employment, Workplace Relations and Small Business portfolio.
- Office of Asset Sales and Commercial Support.

Tabling

The following government document was tabled:


Question so resolved in the negative.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Inquiry into the Use of Pituitary Derived Hormones in Australia and Creutzfeldt-Jakob Disease: Report
(Question No. 2198)

Senator Lees asked the Minister representing the Minister for Health and Aged Care, upon notice, on 2 May 2000:

(1) Is the Minister aware that the Report of the Inquiry into the use of Pituitary Derived Hormones in Australia and Creutzfeldt-Jakob Disease, released in June 1994, only implicated the Commonwealth Serum Laboratory (CSL) and not batches supplied through biomedical departments.

(2) Why did the original inquiry not look at all patients being treated with pituitary-derived hormones, especially hGH 1251, manufactured at Monash Biomedical.

(3) Why were only cases where serum was provided by CSL considered and not those produced, for instance, at Monash Bio-Medicine Department.

(4) (a) Is the Minister aware that because all patients treated were not considered, there have been no health checks on patients who did not receive serum made by CSL (for example, an application for intravenous hGH was made in 1975 by one treating doctor to the Human Pituitary Hormones Advisory Council and it was rejected, at least that was what was stated to the inquiry); and (b) why was this the case.

(5) Was the inquiry misled, as evidence shows that the intravenous use of hGH was being used as early as February 1972.

(6) Does the Minister think it is reasonable that all patients have not been treated equally.

(7) What is being done about approximately 300 ‘short stunted boys’ who in the 1970s were injected with anabolic steroids and who have not been notified that they are carriers of the P53 cancer gene and possibly 78 other side effects of being given anabolic steroids.

(8) Why was section 135A of the National Health Act 1953 not amended as recommended in the above report 6 years ago.

(9) Considering all the abovementioned problems with the initial inquiry, and the injustice faced by those people who as children were subjected to this treatment, does the Government intend to call for a further inquiry into the use of pituitary-derived hormones in Australia.

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

On 31 October 2000 I provided an answer to the honourable member (Hansard, 31 October 2000, page 18753). My Department has now received advice from the National Health and Medical Research Council and I can now add to my previous answer.

The basic position remains unchanged in relation to ‘short stunted boys’, as the honourable Dr Michael Wooldridge last reported on this issue in 1997 (Media release MW107/97). The Department has examined the research in question, and in relation to the children treated with norethandrolone (an anabolic steroid) had advised that serious long-term side effects are unlikely.

Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Richmond Electorate
(Question No. 3000)

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Richmond.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.
Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Richmond (Note – not all programs/grants were available in all of these years):

- The National Landcare Program and National Rivercare Program through the Natural Heritage Trust One Stop Shop.
- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provided support to regional plantations communities, which focus on planning and coordination activity. This included Farm Forestry 2000 and the Establishment of a North Coast Regional Plantation Committee and Employment of a Plantation Development Officer. The program concluded 30 June 2000 with some projects carried over to 2001.
- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.
- Forest Industry Structural Adjustment Program (FISAP) provides assistance to native forest industry business and to workers involved in the native timber industry to adjust to changes in the available resource as a result of Regional Forest Agreements.
- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.
- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.

In addition the Commonwealth government provided funding to help the NSW sugar industry, which is primarily based in the electorates of Richmond and Page, develop a better export focus in light of reduced returns on the domestic market emanating from the removal of the sugar import tariff. The funding was used as a contribution to the construction of a multi-purpose bulk storage and ship loading facility.

Commonwealth funding was also provided under the NSW component of the Sugar Industry Infrastructure Program. The funding was used for payments towards the construction of a cogeneration facility for production of ‘green power’ and the construction of a bridge at Broadwater. The NSW Government provided matching funding for these two projects.

Other programs are administered on a state/national basis and were available to people living in the electorate of Richmond. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- The former Agribusiness Program, which provided grants to improve the international competitiveness of Australian agricultural and related industries. Approval of new projects ceased in 1995-96 but some remaining grant payments were made in 1996-97, the last year in which grant payments were made from the program.
- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:
  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
  - Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
  - Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.
- The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allo-
cated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.

- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.

- The National Non-Government Women's Organisition grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women's organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in process. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women's Industry Network- Seafood Community. All have a broad geographic coverage including women from all States and Territories.

- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis. The level of funding is not applicable. FMDs are not "grants". FMDs are a "cost to revenue" for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme's Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.

- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approvals through the Natural Heritage Trust One Stop Shop programs administrated by AFFA in the federal electorate of Richmond amounted to $0.23 million, $0.07 million and $0.12 million for 1996-97, 1997-98 and 1998-99 respectively.

The actual funding under WAPIS amounted to $100,500 in 1996-97, $250,000 in 1997-98 and $175,000 in 1998-99 for two regional projects operating across the Richmond and Page electorates. The RFA Participation and Awareness Grants program provided actual funding of $1,850 in 1998-99 to the electorate of Richmond.

Actual funding for the electorate of Richmond under the Rural Communities Program totalled $96,448 in 1996-97, $143,365 in 1997-98 and $149,476 in 1998-99. It should be noted that services provided under the Rural Communities Program for this region cover not only the Richmond electorate, but also the electorates of Cowper and Page.

Actual funding of $1 million was provided in 1998-99 to the NSW sugar industry to develop a better export focus.

Actual funding of $17,310 was paid from the Agribusiness Program to the electorate of Richmond in 1996-97.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in NSW on Farm Help during 1997-98 was $4.2 million and in 1998-99 was $9.7 million.

FarmBis actual funding to New South Wales was $1.19 million in 1998-99.

The National Non-Government Women's Organisition grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.11 million has been approved through the Natural Heritage Trust One Stop Shop for programs administrated by AFFA in the federal electorate of Richmond in 1999-2000.

The actual funding under WAPIS amounted to $12,500 in 1999-2000 for one project operating across the Richmond and Page electorates.
No specific amounts are appropriated to individual electorates under FISAP. Of the total FISAP appropriation, about $60 million has been allocated to a jointly funded FISAP with the NSW Government. In 1999-2000 the Commonwealth approved funding of $61,200 in Business Exit Assistance in the electorate of Richmond.

Actual funding for the electorate of Richmond under the Rural Communities Program totalled $149,476 in 1999-2000. It should be noted that services provided under the Rural Communities Program for this region cover not only the Richmond electorate, but also the electorates of Cowper and Page.

Actual funding of $37,475 was provided under the Rural GST Start-Up Assistance Program for 10 seminars and workshops in the Richmond electorate in 1999-2000. It should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations.

Actual funding of $944,500 was provided in 1999-2000 to complete Commonwealth funding under the NSW component of the Sugar Industry Infrastructure Program.

Actual expenditure in NSW on Farm Help in 1999-2000 totalled $5.6 million.

The National Non-Government Women's Organisation grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Cowper Electorate

(Year No. 3012)

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Cowper.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Cowper (Note – not all programs/grants were available in all of these years):

- The National Landcare Program, National Rivercare Program and Farm Forestry Program through the Natural Heritage Trust One Stop Shop.

- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the Dorrigo Farm Forestry Project, the Mid-North Coast and Lower Hunter Regional plantation Committee and Employment of a Plantation Development Officer. The program concluded 30 June 2000 with some projects carried over to 2001.

- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.

- Forest Industry Structural Adjustment Program (FISAP) provides assistance to native forest industry business and to workers involved in the native timber industry to adjust to changes in the available resource as a result of Regional Forest Agreements.

- The Pork Producer Exit Program (PPEP) provided financial assistance for non-viable pork producers to exit the industry. The program concluded on 30 June 2000.
- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.

- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.

Other programs are administered on a state/national basis and were available to people living in the electorate of Cowper. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:
  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
  - Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
  - Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.

- The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Funds are provided to farm families that have been approved for assistance regardless of their location.

- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.

- The National Non-Government Women's Organisation grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women's organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in progress. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women's Industry Network- Seafood Community. All have a broad geographic coverage including women from all States and Territories.

- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis.

The level of funding is not applicable. FMDs are not "grants". FMDs are a "cost to revenue" for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme's Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.

- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approvals through the Natural Heritage Trust One Stop Shop programs administered by AFFA in the federal electorate of Cowper amounted to $0.41 million, $0.44 million and $0.52 million for 1996-97, 1997-98 and 1998-99 respectively.
The actual funding under WAPIS amounted to $85,000 in 1996-97, $212,000 in 1997-98 and $147,000 in 1998-99. One of the projects extends to the Hunter region.

The NSW Department of Information Technology and Management (DITM) administers FISAP in NSW on behalf of the Commonwealth. Because of the staged nature of payments, DITM cannot easily provide figures for actual expenditure for electorates on a financial year basis. Approved FISAP funding amounted to:


Notes: (i) The figures quoted above are for payments approved in each financial year to businesses in the electorate. Some of the payments may not have been made until future financial years.

(ii) The Commonwealth also paid relocation and retraining assistance to ex forest industry workers under the Worker Assistance element of FISAP. However, figures are not available by electorate.

The RFA Participation and Awareness Grants program provided actual funding of $5,000 in 1996-97, $2,500 in 1997-98 and $7,000 in 1998-99 to the electorate of Cowper.

Actual funding for the electorate of Cowper under the Rural Communities Program totalled $96,448 in 1996-97, $143,365 in 1997-98 and $149,476 in 1998-99. It should be noted that services provided under the Rural Communities Program for this region cover not only the Cowper electorate, but also the electorates of Richmond and Page.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in NSW on Farm Help during 1997-98 was $4.2 million and in 1998-99 was $9.7 million.

FarmBis actual funding to New South Wales was $1.19 million in 1998-99.

The National Non-Government Women's Organisation grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.48 million has been approved through the Natural Heritage Trust One Stop Shop for programs administrated by AFFA in the federal electorate of Cowper in 1999-2000. Under FISAP no specific amounts are appropriated to individual electorates. Of the total FISAP appropriation, about $60 million has been allocated to a jointly funded FISAP with the NSW Government. In 1999-2000 the Commonwealth approved funding of $74,920 in Business Exit Assistance in the electorate of Cowper.

The Pork Producer Exit Program provided actual funding of $41,744 in the 1999-2000 financial year.

Actual funding for the electorate of Cowper under the Rural Communities Program totalled $149,476 in 1999-2000. It should be noted that services provided under the Rural Communities Program for this region cover not only the Cowper electorate, but also the electorates of Richmond and Page.

Actual funding of $54,522 was provided under the Rural GST Start-Up Assistance Program for 16 seminars and workshops in the Cowper electorate in 1999-2000. It should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations.

Actual expenditure in NSW on Farm Help in 1999-2000 totalled $5.6 million.

FarmBis actual funding to New South Wales was $1.02 million in 1999-2000.

The National Non-Government Women's Organisation grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Page Electorate

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:
(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Page.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Page (Note – not all programs/grants were available in all of these years):

- The programs are the National Landcare Program, National Rivercare Program and Farm Forestry Program through the Natural Heritage Trust One Stop Shop.

- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the Dorrigo Farm Forestry Project, the establishment of North Coast Regional Plantation Committee, employment of a Plantation Development Officer, Farm Forestry 2000 and the Upper Clarence Farm Forestry Project. The program concluded 30 June 2000 with some projects carried over to 2001.

- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.

- Forest Industry Structural Adjustment Program (FISAP) provides assistance to native forest industry business and to workers involved in the native timber industry to adjust to changes in the available resource as a result of Regional Forest Agreements.

- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.

- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.

In addition the Commonwealth provided funding to help the NSW sugar industry, which is primarily based in the electorates of Richmond and Page, develop a better export focus in light of reduced returns on the domestic market emanating from the removal of the sugar import tariff. The funding was used as a contribution to the construction of a multi-purpose bulk storage and ship loading facility.

Commonwealth funding was also provided under the NSW component of the Sugar Industry Infrastructure Program. The funding was used for payments towards the construction of a cogeneration facility for production of ‘green power’ and the construction of a bridge at Broadwater. The NSW Government provided matching funding for these two projects.

Other programs are administered on a state/national basis and were available to people living in the electorate of Page. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- The former Agribusiness Program, which provided grants to improve the international competitiveness of Australian agricultural and related industries. Approval of new projects ceased in 1995-96 but some remaining grant payments were made in 1996-97, the last year in which grant payments were made from the program.

- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:

  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
- Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
- Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.
- The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.
- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.
- The National Non-Government Women's Organisation grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women's organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in process. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women's Industry Network- Seafood Community. All have a broad geographic coverage including women from all States and Territories.
- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis.

The level of funding is not applicable. FMDs are not "grants". FMDs are a "cost to revenue" for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme's Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.
- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approval through the Natural Heritage Trust One Stop Shop programs administrated by AFFA in the federal electorate of Page amounted to $1.13 million, $0.46 million and $0.77 million for 1996-97, 1997-98 and 1998-99 respectively.

The actual funding under WAPIS amounted to $186,000 in 1996-97, $376,000 in 1997-98 and $248,500 in 1998-99. Two of the projects operate across the Page and Richmond electorates.

The RFA Participation and Awareness Grants program provided actual funding of $10,000 in 1997-98 and $14,500 in 1998-99 to the electorate of Page. The NSW Department of Information Technology and Management (DITM) administers FISAP in NSW on behalf of the Commonwealth. Because of the staged nature of payments, DITM cannot easily provide figures for actual expenditure for electorates on a financial year basis. Approved FISAP funding amounted to:

1997-98 $2,006,493 for Business Exit Assistance and $250,000 for Industry Development Assistance.
$308,600 for Business Exit Assistance.
Notes: 
(i) The figures quoted above are for payments approved in each financial year to businesses in the electorate. Some of the payments may not have been made until future financial years.

(ii) The Commonwealth also paid relocation and retraining assistance to ex forest industry workers under the Worker Assistance element of FISAP. However, figures are not available by electorate.

Actual funding for the electorate of Page under the Rural Communities Program totalled $96,448 in 1996-97, $143,365 in 1997-98 and $149,476 in 1998-99. It should be noted that services provided under the Rural Communities Program for this region cover not only the Page electorate, but also the electorates of Richmond and Cowper.

Actual funding of $1 million was provided in 1998-99 to the NSW sugar industry to develop a better export focus.

Actual funding of $9,550 was paid from the Agribusiness Program to the electorate of Page in 1996-97.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in NSW on Farm Help during 1997-98 was $4.2 million and in 1998-99 was $9.7 million.

FarmBis actual funding to New South Wales was $1.19 million in 1998-99.

The National Non-Government Women’s Organisation grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.38 million has been approved through the Natural Heritage Trust One Stop Shop for programs administered by AFFA in the federal electorate of Page in 1999-2000.

The actual funding under WAPIS amounted to $12,500 in 1999-2000 for one project operating across the Richmond and Page electorates.

No specific amounts are appropriated to individual electorates. Of the total FISAP appropriation, about $60 million has been allocated to a jointly funded FISAP with the NSW Government. In 1999-2000 the Commonwealth approved funding of $74,500 in Business Exit Assistance in the electorate of Page.

Actual funding for the electorate of Page under the Rural Communities Program totalled $149,476 in 1999-2000. It should be noted that services provided under the Rural Communities Program for this region cover not only the Page electorate, but also the electorates of Richmond and Cowper.

Actual funding of $105,691 was provided under the Rural GST Start-Up Assistance Program for 31 seminars and workshops in the Page electorate in 1999-2000. It is should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations.

Actual funding of $944,500 was provided in 1999-2000 to complete Commonwealth funding under the NSW component of the Sugar Industry Infrastructure Program.

Actual expenditure in NSW on Farm Help in 1999-2000 totalled $5.6 million.

FarmBis actual funding to New South Wales was $1.02 million in 1999-2000.

The National Non-Government Women’s Organisation grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

**Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Bass Electorate**

(Question No. 3036)

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Bass.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.
(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Bass (Note – not all programs/grants were available in all of these years):

- The National Landcare Program, National Rivercare Program and Fisheries Action Program through the Natural Heritage Trust One Stop Shop.
- The AFFA component of the Natural Heritage Trust's National Feral Animal Control Program provided funding to the Tasmanian Parks and Wildlife Service in Launceston to develop and promote property-based wildlife management plans.
- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the 2000x2000 Radiata Pine Program, the Drier Tasmania Plantation Demonstration Areas, Special Species Timber Demonstration Sites and the North East and Southern Timber Growers Co-operatives. The program concluded 30 June 2000 with some projects carried over to 2001. Funding was provided to projects, which operated across Tasmania and serviced the Bass electorate.
- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.
- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.
- Funding has been provided under the Rural GST Start-Up Assistance Program for seminars and The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.
- The Exceptional Circumstances Relief Payment (ECRP) assists farm families in exceptional circumstances (EC) areas who are experiencing difficulties meeting personal living expenses. The ECRP is currently available to farmers on Flinders Island in the electorate of Bass. Flinders Island was declared in drought EC on 8 April 1998.
- The New Industries Development Programme is a national program, which provides grants to enhance the capability of Australian agribusiness in commercialising new agribusiness products, services and technology.

Other programs are administered on a state/national basis and were available to people living in the electorate of Bass. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- The former Agribusiness Program, which provided grants to improve the international competitiveness of Australian agricultural and related industries. Approval of new projects ceased in 1995-96 but some remaining grant payments were made in 1996-97, the last year in which grant payments were made from the program.
- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:
  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
  - Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
  - Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.
- The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.

- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.

- The Pork Biz program consists of regional business skills workshops and on-farm consultations specifically for pork producers funded from the National Component of the Commonwealth FarmBis program.

- The National Pork Industry Development Program (NPIDP) aims to improve the pork industry’s international competitiveness, identify market opportunities and enhance industry skills through the provision of grants to industry participants.

- Funding is provided through the Tasmanian Wheat Freight Scheme (TWFS) to offset the costs of shipping wheat from the mainland to Tasmania. Assistance provided to the federal electorate of Bass under the TWFS is not identified separately within the program.

- The National Non-Government Women’s Organisation grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women’s organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women’s Industry Network- Seafood Community. All have a broad geographic coverage including women from all States and Territories.

- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis. The level of funding is not applicable. FMDs are not “grants”. FMDs are a “cost to revenue” for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme’s Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.

- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approvals through the Natural Heritage Trust One Stop Shop, for the National Landcare Program, National Rivercare Program and Fisheries Action Program administrated by AFFA in the federal electorate of Bass, amounted to $0.13 million, $0.28 million and $0.32 million for 1996-97, 1997-98 and 1998-99 respectively.

Actual funding provided through the Natural Heritage Trust’s National Feral Animal Control Program amounted to $50,000 in 1997-98.


The RFA Participation and Awareness Grants program provided actual funding of $35,000 in 1996-97 to the electorate of Bass.

The Financial Counselling Service, part of the Rural Communities Program, provided actual funding in the federal electorate of Bass through Rural Support Tasmania of $100,000 in 1996-
1997, $100,000 in 1997-1998 and $121,393 in 1998-1999. It should be noted that this group receives funding for two financial counselling positions. One counsellor operates from Launceston (in the electorate of Bass) and one from Glenorchy (electorate of Denison). Both counsellors service clients in more than one electorate.

Actual expenditure for Exceptional Circumstances Relief Payment for Tasmania in 1996-97 was $1.0 million, in 1997-98 was $0.4 million and in 1998-99 was $0.2 million.

EC Interest Rate Subsidies actual expenditure in Tasmania in 1996-97 was $0.6 million, in 1997-98 no expenditure was reported and in 1998-99 was $0.2 million.

Actual funding of $22,646 was paid from the Agribusiness Program to the electorate of Bass in 1996-97.

Actual expenditure for Exceptional Circumstances Relief Payment for Tasmania in 1999-2000 was $0.2 million.

EC Interest Rate Subsidies actual expenditure in Tasmania in 1999-2000 was $0.1 million.

The New Industries Development Programme commenced in 1999-2000 and approved a total of $32,000 to the electorate of Bass.

Farm Help actual expenditure in Tasmania totalled $1.2 million in 1999-2000. FarmBis actual funding for the state of Tasmania in 1999-2000 was $229,018.

The Pork Biz business skills training program provided actual funding of $7,350 under the National Component of the Commonwealth FarmBis program, for a workshop held in Launceston during the 1999-2000 financial year.

The Tasmanian Quality Pork program provided quality assurance training to two participants during the 1999-2000 financial year. The National Pork Industry Development Program (NPIDP) provided actual funds totalling $337 for this training.

Actual funding of $1.2 million through the Tasmanian Wheat Freight Scheme was provided for the 1999-2000 financial year.

The National Non-Government Women’s Organisation grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.
Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Hinkler Electorate
(Question No. 3048)

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Hinkler.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Hinkler (Note – not all programs/grants were available in all of these years):

- The National Landcare Program and National Rivercare Program through the Natural Heritage Trust One Stop Shop.
- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the Development of Commercial Plantation Industries for the 700 to 1000mm Rainfall Belt of Central and Southern Queensland. The program concluded 30 June 2000 with some projects carried over to 2001. The project largely operates in an adjacent electorate.
- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.
- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.
- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.
- The Pork Producer Exit Program (PPEP) provided financial assistance for non-viable pork producers to exit the industry. The program concluded on 30 June 2000.
- The Exceptional Circumstance Relief Payment (ECRP) assists farm families in exceptional circumstances (EC) areas who are experiencing difficulties meeting personal living expenses. ECRP information is not available by electorate. However, most of Queensland has been declared drought EC throughout the past 4 financial years. Parts of the Hinkler electorate have been within EC areas, with the most recent ECRP assistance ceasing in June 2000.
- The Commonwealth provided assistance to the electorate of Hinkler through two projects under the Queensland component of the Sugar Industry Infrastructure Program. The Queensland Government provided matching contributions with industry responsible for the remainder. The Walla Weir Irrigation project on the Burnett River involved the construction of a weir that will significantly improve the reliability of the irrigation water supply for much of the Bundaberg area. The Avondale Irrigation project is a small irrigation reticulation scheme that will benefit growers in the Avondale area.

Other programs are administered on a state/national basis and were available to people living in the electorate of Hinkler. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:

...
- Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
- Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
- Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.

- The Farm Help – Supporting Families through Change (formerly know as farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.
- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.
- The National Non-Government Women's Organsition grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women's organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in process. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women's Industry Network- Seafood Community. All have a broad geographic coverage including women from all States and Territories.
- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis. The level of funding is not applicable. FMDs are not "grants". FMDs are a "cost to revenue" for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme's Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.
- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

- Funding approvals for the Natural Heritage Trust One Stop Shop programs administrated by AFFA in the federal electorate of Hinkler amounted to $0.66 million, $0.17 million and $0.16 million for 1996-97, 1997-98 and 1998-99 respectively.

The RFA Participation and Awareness Grants program provided actual funding $750 in 1997-98 and $5,000 in 1998-99 to the electorate of Hinkler.

The electorate of Hinkler is serviced by a rural financial counsellor based in Mundubbera, in the electorate of Wide Bay. Funding for this service under the Rural Communities Program totalled $80,000 in 1996-97, $62,500 in 1997-98 and $46,010 in 1998-99.

Actual expenditure for Exceptional Circumstances Relief Payment in Queensland during 1996-97 was $56.2 million, in 1997-98 was $39.2 million and in 1998-99 was $19.8 million.

EC Interest Rate Subsidies actual expenditure in Queensland during 1996-97 was $23.7 million, in 1997-98 was $12.4 million and in 1998-99 was $7.2 million.
For the Walla Weir Irrigation project the actual Commonwealth contributions were $1,504,608 in 1996-97 and $3,240,392 in 1997-98. A further $37,000 was provided in 1999-2000 for additional environmental studies associated with the project.

For the Avondale Irrigation project the Commonwealth provided actual funding for this project of $117,209 in 1996-97 and $2,433 in 1998-99. Actual funding of $627,318 was also provided in 1995-96.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in Queensland on Farm Help during 1997-98 was $1.4 million and in 1998-99 was $5.5 million.

The National Non-Government Women’s Organisation grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.26 million has been approved through the Natural Heritage Trust One Stop Shop for programs administered by AFFA in the federal electorate of Hinkler in 1999-2000.

The electorate of Hinkler is serviced by a rural financial counsellor based in Mundubbera, in the electorate of Wide Bay. Funding for this service under the Rural Communities Program totalled $46,010 in 1999-2000.

Actual funding of $56,191 was provided under the Rural GST Start-Up Assistance Program for 10 seminars and workshops in the Hinkler electorate in 1999-2000. It should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations.

The Pork Producer Exit Program provided actual funding of $45,000 in the 1999-2000 financial year.

Actual expenditure for Exceptional Circumstances Relief Payment in Queensland during 1999-2000 was $11.4 million.

EC Interest Rate Subsidies actual expenditure in Queensland during 1999-2000 was $2.8 million.

Actual expenditure in Queensland on Farm Help during 1999-2000 totalled $5.8 million.

FarmBis actual funding to Queensland was $2.896 million in 1999-2000.

The National Non-Government Women’s Organisation grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

_**Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Gwydir Electorate**_

_Senator Mackay_ asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

1. What programs and/or grants administered by the department provide assistance to people living in the electorate of Gwydir.
2. What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.
3. What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

_Senator Alston_—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

1. During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Gwydir (Note – not all programs/grants were available in all of these years):
   - The National Landcare Program, National Rivercare Program, Murray Darling 2001 and Fisheries Action Program through the Natural Heritage Trust One Stop Shop.
   - The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the Northern Tablelands Farm Forestry Project and the Central Ta-
blelands Regional Plantation Committee. The program concluded 30 June 2000 with some projects carried over to 2001. The projects operate across a number of electorates.

- Forest Industry Structural Adjustment Program (FISAP) provides assistance to native forest industry business and to workers involved in the native timber industry to adjust to changes in the available resource as a result of Regional Forest Agreements

- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.

- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.

- The Pork Producer Exit Program (PPEP) provided financial assistance for non-viable pork producers to exit the industry. The program concluded on 30 June 2000.

- The West 2000 Rural Partnership Program (RPP) assists landholders in the western division of New South Wales to become more competitive, viable and self-sustaining through the provision of measures to enhance property productivity and natural resource management. The program covers the western division of NSW, incorporating a very small part of the Gwydir electorate (the area west from Lightning Ridge and Walgett). Only a very small part of the electorate can therefore access the West 2000 RPP.

- The Food and Fibre Chains Programme is a national program which provides grants to food and fibre businesses to facilitate increased business competitiveness through the uptake of innovative supply chain management practices.

Other programs are administered on a state/national basis and were available to people living in the electorate of Gwydir. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- The former Agribusiness Program, which provided grants to improve the international competitiveness of Australian agricultural and related industries. Approval of new projects ceased in 1995-96 but some remaining grant payments were made in 1996-97, the last year in which grant payments were made from the program.

- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:
  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
  - Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
  - Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.

- The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.

- The FarmBis Program provides funds to primary producers for training to improve their business management skills. FarmBis funding is not allocated on a regional basis or by electorates.

- The National Non-Government Women's Organisations grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government women's organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in process. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women's Industry Network- Seafood
Community. All have a broad geographic coverage including women from all States and Territories.

- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis.

The level of funding is not applicable. FMDs are not "grants". FMDs are a "cost to revenue" for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme's Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.

- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approvals through the Natural Heritage Trust One Stop Shop programs administered by AFFA in the federal electorate of Gwydir amounted to $1.34 million, $0.81 million and $0.47 million for 1996-97, 1997-98 and 1998-99 respectively.

The NSW Department of Information Technology and Management (DITM) administers FISAP in NSW on behalf of the Commonwealth. Because of the staged nature of payments, DITM cannot easily provide figures for actual expenditure for electorates on a financial year basis. Approved FISAP amounted to $135,800 in 1996-97 for Business Exit Assistance.

Notes: (i) The figures quoted above are for payments approved in each financial year to businesses in the electorate. Some of the payments may not have been made until future financial years.

(ii) The Commonwealth also paid relocation and retraining assistance to ex forest industry workers under the Worker Assistance element of FISAP. However, figures are not available by electorate.


Information does not exist on West 2000 RPP by electorate and the program did not operate in the 1996-97 financial year. Actual expenditure on the West 2000 RPP for the financial year 1997-98 was $0.977 million and in 1998-99 was $1.183 million.

Actual funding of $26,396 was paid from the Agribusiness Program to the electorate of Gwydir in 1996-97.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in NSW on Farm Help during 1997-98 was $4.2 million and in 1998-99 was $9.7 million.

FarmBis actual funding to New South Wales was $1.19 million in 1998-99.

The National Non-Government Women's Organisation grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.73 million has been approved through the Natural Heritage Trust One Stop Shop for programs administrated by AFFA in the federal electorate of Gwydir in 1999-2000.

No specific amounts are appropriated to individual electorates. Of the total FISAP appropriation, about $60 million has been allocated to a jointly funded FISAP with the NSW Government. The Commonwealth did not spend any FISAP money for Business Exit Assistance or Industry Development Assistance in the electorate of Gwydir in 1999-2000.

Actual funding for the electorate of Gwydir under the Rural Communities Program totalled $361,687 in 1999-2000 for financial counsellors based in Gunnedah, Coonamble, Gilgandra, Moree, Narrabri, Walgett, Coonabarabran and Mudgee.
Actual funding of $221,610 was provided under the Rural GST Start-Up Assistance Program for 65 seminars and workshops in the Gwydir electorate in 1999-2000. It should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations. 

Actual funds totalling $129,335 were provided under the Pork Producer Exit Program in the 1999-2000 financial year.

Actual expenditure on the West 2000 RPP for the financial year 1999-2000 was $2.165 million. The Food and Fibre Chains Programme commenced in 1999-2000 and a total of $38,000 was approved to the electorate of Gwydir in 1999-2000.

Actual expenditure in NSW on Farm Help during 1999-2000 totalled $5.6 million.

FarmBis actual funding to New South Wales was $1.02 million in 1999-2000. The National Non-Government Women's Organization grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

Department of Agriculture, Fisheries and Forestry: Programs and Grants to the Eden-Monaro Electorate

(Question No. 3072)

Senator Mackay asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 5 October 2000:

(1) What programs and/or grants administered by the department provide assistance to people living in the electorate of Eden-Monaro.

(2) What was the level of funding provided through these programs and grants for the 1996-97, 1997-98 and 1998-99 financial years.

(3) What is the level of funding provided through programs and grants that has been appropriated for the 1999-2000 financial year.

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) During the period 1996-97 to 1999-2000 AFFA administered the following programs/grants within the federal electorate of Eden-Monaro (Note – not all programs/grants were available in all of these years):

- The National Landcare Program, National Rivercare Program, Murray Darling 2001 and Farm Forestry Program through the Natural Heritage Trust One Stop Shop.

- The AFFA component of the Natural Heritage Trust's National Feral Animal Control Program provided funding to NSW Agriculture for a coordinated wild dog management project. The funding and project outcomes are divided between a number of Rural Lands Protection Boards - some of which occur in the Eden-Monaro electorate.

- The Farm Forestry Program (FFP) through the Wood and Paper Industry Strategy (WAPIS) provides support to regional plantations communities, which focus on planning and coordination activity. This included the formulation and implementation of a Commercial Farm Forestry Strategy for the Canberra Wood Supply Region and the SE NSW Farm Forestry Project (including the SE Regional Plantation Committee). The program concluded 30 June 2000 with some projects carried over to 2001. One of the two projects operates within the electorate and surrounding region.

- The Regional Forest Agreement (RFA) Participation and Awareness Grants program facilitated the participation of stakeholders in the RFA process through the provision of grants to fund communication, information dissemination and awareness raising activities by stakeholders. The grants were funded jointly by AFFA and Environment Australia.

- The Eden Region Adjustment Package (ERAP) is a program to supplement private sector investment to assist the development and implementation of employment-generating projects in the Eden region. The Package is the joint responsibility of the Hon Wilson Tuckey MP, Minister for Forestry and Conservation and Senator the Hon Ian Macdonald, Minister for Regional Services, Territories and Local Government. The Department of Agriculture, Fisheries and
Forestry - Australia, primarily administer the Package with advice provided by the Department of Transport and Regional Services.

- The South East Forest Agreement (SEFA), agreed in 1900, established a framework for ongoing cooperation between the Commonwealth and NSW for efficiently managing forests in the region on a sustainable basis to provide security and certainty with respect to both nature conservation and access to forest resources to maintain and enhance regional development opportunities. The Commonwealth agreed to provide funding for specific projects directed towards achieving the objectives of the agreement.

- Forest Industry Structural Adjustment Program (FISAP) provides assistance to native forest industry business and to workers involved in the native timber industry to adjust to changes in the available resource as a result of Regional Forest Agreements.

- The Financial Counselling Service, part of the Rural Communities Program (RCP), provides rural community groups with Commonwealth grants to contribute towards the cost of employing a Financial Counsellor/s and associated administrative costs.

- The Rural GST Start-Up Assistance Program was established in 1999-2000 to develop farmer education and understanding of the GST.

- The Pork Producer Exit Program (PPEP) provided financial assistance for non-viable pork producers to exit the industry. The program concluded on 30 June 2000.

- The Exceptional Circumstances Relief Payment (ECRP) assists farm families in exceptional circumstances (EC) areas who are experiencing difficulties meeting personal living expenses. Information on ECRP expenditure is not available on an electorate basis.

The ECRP was available to farmers in the Monaro “A” region which is in the electorate of Eden-Monaro. This region was declared to be in EC on 25 February 1998. ECRP was available for two years following the EC declaration. EC interest rate subsidies were also available to eligible farmers in the Monaro “A” region.

The ECRP is currently available to farmers in the Monaro “B” and “C” DEC regions that are in the electorate of Eden-Monaro. These regions were declared to be in drought EC on 8 April 1998 and 30 August 1998 respectively. EC interest rate subsidies are also available to eligible farmers in the Monaro “B” and “C” regions.

Other programs are administered on a state/national basis and were available to people living in the electorate of Eden-Monaro. Electorate levels of funding for these programs/grants are not available and figures provided in (2) and (3) are at the state/national level. These included:

- Funding approved under the Commonwealth Dairy Industry Adjustment Package is available from 2000-2001. The Package comprises three separate programs:
  - Dairy Structural Adjustment Program - a $1.63 billion program designed to provide adjustment assistance to dairy farmers to successfully address the transition to a deregulated market;
  - Dairy Exit Program - a $30 million program to allow farmers who choose to leave their farms and agriculture to do so with financial support; and
  - Dairy Regional Assistance Program - a $45 million program to assist dairy dependent communities.

The Farm Help – Supporting Families through Change (formerly known as Farm Family Restart Scheme) program provides income support, professional advice and re-establishment assistance. The Farm Help scheme is available to all eligible farmers on a national basis. Information on Farm Help is not available on an electorate basis. Farm Help funds are not allocated on a regional or state basis. Funds are provided to farm families that have been approved for assistance regardless of their location.

- The FarmBis program currently provides assistance to farming businesses throughout Australia, including the federal electorate of Eden-Monaro. The program contributes to the costs of farmers’ participation in learning activities, which may be on an individual or on a group basis.

- The National Non-Government Women’s Organsition grants program is not allocated on a regional or state basis or by electorates. A total of $100,000 per annum was appropriated for three years; 1998-99, 1999-2000 and 2000-2001 to be allocated to national non-government
women’s organisations who are specifically concerned with agriculture, fisheries, forestry and natural resource management. For the years 1998-99 and 1999-2000 actual total expenditure of $200,000 has been fully allocated and dispersed in accordance with the specific selection criteria. To date the 2000-2001 appropriation has been allocated but not fully spent. First instalments are in process. Recipient organisations have been Australian Women in Agriculture, Foundation for Australian Agricultural Women and Women’s Industry Network-Seafood Community. All have a broad geographic coverage including women from all States and Territories.

- The Farm Management Deposits (FMD) scheme came into effect in April 1999 and is available to all eligible primary producers in Australia. It provides a tax-linked savings mechanism that allows farmers to set aside pre-tax income from years of good cash flow for use in years of low cash flow. The scheme is administered by authorised deposit taking institutions and information on the utilisation of the scheme is not available on an electorate basis.

The level of funding is not applicable. FMDs are not “grants”. FMDs are a “cost to revenue” for tax income foregone in the year that individuals make an FMD deposit. This is partially offset when FMDs are withdrawn and treated as taxable income, as well as through the impact of tax on interest earned on deposits. Similar arrangements applied to the FMD scheme’s Government-operated predecessors, the Income Equalisation Deposit and Farm Management Bond schemes, which operated until 31 December 1999.

- The Australian Quarantine and Inspection Service (AQIS) provides, on an ongoing basis as required, a range of export certification and quarantine services in this electorate. These services are consistent with those provided anywhere else in Australia.

(2) Funding approvals through the Natural Heritage Trust One Stop Shop programs administrated by AFFA in the federal electorate of Eden-Monaro, amounted to $0.72 million, $0.72 million and $1.47 million for 1996-97, 1997-98 and 1998-99 respectively.

Actual funding provided through the Natural Heritage Trust’s National Feral Animal Control Program amounted to $86,000 in 1997-98. The funding and project outcomes are divided between a number of Rural Lands Protection Boards - some of which occur in the Eden-Monaro electorate.

The actual funding under WAPIS amounted to $20,000 in 1996-97, $100,000 in 1997-98 and $135,000 in 1998-99.

The RFA Participation and Awareness Grants program provided actual funding of $11,500 in 1996-97, $4,327 in 1997-98 and $5,000 in 1998-99 to the electorate of Eden-Monaro.

The NSW Department of Information Technology and Management (DITM) administers FISAP in NSW on behalf of the Commonwealth. Because of the staged nature of payments, DITM cannot easily provide figures for actual expenditure for electorates on a financial year basis. Approved FISAP and SEFA funding amounted to:

1996-97: FISAP: $809,708 for Business Exit Assistance and $171,931 for Industry Development Assistance. SEFA: $1,149,050 was paid to community groups and government authorities for projects related to forest management and industry development in the Eden Native Forest Management Area.

1997-98: FISAP: $1,120,058 for Business Exit Assistance. SEFA: $25,000 was paid to community groups and government authorities for projects related to forest management and industry development in the Eden Native Forest Management Area.

1998-99: SEFA: $273,450 was paid to community groups and government authorities for projects related to forest management and industry development in the Eden Native Forest Management Area.

Notes: (i) The FISAP figures quoted above are for payments approved in each financial year to businesses in the electorate. Some of the payments may not have been made until future financial years.

(ii) The Commonwealth also paid relocation and retraining assistance to ex forest industry workers under the Worker Assistance element of FISAP. However, figures are not available by electorate.

The Monaro Rural Financial Counselling Service Inc., in the electorate of Eden-Monaro, was funded under the Rural Communities Access Program (to 1998) and the Rural Communities Pro-
gram. Actual expenditure under the program totalled $50,000 in 1996-97, $47,800 in 1997-98 and $75,000 in 1998-99.

Actual funding provided through ECRP in NSW during 1996-97 was $51.6 million, in 1997-98 was $22.2 million and in 1998-99 was $3.2 million.

EC Interest Rate Subsidies actual expenditure in the Monaro region during 1997-98 was $0.6 million and in 1998-99 was $0.6 million.

Farm Help (formerly Farm Family Restart Scheme) commenced on 1 December 1997, therefore no expenditure was recorded for the 1996-97 financial year. However, actual expenditure in NSW on Farm Help in 1997-98 was $4.2 million and in 1998-99 was $9.7 million.

FarmBis funding is not allocated on a regional basis or by electorates. However, actual funding to New South Wales was $1.19 million in 1998-99.

The National Non-Government Women's Organizations grants program was a three year program with actual funding of $100,000 in 1998-99 under FarmBis.

(3) Funding of $0.92 million has been approved through the Natural Heritage Trust One Stop Shop for programs administered by AFFA in the federal electorate of Eden-Monaro in 1999-2000.

Actual funding provided through the Natural Heritage Trust's National Feral Animal Control Program amounted to $95,300 in 1999-2000. The funding and project outcomes are divided between a number of Rural Lands Protection Boards - some of which occur in the Eden-Monaro electorate.

The actual funding under WAPIS amounted to $65,000 in 1999-2000.

No specific amounts are appropriated to individual electorates. Of the total FISAP appropriation, about $60 million has been allocated to a jointly funded FISAP with the NSW Government. The Commonwealth did not spend any FISAP money for Business Exit Assistance or Industry Development Assistance in the electorate of Eden-Monaro in 1999-2000.

Funding under SEFA totalled $0.153 million in 1999-2000 and was paid to community groups and government authorities for projects related to forest management and industry development in the Eden Native Forest Management Area.

The Monaro Rural Financial Counselling Service Inc., in the electorate of Eden-Monaro, was funded under the Rural Communities Access Program (to 1998) and the Rural Communities Program. Actual expenditure under the program totalled $75,000 in 1999-2000.

Actual funding of $64,778 was provided under the Rural GST Start-Up Assistance Program for 19 seminars and workshops in the Eden-Monaro electorate in 1999-2000. It should be noted that while the Program is administered by AFFA, the funding is from the GST Start-Up Assistance Office, not from AFFA appropriations.


Actual funding provided through ECRP in NSW during 1999-2000 was $1.6 million.

EC Interest Rate Subsidies actual expenditure in the Monaro region during 1999-2000 was $0.9 million.

Actual expenditure in NSW on Farm Help in 1999-2000 totalled $5.6 million.

FarmBis funding is not allocated on a regional basis or by electorates. However, actual funding to New South Wales was $1.02 million in 1999-2000.

The National Non-Government Women's Organizations grants program was a three year program with actual funding of $100,000 in 1999-2000 under FarmBis.

**Health: Privacy and Security of Medical Records**

(3) Senator Denman asked the Minister representing the Minister for Health and Aged Care, upon notice, on 1 June 2001:

With reference to concerns relating to the privacy and security of medical records held in personal computers and hospital main frames:
(1) Given that medical and other health professionals are keeping patients’ personal records electronically on computers that are Web-linked and on easily compromised mainframes, can the Minister give an unequivocal assurance that these records are secure.

(2) What steps, if any, have been taken to educate users of this technology of the potential dangers.

(3) Are there any plans to ensure that health professionals have access to firewalls to help stop any potential compromise to their patient records.

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

(1) Maintaining the security of electronic health records relies on a number of measures—such as the use of firewalls, password protection and encryption tools. This is also a dynamic area, with the level of sophistication of such tools changing as the information industry itself develops. Notwithstanding the changing nature of this environment, the Department of Health and Aged Care is working closely with Standards Australia to develop a national health security framework which will provide additional guidance to health sector organisations on how they can ensure the safe exchange and storage of health information in electronic format in accordance with nationally agreed standards. Having said that, however, I am clearly not in a position to give an unequivocal assurance that electronic patient records held on medical and other health professionals’ computers are secure when the responsibility to protect such records ultimately rests with the individual practitioner or organisation.

(2) This Government is very committed to ensuring that sensitive health information is handled appropriately. Under the Privacy Amendment (Private Sector) Act 2000, which comes into effect on 21 December, all health service providers in the private sector will be held responsible for maintaining the security of their patients’ records, regardless of whether they are paper-based or in electronic format. The Federal Privacy Commissioner has developed draft guidelines to assist organisations in implementing this legislation, including the need for appropriate security measures. Most importantly, the Privacy Commissioner has indicated that in dealing with complaints about a health provider in this area, he will take into consideration whether providers have developed data security standards consistent with Australian, or international standards. The draft guidelines have been widely circulated for comment and, once finalised, will be made available through a variety of channels to ensure that health professionals are aware of their obligations.

(3) In a sense, firewalls are like any other security measures that health providers currently employ to ensure patient confidentiality in a non-electronic environment—measures such as those designed for the secure storage of paper files. Just as the government is not expected to fund such existing security measures, it is expected that the individual practitioner will fund these essential measures as part of his or her practice in an electronic world.

**Superannuation: Lost Monies to States**

(Question No. 3651)

**Senator Sherry** asked the Assistant Treasurer, upon notice, on 26 June 2001:

Can the following details be provided:

(a) the amount of lost superannuation monies paid to state governments for the 1997-98, 1998-99, 1999-2000 and 2000-01 financial years;

(b) the mechanism for determining which states receive lost superannuation monies; and

(c) the amount of lost superannuation monies transferred to each state for the above financial years.

**Senator Kemp**—The answer to the honorable senator’s question is as follows:

(a) The amount of money paid to the Commonwealth in relation to unclaimed monies for Western Australia was:

1998/99 $75206.01
1999/00 $12839.38
2000/01 $11705.86

Other States/Territories pay unclaimed money to State registers and this information is not available to the Government.
Figures for the year 1997-98 are not available, as legislation did not require any reporting be maintained until 1998-99.

(b) States/Territories must have equivalent legislation to the Commonwealth Lost Members and Unclaimed Money Act and, if so, then the fund pays the unclaimed money to the State in which they are located.

c) All States/Territories other than WA maintain their own unclaimed money registers. Details of those unclaimed monies may be obtained from the respective State/Territory Governments.

Agriculture, Fisheries and Forestry Portfolio: Missing Computer Equipment
(Question No. 3736)

Senator Faulkner asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 July 2001:

(1) Have there been any desktop computers or any other item of computer hardware, other than laptop computers, lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) what and how many have been lost; (b) what and how many have been stolen; (c) what is the total value of these items; (d) what is the normal replacement value per item; and (e) have these items been recovered or replaced.

(2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has action been concluded and with what result.

(3) How many of these lost or stolen items had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.

(4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.

(5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.

(6) What departmental disciplinary or other actions have been taken in regard to the items in (1) or in relation to the documents etc. in (3) and (4).

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) None; (b) 3 desktop computers and 2 laser jet printers (personal) were stolen during home break-ins; (c) The items are leased; (d) This is not applicable as the items are leased; and (e) All were replaced with leased items.

(2) The leasing company have advised us that all instances were reported to the police; (b) The leasing company have not been made aware of any follow up subsequent to the reporting; (c) Refer b; and (d) Refer b.

(3) It is assumed that all of the computers would have had departmental documents, content or information on them.

(4) (a) None. Officers involved have confirmed that no information of a classified nature was held on the subject systems. Departmental guidelines address the issue of handling classified information using Information Technology equipment and materials; and (b) Not Applicable

(5) (a) None; and (b) None.

(6) None.

Agriculture, Fisheries and Forestry Portfolio: Missing Laptop Computers
(Question No. 3755)

Senator Faulkner asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 25 July 2001:

(1) Have there been any laptop computers lost or stolen from the possession of any officer of the department and/or any agencies within the portfolio during the 2000-01 financial year; if so: (a) how many have been lost; (b) how many have been stolen; (c) what is the total value of these comput-
ers; (d) what is the average replacement value per computer; and (e) have these computers been recovered or replaced.

(2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.

(3) How many of these lost or stolen computers had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.

(4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.

(5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.

(6) What departmental disciplinary or other actions have been taken in regard to the computers in (1) or in relation to the documents etc. in (3) and (4).

Senator Alston—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) None; (b) Three (3); (c) The items are leased; (d) This is not applicable as the items are leased; (e) All were replaced with leased items.

(2) The leasing company have advised us that all instances were reported to the police; (b) The leasing company have not been made aware of any follow up subsequent to the reporting; (c) Refer b; (d) Refer b.

(3) It is assumed that all of the computers would have had departmental documents, content or information on them.

(4) (a) None. Officers involved have confirmed that no information of a classified nature was held on the subject systems. Departmental guidelines address the issue of handling classified information using Information Technology equipment and materials; (b) Not Applicable.

(5) (a) None; (b) None.

(6) None.

Regional Minerals Development Program: Funding
(Question No. 3827)

Senator Brown asked the Minister for Industry, Science and Resources, upon notice, on 7 August 2001:

(1) What is the $5 million Regional Minerals Development Program funding made available to Tasmania being spent on.

(2) Is $800 000 being used to do an environmental study of the north west industrial area near Port Latta.

(3) (a) What studies were done to determine that the site selected for the north west industrial area was potentially suitable for the purpose;
(b) What was the total area investigated;
(c) Which other sites were considered;
(d) What factors made the selected site the only one short-listed for further consideration; and
(e) How much money was spent on these studies and when were they done.

(4) Is it usual for the Regional Minerals Development Program to fund detailed environmental studies of a single site for a proposal such as this.

(5) What analysis assured the Minister that spending $800 000 on environmental studies on this site alone did not risk the expenditure being a complete waste of money.

Senator Minchin—The answer to the honourable senator’s question is as follows:

(1) $4.2 million was allocated to improve Tasmania’s geological data and $0.8 million to conduct the studies necessary to rezone the North West Industrial Area (Port Latta) site as a multi-purpose in-
industrial site. These projects were recommended by the Western Tasmanian Regional Mineral Program “Final Development Plan”.

(2) Yes. The study will determine operating parameters and planning provisions that ensure that acceptable social, economic and environmental standards are maintained.

(3) (a) The suitability of the site was assessed when the area was approved as a Special Area under the Circular Head Municipality Planning Scheme. The Tasmanian Resource Planning and Development Commission, which is the relevant State Government regulatory authority, approved this decision. The suitability of the site was further confirmed by the Western Tasmanian Regional Mineral Program “Final Development Plan”.

(3) (b) The entire Western Tasmania Minerals province was assessed in the WTRMP study.

(3) (c) A number of general areas were considered namely Burnie, Zeehan, Hampshire, Railton and Bell Bay.

(3) (d) The Port Latta site was chosen because of its proximity to resources, its infrastructure and the presence of similar industries. It was considered that, given the work that had been carried out in selecting this site, that further expenditure to evaluate alternatives would not be cost effective.

(3) (e) The Western Tasmanian Regional Minerals Program study cost $152,000 which was born equally by the Commonwealth and State Government and the Tasmanian minerals industry through the Tasmanian Minerals Council. The report was completed in 1999.

(4) The Government’s “Minerals to Market” pre-election policy statement indicated that it would provide $5 million to support infrastructure development in Western Tasmania. The priority actions identified in the Western Tasmanian Regional Minerals Study provided the guidance on how best the money could be spent to develop the required infrastructure.

(5) The recommendation was a key outcome of the Western Tasmanian Regional Minerals Program study. This involved an extensive examination of the minerals potential and infrastructure requirements of the Western Tasmanian region in an exercise involving all major stakeholders: Commonwealth and State Government representatives and industry. The report was endorsed by the Commonwealth Minister for Industry, Science and Resources, Senator the Hon Nick Minchin; the Hon Paul Lennon, Deputy Premier and Minister for Infrastructure, Energy and Resources; the head of the Tasmanian Minerals Council; and the Chair of the study’s Management Committee.
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