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SITTING DAYS—2001

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Monday, 24 September 2001

The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 12.30 p.m., and read prayers.

MIGRATION LEGISLATION AMENDMENT BILL (No. 6) 2001
MIGRATION LEGISLATION AMENDMENT BILL (No. 5) 2001
First Reading

Bills received from the House of Representatives.

Motion (by Senator Hill) agreed to:
That these bills may proceed without formalities, may be taken together and be now read a first time.

Bills read a first time.

Second Reading

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.31 p.m.)—I table a revised explanatory memorandum relating to the Migration Legislation Amendment Bill (No. 6) 2001 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—

MIGRATION LEGISLATION AMENDMENT BILL (No. 6) 2001

This bill is aimed at addressing two critical challenges facing Australia’s refugee protection arrangements and our ability to effectively contribute to international efforts to protect refugees.

Firstly, the continuing influx of unauthorised arrivals to this country is a tangible indicator of increasingly sophisticated attempts to undermine the integrity of Australia’s refugee determination process.

The evidence is clear and growing — that large numbers of these people have, but disposed of, identifying documentation before arrival in Australia.

The smuggling operations which are providing this travel give often highly detailed information and coaching to these arrivals on appropriate claims and country knowledge and on Commonwealth assessment procedures to maximise their chance of successfully gaining a visa.

We cannot lose sight of the fact that refugees will be amongst those people travelling to Australia without authority.

But it is critical that Migration Act powers to test these claims effectively match the challenge being posed by organised and sophisticated attempts at nationality, identity, and claims fraud.

The second major challenge lies in the increasingly broad interpretations being given by the courts to Australia’s protection obligations under the refugees convention and protocol.

The convention does not define many of the key terms it uses.

In the absence of clear legislative guidance, the domestic interpretation of our obligations has broadened out under cumulative court decisions so that Australia now provides protection visas in cases lying well beyond the bounds originally envisaged by the convention.

These generous interpretations of our obligations encourage people who are not refugees to test their claims in Australia, adding to perceptions that Australia is a soft touch.

Significantly, every protection place in Australia which is obtained through deception and every protection place which is provided to a person who would not be covered by the proper interpretations of the refugees convention because of the way domestic law has developed, represents a place taken from the neediest of refugees languishing in refugee camps around the world.

Australia is proudly one of the very few countries which has a formal program to resettle refugees in consultation with the UNHCR.

The challenges to the integrity of our onshore determination processes and the broadening out of our convention obligations in domestic law directly undermine the capacity of Australia to contribute effectively to protecting refugees both in Australia and who are in refugee camps and in most need of resettlement.

Our action in legislating on the application of the refugees convention is consistent with the principles recognised in international law that states have the right to define how they will implement their obligations under international treaties.

The bill will include measures to allow the minister to draw adverse inferences when a person does not have identity documentation or if they refuse to make an oath or affirmation about the truth of the information they have provided.

The bill will also stop the refugees convention being interpreted so broadly that people who were never envisaged to be refugees manage to obtain refugee protection in Australia.
The government has been concerned for some time that the refugees convention has become so widely interpreted that it is in danger of failing the very people that it was designed to protect.

Australia grants a higher proportion of claims for refugee status than even the UNHCR assessing the same caseload on their way to Australia.

This generosity is in itself attracting people with the means to pay a people smuggler or who can afford air fares to our region and who wish to seek a more prosperous way of life.

This is not what the convention was designed for.

The bill will define the fundamental convention term, persecution, as an appropriate test of serious harm.

Exclusions for serious non-political crime and particularly serious crime, will also be defined to ensure that only those people who merit protection receive it.

The legislation will also allow contrived claims for refugee status in Australia to be disregarded.

Australia remains committed to providing appropriate protection to refugees consistent with our international obligations.

However we intend to send a strong message to people smugglers and to others wishing to exploit our provisions, that abuse is not on.

It is both Australia’s right and responsibility as a sovereign state to ensure that the convention is implemented responsibly and consistently by all decision makers in accordance with the express intentions of parliament.

Persecution is a key concept in considering claims for refugee status and it is not defined in either the convention or Australian legislation.

Our legislation should reinforce the basic principles of persecution under the convention – that for a person to require protection the persecution must be for a convention reason, and the persecution must constitute serious harm.

The legislation will also prevent people obtaining protection in particular circumstances where there is no real fear of persecution for a convention reason.

The fundamental intention of the convention is to provide protection to those who fear persecution so serious that they cannot return to their home country.

It was not intended to protect people facing discrimination or hardship in comparison to life in Australia.

The legislation will define elements of serious harm as including a threat to the person’s life or liberty, significant physical harassment or ill-treatment, and other events that threaten a person’s capacity to subsist.

Providing a definition of persecution in the legislation will ensure that the level of harm necessary to constitute persecution will be at a level intended by the refugees convention.

The legislation will also provide that to invoke protection the convention reason must be the essential and significant reason for the persecution.

The convention was not designed to protect people who fear persecution for personal reasons that have little or nothing to do with the convention – for example because they have failed to pay their family’s debts.

Yet recent court case law provides for this very scenario.

The legislation will also prevent people from using elaborate constructs to claim that they are being persecuted as a member of a family and thus under the convention ground of a particular social group, when there is no convention related reason for the persecution.

This will remove a potential avenue for criminal families to claim protection on the basis of gang wars- not those that the government would see as warranting international protection.

I am also concerned about court decisions that have recognised the claims of applicants who have deliberately set out to contrive claims for refugee status after arriving in Australia.

Such action, deliberately seeking to attract hostile attention from a home country government, makes a mockery of an applicant having a real fear of persecution.

The legislation will make it clear that any actions by a person taken after arrival in Australia will be disregarded unless the minister is satisfied that the actions were not done just to strengthen claims for protection.

The convention was not intended to provide protection to applicants who contrive claims in second or third countries and who have no other basis for claims to refugee status.

However, in exceptional cases where a person has acted purely to strengthen their claims, and so as a result needs some protection, my ministerial intervention powers will allow me to intervene in the public interest.

Article 33 of the refugees convention provides that a person who has been convicted of a ‘particularly serious crime’ and is a danger to the community, does not have the benefit of Australia’s international protection obligations.
However, there is currently no definition of what constitutes a ‘particularly serious crime’ in the refugees convention or the migration act.

The legislation will provide a threshold definition to include crimes of violence against a person, serious drug offences, serious damage to property and offences within detention centres, when the crime is punishable in Australia by life imprisonment or three years or more in prison.

Where the crime is committed overseas, the relevant penalties will be those that would have applied if the offence had been committed in the Australian capital territory.

People convicted of particularly serious crimes will still need to be assessed on a case by case basis to see whether they are also a danger to the community and should be excluded from protection.

These provisions will make it clear to unauthorised arrivals that if they are convicted of particularly serious crimes, including in detention, that they risk exclusion from the benefit of our protection provisions.

I would also like to foreshadow regulation amendments that will further strengthen the requirements that asylum seekers do not commit crimes in Australia.

Any asylum seekers convicted of a minor criminal offence, including those in the community, will not be eligible for a permanent protection visa for four years from the date of conviction.

The bill will introduce provisions to ensure that persons who commit serious crimes primarily for personal reasons or gain and not for genuine political motives can be excluded from refugee protection.

Article 1F of the refugees convention provides that a person is not owed protection if there are serious grounds for considering that they have committed a serious non-political crime before arriving in Australia.

However there is no definition of what constitutes a non-political crime in either the refugees convention or domestic legislation.

In recent times the courts have determined that applicants are owed protection obligations if they have committed a serious crime with mixed personal and political motivations, even where the political motivation is a minor element of their motivation.

The amendment will also provide that those atrocious crimes defined in the extradition act as not being political, such as hijacking and killing a head of state, will always be considered to fall within the definition of non-political crime.

There is currently no power for the minister to replace unfavourable protection visa decisions of the administrative appeals tribunal with a decision more favourable to the applicant.

The legislative interventions will deal with character and exclusion matters under articles 1F, 32 and 33(2) of the refugees convention and under the Migration Act.

For example it would hear appeals on matters relating to the particularly serious crime and serious non-political crime provisions in this bill.

The legislation will allow ministerial intervention in the public interest, following decisions of the administrative appeals tribunal on protection visa matters.

This expansion of the ministerial intervention powers will strengthen Australia’s ability to provide residence in Australia in cases where the public interest may require this.

This ministerial intervention power is consistent with existing powers relating to decisions by the refugee review tribunal and the migration review tribunal.

The legislation will provide that unauthorised arrivals and protection visa applicants may be required to give evidence on oath or affirmation and that failure to do so, after being warned, or the manner in which they do so, could be grounds for drawing adverse inferences as to their credibility.

I am deeply concerned about the level of fraud by unauthorised arrivals and in the protection visa case load and it is imperative that we do as much as possible to stop it.

Recent evidence has indicated that some protection visa applicants may be discouraged from making fraudulent claims for protection if they are required to swear an oath of affirmation that information that they have provided is correct.

Guidelines will be developed to ensure that the requirement is implemented with regard to cultural and religious sensitivities.

This provision is not intended to compel a person to make a particular form of oath or affirmation but rather to make it clear that failure to comply with a request or the manner in which a person complies may be taken into account in considering credibility.

I have already expressed my concern about the number of unauthorised arrivals entering Australia without documentation establishing their identity and nationality.

I recognise that there are people who may have legitimate reasons for not having such documentation in their possession.
Others, however, have clearly had documents for the first leg of their journey and then disposed of them.

The legislation will provide that the lack of identity documentation may be the basis for drawing adverse inferences about a person’s claimed identity, nationality and citizenship.

The intention is to send a clear and strong message that Australia expects applicants, who are able to do so, to provide satisfactory identity and nationality documentation.

The legislation will provide that applicants will be warned of the importance of providing documentation. A reasonable explanation for failing to produce documents will be taken into account.

As well, the act will be amended to make clear that protection visas can be granted to spouses and dependants in Australia of a person found to be owed protection obligations even though the spouse and dependants did not have personal claims for protection.

However, consequential changes are made by the legislation to make it clear that provisions in the Migration Act that bar repeat protection visa applications relate also to a person who has not raised protection claims in their first protection visa application.

Without this provision, dependants of an unsuccessful protection visa applicant, who had chosen not to advance protection claims when given the opportunity to do so, could apply again making such claims.

Potentially, family members could apply for protection with each member taking turns to be the one advancing protection claims.

This could prolong a family’s stay in Australia for years as each applicant in turn applies and pursues appeal channels.

The bill will extend the bar on repeat applications to ensure that all family members included in a protection visa application will be barred from making another application for a protection visa.

In order to strengthen Australia’s capacity to prevent people whose protection visas have been cancelled from immediately re-entering the protection visa system, the bar will also be extended to cover such people.

The legislation will provide additional protection for protection visa litigants by requiring that the federal and high courts do not publish their names, including on the internet.

The publication of the identity of a person as a protection visa applicant may create a protection need and may endanger the lives of family or colleagues overseas.

Although courts may currently agree to suppress an applicant’s name, it is essentially a matter for the court’s discretion to grant such an order and it must be argued on a case by case basis.

Australia’s protection visa assessment processes at the refugee review tribunal already contain safeguards preventing publication of any information identifying a protection visa applicant.

The legislation will ensure that these requirements will also cover protection visa related decisions of the administrative appeals tribunal.

In conclusion, the legislation strengthens powers in the migration act to protect Australia’s refugee determination processes against intentional fraud and blatant misuse.

It provides clear guidance to focus refugee decision making on those who need protection and removes opportunities for others to abuse our generosity.

These amendments have been carefully drafted to ensure that refugees as appropriately defined in accordance with the convention will receive the protection that they properly deserve under the convention.

This government remains fully committed to Australia’s continuing to meet its obligations under the refugees convention and protocol.

This bill continues the proud tradition of providing assistance to genuine refugees in need to which our nation has been so committed.

I commend this bill to the chamber.

MIGRATION LEGISLATION AMENDMENT BILL (No. 5) 2001

This bill amends the Migration Act 1958 to allow private sector organisations to provide the Department of Immigration and Multicultural Affairs with information regarding a person’s actual or proposed travel to or from Australia.

The Department of Immigration and Multicultural Affairs currently receives travel information from airlines, shipping operators, and travel agents.

This information is provided to facilitate speedy immigration clearance.

This information usually includes a traveller’s name, nationality, date of birth, sex, country of birth and flight details.

If this information is not provided there may be significant delays at airport immigration points.

Information may also be provided about travel already commenced or completed by the person, including the route taken.
The purpose of these amendments is to ensure that private sector organisations can continue to provide this information voluntarily without being in breach of the Privacy Act 1988, once amendments to that act covering private organisations commence on 21 December 2001. From this date private sector organisations covered by the Privacy Act will be required to comply with the national privacy principles. These principles include a prohibition on the disclosure of personal information for purposes other than the purpose for which the information was given, unless each person consents to disclosure of their details.

Due to the automated information systems used, it is unlikely that every person would be able to give consent to providing DIMA with their travel details. The only viable alternative is to amend the Migration Act to authorise such disclosures. The amendments contained in this bill will expressly authorise the disclosure of travel information to officers under the Migration Act. This will enable private sector organisations to continue to provide this valuable information without breaching the requirements of the Privacy Act.

I should like to point out that while authorising disclosure of travel information, the amendment does not compel organisations to provide this information.

In addition to airlines, shipping operators and travel agents, the authorisation will extend to other prescribed organisations. This will allow the flexibility to add other organisations, should the need arise.

The Attorney-General will be consulted about any proposal to prescribe other organisations. I emphasise that this bill is intended to facilitate speedier immigration processing at air and sea ports, to the benefit of carriers and their passengers.

I commend the bill to the chamber.

Leave granted.

Senator HILL—I move:

That, on Monday, 24 September 2001:

(1) The hours of meeting shall be 12.30 pm to 6.30 pm and 7.30 pm to the adjournment in accordance with paragraph (3).

(2) The routine of business from 7.30 pm shall be any motion under government business relating to the consideration of the bills listed in this paragraph and the government business orders of the day relating to the following bills:

- Migration Amendment (Excision from Migration Zone) Bill 2001,
- Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001,
- Border Protection (Validation and Enforcement Powers) Bill 2001,
- Migration Legislation Amendment (Judicial Review) Bill 1998 [2001],
- Migration Legislation Amendment Bill (No. 1) 2001,
- Migration Legislation Amendment Bill (No. 6) 2001, and
- Migration Legislation Amendment Bill (No. 5) 2001.

(3) The question for the adjournment shall be proposed at midnight.
Senator CARR (Victoria—Manager of Opposition Business in the Senate) (12.34 p.m.)—The opposition are supporting the amendment that has been moved to the motion. I think it is important, since Senator Hill has indicated the course of events that led to leave being given to move the motion on Thursday, that we should reiterate the proposition. I have not just a verbal commitment but one in writing, Senator Hill. I must say that I was struck by the proposition that you would need an undertaking such as this to be put in writing, but it was the offer made by Senator Campbell and what could I do but accept his offer.

It now occurs to me why it is so important to get these commitments made in writing. In politics I think we have very few assets when it comes to people’s response to our reputations. We all know the name of the game, but there is one thing that we all ought to maintain at all times in our political dealings with others—that is, we have a commitment that, once you give your word, you keep it. Whatever people say about me, I do not think it is said that once I have made a commitment I have ever broken it. In terms of your dealings with people in this chamber, I think the same principle applies. So when Senator Hill just now indicated to me that he was not aware of a commitment being made, and I hear on the radio all weekend that it is the intention of the government to sit all night on these matters, I am obviously concerned; and it would appear to me that there are good grounds for that concern. Given that the government has now accepted the opposition’s position that the Senate should adjourn at midnight, I think we have no trouble in supporting the motion.

Senator BROWN (Tasmania) (12.37 p.m.)—I ask you to see whether the motion does not anticipate an order of the day. In fact it includes bills Nos 5 and 6 but these are at the moment subject to the cut-off order and therefore cannot be dealt with later today. Insofar as this motion contains references to those two bills, I cannot see how that can go forward. I would like a ruling on that.

The PRESIDENT—The question before the chamber is that the motion by Senator Hill be agreed to. I call Senator Bourne.

Senator Brown—I take a point of order, Madam President. Madam President, I did ask about the validity of the motion in that it contains a process for dealing with two bills which have not yet been released from the cut-off order if the chamber so determines. Therefore, it is anticipating an order of the day. I ask for your ruling on that before we proceed.

The PRESIDENT—It is a subsequent motion that may or may not be passed. I do not see that there is a difficulty, Senator. If it is not passed, then it will not happen.

Senator BOURNE (New South Wales) (12.38 p.m.)—I take it that means that if the cut-off is not passed we just will not deal with those two bills.

The PRESIDENT—Yes, that would be the case.

Senator BOURNE—There are a couple of other points I would like to make about this. There are seven bills. Two have not gone past the cut-off. One is in front of a committee, as we know, and is unlikely to be finished before we finish these bills. If I recall, one of the very good reasons that the opposition put for not dealing until today with the Commonwealth electoral amendment legislation was that the bill was in front of a committee and the committee had not reported. Naturally, as we always do in this chamber, we wanted to see the report of that committee, with all the oral and written evidence from witnesses that that entailed, before we went ahead with this bill.

The Migration Legislation Amendment Bill (No. 6) 2001 deserves the same scrutiny and deserves to have the same care and attention paid to it as every bill gets that comes before this chamber. If a bill is in front of a committee—which, as we know, this one is—and unlikely to come out of that and be reported on beforehand, it is a very sad day if we allow ourselves to debate it.

Varying the hours to midnight is a vast improvement on varying the hours to heaven knows when, up to and including not stopping before we start again tomorrow. We
ought to be considering very carefully varying the hours at all today and starting to debate cognately seven migration bills, two of which have not gone past the cut-off yet—I suspect they may—and one of which is still before a committee. We are considering allowing ourselves to debate them despite the fact that we have not had all the evidence. We certainly have not seen a report. I am not on that committee, so I have no idea what is in all of that.

I know that rumours absolutely abound about whether or not we will be back, and I imagine there are few people in this chamber who expect us to return after the end of this week before the election. But these bills are so massive, they are so important, and they change the lives of so many people that I think they deserve more respect than we are giving them. To debate seven bills cognately and then go on to debate all the committee stages cognately without even having seen the evidence that is going before a committee and the report that the committee will make is not giving these bills the respect they deserve. I do not think it is giving the people whom these bills will affect—there are a lot of them, and they deserve respect—the respect that they deserve.

So while I am more than happy that the motion that was put up—which, I must say, I found fairly startling when I saw it last week—has been changed to midnight, I still do not see that there needs to be this amazing urgency of dealing with this huge number of bills without even the report of the committee today, probably tomorrow and possibly even the next day—maybe up until Thursday; I do not know.

**Senator ROBERT RAY (Victoria) (12.42 p.m.)—**Firstly, I am sorry that Senator Ian Campbell cannot be with us today. My sympathy goes to him in his current circumstances.

When we discussed last week the rescheduling of parliamentary sittings, I described it as a bunch of weasel words we were getting. Apparently, the October sitting in parliament was being put back to fit with cabinet committees—a whole range of inventions were made—when the truth was that it was to give the Prime Minister flexibility as to when to call an election, something I do not actually disagree with. It is quite sensible. Why can’t we say it? But the moment they cannot say it, they cannot really argue that this is the last week of sitting. They are caught. They cannot argue it is the last week of sitting; therefore, let us not create an aura of panic.

The second point is that what we need here and what we do not have at the moment, but I suggest we have by the end of the day somewhere, is an end point—whereby we understand where we are going to finish by the end of this week and which are the key pieces of legislation. I think it is fairly obvious that the migration bills will be one. I would imagine that those bills relating to the Ansett entitlements will be one. I daresay there will two or three other fairly urgent ones. Why don’t we establish today what they are so we can have a rational allocation of time to all those measures? If we can get that rational allocation of time we will not be here each day arguing procedural motions as we go.

With regard to the six or seven immigration bills, the view of the Labor Party is that these must be debated at a reasonable length. They cannot just be rushed through unseen. We are not going to repeat the errors that this parliament almost made in the first border protection bill, the Border Protection Bill 2001. There must be some examination, both on a second reading basis and then on a committee basis, for these seven bills. You just cannot tick this legislation through on the nod.

I would also like to say that the Labor Party is not too sympathetic to an artificial filibuster on these bills. We are pretty good at detecting them, having run a couple ourselves over the years. We would be able to divine whether that is occurring.

It is really a matter of trying to get the balance right, with serious consideration. In these procedural matters, we will be trying to avoid having the government drive a wedge between the Labor Party, the Democrats and the Greens on procedural issues. We will try to protect the minor parties’ rights as much as we can. We do not generally vote for gags and guillotines. On the other hand, we have
the right to express our own procedural views and vote that way. We do not want to create a bidding situation where we limit the rights of minorities on this issue and then the minorities combine with the government and limit our rights on other issues. We are not going to let them be in that trading position—at least, we hope we will not let them into that trading position.

In summary, going to midnight tonight is not the end of the world. It will give you an extra two hours and 10 minutes of debate. We then go into an unlimited adjournment on Monday night. I hope all colleagues are disciplined and will not keep the Commonwealth cars waiting for too long tonight. But I repeat: let us today work out where we are going for the next three days. Let us put some certainty into it. You might think it is going to be fun to sit late Thursday night and maybe on Friday. I hope you enjoy Canberra weekends. With an AFL grand final on, you will not get home anywhere unless the VIPs come in, and that will be an awful look—if, with a lot of other people stranded, we get first-class delivery home via the RAAF. That is not a good political look at this time of the electoral cycle.

We should have an end point somewhere on Thursday night, with a list of legislation that is reasonable and on which, if a filibuster occurs, we can all take the necessary action to say yes, we will deliver on that load of legislation. Unless we do that, what we are going through now is going to be repeated time and time again over the next week.

Senator BROWN (Tasmania) (12.47 p.m.)—I am also sorry to hear about Senator Ian Campbell’s loss and I wish him well. I want to begin, Madam President, by drawing your attention to standing order 85. It says:

A motion or amendment shall not anticipate an order of the day or another motion of which notice has been given, unless the new motion or amendment provides a more effective method of proceeding.

I believe this motion does anticipate another order of the day, and it does deal with a motion that is already before us. It anticipates that, because it has the effect of assuming that that other motion is going to go through—whether or not, when we get to that other motion, it changes this one retrospectively. It is not a good way to be proceeding. It is in contradiction of standing order 85.

The reason we are today dealing with five, and potentially seven, bills together on the hugely important matter of immigration, and in particular asylum seekers, is that, in the wake of the *Tampa* affair, the government and opposition have determined that this is a difficult issue in terms of standing by the Australian norms on humanitarian values and is one that they can point score on, with the opposition shadowing the government almost all the way down the line except for mark 1 of the Border Protection Bill 2001. We have the second version of that in amongst the bills for consideration today. What we are seeing in this legislation is a very broad attack on values which Australians have been proud to uphold in the past. I do not have to remind you, Madam President, that, in the wake of the *Tampa* affair, Australia’s reputation was damaged around the world—very seriously damaged. Here was the sight of a ship being asked by the Australian authorities to pick up refugees from a sinking boat in the waters to our north and then the captain of the ship that went to their aid being told that he could not bring that ship into Australian waters.

As Mr Beazley, the Leader of the Opposition, said a number of times until last week, when he fell into line with what the government is doing here, the Prime Minister and his special cabinet had not taken this action for any similar boat sinking, emergency or rescue out of the 160 boats that have come to Australia during his term of office. This was selectively taken as an election move. It has been, as adeptly, taken up by the opposition, which has failed to take a position which would allow Australia to believe that there was a functioning democracy, with an opposition that was able to take a stronger line defending Australian values.

This package of legislation involves removing access to the courts, both for Australian citizens and for potential asylum seekers. It introduces mandatory sentencing into federal legislation for the first time. It
gives the minister power to regulate to excise from law all Australian islands, and it begins with Christmas Island, the Cocos islands and the Ashmore Reef islands. It makes retrospective any illegal action under Mr Ruddock’s direction since the Tampa incident began last month. I wonder which of those matters the opposition is going to have any concern with. It is almost impossible to believe that the Labor Party is not going to stand in defence of the principles being eroded in legislation which does those things. If a consequent motion is successful in bringing on the two extra bills, we also get to a diminution of the definition of ‘refugee’ through a constriction of the definition of the word ‘persecution’—a matter that has brought great concern to the experts within our nation who have to deal with these matters in the legal and humanitarian senses.

Madam President, at the weekend you may have heard the comments from Australia’s own Human Rights and Equal Opportunity Commission. That is set up to do just what it says. It is a commission which is there to defend human rights and equal opportunity under our law. Let me read a little of what Ms Alice Erh-Soon Tay, the President of the Human Rights and Equal Opportunity Commission, has said in a letter which has gone to most, if not all, of us:

I refer to current proposed changes to migration and related legislation in the Border Protection (Validation and Enforcement Powers) Bill 2001 (“the Border Protection Bill”), the Migration Amendment (Excision from Migration Zone) Bill 2001 (“the Migration Amendment Bill 1”) and the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001 (“the Migration Amendment Bill 2”). I will refer to these bills together as “the Amendment Bills”.

The provisions of the Amendment Bills are of great concern to the Human Rights and Equal Opportunity Commission (‘the Commission’) for the reasons outlined below. It is the Commission’s strong view that the provisions of the Amendment Bills undermine Australia’s commitment to international human rights obligations.

That is not the incidental opinion of a bystander. Here we have the national body set up to defend those who believe that their human rights or their equal opportunities are being infringed. The president of that body, in a very unusual move, has gone public to say that the commission’s strong view is that the provisions of these bills undermine Australia’s commitment to international human rights obligations. Where is the Labor Party in defence of those international obligations and indeed the consequences for domestic law and rights within our nation? The president goes on to say:

It is a disappointing departure from established Australian legislative tradition that changes to fundamental human rights guarantees could be made in haste without extensive consultation and public debate.

That is what we have here—hasty decision making on hugely important matters in the absence of proper public debate and input. How can this chamber hold its head up high or believe that it has discharged its duty on a matter like this when there has been no committee, no opportunity for the public and the very bodies which are there to ensure that we understand legislation like this to feed into this process? This legislation is being railroaded through the parliament by a government with an eye on election and an opposition with its eye on exactly the same thing. The opposition is unwilling to act as an opposition and is failing as opposition, even as the government is failing its role in looking after all of us, as the Prime Minister promised to do at the last election. Ms Erh-Soon Tay goes on to say:

The parliamentary committee system allows for detailed consideration of proposed legislation and public comment on laws that, if enacted, would seriously affect existing rights. In the absence of consideration of the Amendment Bills by parliamentary committee, the Commission considers it imperative to raise some of the human rights implications of the proposed legislation.

In general terms, the Bills introduce inconsistency into the refugee determination system and mark a retreat from human rights protection in Australia. In more specific terms, the Commission is concerned that the Amendment Bills:

- erode the universal application of human rights;
- undermine core international human rights guarantees; and
- undermine judicial protection of human rights.
She goes on to speak about each of those in turn. How can the government, which is charged with upholding international treaties on these matters—on human rights and judicial protection of human rights—rush legislation of this nature through this parliament on the eve of an election, without having the decency to take into account what the public experts out there are saying? The national legal bodies are echoing those sentiments. They are very alarmed about what is going on here.

Madam President, you will remember that just two years ago this Senate passed my bill opposing mandatory sentencing which ensnared indigenous youngsters in the Northern Territory. The bill then went to the House of Representatives, where the government, under pressure, including from members of its own ranks, moved to intervene to uphold basic rights in the Northern Territory against mandatory sentencing which was doubtlessly infringing the rights of Australians.

Here we have got legislation which also infringes the rights of Australians, by such things as cutting access to the courts, but which goes on to say that people within our borders who commit certain crimes are subject to mandatory sentencing. The Labor Party is backing that. It will be very interesting to hear what argument the Labor Party puts up in its new-found support for mandatory sentencing, for goodness sake.

We have got a Labor Party in the Northern Territory getting kudos from around the world and domestically for moving to reduce mandatory sentencing, to take it off the statutes, and here we are in the national parliament, which took the lead in achieving that outcome two years ago, bringing mandatory sentencing into this place now. What an extraordinary outcome! And how particularly extraordinary that the Labor Party should be backing this. How can the Labor Party, which has fought so strongly to remove mandatory sentencing at state level, at territory level, now be backing the Howard government in bringing it into this place?

I know Senator Harris and I have got disagreements in some areas, and I hope he will listen carefully to what I have to say here. The Prime Minister’s handling of this issue has taken Pauline Hanson’s One Nation Party off the front pages, and I will tell you why. Through this legislation, the Prime Minister is, firstly, effectively bringing into law Pauline Hanson’s policy of turning around the ships and sending them back to who knows where and, secondly, changing the status of Christmas Island and others to allow people to be processed under a different regime of law in one part of Australia compared to another. That was her idea. She was flagging that a week before the Prime Minister took it up. The Prime Minister has been taking Hanson ideas—One Nation ideas—and bringing them into the parliament and, amazingly enough, getting Labor backing. So we now have One Nation, the coalition and the opposition all on the same base. One Nation was there first, the Prime Minister has moved to it now and the opposition, failing to be an opposition, has moved across to be there as well. All three are crowded onto the one base.

The feedback I get from the electorate is very different indeed. You may not have seen an opinion poll about this issue in Tasmania two weeks ago, Madam President, but people were asked what they thought of the Prime Minister’s handling of the Tampa affair. Polls around the country were saying that 70 per cent, 80 per cent and 90 per cent of people supported it; in Tasmania it was 67 per cent. When it came to the green voters in Tasmania, it was 20 per cent. People had been offered a very clear option. Had the Leader of the Opposition, Mr Beazley, and his shadow cabinet gone to the people with a decent point of view, in opposition to the Prime Minister’s indecent point of view on the asylum seeker issue, the outcome would be very different now.

It will be the one that we will see the Australian people expressing a little further down the line—that is, opposition to the new way of handling people who come to our shores, not with a welcome and not with a proper processing manner which is befitting people who have come from places of terror like Afghanistan but with a heavy hand that reminds some of them that they have not escaped to what they thought was a Western democracy, that they have escaped to a de-
democracy which is seeing its own tenets of justice eroded by legislation rapidly passing through this parliament without an opposition. These bills should be dealt with after proper consideration by a committee. I do not support this motion.

Senator HARRADINE (Tasmania) (1.03 p.m.)—I would have preferred debate on the migration bills to have taken place later this week. The government might say that their place is at the top of the list. I acknowledge that, but the government and the opposition will acknowledge too that these pieces of legislation deal with fundamental issues which, in many respects, go to the heart of human nature. I, for one, would appeal to the government to allow at least the Migration Legislation Amendment Bill (No. 6) 2001 to be considered later in the week because that bill is still before the committee. I do not know when the committee anticipates reporting to the chamber. I find the reports that come from our committees very useful. In my situation as an independent, the work that colleagues do on committees is much appreciated. Very often I try to attend the committees. Certainly, the Joint Committee on Foreign Affairs, Defence and Trade and its subcommittees take up a lot of time. I raise this issue because I am concerned about the merits or otherwise of these pieces of legislation. This is not the time to debate that. I simply make an appeal to the government and to the opposition to at least have a look at the committee report. So far as I am concerned, that report would be very useful. I join with colleagues in sympathy to the Manager of Government Business in the Senate, Senator Campbell.

Senator HARRIS (Queensland) (1.05 p.m.)—I rise to support the motion on the migration bills. These bills are of significance and should be handled expeditiously, and no doubt robustly, by this chamber. I support Senator Hill’s motion in relation to this legislation. I would also like to place on record my sincere condolences to Senator Campbell.

Senator BARTLETT (Queensland) (1.06 p.m.)—It is important to highlight clearly what is happening with the migration legislation. Each step of the process being followed in relation to this raft of legislation—the seven bills listed in this motion—is one more step in an attempt to railroad these incredibly significant pieces of legislation through this Senate without adequate scrutiny, in the shadow of an election. It is a very dark day for democracy in that these bills have incredible precedence in a range of areas that undermine the rule of law. They challenge aspects of the constitution and seriously challenge the whole notion of separation of government that underpins our system of government; that obviously puts the rights of asylum seekers under serious threat and that quite clearly puts people at greater risk of being returned to face persecution.

That is a fundamental obligation of Australia not just under the refugee convention but under other conventions as well and under our own law. It could potentially have enormous negative international ramifications, in terms of not just how people perceive Australia internationally but what consequences may occur in relation to how other nations deal with this global issue. The Democrats think it highly inappropriate that there should be an attempt by the government to rush through in the dead of night bills that deal with such fundamental life and death issues, and human rights issues. I would say to those in the community who support the thrust of what the government is doing in relation to this issue to think again about the precedent of allowing fundamental human rights to be abused and removed in a midnight sitting of the Senate in the shadow of an election.

If political parties think that they can get away with rushing through legislation—whilst concerns are being diverted elsewhere in relation to global war and in relation to pending elections—that, on this occasion, takes away people’s legal rights and basic human rights, people might start to think, ‘Well it’s only a bunch of queue jumpers, we don’t need to worry about it.’ It may be the so-called queue jumpers this time, but it will be another group in society next time. Unless we stand up and properly examine what is being done in relation to one group of human beings by virtue of these bills, we provide no
guarantee against it being done in the future to another group of human beings who may be sitting back supporting the approach that this government is taking in relation to this issue.

Once you remove the opportunity for proper scrutiny of the actions of government, or the actions of government officials, you really are putting at risk the rights of the entire community. If governments, ministers and departmental officials are able to act outside the law, and not have adequate legal oversight or legal scrutiny of what they are doing—whether that is parliamentary scrutiny or legal assessment—it puts at risk the rights of the entire community in the future. We saw that in some respects when we were examining another piece of legislation last year before the Olympics—the so-called shoot to kill bill. A lot of the concerns that were raised about that were because of the complete lack of accountability in terms of the actions of the government and government officers. It gave incredible powers and provided no real opportunity for the exercise of those powers to be properly scrutinised or for citizens to be able to have the protection of the law if those powers were misused.

What is at stake in relation to these bills before us is enormous powers, enormous discretion being provided to an enormous number of government officials with no opportunity to ensure that those powers are exercised responsibly and exercised appropriately. This is an incredibly dangerous precedent and one that should be avoided except in the most extreme of circumstances. Despite the government’s attempt to whip up this issue to suggest that it is some sort of national emergency, which it quite clearly is not, such draconian powers should not be provided in such a circumstance.

The Democrats are particularly concerned that a number of the bills listed to be pushed through in a midnight sitting include bills that have not had proper scrutiny. Senator Harradine mentioned Migration Legislation Amendment Bill (No. 6) 2001, which has been sent to a Senate committee for scrutiny. We started examining that single bill last Friday and the committee heard evidence from the United Nations High Commissioner for Refugees as well as Dr Penelope Mathew from the Australian National University and from the department. Despite all the government’s statements that they had consulted with the UNHCR—and the UNHCR, whilst not one hundred per cent thrilled, was not concerned that it would breach their obligations—when we got the chance to question them ourselves, they said something very different and gave quite a different perspective on how they felt about just that one bill. They made it clear that that one bill could lead to Australia contravening what is probably the fundamental central principle of the refugee convention, which is non-returning of a person to face persecution.

They said, quite categorically, that passing that one bill could lead to Australia breaching not just a fundamental obligation under the refugee convention but, I would argue, a fundamental ethical principle, that you do not toss somebody back into a lion’s den to face danger. They had a range of concerns which they expressed about that one bill and a lot of aspects to it. They were supportive of some components of the bill but they expressed very serious concerns. Some of those quite clearly were concerns that would equally apply to the Migration Act as it stands now. Let us not forget that we have already an incredibly stringent and strict Migration Act in many respects in relation to claims for protection for asylum seekers who are seeking to be assessed as refugees. We already have an incredibly strict approach. The suggestion that we are a soft touch is laughable, yet it continues to be made and continues to be used as a justification for bills such as these.

We already have a situation where legal avenues of appeal are significantly curtailed. We already have a situation where the Minister for Immigration and Multicultural Affairs and departmental officials have incredible discretion which is not reviewable by any review process, appeal process or legal process. There are already quite significant restrictions on people—including the shameful system of mandatory detention, which is one of the harshest in the developed world. We are clearly already not a soft touch, yet we are moving further down the path of signifi-
cantly restricting the ability of people to seek protection from persecution. The global body responsible for overseeing the protection of refugees has expressed significant concerns about the Migration Legislation Amendment Bill (No. 6) 2001. The first three bills listed in this motion—the Migration Amendment (Excision from Migration Zone) Bill 2001, the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001 and the Border Protection (Validation and Enforcement Powers) Bill 2001—only saw the light of day last Wednesday, and we have not had the opportunity to get comprehensive feedback, indeed much feedback at all, on them from the UNHCR. There has been some initial—very unflattering—assessment of them by the Human Rights and Equal Opportunity Commission, and some initial assessments by other experts raise serious concerns.

I would bet that not even the government has really thought through the full ramifications of those three pieces of legislation, because they are predominantly political documents. They are predominantly being put forward as part of a deliberate attempt by this government to gain political advantage, and that has to be the most appalling approach to legislating in general, and particularly to legislating in such a crucial area as this one. The primary motivation of short-term political gain with no real concern for the long-term damage to our nation, to our rule of law or to the risk that it puts individual people into and at is quite disgraceful. To try to extend the hours of sitting to enable the passing of bills that have had virtually no scrutiny and to overturn a previous decision of the Senate to refer one of them to a committee for proper scrutiny, because of the recognition of the far-reaching nature of it, is quite unjustifiable and should be condemned.

I suggest that this package of bills represents the single most comprehensive assault on the rights of refugees and asylum seekers in the 100-year history of this parliament. In the same way that people point to 1901 and to our passage of the immigration legislation that implemented the White Australia Policy, I think in future people will point to 2001 and this package of bills as a very black mark on our nation’s approach to migration and refugee issues. The same sorts of irrational fears that applied in 1901 are being whipped up again in 2001 by incredibly irresponsible political leaders and others in our community. This will leave us with the same terrible legacy we have in our approach to people from other countries that we inherited from 1901. It is an incredibly serious matter—not only the content of this legislation, which we will debate later on, but also the actual process that is being followed—and it is, as I said, a very dark day for our democratic system when we try to railroad legislation through without proper scrutiny, without proper opportunity to really examine the consequences and without proper opportunity to make the public aware of the consequences.

There is no way that the general public is aware of what these bills actually do or of what the negative consequences will be. This is being painted as just a general approach to deal with a problem that is being blown up to be much bigger than it is—and it will not even solve that situation, which is the other absurdity of the whole process that we are going through. It is not going to stop people seeking asylum. They are seeking asylum because they are being persecuted, and people unfortunately are not going to stop being persecuted. This is approaching the issue in completely the wrong way and it is causing enormous damage to Australia in the process.

The Democrats strongly oppose this motion. In general, the approach of legislation through exhaustion should be avoided if possible. Certainly on this occasion, in relation to legislation that is so far reaching and has not only enormous consequences for incredibly vulnerable individuals but also negative consequences for our country, it is completely against the national interest to rush through major legislative changes without the opportunity for any sort of decent scrutiny or any real chance not just to get community opinion but even to inform and develop community opinion about these issues. The process that is being used is particularly unfortunate and it caps off the particularly unfortunate approach that some members of
the government for some time now have
taken to this issue. It is in some ways a real
indictment of the lengths to which some in
this government, including the Prime Minis-
ter, are willing to go to gain political advan-
tage. The cost and the consequences to the
nation are put second to the opportunity for
short-term political gain. Obviously, when
you have an election just around the corner,
the political gain needs only to be very short
term and the cracks and the failure of this
approach will become apparent only after the
election. This again highlights the reason
why the government is keen to railroad these
through in some form of midnight sitting.

The Democrats will strongly oppose this
motion as bad process and bad procedure—a
serious undermining in many ways of the
fabric of our democratic system, which has
already taken a battering and had a loss of
confidence in recent years. This certainly is
not going to help that in any way. There are
at least 10 good arguments why this motion
is a particularly bad idea and probably many
more besides that. Each one of them alone is
sufficient justification for opposing this mo-
tion.

Question put:
That the motion (Senator Hill’s) be agreed to.
The Senate divided. [1.27 p.m.]
(The President—Senator the Hon. Marga-
et Reid)

Ayes........... 47
Noes........... 9
Majority....... 38

AYES
Abetz, E. Bishop, T.M.
Boswell, R.L.D. Brandis, G.H.
Buckland, G. Campbell, G.
Carr, K.J. Cook, P.F.S.
Coonan, H.L. * Cooney, B.C.
Crane, A.W. Crossin, P.M.
Denman, K.J. Eggleston, A.
Evans, C.V. Ferguson, A.B.
Ferris, J.M. Forshaw, M.G.
Gibbs, B. Gibson, B.F.
Harris, L. Hill, R.M.
Hogg, J.J. Hutchins, S.P.
Knowles, S.C. Lightfoot, P.R.
Ludwig, J.W. Lundy, K.A.
Macdonald, J.A.L. Mackay, S.M.
Mason, B.J. McGauran, J.J.J.
McKiernan, J.P. McLucas, J.E.
Murphy, S.M. O’Brien, K.W.K.
Patterson, K.C. Payne, M.A.
Ray, R.F. Reid, M.E.
Schacht, C.C. Tambling, G.E.
Tchen, T. Tierney, J.W.
Troeth, J.M. Watson, J.O.W.
West, S.M.

NOES
Bartlett, A.J.J. Bourne, V.W. *
Brown, B.J. Cherry, J.C.
Greig, B. Harradine, B.
Murray, A.J.M. Ridgeway, A.D.
Stott Despoja, N.

* denotes teller

Question so resolved in the affirmative.

Consideration of Legislation

Senator Hill (South Australia)—Leader of
the Government in the Senate) (1.33
p.m.)—I move government business notice
of motion No. 2:

(1) That the provisions of paragraphs (5) to (7)
of standing order 111 not apply to the fol-
lowing bills, allowing them to be considered
during this period of sittings:
Migration Amendment (Excision from Mi-
gration Zone) Bill 2001
Migration Amendment (Excision from Mi-
gration Zone) (Consequential Provisions)
Bill 2001
Border Protection (Validation and Enforce-
ment Powers) Bill 2001
Migration Legislation Amendment Bill (No.
6) 2001
Migration Legislation Amendment Bill (No.

(2) That the Migration Legislation Amendment
Bill (No. 6) 2001 may be proceeded with be-
fore the Legal and Constitutional References
Committee reports on its provisions.

(3) That the government business orders of the
day relating to the following bills may be
taken together for their remaining stages:
Migration Amendment (Excision from Mi-
gration Zone) Bill 2001
Migration Amendment (Excision from Mi-
gration Zone) (Consequential Provisions)
Bill 2001
Border Protection (Validation and Enforce-
ment Powers) Bill 2001
Migration Legislation Amendment Bill (No. 6) 2001
Migration Legislation Amendment Bill (No. 5) 2001
Migration Legislation Amendment Bill (No. 1) 2001

This is the motion that provides that the cut-off provisions do not apply to a series of migration bills. The urgency of the matter is well known. I heard Senator Harradine speak about the Migration Legislation Amendment Bill (No. 6) 2001. In normal circumstances I would agree with him, but I understand that the Legal and Constitutional References Committee is not due to report on that matter until mid-October, which of course would not allow the legislation to be passed this week, which the government believes to be critically important. I therefore commend the motion to the Senate.

Senator BROWN (Tasmania) (1.33 p.m.)—The urgency of the matter is not well established at all. I expected the Leader of the Government in the Senate to explain why this matter is urgent. What has happened to the problem of boat people coming to Australia, for example, that is different from six months ago? Possibly the numbers have changed, but that flow has been large for the last couple of years. There has not been a change. The government has had five years in which to bring in this legislation and make sure that it is properly dealt with. Dealing with it properly includes going to a committee so that we as legislators can canvass the opinions of the top brains in the country in these matters. It is not good enough for Senator Hill to simply say, ‘The urgency of the matter’s well understood.’

What I see here is a failure of government. If dealing with boat people and refugees is an urgent matter now, it was six months ago. The only thing that has changed is that the Prime Minister has noted clearly that there is an election coming and has made an election issue out of it. The opposition has decided to follow suit, without the backbone to stand up for principle—even principles that it has argued for strongly in this place. It is now going to pass legislation that it has refused to pass for three years, stripping the rights of people within our borders on such time-honoured things as access to the courts or the right of judicial review. I absolutely oppose the inordinate haste that is built into this motion. It is an abuse of parliament, if you ask me, and it is on a very important matter to the nation. I am amazed that the opposition is not taking a stand on it.

Senator BARTLETT (Queensland) (1.36 p.m.)—The Democrats are also opposed to this motion, and it is worth highlighting what the motion actually seeks to do. Firstly, it seeks to exempt five bills: the Migration Amendment (Excision from Migration Zone) Bill 2001, which exempts Christmas Island and other places; the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001, which introduces continuous temporary visas; the Border Protection (Validation and Enforcement Powers) Bill 2001, which tries to put the government beyond the law, retrospectively validates any illegal activities, contains mandatory sentencing and does a lot of other things; the Migration Legislation Amendment Bill (No. 6) 2001, which restricts the definition of ‘refugee’; and the Migration Legislation Amendment Bill (No. 5) 2001, which deals with exemptions from the Privacy Act provisions.

The first part of the motion seeks to exempt those five bills from standing order 111, which basically is the standing order that enables the Senate to give proper scrutiny to legislation: a bill that is introduced in one session should be debated in the next to give adequate time for consideration. Those five bills will need to be exempted from the cut-off to allow them to be considered in this session. Of course, let us not forget that ‘in this session’ means just this week—that is, it is a truncated session, which highlights that there is even less time to give proper consideration to these bills. So part (1) of the motion on its own is of some concern.

Part (2) is of much greater concern. It would enable the Senate to debate the Migration Legislation Amendment Bill (No. 6) 2001—which narrows the definition of ‘refugees’—before the Legal and Constitutional References Committee reports on its
provisions, basically to force the bill through before the committee examining it gets a chance to do that examination and report back to the Senate. It is basically to ensure that the Senate passes the bill blindly without knowing what it is really doing. That one is quite serious. I do not know whether or not it is an unprecedented action—perhaps someone with a bit more knowledge of the history of the chamber over its 100 years might have a clearer idea—but certainly it is very unusual for the Senate to send a bill to a committee, recognising that the bill needs proper scrutiny, and then to force a debate on the bill before the committee can report back. I would think that that is quite unusual, and I think it shows contempt not just of the Senate in making that reference but also of the committee and of the public.

The committee has advertised the inquiry into the bill, and it has sought public submissions. About 20 or so people and groups have provided submissions. The committee has organised public hearings. It conducted one last Friday, and it has another one scheduled for 4 October. It aims to hear from very significant people and organisations such as the Refugee Council, probably Amnesty International and other groups with expertise in this area. The committee is doing its important job of having legislation properly scrutinised, but this motion seeks to basically tell the committee that it is wasting time and not to bother and that we are not going to pay any attention to it. That is not just contemptuous of the committee but contemptuous of all those who have sought to have input and to ensure that there is not only informed debate but informed decision making on this issue. That specific part of the motion is of particular concern to the Democrats, and I think it highlights what is going on here. It is important to emphasise, and to use each step of this process to highlight, what is going on here.

Back when that referral to the committee was made—which was only in the last sitting fortnight, so about three weeks ago—there was significant debate in this chamber, as well as outside it, about whether the bill should be referred, which committee it should be referred to and when it should report back. There was quite obviously a majority view in this place from the Democrats and the opposition that it was sufficiently serious that it should be given proper scrutiny, that it should not just be flicked to a committee and flicked back without proper examination and that there should be a reporting date in the next sitting fortnight in October.

The only thing that has changed, of course, is the political climate, and that has led to the government’s attempt not just to ignore the committee’s work but to try and force all these bills through. Again, that shows that the motions and the decisions being made in relation to these bills are driven not by public interest, not by an informed view on the legislation, but purely by political motives. Obviously, you cannot avoid having political motives to some extent in politics; they always come into play. But they need to be kept in check; they need to be kept in balance with the fundamental role that all of us here play, which is assessing legislation and providing a check and a balance to the activities of the executive and the judiciary, properly assessing and making informed decisions about the impacts of legislative change, particularly in significant areas—and this area specifically is very important.

My amendments have been circulated. The first amendment seeks to omit paragraph (2) of the motion. This would allow the committee to continue its work and not be a slap in the face to the committee and those who have already put in submissions and who are seeking to participate properly in the legislative process. I think that is at least a small thing the Senate can do to show good faith towards the scrutiny process of what is just one very significant bill amongst many. As I stated just before, already very serious concerns have been raised by the UNHCR in relation to a number of aspects of that bill.

The other thing that this motion does is enable all seven of these bills—the five that I read out before plus the judicial review bill, which seeks to limit the opportunity not just for refugee claimants but for claimants involved in migration issues more broadly to have access to the courts to consider any
failures of legal process in relation to their decisions, and also Migration Legislation Amendment Bill (No. 1) 2001, which seeks to restrict people’s opportunity to engage in class actions to get their concerns addressed through the legal process—to be debated at once. Any one of these bills, with the possible exception of the Migration Legislation Amendment Bill (No. 5) 2001, is significant enough on its own to deserve proper scrutiny. To try to force all seven of them to be debated at once so that each senator can address only a small component of the whole package of bills in speaking in the second reading stage highlights again the desire of the government to avoid any proper scrutiny of the many issues that are raised by these bills.

The motion in total seeks to exempt them from standing order 111, which means putting them to debate more quickly than is desired under the intent of that standing order. It sends a significant insult to a Senate committee. Its says that the Senate wants to debate a bill which two or three weeks ago it recognised was sufficiently important to be scrutinised. It is now sending a message saying that scrutiny does not matter, the committee and those who have had input so far are not important and do not count, and it is not interested in their views. It seeks to again prevent proper debate on the bills by having all seven of them debated at one time. All of those aspects of the motion specifically combine to again prevent proper scrutiny of the issues and proper examination of the many aspects of these bills that have such serious ramifications.

The Democrats believe it is important that there is proper debate on these bills. They clearly require comprehensive examination. That ideally should have occurred in the committee stage, but last week the Senate prevented three of these being sent to a committee and now, through this motion, is trying to drag one of them back from a committee as well. Two of them, the judicial review bill and amendment bill No. 1, have been examined by Senate committees, and of course in both those committee reports the ALP members of the committee highlighted their opposition to those bills. But five of the bills have not been examined by a Senate committee. Three of them have been around for less than a week, and they require—they demand—proper examination.

The Democrats’ approach on these bills is not to waste the time of the Senate; our approach on these bills is to ensure that the issues are at least put on the record and that there is an opportunity for the voices of concern amongst the community to be put out in the open, for there to be a voice of genuine opposition to what is being done through these bills and also, hopefully, for some clarification from government ministers. We have not had the opportunity to have committee inquiries to get detail from the departmental officials about how some of these mechanisms are going to work. There are a lot of unanswered questions on a number of these bills about how they going to be implemented, about what procedures the government is going to put in place and about what the cost to the taxpayer will be in an economic sense. These bills have a financial impact statement that has to be the most feeble and unclear one I have ever seen. It suggests that there may be some costs to the taxpayer but that there may be some savings. We need a bit more detail than that. That is why, given we have not had the opportunity to examine them in a Senate committee, we should be able to provide some opportunity for scrutiny of some of these questions and for scrutiny of members of government to get some of those answers on the record.

It has been very difficult to get specific responses from the government to get information on the record about how just in the last few weeks they have been going about things in relation to these issues. It has been policy making on the run with quite a clear attempt to prevent adequate information being released about what is being done. Again, it is a duty of this chamber, this Senate, and this parliament to shine a spotlight on some of those issues and not to allow the government to get away with operating in such secrecy without clearly explaining what they are doing.

The opportunity to do that is severely curtailed by this motion of having all seven of these bills debated together. It signifi-
cantly curtails our opportunity to perform our duty in getting a proper examination of these matters. So it is quite a significant motion, and I think it is worth highlighting the nature of the motion. It is important to ensure that it is put on the record what the consequences of this motion are, what the underlying motivation of the motion is from the point of view of the government and what the ramifications are for the proper exercise of the Senate’s responsibility. I am assuming that this motion is likely to go through, although I do hope the opposition gives some consideration to the amendment I am about to move and to the second one which I will move together with it. I seek leave to move them together.

Leave granted.

Senator BARTLETT—I move:

(1) Omit paragraph (2)
(2) Paragraph (3), omit “Migration Legislation Amendment Bill (No. 6) 2001”

Amendment No. 2 is also to exempt migration bill No. 6 from the list of bills to be taken together. That is the bill that is before the Senate committee, and it is consequential with my other amendment, which seeks to enable that committee to continue to do its work. It is at least one thing that the Senate could do to show some modicum of good faith in the process here and provide some opportunity for scrutiny of these important issues.

Senator Hill, in his brief speech to this motion, said that in normal circumstances the government would allow these bills to be properly examined, but these were not normal circumstances. They are not normal circumstances but they are circumstances of the government’s making. There is a crisis in this government’s handling of the issue of asylum seekers. They have generated that crisis and have made these very abnormal circumstances—all the more reason why any further actions of the government in this area need to be properly scrutinised, because of the very abnormal circumstances which this government have generated through their mishandling of this issue, through their politically driven approach to this issue rather than taking a sensible, constructive policy approach.

The only other thing that is making these not normal circumstances is the pending election. That highlights why the Democrats’ view is so important about why we need to have fixed terms in this parliament, so that we cannot have the government manipulating the legislative program for its own short-term political gain. If we had fixed terms, we would know whether or not this was the last week of sitting. I think all of us are assuming very strongly that it is, but we do not know. It is being used as a justification to rush things through when we do not need to. If we had fixed terms, we as a legislature could more effectively plan that legislative program and ensure that we knew how much time we had. So it is not in any way an adequate justification. The only abnormal aspect of those circumstances is that the government is wanting to maintain maximum flexibility to act in its own short-term political interests, again not a good reason for rushing through legislation without proper scrutiny.

So there has been no case put of any substance by the government as to why this motion needs to be passed, as to why all these bills should be clumped together as one to prevent adequate examination, as to why they should be rushed through at all, and as to why a bill should in effect be recalled from a committee before that committee has had a chance to scrutinise the legislation, particularly given that, in the short amount of scrutiny that committee has already been able to give, there have been very serious concerns already raised.

All those things highlight why Senator Hill’s motion is a bad idea. No case has been put by the government as to why it is a good idea, other than that it helps the government’s own short-term political interests. It is certainly not the Senate’s responsibility to facilitate the shabby political intent of the government of the day. Indeed, it is our responsibility to resist such a perversion of the parliamentary process and, more broadly, such an undermining of the value of our democratic process. This is a bad motion relating to bad bills, and the process that is being adopted is a bad one. The Democrats
oppose the motion, and we certainly encourage others in the Senate to do so. We also encourage them to support the amendments I have moved to at least ensure the possibility of scrutiny of the one bill about which the Senate has clearly expressed the view that proper scrutiny is needed. In some ways, I think that passing this motion would reflect negatively on that previous vote of the Senate, when it made its decision to have proper scrutiny of the Migration Legislation Amendment Bill (No. 6) 2001 by the very able Senate Legal and Constitutional References Committee. That is a particularly unfortunate precedent and, for that reason, I have specifically moved amendments to remove that bill from the lists in parts (2) and (3) of this motion.

Senator HARRADINE (Tasmania) (1.54 p.m.)—I support the amendments moved by Senator Bartlett, and I do so for the very reasons advanced by Senator Bartlett in persuasive and measured terms. There was only one thing there that I might have an argument with Senator Bartlett about, and that is the question of fixed terms. That is an argument that can probably wait for another day. What Senator Bartlett said to the chamber is, we all know, true. There is nothing he said—and I listened very carefully for the whole time he spoke—which was contrary to what we all feel about the role of this chamber and about how we should operate vis-a-vis the executive government.

Senator Robert Ray—Don’t you remember that guillotine and gag you crushed us with?

Senator HARRADINE—Go on: when?

Senator Robert Ray—You know the one. It was the most vicious ever in this parliament’s heritage, and you voted for it.

Senator HARRADINE—I would be interested to be reminded about that. Maybe I would be able to let Senator Ray—

Senator Robert Ray—It was on the sale of Telstra.

Senator HARRADINE—No: we debated the sale of Telstra fully. On that matter, when I did it, one of your colleagues—I will not say who—said, ‘You have done what ought to have been done. Only you did not get to it soon enough, that was your problem.’

Senator Robert Ray—Maybe we are doing what ought to be done today.

Senator HARRADINE—If you were doing what ought to be done today, you would be supporting the amendments advanced by Senator Bartlett on this motion that we are discussing. I said before, when I intervened briefly in the previous debate, that it is not my intention to add extensively to the debate on these matters or to go to the merits of the issues during these procedural debates, nor will I. Sufficient has been said by Senator Bartlett to jog all our susceptibilities as to what ought to be the case and as to how all these matters ought to be dealt with because of their great importance to many areas of major public importance.

Senator ROBERT RAY (Victoria) (1.57 p.m.)—A few things have been said in this debate. Senator Brown said that Senator Hill’s explanation for the necessity of this resolution was cursory. I think Senator Brown was being very kind to Senator Hill who, if I can read body language, had two things on his mind: briefing for question time and some lunch. I think those are the things that dictated his speech, rather than any passion or rationality. The fact is that Senator Bartlett has said that, by cognating seven of these bills, it may not be possible to address them properly. I do not want to verbal him, but I think he was especially talking about the second reading debate. I think there is some merit in that and, clearly, if the party spokesman or one of the independents believes they may need more than the allotted 20 minutes to address and cover adequately the seven bills, I for one will be sympathetic in terms of lobbying my own side for that particular eventuality to be covered by an extension of time. Certainly, with seven bills up, that would be logical for a particular spokesman.

But let us go to the cut-off part of the motion. We are really saying that these bills will be debated either this week or in February. That is the reality. Either they are going to be debated this week and resolved or they will be resolved in February. There are not going to be any other sittings between now and
then, other than maybe one ceremonial one of some sort. Therefore, supporting the cut-off is not that hard. I think around 125 to 127 bills have been subject to a cut-off resolution since we resumed after the 1998 election. The Labor Party has only ever opposed the cut-off for one, and we still have that listed for debate in this chamber later today. There is nothing too complex in these bills, so the argument that these bills are immensely complex and, therefore, we should not have the cut-off motion is not valid. However, I respect the argument from those who say they do not agree with the bills and who ask, therefore, why they should support a cut-off motion. I cannot argue against that. If that is your world view, it is, and you are certainly entitled to it, and that is legitimate.

The real problem we face in this debate—and we faced it in the previous debate—is that this is all being done in a vacuum. We have no idea how long is being given or whether enough time is going to be given to these migration bills or to any other bills in this session. We have no idea because this government has no idea. It is not managing the program at all. It is trying to salami slice one issue at a time. Hopefully, it will all come out at the other end and we will not, therefore, have a problem. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

QUESTIONS WITHOUT NOTICE
Ansett Australia: Tax Adjustments

Senator SHERRY (2.00 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware that Australian businesses that have paid for tickets from Ansett—including GST—will be unable to claim GST input credits because the Ansett collapse has prevented them from using the flights in question? Is the minister also aware that, according to an ATO press release put out on Friday, businesses that have already claimed GST credits on Ansett tickets will have to repay these credits to the Taxation Office? What does the minister say to these businesses which, as PricewaterhouseCooper’s GST practice leader Ken Fehily puts it, ‘will be stunned’ to find out that they owe the tax office as well as being out of pocket to Ansett? Does the government intend to reverse its position on input credits, or else provide GST refunds to businesses hit by this aspect of the Ansett crash?

Senator KEMP—Senator Sherry is aware that the tax office put out a press statement last week entitled ‘GST adjustments for cancelled airline travel’. There are a number of key points that are probably worth making.

For example, the press statement says:

GST is payable on most domestic air transport—
but not on international flights or connecting domestic legs of international flights.

In respect of individual consumers, it states:

Airline customers who have paid for domestic flights ... been cancelled, can seek a refund of the ticket price from the relevant airline or ... supplier. The GST is in the final price charged by the airline for the supply of the flight, and if the supply is not made, it is a contractual matter between the airline and the customer. Any refund ... includes GST.

I am advised that the Commissioner of Taxation has no power to pay customers of any entity a refund of GST included in the price of goods and services that they have purchased but which have not been supplied. Businesses that are registered for GST may also be able to obtain refunds from the relevant airline or from the credit card suppliers. The collapse of a GST registered business may mean that certain supplies have no prospect of being made, and that is what Senator Sherry is aware of. This has the effect of cancelling these supplies and triggering a GST adjustment event, both for the collapsed business and the GST registered businesses that have already paid for but not yet received supplies. The net effect of the adjustments—this is in relation to businesses that are registered for GST—is that no GST will be retained by the tax office on any of the cancelled supplies. Businesses that are not registered for GST are in the same situation as individual customers—except that they would be entitled to an income tax deduction for any unrefunded GST inclusive amount.

I think that deals with the matters that were raised by Senator Sherry. As I said, the Taxation Office has issued a press statement.
I would urge those people that wish to read this in full to go into the ATO web site, where matters in relation to the issues that Senator Sherry raised are outlined in some detail.

Senator SHERRY—Madam President, I ask a supplementary question. Can the minister explain why the Queensland Liberal Party, with the approval of the Minister for Small Business, was able to claim input credits when no GST was paid—while honest businesses are unable to claim credits when GST has been paid?

Senator KEMP—Senator Sherry, as usual, speaks nonsense. Can the Labor Party explain why the taxpayers have been forced to pay an additional $36 million into the coffers of the ALP due to the Centenary House rent—which I would say is a rort by any standard? I am a bit surprised that the old rort buster in the Senate, Senator Faulkner, has not been on to this one because this has been an absolutely disgraceful rort by the Labor Party. I might say it can be fixed with one phone call: Mr Beazley can phone up and say that that outrageous rent will be renegotiated. Senator Sherry, that is what I think the Labor Party should be focusing on. We are now in possibly the last week of this parliament—maybe not, but maybe we are—but there is time for the Labor Party to fix up this disgraceful rort. (Time expired)

Rural and Regional Australia: Telecommunications Services

Senator LIGHTFOOT (2.05 p.m.)—My question is addressed to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of how Australian consumers, particularly those in regional, rural and remote areas, continue to benefit from improved telecommunications services? Are there any independent reports which put to rest any scare campaigns about regional telecommunications services?

Senator ALSTON—Senator Lightfoot’s question is entirely apposite because not only have we put almost $1 billion into regional and rural Australia over the last 5½ years but also we have introduced the customer service guarantee, which is all about ensuring that people do not just get their phones fixed when Telstra is good and ready: it is about ensuring that carriers have to meet performance standards. When we tweaked it recently as a result of the Besley report we actually said that people are entitled to a temporary service within 30 days, so we have come a long way. The very good news is that the quality of service figures put out by the Australian Communications Authority, which have been released today, show that Telstra has improved its performance in connecting new services in all areas—urban, major rural, minor rural and remote. On the installation of new infrastructure, overall it is 92 per cent, up from 87 per cent in June 1999; on major rural, it is 89 per cent, up from 8 per cent; on fault rectification, overall it is 93 per cent, up significantly from 82 per cent in June 1999; and on remote areas, it is 87 per cent, well ahead of the 65 per cent figure in June 1999.

The Chairman of the ACA was moved to comment today that over the past 18 months Telstra has shown sustained high performance against the CSG standard for connection and fault repairs. Indeed, the TIO said recently that the number of customer complaints about Telstra had dropped to its lowest level in almost three years.

So where does the Labor Party stand on all this? Why are they not out there barracking for the customer service guarantee? Why are they not on the side of consumers? It is simply because they are taking the lazy policy option. They are out there lying and distorting and cheating and trying to mislead people into thinking—

Senator Cook interjecting—

The PRESIDENT—Senator Cook, cease shouting.

Senator ALSTON—Well, tell me about the pledge. Have you signed the pledge yet? The pledge has to be the most misleading document you have ever heard. Common-sense tells you, says the pledge, that under a privatised Telstra services will suffer. That is what it says.

Senator Cook interjecting—

The PRESIDENT—Order! Senator Cook, you were shouting in a totally disor-
derly fashion. There is an appropriate time for you to debate the issues, and it is not now.

Senator ALSTON—‘Commonsense tells you’—in other words, you cannot be bothered doing the policy hard yards. If you went into a court you would be laughed at if you said ‘commonsense tells you’. That is the last refuge of a policy scoundrel—that is what that is. All you do is go on writing letters that selling Telstra would mean phone services will suffer, whereas you know very well that by law—

The PRESIDENT—Senator, direct your remarks through the chair, not across the chamber.

Senator ALSTON—The Labor Party knows very well by law that those service standards are in place and will apply irrespective of ownership. Mr Beazley runs around saying that there would be no constraints at all on the costs that Telstra could impose if it were privatised. Again, he knows full well that is not the case. He knows by law because he was the communications minister who introduced the GBE requirements. So is it any surprise that we have Alan Ramsey lampooning Mr Beazley in the most extraordinary terms, quoting Mr Beazley as saying:

As I have outlined ... today, we need a national debate that includes all Australians as the starting point for putting in place stable policy that will bear fruit in the long-term.

In other words, after nearly six years he is out there calling for a national debate.

Opposition senators interjecting—

Senator ALSTON—What do I stand for? I will tell you one thing. What the Australian public will not stand for is being treated as mugs. They want to know not only what you stand for but how you are going to pay for it. You cannot even get around to doing that with only a matter of weeks to go before the election. Promising a national summit and three committees to kick-start a national debate which will ‘bear fruit in the long-term’—no wonder the public are outraged at Mr Beazley’s performance. As Alan Ramsey says:

He truly does not have a leadership bone in his body...

Being lectured by Beazley in the abstract on what he might or might not stand for is now all too late. That is what happens when a political party leaves everything to the end and gets overwhelmed by events.

The reality is Kim Beazley is killing himself, and Labor with it.

So it is all their own work. They have not bothered to do the hard yards. They are not interested in anything other than dishonest and deceitful scare campaigns, and the public knows it. (Time expired)

Senator Cook interjecting—

The PRESIDENT—Senator Cook, you are out of order.

Goods and Services Tax: Small Business

Senator LUNDY (2.10 p.m.)—My question is directed to Senator Kemp, the Assistant Treasurer. Does the minister recall comments by the Treasurer Mr Costello on 31 August 2000 that ‘business is increasing its confidence as a result of the introduction of the new tax system’? How does this claim sit with the finding by the Society of Certified Practising Accountants’ small business survey released on 18 September that 39 per cent of small business people believe the GST has had a negative effect on their overall business performance compared to only 19 per cent who believe it has had a positive effect?

Senator KEMP—Let me make it very clear. One thing that small business are very clear on is their fear of Labor Party’s roll-back. Ask anyone in business, Senator. I go around and speak to a lot of accountants, and the last thing they want is the Labor Party’s roll-back. I have gone on record on a number of occasions asking the Labor Party to stay back after question time and have a debate on roll-back so that we can clarify to the wider public just what roll-back means. I think I may have thrown out that challenge 22 or 23 times. I am waiting for a note from Senator Cook saying, ‘Senator Kemp, today we are going to debate roll-back.’ I have made a commitment that I am prepared to come back into this chamber and debate roll-
back with Senator Cook and Senator Sherry and Senator Lundy.

Small business are scared of roll-back and they are scared of tax rises that the Labor Party will bring in. You cannot promise more spending on every major area of government activity, you cannot promise to maintain the surplus, without raising taxes. A lot of us are concerned about whether the Labor Party have refused to commit themselves to the income tax cuts this party delivered. I think it is also correct to say that if Senator Lundy looks very closely at surveys which relate to small business she will find that one area is always very high on the list of concerns of small business—the unfair dismissals issue.

Senator Lundy—Answer the question. You still haven’t addressed the question.

Senator KEMP—I am addressing your question, Senator. Your question was: am I aware of a survey? I am making it very clear to you, Senator, that there are a lot of surveys around. What the Labor Party refuses to address is the concern that small business has for roll-back. I am happy to put out the 24th offer to the Labor Party today—this is the 24th time I have made this offer—that I am very happy to stay behind in the chamber after question time if I receive a note from Senator Cook or Senator Lundy saying that they are prepared to debate roll-back. But I can assure you, Madam President, I will be waiting in vain.

Small business are concerned about a variety of issues. The first one is the Labor Party on roll-back. The second issue is whether we are going to see another raft of tax rises if by some mischance of fortune the Labor Party manages to get into government. What is the Labor Party’s approach to unfair dismissals? Those are issues of major concern to small business. There are a number of issues I would like to raise. If Senator Lundy would be kind enough to ask me a supplementary question, I would be happy to pursue those points with her.

Senator LUNDY—Madam President, I will take up the invitation by the Assistant Treasurer to ask a supplementary question, with the chance that he might actually answer the question. Isn’t it clear from last week’s CPA small business survey that, far from increasing business confidence in the small business sector, the GST has had the opposite effect? How else can you read the results of the survey, which showed that 39 per cent of small business people believe the GST has had a negative effect on their business performance and only 19 per cent believe it has had a positive effect? Please address that question.

Senator KEMP—You say that 39 per cent say that it is of concern. If the question was contrasted with small business concern on roll-back, if it was contrasted with concern about the Labor Party approach to unfair dismissals, if it was contrasted with small business people’s fear of tax rises under the Labor Party, I would have to tell you that the Labor Party would not rate particularly well. My offer to you remains: if you wish to debate roll-back after question time, if you send me a note across the chamber with the messenger saying, ’I am prepared to debate roll-back with you,’ I will be here. But let me make a bet, Madam President: Senator Lundy will not send that note; Senator Lundy will scurry out of the chamber, as she always does when she has to debate any policy of any substance whatsoever.

Christmas Island: Government Assistance

Senator KNOWLES (2.16 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald. Will the minister inform the Senate of recent coalition government initiatives to assist the remote community of Christmas Island, particularly in relation to illegal immigrants? Is the minister aware of any alternative proposals?

Senator IAN MACDONALD—I thank Senator Knowles for that question. I know Senator Knowles, as a senator representing Western Australia, is always very concerned about unlawful boat arrivals on the north-west shores of Australia. I am asked what the government has done for Christmas Island. The Senate will know that we provide $70 million a year to the Indian Ocean territories for their general recurrent expenditure and capital works. We have recently announced funding of $100 million to support the space base facility on Christmas Island, which will
build new roads, build a new port and extend the airport. And, of course, we are assisting the mining company in the extension of its mining operations.

Senator Knowles particularly asked me about illegal boat arrivals. I am pleased to say that the government has announced that we will be developing a new multipurpose facility on Christmas Island for the Christmas Island people. It is something they have been asking for for some time. It will be multipurpose in that it can be used to house illegal boat arrivals if the need arises. The Minister for Immigration and Multicultural Affairs, Mr Ruddock, and I went to Christmas Island yesterday to consult with the Christmas Island people about the measures. We were very pleased to have a series of meetings with various groups. About 300 people out of a population of about 1,200 attended a public meeting at the Christmas Island Club, where we were able to answer many of the questions that have been raised. We were able to assure the people of Christmas Island and the Cocos (Keeling) Islands that the new measures to be introduced into the Senate would not impact upon them at all—that they would not affect people lawfully within Australia, lawful residents, but were aimed at illegal boat people.

Those at the meeting were very receptive, very appreciative. In fact, the Christmas Island Chamber of Commerce handed me a copy of a letter to Mr Ruddock, the first paragraph of which says:

On behalf of the Christmas Island Chamber of Commerce, may we congratulate you and your department on the manner in which you are dealing with one of the most difficult and politically sensitive issues confronting Australia today.

I add my congratulations to Mr Ruddock on the way he has handled that. Currently the old gym centre on Christmas Island is used. It is not really suitable. There is also a tent centre built up on the shores near the main living area of Christmas Island. It is not really suitable; with the wet weather coming, it will be entirely unsuitable. The government has arranged for an old tavern from Collie in Western Australia, which was going to Adelaide, to be diverted to Christmas Island so that it will provide immediate relief for any illegal boat people who come to Christmas Island in the very near future. In addition to that, there is the new multipurpose facility that the island has been asking for for some time, on which the government will spend between $7 million and $9 million.

I am asked whether I am aware of any other approaches to this issue. I am not. I am aware that Mr Beazley has flip-flopped over this issue, as he has flip-flopped over anything. I really do not know where those opposite are. I am not sure whether they support this proposal. Unfortunately, Mr Beazley has been fairly unseen when it comes to these islands. I only hope that there can be a bipartisan approach and that Australians who live on Christmas Island can benefit from these facilities which the government is organising.

**Goods and Services Tax: Insolvencies**

Senator BUCKLAND (2.20 p.m.)—My question is addressed to the Assistant Treasurer, Senator Kemp. What is the government's explanation for the response to the very significant increase in insolvencies reported by the Australian Securities Commission since the introduction of the GST? Is the minister aware, for example, that insolvencies for July 2001 were up over 40 per cent compared with the same time in 1999—that is, the last July before the introduction of the GST in Australia? Is the minister aware that insolvencies for July 2001 were up nearly 18 per cent last year, which was the July immediately after the introduction of the GST, and that insolvencies for the first year of the GST were up nearly 17 per cent on the figure for the year before it was introduced? Business bankruptcies were up 177 per cent in the June quarter of this year compared with the June quarter for 2000. What explanation can the minister offer for this alarming increase in business failures?

Senator KEMP—My first advice to the senator would be to get Senator Cook to ask his own questions because the senator has been very poorly informed, as usual. Let me quote some figures that were put out by the Attorney-General recently. This throws some
light on the figures that were quoted by the senator. I am quoting from a press release that was put out on 18 September, which is pretty recently:

There were 13,700 bankruptcies in the six months to 30 June 2001. The GST was mentioned as a cause of bankruptcy in less than 0.3 per cent of cases.

I will repeat that, because that was not the impression that was conveyed by the questioner. Senator, I will go through this again, if you would like to take out a pencil and jot this down, and perhaps you might be able to throw some further light on the issue in your supplementary question.

There were 13,700 bankruptcies in the six months to 30 June 2001. The GST was mentioned as a cause of bankruptcy in less than 0.3 per cent of cases.

That is less than one per cent.

It was mentioned on only 35 statements of affairs—eight in New South Wales, 15 in Queensland, four in Victoria, two in South Australia and six in Western Australia. In addition, only 1,696 of the business bankrupts attributed the cause of their bankruptcy to economic conditions during the 2000-01 financial year.

We are seeing a desperate attempt by Labor. The Labor Party are in a truly desperate position. They have been 5½ years in opposition and they have developed no policies. They cannot even stay behind in this chamber and debate roll-back. They are scared to discuss roll-back.

Senator Carr—Where were you last Thursday?

Senator Kemp—You did not mention roll-back. There was no mention of roll-back.

Senator Conroy interjecting—

Senator Kemp—I make this offer for the 25th time. If one Labor senator can write to me and say, ‘We are going to debate roll-back after question time; Senator Kemp, would you please stay behind and debate roll-back?’ I will be first here. That is the 25th offer I have made and I make that offer to you. Senator Lundy has ducked the offer, Senator Sherry has ducked the offer, Senator Cook ducks the offer and I make that offer to you. All I need is a little note from you, Senator, and I will stay behind.

Senator Carr interjecting—

Senator Kemp—Or else, as Senator Carr says, I will be out of this chamber at 3 o’clock and having a cappuccino at Aussie’s. With the figures that you quoted, Senator, it was a very misleading question. The response that I have given from the Attorney-General’s press release sheds quite a different light on the matters that you have raised. When you receive questions from Senator Cook, I would advise you to ask him to ask his own questions. I cannot get a question from Senator Cook these days. I do not know what I have to do.

Senator BUCKLAND—Madam President, I ask a supplementary question. Does the minister continue to stand by the Treasurer’s assertions of 18 May 2000, when he said:

I don’t think anybody will go to the wall as a consequence of GST ... I don’t think that there will be businesses that will flounder because of GST.

How did the Treasurer get it so wrong?

Senator Kemp—It is always the problem with Senator Buckland. You give him a very detailed answer, you go through the figures, you go through the insolvencies, you explain it carefully to him and what happens? The senator gets up and reads the supplementary question as though nothing had been said. I do not want to repeat what I said in my answer, but the fact of the matter is that the basis on which your question has been asked is wrong. It has been explained on a number of occasions in this chamber. As I said, I urge you to read the press statement that was put out by the Attorney-General as recently as 18 September. I think that throws into better relief the real facts of the matter. The fact is that Australia is one of the world’s better performing economies and there can be no argument about that.

Zimbabwe African National Union-Patriotic Front: Mr Robert Mugabe

Senator MURRAY (2.27 p.m.)—My question is to Senator Hill, as the Minister representing the Minister for Foreign Affairs. Does the government intend not only to join a much stronger international campaign
against terrorism but also to be far more determined to bring to justice everyone accused of terrorism whom it finds in Australia? Would the government agree to detain and to bring to a fair trial, to be proven guilty or not, anyone accused of heading an organisation which has committed acts of terror, whether against their own people or citizens of other countries, particularly where evidence and witnesses could be provided? Is it true that the government is aware of the identity of someone whose organisation has been accused of the murder of tens of thousands more than Osama bin Laden's group, as well as many thousands of tortures, burnings, beatings and rapes? Is the government aware that the organisation ZANU PF, headed by Robert Mugabe, has been accused of these very things, starting with the mass murder of the Ndebele minority in the eighties and continuing with farm workers, farmers and political opponents right up to the present? What is the government's attitude to these accusations and how does it intend to deal with them?

Senator HILL—We have spoken before on the subject of Mr Mugabe and his government and have condemned the violence that has been perpetrated upon farmers and others under his regime. There is no secret about that. We have used what diplomatic measures we have to hand to try to influence a better outcome in Zimbabwe and we will continue to do so. On the question in principle, obviously if somebody is in breach of Australian law then they will be arrested and tried according to Australian law. In some circumstances, where there is a case that is brought against an Australian person arising out of a breach of law overseas, where we have extradition arrangements, that might be dealt with in that circumstance as well, but I do not think either of those instances will adequately address the issue that Senator Murray is raising. I think that the way to respond to that is to exert, together with our friends, sufficient political pressure on Mr Mugabe to accord to the basic tenets of human rights as we appreciate them.

Senator MURRAY—Madam President, I ask a supplementary question. Is the minister aware of a recent television program in which a former minister of the Labour government Tony Benn stated that he had met a lot of terrorists in his life and most of them had ended up having tea with the Queen? Does the government accept that, if it is going to join in an international campaign to punish mass crimes against humanity—and I support them doing so—from Konrad Kalejs to the Burmese government or the Zimbabwean government, it cannot be selective and must apply the same standards in Australia?

Senator HILL—Yes, we do want to be part of an international movement towards ending particularly international terrorism but also intranational terrorism. It is easier in many ways for us to contribute to that in an international arena where terrorists are sent to perform terrorist acts in a third country. Nevertheless, as I have already indicated to the honourable senator, we do have certain political, diplomatic and other persuasive means by which we can try to bring to an end what we would regard as gross misbehaviour within states, and we should be equally conscious of that.

Goods and Services Tax: Business Activity Statement

Senator WEST (2.31 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Does the minister recall a promise made by the Treasurer, Mr Costello, on 30 June 1999 that the GST 'will reduce compliance costs for small business by removing uncertainty and reducing the amount of paperwork'? Is he aware that the Society of Certified Practising Accountants small business survey, released on 18 September, found that 72 per cent of small businesses believe the GST has increased their workload? Given that the government would have been made well aware of these views in the small business community, why does Minister Macfarlane's small business package, which was announced today, completely fail to address the issue of the BAS workload?

Senator KEMP—I do have a press cutting here—I do not have the matter that was directly referred to by Senator West—which deals with the issue of red tape. It is an article by Gerard McManus, published in the Herald Sun on 17 June this year, headed ‘Labor’s red tape plan’. It states:
The Federal Labor Party has promised to create 43 new bureaucracies and new government offices if it wins the next election.

Senator West—Madam President, I rise on a point of order. I would draw the minister’s attention, or your attention, Madam President, to relevance. My question was about a survey done by the Society of Certified Practising Accountants and about Minister Macfarlane’s small business package that was announced today. It did not canvass other issues in relation to what the minister is trying to bring in.

Senator Kemp—The issue was red tape, and I am dealing with the red tape issue, and I will be coming onto the Labor Party’s roll-back as well. If the issue was about a small business package, Senator West has clearly asked the wrong minister. But I am dealing with red tape and I do plan in my answer to deal with red tape quite extensively.

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

Senator Kemp—The article further states that the 43 new bodies being established by the Labor Party, include advisory councils, task force committees, agencies, bureaus, auditors, commissions and ombudsmen and that ‘New bodies Labor has promised to create include Australia’s first “virtual university”’. The article also states that the Treasurer, Mr Costello, who was referred to in the question, said that we are seeing a ‘bureaucracy blowout’ already being promised by the Labor Party. The Treasurer claimed that the opposition, if elected, would have to raise income taxes or reintroduce the indexation of petrol excise.

The President—Senator Kemp, I am having some trouble with relevance.

Senator Kemp—What we are seeing, of course, is massive red tape. Let me also refer to the attitudes of small business regarding red tape and roll-back. Mark Paterson of the Australian Chamber of Commerce and Industry said that further roll-back would only increase complexity. The Chairman of the Council of Small Business Organisations of Australia, Rob Bastion, said:

Roll-back would increase complexity, increase supervision and means increased fear. The uncertainty about roll-back has to be addressed because of the need for clarity.

We have had a number of business organisations turning their attention to the problems of the Labor Party and red tape. If anyone in this chamber believes that the Labor Party has the interests of small business at their heart, they are belying history. The Labor Party is the trade union party. The Labor Party is the party of trade union bosses.

Opposition senators interjecting—

Senator Kemp—And thank you, Senator, for nodding in agreement. The Labor Party is the trade union party. If anyone believes that the Labor Party has the interests of small business, they are ignoring the lessons of history. Small businesses are petrified of the Labor Party, and I will tell you why. They remember that, when Labor was in office, interest rates to business were over 20 per cent.

Senator West—Madam President, on a point of order: the minister has had three minutes in which to talk about the Society of Certified Practising Accountants small business survey where 72 per cent of them believed that the GST had increased their workload and also to talk about Minister Macfarlane’s small business package. Three minutes have gone, and I am still waiting to hear something relating to that question.

Senator Kemp—If Senator West wants me to speak about Minister Macfarlane’s small business package, I have to say that Senator West has asked the wrong minister. I do not know about the questions committee, but it is not up to me. I am always happy to assist Senator West, but she has made a fundamental error here. If Senator West is kind enough to ask me a supplementary question, I do have some information from Mr Macfarlane here and I may be prepared to share it with her. Senator, you should have asked the correct minister. That is where you made your big mistake.

Honourable senators interjecting—

The President—Order! Minister, I draw your attention to the question. If it is not a matter that you are able to answer, you should resume your seat.
Senator KEMP—I was dealing with small business and red tape, which was the substance of the question. I have pointed out that business is very worried about the complexity which will come about as a result of the Labor Party roll-back. I have mentioned a newspaper article which deals with Labor’s red tape plan and which outlines the massive amounts of red tape which will come about as a result of the Labor Party initiatives. I understand that Senator West does not like that, but to the extent that people may be worried about red tape at present they will be petrified on the election of a Labor government. The Labor Party has never had the interests of small business at heart. When it was in office the Labor Party loaded small business with a whole bunch of regulations. (Time expired)

Senator WEST—Madam President, I ask a supplementary question. It is no wonder that the conservative members of the public out in the rural areas are complaining about the minister not answering questions. Why can the minister not answer the question and admit the obvious: the Treasurer has not kept his promise to small business to reduce compliance costs on the GST? Will he admit that as far as small business is concerned the so-called new tax system, the GST, has been nothing but a series of broken promises and backflips made only worse by the omissions in today’s announcement by Minister Macfarlane?

Senator KEMP—Let me state a few words that I am sure that Mr Macfarlane may wish to say today. The outlook for small business remains very positive. In the retail sector with small business the ABS recently found small business increased their turnover by 14 per cent in the year to 2001—pretty good figures. Interest rates are at record lows, inflation is low, and income and company taxes have been cut. We all recognise that tax reform has been a major change in this country and has posed substantial challenges to the wider community. But this government has been responsive to concerns of small business. We have changed the reporting requirements, as Senator West would be aware, for the BAS and we are always ready to listen to the concerns of small business because we are a party that cares about small business, which I might say is in complete contrast to the Labor Party. (Time expired)

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the President’s gallery of a delegation from Vietnam, led by the Hon. Mrs Truong My Hoa. On behalf of honourable senators, I have pleasure in welcoming you to the Senate and I trust that your visit to this country will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Radioactive Waste

Senator CHAPMAN (2.40 p.m.)—I direct my question to the Minister for Industry, Science and Resources. Will the minister advise the Senate of the government’s responsible approach to the management of Australia’s existing low level radioactive waste, including from the production of life-saving medical radioisotopes and scientific research? Is the minister aware of any alternative policies?

Senator MINCHIN—I thank Senator Chapman for the question and acknowledge his very good policy work in this area. It is a fact that the Australian community gets enormous benefits from our expertise in nuclear science, including—something the opposition ignores—the production of life-saving radioisotopes for the Australian community. These activities do generate some small amounts of waste which have to be dealt with. We currently have about 3½ thousand cubic metres of low level waste which we have been accumulating for about 50 years. At the moment the storage is hopeless: it is just stored in basements of hospitals and universities around our capital cities, a situation that cannot be left as it is. It is the coalition that has had to come up and clean up a problem that Labor did not deal with in its 13 years. This government will establish a store for low level radioactive waste in a purpose-built facility near Woomera built to international standards. It is the safe, responsible way to deal with this waste. There are hundreds of similar facili-
ties operating in 30 countries around the world, all perfectly safely. We have stated time and time again that we are opposed to the importation of anybody else’s waste, but we believe that we, and every other nation, have a fundamental responsibility to safely store our own waste. Our position is absolutely clear and responsible.

I was asked what the alternative is. The alternative is fascinating. To this point, typically, it has been all over the place, although Mr Beazley at the behest, presumably, of Senator Bolkus came out last Friday and put out a statement saying that Labor is going to categorically rule out putting any radioactive waste in South Australia. He ruled out putting it anywhere. I am afraid that it is a classic example of Labor being all over the place on policy. It is a complete flip-flop approach to policy. Mr Beazley has completely forgotten about Labor’s deep involvement in storing radioactive waste in South Australia when it was in government.

I want to remind the opposition, and particularly Senator Bolkus, of the facts. In 1992 it was Mr Beazley’s current deputy, the then Minister for Primary Industries and Energy, Simon Crean, who decided on behalf of the federal Labor Party government, that we did need a national storage system for low level waste and he did start the process of selecting a national site. In 1994 the federal Labor government short-listed the central north of South Australia as a site for this repository. The state Labor government of the time accepted and supported that decision. Worse than that, in 1994, when Mr Beazley was a senior minister in the government, the federal Labor government moved 2,000 cubic metres of low level waste to Woomera in South Australia with virtually no consultation with the public whatsoever. Then, less than a year later, when Mr Beazley was the Deputy Prime Minister, his government moved 35 cubic metres of intermediate level waste—where to?—to Woomera in South Australia, where he says, ‘No, we are not going to have any waste.’ Again, there was been very little public consultation on it. The best scientific advice to us was that the central north of South Australia, the site short-listed by Labor, is the best site to store our waste. But now Mr Beazley says, ‘No, it should not go there.’

The questions for Mr Beazley are: what does he intend to do with Australia’s inventory of low level and intermediate level radioactive waste that Labor itself moved to South Australia? What does Mr Beazley intend to do with the waste that is now stored in hospitals and universities in the main streets of our capital cities? What is Labor going to do with the waste that is currently stored at Lucas Heights? Unfortunately, Mr Beazley has no answers to any of these questions. As Alan Ramsey so accurately said in the Sydney Morning Herald yesterday, here is a man who ‘truly does not have a leadership bone in his body’. This is the most abject failure of leadership, and his position on radioactive waste sums it up.

Goods and Services Tax: Draft Ruling

Senator ROBERT RAY (2.44 p.m.)—I direct my question to the Assistant Treasurer, Senator Kemp. Can the minister confirm that the ATO issued GST draft ruling 2001/D6 on 29 August 2001, some 14 months after the introduction of the GST, to deal with GST-free export related provisions of the GST? Isn’t it true that this draft ruling runs to some 85 pages and is supposed to be effective from 1 July 2000? Given that it has taken the ATO more than a year to actually think through how the law in this case operates and commit those thoughts to paper, what chance do small businesses around Australia have of understanding this complex tax? What sorts of penalties will apply to those taxpayers who have acted in good faith and, due to the absence of guidance from the ATO, have got on with doing business on the basis of their interpretation of the law, only to find that more than a year down the track the ATO tells them they got it wrong?

Senator KEMP—Madam President, let me make it clear that the ATO has always said in relation to GST compliance and to people who act in good faith that it will take a very constructive approach. We recognise, as the ATO recognises, that the bringing in of a major change in the tax system is a very major change for the economy and a major change for small business, so the ATO has stated on innumerable occasions that it will,
as I said, work with business to assist compliance rather than move directly and immediately to impose a penalty. I think the record of the ATO in this area has been good. If Senator Ray has other information he wishes to bring forward, I would welcome that. The commissioner has gone on record about the challenges of compliance in a new tax system and the commissioner will always take a constructive approach to it, recognising that this is a new system.

I ask the question, and I think it is an important one: if this tax system were such a bad tax system, what would you expect an opposition to do that stood up day after day and complained about the new tax system, ignored the fact that the Australian economy is one of the world’s growth economies, ignored the fact that interest rates are at levels we have not seen since man walked on the moon and ignored the fact that the fundamentals of the Australian economy are very sound? If the Labor Party were opposed to this tax system and felt, as was implied by Senator Ray’s comments, that the GST was an unfair system, you would expect the Labor Party to announce they would abolish the GST. That is what you would have thought. One of the reasons that the Labor Party have declining standing in the public arena is the utter failure of the Labor Party to articulate a clear policy position. As the Treasurer has said, the Labor Party hate the GST so much that they are proposing to keep it.

The Labor Party have attempted to hide behind the notion that somehow there will be a roll-back. Senator Ray, I know, is loath to get into policy areas—I understand that, Senator. You are not one who likes a bit of hard policy. You are the sort of person, Senator Ray, who likes the sleaze and likes to get into the gutter—

The PRESIDENT—Senator Kemp, your remarks should not be directed across the chamber.

Senator KEMP—I challenge Senator Ray—and I say this in making my 26th challenge to the Labor Party—to drop me a note to say that he is prepared to stay behind after question time to debate the Labor Party roll-back, to debate what roll-back means, how much it will cost and how it will be financed. These are pretty fundamental issues that the public want to hear about. I am astonished that I have not received a note across the chamber from anyone in the Labor Party, but the offer remains open and, Senator Ray, it remains open to you. If you want to debate roll-back, I am very happy to stay behind in the chamber and debate roll-back with you. But I guess I will not be receiving a note from you—as I have not received a note from Senator Cook.

Senator ROBERT RAY—Madam President, I ask a supplementary question. On the basis of that answer, you would have to conclude that Senator Kemp is a few runs short of the follow-on. Will you at least confirm, Minister, that there are five significant areas in which we do not even have draft rulings, as identified by the ATO, and that there are a further seven significant areas in which we only have draft rulings? When will we get finality on these matters? Can we be assured that they are not each going to run to 85 pages? How many of these seven draft rulings, and five that are yet to even be draft rulings, are going to have retrospective effect?

Senator KEMP—Madam President, Senator Ray is always one to throw out the insult, but he was the man who presided over one of the larger policy failures in the previous government. Senator Ray was the minister in charge of the disastrous Collins class submarine project and the cost overruns there. It seems to me that that rather suggests that Senator Ray should be a little bit cautious about attacking the efficiency of others. Maybe a modicum of modesty might be appropriate. Let me make it clear that the Taxation Office is always prepared to work with small business to deal with problems. If, Senator Ray, there are some specific issues about when some of these rulings will be finalised, I will obtain information from the Taxation Office and provide it to the chamber.

Nauru

Senator BOURNE (2.51 p.m.)—My question is to the Minister representing the Minister for Foreign Affairs, Senator Hill. Does the minister recall that I asked him last week—twice—about the recent OECD re-
port which relisted Nauru as a non-cooperative country or territory in its efforts to stamp out money laundering and which recommended that OECD member states apply stringent countermeasures in their dealings with this country? Has the minister now had an opportunity to read that report and to view the ABC’s Foreign Correspondent program, which made allegations of financial impropriety by members of the Nauru government? Can the minister now inform the Senate of the full cost to Australian taxpayers of housing the Tampa refugees in Nauru and of what transparency and accountability measures are in place to ensure that Australia’s money will not be misappropriated?

Senator HILL—I am making progress on that matter. I have obtained a copy of the videotape and I will soon be viewing it. In anticipation of the honourable senator asking the same question a third time, I thought I would take some advice from somebody who has viewed the tape. I gather the tape contains certain allegations against the leadership of Nauru. As I correctly anticipated, the nub of Senator Bourne’s question was really to seek an assurance that the aid we are providing to Nauru is not being misused.

On that matter, I am advised that as part of the agreement with Nauru over the processing of asylum seekers Australia agreed to provide aid to help Nauru address a number of its economic and development challenges. This aid takes the form of essential goods, such as fuel, spare parts for water pumps and new generators to provide reliable power to Nauru.

Honourable senators interjecting—

The PRESIDENT—Order! Senator Hill’s answer needs to be heard by Senator Bourne.

Senator BOURNE—Madam President, I ask a supplementary question. I thank the minister for that answer. He may recall that it is an answer to the question I asked last week.

Honourable senators interjecting—

The PRESIDENT—Order! The level of conversation in the chamber is such that I cannot hear Senator Bourne.

Senator BOURNE—I thank the minister for the answer to that question of last week. This week, I am actually asking something a little different. In relation to the OECD report about transparency and the remedies that the OECD suggests countries take when dealing with countries such as Nauru, is Australia actually taking those remedies? I take his point about AusAID being responsible and therefore making it transparent, but is Australia actually looking at the remedies the OECD suggests and taking those remedies to make sure that everything that we give is transparent and is spent on what it should be? Also, he has not answered yet my question about how much this will actually cost the Australian taxpayer.

Senator HILL—if the aid is provided in the form that I have stated—regional scholarships, spare parts for water pumps and essential goods such as fuel—and if it is being administered by Australia’s own agency, then by definition it seems to me that it is transparent and Senator Bourne can have confidence that it will not be in any way misused.

We have talked in the past about the total cost of the operation in Nauru. Senator Bourne now wants a breakdown of that into its component parts, including which part of it can be best described as aid rather than the cost of providing the facilities and other
costs in association with the housing of the refugees. I will obtain and provide that breakdown for her.

**Goods and Services Tax: Changes**

Senator CONROY (2.56 p.m.)—My question is to Senator Kemp, the Assistant Treasurer. Is the minister aware that the government has made over 1,800 changes to its own GST since its introduction in July last year? Can the minister outline why the government has made its own roll-back of massive proportions on petrol, beer, the BAS, caravan parks, charities and religious institutions? Is it because the government realised that it had broken its own promises and that the GST was unfair for Australian consumers and too complicated for small businesses? After these bucket loads of roll-back from the government, can the minister explain whether he supports rolling back the GST or not?

Senator KEMP—Let me make it clear: the one thing that small business are worried about is the Labor Party roll-back. I wonder how many amendments would be required to put it into effect roll-back? Would it be 5,000 or 6,000? Say it is a substantial roll-back: in which case, it may be 10,000 amendments. A small roll-back may be 5,000. The fact of the matter is that Senator Conroy’s question shows the utter hypocrisy of the Labor Party.

We make no apology for listening to the concerns of small business. Small business brought to the government’s attention some concerns about the BAS statement and we made changes. We make no apologies for that. In relation to charities, we have always recognised the very important role of charities in Australian society. We have been very happy to work with charities to deal with any particular concerns that they have.

Honourable senators interjecting—

The PRESIDENT—Order! There are far too many senators exchanging views across the chamber and it is disorderly.

Senator KEMP—The point I am making is that we are very interested in listening to the wider community. We are a consultative government—I have said that on a number of occasions. We are happy to work with small business. We regard small business as playing a very vital role in the community. We are always happy to work with small business to see how we can ease compliance issues and encourage their prosperity. We make no apologies for that. But the issue that was raised by Senator Conroy is an interesting one. He has, along the lines of Senator Sherry, mentioned the number of amendments which have been made. What we want to know is: how many amendments would be required to put roll-back into effect?

Honourable senators interjecting—

The PRESIDENT—The Senate will come to order.

Senator KEMP—Senator Sherry has been prepared to put a figure on the number of amendments the Labor Party will need to make in order to implement roll-back. At least that is a start. I make a prediction that, in order to put a minimal roll-back into effect, you would probably need 4,000 to 5,000 amendments. In order to put a substantial roll-back into effect, you may well go to 10,000 and more. It is silly for the Labor Party to be raising the issue of amendments when it is the Labor Party that wishes to bring in roll-back. Roll-back will involve thousands of amendments to the tax acts.

It is no surprise that small business are petrified of roll-back. They are worried about the complexity that roll-back will bring, they are worried about the vagueness of roll-back, and they are worried about the uncosted nature of roll-back. Senator Conroy raised the issue of roll-back. Let us have a debate after question time today. The offer goes out—the 27th offer now is on the table. If you want to debate roll-back, Senator Conroy, I will be first in the chamber to listen to you, because I want to know what roll-back is, I want to know what roll-back will cost, I want to know how roll-back will be funded, and I want to know about the complexity that roll-back will bring. All I know is that time and time again the Labor Party duck this issue.

Senator CONROY—Madam President, I ask a supplementary question. If the Liberal Party is so strongly opposed to roll-back, as the minister claims, why did three Liberal electorate councils become involved in a do-it-yourself roll-back scheme to profit from
the GST? Why didn’t the Treasurer, that fearless opponent of roll-back, make his own attempt to stop them?

Senator KEMP—My advice to Senator Conroy is to leave the sleaze to the old sleazemeister himself, Senator Robert Ray. Senator Robert Ray is a specialist in sleaze, and at least he can do it with slightly more flair than you, Senator Conroy. The fact of the matter is that Senator Conroy is wrong. The only rort regarding a political party that I am aware of that is on the agenda is the $36 million that the Labor Party has ripped off the taxpayer with Centenary House. I am very surprised that Senator Faulkner, who specialises in rorts, has not drawn the Senate’s attention to this. You are able to save the taxpayer $36 million with one phone call from Mr Jellyback himself, Kim Beazley—one simple phone call. So don’t you speak to me about rorts, Senator. The Labor Party has 36 million reasons in relation to rorts, and refuses to do anything about it. (Time expired)

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

ANSETT AUSTRALIA

Return to Order

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (3.04 p.m.)—On 19 September the Senate required me, representing the Minister for Transport and Regional Services, to table by 5 p.m. on Thursday, 20 September certain documents. I want to make a comment about that, if I could, now. In doing so, I hope Senator O’Brien will withdraw some of the hurtful things that he said about me when we came in at 6 o’clock on Thursday night to do it, but he did not want us to do it on Thursday night.

Senator Schacht—Madam President, I rise on a point of order. If people want to make personal statements—

Senator Hill—He is responding to your return to order.

Senator Schacht—Yes, but he is now debating the matter. If he wants to table it, he can table it. This should be done after the taking note of questions.
concerning the Australian National Training Authority. I undertook to obtain an answer for Senator Carr, which I now have. I seek leave to have it incorporated.

Leave granted.

The answer read as follows—

Senator Hill - On 4 April 2001 (Official Hansard, page 23672) Senator Carr asked me, as Minister representing the Prime Minister, a question without notice about a letter to the Prime Minister from the Chief Executive of the Australian Chamber of Commerce and Industry (ACCI), on negotiations for a new Australian National Training Authority (ANTA) Agreement, and funding for vocational education and training (VET). I undertook to obtain an answer for Senator Carr.

The Prime Minister has provided the following answer to the honourable Senator’s question.

Mark Paterson wrote to me on 7 March 2001 with a number of proposals in the area of VET and innovation. Significant work is already being done in this area, including in areas proposed by ACCI.

The Commonwealth Government is committed to working with the States and Territories to develop a strong VET sector capable of meeting the needs of Australian industry and students.

In the 2001-02 Commonwealth Budget, the government agreed to make available up to $231 million in growth funding over the period 2001-02 to 2003-04 under a new Australian National Training Authority (ANTA) agreement to support the operations of the vocational education and training sector. This funding is expected to enable the States and Territories to expand New Apprenticeship training opportunities and to further develop the broad skill base needed to support innovation in industry. It is in addition to annual Commonwealth funding of over $950 million in 2001 provided through ANTA under the Vocational Education and Training Funding Act 1992, which will be indexed over the life of the ANTA Agreement.

The growth funding forms part of the Commonwealth’s proposal for a new ANTA Agreement for the period 2001 to 2003 and is subject to a requirement that Commonwealth growth funding will flow to States and Territories that make an equal commitment of their own growth funds. The new Agreement would also require States and Territories to produce annual innovation strategies. The Commonwealth’s offer for a new agreement was accepted in principle by the States and Territories at the meeting of the Australian National Training Authority Ministerial Council meeting on 8 June 2001.

Goods and Services Tax

Senator CONROY (Victoria) (3.06 p.m.)—I move:

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

Once again, we have seen Senator Kemp race for the cappuccino line at Aussies. If anybody in this building wanted to race down to Aussies now and have a look—when there is a chance for Senator Kemp to be in here describing his 1,800 amendments—they would just have to zip over to Aussies now and get into line with Senator Kemp. Then Australians would see the priorities of the Assistant Treasurer, the man charged with tax administration in this country, the man who is watching the tax office collapse under him, under the unwieldy weight of the GST.

What were the promises that were made regarding the GST? Remember the ‘no small businesses will go under’ statement—Peter Costello, Radio 6WF, 18 May 2000? He said:

I don’t think anybody will go to the wall as a consequence of GST ... I don’t think that there will be businesses that will flounder because of the GST.

That was Peter Costello, and what have we seen since then? Business bankruptcies increased by 78 per cent—that is right; a massive 78 per cent—in the June quarter 2001, over the same period last year. Corporate insolvencies in July 2001 were up over 40 per cent from the same time in 1999—that is, the last July that Australia had before the introduction of the GST. The figures for July 2001 were up nearly 18 per cent from last year, which was the July immediately after the introduction of the GST. So what do we make of the promise that Mr Costello, the Treasurer, made us, compared with ASIC’s figures? We again heard today from Senator Kemp that small business red tape will be slashed. It is not the first time we have heard that—a press release from John Howard on 30 January 1996 said this:

A coalition government will slash the burden of paperwork and regulations on small businesses,
with our aim being a 50% reduction in our first term of office.

Here is another quote:
The volume of tax legislation has become a tidal wave which threatens to overwhelm small business.

Who could have said that? John Howard, Hansard, 24 March 1997. On Radio 2UE on 14 August 1998, a journalist asked Mr Howard:
Will the number of pages in the tax act be reduced by the introduction of a GST?
John Howard replied:
Yes, it will.

What have we actually seen? The GST legislation and explanatory material are thicker than three telephone books and weigh 7.1 kilograms.

Senator Forshaw interjecting—

Senator CONROY—I think that reference to Senator Kemp was a little unfair, Senator Forshaw: he is thicker than the telephone books.

Senator Forshaw—They’re Sydney telephone books.

The DEPUTY PRESIDENT—Order! Senator Conroy, address the chair, please. Senator Forshaw, come to order.

Senator CONROY—As I said earlier, the government has already amended the GST 1,800 times, and further amendments are in the pipeline. The tax act will soon run to 8,500 pages, compared with 3,000 when Prime Minister John Howard was elected with a promise to cut red tape and a promise that there would be a reduction in the number of tax act pages. That is right: 8,500 compared with 3,000. Let us see you talk that one away, Senator Ferguson and Senator Brandis: 5,500 extra pages as a result of this government.

And what happened with petrol? Remember the famous petrol promise that petrol prices would not increase? That was made by John Howard in his address to the nation on 13 August 1998, taking us on this great tax adventure that we have all so benefited from! He said:
The GST will not increase the price of petrol for the ordinary motorist.

We all know that that was misleading. We all know that the government have spent billions of dollars trying to backflip their way out of their promise on petrol. When the GST was introduced, fuel excise was cut by 6.7c but the GST added 8.2c—that is a net increase of 1.5c a litre. (Time expired)

Senator FERGUSON (South Australia) (3.11 p.m.)—Senator Conroy’s performances get more pathetic day by day. Every time he comes in here, he starts quoting things that have been said in the past. He started quoting some dates, and I am sure Senator Brandis would have heard those dates as well. But there is a date that sticks very clearly in my mind, and that is 24 May, some four or five months ago. Someone asked a question about Labor’s key commitments: Knowledge Nation and roll-back. Senator Conroy was asked the question, ‘Would you be willing to increase taxes and revenues?’ And what did Senator Conroy say? I can understand why he is leaving the chamber: because he does not like hearing what he said then. He said:
We have some hard decisions to make over the next couple of months. I do not think we can run away from the fact that there will be hard decisions and we have to prioritise how we are going to fund our spending initiatives, and we are going to have to make choices between are we going to cut programs, are we going to increase some taxes in this area? Those are the really tough choices we are now confronted with after having seen the numbers in the last 48 hour, so we will be making announcements about that as we go over the next couple of months.

From 24 May to now, I have been waiting and waiting to hear these announcements. It seems as though the announcements and the hard decisions that, back on 24 May, Senator Conroy said the Labor Party would make are simply not being made and will not be made. The Labor Party have shown nothing but confusion on tax issues right from the very start. They have been confused over every single issue in relation to the GST. They have criticised the GST so heavily but they want to keep it. They are so opposed to a GST that when they get into government they are going to keep it lock, stock and barrel, except for some unnamed roll-backs that they might put in place at some stage in the future—which will, of course, mean hun-
dreds and hundreds of amendments to the legislation.

They cannot even get it right amongst themselves. The member for Werriwa, Mr Mark Latham, made some very interesting comments about roll-back. He said that roll-back should be about making certain geographical areas exempt from GST. That is a new idea, but he certainly did not get too much support from his colleague Mr Kevin Rudd, who described the proposal as lunacy.

Mr Rudd said:
Latham has written much that is innovative in each of these areas. His most recent tax proposal, however, is just plain loopy.

That is how much agreement there is in the Labor Party about taxation issues: Mr Latham puts forward a proposal; Mr Rudd calls it ‘loopy’. However, Mr Latham was not likely to let that go without a rejoinder, which he indeed made. Mr Latham’s response was:
As expected, Rudd—this is his own Labor Party colleague he is talking about—has no suggestions of his own to assist the poor. As ever, rhetoric is easy in politics; change is hard.

I can reaffirm what Mr Latham has said: rhetoric is very easy in politics, because we have just had Senator Conroy for the umpteenth time talk about roll-back without giving us any information. Change is hard, and this government is only the government to have bitten the bullet and introduced changes that the ALP have been too afraid to make since former Prime Minister Keating first proposed a GST in 1985 or 1987—I cannot remember which but I think it was prior to the 1987 election. Mr Latham is right: rhetoric is easy, change is hard. The government have taken that hard decision and brought in a new tax system for the benefit of all Australians.

I heard Senator Conroy talking about bankruptcies that may have occurred in the past 12 months. Senator Conroy is of course making the assumption that every bankruptcy that takes place has been caused by the introduction of the GST. I have never heard anything so ridiculous in my life. Does that mean that every one of the thousands and thousands of bankruptcies that occurred in the late eighties, when interest rates were 24 per cent, was a result of the interest rates? Most of them were, I can tell you, because I experienced the hardship that was caused by high interest rates that were the result of a policy deliberately put in place by the then ALP government. If people had a choice between the GST and 24 per cent interest rates, I know which one they would take every time. They would choose to live under the new tax system. (Time expired)

Senator BUCKLAND (South Australia) (3.16 p.m.)—The figures that Senator Kemp quoted in response to the question by me were that only 0.3 per cent of bankruptcy cases were reported as small businesses being affected by the GST. That is not entirely correct if you look at the whole picture, and I think it is somewhat spurious that he raises figures such as these without doing all of his homework. As it is with this minister, it is like him not to do his homework and not properly answer questions.

It is interesting that figures from Insolvency and Trustee Service Australia, who deal with these sorts of things all the time as professionals, show an overall 13.64 per cent rise in business bankruptcies in the year 2000-2001. The 150 or so insolvency practitioners are reporting a very busy year with businesses crumpling. They are crumpling under the weight of the GST, according to this body, so the 0.3 per cent quoted by Senator Kemp is far from the mark. Indeed, before he answers questions, it would be nice of him to read his portfolio briefings more thoroughly to get the true picture to pass on to the Senate.

The GST is of course having a dramatic effect on small businesses. There are the flow-ons from this and the erratic cash flow problems that have resulted from higher than expected prices brought about by the GST. The President of the Insolvency Practitioners Association, Michael Dwyer, said:
We haven’t yet seen insolvency that’s purely GST-related, but there is an increase in the number of failures in which it has played a contributing factor.
It may be 0.3 per cent but the GST is a contributing factor. The small businesses I have been dealing with, who were unfortunate enough not to leave their industry prior to the introduction of the GST, are finding that the problem is GST related, and this minister is giving false responses to the questions raised by the opposition in trying to find out the true picture of the effects of the GST. The GST has had a dramatic effect on all businesses—small and large—but it is the way of the government to say that it has had no effect at all. It has had an effect, and the minister needs to take note of that.

The Australian building industry has bled far more than any other industry in this country as a result of the GST; its activity falling 23 per cent in the year 2000-01. The blame for the fall, recognised as the worst in 25 years, has been squarely laid on the reduction in residential dwelling starts since the introduction of the GST. Yet this minister gets up and says that the introduction of the GST has had no effect at all, but it has, and it is not only small business that is being affected by this and has had to respond and try to make do.

The most clearly identified action of the government is that it will not even answer questions put by the community groups that it goes to address at meetings. At one such meeting in Adelaide—at the Thebarton Town Hall, organised by the Liberal MP Mrs Chris Gallus—it was made very clear to the Greek community that the Prime Minister was to address about the GST that there were to be no questions, that questions were to be put through the president in writing so they could be vetted by Mrs Gallus prior to the Prime Minister seeing them. The reason why they had to be vetted was very simple: ‘the people spoke Greek’. (Time expired)

Senator BRANDIS (Queensland) (3.21 p.m.)—The Labor Party is fond of speaking about the effects of the GST. Let us consider what some of the other effects of the GST have been. In the first place, one effect of the GST has been to enable this government to introduce the largest personal income tax cuts in Australian history. That would not have been possible but for the tax reform package. That was one effect of the GST. Another effect—and let it not be forgotten that the Commonwealth government is not the beneficiary of the GST; the states are—is that 100 per cent of GST revenues are remitted directly to the states. Another effect of the GST has been to secure for all time the public finances of the states of Australia.

We do not hear Labor state Treasurers and Labor state Premiers coming to COAG meetings and complaining about the GST. They think it is the best thing that has ever happened to the public finances of the Australian states, and they are right. Another effect of the GST has been to contribute to the stability of the Australian economy by enabling Australia to continue to be, at a time of enormous financial and economic difficulty on a global scale, the standout performer in the OECD, with consistently low interest rates, consistently low unemployment and consistently low inflation. So, today, if you compare the key indicators of economic performance of all the OECD economies, Australia is the standout.

Senators Conroy and Buckland should not insult our intelligence. Of course we knew and expected that there would be a period of adjustment to the GST, as did the small business sector. Of course we knew and expected that there would be a need for regulatory adjustments to the legislation. There is nothing surprising about that, when one considers the exercise that was undertaken. That exercise was nothing less than the most comprehensive, wide reaching, thoroughgoing reform of the Australian tax system that any government had ever embarked upon, and this government was able to complete it successfully. It was a task the Hawke government, with Mr Keating as Treasurer, essayed and failed, because the trade union movement would not let it.

For the last 20 years, there has been nary a serious economic commentator in Australia who has disputed the proposition that Australia needed some form of broad based consumption tax to take pressure off personal and company taxation rates. However, only one government not only recognised that need but also had the political will, courage and skill to deliver on it, and that was this government. The Labor Party must be
weeping bitter tears to think that, when the history of the public finances of this nation is written, it will be the Liberal-National Party coalition who will be recognised as the authors of the most fundamental reform of the fiscal system in this country that there has ever been. The Labor Party, in their usual cowardly fashion, have allowed us to take the political heat and wear the political pain, in the hope that maybe, as a result of the unpopularity caused by short-term adjustment, they might just fall into government. But they will not because the Australian people are wise enough to recognise political courage and good public policy when they see it.

Let me finish on the question of the GST as a contributor to small business bankruptcies. In the six months to 30 June, 2001, there were 13,700 bankruptcies in this country among small businesses. When asked to ascribe the primary cause of their bankruptcy, the percentage of people in that group who quoted the GST as the primary cause was 0.3. That is not what the government is saying; that is not what the Insolvency and Trustee Services of Australia are saying: that is what the people who themselves have been made bankrupt said, when asked to make their own judgment as to what was the cause of their bankruptcy. Let their evidence speak for itself. (Time expired)

Senator FORSHAW (New South Wales) (3.26 p.m.)—We have just heard from Senator Brandis and I will give him credit for one thing: he actually attempted to defend the GST, unlike the Minister, Senator Kemp, who on each occasion he was asked a question during today’s question time refused to answer it. Instead, he rattled on, wandering off into the usual waffle he goes on with. In his defence of the GST, Senator Brandis made a number of assertions. First, he said that the GST had been great for the economy. Then he referred to inflation. My recollection is that, when this government came into office in 1996, inflation was running at less than two per cent. It is now running at around four per cent, and after the GST was introduced last year inflation increased to nearly six per cent. I also recall that when this government came to office the value of the Australian dollar was in excess of US60c. What has happened since then? Last year our dollar dropped below US50c. It still sits around that figure. One of the comments made about the Australian dollar in respect of the GST was made by Peter Costello who claimed, in the booklet, *A new tax system*, that the Australian dollar will be worth more. He said:

Lower costs for exporters will be reflected in a moderately stronger exchange rate over time.

That clearly has not occurred. Of course, as we go through and recall all the promises and great statements that were made by the government in support of the GST, we find that in just about every case the reverse has happened. For instance, as my colleague Senator Conroy pointed out in his remarks in respect of the impact upon small business, it has not got any easier; it has got more difficult. It has got more difficult to the extent that with the business activity statement the government itself has had to roll back its own legislation. As Senator Conroy also pointed out, the tax act was going to be simplified, but it is now far more complex, with 1,800 amendments. And small business has indicated that they are expecting even more amendments to be enacted by this government, in the unfortunate event that it is re-elected at the next election.

Let me go to a few other promises made about the GST in the past. It was claimed that the black economy would disappear. John Howard said that as well as getting money from the surplus the GST itself produces a dividend out of the black economy, that there is $3 billion there that you cannot get out of the black economy without a GST. Peter Reith went further. He was referring to the black economy, and he said:

Treasury’s estimates have been an extra three and a half billion dollars from the black economy. Personally, I would double that figure—I would say an extra seven billion dollars as a result of the black economy.

The government was claiming that the GST was going to soak up all of this unpaid tax that was being avoided in the black economy. What is the reality? Peter McDonald from the Taxpayers Association of Australia stated on 18 June this year, ‘The black economy is going ballistic.’ Michael Dirkis, Di-
rector of the Taxation Institute of Australia, stated on 7 June this year:

There’s been an explosion in the black economy and businesses have more cash than ever being thrown at them.

That has been the impact on the black economy. The reason was that when the GST was applied to a lot of services—in addition to the taxes that those businesses either were avoiding in the black economy or were reluctant to pay—businesses did not want to be a tax collector for the government. What has happened is the black economy has actually been burgeoning, not reducing.

There were other promises that were made. We all recall the famous promise of a $1,000 savings bonus for pensioners, for people over the age of 60. As everyone knows, most elderly Australians missed out on that full amount of $1,000 and, in some cases, received an insulting cheque for $1. There is a litany of promises that have been broken in respect of the GST. Of course, the one that everybody remembers is when John Howard, then Leader of the Opposition, said that we would never, ever have a GST. He stated that the GST was dead—and then he introduced it. People are not going to forget those statements of the Prime Minister. (Time expired)

Question resolved in the affirmative.

Zimbabwe African National Union-Patriotic Front: Mr Robert Mugabe

Senator MURRAY (Western Australia) (3.31 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 Murray today relating to Zimbabwe President, Mr Mugabe, and the Zimbabwe African National Union-Patriotic Front.

I must state at the outset that I am a strong supporter of international action against mass crimes against humanity, including those of terrorism, and I am a strong supporter of the development of international law in this respect. The coalition led by the United States—of which Australia is a part—have put a great deal of emphasis on the fact that they will go after those who harbour those who commit terrorism. Their focus has consequently been on those states who use the power of the state to protect terrorists who are within their midst. It is for that reason that the undemocratic fanatical women-hating government of the Taliban in Afghanistan have been a particular focus. However, Australia and other governments cannot be selective in their approach to these matters. If we are to adopt principles which will govern our assault on international terrorism and those who act against humanity, then we have to accept that there needs to be an international law which specifies that there are crimes against humanity and international courts to action those and that no person, no head of any organisation or no members of those organisations which carry out terror should be safe outside of their own countries or their own havens. That is so whether it is members of former Nazi regimes such as Konrad Kalejs or members of the Burmese government, members of the Zimbabwean government or members, indeed, of the Taliban government.

I made the point in my question that the ZANU-PF organisation, which is headed by Robert Mugabe, is accused of tens of thousands more murders since the 1980s than Osama bin Laden is accused of and, right up to the present day, are accused of murders, beatings, rapes and burnings. This person is going to come to Australia to CHOGM. Australia has failed to sign off on the two United Nations conventions against terrorism, it has failed to agree to adopt something similar to Senator Greig’s private senator’s bill against genocide and it has failed to hunt down past Nazi criminals. This is a kind of selective outrage. I agree there should be outrage—I share in the outrage—but let us make it applicable on the basis of common principles of justice and the pursuit of people who engage in these matters. The Zimbabwean government may indeed be elected under a democratic process but, like the Taliban, they are people who abuse, distort, avoid and ignore the rule of law. You cannot be selective about these matters.

Where are we to go with all this? If we are in a new stage of international development and international law, we, as a parliament, and Australian governments have to start to
work out principles as to how these matters should be addressed because, otherwise, we will face a situation, as Tony Benn outlined, where all people who have in the past been classified as terrorists become people who are perfectly acceptable to society and have tea with the Queen. On that front, we will all remember how Yasser Arafat was once regarded and now he is regarded as a saviour in the Middle East—or Archbishop Makarios, all the leaders in Asia, all the leaders in Africa and all the leaders in the Middle East. We really must get some perspective about the laws and the principles of justice that we apply to these matters.

Question resolved in the affirmative.

ANSETT AUSTRALIA

Return to Order

Senator HILL (South Australia—Leader of the Government in the Senate) (3.36 p.m.)—I have responses to orders of the Senate relating to documents. In my instance, it was an order of the Senate of 19 September seeking that I, representing the Prime Minister, provide a range of documents relating to the application of Air New Zealand to take 100 per cent ownership of Ansett Airlines. The government recognises that there is considerable public interest in this issue. However, it is important to maintain the effective working of the Foreign Investment Review Board processes. The production of correspondence and other documents containing confidential materials submitted from the time Air New Zealand approached the Foreign Investment Review Board in February 2000 to initiate consideration of its acquisition of Ansett may affect, in the government’s view, the quality of information provided in future processes. Many of the documents sought contain advice between the Prime Minister and his department. The documents are in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded in the course of, or for the purposes of, the deliberative processes involved in the functions of the government whose release would be contrary to the public interest.

Furthermore, the short time allowed for response has not permitted the detailed review necessary, particularly at a time when the department is focused on advising on wider aviation and related policy issues, particularly following the terrorist attacks in the United States of America and the collapse of Ansett.

I will, however, respond further to the order as soon as the review has been completed. I seek to respond on behalf of Senator Ian Macdonald to an order that was made to him representing the Minister for Transport and Regional Services. The order was in similar terms. I will table a response from Senator Macdonald as Minister representing the Minister for Transport and Regional Services in similar terms to that which I have just read on behalf of the Prime Minister.

Senator O’BRIEN (Tasmania) (3.39 p.m.)—by leave—I move:

That the Senate take note of the statement.

Firstly, in relation to the return to order pursuant to order of the Senate for the Minister for Transport and Regional Services and, therefore, for Senator Ian Macdonald to respond to, that was due at 5 p.m. last Thursday. It was, of course, not possible for that time line to be met, given that it had not been met by the commencement of the general business item. It was not possible to facilitate that at 6 p.m. on Thursday, apparently, because the government was not ready at that time. Although it was prepared to make a statement after that, I had committed to be at a Senate hearing at 7 p.m. and was not in a
position to indicate that we would grant leave later because that may well have meant that we would not have had the opportunity to respond.

So I do not make an issue of the timing of response being one sitting day late in the circumstances. It was occasioned by, I think, circumstances which militated against a timely response in that case. Notwithstanding a small problem that occurred immediately after question time, which I think may have been a misunderstanding of what we understood would be a response after question time, that is, after the motion to take note, I do not make an issue of that. The important thing is we now have a response and we also have a response on behalf the Prime Minister.

The material the Senate has asked both the Minister for Transport and Regional Services and Deputy Prime Minister, on the one hand, and the Prime Minister, on the other, to produce is an analysis and any related reports prepared by the Department of Transport and Regional Services of the application by Air New Zealand to the Australian government for approval to take 100 per cent ownership of Ansett. The Senate also wanted any reports prepared for the department by consultants relating to that analysis. We also wanted all correspondence and other communications, including emails and briefing notes, between the minister, Mr Anderson, his office, the Department of Transport and Regional Services and Air New Zealand, on the one hand, and the Prime Minister, his department and Air New Zealand, on the other, relating to conditions placed on that company—important conditions in the circumstances, I might say—as part of the approval by the government of Air New Zealand’s application to take 100 per cent ownership of Ansett.

The Senate also required both the Deputy Prime Minister and the Prime Minister to produce copies of all correspondence and other communications, including emails and briefing notes, between ministers, officers and their departments and Air New Zealand relating to the ownership and operation of that airline and its subsidiaries from 1 January 2000, which is obviously relevant to what has taken place since the takeover of the airline. The Senate also wanted all submissions and other communications, including emails and briefing notes, from the departments to the various ministers.

It would be my view that there is no basis for the government to argue against the release of this material on the grounds of public interest immunity. One cannot see how the release of these documents would prejudice national security or law enforcement operations. The release of the documents would not adversely affect Commonwealth-state or international relations, one has to say. Nor can the government argue that this release of material would breach commercial confidentiality. There is so much discussion about what actually took place. In fact, the government is saying on the record that its view of what took place is that the revelation of this material can clarify once and for all exactly what was in discussion at this most critical time, probably the most critical time in the history of the two-airline policy in Australian aviation.

Of course, we have had a statement that this is something to do with protecting the role of the Foreign Investment Review Board. What a bizarre statement! What a bizarre claim! This board, which advises the Treasurer about his role in approving or not approving foreign takeovers, comes into play at various times. We have seen it be the subject of considerable lobbying from members of this parliament—certainly, without limiting it, from members of the government in relation to the approval of the Woodside matter. The Foreign Investment Review Board can be opened up to public scrutiny when it suits, but apparently not when it does not suit.

It is clear that the reason the Prime Minister and the Deputy Prime Minister are refusing to release this material is political self-interest. I would say the exposure of this material will see the exposure of the roles of both the Prime Minister and the Deputy Prime Minister in this sorry affair. The Senate has endorsed a motion authorising the Rural and Regional Affairs and Transport References Committee to hold an inquiry into the role of the government and the min-
isters in the collapse of this country’s second biggest airline. I propose to the chair of that committee, Senator Ridgeway, that tomorrow night the committee hold its first hearings into the role of the government and Mr Anderson in the collapse of this country’s second biggest airline. My understanding is that a majority of the committee will support that proposal, and the committee has advised the appropriate departmental officers that it will be seeking their attendance tomorrow night.

The officers have been invited to attend and answer questions put to them about their role and that of the government in the first approval of the Air New Zealand takeover and the events leading to the collapse of Ansett. It will be interesting to see the behaviour of the government in relation to that matter. The government has been anxious for certain committee hearings to take place this week. The Rural and Regional Affairs and Transport Legislation Committee met on Thursday night and again this morning in relation to one of the government’s bills; it proposes, with the leave of the Senate, to sit tonight in relation to another of its bills. The government has obtained the cooperation of the Senate in relation to those matters, so it will be interesting to observe the behaviour of this self-interested government in relation to another committee in a matter of such great public importance as the collapse of Ansett and the role of the government in it. We will judge the government’s actions by its attempts to avoid scrutiny in this matter.

Question resolved in the affirmative.

PETITIONS

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

Bass Strait: Transport

To the Honourable the President and Members of the Senate in Parliament assembled, the petition of the undersigned respectfully showeth that:

1. People with disabilities are disadvantaged in crossing Bass Strait by sea; and that

2. People with disabilities should not be discriminated against in any means of transport.

Your petitioners request that the Senate, in Parliament assembled, call on the Federal Government to ensure that:

1. The Bass Strait Passenger Vehicle Equalisation Scheme makes provision for people with disabilities to send their vehicles unaccompanied on a Bass Strait ferry and still receive the appropriate rebate;

2. Tasmanian Government vessels meet national standards for people with disabilities; and

3. The Tasmanian and Victorian governments provide port facilities which also meet such standards.

And your petitioners as in duty bound will ever pray.

by Senator Calvert (from 90 citizens).

Telstra: Privatisation

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

The petition of the undersigned shows our concern that:

1. the Howard-Anderson Government plans to fully privatise the Australian people’s 50.1 percent share of Telstra as stated in the Government’s own 2001 Budget papers;

2. a fully privatised Telstra will focus on profits not people; and

3. services will suffer under a fully privatised Telstra, particularly in outer metropolitan, rural and regional Australia.

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

by Senator Hogg (from 411 citizens).

Petitions received.

NOTICES

Presentation

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

That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate on 25 September 2001, from 6.30 pm, to take evidence for the committee’s inquiry into Ansett Australia.

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

That the time for the presentation of the report of the Legal and Constitutional References Committee on the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000 be extended to the last sitting day in March 2002.
Senator Bolkus to move, on the next day of sitting:
That the Senate—
(a) recognising that:
(i) Australia has an international reputation as a successful multicultural society,
(ii) freedom and respect for diversity, particularly religious diversity, has underpinned that success,
(iii) Australia has had a peaceful transition from a time where one religious group dominated religious culture to the current situation where religious legitimacy is shared by all religious groups, and
(iv) such success has been based on religious settlement involving highly diverse religious groups;
(b) further recognising that the framework provided by Australia’s civic values of tolerance, equality, our ‘fair go’ culture, and freedom of speech and religion, together with the structures of constitutional parliamentary democracy and the rule of law, have worked together to enable this transition;
(c) noting that:
(i) Muslims are the largest non-Christian religious group in Australia, with migrants from Turkey, Lebanon, and other Middle East and Asian cultures,
(ii) at least 35 per cent of Australian Muslims were born in Australia,
(iii) Muslim migrants have been part of Australian society for more than a century, with the first mosques built in Adelaide, Coolgardie, Maree, Broken Hill and Perth by the end of the nineteenth century;
(d) appreciating that Islam is a peaceful religion and that in more than 100 years of immigration Australia has never experienced acts of terrorism arising from our migrant Muslim communities, but that Australia has benefitted enormously from the successful immigration of such communities;
(e) noting also the commitment expressed by Muslims and Australian Arabs in the press on the weekend of 22 and 23 September 2001 to condemning terrorism;
(f) is concerned at the current unhealthy level of physical and verbal attacks on these communities, especially their mosques, schools, women and children; and
(g) calls on the Australian community, at all levels, to give Australia’s migrant Muslim community the respect we give to all other religious groups.

Senator Allison to move, on the next day of sitting:
That the Senate—
(a) notes that:
(i) a record 1.09 million tonnes of timber from Victoria’s native forests last financial year is to be woodchipped,
(ii) this compares with just 650,000 tonnes of timber for sawlogs,
(iii) woodchip volumes from Victorian native forests have more than doubled since 1997 when the first Victorian Regional Forest Agreement was signed, and
(iv) woodchip volumes from East Gippsland forests rose from 155,918 tonnes in the 1998-99 financial year to 399,201 tonnes in the 2000-01 financial year; and
(b) urges the Victorian State Government to phase-out logging in native forests by buying out forestry agreements and, in the interim, substantially increase the proportion of native forest timber that is value-added at sawmills.

Senator O’Brien to move, on the next day of sitting:
That the Rural and Regional Affairs and Transport References Committee have leave to meet during the sitting of the Senate on 25 September 2001, from 6:30 pm, and, if the Senate continues to sit beyond 8 pm, until midnight, for the purpose of holding a public hearing in relation to its inquiry into the collapse of Ansett Australia.

Senator Brown to move, on Thursday, 27 September 2001:
That the Senate—
(a) notes that the civil rights lawyers who took action in the Federal Court on behalf of the asylum seekers on MV _Tampa_ worked _pro bono_ and in the public interest; and
(b) calls on the Government to pay its own costs in the matter, including the costs of defending any appeals.

Senator Heffernan to move, on the next day of sitting:
That, on Tuesday, 25 September 2001:
(a) the hours of meeting shall be 2 pm to 6.30 pm and 7.30 pm to adjournment;
(b) the routine of business from 7.30 pm shall be government business only; and
(c) the question for the adjournment of the Senate shall be proposed at midnight.

COMMITEES
Community Affairs Legislation Committee
Extension of Time
Motion (by Senator Calvert, at the request of Senator Knowles)—by leave—agreed to:
That the time for the presentation of the report of the Community Affairs Legislation Committee on the Disability Services Amendment (Improved Quality Assurance) Bill 2001 be extended to 26 September 2001.

Rural and Regional Affairs and Transport Legislation Committee
Meeting
Motion (by Senator Crane)—by leave—agreed to:
That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 25 September 2001, from 6 pm, to take evidence for the committee’s inquiry into the provisions of the Regional Forest Agreements Bill 2001.

Community Affairs Legislation Committee
Meeting
Motion (by Senator Calvert, at the request of Senator Knowles)—by leave—agreed to:
That the Community Affairs Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 25 September 2001, from 3.30 pm, to take evidence for the committee’s inquiry into the Disability Services Amendment (Improved Quality Assurance) Bill 2001.

NOTICES
Postponement
Items of business were postponed as follows:
General business notice of motion no. 1046 standing in the name of Senator Brown for today, relating to public education, postponed till 25 September 2001.
General business notice of motion no. 969 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to the introduction of the Republic (Consultation of the People) Bill 2001, postponed till 26 September 2001.
General business notice of motion no. 1044 standing in the name of Senator Allison for today, relating to energy efficiency and low pollution standards for new power stations, postponed till 25 September 2001.
General business notice of motion no. 1034 standing in the name of Senator Ridgeway for today, relating to the death of an Aboriginal man in custody, postponed till 26 September 2001.

DOMESTIC VIOLENCE
Motion (by Senator Allison) not agreed to:
That the Senate—
(a) notes that:
(i) the Victorian State Government recently rejected the petition of mercy for Heather Osland, who is serving a fourteen and a half year jail term for the murder of her abusive husband despite calls from the Release Heather Osland Group and 30,000 Victorians to do so, and
(ii) 330,000 Australian women reported to the Australian Bureau of Statistics in 1996 that they had experienced physical violence inflicted by their current partners and 1,070,000 by previous partners;
(b) on behalf of women who suffer brutality at the hands of their partners, condemns the Victorian State Government for its lack of compassion in this case;
(c) calls on state and territory governments to reform the law so that:
(i) ongoing and persistent abuse can be recognised as self defence in the consideration of murder charges, and
(ii) charges may be laid for physical violence with or without the involvement of the victim of abuse; and
(d) calls on the Federal Government to increase its efforts to protect women and children from abuse.

TOBACCO

Motion (by Senator Allison) agreed to:
(1) That the Senate, having regard to:
(a) the enormous health disaster represented by tobacco;
(b) the rising costs of tobacco diseases, conservatively estimated at $12.7 billion (1992), that are borne by governments, individuals and businesses, including health care costs, lost productivity, absenteeism, and social security payments;
(c) the availability of evidence that the tobacco industry in other countries, including parent companies to Australian manufacturers may have engaged in:
(i) misleading and deceptive conduct to downplay the adverse health effects of smoking and the addictiveness of nicotine, and
(ii) misleading, deceptive and unconscionable conduct in relation to the marketing of tobacco products to children; and
(d) the desirability of preventing or reducing loss or damage suffered or likely to be suffered by such conduct, and of compensation being available for any loss and damage suffered or likely to be suffered by that conduct;
(resolves that there be laid on the table, no later than 30 April 2002, a report by the Australian Competition and Consumer Commission (ACCC) on the performance of its functions under the Trade Practices Act 1974, with respect to:
(e) the outcome of ACCC investigations into the conduct of Australian tobacco companies and their overseas parent and affiliate companies in relation to any such misleading, deceptive or unconscionable conduct;
(f) whether documents publicly released during the course of tobacco litigation in the United States of America contain evidence of anti-competitive behaviour or breaches of Australian law;
(g) the adequacy of current labelling laws under the Trade Practices (Consumer Product Information Standards) (Tobacco) Regulations to fully inform consumers of the risk that they are exposed to;
(h) the extent of loss or damage caused, or likely to be caused, by the conduct referred to in paragraph (e) in Australia;
(i) the extent to which the tobacco industry may be made liable to compensate for that loss or damage, or the extent to which that loss or damage may be prevented or reduced; and
(j) the potential for tobacco litigation in Australia, including for compensation and remedial action, in respect of that conduct.
(2) That, in preparing a report under paragraph (1), the ACCC is to consider:
(a) the importance of this issue to Australian public health;
(b) the impact of the costs of treating tobacco-related disease in Australia and the associated productivity losses borne by Australian businesses;
(c) the desirability of ensuring that the tobacco industry is made accountable under the Trade Practices Act in respect of such conduct, that any loss or damage suffered or likely to be suffered by that conduct be prevented or reduced and that any persons harmed or likely to be harmed by that conduct obtain appropriate compensation; and
(d) the potential for overseas parent and affiliate companies being made liable for such loss or damage; and
(indicate in its report the action it has taken, and the action it proposes to take, with regard to the matters upon which it is required to report.

NATIONAL STORE PROJECT

Motion (by Senator Allison) agreed to:
That the Senate—
(a) notes:
that a National Store Project discussion paper regarding the location for the disposal of radioactive waste was released in July 2001 by the Department of Industry, Science and Resources,
(ii) the discussion paper was advertised nationally, inviting submissions by the closing date of 31 August 2001,
(iii) hundreds of submissions to the discussion paper were ‘returned to sender’ as a result of the wrong address being provided in the national advertising campaign,
(iv) many more submissions may have been lost altogether as a result of this blunder, and
(v) that the Minister provided a two-week extension for submissions to those who contacted the department, but did not notify interested parties or readvertise for submissions; and

(b) calls on the Minister to:
(i) readvertise nationally for public submissions to the National Store Project discussion paper with the correct address,
(ii) extend the deadline for public comment in order to ensure that all interested parties may resubmit their comments, and
(iii) directly contact those organisations and individuals expected to have an interest in the matter of the disposal of radioactive waste, in order to ensure that those organisations and individuals are aware of the new public comment period.

MELBOURNE: COMMONWEALTH GAMES

Motion (by Senator Allison) agreed to:
That the Senate—
(a) notes that the Victorian State Government:
(i) proposes to legislate to exempt the forthcoming Commonwealth Games in Melbourne from planning, environment, heritage, building and coastal management Acts, and residential tenancy and local government controls, and
(ii) does not propose to adopt the ecologically-sustainable development (ESD) guidelines used by the Sydney Olympics so successfully;
(b) notes that the venues and village are likely to all be constructed on parkland;
(c) reminds the Bracks Government that it promised it would be democratic and accountable in government and not bypass the checks and balances as its predecessor had done; and
(d) calls on the Victorian State Government to:
(i) ensure there is no net loss of parkland in the Commonwealth Games preparation, and
(ii) implement the ESD guidelines for the Melbourne Commonwealth Games.

COMMITTEES

Superannuation and Financial Services Committee
Reference

Motion (by Senator Calvert, at the request of Senator Watson) agreed to:
That the following matter be referred to the Select Committee on Superannuation and Financial Services for inquiry and report by 31 January 2002:

The effectiveness and efficiency of the current rules governing early access to superannuation benefits on existing compassionate and severe financial hardship grounds.

Motion (by Senator Calvert, at the request of Senator Watson) agreed to:
That the Select Committee on Superannuation and Financial Services inquire into the following aspects of the general insurance industry in Australia, and report by the last sitting day in March 2002:

(a) motor vehicle insurance; and
(b) public liability insurance for community and sporting organisations,
with particular reference to:
(a) the cost of insurance products;
(b) the conduct of insurers; and
(c) the adequacy of the existing consumer protection regime, including industry ‘self-regulation’ and complaint and dispute resolution services, but not including any reference to matters contained within the terms of reference of
MATTERS OF URGENCY

United States of America: Terrorist Attacks

The DEPUTY PRESIDENT—I inform the Senate that the President has received the following letter, dated 24 September, from Senator Brown:

Dear Madam President

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

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

The need for the Australian Government to take a lead role in having the United Nations coordinate the global response to the terrorist attacks in the United States and the need for the Australian Government to use all possible restraint in an effort to prevent war.

Yours sincerely

Senator Bob Brown

Is the proposal supported?

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

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

Senator BROWN (Tasmania) (3.57 p.m.)—I move:

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

The need for the Australian Government to take a lead role in having the United Nations coordinate the global response to the terrorist attacks in the United States and the need for the Australian Government to use all possible restraint in an effort to prevent war.

I thank the Democrats for supporting this motion. It is indeed a matter of enormous urgency and a matter of relevance to every Australian. The President of the United States has said that America is at war. The Prime Minister of this country has said that we are going to back the United States to the end of our capabilities. In doing so, he has gone further than any other country of similar stature around the world and yet there has not been a full and open debate on this matter in the parliament, and we are due to rise at the end of this week.

What I see happening is an attack on Afghanistan and possibly other countries by the United States, Australia and various other countries, without a parliamentary debate at all. That is enormously remiss. One thing that should come out of this debate is support for the idea that parliament be recalled if we are going to commit young Australians into the oncoming war that President Bush has declared. Let me remind people that an act of terrorism just short of a century ago in Sarajevo led to World War I and the death of 40 million people. We have an enormous responsibility in Australia and elsewhere around the world to put a hand of restraint on the shoulder of the hawks in the United States to ensure that we do not see that, or worse, come out of this current conflagration when much more destructive technology is at hand. The destructiveness of the terrorists is unforgivable and they must be brought to justice, but we must, as part of the response to terrorism, not ensure another round of terrorism follows, on a much wider scale.

War itself is terror for the people who are involved, for the people who go to it, for the loved ones who wait at home and, these days around the world, for everybody who is watching it. Madam President, I draw your attention to a comment by Susan Sontag in today’s Age. She says:

To this appalled, sad American and New Yorker, America has never seemed further from an acknowledgment of reality than it has been in the face of [these events]

She goes on to say:

America’s leaders are bent on convincing us that everything is OK. America is not afraid. Our spirit is unbroken. “They” will be hunted down and punished (whoever “they” may be).

We have a robotic president who assures us America still stands tall. A wide spectrum of public figures strongly opposed to the policies being pursued abroad by this administration apparently feel free to say nothing more than that they stand united behind President Bush.
We have been told everything is, or is going to be, OK, although this was a day that will live in infamy and America is now at war.

But everything is not OK. And this was not Pearl Harbour.

I agree with that. This is a democracy in which debate on this matter must be part of the process, otherwise we give away our democratic processes and the role of this parliament. What I am saying in this motion and what those backing this motion are saying is that the United Nations has a role here. Australia took a historically very noble role in establishing the United Nations. Page 2 of the charter says that you shall not go to war without going to the United Nations and that the United Nations takes that role of getting together the community of nations against somebody who commits an act of war. It says that you shall not invade another country. If you do so, you are breaching the charter of the United Nations. The United Nations is there to take on this role. In a world which could see the Islamic countries against the rest, it is much better that we see the wisdom of undertaking to act through the United Nations, which is the community of nations, to take on the terrorists rather than find ourselves committed to a much greater war.

Many of the Australians whom I have spoken to in the last few days are very worried, including parents and relatives of those in the armed forces. The debate on which we will be engaged in the next hour should be the major debate of this week. I want the government to give a commitment that, in the event of committing our armed services into a war involving Afghanistan, the parliament is recalled to debate that. What could be more important in a democracy than that that occur? (Time expired)

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (4.02 p.m.)—I do not at all criticise Senator Brown for bringing on this motion for debate, nor do I say that the United Nations does not have a role in the present circumstances. Clearly, it has a role. But I do regard the motion that we are debating as disingenuous, as muddled and as plain wrong. It is disingenuous because Kofi Annan, the Secretary-General of the United Nations, has made it clear that the role that this motion would see the United Nations play is not a role that he believes the United Nations should play. I do not think anyone believes that the United Nations is equipped to act decisively against international terrorism in a way that would bring the perpetrators of this terror to justice. That is certainly not the history of the United Nations. The United Nations has a diplomatic role, it has a peacekeeping role, and sometimes it has an offensive role. What is required here is a sophisticated and concentrated exercise in tracking down terrorism, cells of terrorists wherever they are in the world, and in dealing directly and in a hard and very firm way with governments that give protection to those terrorist entities to give up those terrorists, and to make sure that this is a war on terrorism. This is a different sort of war. If the United Nations were in charge of this war—I do not think it is the appropriate authority—it would require the US to lead and it would rely upon all of the sophisticated IT and special services capability of the United States. I do not believe at that level, at least, that this motion is anything other than disingenuous.

The US would not allow the United Nations to take over this role either, and nor should it. This was an attack upon the people of the United States. That is why this motion is muddled. The attack was upon the US, and here we have a motion calling for Australia to refer a terrorist attack on the US to the United Nations and for the United Nations to take over the bringing of those perpetrators to justice. Surely, at the beginning the nation being attacked has a right—and that is the United States. It was not just an attack upon the United States; it was an attack upon some of the symbols that represent the United States: the World Trade Centre, the Pentagon and, if that plane that was downed in Pennsylvania had reached its target, the White House as well. Over 6,000 US and other citizens, but mostly and overwhelmingly US citizens, are still missing. We have part of New York reduced to a smoking ruin. We have part of the Pentagon now also similarly disabled. This is clearly an attack upon the United States. What are we to do other than to support their right to bring the perpetrators
of that attack to justice? It is not to put it in a forum which is distinguished by an inability to act decisively and which requires a consensus to move forward. The Australian Labor Party have supported the government in invoking the ANZUS Treaty in joining with the United States to help bring these perpetrators to justice, and we stand strongly by that.

This motion is plain wrong. This motion concludes with the words ‘the Australian Government to use all possible restraint in an effort to prevent war’. To prevent war? I thought there already was one, and it was not a war that we invited. It was not a war that the United States invited, for that matter, either. It was a war conducted against them by a terrorist organisation on a scale the like of which we have never seen in the world before. It is a war against terrorism.

One of the points that Senator Brown has made is worth emphasising, because it is a very valid point. This is not a war with hawks on one side—who are victimising Muslim children in some centres of Australia, if the reports in the media are to be believed; and in parts of the United States, if those reports are to be believed. This is not a war that the xenophobic want, who want to turn everything into a question of creed, colour or difference. This is not a war based on those sorts of divisions in society. This is not a war against Muslims, either. This is a war that the Muslim fundamentalists want; those that preach a fundamentalist view of their religion. Not all of them support terrorism as a way of conducting themselves in the world. The fundamentalists, and perhaps the hawks and the xenophobes, would like to see this turning into a war between Christians and Jews on one side—as I have heard it explained in recent weeks—and Muslims on the other. If that happened, the whole thing would be wrong, because it is not a war against creeds or religions or against peoples. This is a war clearly against terrorism.

As the United States knows only too well, prior to this event the last major act by terrorists in the United States was the bombing of a major building in Oklahoma City. The perpetrators of that act of domestic terrorism in the US were white Christian fundamentalists. They were convicted and at least one of them has been put to death. We have to be very clear here that this is not about creeds; this is about terrorism. No civilised person in the 21st century can expect to conduct a normal life while that threat hangs over our society and over us as individuals.

What the United States has had thus far—as the programs to bring this matter to resolution that it has laid out show—is a considered and deliberate war on terrorism. It is why the President of the United States has gone to a mosque in the US to pray—to make sure that the religious connotation is removed. It is why governments have been asked to give up terrorists; it is why Pakistan has been asked to use its forward bases and its intelligence system to identify where those terrorists might be. It is why Afghanistan has been asked to give up Osama bin Laden, and why other countries that have harboured terrorists have been asked to put forward information on how the terrorists operate, where they are, and how best they can be dealt with. That is what has happened thus far.

It may well be that it is a circumstance in which a military strike of a surgical nature will occur against bases that train and provide succour and military support to terrorism. I do not think anyone in this chamber would necessarily argue that that should not happen. Certainly we do not: we believe that it is an appropriate response in these circumstances. It is appropriate for another reason too. It is appropriate that, in the 21st century, the civilised world declares that acts of terror and brutality—wherever they occur—are not acceptable. If we do not do that, and if we do not bring those perpetrators to justice as soon as we can conceivably manage it when they do occur, we will be failing in our duty.

This motion reads that the whole thing should be put in the hands of the United Nations—as if we would have a reasonable expectation that that could result in justice being done. Based on the performance of the UN in most recent years, that would not result in achieving the outcome that the world so urgently needs in these circumstances. Some of the governments that sit in the
councils of the United Nations are governments that—we have to be frank about them—harbour terrorists too. In a forum that requires a fair degree of unanimity before it can act decisively, that is in fact handing a veto, or a means of slowing down the process of justice, to those who have to be brought to justice. For those reasons we will not be supporting the motion and will be voting against it. We believe it is appropriate that the ANZUS Treaty be invoked by Australia in these circumstances. We believe it is our obligation under the treaty, in defence of the United States.

Senator SANDY MACDONALD (New South Wales) (4.12 p.m.)—This motion covers serious matters and it requires serious debate. It is unfortunate that it comes from Senator Brown, whom I regard as probably the most blatant political opportunist in this place. Nevertheless, these are important matters and they affect some of the most important world events that those of us presently in the Senate will share some responsibility for.

Nearly two weeks ago and for the first time in 50 years, and almost 50 years to the day of signing the original ANZUS Treaty, the Australian government, with the support of the opposition—and Senator Cook just mentioned it—involved the ANZUS Treaty. We regard the terrorist attacks against the United States as an attack on the United States and therefore within the meaning of articles IV and V of this treaty, which is basically Australia and the US, New Zealand having been suspended.

As the Prime Minister has said on several occasions, Australia stands ready to provide military support in this crisis to the extent that it is needed and to the extent to which we are capable. Some people, like Senator Brown, ask whether action taken by the United States and its allies is legal. It is important to reaffirm that there is already full coverage in the UN charter and through a UN Security Council resolution for the appropriate action to be taken by the United States.

On 12 September, the UN Security Council passed resolution 1368 condemning the attacks—specifically condemning them as a threat to international peace and security—and calling on the international community to redouble their efforts to prevent and suppress terrorist attacks. More generally, article 51 of the UN charter provides that there is an inherent right of individual or collective self-defence for any UN member which is attacked until the UN Security Council takes measures to maintain international peace and security.

The United States believes—and Australia agrees—it has sufficient authority under article 51 of the charter and SCR 1368 to act without further recourse to the council. Not only does Australia agree; so do senior officials in the UN secretariat and other countries across the globe. In fact, we have seen one of the greatest examples of agreement in the international community that I can recall. The Russian Federation have agreed to bases in Uzbekistan and Turkmenistan being used and the United Kingdom’s Foreign Secretary, Jack Straw, has gone to Iran for the first time in 20 years. There are other examples.

It seems that only the Greens, Pauline Hanson and Senator Stott Despoja—although not the majority, I suspect, of her colleagues within the Australian Democrats—believe that these terrorists should merely be counselled and not brought to justice. My experience of apologists in all spheres of human activities is that they share a similar view. They think—and Senator Brown, I am sure, agrees—that the victims should be punished but that the perpetrators should go free. They will not go free from being brought to justice on this occasion, Senator Brown. The attack on the United States was an attack on the peace, order and good government of all of us. Its perpetrator should be caught and brought to justice otherwise we will all be diminished by these acts.

From Australia’s point of view, the invoking of the ANZUS Treaty provides the legal basis for our active support of the proposed US-led military response. Also, as I pointed out, the US has UN support for its actions. ANZUS states that each party recognises that an armed attack on the other—which, interestingly, under article 5, includes an attack on the other’s metropolitan territory—‘would be dangerous to its own peace
and safety’ and that it would ‘act to meet the common danger in accordance with its constitutional processes’. Australia has done that.

I have no doubt there will be further UN consideration of the situation, specifically of the proposed US-led response and Australia’s participation in it—whatever that might be. But, importantly, any proposed action has a firm basis in international law. The Australian government believe it, and I believe it. The decision by Australia to invoke ANZUS was made to demonstrate the seriousness of our commitment to support the US in combating international terrorism, upholding the rule of law and underlining the gravity of the situation. The North Atlantic Treaty Organisation, NATO—of which Australia is not a member—has taken a similar step in invoking article 5 of the Atlantic treaty, which stipulates that an armed attack against one member shall be considered an attack against them all. That also has shown a unity of purpose certainly unparalleled in the history of NATO.

Australia has a strong commitment to supporting UN efforts to combat terrorism in many other ways and is presently a party to 10 of the 13 UN antiterrorism agreements. Of those agreements, 11 are conventions and two are protocols. These cover such things as hijacking, violence against aircraft, hostage taking and attacks against diplomats and UN personnel. There are also a number of ongoing matters which will give greater weight and assistance to any UN actions. For instance, the Office of Parliamentary Counsel is presently drafting legislation to implement the Convention for the Suppression of Terrorist Bombings so that we can accede to it.

I remind the Senate that no UN resolution or convention applies in Australia without first having parliamentary oversight and without any necessary domestic legislation being passed through both houses of parliament. Other matters the government is considering in relation to the UN actions include: firstly, that we become a party to the Convention for the Suppression of the Financing of Terrorism, which is open to signature until December this year; and, secondly, that we become a party to the International Convention for the Marking of Plastic Explosives for the Purposes of Detection. Also, Australia is playing a lead role in the UN in the drafting of a comprehensive convention to cover terrorist acts not already addressed by the existing antiterrorist regime.

The Australian government is determined in its resolve to assist the US, the UN and the great majority of countries around the world to respond in a measured and targeted way to the terror perpetrated in the United States two weeks ago. Senator Brown should get behind Australia’s proposed actions, which would be very helpful to the Australian government, to Australia and to pursuing a satisfactory outcome to this very difficult situation.

The parliament must have the opportunity to examine in detail the commitment of Australian troops to battle. It is one thing to provide intelligence support or to send medical personnel but the commitment of troops to war is another matter. Our aims must be realistic. The military strength of the United States and its allies alone cannot win in asymmetric warfare such as terrorism. American Secretary of State Colin Powell seems to recognise that a war against terror-
ism requires international cooperation. The United Nations provides an important forum for negotiation, as it did during the 1991 Gulf War. Nations should be encouraged to pursue cooperation, communication and trust building measures.

Australia should sign and ratify the two outstanding United Nations terrorism conventions: the International Convention for the Suppression of Terrorist Bombings 1997 and the International Convention for the Suppression of the Financing of Terrorism 1999. Australia should ratify the statute of the International Criminal Court. We should continue to support the use of UN sanctions against countries that harbour terrorist groups. The UN imposed sanctions on Afghanistan following bombing of American embassies in 1998. The US launched raids on southern Afghanistan as a result of those 1998 terrorist attacks. Clearly, the military campaign against Osama bin Laden and other terrorists did not work. There is no guarantee that this escalated military campaign will work either.

There is great desire in our sorrow to do something. And we are all feeling it. But it must be effective and it must be proportional. If Afghanistan was wiped off the map by military action, killing all 20 million people, there is not even the guarantee that Osama bin Laden would be one of them—it certainly would not bring about peace. Courage, compassion and commonsense must guide us. We must respect the rule of law—both domestic and international—and the rules of war include that civilians are not legitimate targets and that the ultimate aim is peace, not World War III.

The Australian Democrats support the urgency motion before us for many of the reasons that I have outlined today—Senator Vicki Bourne will add to those—as well as for the reasons that we outlined in our response to the condolence motion that was debated in this chamber and passed last week.

Senator HOGG (Queensland) (4.24 p.m.)—I rise in this debate this afternoon not having had the opportunity last week to be privy to the condolence debate in this chamber, and I will come to that in a few moments. There were very good reasons why I was not privy—

Senator Stott Despoja—You got stuck.

Senator HOGG—Yes, I was stuck, and I will come to my being stuck in a moment because I think my being stuck, as Senator Stott Despoja puts it, has not clouded my view of the world but has focused it very much on the motion that has been put forward by Senator Brown today. So that people are not under any illusion as to what being stuck means, it means that, on the day of the attack in New York, I was there. I was in the unfortunate situation of going in the night before for 24 hours and found myself in the midst of the calamity that took place. Let me say that only for the third time in my life I found myself genuinely scared; genuinely frightened. I found myself in situation that I did not know the answers for.

I had been in my room at the hotel on the morning of the attack and had the TV news on. I watched it briefly and then ducked in to have a shave. When I came out, I saw on the TV that a building was burning—I could not see it from my hotel—so I went in and had a shower. When I came out—some people might think it was a very long shower—I saw that a second building was burning. It then struck home that the claim of terrorism that was being made on the TV was in fact very true. It left me very cold and frightened, only the third time that I had experienced that in my life.

I went downtown to the Australian Consulate and was impressed by the organisation there of the Consul-General, Ken Allen, and our Ambassador to the United Nations, John Dauth. They took everything very calmly. When I left at the end of the day, I walked towards the World Trade Centre. People who know New York will know that I walked from East 42nd Street down to the corner of 5th and 20th Streets. As I walked, I saw American people in the street—they were not panicking but you could see the anger, dismay and real fear on their faces. But there was no panic and, for that, they must be admired. As it evolved over the next few days, one saw that there was a considered and a measured response to the violation of their
freedom and democracy. I also felt that violation of my freedom, of my opportunity to operate and move within a democratic society.

All I can say is that the fact that America did not go down the path of firing their six guns in all directions shows how considered and how measured a response it truly was on their part. The response of the Australian government and the opposition has been equally considered. We have supported our allies under the umbrella of the ANZUS Treaty and we have said to the world that we are not mavericks and that we are not people who will support flippant operations or actions of mavericks—the way some people might have expected the United States to react. But that was not the case. We have approached it on the basis of our treaty with the United States, a longstanding treaty and a friendship that has been there over the years. We have supported them in their considered and measured approach.

The Americans have invited nations harbouring, or potentially harbouring, those terrorists to surrender them. It is not as if the Americans have marched in to try to pull those terrorists out or attack those terrorists on site. They have been open and they have made the invitation. Bin Laden, the major suspect in this case, is purportedly being harboured in Afghanistan, and Afghanistan at this stage have failed to hand over bin Laden or any of his followers. But it has not been an attempt on the part of the United States to go to war. It has not been an attempt on their part to use unfeathered aggression, even potentially, on the people they believe to be the perpetrators of this heinous crime—which I witnessed in New York over a week ago. It is no attempt on the part of the United States to deliberately seek those people out at this stage without categorically understanding where they are.

So to talk of the fact that we are preparing for war ourselves, that we are on a war footing, I think is just a little overly emotional. I think that the people in the United States have every right to expect that those people who did perpetrate the terrorism will be brought to some form of justice, whether it be before an international court or some other court, to pay for the crimes that they have perpetrated not just against the United States but against humanity—against all of us. That day definitely changed the way in which people will view international travel, international safety and the safety of democracies where people such as ourselves in this wonderful democracy have the right to express our views with relative freedom and openness without fear of reprisal and without fear of being put down because of the beliefs we have.

As my colleague Senator Cook said, this motion is not properly targeted. The United Nations do not have the capacity to coordinate American retaliation for the violation that they have experienced. I do not believe that the United Nations have the capacity or the will on a broad political basis to achieve what needs to be achieved. (Time expired)

Senator KNOWLES (Western Australia) (4.32 p.m.)—Today we are debating a motion put forward by Senator Bob Brown:

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

The need for the Australian Government to take a lead role in having the United Nations coordinate the global response to the terrorist attacks in the United States and the need for the Australian Government to use all possible restraint in an effort to prevent war.

I have to say that I find that motion sanctimonious and gratuitous. The wording of the motion implies that the Australian government is not doing everything possible and is not using all restraint in an effort to prevent war. Does Senator Brown honestly believe that the government wants to commit troops to a war, wants to commit Australia to a war? I certainly hope that he does not believe in his heart that that is the wish of the Prime Minister of Australia. To do so is just blantly wrong, scaremongering and dishonest.

The wording of this motion is naive, silly and unnecessary. At this moment I, too, would like to express my deepest sympathy to the victims, families, friends and associates of the acts of terrorism. Due to parliamentary business I was not here last Monday, although I did hear part of the contributions of honourable senators, and I think that what took place on 11 September is some-
thing that Australia would condemn forever, as does the rest of the world. For Senator Brown to come into the parliament of Australia, the Senate, and somehow put forward a motion that is so silly and naive really begs the question: what is he doing here? Senator Brown would have the world debate the issue forever instead of getting on with what needs to be done in the most measured, considered way based on evidence, not based on a gut feel. That is what should be done, and for Senator Brown to somehow believe that the United Nations of itself can wave the magic wand is equally silly and naive.

The Prime Minister of Australia does not want to commit Australia to war, and nor I believe does any other leader of any other country in this world, yet Senator Brown would have this parliament and the people of Australia believe that the reverse is fact. That is terribly wrong. For Senator Brown to come in here and try and make political mileage out of such a tragic circumstance is something that, in all my years in this place, I thought I would never, ever see.

In the past terrorists attacks tended to be targeted against official or military installations, but more and more in recent years we have seen such attacks being directed against private citizens such as we have seen in the World Trade Centre. The modern world is particularly vulnerable to acts of politically motivated violence. It is the very openness of democratic societies that do not involve rigid controls on their citizens’ movements and activities which leads to vulnerabilities which terrorists have exploited and which they will continue to seek to exploit unless they are stopped. That is what disturbs me about the response from Senator Brown, from some members of the Australian Democrats and from certain people within One Nation. To be away with the fairies is to put it mildly.

There was an article written about Senator Stott Despoja not long after she became leader, and it made comment on her position on issues regarding foreign affairs. The comment was made that Senator Stott Despoja believed everything should be viewed in light of what the young people of Australia want these days. The article concluded by saying, ‘Senator Stott Despoja, this is the world of grown-ups.’ I would say that again to Senator Stott Despoja. The way in which some in the Australian Democrats have responded, and the response of those others I have already mentioned, is not helpful because I believe that this country needs the solidarity that has been witnessed in America. We do not need to see people in Australia—and Senator Bourne can sit in here and huff and puff and groan and moan—trying to divide the response to such acts of terrorism. All sections of the community have condemned what has happened, and I cannot believe that there are honourable senators sitting in this place who do not join in that condemnation and want to get on with the—

**Senator Bartlett**—That is disgraceful and outrageous verbally. It is completely false.

**Senator KNOWLES**—They protesteth too much. I have been stunned in the last—

**Senator Bartlett**—You’re lying!

**Senator KNOWLES**—I ask for that to be withdrawn, Mr Acting Deputy President.

The **ACTING DEPUTY PRESIDENT** (Senator Ferguson)—You do not need to ask. Withdraw that, Senator Bartlett, please.

**Senator Bartlett**—I withdraw.

**Senator KNOWLES**—I feel very strongly about this; I feel exceedingly strongly about this. All sections of the community have condemned what has happened. It is important that we avoid the trap of assuming guilt by association, and it is also important that we act responsibly—that we do not somehow look at another way of doing something.

**Senator Bourne**—What about the United Nations?

**Senator KNOWLES**—The United Nations is not the body to coordinate this response, as has been said by my colleague Senator Sandy Macdonald, as has been said by Senator Hogg and as has been said by Senator Cook. The United Nations cannot possibly have the capability to coordinate the ‘global response’, which rather sanctimoniously is contained in this motion. This matter is too serious for the pixies at the bottom of
the garden to come in here and start trying to mess around with global affairs that are being considered seriously and astutely by those who are in the main game. I am sorry that this type of debate has had to be conducted on such a serious issue, because it cannot possibly be said that the governments of the world are not treating this seriously, that the United States of America is not treating this seriously, and that the response by those governments is not considered judiciously. Why on earth would people want the United Nations to be the sole repository of all wisdom in this matter when, in fact, the issue is being considered seriously and in great detail by the countries of this world?

Senator BOURNE (New South Wales) (4.40 p.m.)—What an extraordinary speech that was. How outrageous! How can any senator in this place—and particularly one who was not here for the debate—say that there is anybody in this place who has not condemned what has happened? How can they? I am shocked and horrified by that. It is absolutely disgusting.

Senator McGauran interjecting—

Senator BOURNE—I am appalled by that statement. Naturally, everybody in this place has condemned it. Everybody. And if you had been here, Senator Knowles, you would know that. That is outrageous. Of course we condemn what happened.

Senator Knowles—I was talking about the motion, you dope!

Senator BOURNE—You did not say anything. Senator Knowles.

Senator Knowles—I was talking about the motion, you silly person.

Senator Bartlett—You were not! Stop changing your story.

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order! Senator Knowles, would you withdraw that comment you made towards Senator Bourne, please.

Senator Knowles—Silly person?

The ACTING DEPUTY PRESIDENT—No.

Senator Knowles—Dope? Is dope now unparliamentary?

The ACTING DEPUTY PRESIDENT—Yes, it is unparliamentary.

Senator Knowles—It is? If that is the case, I withdraw.

Senator BOURNE—If people go back and read that speech they will discover what was said and they will know how outrageous it was. Let me go on to a couple of the other things that have been said. It is very obvious from what has been said today that nobody in this chamber, particularly Senator Cook and Senator Knowles, has read the ANZUS Treaty. If they had, they would have read articles I, IV and VI. They obviously have not, so I will read those articles out for them. Article I says:

Article I says:

The Parties undertake, as set forth in the Charter of the United Nations, to settle any international disputes in which they may be involved by peaceful means in such a manner that international peace and security and justice are not endangered and to refrain in their international relations from the threat or use of force in any manner inconsistent with the purposes of the United Nations.

Any such armed attack and all measures taken as a result thereof shall be immediately reported to the Security Council of the United Nations. Such measures shall be terminated when the Security Council has taken the measures necessary to restore and maintain international peace and security.

Thank you very much, that is exactly what this motion says. This motion says that we should go back to the United Nations; we should go back to the ANZUS Treaty.

An awful lot of other things have been talked about here today. We have had Senator Cook saying that clearly this is an attack on the United States. What about our declaration? I just read article IV. Our declaration
says, ‘Go back to the United Nations.’ That is what article IV says: go back to the United Nations. Senator Cook said that the Labor Party stands strongly behind Australia invoking the ANZUS Treaty. That is good. That means, of course, article IV: it supports going back to the United Nations on this. It is absolutely outrageous the way the Democrats have been verballed so far in this debate by Senator Sandy Macdonald and Senator Knowles that we have done things that we have not done and would have no dream of doing. (Time expired)

Senator SCHACHT (South Australia) (4.44 p.m.)—I rise as a member of the opposition to indicate again that we oppose this urgency motion. My colleagues Senator Cook and Senator Hogg have given a number of reasons why. The main reason is that in itself the motion might be considered very reasonable but in the context in which it is being raised it could be misunderstood and taken in some quarters around the world as though we are trying to step away from the commitment we made at the time of the horrific attack that took place on innocent civilians in the United States, including the several dozen Australians who lost their lives.

However, the context of the motion and what we are now starting to debate in the parliaments of the Western world is: what is the best way to respond? I strongly support military action being taken against the terrorist organisation itself. I do not think there can be any qualms about that. When so many thousands of innocent people have lost their lives, there can be no argument about that—it is a necessary response. But we all should recognise that removing terrorism from the world scene will take a number of responses from the First World, including action on issues like poverty in the Third World, the disproportionate distribution of the world’s resources and the living standards in the Third World compared with ours in the First World. You have to take account of the fact that there is a whole range of people who, in my view, for religious zealotry reasons are now promoting discord and disquiet. In all religions, there are extremists who are using the dissatisfaction of ordinary people to create discord. Remember this: there are fundamentalists not just in the Islamic religion but in Christianity, in the Hindu religion and apparently in all religions, and that is very unfortunate.

In particular, I think we in the West have to make a bigger and stronger effort to get a peace settlement in the Middle East. There is no doubt that the lack of a peace settlement or progress on peace in the Middle East is being used by extremists to attack and to justify the dreadful atrocities they have been committing in recent times. As I said in my remarks last week, you have suicide bombers, people who are willing to commit suicide in the name of their cause, and it is very difficult to have a rational response and rational discussion with such people. We have to get rid of the underlying causes. Generally, the underlying cause is the maldistribution of world resources—our lifestyles in the First World compared with those in the Second World and Third World. Unless that is addressed over the coming decades, we will always risk fundamentalists of any type using this dissatisfaction and the fact that some people are not getting a fair share in improved living standards in the world for their own purposes. As an intermediate priority, we must get a peace settlement in the Middle East—that is, between the Israelis and the Palestinians—that guarantees both peoples a secure future of peace and prosperity.

In this, America, as the leader of the Free World, has to take a major responsibility. We can all carry resolutions here about the Middle East peace process, but it is the Americans who have the weight and the influence to show leadership. Until that is provided, from time to time fundamentalists on both sides in the Middle East will unfortunately use it as an excuse to murder others in the name of their cause. I want to emphasise those points in the short time I have to make these remarks, but I believe the motion in itself in the present context gives the wrong message. The first and immediate thing we have to do is tell those responsible for this appalling atrocity that they cannot get away with it and they will have to suffer a direct response. But in the long term we have to get
better measures for peace in the world. (*Time expired*)

Senator MASON (Queensland) (4.49 p.m.)—I would like to thank Senator Brown for proposing this urgency motion this afternoon. The motion is in two parts. The first part says:

The need for the Australian Government to take a lead role in having the United Nations coordinate the global response to the terrorist attacks in the United States ...

The UN is a great organisation. It is good at many things. It is good at mediation and conciliation, and it is a great forum for the drafting of international treaties. It is often a clearing house for international debate. Indeed, sometimes it is even good at peacekeeping, although more recently in Bosnia and Rwanda there have been problems. Sometimes the UN has even been good at peacemaking. In the early 1990s in Cambodia it did a bit of that and did it quite well. But the United Nations, in whatever guise, has never been very effective in actually running complex military operations. The only two notable exceptions, Korea in the early 1950s and the Gulf War in the early 1990s, succeeded because they were actually initiated by and the diplomatic impetus came from one superpower, and that was of course the United States. In effect, it organised both those wars diplomatically and provided the military apparatus for fighting them.

Experience shows us that the United Nations is not a very effective instrument for coordinating acts against international aggression. It is not very good at all. While I accept that the UN Security Council has occasionally worked well—recently endorsing the need for certain military acts, as in the case of the recent terrorist attacks in the US—the UN Security Council does not operate, never has operated and never will operate as a meeting of the joint chiefs of staff. That is not its role, and it does not work like that. It gets even worse with the UN because, while the Security Council may be an unwieldy body, the General Assembly is far worse. There is no way the General Assembly can coordinate this sort of activity. It has over 200 member states, and some of the states partaking in the General Assembly are not democratic. It is very difficult to ask a democratic organisation involving many non-democratic actors to partake in this sort of resolution.

How can you ask an organisation to fight terrorism when some of its members include Iraq, Iran, Syria, Libya and the Sudan? I think the UN taking a leading role is problematic, but I recognise that historically it has been asked to do that on several occasions. As a young student, I can remember the Rt Hon. Michael Foot asking the UN to take a leading role in the Falklands War. Even then, that was the wrong move. That war was successful because the UN did not play a leading role in it.

Senator Brown’s urgency motion relates to the need for the Australian government to use all possible restraint in an effort to prevent war. Once again, I am sympathetic to the sentiment underlying Senator Brown’s motion—it is impossible not to be supportive of it—but it reminds me of something I saw a while ago on TV. Back in the early 1970s, President Nixon, during the Vietnam moratoriums in Washington, rushed up to the Capitol building at about three or four one morning. He confronted all these young students who said to him, ‘Sir, this war must end. There must be peace at any price.’ President Nixon replied that peace at any price might be too big a price to pay for peace. I think he was right. War is a terrible thing, but the prevention of war at any price only leads to the victory of those who are prepared to pay any price. As Senator Schacht said before, we did not choose this conflict, we did not choose this war. Australians, Americans and indeed all peoples of the world—or nearly all peoples of the world—prefer to live in peace and tranquillity. We do not want war, but we also do not want to see crimes go unpunished and justice not being done. Terrorism cannot go unpunished. We have not chosen this war, but I suspect we are going to end it. As the Israeli journalist Sever Plotzker wrote last year:

Democracies move slowly. They don’t rush to enter war until they have turned over every stone in a peace process. They, the democracies, prefer a fair compromise to spilling blood. They must secure from the public the support that is not automatically given to every elected government.
Therefore, at first glance, democracies seem weak, but it is an illusion. When a democracy goes to war, it does so on the basis of the conviction of all its citizens, which is why it wins. History is filled with the skeletons of defeated non-democracies. Do not be mistaken, there has never been a terror organisation which has vanquished a democracy.

In conclusion, this is no exception. We will fight this war because we have to fight this war, not because we have chosen it. The second part of Senator Brown’s urgency motion reads:

... the need for the Australian government to use all possible restraint in an effort to prevent war.

Perhaps not ‘all possible restraint’ but ‘all reasonable restraint’. We will not choose war unless we have to.

Senator BROWN (Tasmania) (4.56 p.m.)—I thank Senator Mason for that very well informed contribution in opposition to the motion. He has made a most constructive contribution to the debate. We ought to be debating this matter in this parliament. I have a great fear that we will be debating it after events have overtaken our armed services personnel and the rest of the world at a rate which we may live to regret.

One thing that Senator Mason said was that a democracy has not been defeated by terrorism. In the international arena, the closest thing we have to a democracy is the United Nations. It was established to give each nation a say and to give each nation a voice. While there will always be those countries that we do not like—we do not like their systems and their dictatorships—they are not in the majority in this situation; they are in a very small minority. The point I make through this motion is that we would be much safer including that community of nations that wants to see the terrorists brought to justice working through the United Nations, rather than through the power of the United States alone. Senator Mason has referred to a couple of occasions when the United Nations was actually the vehicle for giving the go-ahead, although the United States had the firepower.

These are very dangerous times. They are a great challenge to democracies—there is no doubt about that. It is very important that this matter be handled by parliament and not just the government of the day, particularly as we move to an election. Senator Knowles said that this is a world of grown-ups and cannot be run by young Australians. The probability is, though, that it will be young Australians who get sent off to hostilities in the pursuit of the terrorists. That is what concerns me. They ought to have a say in that and the parliament ought to have a say in that. (Time expired)

Question put:

That the motion (Senator Brown’s) be agreed to.

The Senate divided. [5.02 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes........... 10
Noes........... 51
Majority....... 41

AYES

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

NOES

Abetz, E.
Bishop, T.M.
Boswell, R.L.D.
Brandis, G.H.
Buckland, G.
Calvert, P.H.
Campbell, G.
Carr, K.J.
Collins, J.M.A.
Conroy, S.M.
Cook, P.F.S.
Coonan, H.L. *
Cooney, B.C.
Crane, A.W.
Crossin, P.M.
Denman, K.J.
Eggleston, A.
Ferguson, A.B.
Ferris, J.M.
Forshaw, M.G.
Gibbs, B.
Gibson, B.F.
Harradine, B.
Harris, L.
Herron, J.J.
Hogg, J.J.
Hutchins, S.P.
Knowles, S.C.
Lightfoot, P.R.
Ludwig, J.W.
Lundy, K.A.
Macdonald, J.A.L.
Mackay, S.M.
Mason, B.J.
McGauran, J.J.J.
McKiernan, J.P.
McLucas, J.E.
O’Brien, K.W.K.
Patterson, K.C.
Payne, M.A.
Ray, R.F.
Reid, M.E.
Schacht, C.C.
Sherry, N.J.
Tambling, G.E.
Tchen, T.
Tierney, J.W.
Troeth, J.M.
Question so resolved in the negative.

COMMITTEES
Superannuation and Financial Services Committee
Withdrawal of Reference
Motion (by Senator Coonan)—by leave—agreed to:
That the reference to the Select Committee on Superannuation and Financial Services relating to aspects of the general insurance industry in Australia be withdrawn.

PARLIAMENTARY ZONE
Proposal for Works
Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (5.07 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 content of slivers for Reconciliation Place in the Parliamentary Zone. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator TAMBLING—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 content of slivers for Reconciliation Place in the Parliamentary Zone.

COMMITTEES
Foreign Affairs, Defence and Trade Committee: Joint Report
Senator COONAN (New South Wales) (5.08 p.m.)—On behalf of Senator Ferguson, I present the report of the Joint Standing Committee on Foreign Affairs, Defence and Trade entitled A model for a new army: community comments on the ‘From Phantom to Force’ parliamentary report into the Army, together with the Hansard record of the committee’s proceedings and submissions received by the committee.

Ordered that the report be printed.

Senator COONAN—I seek leave to move a motion in relation to the report and to incorporate my tabling statement in Hansard.

Leave granted.

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

The statement read as follows—
In September 2000 this committee tabled a report on Army titled ‘From Phantom to Force: Towards a More Efficient and Effective Army.’ That report raised great concern that while the performance of our Army over the last decade has been impressive, much of it has been and remains hollow, and could have been characterised as a Phantom Army.

At that time the committee stated that, in a departure from usual practice, it intended to seek public comment on the report following its release. We did this because, if the model for a future Army that we proposed is to be successful in increasing the capability and efficiency of the Army, it needs to be refined through consultation and discussion. It needs to be owned and supported broadly by the community, the Army and the Defence Department.

There has been considerable change since the release of From Phantom to Force. In the first instance the Government released the Defence White Paper entitled ‘Defence 2000: Our Future Defence Force’. In this document the Government took up many of the recommendations of the original paper, including a significant boost to Defence spending over the next 10 years. In other areas, such as a change in role for the Reserve, Government policy took a different course from that recommended in the report. In addition there was the important change to Defence Reserve legislation adopted in early 2001 whereby the procedure for calling out Reserves was simplified, and Reserves were given greater employment and education protection.

The committee has taken account of the new information provided by both the community consultation, and the changes in the Defence landscape since the release of From Phantom to Force, and has reviewed the original recommendations. What this report does is consolidate what the committee believes was a well researched and well received report, and update the report’s recommendations. It benefits from being an external report and thus not constrained by preconceived ideas, but able to take an objective assessment of where the future of the Army should lie.
In practical terms, the follow-on report:

- reconfirms the requirement for effective doubling of the Army's capability to respond to short-warning contingencies by the creation of four capable, fully staffed and ready brigades;
- has taken into account new evidence regarding the Army's expansion capability and now believes that the Army must be able to expand to 8 brigades within a reasonable warning time rather than the 12 originally recommended; and finally
- reconfirms the committee's original recommendation regarding the establishment of a unified Army personnel structure by aligning the Regular and Reserve components into a single entity for the purposes of employment arrangements, training and operations.

In conclusion, the committee is fully supportive of the great work carried out by the Army and the Defence Force, but remains convinced that action is required to improve Army's capability. I would like to thank the many people who took time to contribute to this inquiry, including private citizens, academics, departmental staff and serving soldiers and officers within both the Regulars and Reserve. The efforts of all these individuals have resulted in a significant report and have made a major contribution to the discussion on our Defence Policy and the future of our armed forces.

I commend this report to the Senate.

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

Leave granted; debate adjourned.

Superannuation and Financial Services Committee Report

Senator WATSON (Tasmania) (5.09 p.m.)—I present the third report of the Select Committee on Superannuation and Financial Services on prudential supervision and consumer protection for superannuation, banking and financial services, entitled Auditing of superannuation funds, together with the Hansard record of the committee's proceedings and submissions received by the committee.

Ordered that the report be printed.

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

Leave granted.

Senator WATSON—I move:

That the Senate take note of the report. Given the pressures on parliamentary debating time as this is going to be our last sitting week, I seek leave to incorporate my tabling statement in Hansard.

Leave granted.

The statement read as follows—

I present the Committee's Third Report on prudential supervision and consumer protection for superannuation, banking and financial services. This report focuses on the auditing of superannuation funds.

As I advised the Senate in August when I tabled the Committee’s First Report on this term of reference, the Committee determined to hold a roundtable on auditing with relevant professional organisations and individuals, and to report separately on this issue, because of its importance in enhancing the effective supervision of funds. This report presents the results of that roundtable.

The roundtable was attended by representatives of key professional bodies, namely the Auditing and Assurance Standards Board, CPA Australia, the Institute of Actuaries of Australia, the Institute of Chartered Accountants in Australia and the National Institute of Accountants. Two individuals with specialist expertise, Professor Tony Harris and Mr John Shanahan, also participated, as did representatives from the three regulators (APRA, ASIC and the Australian Taxation Office) and the Australian National Audit Office.

During the Committee’s inquiry into the prudential regulatory framework and our subsequent inquiry into the five case studies detailed in the Second Report, we had become concerned that the standards of auditing, especially of superannuation funds, were not always as high as they should be. In the wake of recent corporate collapses and the mismanagement of some superannuation funds, the Committee wants to ensure that the bar is lifted not only for trustees, but also for auditors of superannuation funds.

The Committee acknowledges that a gap exists between the community's expectations of auditors and what auditors actually do. However, the Committee does not accept that auditors have only a limited role. Audit reports need to be able to be relied upon more widely than is currently the case. In particular, they should be able to be relied upon to provide early warning of potential fund failure.

The Committee notes that the accounting standards for superannuation are more rigorous than those applying in the commercial area and that, generally, most auditors of superannuation enti-
ties in Australia are performing at a high standard. The Committee acknowledges that the professional accounting bodies seek to position themselves as leaders in finance, accounting and business advice and that they strive through their endeavours to maintain and enhance their high public standing.

Recognising the professional bodies’ efforts, the Committee nevertheless believes it is essential for the profession to take a more forward-looking approach to improving the standards of auditing, and to do much more to address the expectation gap. The Committee therefore calls on the profession to take a broader and more proactive approach, rather than confining itself to explaining the limitations of the traditional role of auditors.

In this report, the Committee has made a number of recommendations designed to improve the auditing of superannuation funds. These include strategies to:

- tighten the current reporting requirements under the SIS Act to require auditors to report directly to the regulator in certain circumstances;
- ensure genuine auditor independence;
- expand the nature of audit reports by requiring the auditors to assess and comment on the fund’s risk management and investment strategies in accordance with guidelines prepared by APRA;
- require a follow-up to qualified audit reports;
- provide increased assurance about the effectiveness of the governance arrangements in place by requiring large funds to undertake a prudential review every five years; and
- improve communication with fund members by routinely providing them with the auditor’s reports.

Superannuation is compulsory, with funds under management increasing yearly. The Committee considers, therefore, that the standards which apply to fund management must be higher than those applying to commercial companies in which individuals may choose to invest.

Implementation of the Committee’s recommendations will help to provide the community with greater assurance that their superannuation savings are safe and their retirement incomes assured.

The Committee is grateful to the individuals, professional organisations and regulatory bodies which took the time to participate in the roundtable and, in some cases, make written submissions on the relevant issues.

On behalf of the Committee I would also like to record my appreciation to the Secretariat for their work in assisting us to conduct the roundtable and produce this report. In particular I would like to thank the Secretary, Sue Morton, the team of research officers, especially the acting Principal Research Officer, Louise Gell, and the Executive Assistant, Jade Ricza.

I commend the report to the Senate.

Senator SHERRY (Tasmania) (5.11 p.m.)—As I am sure most Australians are aware, superannuation is compulsory. It is a very important part, and an increasing part, of the retirement incomes of all Australians. At the moment, approximately $500 billion—

Senator Watson—Billion.

Senator SHERRY—Sorry, $500 billion—I am glad Senator Watson chose to remain in the chamber. Approximately $500 billion is in superannuation, and that is a massive amount of Australian savings. Importantly, superannuation has a number of organisations responsible for its governance: trustees, who are legally the custodians of superannuation funds in this country, and a number of funds managers and administrators, who directly administer and invest the moneys. In addition to that, we have a number of prudential regulators, commonly known as APRA and ASIC. It is not my intention to comment about those regulators today; I have spoken about them previously. They are government regulators created by the current Liberal government. Treasurer Costello proudly boasted of the greatness of these regulators; sadly they leave a lot to be desired with regard to some of the recent disasters we have seen—HIH and Commercial Nominees, to name but two.

The subject of the report that is being tabled is the auditing of superannuation funds. Auditors are one part of the very essential network required to oversee the safety of Australia’s superannuation savings: $500 billion, as I mentioned earlier. Superannuation is particularly important as part of Australia’s retirement incomes, so there is a need for particular protections to ensure that incidents of theft and fraud—which regrettably do occur—are kept to an absolute minimum. As part of its report, the Select Committee on
Superannuation and Financial Services conducted a roundtable of people representing the Prudential Regulation Authority, ASIC, the Australian Taxation Office and a number of key professional bodies. The report goes into discussion in the following areas: the adequacy of auditing and accounting standards, the adequacy of reporting requirements under the Superannuation Industry (Supervision) Act, the nature of audit reports, the reliability of audit reports, the role of professional bodies, and the qualifications and experience required of auditors of small, medium and large superannuation funds.

Whilst on that topic, it is important to note that there are over 220,000 superannuation funds in Australia. That is an incredible number. It is somewhat difficult to adequately prudentially regulate such a massive number of funds. That number is a little misleading because the do-it-yourself, self-managed superannuation funds regulated by the ATO make up the vast bulk of that number. In respect of self-managed superannuation funds, the onus of prudential regulation primarily rests on the individuals who are effectively the trust management of those particular superannuation funds. The other 3,780 funds that are regulated by APRA—excluding the small APRA funds, those with less than five members—would represent the vast bulk of that $500 billion that I referred to earlier, as well as probably 18 million or 19 million members’ accounts. So, from the point of view of asset size and membership fund size, they are the most important area of regulation.

I want to comment on a couple of aspects of the report. The roundtable discussed whether auditors should be compelled to report directly to the regulator where they have identified a compliance breach or possible unsatisfactory financial position. It is important to note that Mr Brown, who was at the roundtable representing APRA, supported such a requirement. I think it is important that this requirement be introduced. It does not exist at the present time. If an auditor picks up a problem or believes there is a potential problem in a superannuation fund, it should be immediately reported to the prudential regulatory authority. I have already touched on the 220,000 small self-managed superannuation funds. There is not a necessity there to have the same auditing regulatory environment.

What was of particular concern to the committee was that, of the 3,780 funds that APRA regulates, excluding the small APRA funds, if one in eight of these funds has a qualified audit—which apparently it does, as Mr Brown suggested—and 20 per cent of those qualified audits concern breaches more serious than simply late returns, this equates to potentially serious breaches being noted in about 90 funds. That would be 90 superannuation funds with hundreds of thousands of members. Even though there were a number of examples cited before the committee at the roundtable, the committee did not hear evidence of major systematic problems concerning auditor independence in the area of superannuation.

The committee, at paragraph 3.45, recommends that auditors be required to report to the regulator ‘any breach of compliance with the Act or suspicion of a fund’s unsatisfactory financial position’. The committee also considered the important issue of auditor independence in the case of a corporate fund which is associated with a particular company. There are some instances of the auditor of a superannuation fund being the auditor of a company. We considered that to be undesirable, that the SIS Act be amended to require that the auditor of a superannuation fund be truly independent and that the auditor of a particular company fund not also be the auditor of a superannuation fund.

On page 26 the report says—this was particularly interesting and certainly worried me as deputy chair of the committee—that the auditing requirements of banks ‘are more detailed than those required for superannuation funds’. The committee considered that it would be impractical, in the case of small- and medium-sized superannuation funds, to move to the banking standard. However, we believe there is merit in the longer term for the same auditing requirements and audit reports that are applied to banks to be applied to larger superannuation funds.

The only other matter I want to touch on is on page 39 of the report dealing with the
role of professional bodies and enhancing their public standing. The committee supports the professions’ move toward having ‘auditing competency formally assessed, rather than merely having a requirement that a certain number of hours be completed’.

The report says:

The Committee considers that superannuation is a specialist area, that experience in this type of work is essential, and that requiring formal assessment of competency in auditing of superannuation funds should proceed as a matter of urgency.

There are important recommendations in the committee’s report. The role of auditors is an essential and critical part of the oversight of Australia’s superannuation savings—$500 billion. It is particularly important that we have the most rigorous safeguards of our superannuation retirement savings. I would urge people to read this report. It is one of a series of very incisive, forward-looking and necessary reports, with recommendations that I hope the government of the day, whoever it may, will implement posthaste.

Question resolved in the affirmative.

Treaties Committee

Report

Senator CAL VERT (Tasmania) (5.21 p.m.)—On behalf of Senator Coonan and the Joint Standing Committee on Treaties, I present the 42nd report entitled Who’s Afraid of the WTO?, is the result of a year-long inquiry by the Joint Standing Committee on Treaties about Australia’s interaction with the World Trade Organisation.

Over the last few years there has been growing ‘anti-globalisation’ sentiment in Australia and overseas, targeting the WTO and other global institutions such as the World Bank, World Economic Forum, and the recent G8 summit in Genoa.

Against this background, the Committee examined Australia’s practical interaction with the WTO, undertaking a wide-ranging inquiry with the aim of reviewing the impact of the WTO’s 1994 Uruguay Round Agreements, and suggesting ways for Australia to improve its WTO advocacy.

We focused primarily on Australia’s interaction with WTO’s dispute settlement system, and how this affects our ability to trade. However, the Committee’s review also looked at issues of globalisation, socio-economic impacts of trade liberalisation, and challenges before the WTO such as transparency and accountability, multilateral and regional agreements, and inclusion of developing countries.

The Committee has made 21 recommendations covering a broad spectrum of WTO issues. The recommendations address major concerns highlighted in submissions to the inquiry, and aim to strengthen Australia’s ability to participate in the WTO.

I will outline some of the major recommendations in the time remaining here.

Clearly there are ‘winners’ and ‘losers’ as a result of trade liberalisation, both in Australia and internationally. While some industries gain from increased access to overseas markets, others find it difficult to compete against increased competition. These industries and their associated communities find it difficult to believe in the overall benefits of trade liberalisation.

We found that there has been no comprehensive evaluation of the impact of the Uruguay Round agreements since the Industry Commission undertook some research back in 1994. While the Committee acknowledges that this work is difficult to undertake, we do not believe that is an adequate excuse not to do so.

The Committee has recommended a comprehensive evaluation of the socio-economic impacts of trade liberalisation in Australia. We have also recommended that prior to entering any future WTO Agreements, Australia should evaluate the socio-economic impacts of such Agreements, and
the appropriateness of structural adjustment measures to alleviate negative impacts.

The ability for the Australian community, including industry groups, non-government organisations, the legal profession, and individuals, to participate in WTO policy decision-making and dispute processes, was a major theme throughout submissions to the inquiry.

We found that there is clearly a need for more effective community education about the role, responsibilities and limitations of the WTO. There is also a need for better industry consultations. We have made a number of recommendations in these areas.

We also believe that there could be better Parliamentary scrutiny of WTO issues, and have recommended the establishment of a Joint Standing Committee on Trade Liberalisation. The Committee would seek community and industry input on WTO issues, particularly leading up to Ministerial Meetings. We note that a Canadian parliamentary committee undertook such a review prior to the 1999 Seattle WTO meeting.

The Committee on Trade Liberalisation would also review Australia’s performance in the WTO dispute settlement system and canvas the economic and social impacts of trade liberalisation and the effectiveness of structural adjustment packages.

The Committee received evidence arguing that there needs to be better coordination of WTO issues at the bureaucratic level of Government. While DFAT is the lead agency for WTO matters, a number of other Commonwealth agencies are involved in WTO matters, particularly disputes. Our recommendations in a number of areas, including education, communication, consultation and Commonwealth/State relations, illustrate the need for a new office to deal with WTO matters. The Australian Greenhouse Office provides a useful model.

The Committee has recommended that the Government establish an Office of Trade Advocate within the portfolio of foreign affairs and trade, drawing on existing DFAT resources and augmenting them with public and private sector expertise as needed.

Agriculture is of great importance to Australia both as a significant export industry and as the backbone of many rural and regional communities. While agriculture has not yet benefited fully from increased trade liberalisation, the inclusion of agriculture in the 1994 Uruguay Round was a major achievement.

Australia, both through the Cairns Group and individually, continues to be one of the strongest proponents for increased agricultural trade liberalisation in future WTO negotiations.

Australia’s experience in the WTO dispute process is built largely around agricultural issues - for example in the Lamb dispute as a complainant and the Canadian Salmon case as a respondent. Protection of our high quarantine status carries a high profile within Australia and is a target for many overseas countries wishing to expand access to our markets. We have made three recommendations regarding agriculture, the dispute settlement process and quarantine.

There is increasing debate at the international level about trade and the environment - particularly the need to allow domestic governments to legislate for environmental protection without being in breach of WTO Agreements. It is important to ensure that such measures are not protectionist policies in disguise.

The relationship between WTO Agreements and Multilateral Environment Agreements, particularly those environment agreements which contain trade sanctions, is the subject of ongoing debate.

While there has not been a case before the WTO dispute system involving a conflict between the WTO and an environment agreement, there are questions about which international treaty would take precedence in such a situation.

We recommend that the Australian Government continue to use its position on the WTO’s Committee on Trade and the Environment to ensure that conflict between these agreements is avoided. Regional Trade Agreements, such as the Closer Economic Relations agreement between Australia and New Zealand, are allowed under the WTO rules. The absence of new multilateral negotiations has resulted in a proliferation of regional agreements as countries seek to increase their trade opportunities. The Australian Government is currently exploring the possibility of such an agreement with the United States.

The Committee believes that the multilateral trading system must continue to be the primary vehicle for future trade liberalisation, and we note that this is also the Australian Government position.

However, Australia should be open to negotiating and securing regional agreements where they can deliver a benefit to Australian industry. We have recommended that Australia continue to pursue regional trade agreements where appropriate.
Although all WTO Members are ‘equal partners’ in the organisation, the ability for developing countries to fully participate in the WTO is sometimes limited by resource and other constraints. A number of developing countries do not even have permanent representation at the WTO in Geneva.

However, developing nation governments have expressed their support for the WTO system and their desire to participate in it, as they see trade as a key mechanism for improving their economic base.

We have recommended that the Australian Government push for the establishment of an Asia Pacific Regional Centre of the WTO.

The location of the WTO in Geneva means that Members in the Asia-Pacific region, particularly developing countries, need to commit substantial resources to attend negotiations, committee meetings, dispute hearings and other WTO events. The Australian Government should advocate the establishment of a regional WTO centre to host trade negotiations, dispute hearings, and training for developing countries. This is an area in which Australia can show significant leadership and support for our regional neighbours.

There are arguments that the WTO should redraft its Agreements to include labour and human rights clauses. Proponents argue that trade liberalisation may impact adversely on labour and human rights standards, particularly as companies seek to move their operations to countries with lower wages or occupational health and safety requirements. Others argue that the WTO is not the appropriate forum in which to deal with these issues, citing the International Labour Organisation and the United Nations and others as the relevant agencies.

The Committee has recommended that the Australian Government continue its push to establish an inter-agency forum to discuss these issues.

Madam President, as you can see, the Committee canvassed a broad range of issues throughout this inquiry. The WTO has been in operation for just over five years. Over this short time its profile has increased to vastly overshadow that of the GATT in its 50-year history.

While the Uruguay Round Agreements resulted in substantial trade liberalisation, it is widely recognised by Member governments that there is more to achieve.

Developing countries in particular feel that their interests were not fully served in some of the Uruguay Round outcomes.

The failure to launch a new round of trade negotiations at Seattle in 1999 has placed increasing pressure on the WTO, and the forthcoming meeting at Doha, Qatar, in November 2001 will be closely monitored by the international community.

The recommendations we have made relate both to Australia’s domestic policies relating to the WTO, and to how Australia should engage the WTO system at the international level.

I commend the report to the Senate.

The additional comments read as follows—

Due no doubt to my interest in the WTO and passion for building Australia’s capacity to engage the global trading system, my colleagues on the Joint Standing Committee On Treaties agreed that I should Chair this entry into Australia’s Relationship with the WTO.

I thank them for entrusting me with Chairing this absorbing and important inquiry.

I thank each of them for their contributions which, bar one member, is a unanimous report.

I also thank the Secretariat, in particular the Inquiry Secretary Bronwen Jaggers, for their role in handling this voluminous task.

This broad ranging inquiry into Australia’s relationship with the WTO provided the Committee with an opportunity to evaluate some of the medium to long-term impacts of the covering agreements to which Australia became a party in 1994.

Although the focus was specifically the impact of the WTO rules based system on Australia’s ability to trade, the scope of the inquiry encompassed issues relating to globalisation, the socio-economic impacts of structural changes in Australia and broader social concerns of the anti-globalisation movement.

The tendency to blame the WTO along with other global institutions including the World Bank, International Monetary Fund and the World Economic Forum, as contributing to inequality between rich and developing nations was not supported by conclusive evidence.

In fact the WTO is working to prevent small nations and disadvantaged developing countries from being excluded from the world trading system through application of the principle of non-discrimination.

It is recognised that meeting this objective also requires the involvement of large economies convinced of the benefits of liberalised trade.
The fact that there are 142 current Members of the WTO (100 of which are developing countries), with agreement now reached on the terms on which China will be granted accession, and other countries in the queue, strongly suggests that the governments of these countries recognise that openness to trade, capital and ideas is the best pathway to economic growth and reduction of poverty. Clearly if the poor nations see no benefit in trade, political support for the WTO will erode. The quest for membership confirms that developing economies see their prospects as being enhanced by the certainty of a rules based trading system rather than being shut out of the global trading system.

Unfortunately, this message does not seem to have penetrated some sections of the community who remain resolutely unconvinced about the claimed benefits of free trade.

There is a compelling need for the government to proactively promote the benefits of trade and to educate the broader community about the gains Australia has made by virtue of its membership of the WTO and participation in the global trading system.

The Committee has recommended that one of the functions of the proposed Office of Trade Advocate be to encourage this community appreciation by running up to date and well-targeted public education programs (reviewed by the Minister for Trade) and inviting NGO members of the WTO Advisory Group to participate in Australia’s delegation to the WTO Ministerial Meeting in Doha in November 2001.

On the other hand it must be acknowledged that injustices do exist in the richer economies’ ability to manipulate the implementation of key trade agreements such as textiles.

Even more difficult to contend with, the United States and European Union spend an estimated seven times as much on domestic subsidies, especially support for farmers, as they do on foreign aid for poor countries. Agricultural subsidies that are WTO compliant effectively deny market access to developing economies.

This is also a significant access problem for medium sized export orientated economies such as Australia.

Reductions in farm subsidies and border barriers as well as greater access to markets will be a key focus for Australia in the lead up to the Ministerial Round in Qatar in November.

The political paralysis surrounding a future WTO Ministerial Round is regrettable – the WTO has delivered measurable benefits to Australia and it must be supported as part of the solution to freer trade and to address some of the problems of globalisation and not seen as part of the problem.

The successful settlement of the Howe leather and salmon disputes, Australia’s wins in the Korean beef case and more recently in the lamb safeguards dispute with the US, as well as Australia’s successful participation as a third party in a number of trade disputes, underpins the importance of the WTO dispute system and how it can be used effectively to pursue Australian export interests.

The enquiry has served to highlight opportunities for the Government to take a more robust and proactive approach to engagement of the dispute settlement system.

Notwithstanding relatively recent Government initiatives such as the establishment of a dispute resolution and enforcement mechanism (DIEM) within the Department of Foreign Affairs and Trade to assist exporters to identify where the WTO rules might help their trading interests, the enquiry revealed a lack of understanding of WTO dispute processes among Australian industry.

There is an urgent need for Government to develop other and more targeted infrastructure to foster government-industry co-operation and understanding.

There has not yet been a case in which an enterprise has formally used the DIEM to seek action to address specific concerns.

Whether this is due to lack of knowledge of the rules and the capabilities of the WTO system on the part of companies, or whether DFAT efforts to provide understanding and access through seminars with key business and legal groups have failed to hit their target, is difficult to distinguish.

In reality the processes of DIEM as a mechanism for industry access to the dispute settlement system is unused.

An experienced WTO panellist, Professor Jeff Waincymer, who gave evidence to the Committee, was critical of the organisation of resources and expertise in WTO matters:

“In terms of fitting together it is easier to be a critic than a playwright. Notwithstanding that all the individuals are excellent, there are too many Chinese walls in the Australian structure. There is a bit of expertise in DFAT and a bit in the A-G’s, the Department of Industry desperately wants to know the rules so that they can come up with some sensible sustainable industry development policy for Australia, and there is Agriculture et cetera. So it is all over the place.”
There is an identified need for a better co-ordinated approach to WTO advocacy and policy development.

Although mindful of the role of the Trade Negotiating Division, we have recommended the establishment of an Office of Trade Advocate within DFAT to provide a focal point to co-ordinate and support the development of sectoral priorities for Australia's trade policy, WTO negotiations and consultation and advocacy, including the participation of private sector lawyers, issues of WTO compliance, the impact of structural adjustment measures and domestic subsidies, and to promote awareness of the WTO to industry and to educate the broader community about the WTO.

The Committee has also made a number of specific recommendations designed to address the need for closer consultation with State and Territory Governments, the development of sectoral advisory committees and expert legal panels.

The Committee has concerns about the particular difficulties of enforcement and compliance with WTO decisions where time frames allowed under the rules to bring measures into conformity with WTO obligations can effectively shut out a successful party from the fruits of their victory for many months without redress for ongoing losses.

The Committee has recommended that in review of the Dispute Settlement rules, the Government proactively seek to identify opportunities for more effective use of mediation and conciliation to secure more timely compliance with WTO rulings.

Committee members are of the view that the operations of the WTO thus far with the Secretariat and hearings located in Geneva, are predominantly Euro-centric to the detriment of the Asia-Pacific countries including many developing countries.

We have recommended that at the Ministerial meeting in Doha and at future WTO meetings, the Australian government advocate the establishment of an Asia Pacific Regional Centre of the WTO.

The Centre would serve as a venue for WTO negotiations and dispute hearings and as a training and information centre for countries within the region to develop their capacity for WTO advocacy.

Finally, given the importance of trade to Australia, to Australian industry and to the Australian people, a major recommendation is for more focused and specific parliamentary scrutiny of the impact of trade liberalisation on Australia, of the opportunities for trade expansion and trade negotiation positions developed by the Government.

A Joint Standing Committee on Trade Liberalisation would provide a conduit to increase understanding between governments, industry and the community in this critical area of endeavour. We believe that this role is not currently fulfilled by the Joint Standing Committee on Treaties where the focus is whether it is in Australia's interests to ratify an international agreement and is not concerned to monitor its subsequent impact.

The Trade Sub-Committee of the Joint Standing Committee of Foreign Affairs, Defence and Trade appears to focus primarily on promotion of Australia's trade interests but not by reference to advocacy, capacity building and the ability to engage the multi-lateral trading system.

I have only had time to refer to some of the recommendations which form part of a comprehensive set of recommendations identified by the Committee as necessary to address concerns and to strengthen Australia's ability to participate in the WTO.

I commend the Report.

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

Leave granted.

Senator BARTLETT (Queensland) (5.22 p.m.)—by leave—I would like to speak briefly to this report of the Joint Standing Committee on Treaties entitled Who's Afraid of the WTO? Australia and the World Trade Organisation. It is a significant report and the committee has put a lot of work into it and, given that otherwise it will probably not come on for debate before the election, it is appropriate to note its tabling and its contents to some degree. I am the Democrats sole representative on the treaties committee and, as I have said a number of times before, the committee is a constructive one that does a lot of valuable work. It is, I believe, one of the initiatives of the Howard government that should be acknowledged as a positive creation. It goes part of the way along the lines of longstanding Democrat policy, I should add, but nonetheless it is worth acknowledging positive actions when they occur.

The report contains a few pages of additional comments that I have put in outlining some of the distinctions between the ap-
approach of the Democrats to the issue of the WTO and those of other parties. As a whole, the report does a good job of trying to present the range of different views on issues relating to the operations of the WTO, and it has a number of recommendations, some of which are reasonably constructive. There are some that I am not totally supportive of; nonetheless, I think it is worth acknowledging that there was a strong effort made by the committee—particularly by Senator Coonan, the chair of the subcommittee—to get agreement across the range of views of the members of the committee. Senator Coonan should be congratulated for that. The committee itself has recently had a change of chair, with Mr Andrew Thomson no longer holding that position. I have forgotten which electorate he is the member for.

Senator Robert Ray—Wentworth.

Senator BARTLETT—Thank you. He has been replaced by my namesake in the other place, Mr Bartlett.

Senator Robert Ray—Macquarie.

Senator BARTLETT—He is the member for Macquarie. I do not usually pay much attention to that other place. They do not seem to do anything terribly significant, although in this case they have contributed to a good report. Nonetheless, I think it is worth emphasising some of the Democrat concerns about the direction of the WTO and about some of the thematic aspects, if you like, that run through the general thrust of the report. The Democrats are not supportive of untrammelled, unconstrained free trade. We are very much supportive of what is generally known in shorthand as fair trade, rather than free trade. While recognising the importance of trade to the Australian and international communities, it is important, in the view of the Democrats, that trade policies be balanced with those which ensure protection of human rights and of labour and environmental standards. We do not believe there are sufficient safeguards at the moment in relation to those things in how the WTO operates.

The committee argues in its main report that globalisation is inevitable and that it presents a challenge for government that is ‘to ensure the benefits of globalisation are more equitably distributed throughout the global community’. I believe this can be achieved only through comprehensive policies aimed at alleviating poverty and improving income distribution. There is not really a lot of discussion of that in the report as a whole. I also think that it is somewhat misleading to make the statement that globalisation is inevitable. To try to say that this is all going to happen anyway and so we just have to sit back and hope that it happens well is not only not good enough but also not accurate. The future direction of trade is not inevitable; it can be shaped in a lot of different directions and we should contribute to shaping that future direction of change.

The Democrats are also concerned about one of the WTO’s agreements, which I spoke on briefly in this chamber last Thursday. It is the General Agreement on Trades and Services which seeks to open up international trade in public services such as education, health, water, electricity and other essential public infrastructure. The Australian government has entered negotiations on the GATS, with little if any public consultation. Removal of domestic regulations for these essential services could well stifle democratic accountability and public debate on the role and responsibilities of public utilities and restrict policy choices for future governments. We have seen already, with the privatisation of a range of public services in Australia, governments’ lack of ability to adequately ensure community service obligations are met in some infrastructure areas. To have that problem extended to areas such as education, health, electricity and water supply, where any future attempt to ensure basic public service obligations may be seen as a constraint on free trade in such services, is a dangerous path to go down and certainly one we should not go down without full public debate.

The Australian government, in the Democrats’ view, should be playing a leading role in protecting the environment, human rights and core labour standards by ensuring that all trade treaties have standard clauses addressing these issues. This is not something which relates so much to the body of this report but
it certainly relates to the attitudes of government officials, particularly department of trade officials: unfortunately, this is not something they see as part of their role at all. That is a great disappointment and partly explains why there is a lot of community concern about the direction of trade policy in this country. It is an area that should be involved; you cannot separate economic activity from its social and environmental consequences, and it ought to be possible to have those taken into account. That is not being neo-protectionist; it is simply being more comprehensive and recognising the interdependency and interconnectedness of those areas of activity.

The report also tends to generally suggest that criticism of free trade is based on a lack of understanding of the issues and that criticisms can be overcome if we can only achieve better information dissemination. That is supportable to a degree, but you have to make sure that factual information about the reality of the operation of trade is disseminated and not just more propaganda. Nonetheless, as a whole the report provides a good comprehensive outline of the issues involved. It looks at trade liberalisation and the multilateral trading system, and it examines some of the current anti-WTO sentiment. It looks at the benefits and the costs of trade reform, not focusing quite enough perhaps on the costs, in my view. It looks at Australia’s role particularly within the WTO and at where our future policy should go, especially in relation to the dispute settlement process. It focuses on agricultural trade reform, and again this is an area where the Democrats think we need to proceed very carefully and not just pursue an absolute, free market, free trade at any costs approach.

It also looks at quarantine, an important area that, in the view of the Democrats, has already put our environment at risk. We saw this in relation to the Tasmanian salmon case where WTO rules meant that Australia was on the verge of being forced to take—in the view of the Democrats—an excessive environmental risk or risk trade sanctions. Fortunately, through a lot of negotiation and the sensible actions of the Tasmanian government in trying to ensure it could retain its status as a quarantine zone—which was accepted by the Canadians—we did not have an ongoing trade impact as a consequence, but it showed how dangerous that section of the WTO can be. It showed the risks that we are facing in relation to quarantine measures and the operations of quarantine in Australia.

The report also looks at the future of the WTO, transparency and accountability. It gives some support to the idea of better opportunities for participation by non-government organisations, which the Democrats strongly support. It also looks at multilateral and regional agreements, including multilateral environment agreements. Again, the view of the Democrats is that environment agreements should always have primacy and should not be subservient to purely economic based agreements, because the environmental cost will in the end affect economic agreements. The economy is really just a subsidiary of the environment and certainly should not get primacy.

The report also addresses other aspects of how the WTO may be more inclusive and issues relating to labour and human rights standards. I think it is a good examination of the issues. I have set out a few differing views at the end but, as a general outline of the situation, I think it is a constructive piece of work, although some of the thematic directions are ones that the Democrats would have some disagreement with. We also signal some warning signs in relation to future directions of WTO issues. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

DELEGATION REPORTS

Parliamentary Delegation to Indonesia and South Korea

Senator CALVERT (Tasmania) (5.32 p.m.)—by leave—On behalf of Senator Lightfoot, I present the report of the Australian parliamentary delegation to Indonesia and South Korea which took place from 1 to 14 July 2001.

DEFENCE LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

EMPLOYMENT, WORKPLACE RELATIONS AND SMALL BUSINESS
LEGISLATION AMENDMENT
(APPLICATION OF CRIMINAL CODE)
BILL 2001
First Reading
Bills received from the House of Representatives.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (5.33 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 PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (5.35 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—
DEFENCE LEGISLATION AMENDMENT
(APPLICATION OF CRIMINAL CODE)
BILL 2001

The Defence Legislation Amendment (Application of Criminal Code) Bill 2001 proposes to apply the Criminal Code Act 1995 (the Criminal Code) to all offence-creating and related provisions in Acts administered within the Defence portfolio, and to make all necessary amendments to those provisions to ensure compliance and consistency with the general principles of the Criminal Code.

This bill advances the Government’s overall program to harmonise offence creating and related provisions in Commonwealth legislation with the Criminal Code. The Criminal Code will codify offences under Commonwealth criminal law and establish a cohesive set of general principles of criminal responsibility.

The bill will similarly improve the efficient and fair prosecution of offences by clarifying the physical elements of offences and amending inappropriate fault elements.

On 1 September 1993, the Government agreed to develop a National Uniform Criminal Code by 2001. The (Commonwealth) Criminal Code Act 1995 was enacted as part of the development of this nationwide system. Chapter 2 of the Criminal Code standardises the principles of criminal responsibility applicable to all Commonwealth offences. The Criminal Code also seeks to clarify or replace common law principles of criminal liability, which now apply to many offences created by Commonwealth legislation.

All Commonwealth agencies are required, as a matter of law; to review their legislation with a view to harmonising affected statutes with the Criminal Code. The harmonisation process is intended to achieve a balance between updating the principles of criminal responsibility in Commonwealth statute law and ensuring that existing offence-creating provisions operate as intended by Parliament.

The Criminal Code affects Defence legislation containing criminal offence-creating provisions. Amendments have been proposed for ten Defence statutes, as follows:

- Approved Defence Projects Act 1947;
- Control of Naval Waters Act 1918;
- Defence Act 1903;
- Defence Force Discipline Act 1982;
- Defence Force Retirement and Death Benefits Act 1973;
- Defence Forces Retirement Benefits Act 1948;
- Defence Force Discipline Act 1982;
- Defence Force Retirement and Death Benefits Act 1973;
- Defence Forces Retirement Benefits Act 1948;
- Defence (Special Undertakings) Act 1952;
- Military Superannuation and Benefits Act 1991;
- Naval Defence Act 1910; and

The bill amends those Acts among the identified Defence portfolio legislation, which specify the physical elements of an offence and corresponding fault elements (where these fault elements vary from those specified by the Criminal Code). The bill also amends those Acts among the identified Defence portfolio legislation which specify whether an offence involves elements to which strict or absolute liability applies — that is, where
the prosecution does not need to prove fault on the part of a defendant in respect of an element. The Criminal Code is particularly relevant to the Defence Force Discipline Act 1982 (DFDA), which is the statutory basis of the discipline and military justice system of the Australian Defence Force (ADF). The DFDA is a key mechanism by which service discipline is maintained. The DFDA is used predominantly by ADF personnel who are not legally qualified. These ADF summary authorities, prosecuting officers, defending officers and discipline officers conduct approximately 7000 summary trials per annum and some also conduct committal proceedings for matters referred to Courts-Martial and Defence Force Magistrates.

Consequently, the bill sets out the offence creating provisions in the DFDA in a consistent format to ensure that they may be easily understood and applied by the non-legally qualified ADF personnel who must implement the DFDA. The bill has resulted in significant changes to the wording of some provisions of the DFDA, but it achieves a balance between the requirement of the Criminal Code to update the principles of criminal responsibility in Commonwealth law and the continuing consistent operation and effect of existing DFDA offence-creating provisions. Accordingly, the bill will ensure a smooth transition for the military justice system, as represented by the DFDA, in harmonising with the Criminal Code and will guarantee that a consistent set of principles is maintained in the administration of military justice.

Under the Criminal Code, where it is intended that strict liability will apply to a particular offence, this must be expressly stated in the provision in question. In all other cases, the prosecution will be required to prove fault in relation to each element of the offence. In the absence of the proposed amendments, offences previously interpreted as strict or absolute liability would be interpreted as not being of strict or absolute liability. Consequently without the bill, offences that would have been interpreted as offences of strict liability prior to the introduction of the Criminal Code would have become more difficult for the prosecution to prove.

There are two specific aspects to the bill. First, the bill reflects the requirements of Chapter 2 of the Code that comes into effect on 15 December 2001. From a Defence legislation perspective, these requirements are:

- the replacement of common law notions of a criminal act or a guilty mind with physical and fault elements;
- the requirement to expressly state those elements of offences that are elements of strict liability and absolute liability; and
- the preservation of the legal burden of proof on the balance of probabilities in respect of statutory defences.

Second, the bill proposes the amendment of all offence-creating provisions in Defence legislation, particularly the Defence Force Discipline Act 1982 (DFDA). The DFDA reflects and incorporates common law notions of a criminal act and a guilty mind. The Criminal Code will replace these concepts with physical and fault elements. The physical element of an offence may be conduct, a circumstance in which conduct occurs, or a result of conduct. A fault element (or a description of the state of mind of the offender at the relevant time) may be intention, knowledge, recklessness or negligence or another factor if specified, for example, dishonesty. The reason for the breadth of the amendments proposed for the DFDA is because it establishes an internal disciplinary system, implemented by military tribunals that are required to act judicially, applicable to Defence members and Defence civilians. At summary level, the level at which most hearings occur, these service tribunals are staffed by lay ADF personnel who generally do not have legal officers appearing before them. While the higher tribunals, namely Defence Force Magistrates and Courts-Martial, are conducted or assisted by legal officers, they have no original jurisdiction and may hear and try matters only on referral from summary tribunals.

The bill does not change effect of the criminal law provisions contained in Defence portfolio legislation. Rather, it preserves current law following application of the Criminal Code. The proposed amendments will ensure that the relevant offences continue to have much the same meaning and operate in much the same way as they do at present. The bill is consistent with a number of other bills that have been prepared in relation to criminal offence provisions administered by other portfolios.

The bill will modernise and improve Defence legislation. In particular, it will generally bring the operation of the DFDA into line with the civilian criminal law.

This “harmonisation” of offence-creating and related offences in Defence legislation with the Criminal Code is an important step in the Government’s program of legislative reform that will achieve greater consistency, clarity and cohesion in Commonwealth criminal law. It can also confidently be expected that these improvements will save valuable military tribunal and court time.
This bill is one of the steps in a process that will give Australians greater certainty, protection and confidence under the criminal law. I commend the bill to the Senate.

EMPLOYMENT, WORKPLACE RELATIONS AND SMALL BUSINESS LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

The purpose of the Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001 is to apply the Criminal Code to offence—creating and related provisions in legislation administered by the Employment, Workplace Relations and Small Business portfolio, and to make all necessary amendments to these provisions to ensure compliance and consistency with the Criminal Code’s general principles.

This bill is one of a series designed to apply the Criminal Code on a portfolio-by-portfolio basis. The amendments are all technical in nature. In general, the purpose of the amendments is merely to ensure that existing criminal offence creating and related provisions continue to operate in the same manner as at present after the application of the Criminal Code.

The bill “harmonises” portfolio legislation, including bills currently before the Parliament, in a number of ways.

First, the bill makes it clear that Chapter 2 of the Criminal Code will apply to all offence provisions in portfolio legislation. Chapter 2 establishes the general principles of criminal responsibility and provides for a standard approach to the formulation of Commonwealth criminal offences.

Second, the bill will amend certain provisions to expressly provide that they are offences that attract strict liability— in other words, offences where the prosecution does not have to establish fault on the part of the defendant. Under the Criminal Code, where it is intended that a strict liability standard apply to a particular offence, or to an element of an offence, this must be expressly stated in the relevant provision. In all other cases, the prosecution will be required to prove fault in relation to each element of the offence. These amendments are necessary to ensure that the strict liability nature of some provisions is not lost in the transition to the application of the Criminal Code’s general principles. Without these amendments, offences that would have been interpreted as offences attracting strict liability prior to introduction of the code, would become more difficult for the prosecution to prove and perhaps even unenforceable.

Third, the bill amends my portfolio legislation to remove unnecessary duplication of the general offence provisions in the Criminal Code.

The bill will also improve the efficient and fair prosecution of offences by clarifying the physical elements of offences—that is, the precise conduct that is proscribed by an offence—and amending inappropriate fault elements (that is, the type of mental state required for a defendant to be found criminally liable).

These are a few examples of the changes to be implemented by the bill.

Overall the bill will bring greater consistency and clarity to Commonwealth criminal law and engender greater confidence in the criminal law.

It is important that these amendments are made prior to the application, on 15 December 2001, of the Criminal Code’s general principles of criminal responsibility to all offences against Commonwealth legislation.

Ordered that further consideration of these bills be adjourned to the first day of the 2001 summer sittings, in accordance with standing order 111.

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

INTELLIGENCE SERVICES BILL 2001

INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001

First Reading

Bills received from the House of Representatives.

Motion (by Senator Patterson) agreed to:

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

Bills read a first time.

Second Reading

Senator Patterson (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs and Parliamentary Secretary to the Minister for Foreign Affairs) (5.35 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—

INTELLIGENCE SERVICES BILL 2001

Introduction

The Intelligence Services Bill 2001 represents an historic step forward in enhancing the accountability of particular agencies dealing with intelligence and security matters. As its title suggests, this Bill relates to three agencies within the Australian Intelligence Community (AIC) – the Australian Secret Intelligence Service (ASIS), the Defence Signals Directorate (DSD) and the Australian Security Intelligence Organisation (ASIO).

It deals with ASIS in the greatest detail responding to key recommendations of the Commission of Inquiry, conducted by the Honourable Gordon J. Samuels AC and Mr. Michael H. Codd AC, which reported to Government on 31 March 1995. The Bill seeks to place ASIS on a statutory footing and details its functions, lines of authority and accountability, including under an expanded oversight mechanism through the establishment of a Parliamentary Joint Committee.

The Bill also details the functions of DSD, lines of authority and accountability mechanisms. ASIO, which members will be aware already has its own legislation, is included only in so far as it is to be subject to expanded oversight by the Parliamentary Joint Committee which is also to oversee aspects of ASIS and DSD. This new Parliamentary Joint Committee will replace the Parliamentary Joint Committee for ASIO and will have expanded functions. Flowing from these measures, this Bill should provide increased assurance to the public in regard to the control and conduct of these agencies. The Office of National Assessments (ONA) is not covered by the Bill as it has separate arrangements under the Office of National Assessments Act 1977.

The Bill has benefited from consideration by a Joint Select Committee which made constructive and helpful recommendations, the majority of which the Government has accepted and incorporated.

The Value of Intelligence

Intelligence information is of critical importance to the Australian Government as to most other national governments. Good information is essential to sound policy-making. To ensure national security, the appropriate development of foreign relationships and national economic well-being in fast changing environments, countries must seek to make informed decisions. Information on which these decisions are based is drawn from many quarters: some of it is freely available, some less so. As a result many countries in the world have established intelligence agencies to gather information. As far as Australia is concerned, the intelligence agencies play a vital role in enabling certain critical decisions to be made with the best possible knowledge base. The information they provide, to use the words of the Commission of Inquiry that reported on ASIS in 1995, represents “a valuable element in the advancement of Australia’s policies and in the protection of its security.” In so doing the agencies provide a highly cost-effective service. Australia needs quality intelligence to enable it to compete and protect its position in an ever-changing and complex world. The horrific events of recent weeks underline this. It is appropriate that Australia has competent and effective intelligence agencies.

The Government considers the information provided by our intelligence agencies to be invaluable. The service that the agencies provide is essential in the development of our approach to key foreign relations and defence issues. Intelligence information goes to the heart of the protection of Australia’s security and is of vital importance in both supporting our Defence force and developing defence capability. ASIS and DSD are tightly focused organisations, attuned and responsive to Australia’s needs.

Elements of the Intelligence Services Bill

I will now address specific elements of the Bill. The Australian Secret Intelligence Service was established by executive direction on 13 May 1952 and has provided an important service to Government since that time. Its existence was acknowledged by the Government on 25 October 1977 in conjunction with commentary on the Reports of the Honourable Justice Hope who had conducted the Royal Commission on Intelligence and Security. In his report on ASIS, Justice Hope commented that the Service was “right in concept for Australian circumstances” and recommended that ASIS be retained. Subsequent reviews of ASIS echoed those judgements. In 1995 the Commission of Inquiry noted that “ASIS is highly focused on its core function and on achieving success”.

DSD has its origins in two World War Two organisations, Central Bureau and the Fleet Radio Unit, Melbourne (FRUMEL). It was constituted as the Defence Signals Bureau in 1947, and was renamed the Defence Signals Directorate in 1978. DSD is Australia’s national authority for signals intelligence and communications and computer security, and in that capacity provides an impor-
tant support service to the Government and the Defence Force. The activities of DSD have been reviewed by a number of Royal Commissions, whose findings have all been favourable.

In line with one of the key recommendations made by the Commission of Inquiry, which reported to Government in 1995, the Government determined that ASIS should be placed on a statutory footing. The Commission of Inquiry had maintained that legislation to affirm ASIS' existence and provide authority for its activities was both desirable in principle and would be of benefit in practice. The Commission's report stated that in a parliamentary democracy, the existence of an agency such as ASIS should be endorsed by the Parliament and the scope and the limits of its functions defined by legislation. The Howard Government followed through with the previous decision to put ASIS on a statutory footing and has advanced the process of developing legislation appropriate for ASIS.

In placing ASIS on a statutory footing, we are bringing the service in line with the intelligence services in most other Western democracies. Members will be aware, for instance, that the intelligence and security services of the United Kingdom, the United States, Canada and New Zealand all have a legislative basis. Similarly, placing ASIS on a statutory footing will bring the Service more into the open and, in line with the 1995 Commission of Inquiry's viewpoint, see Parliament formally acknowledge its role and value.

The Commission of Inquiry maintained that in placing ASIS on a statutory footing ASIS should receive from Parliament the maximum authority and control consistent with the essential need for secrecy. This Bill seeks to achieve that objective by establishing the framework within which ASIS must operate, detailing arrangements for ministerial control and expanding accountability and oversight mechanisms. Concurrently, the Bill sets out in legislation the existing control and accountability framework for DSD, creating a balance between greater openness and the need for continued secrecy. The functions of ASIS and the Defence Signals Directorate are listed in legislation for the first time.

With regard to accountability, the Bill also details the mechanisms associated with each of the agencies. It is worth noting that the activities of these agencies are already subject to extensive oversight through the Office of the Inspector-General of Intelligence and Security under the Inspector-General of Intelligence and Security Act 1986. In this regard the Commission of Inquiry stated, in its report on ASIS in 1995, that the accountability and oversight arrangements in place were already comprehensive and effective. Nevertheless, under this Bill, the role of IGIS is further emphasised to enable the IGIS to ensure agency compliance with appropriate ministerial authorisations.

As to the functions of ASIS and DSD, both have an external focus in the furtherance of Australia's national security, foreign relations and national economic well-being. Therefore, both agencies are empowered, under close government oversight and control, to collect intelligence information in accordance with national priorities and long-standing intelligence tasking mechanisms and to distribute that intelligence. ASIS may also undertake counter intelligence activities to maintain its own security, and that of Australia, in conjunction with other relevant Australian agencies. Additionally, it is also able to liaise with other intelligence services. DSD may provide assistance in various forms to Commonwealth and State authorities concerning the security and integrity of information and in relation to cryptography and communications technologies. The Government has accepted the recommendation of the Joint Select Committee that the IGIS, in the IGIS Annual Report, report on the operation of this function. Both ASIS and DSD are empowered to cooperate with Commonwealth, State and other authorities in order to perform their functions or to facilitate the performance of their functions.

The Bill also provides the Government of the day with the option of directing ASIS to perform other strictly defined tasks. This is prudent public policy giving the Government of the day flexibility in dealing with contingencies which may arise. These activities or tasks would still have to be strictly related to the capabilities, intentions, or activities of people or organisations outside Australia. The responsible Minister must consult other Ministers with related responsibilities before directing ASIS to perform activities under this provision and subsequently advise the Parliamentary Joint Committee on ASIO, ASIS and DSD of the nature of any additional activity. Furthermore, any directions issued under this part of the Bill would be subject to close inspection by the IGIS and copies provided to him.

It is important to emphasise that ASIS is not a police or law enforcement agency; nor does ASIS have paramilitary responsibilities. Additionally, ASIS does not, in its planning or conduct of activities, allow for personal violence or the use of weapons. Such activities are not relevant to the role and functions of ASIS. Not, of course, are ASIS or DSD permitted to do anything for the purpose of furthering the interests of an Austra-
lia political party or other Australian political organisations. These limitations are made explicit in the Bill.

**Levels of Accountability**

In respect of the agencies’ functions and their oversight, this Bill shows the various levels of accountability to which ASIS and DSD are subject. The Bill itself establishes the first level of accountability, providing a legislative basis for ASIS and listing the functions of both ASIS and DSD. The second level of accountability, as detailed in the Bill, concerns the greater definition of the agencies’ roles through written directions. Accordingly, the Bill states that the responsible minister must provide a written direction to the relevant agency head. This classified direction will detail each agency head’s responsibilities and also specify the circumstances under which the agency head must seek formal authorisation for the agency to undertake particular activities, including ones which in rare situations may focus on Australians overseas. The third level of accountability in terms of each agency’s functions concerns requests to the responsible minister for authorisations to undertake particular activities. The Bill details the circumstances under which this may occur and the arrangements that must be in place before such authorisations may be provided. Through these levels of accountability, all of which are subject to oversight and monitoring by the Inspector-General of Intelligence and Security, and the establishment of a Parliamentary Committee for ASIO, ASIS and DSD, the Bill provides the Australian public with further confidence about the accountability of the intelligence agencies to government.

**Immunities and Limitations on Functions**

The services provided by ASIS and DSD are vital to the interests of the country. Necessarily, the agencies focus on intelligence and their activities must remain secret if they are to be conducted effectively. This Bill does not shy away from that fact. Occasionally, these agencies are inhibited in the conduct of their activities outside Australia by the unintended consequences of some Australian laws, specifically those which have an aspect of extra-territorial application. It will be apparent that the original intention of the legislators who drafted these laws was not to inhibit Commonwealth agencies from fulfilling their charter at the behest of the Commonwealth. Accordingly, this Bill seeks to provide limited immunities for both ASIS and DSD in respect of the proper conduct of their functions. The immunity provisions now in the Bill reflect the careful consideration given by the Joint Select Committee to this issue and the need to protect the rights of Australians. Immunity will only be provided in respect of properly authorised activities which take place overseas or are directly connected with proposed overseas operations and which are carried out in accordance with the directions issued by ministers. Importantly too, as with other aspects of both ASIS’ and DSD’s activities, the Inspector-General of Intelligence and Security, as an independent watchdog, will oversee the propriety of the activities of the agencies in this regard.

This Bill finds the appropriate balance between the ability of ASIS and DSD to conduct their functions and the limits that should be placed on both agencies. The Bill clearly details the limits that are to be placed on ASIS and DSD. They may only perform their functions in the national interest as determined by Government – in particular, in the interests of Australia’s national security, Australia’s foreign relations or Australia’s national economic well-being – and only to the extent that those matters are affected by people or organisations outside Australia. In addition, specific Ministerial authorisation is required by the agencies before they can focus on Australians overseas with the specific purpose of producing intelligence. Such authorisation will only be granted in relation to specific circumstances prejudicial to national security which are set out in the Bill.

**Privacy**

The privacy of Australians is another matter that is a focus for protection under this Bill and which was closely examined by the Joint Select Committee. The responsible minister for both ASIS and DSD must make written rules regulating the communication (within government) and retention of intelligence information concerning Australians and Australian corporations. This is done to preserve the privacy of Australians and permanent residents defined as in the ASIO Act, which includes a body corporate. These rules, extending from arrangements already subject to close examination by the Inspector-General of Intelligence and Security, are to be prepared in consultation with the Attorney-General and the IGIS, and ASIS and DSD’s compliance with them inspected by the IGIS on a regular basis. The Parliamentary Joint Committee on ASIO, ASIS and DSD is to be briefed by the IGIS on these rules and any changes to them.

**Other Provisions**

Beyond dealing with the functions of the ASIS and DSD, the Bill also caters for the continued existence and control of ASIS. ASIS is under the control of the Director-General who is responsible to the Minister. The administrative provisions
for the Director-General and the employment of ASIS staff are also addressed.

The Bill also provides for the Leader of the Opposition in the House of Representatives to be briefed about ASIS. This provision is in the same terms as that in the ASIO Act.

**Parliamentary Joint Committee for ASIS, ASIO and DSD**

This Bill, beyond emphasising the role for the Inspector-General of Intelligence and Security, also enhances other aspects of the accountability regime for the intelligence and security agencies by establishing a complementary oversight mechanism that deals with the expenditure and administration of ASIS, ASIO and DSD. This oversight mechanism will take the form of a Parliamentary Joint Committee for these agencies. In its report, the Commission of Inquiry had proposed that a single Parliamentary Joint Committee oversee ASIO and ASIS. The Government accepted the Joint Select Committee’s recommendation that DSD also be included. The Committee envisaged under the Intelligence Services Bill has an expanded focus in comparison to the current Parliamentary Joint Committee for ASIO, which will be disbanded once the new Committee is established. The Commission of Inquiry maintained that the Parliamentary Joint Committee not review operationally sensitive matters. The Government agrees and the Parliamentary Joint Committee will be authorised to examine the expenditure and administration of ASIO, ASIS and DSD. The Parliamentary Joint Committee’s role is a significant development in terms of openness and enhanced accountability. The Inspector-General of Intelligence and Security will address matters associated with operational areas of activity and the Parliamentary Joint Committee will address the areas of agency expenditure and administration. Their roles will be complementary but distinct.

The Parliamentary Joint Committee will comprise seven members, four from the House of Representatives and three from the Senate. These members will be appointed by resolution of the relevant Chamber on the nomination of the leader of the Government in that Chamber. This will follow consultation with the leader of each recognised political party in the relevant Chamber. The desirability of ensuring the composition of the Parliamentary Joint Committee reflects the representation of the recognised parties which will also be taken into consideration. The 1995 Commission of Inquiry recommended that the Parliamentary Joint Committee exercise its functions principally through the medium of hearings in camera and subject to rules capable of preventing the release of information without authority. The Bill also addresses these recommendations.

The establishment of the Parliamentary Joint Committee to oversee aspects of ASIS, ASIO and DSD brings together a broad, balanced, accountability regime. This is underpinned by the responsibility which Ministers for the agencies have to Parliament, and the role of the Inspector-General of Intelligence and Security in reporting to the Prime Minister and the Parliament on the propriety and legality of the agencies’ operational activities. As a consequence, members of the public should gain particular reassurance that the agencies are operating responsibly and are under appropriate control and scrutiny.

**Protection of ASIS and its Staff**

Having earlier noted the special nature of the ASIS and DSD in respect of their functions externally, this Bill, quite appropriately, seeks to protect ASIS staff, the intelligence it produces and its sources and methods. As was noted by the Commission of Inquiry in its report to the Government, it would be important to dispel any public impression that the introduction of legislation would imply any complete opening up of ASIS to public view. The Commission of Inquiry report also commented that the collection of intelligence “...depends on people who often put their lives and liberties at considerable risk”. It is for that reason that secrecy about ASIS’ activities and the people engaged in them is necessary in the national interest. To lay ASIS bare would be to irreparably damage its capabilities and assets. The men and women of ASIS perform difficult and, at times, dangerous tasks in distant locations. Information about their work and indeed their identities needs to be closely held. Accordingly the Government, in line with recommendations from the Commission of Inquiry, has sought to provide ASIS and its officers with appropriate legislative protection. This Bill generally prohibits the identification of a staff member or agent of ASIS (other than the Director-General of ASIS) and provides protection for information produced by or on behalf of ASIS in connection with its functions. This is in line with similar provisions in the ASIO Act.

**Conclusion**

In conclusion, I seek to remind the Senate of the importance of intelligence and therefore of the intelligence agencies to government. Australian Governments need the best possible information our intelligence community can provide. The functions performed by the agencies are essential and highly valued.
This Bill implements key recommendations of the Commission of Inquiry concerning ASIS and incorporates substantially all but one of the recommendations of the Joint Select Committee which examined it. The Bill finds a balance between the proper performance by ASIS and DSD of their functions and the agencies’ accountability to Government. The accountability regime for ASIS, ASIO and DSD has also been expanded through the establishment of a new Parliamentary Joint Committee.

I commend the Bill to the Senate.

INTELLIGENCE SERVICES (CONSEQUENTIAL PROVISIONS) BILL 2001

The Intelligence Services (Consequential Provisions) Bill 2001 provides for the legislative amendments necessary as a result of the Intelligence Services Bill 2001 which relates to three agencies in the Australian Intelligence Community – the Australian Secret Intelligence Service (ASIS), the Defence Signals Directorate (DSD), and the Australian Security Intelligence Organisation (ASIO). The Bill caters for amendments to the Australian Security Intelligence Organisation Act 1979 stemming from the establishment of the Parliamentary Joint Committee on ASIO, ASIS and DSD, which replaces the Parliamentary Joint Committee for ASIO. The Bill allows for necessary amendments to the Inspector-General of Intelligence and Security Act 1986. The Office of the Inspector-General of Intelligence and Security is responsible for oversight for ASIS and DSD. Finally, the Bill also addresses minor amendments to legislation resulting from ASIS being placed on a statutory footing.

I commend the Bill to the Senate.

Ordered that further consideration of these bills be adjourned to the first day of the 2001 summer sittings, in accordance with standing order 111.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Message received from the House of Representatives returning the following bill without amendment:

Measures to Combat Serious and Organised Crime Bill 2001

BUSINESS

Consideration of Legislation

Debate resumed.

Senator ROBERT RAY (Victoria) (5.36 p.m.)—I am speaking in continuation. That is always a bad thing because you get a second wind and, because you are speaking to a different audience, you have to reacquaint them with the arguments. I will try not to traverse the ground too much and I will not try to delay matters.

One of the problems with this motion is that we are in a sort of surreal farce. We all know that this is the last sitting week. The Democrats, the Greens, Senator Harradine and the Labor Party can all admit it. But we have got 35 people sitting over there that are not allowed to admit it. Why? Because the Prime Minister has not told them when the election is going to be. The next week of sittings has been put off using a press release and a statement by Mr Reith, which the Manager of Government Business read out—to his credit he only read it out and did not extemporise on it, because he knew what weasel words they were. What we really need to know is what the bottom line is in terms of legislation for the rest of this week. There are 50-odd bills around. There is no way we can pass 50-odd bills in this coming week. So we need to prioritise them and we need to have a clear idea of the amount of time we are going to allocate to each one for proper and fair debate.

I said before question time that we do need to leave a reasonable amount of time for the migration bills, especially as we are cognating them. There are seven migration bills proposed to be considered. If there is insufficient time for specific spokesmen—for the Labor Party, the Democrats, et cetera—to cover that ground in 20 minutes you would have to think of giving at least the representative of the party some extra time. I calculate that a reasonable consideration of the migration bills, starting at I think 7.30 tonight, would mean 4½ hours debate to virtually cover the second reading, if there are 15 speakers. I do not think there will be a lot more, so we should be able to conclude or get very close to concluding the second reading of all those migration bills tonight. That leaves tomorrow. Assuming that the government’s motion to extend the sittings until midnight tomorrow night is passed, we will probably get 5½ hours in committee tomorrow on the migration bills, and then a
further three hours on Wednesday morning and two hours on Wednesday afternoon. That should about do it.

A lot of the bills are not complex in terms of their length. It is not as though we are going to be dealing with hundreds of amendments, but I will be corrected. The Migration Amendment (Excision from Migration Zone) Bill 2001 and the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001 are quite simple: you either agree with them or you do not; you either excise Christmas Island and Cocos or you do not. It is true that the Migration Legislation Amendment (Judicial Review) Bill 1998 [2001], dealing with appeals to the High Court and judicial review, is more complex. The Border Protection (Validation and Enforcement Powers) Bill 2001—quite different from the Border Protection Bill 2001 that we saw two or three weeks ago—is also reasonably simple in terms of its understanding, if not its effect. So it might be possible—and I think we should aim for this—to complete these migration bills by Wednesday night. The difficulty is that that leaves us then one day—for how many bills?

As I understand it, at some stage we really should get to the Ansett bills, the ticket levy. We cannot wait until February of next year to take action on that. It is argued that the security bills that Senator Patterson has just given a first reading to, the Intelligence Services Bill 2001 and the Intelligence Services (Consequential Provisions) Bill 2001 that we saw two or three weeks ago—is also reasonably simple in terms of its understanding, if not its effect. So it might be possible—and I think we should aim for this—to complete these migration bills by Wednesday night. The difficulty is that that leaves us then one day—for how many bills?

Let me just as I wind down go to some of the other points made in the debate. One of the advantages of cognating these seven bills is that it does allow a degree of negotiation and trade-off. There is no question that the government—and I will give them some credit for this—have come a long way from the Border Protection Bill 2001 to meeting the Labor Party’s concerns, which is the one of the things that has prompted us to say that it would be pretty churlish of us not to look at some of these other bills to see if we can meet the government somewhere down that path. The advantage of having the seven bills together does allow that form of negotiation.

The point has been made that Migration Legislation Amendment Bill (No. 6) 2001 was referred to a reference committee. It is a bit like Alice in Wonderland, is it not? We are going to actually vote on the legislation, then have the hearings and then have the report—all in reverse order. Those things happen occasionally. It reminds me of those classic letters that you used to get from Attorney-General’s: ‘Minister, on a better view’. The Labor Party is taking a better view on this now and in the context of considering all of these bills at once we are saying that we were wrong to refer the bill to the committee. That is a bit of egg on our faces. We accept that. We know that a couple of cheap points, and valid points too—

Senator Patterson—We used to not have committees at all once—not that I am saying it is a good thing.

Senator ROBERT RAY—I can remember all of these committee reforms. I have been on the Procedure Committee for over 20 years and have been in the negotiations on all of these things for 20 years. What is decided and what actually evolves are always two different things. In any event, on Migration Legislation Amendment Bill (No. 6) 2001, which Senator Bartlett and others criticised us on, we would just have to cop the criticism and say: ‘You’ve made a valid
point there. However, we regard it more important to cognate the bills. One of the recurring themes in all of this is, ‘Oh, you are jamming us for time. We are not giving it proper consideration, et cetera.’ Let he who has no sin cast the first stone. Really, how many people in this room have not voted for a gag or a guillotine? Every Liberal has; we know that.

Senator Patterson—The Democrats have.

Senator ROBERT RAY—The Democrats even gagged a censure motion on my innocent colleague here, Senator Bolkus, as I recall—Woodley the gagger; I remember him. I do not know whether Senator Bartlett was here for that one.

Senator Bolkus—Yes, he was.

Senator ROBERT RAY—He was?

Senator Bolkus—I remember.

Senator ROBERT RAY—That is harsh. Senator Harradine got a bit needled, I think—I was not really getting into him—over the Telstra legislation when that draconian guillotine came down, all of which was pointless because his other ally, he whose name I will not speak, deserted him at the last minute. So we wasted a whole day of intense abuse across the chamber at each other for nothing. That debate was gagged and guillotined.

In summary, this cognating of the bills is sensible. Extra time should be given to specific spokesmen if they need it. We should think up a proper division of time between the second reading stage and the committee stage. This debate should not be rushed through and it should not be filibustered. Walking that fine line, certainty can occur only through initiatives from the government—which I hope to see over the next two or three days—where they prune the list of their bills and tell us what the bottom line is and we can use the time productively in this chamber.

Amendments not agreed to.

Original question resolved in the affirmative.

**Consideration of Legislation**

Debate resumed from 19 September, on motion by Senator Ian Campbell:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Commonwealth Electoral Amendment Bill 2001, allowing it to be considered during this period of sittings.

(Quorum formed)

Senator CONROY (Victoria) (5.47 p.m.)—I rise to speak on the Commonwealth Electoral Amendment Bill 2001, the famous dash for cash bill. Why on earth do the Liberals believe this is so urgent that it has to be passed between now and the end of this week? What is the agenda, guys? Is this the last sitting week? Let us in on the secret. What is the urgency? Why does this bill have to be passed this week? These are the questions we have not had any answers to at any stage.

All it would take to avoid this farce, as we found out recently in the committee hearings on this bill, is one 45c stamp on one letter from the federal Liberal Party. This bill would not be necessary then. This is a farce. It is a farce that unfortunately it appears some members of the Democrats have signed up to. That is very disappointing. You would have thought the Democrats would have understood that this is about nothing more than solving the internal wrangles of the Liberal Party, particularly in the Queensland branch. I welcome Senator Brandis to the chamber.

Senator Brandis—I’ve come to keep an eye on you.

Senator CONROY—I will consider myself being watched as I speak, Senator Brandis. It is very disappointing that, on a day when we have been debating issues that are really important to this country, to our future direction, to refugees and a whole host of issues like that, we are now reduced to a debate at its lowest, tawdry political level—a Liberal Party scam to fix up their internal wranglings in Queensland. There is no pretence from the government that that is not what it is about. We had Lynton Crosby—


Senator CONROY—Lightweight Lynton, as he is affectionately known. Thank
you, Senator Ray. We had Lightweight Lynton appearing before the committee. He was asked, ‘Do all the state branches support this legislation?’ His response was consistently, ‘It’s a unanimous position on the federal council.’ I can only say that I wonder what the Queensland vote was doing on the federal council, but some others might want to answer that question for me. Why won’t the Queensland state or divisional secretary, depending on your terminology—the state director for Queensland in the Liberal Party—sign a letter supporting the centralisation of their electoral funding? Why is that? Weeks and weeks after this bill was first put up, we are still waiting for an answer to that question. We just get stonewalled by old Lightweight Lynton.

We have been gagged in the committee. Due to the evidence that was given, we found out there were cash flow implications. This was important for us, so we asked to speak to the tax office. We found out that a new unit has been created in the Department of Finance and Administration to deal with some of these issues. We wanted to talk to the people there. What did the Liberal majority on the committee do? They shut the hearings down. They would not allow us to call the witnesses. They were going to be embarrassed by the evidence from the tax office because the tax office would have been forced to fess up and say, ‘Yes, the federal Liberal Party are at it again.’ This is a bill designed to ease the Liberal Party problems caused by the GST.

It was not good enough that we had the GST scam in trading in GST input credits recently in Queensland—and I will be coming back to that—it was not good enough that they were caught red-handed, the whistle blown on them by one of their own members, it was not good enough that we have had that perpetrated on us; now we find out, from the mouth of the Western Australian state Liberal Party director that this is an issue which significantly enhances the Liberal Party’s financing because it helps their cash flow. How many businesses would love to be able to pull a scam like this? You have got a bit of a problem with your cash flow? Here is how we will fix it. We will get the federal parliament to pass law so that you can get away with not having to pay your GST when it is due. You can just change the time lines around.

That is what they are doing here today. The Western Australian state director said it was great that the Liberal Party were doing this because it would solve their cash flow problem. He made some comment along the lines of, ‘Why would you want to deal with the GST if you do not have to?’ That is how every business in this country feels, but they do not get the option of bringing in a bill, supported by the Democrats, to run over the top of the rest of us to say, ‘Here is how we are going to fix this.’ Small business in this country does not get to do that. Why would the Democrats sign up to it, you have to ask yourself. But at some point you have to have some sympathy, because the old Lynton—Lightweight Lynton—was asked—

Senator Schacht—Lightweight Lynton—I like that.

Senator CONROY—It is Robert’s term; I cannot claim it was my own. Lynton was asked about the state director of the Liberal party in Western Australia, Peter Wells, and specifically about the comment that Wells had made when he said, ‘Why mess around with the GST if you do not have to?’ Poor Lynton tried to stonewall as best he could. He said:

If there is any GST issue—but I am not sure that there is; I have heard one state say it is only a timing issue—

He went on to say in the interview with the *Canberra Times* that there would be a cash flow implication, but that is all. Even Lynton Crosby, who was trying to pretend that black is white at the committee, had already been put on the public record acknowledging there was a cash flow benefit to the Liberal Party in this legislation. But there has not been a word of it from the other side—not a word from Senator Hill about the famous ‘dash for cash’—because they know that, on top of the GST scam in a couple of their divisions, they have got a full-on scam going through parliament. But you have to have some sympathy for Lynton.

Senator Schacht—I wouldn’t go that far.
Senator CONROY—Seriously, Senator Schacht, you do have to have some sympathy for Lynton. What is he really trying to do here? He has a state branch in Queensland which is falling apart at the seams. Would you let them have $2 million or $3 million to play with, six weeks before a federal election is called? Fair dinkum, you would have to be pretty trusting. Let us look at the Queensland division—

Senator Schacht—Senator Brandis’s division.

The ACTING DEPUTY PRESIDENT (Senator Sherry)—Order, Senator Schacht.

Senator CONROY—That would be Senator Brandis’s division, Senator Schacht; you are correct. How could you trust a branch that has been up to the following, just in the last few months? We will run through it, electorate by electorate. In Ryan, that bastion of democracy in the Queensland Liberal Party, you have had court action. You had the state admin committee try to stop them holding a plebiscite on the basis that it was too urgent, just so one faction could get their preferred candidate up and not have to do a deal with another grouping. That gets taken to court and gets knocked over. They are forced then to reconsider and suddenly the urgent need not to hold the plebiscite is forced on them by a court. What has happened? They held a plebiscite. Did the world end? No. But there has been a bit of branch stacking in Ryan. It is fair to say that the preferred candidate of the ruling faction in Queensland probably did not win. It is fair to say that they have had to grit their teeth and do a deal with the local powerbroker.

Senator Ludwig—They don’t have factions.

Senator CONROY—I will come to those famous comments, Senator Ludwig, don’t worry. You have had a bit of branch stacking going on in Ryan, by all accounts, and you have had the famous Hong Kong branch—

Senator Eggleston interjecting—

Senator CONROY—I have never joined anybody up in Hong Kong! There are all of those members who do not even live in Ryan; they live in Hong Kong, on their own admission. Then there is the famous rule—and I do not want to just give it to Senator Brandis, because I would not want him to get a big head—that says a branch can vote to allow ineligible voters to vote if two-thirds of the branch members at the branch meeting vote to do it. The real key here is that you can turn up the ineligible voters to vote in the vote about whether or not they are eligible. Some have unkindly suggested that this is called ‘the Brandis rule’ or ‘the Brandis amendment’ but I would not want to give Senator Brandis a big head by saying it was purely down to him. But there are some who have unkindly suggested that.

What happened just before the ballot? Funnily enough, one of the branches had a meeting and 50 to 60 Hong Kong residents got voted in to vote by the branch meeting, just to make sure that the faction that was in control of the branch maximised its vote. I am not trying to claim that I have never encouraged people to join the Labor Party but, fair dinkum, this is as red hot as it gets. I have never seen a rule this rortable. We have even had allegations of racism. One of the candidates resigned in the plebiscite because of racism. I think this was Astrid V alatti. She was a candidate at one point in Ryan.

Senator Brandis—He.

Senator CONROY—Thank you, Senator Brandis, ‘he’. He resigned and said that the Liberal Party in Queensland ‘reeks of defeat’ and that ‘it is just a matter of time when and who will dispose of the carcass.’ He went on in his letter to say:

I accuse all those who had part in publishing this piece of racist, bigoted and hypocritical claptrap of extreme disloyalty to all of the principles which I and many other Liberal Australians of whatever ethnic or national origin have supported.

Dr V alatti rang the bell about what is really going on in the seat of Ryan where they are trying to drive out legitimate voters and put in voters who live in Hong Kong. It has got pretty messy up there. I do not think I can go past Graham Young, a former vice-president of the Queensland Liberal Party, who said:

The faction—

and he is referring, I think, to the Santoros-Brandis-Mason faction—
monsters the rest and puts its interests before anything else. In the four years it has been in control, it has been completely incompetent, reducing the State Liberal Party from 15 State MPs to a three-person rump and running up at least $400,000 of unpaid campaign debts.

That is a former vice-president of the Queensland Liberal Party. When David Watts and his wife did the right thing and said that they were not going to be party to this GST fraud being pulled by those powerbrokers in Queensland, he described the bitter factional war within the Liberal Party as ‘a political form of mad cow disease’. Tensions are running just a little hot up in Queensland because of the tactics being employed.

We have seen an excellent article by Dennis Atkins entitled ‘Ryan divided may fall’. I welcome Senator Mason to the chamber. I am pleased he has taken the chance to come and join the debate. In the article, Dennis Atkins says:

Johnson used an extraordinary loophole in Queensland Liberal rules on Thursday night and had 50 of his supporters who had been struck off the party roll for not meeting eligibility requirements validated as pre-selection voters (they were even allowed to vote themselves back in).

I am glad that Senators Brandis and Mason are here because I want them to hear what Ron Walker said about what is going on in Queensland. The article continues:

Walker, a Victorian powerbroker who has some ambition to be the next party president—

God help your party—

is looking at rule changes to break down the federal structure of the Liberal organisation, giving the national executive power to intervene in day-to-day state division business.

The article goes on to say that Lightweight Lynton Crosby and Ron—‘Burn down my factory to claim the insurance’—Walker state that the impotent management committee has failed and that the ruling faction has shown no inclination to share power or bring people like Tucker back into the fold. I would pay attention here, senators. In the article, one senior federal source says:

“If Howard wins the election we will move swiftly to bring about change and take out these people in Queensland.”

“They have a winner-take-all view of the world which is anti-democratic.”

“They seek to rule with an iron fist, using brutal, ruthless tactics which you usually see in the Labor Party.”

“Imagine the power and authority Howard will have if he pulls this election off.”

Senator Brandis—Wipe the smile off your face.

Senator CONROY—Wait for it! The senior federal source quoted in the article says:

“Those people in Queensland should be very afraid.”

I can see that you are worried over there, and from the sound of that article you have every reason to be. But that is just one electorate. I have not even got off Ryan. Now I am on to Moncrieff. We have the unique circumstance in Moncrieff where the sitting member is suing her replacement for defamation. I did hear a rumour that it has been settled and a lot of money has changed hands, but you had the unique experience of the sitting member suing for defamation the preselected Liberal Party candidate who replaces her.

Senator Ludwig—A Liberal unity ticket.

Senator CONROY—That is right. Then we talk about Groom. What can you say about Groom? Ian Macfarlane has perpetrated on small business, despite being the Minister for Small Business, one of the worst GST frauds this country has seen yet. If the tax office allowed the definition of taxable supply to be so degraded in allowing what the Liberal Party have done, Dick Warburton is probably right and they need to be dealt with. But it was not just Groom, it included Lilley and Leichhardt. We already know about Parliamentary Secretary Entsch’s contribution, his contract scam where a company in which he has ownership and a shareholding picks up defence contracts for concreting. Maybe that is how you deal with your enemies, Senators Brandis and Mason.

The key here is that the whole GST avoidance scam was in fact set up by their head office. It was not just a flight of fancy—

Senator Ludwig—Real shadowy figures.

Senator CONROY—There are some very shadowy figures in this chamber at the
moment! But I have to say that I am not personally blaming Senators Mason and Brandis. I will accept their word that they are not the people being referred to. I have to say that Mr Watts insists the material was leaked because he and his wife were frustrated. A number of people had told them repeatedly that what they were doing was dangerous and probably illegal. In the Sydney Morning Herald on 1 September 2001, Mr Watts says: “We were ignored. It was so cleverly done it could have gone on indefinitely. They thought it was perfectly safe because nobody would blow the whistle. But as far as we were concerned, our Liberal Party doesn’t engage in stealing from taxpayers.”

That is your own 50-year foundation member of the Liberal Party saying that you are stealing from the taxpayers. And who is behind it? Rumour has it that it was Mr Neville, the vice-president, who suggested that the division may want to engage in this particularly deceitful and illegal practice.

Senator Brandis—Madam Acting Deputy President, I rise on a point of order. Senator Conroy has made an allegation of criminality by innuendo, with absolutely nothing to support the allegation whatsoever, in relation to an individual outside this chamber. That is unparliamentary and it ought to be withdrawn.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Brandis, while I do not like that sort of language in the chamber, it is not against standing orders, as it refers to someone outside the chamber. What does concern me more, Senator Conroy, at the moment is the direct addressing of your colleagues across the chamber and alleging that they done some criminal act—

Senator CONROY—I’ve cleared them.

The ACTING DEPUTY PRESIDENT—No, Senator, by virtue of your addressing the colleagues across the chamber instead of through the chair it sounds as though you are making allegations against honourable senators. I would therefore ask you to direct your comments through the chair.

Senator CONROY—I accept your admonishment, Madam Acting Deputy President.

Senator Brandis—Madam Acting Deputy President, may I speak to your ruling, and simply record on my own behalf—and I am sure on behalf of Senator Mason—that we entirely accept Senator Conroy’s assurance that he is not directing any of these allegations against either of us.

Senator CONROY—Just in case there is any misunderstanding, particularly given how you felt, Madam Acting Deputy President, I assure Senator Brandis and Senator Mason that I am in fact pointing at somebody else, as I have said. We have had a former state Liberal director, David Fraser, who wants full-scale federal intervention. I quote from a newspaper article:

Clearly they have to have a complete clear-out, Fraser says. ‘We have lost months in which things could have happened. The party is like a rabbit trapped in a spotlight. It sits there and doesn’t know what to do. There were enough lessons coming out of the State election but the party is incapable of moving.

Party sources have said that donations from businesses have dried up and debts of $600,000 have left them so cash-strapped that they tried to run a fundraising raffle, which is now infamous, where they had to let people know they were going to give them their money back because they could not sell enough tickets. There was a classic recently, and I quote:

In another imbroglio, the Liberals … City Council leader, Michael Caltabianco, quit two weeks ago when his factional opponents on the council dumped him from the State executive.

The president, John Herron, was asked about all of these problems in Queensland. I could go on and on but time is running out. John Herron said:

Faction is a Labor word. It is an urban myth that there are factions in the Liberal Party in Queensland.

Is it any wonder Lynton Crosby does not want to give this mob $2 million or $3 million to waste and destroy each other? (Time expired)

Senator BARTLETT (Queensland) (6.10 p.m.)—As a senator for Queensland I could
elaborate also with other perspectives on the activities of political parties in Queensland. Curiously enough, I do not think that is actually the motion we are debating at the moment. What we are debating is a motion to exempt a particular piece of legislation from the cut-off to enable it to be debated before the end of this session. I also need to speak to correct the most unfortunate reflections that Senator Conroy made on the Democrats, misrepresenting our position on this issue. In some ways that makes us more inclined to support the cut-off motion, so we can ensure our position is put on the record and is not misrepresented by people such as Senator Conroy. Perhaps he was not here when Senator Murray was speaking to this motion before and does not understand fully our honourable and clear-cut position on this piece of legislation. The Democrats’ view on the bill will be put in more detail when the bill itself comes on for debate—if it comes on for debate, because that is up to the government in terms of their priorities.

I agree with the comments that Senator Ray has made previously on this motion and others. It is a curious thing that when we have 50 or more bills before us, in what is almost definitely the final week of sittings in the life of this government, they have put this bill so high on their list of priorities. The Democrats do not have a problem—and indeed, neither do the Labor Party, if I have heard their comments correctly—with parties being able to decide whether to receive funding centrally or at state level. As I think has been pointed out in this debate, that provision already exists in the act. So for Senator Conroy to suggest that enabling the Liberal Party to do that is somehow akin to supporting a rort is ridiculous. They already have the power to do that, as Senator Ray has said. If they were to get their administrative act together, their internal act, they could do it without having this legislation passed. It is clearly not a rort in any way to enable them to do this for GST purposes or something like that. They could do it now.

It is a very unfortunate reflection by Senator Conroy on the Democrats to say that this has anything to do with issues like that. As Senator Murray has said, we do not have a problem with any party—the Labor Party included—being able to receive its funds centrally. It does not cost the taxpayer one extra cent. It is simply a matter of where that public funding goes to; it does not change the amount of money that is paid. I think there are a lot of red herrings in relation to the issue. Nonetheless, some legitimate points have been made about why, when we have so many bills to debate, we are chewing up parliamentary time with one that is really a matter of the political administration of one political party. I think that is a valid point to make.

Nonetheless, in relation to this particular motion, which is about the cut-off and not the order of priority of the bills, it is a matter of whether it can be brought on for debate at all; it is a matter for the government as to whether they wish to bring it on for debate. I think it would be most unwise of them to do so, because I do not anticipate their having much prospect of getting much else through if they bring on this particular bill. I am sure they are well aware of that. It seems like a curious prioritising on their part, but that is a matter for them. Similarly, unless there is some inappropriate curtailment of debate on bills like the migration bills, I cannot see much prospect of there being any curtailment of the opportunity for a debate on the electoral bill that we are considering exempting from the cut-off at this moment. If the government does want to bring it on for debate, certainly it is appropriate to have it debated properly.

Given that there are other bills around at the moment, including of course the obnoxious migration bills that we will be talking about later tonight, having other time used up—which would make it more likely that the migration bills do not come to a vote—is something that would not trouble the Democrats particularly. In that sense, I do not see any motivation for us to not support this motion—because if we did oppose the motion that would actually prevent its being debated. From our point of view, we are quite happy to have it debated as fully and as comprehensively as the ALP wants—although we do not think that it has the importance, priority
or even political significance that others are giving it.

In my view, it reflects a bit poorly on the ALP that they are quite keen to prevent the Commonwealth Electoral Amendment Bill 2001 being debated, even though it has been to a Senate committee, is a very simple and short bill, the issues are quite clear-cut, the way in which it is going to work is quite clear-cut, it has been examined by a Senate committee and the report has been brought down. There could certainly be no argument that the bill needs more scrutiny before we debate it in this chamber. The ALP are keen to stop that bill coming on for debate. They are happy to wave through seven migration bills, including three that were introduced only five days ago, and have them rushed through this place without any examination, but they do not want to bring on for debate a bill to do with a very minor and, frankly, fairly inconsequential amendment to the Electoral Act because they want to cause some pain for the Liberal Party. That is fine, and I can understand the Labor Party wanting to cause a bit of pain for the Liberal Party, but attaching priority to that over ensuring that we do not make monumental changes to the way we treat refugees and potentially significantly undermine our obligations to the refugee convention, in my view, generates a very dangerous international precedent. Those things should have much higher priority than giving a bit of pain to the Liberal Party.

Be that as it may, that is the approach and the decision that the ALP have chosen to take, and that is a decision for them to justify. Coming back to the motion we are debating, by supporting this motion the Democrats are not saying that we support the bill unamended—and Senator Murray has put the position of the Democrats on the record in relation to that. Our position is quite clear, and it is quite clear to the ALP. Supporting the motion to exempt the bill from the cut-off is completely different to supporting or not supporting the bill.

As Senator Ray said in his quite enlightening elaborations on the history and origin of cut-off motions, it is extremely rare for the ALP to prevent a bill being exempted by the cut-off. This is a unique occasion, if Senator Ray is to be believed, as I am sure he is, in that it is the first time in some 200 or more bills—or maybe it was 120-odd, I cannot remember now, but certainly a large number—that Labor have opposed a cut-off to try to prevent a bill coming on for debate early. What a bill to pick—a bill that really, quite honestly, has had plenty of examination, is very simple and there is no real reason for not bringing on! The purpose of the cut-off motion is to ensure that a bill cannot be rushed through and that it gets proper scrutiny. The bill has had proper scrutiny, and therefore there is no legislative reason not to allow it to come on for debate. The parties can put their views, positions and amendments to the bill when it does come on for debate.

To pick this bill as the one to try to prevent coming on for debate, particularly when on the very same day the Labor Party have exempted five migration bills and allowed them to come on for debate—three of which were introduced just five days ago and all of which make profound changes to our migration regime—and be rushed through without proper examination, regardless of what the Democrats and others try to do in this chamber tonight and tomorrow, is a poor substitute for a decent committee inquiry. The one committee inquiry we had under way on one of these bills was, in effect, terminated by the Liberal Party and Labor Party voting together just half an hour or so ago. There is a bit of a contrast, and I think a pretty poor contrast, in Labor’s differing approaches to the range of cut-off motions we have debated today, but they have made clear—and it is pretty clear to any observer—what their rationale and agenda are on this.

I do not mind the Labor Party highlighting some of the internal wrangling in the Liberal Party and the inadequacies of their organisational activity, and I certainly believe that it is appropriate to scrutinise the dubious practices of some branches in the Queensland Liberal Party in trying to avoid the GST. It seems a long time ago that that issue was on the front pages, but it was not that long ago and, indeed, I think there are still questions to be answered in relation to it. I am quite
happy for that to be examined and in a sense, again, the Democrats are doing Labor a favour by passing this motion. It gives them the opportunity to pursue that agenda and to get more exposure on that issue, as well as to pursue their more venal—I suppose—motivation to generate some political uncomfortableness for the Liberal Party and particularly the Queensland Liberals. I do not have a problem with their doing that, although there are some other priorities to which I would have liked to have seen them give greater recognition, but that is obviously not going to be the case.

We are supportive of this cut-off motion. We strongly refute any allegations that supporting the cut-off motion in any way entails support for the bill unamended or in any way suggests some sort of support for any internal agendas of the Liberal Party. I think that is an extreme red herring that should not be given any sort of currency. We support the cut-off motion because there is no valid parliamentary or legislative reason for it not to be agreed to on this occasion.

I should do a count back and perhaps do a similar count to what Senator Ray has done in relation to the Democrats’ opposition to cut-off motions because I am sure we have opposed a lot more than one. Nonetheless, we certainly have not been obstructionist to either legislation that is very simple and clearly does not need further committee scrutiny or legislation that has had adequate committee scrutiny. I would be interested in the percentage of motions that we have supported, but it certainly is not unusual for the Democrats to support such a motion. I am almost certain that it would be well and truly in the majority that we have supported cut-off motions and exempted bills from the cut-off. In that sense, our doing that one more time to this bill is not of any great note or significance.

The bills that we do tend to oppose being exempted from the cut-off are either ones that we have strong objections to and therefore do not want to see passed or ones that we believe do need more committee scrutiny or even more opportunity for community awareness to be raised on the issues that are involved. I think that is important. One aspect that is often not given consideration is the value and benefit of having some sort of community awareness of what we are actually doing and what the changes are likely to mean rather than our having people finding out after the fact. I think it is a valuable part of the parliamentary process to at least try to have some increased community awareness above and beyond encouraging community input. But that opportunity has already been provided on this bill anyway, as it did go to a committee.

As I said, the bill is quite simple and I do not think it is anything that many in the general public would have that much interest in. The internal directing of funding within political parties, as long as it is done in accordance with law, is really not much more than an accounting matter. The internal accounting processes of political parties should be clearly open to adequate scrutiny, as I believe they are through AEC audits. That may be something that could be looked at more fully, but this bill simply looks at where the cheque goes to—whether it goes to a person at head office in Canberra or to six or seven people at state level in that particular party. It does not involve any public expenditure at all and, for that reason, it is not anywhere near as controversial as the ALP likes to suggest. Indeed, as has been said a number of times, the ability of a party to do that already exists under the current act, so it is certainly not trying to set some new precedent in that sense either. We support the cut-off motion on this occasion. If the government wishes to bring what I believe is not a particularly urgent or important bill on for debate in this final sitting week, that is a matter for it to decide.

Question put: That the motion (Senator Ian Campbell’s) be agreed to.

The Senate divided. [6.30 p.m.]

(The Acting Deputy President—Senator S.C. Knowles)

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AYES
Abetz, E. Allison, L.F.
Bartlett, A.J.J. Boswell, R.I.D.
Bourne, V.W. Brandis, G.H.
Calvert, P.H. Chapman, H.G.P.
Cherry, J.C. Eggleston, A.
Ellison, C.M. Ferguson, A.B.
Ferris, J.M. Gibson, B.F.
Greig, B. Harradine, B.
Heffernan, W. Herron, J.J.
Kemp, C.R. Knowles, S.C.
Lees, M.H. Lightfoot, P.R.
Macdonald, I. Macdonald, J.A.L.
Mason, B.J. Murray, A.M. *
Minchin, N.H. Payne, M.A.
Patterson, K.C. Stott Despoja, N.
Ridgeway, A.D. Tchen, T.
Tierney, J.W. Troeth, J.M.
Vanstone, A.E. Watson, J.O.W.

NOES
Bishop, T.M. Brown, B.J.
Buckland, G. Campbell, G.
Collins, J.M.A. Cook, P.F.S.
Cooney, B.C. Crossin, P.M.
Denman, K.J. Evans, C.V.
Gibbs, B. Hogg, J.J.
Hutchins, S.P. Ludwig, B.W. *
Lundy, K.A. Mackay, S.M.
McKiernan, J.P. McLucas, J.E.
Murphy, S.M. O’Brien, K.W.K.
Ray, R.F. Schacht, C.C.
West, S.M.

PAIRS
Alston, R.K.R. Sherry, N.J.
Campbell, I.G. Crowley, R.A.
Coonan, H.L. Conroy, S.M.
Crane, A.W. Bolkus, N.
Hill, R.M. Carr, K.J.
Newman, J.M. Forshaw, M.G.
Reid, M.E. Faulkner, J.P.

* denotes teller

Question so resolved in the affirmative.

Sitting suspended from 6.33 p.m. to 7.30 p.m.
arriving here without the proper documentation.

When that piece of legislation turned up three weeks ago, it was such a draconian breach of all aspects of what a democratic civilised society should base itself on that we immediately announced that we were not going to support it. The Leader of the Opposition, Kim Beazley, announced details of what we would find acceptable and how that piece of legislation could be amended to make it acceptable within the broad traditions of Australia’s democratic process. There was no response from the government other than to bag Mr Beazley and the Labor Party as though we were weak in dealing with the issue of boat people arriving in this country. Lo and behold, two weeks later, quite out of the blue, without any warning, the government then presented us with a re-drafted bill that met every objection that we had made about the first bill on protecting our borders.

As a result, Mr Beazley announced that, as the government had accepted all of our recommendations and all our comments about the deficiencies in the original bill, we would now support it. And that is what we are now doing. It should be stated that the government agreed with the opposition’s criticism of their own bill and amended the bill accordingly. It is quite clear that the first bill was drafted either in the Prime Minister’s office or in the Prime Minister’s department by incompetent lunatics who did not have any understanding about due process, civil liberties and how a democracy should act to protect the citizens. What appears to have happened over the following two weeks is that other people in the government recognised that there needed to be some legislation to deal with protecting our borders. I suspect that that idea, and therefore what was drafted, came from the Department of Immigration and Multicultural Affairs, which has some experience in these matters.

Once the issue was taken out of the hands of the ideologues and the lunatics in the Prime Minister’s office and in the Department of the Prime Minister and Cabinet, we got a much more sensible approach by people who knew a little about immigration—if not to say a lot more about immigration than the ideologues in the Prime Minister’s office and in the Prime Minister’s department. Some of those people who are responsible for drafting the second bill I suspect are sitting at the advisers desk at the moment and I suspect are very relieved that they do not have to cop a dreadful piece of legislation that broke so many arrangements and so many issues of civil liberties and of legal process that this country has come to expect in legislation which governs us. I congratulate those officers on being able to convince their own minister and the ideologically driven Prime Minister to back down and agree with the Labor Party over this legislation. This was a victory for commonsense from the Labor Party. The Prime Minister had to back down from that draconian piece of legislation that everybody knew would not work, would have been appealed everywhere, would have made us a laughing stock internationally and would have been soon exposed to the Australian people as achieving nothing.

This leads me to the role of the Prime Minister. The Prime Minister is not interested in getting a solution to the problem of so-called boat people. He is interested in a political victory that improves his chances of winning the next election. I will openly admit that, in the way this issue was promoted initially by the Prime Minister and the Minister for Immigration and Multicultural Affairs, they have had, according to a balanced range of opinion polls, some success. Every day the Prime Minister got his report on how many people rang up talkback programs complaining about boat people and saying that the Prime Minister was right—some people even disgracefully suggesting on air that the boat should be turned away, that we should let them drown and exposing them to other sundry treatment, which was not the view that one would have expected people in a civilised society to express.

The Prime Minister barely tut-tutted about such suggestions. Every time the rednecks and others made such comments on talkback programs, the summary of which he got each day, he took it as a political victory, irrespec-
tive of the consequences to Australia’s international standing. He played it very well, in a narrow, cynical sense. You could see from the smile on his face that he thought this was great for his political survival and he was not too concerned about the impact on our international standing.

But, as time moves on, more and more people are starting to understand the difference between being a cheer-chaser with the mob and being a leader. I am indebted to an article written by Phillip Adams, who of course is not known in any circle as being pro-government or pro-Prime Minister—I openly admit that. But, even allowing for that, what he wrote in Saturday’s Weekend Australian identifies a couple of points that the Prime Minister and those who support him should be aware of. Adams wrote:

Donald Horne—the well-known Australian writer—says a good leader brings out something in us that we didn’t know we had. In effect, such a leader gives us a reach beyond our grip. But Howard is different. His great gift, his genius, is to identify and amplify the worst in us. He exalts our mean-spiritedness, our gutlessness, our banality. Dousing the welcoming glow of the Olympic cauldron, he pours petrol over the red coals of paranoia, turning anxiety and fear into panic into foreign policy. And into surging polls and election momentum.

Senator McGauran—Intellectual snobs.

Senator SCHACHT—Senator McGauran, I suspect that in the great sum of things in history Donald Horne and Phillip Adams will be remembered much more for their contributions to a civilised society than you will. A further part of the article again quotes Donald Horne:

Howard likes to evoke the spirit of Menzies. But Horne is right to point out that the PM he most resembles is Billy Hughes. Like Hughes, Howard is unafraid of tensions, divisions, communal hostilities. Why fear them when you can use them? No subsequent prime minister—McMahon or Whitlam, Fraser, Hawke or Keating and certainly not Menzies—would be as audacious, as reckless, as Howard, our little hero, is being today.

He finishes off with a comment which cannot be ignored: ‘Which is why we should and must vote for Howard,’ says Phillip Adams sarcastically. He continues:

And as you go to the ballot box remember these words. “The efficiency of a truly national leader consists primarily in preventing the division of the attention of the people and always in concentrating it on a single enemy.”

Who said that? I’ll give you a couple of hints. He united his people behind him. He was immensely popular in all the polls. And he invaded Poland.

That is the master political evil genius of the 20th century, who knew that if you create an external enemy—or even an internal enemy; in Hitler’s case, it was the Jews—you can then concentrate all the evils of your society, all the difficulties, on those people and blame somebody who cannot fight back. What we have with John Howard—unfortunately aided and abetted by most members of his government—is the fact that the new evil to Australian society is a group of boat people! A few thousand boat people over a few years: these are the demons that we have to wipe out, that we have to stop! They are the threat to Australian society!

Labor have made our stance clear from the very beginning. When we were in government, we took a number of measures to ensure that people trying to arrive by boats in Australia without proper documentation would be dealt with but dealt with fairly. We took extra action internationally in discussions with countries like Indonesia to stop the flow of the so-called boat people. But this Prime Minister is so offside with Indonesia that the President of Indonesia will not even return a telephone call. If the Prime Minister had some idea of international relations, some relationship with our nearest, biggest neighbour, you would have thought that at least he would have had his phone call picked up—all he gets is a recorded message: ‘Not at home.’ Prime Minister John Howard is playing short-term political advantage to try to win the election, and he will use any device, no matter how damaging it is to Australia, to do so.

I turn now to the next issue: the cost of this extraordinary range of proposals. The cost last week, according to the Australian last Friday, was $150 million. It is openly admitted now that the cost of these proposals—the use of the Navy and other measures—is running at $3 million a day or over
$20 million a week. If it was up to $150 million by Friday last week, we know that over the next three weeks over $200 million will have been spent stopping 400 boat people coming into Australia. My rough calculation is that, give or take the odd $10 million, that is about half a million dollars per refugee. And the joke is that within the next six months a large majority of them will be coming to Australia. They will meet the requirements, and they will be coming to Australia. We will have spent half a million dollars stopping them arriving and shipping them to Nauru, and a majority of them will still end up in Australia because they will obtain a refugee determination.

Rather than the absurd measures this government is going to to prove a point about the Prime Minister’s paranoia, it would have been cheaper for the immigration department to hire the Queen Elizabeth II cruise liner, send it up to Indonesia, pick them up, put them on board the boat, sail them around the world twice on a pleasure cruise and then get them to come to Australia. If you had given each of the 400 refugees half a million dollars, given that this will have cost $200 million within three weeks, they all would have met the business migration program requirements; they all would have come with half a million dollars as business migrants to this country. That is the absolute absurdity of this policy—$200 million down the spout, and over three-quarters of them are going to be in this country within six to 12 months.

Does anyone believe that if they get to New Zealand—there are 100 going to New Zealand—they will not get residency status? In three years they will be eligible to come to Australia. What will John Howard do then—put a barrier up at Sydney airport and stop them arriving by air? He cannot. We all know this is a trumped up arrangement.

The opposition says, ‘If this is what you want to do, you can have your package of bills.’ But we all know that whoever wins the election—and if unfortunately it is the Liberal Party that wins the election again—you will be back here in six months with further amendments trying to untangle the mess of this pack, this bunch, of bills. Well, it will be on your head. Then we will ask the question: how much more are you going to spend? How are you going to stop it?

One of the most disgraceful things we have seen in the last 12-odd days since the tragedy of the terrorist attack in America has been some members of the Liberal Party saying openly, ‘This proves our point. How do we know the boat people arriving from Afghanistan or Pakistan are not the Muslim terrorists, the Islamic terrorists, that did the atrocity in America?’ First of all, let us take one point: the people coming from Afghanistan are fleeing from the Taliban. They are not staying to support the Taliban; they are getting away from Islamic fundamentalism and the terrible lifestyle that has been imposed on them. Why wouldn’t any woman of any commonsense or intelligence in Afghanistan want to get away from that regime?

Senator McGauran—This is a distortion. Senator SCHACHT—Mr Slipper publicly said they are connected—that was the disgraceful thing. Those were the sorts of words that incite attacks on the Islamic community in this country. This is the sort of incitement that led to the burning of the mosque in Queensland. When you have people like Mr Slipper, who is not pulled into line by this Prime Minister—he is let loose—the undercurrent is still out there: ‘Yes, let’s create further fear.’ This is a disgraceful performance by a disgraceful Prime Minister.

So we have these people coming, escaping persecution. The next thing that is said is that they are rich people, therefore they are not refugees. I remind the government that in the thirties and early forties many of the Jews who escaped out of Europe were rich, and they did have access, fortunately for them, to money to pay bribes to get out of Nazi Germany. Just because you have money does not mean you are not eligible to claim persecution—but no, ‘these people are rich, therefore they’re not genuine refugees’. How much money or lack of money you have is not the determining factor; it is whether you meet the UN description.

We have this government involved in a disgraceful performance that in years ahead will be treated and written about as a shame
on Australia, but the government wants this legislation. We will give it to them, and they will live by it and they will be condemned for it if it does not work—and it will not work in a number of ways. When we get to the committee stage there will be lots of questions to be asked and amendments to be moved, I understand, by the Democrats and by the Greens. Certainly I will be expecting answers from the minister at the table to tell us how much they have spent. Is it $3 million a day? Can they guarantee that none of the people that have gone to Nauru will not end up in Australia anyway? They cannot guarantee that. In the committee stage I want to ask questions about how much the bribe to the Nauru government was worth—$30 million? How much ongoing money is going to have to be given to them? Also the government of Kiribati is now in line. If this money went as a genuine part of our aid program, the situation would be a lot different. But this money is a bribe to get this Australian government off the hook of its own making, and remember: most of those refugees will meet the determination and be back here in Australia anyway? They cannot guarantee that. In the committee stage I want to ask questions about how much the bribe to the Nauru government was worth. It provided for people who were arriving on vessels to be removed. It provided for anybody who enabled or assisted a person to immigrate illegally to be convicted of an offence. What we are talking about 100 years later, despite the continual disinformation and misuse of the phrase by the minister and others in the government, is not illegal immigration. We are not actually dealing with illegal immigration, and one of the many myths that should be punctured in this debate is the myth that people do not have a legal right, under international law or under our own domestic law, to arrive in a country without authorisation and seek protection if they believe they are genuinely experiencing or fleeing persecution. They do have that right, under international law and under our own act. We, as a country, have the right to assess that claim and deport them if the claim does not meet the definitions required under our law. So we are not talking about illegal immigrants at all; we are talking about people who are exercising their legal rights. We are also not talking about protecting our sovereignty or protecting our borders. Our borders are protected. All the people that all these acts deal with are detected and assessed; they are removed if they do not meet our legal requirements to stay, and they remain if they meet the requirements of our law. So our borders are protected. The integrity of our sovereignty is protected. These bills are being used as an excuse to deal with something that does not exist.

We have also had repeated statements that Australia is the most generous of all countries, except possibly Canada, in relation to the provision of assistance for people who are seeking asylum. Again, the facts do not bear this out. I acknowledge that there are different definitions in different parts of the world, so there are always some imperfections related to comparing figures—that can...
work both ways of course—but the UNHCR track these things and, if we look at their statistics for asylum applications lodged in Europe, North America, Australia and New Zealand in the first six months of this year, Australia ranked 12th in the first part of the year, with 3,400 in the first quarter of the year and just under 3,000 in the second quarter. This compares with countries such as Germany, which had over 40,000, and France, which had over 20,000, and the list goes on. Similarly, in relation to applications lodged, our overall number is significantly below that of many other countries, and so it is a complete furphy to suggest that we are more generous than other nations. Sure, if you just count people from offshore, we do not do too badly; we are ranked about third on a per capita basis at the moment, behind Norway and Canada. However, if you include onshore arrivals and people having to deal with asylum applications, we come quite a long way down the list, on a per capita basis. There are 687 per million people in Australia, compared with 2,400 in Norway, 2,480 in Switzerland, 1,000 in Canada, 2,778 in the Netherlands and 957 in Germany. So let us not accept this myth which is being peddled, among all the other myths, that we are more generous and are pulling our weight more than anybody else. We do have a good history not just in relation to offering people protection but in supporting the refugee convention, which encourages international cooperation in the provision of assistance and protection for people fleeing persecution. However, that reputation has been well and truly trashed by this federal government and, unfortunately, we are seeing a deliberate use of political opportunism to generate fear, apprehension and hatred in our community where it did not exist before.

The government is pointing to opinion polls as an indication that they have public support for what they are doing. Indeed, a reasonably comprehensive poll done by Morgan recently did indicate public support for the government’s policies on this issue. People were asked whether people who arrive here without authorisation should be accepted here and processed or pushed out to sea. To our great shame, over 60 per cent said that they should be pushed back and somewhere around 20 per cent said they should be assessed here. One of the most shameful aspects of that survey was that when the same question was asked in 1979 the results were almost completely reversed. That was at a similar time, when we were under pressure from boat arrivals, but the numbers were almost reversed: the majority believed that we should assess people here and the minority suggested that we should send them back. To me, that is this government’s legacy, in terms of the social division, fear and hatred it has sown for its own political ends not just in the last few weeks but consistently over the last few years. Through disinformation, demonisation, distortion and blatant fabrication, they have generated fear and apprehension in the Australian community which, in my view, is a compassionate group of people at heart. That is the legacy we are left with: we are a divided nation, with increased tensions and mosques being bombed here in Australia. It is a legacy that this Prime Minister is willing to generate, simply in order to try to win himself an election, and history will judge him for that. It may judge him as an incredibly clever and ruthless politician, but it will judge him as somebody who did not act in the national interest and was willing to put his political interests ahead of the good of the country.

I have only 20 minutes to discuss these seven bills, which gives me less than three minutes per bill. Virtually all these bills have very significant ramifications, and I thank the many people around the country who have tried to provide commentary, particularly on the three pieces of legislation that were only introduced five days ago. They have tried to at least give some indication and commentary on what the ramifications of those bills will be.

Let us just step through a bit of what we are dealing with this evening in relation to the seven bills. The Migration Legislation Amendment Bill (No. 1) 2001 seeks to limit the ability of the asylum seeker to have an independent review of the decision made by the Department of Immigration; seeks to place time limits on applications to the High Court; limits the ability of the Federal Court to hear certain matters, and aims to prevent
multiple party litigation, or so-called class actions, which currently save resources of the court and provide test cases for migration law. This bill was examined by the Joint Standing Committee on Migration. The Democrat and Labor members of the committee reported that the bill should be opposed and, indeed, that the case the department put justifying the need for this bill was flimsy at best.

The Migration Legislation Amendment (Judicial Review) Bill 1998 [2001] introduces a privative clause which further limits the jurisdiction of courts and their ability to review administrative decisions under the Migration Act. It prevents people basically from having access to justice. It prevents any protection for people in ensuring their legal rights for assessment by the Administrative Appeals Tribunal of their asylum claims or, indeed, any migration matter. It is not just refugees; it is also people applying to the Migration Review Tribunal. It is already difficult. There are already significant restrictions on what can be reviewed and what grounds there are for appeal to the courts. Those restrictions were introduced for the same justification: ‘We need to restrict the avenues and grounds for appeal, to stop people from using the courts, to stop them delaying their departure, to stop the cost to the taxpayer. We need to deprive people of their legal rights because of this so-called abuse of the system.’

What happened? The number of appeals went up dramatically. It will be interesting to see what happens as a consequence of these changes. Judicial review is important because there is a public interest in having bureaucrats and officials abide by the law, irrespective of whether the litigant is a citizen or a non-citizen. Let us not forget—and it is not being melodramatic to remind the Senate of this—that these decisions of the Refugee Review Tribunal are literally life and death decisions. It is a heavy burden for them. To remove any opportunity for judicial oversight is, I believe, a grave mistake. Judicial review is an important discipline on decision-makers and, without it, it can become a matter of whim whether to obey the law or not.

The Border Protection (Validation and Enforcement Powers) Bill 2001 has several main purposes. It retrospectively validates the legality of actions taken by Commonwealth officers in relation to the Tampa. It provides additional statutory authority for future action in relation to vessels carrying unauthorised arrivals and the arrivals themselves, including the power to detain. It introduces mandatory sentencing—I believe an unparalleled provision in Commonwealth law—for people involved with people-smuggling, and it prevents civil proceedings being instituted in relation to any activities involved in removing boats from Australian waters. It provides significant extra powers and, again, puts government and government officials very much above the law. It is an incredibly dangerous act on its own, and I think for the Senate to be considering it and passing it without a proper examination of its impacts is an indictment. Many of the criticisms that were rightly made in this place three weeks ago with great passion by many opposition senators about the Border Protection Bill 2001 still remain. There have been some modifications but a lot of the valid criticisms that were made then still remain. It is a very unfortunate outcome that the ALP has agreed to support this particular bill.

The Migration Amendment (Excision from Migration Zone) Bill 2001 is purely a device to allow the government and the Department of Immigration and Multicultural Affairs to achieve their long-term objective of exempting their refugee status determination processes from proper review. It is basically a mechanism to give the government and the department absolute power without any opportunity for oversight by any independent body with any powers at all. It will also set up, via the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001, categories of second-class and third-class visas and create yet another class of refugees. It will not deter; it will simply make life an even bigger burden for people who have already suffered and this, in turn, will be burdensome for the taxpayers.

The Migration Legislation Amendment Bill (No. 6) 2001 is the bill that went to the
committee inquiry you have when you do not have a committee inquiry. It was taken back from the committee by the vote of the Senate today before we got a chance to start examining it. But, even in the brief time that we did get to examine it, we have had significant evidence provided—and I thank those people in the community who went to the trouble of providing submissions. There was a range of groups, and it is worth noting the groups that have expressed significant concern about and opposition to this raft of legislation. There was a range of legal groups, advocacy groups, people that have worked on a daily basis with this area of law who have pointed out flaw after flaw in the package of bills and many, many dangers in relation to what it will mean.

It is worth quoting the UNHCR in their statement to the Senate Legal and Constitutional References Committee last Friday in relation to the Migration Legislation Amendment Bill (No. 6) 2001. This bill seeks to narrow the definition of ‘refugee’. The UNHCR submission raised a number of concerns with various aspects of the bill. It stated:

The UNHCR remains concerned about other provisions contained in section 91R which restrict the definition and application of the notion of persecution, and—

this is a damning phrase—

which could exclude refugees who, in our view, should be covered by the refugee convention.

If there is one thing that is at the heart of the refugee convention, it is the principal of non-refoulement, or not returning people to a situation where they may be subject to persecution—to be blunt about it, not sending people back where they might get killed. The UNHCR has quite clearly stated that that bill alone raises that risk, and it was clear from the evidence provided that that was a potential consequence of just that one bill.

Unfortunately, the UNHCR has not provided us with much feedback in relation to the Border Protection (Validation and Enforcement Powers) Bill 2001, the Migration Amendment (Excision from Migration Zone) Bill 2001 or the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001, but I think it is eminently reasonable to assume that there are significant concerns in relation to those. It is eminently reasonable to assume that because there had been significant concerns produced by other people. Indeed, the Human Rights and Equal Opportunity Commission produced a scathing critique of those bills. There was a unanimous resolution passed today by the Uniting Church National Assembly and Synod of Victoria expressing grave concern about these bills.

It is these groups that are concerned with the welfare of people, particularly vulnerable people, who are trying desperately to send us, as legislators, a message, and we should not close our ears to that message. If we do, we will be abdicating our responsibility as legislators and as people who should be leaders in this nation. We should be leading, and it is the absence of leadership that has led to that change in figures where instead of 20 per cent wanting to send people back 20 years ago it is now over 60 per cent.

That is a failure of all of us, me included. We have all failed to show the necessary degree of political leadership to stand up against the voices of ignorance, of disinformation and intolerance as well as the deliberate purveyors of hate in community—the Alan Jones’s, the Piers Ackerman’s—who deliberately seek to inflame and distort and create suspicion and hatred. We have a responsibility to stand up against that and we have failed to do that effectively. The consequence is this batch of legislation that we are seeing before us, a batch of legislation that will be, unfortunately, almost definitely passed by the Senate by the end of the week. I do not do this very often, but I was given a Bible when I came in here and I thought I might finish with a very apt phrase from Jesus:

... I was hungry and you gave me something to eat, I was thirsty and you gave me something to drink, I was a stranger and you invited me in

whatever you did for one of the least of these brothers of mine, you did for me.

We hear a lot of talk about our Christian heritage in this place, and this is a very fundamental part of the New Testament—which has stuck in my head even from childhood,
so I knew it was there—that we should look to a bit more often. *(Time expired)*

Senator McKIERNAN (Western Australia) (8.10 p.m.)—One thing is sure, I shall not be quoting from the Bible this evening. In fact, at this moment in time, I am not exactly sure what I am going to say in my speech in the second reading debate on these seven migration bills. In some respects, I do not have to speak to some of the bills, because I have already had an opportunity to scrutinise them, to make decisions and to make those decisions public. I am referring, of course, to the bill that deals with class actions. I am referring also to the bill that deals with judicial review and, to a certain point, to the Migration Legislation Amendment Bill (No. 6) 2001, on which the Legal and Constitutional References Committee held a hearing last Friday morning and have got another hearing planned for next week. So I suppose I have put a mark down on the legislation. At the end of the day, when these bills come to a vote, I will be supporting them, because that is what my party has determined, but I will not be doing it with any great deal of comfort. I particularly do not want to be supporting the proposition on mandatory sentencing.

There is some place for mandatory sentencing in some of the laws dealing with the rules of the road but, on issues such as the property offences in the Northern Territory, I do not think there is room for it, and in our committee work we have expressed views on that. I, quite frankly, never thought that I would have to vote for a proposition to support mandatory sentencing on people smuggling. People smuggling is an evil and obnoxious trade carried out by the dregs of society who profit from individuals who can least afford to be profited from.

I suppose some of our community would say that it is right and proper that there should be mandatory sentencing on people smuggling, but I am reluctant and if I had the opportunity—but that was my fault—I would have argued very vehemently against it in committee and in my caucus. But a decision is made and I will abide by that decision. I will not do it with any great deal of comfort, just as I will not with a great deal of comfort support the decisions on the Migration Legislation Amendment (Judicial Review) Bill 1998 [2001]. I have expressed pretty strong views that I did not think the administrative system for refugee determination was accurate enough at this stage to remove all areas of judicial review from the legislation.

The fact that some individuals can still have their cases overturned in the courts is an indicator that indeed there is still room for some form of judicial review. I will wait with interest to see what amendments come forward in regard to referring the matter to the Federal Magistrates Service. Similarly, on the class actions, evidence was put before the Joint Standing Committee on Migration that there was some abuse taking place in the system, that people were using the system in order to prolong their stay in Australia. A minority of the committee said that if there was real evidence, hard evidence, in regard to that, then people from this side of the house would be more than happy and prepared to work with the government to rectify the situation. I do not think the removal of class actions is the answer.

The matter that concerns me most is the whole process that we are engaged in at this time, with seven very important bills—some more important than others—being debated in a very short time, being compressed. At this time tomorrow night or later in the week, no doubt there will be pressure upon us on this side to put a guillotine and a gag in place in order to pass the legislation so that this parliament can rise on Thursday of this week in preparation for the election. That has not been said yet, but it is going to happen.

The process that the Senate Legal and Constitutional References Committee has embarked upon in looking at Migration Legislation Amendment Bill (No. 6) 2001 started last Friday when we took evidence from the department, the United Nations Commissioner for Refugees and Dr Penny Matthew. That started a process which exposed some of the deficiencies of the bill. Next week in Sydney, we were to have heard more important evidence on the bill that might have exposed more deficiencies. The committee, in addressing the bills, might have been able to make recommendations
that would overcome deficiencies that may have been exposed. It may be that, at the end of the time, Senator Mason, who was a member of the committee, Senator Coonan, who is a member of the committee, my Labor colleagues or I might have disagreed on the recommendations. Indeed, Senator Bartlett and I might have disagreed on the recommendations.

I think everybody in this place will agree that the committee processes of this parliament, of this Senate, aid the development of good legislation. The process in this case was all for naught. The Senate, in its wisdom, has today determined that the inquiry should no longer proceed. The Senate or the government has determined that the reports of the committee on the two earlier bills on judicial review and on the class actions are of no account; the bills will be passed in their current form.

The major bills, the border protection legislation, are an improvement on what this chamber was looking at some three weeks ago. That has to be said, although Senator Bartlett probably disagrees with me, from what he said in his earlier comments. The bills are an improvement, but they contain mandatory sentencing. If we had more time, and particularly if we had time to consult with the community, we might have been able to address the legislation in a better way than it has been addressed at the moment. The processes are not perfect, in having only a very short period of time to look at these very important pieces of legislation. I did not agree totally with what either Senator Schacht or Senator Bartlett had to say, but I found I was probably more in agreement with some of the comments that Senator Bartlett was making than with the comments that Senator Schacht was making. That is not to say that I entirely agreed with where Senator Bartlett was coming from.

We have a real problem in this country. As I stand here as a senator for the state of Western Australia, I am left in no doubt at all from my constituents that they support this very tough action by the government and are putting pressure on me to support this legislation. That comes not just from people who might by some be determined to be rednecks in the community. Many people have sought to make contact with me over the last few days since the border protection bills came to the fore again, and many, from all parts of Australia, are encouraging me and reminding me of what Labor Party policies are on these matters. Contact is coming through form letters, which one always takes with a pinch of salt. I try to test where the letters are coming from. If they are coming from Western Australia, obviously I will give them a lot more credence than if they are coming from other parts of Australia.

Apart from the people who have taken it upon themselves to make contact with me, over the weekend I spent a considerable amount of time on the telephone making contact with people back in my home state—not only in the Perth metropolitan area but throughout the state—whose views on these issues I respect, whose views on what is happening in their local communities I am aware of. I have tested the views with them as well. The view in the community of Western Australia—and it is not by opinion polls, because I do not necessarily go round quoting them or what the shock jocks of the radio say—is this: people are supportive of the very tough and very strong actions of the government.

I would have loved to have had the opportunity to test whether these people supported mandatory sentencing, which is contained in this legislation, or whether they wanted to fully remove judicial review. They are certainly not happy about the events that occurred on the Tampa a few weeks ago or what happened with the Aceng—or, indeed, today’s news that a number of the people who are being looked after by Australia are refusing to leave the troop-carrying ship Manoora, which is anchored off Nauru.

That is a part of the problem—how the individuals who come here seeking our protection treat us in return. Certainly they are exercising their human rights in coming to Australia to claim protection. We as a developed nation should provide protection to those that are in need of protection. But what happens when they come here and make demands? What happens when, as was the case with the people who were on the Tampa,
they are rescued at sea and then make demands of the captain of the vessel—who has rescued them and saved them from almost certain death—to turn the vessel around and head for Australia? That action did not endear them to the community of Australia and the people that I represent in this chamber. The costs of that operation are something that we will be exploring in further detail as we go through the Senate committee processes.

The other thing that is happening as we speak is that individuals on the Manoora are saying they will not leave the ship because they have paid the people smugglers to come to Australia and that we—Australia—have got obligations to allow them in because they have paid the people smugglers to come here. The community of Australia does not accept demands like that and, for that reason, Australian people are reacting and putting pressure on people like me—their representatives in the parliament—to support the actions of government on these matters. These are actions that I would probably rather not be supporting in some instances, but I have spoken about the mandatory sentencing part of things already.

There is a real difficulty on this. I have been with this issue for quite a number of years. As a matter of fact, when the Joint Standing Committee on Migration was set up the committee happened to be in Darwin and we met with the Cambodians who had recently arrived in this country on the Pender Bay. There were only 26 people on the vessel and since that time—November 1989—we have had some 13½ thousand people seek to enter Australia unlawfully by way of boats. Many others come in by aircraft. I entered this country on Monday of last week and, as an Australian citizen and member of the legislature, I had to show my passport and my papers to show that I had an entitlement to come here. But others seek to do it without papers at all. Many of them are destroying their papers before they arrive here. There are provisions in some of the bills which I personally lean towards supporting at this time—even though I will obviously be voting for them.

This issue of boat people, boat arrivals, was an issue during the currency of the Labor government. I am surprised that government representatives have not done the comparison of what was happening when we, the Labor Party, were in government with what has happened since the conservatives have been in government. It was an issue, it was a problem, it was controversial and we had religious groups, including not only the Anglican Church and the Uniting Church but also the Catholic Church, making noises about it. In the time that we were in office, up until we left office in 1996, some 45 boats arrived in this country, carrying 1,975 people. Nearly 2,000 people arrived in those nearly six years. Since that time, there have been a further 11½ thousand people seeking to come here in this way. If people say that it is not a problem, they are, quite frankly, deluding themselves. It is a huge problem and a huge issue and an expensive issue. Eleven and a half thousand people have come in since March 1996 and they are coming to an ever-toughening regime, which includes mandatory detention—which was put in place by the Australian Labor Party when we were in office—yet they still come. They pay huge amounts of money to come.

There has been a lot of commentary on the issue, but one of the articles that I found of great importance on the issue was one written by Paul Kelly in the Australian newspaper on 25 July 2001. Mr Kelly in part wrote:

The core of the problem is the 500,000 worldwide illegal asylum seekers, most of whom don’t qualify as refugees yet who dominate the struggle for government funding, clog up the legal systems of the democracies and win the compassion factor of public opinion. Meanwhile, the 22 million refugees looking for resettlement are doing it tougher than ever.

The article goes on to quote Britain’s former Home Secretary Jack Straw saying that the expense of the matter is alarming—that some $US10 billion is being spent by developed nations on assessing refugee claims, most of which are rejected. Quite a lot is said about Australia and what this country does in the processing and the determining of whether a person who arrives unlawfully is indeed a refugee. Mr Kelly in this article says:
Recently, about 70 per cent of onshore applicants have won refugee status. The numbers vary, with a high rate of acceptances from Iraq and Afghanistan. Delete applicants from these two countries and the approval rate overall falls to 30 per cent.

For those who say Australia is too harsh, Ruddock offers a telling statistic—Australia’s onshore acceptance rate for Iraqis was 97 per cent as opposed to the UNHCR rate for displaced Iraqis in Syria and Jordan of only 15 per cent to 25 per cent. There’s one certainty—refugee policy has changed forever.

Many commentators forget just what a refugee is. Kelly’s article goes on to say:

A refugee is not a person who merely travels by boat from the Middle East to Australia. That is a fact that many of the supporters around nowadays seem to ignore. Kelly also says:

A refugee is not an economic immigrant.

Many persons on the other side of the chamber would say that most of them are. Kelly also says:

A refugee under the 1951 convention has a ‘well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group’ and is outside his country of nationality.

I wish that we had more time to go through these pieces of legislation in the depth and detail that they require. They are very important pieces of legislation and, in the main, I support most of the thrust of the legislation, with a few reservations that I have already spoken about—in particular, mandatory sentencing. I give notice now that I shall do whatever I possibly can to get this changed—and I am sure that it will pass into law—when Labor win office at the forthcoming election. Having mandatory sentencing for this when we do not have it for such things as drug smuggling and some of the more pernicious crimes will be a blight on Australia at an international level. (Time expired)

Senator HARRADINE (Tasmania) (8.30 p.m.)—I rise to speak on the seven migration bills currently before us. Not one word or one sentence of what I say tonight on the legislation will change anybody’s mind in this chamber. It is virtually a waste of time for me to get up here and speak. It is all cut and dried. We have a long night ahead of us with second reading speeches, and it is not my intention to speak at length, but I do wish to raise a couple of things in respect of these measures.

The background to these measures has been a certain fear generated about our borders being unprotected. Is that fear a well-founded fear? In my view, it is not. I think it behoves the government and the opposition to show us where our borders will remain unprotected without this legislation before us. That is the first thing the government must prove to us before that fear is aroused—in me, anyhow. We certainly do, however, have an obligation to protect those asylum seekers who do have a well-founded fear of persecution. That is our obligation. Someone will say, ‘So is the obligation to protect our borders. That is one of the first obligations on any country.’ That is very true, but I believe that obligation is already discharged and there is no need for the legislation that is before us today. I will have something more to say about that in the committee stage of the debate.

I know that much of what I will say tonight will be against the tide of public opinion. I respect the views of others in this chamber, but I am concerned that there is an ugly side to all of this and that in the community there is underlying racism being generated—I am not saying by the government of course—from talkback shows and all the rest of it, which is most unfortunate. We as representatives in this parliament of the people have an obligation to renew our efforts to avoid the spread of racism in our community. I commend persons from the government, the opposition, the Democrats and others within this chamber and from the other place for putting their attention to that task.

I am the longest standing member of the Human Rights Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. That committee took on a review of detention centres within Australia, and I will refer to that in a moment. As a patriotic Australian, I recognise the need, as does the government and everyone else in
this chamber, to protect our borders. I believe that they are protected. We also have a very serious obligation to genuine refugees. It is the Senate’s task to review the legislation that the government has put before us. My concern is that I am not as prepared as I should be to examine these matters thoroughly. One of the reasons for that is that I rely fairly heavily on the work of the committees and the information that comes therefrom. I commend those in this chamber, the officials and all of the workers in the Department of the Senate who are responsible for the work of the committees of this parliament.

The 

incident raised questions of the detention of persons without lawful authority as well as the need to lawfully protect Australia’s borders. The legislation that is before us does have elements of retrospectivity. This does worry me. I have not heard those elements of retrospectivity referred to thus far. Maybe something has been said about it, but it does concern me that there is an element of retrospectivity in the Border Protection (Validation and Enforcement Powers) Bill 2001. We should always be careful about the passage of retrospective legislation in this chamber. It will be interesting to explore at the committee stage the reasons the government has proposed for that retrospectivity and whether or not it considers that its actions were at the time unlawful.

I acknowledge what Senator McKiernan has said: the action of persons who are rescued from a situation then turning around and threatening the skipper of the vessel is not to be countenanced. I am also fully aware of the fact that our overriding obligation does require us to give refuge to those with a well-founded fear of persecution by reason of race, religion, nationality, membership of a particular social group or particular opinion. I am also fully aware of the fact that the 

incident raises the issue of international people-smuggling gangs profiting from human misery. I acknowledge that there is a dilemma in respect of this matter, but people smuggling needs to be curtailed and eliminated as it puts at risk the credibility of the refugee determination system.

We do need to have international cooperation in this area of people smuggling. We do need to find common cause with Malaysia, and Indonesia in particular. If those countries are finding it difficult, then we should offer our assistance, including aid, to overcome those problems. So we should commit both physical and financial assistance to attack the people-smuggling racket. I think it will be necessary in the committee stage of the vote to elicit from the government what action the government is taking towards international cooperation with Malaysia and Indonesia in respect of people smuggling. There is also a vital need to enhance international cooperation by addressing the root causes of the disruption and movement of a vast number of concerned people who have a well-founded fear of persecution. There are a vast number of poor and destitute people who do not want to leave their motherland but who are forced to for a variety of reasons. The federal government, whilst tackling that problem, should also consider concentrating on the assessment of the refugee status of those languishing in refugee camps, including those in Africa. I know the response by the government is, ‘Well, yes, we are placing importance on that, but we do fear that if there are more onshore claimants than we have catered for then the assessments offshore will be reduced.’

Our Australian 2000-01 humanitarian program comprises 12,000 places, of which 8,000 are to be used for those in humanitarian need offshore. The balance of the 12,000, along with any unused places, will be available for people found to be refugees onshore. Offshore places may be supplemented by unused places onshore during the remainder of the year. I emphasise that the overall size of the program remains the same as in past years. Refugee places are maintained at 4,000, in line with the government’s continuing commitment to assist those in greatest need. I believe that Australia should consider a substantial increase in the overall number of humanitarian program places. As has been noted by Senator Bartlett, I think the government has been quoting figures which portray Australia as being the second
most generous nation in the world in its acceptance of refugees.

This can be misleading if considered in isolation from other factors. Australia might be the second most generous on a per capita basis in its acceptance of resettled refugees, but this must be seen in perspective. For example, Germany’s intake of 200,000 asylum applicants does not qualify for this list, as these people do not meet the definition of ‘resettled refugees’. These asylum applicants simply arrive on Germany’s doorstep. In assessing Australia’s performance, we should also consider our ranking on the nation list for the number of refugees hosted on our territory. We are well down on this list, at No. 30.

Very briefly and before I conclude, I want to say that Australia’s detention system is not something about which we can be particularly proud. I was shocked, as were most other members of the Human Rights Subcommittee, by what I saw when we inspected certain detention centres in outlying areas. Based on what we saw, I would venture to say that Australia is not likely to win any international accolades for the way it hosts asylum seekers. I am firmly of the view that the government over time should move to close detention centres in isolated areas. The government should also ensure that alternative arrangements to detention be made for asylum seekers where detention is not necessary for security or other valid reasons. This should particularly apply to women, children and family units.

The bills before us will—as we know, given the numbers situation—be passed in the Senate. I am disappointed in that because I feel that there are quite important—vital—humanitarian principles at stake. But political pragmatism seems to reign at the moment. I am not going to comment on why I think that might be so, but I commend those who have spoken thus far in the debate and expressed their concern about these measures—I particularly mention Senator Bartlett, and I am looking forward to hearing the speech of Senator Stott Despoja. I am not prepared to support these measures una-mended.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (8.48 p.m.)—I commend Senator Harradine on his contribution. Tonight, the government, with the acquiescence of the Labor opposition, will pass seven—yes, seven—migration bills without proper examination of their implications. Broadly, these bills will further restrict the rights of those asylum seekers who are genuine refugees to find safe haven in Australia. These bills will set in place a system for dealing with refugees that not only lacks compassion but also lacks commonsense. It will be expensive, cumbersome, irresponsible, unworkable and, in some cases, probably and possibly unconstitutional—and that is before we even get to the human rights implications.

There is nothing that the Australian Democrats can say tonight that will prevent this injustice occurring. As Senator Harradine pointed out, the numbers are obvious. We are not expecting an eleventh-hour crisis of conscience by government or Labor members in this chamber—although I acknowledge that some individual members have expressed their concerns and their consciences. I do not believe that people in this chamber tonight are voting according to what they know is right; they are voting in their short-term political interests. Yes, Senator Harradine, there is a lot of political pragmatism around this evening.

We cannot change the outcome of this vote, but we can ensure one thing: that parliament does what it is supposed to do, which is scrutinise legislation. We can ensure that the many arguments against these bills—and many have emerged in the few days that we have had to consider the bills—are put on the public record. We can give a voice to the many Australians who do not support this legislation, to the many Australians who recognise that these bills are unworkable, inhuman and unjust. We can ensure that historians, when they look back and see that today Australia adopted One Nation’s immigration policy, know that there were some Australians and some political representatives who rejected it—not just Democrats but a number in this chamber and also many other Australians. An article in the Australian Magazine
of last weekend talked about the increasing number of Australians who go so far as to shelter refugees in their own homes. I think a lot of those Australians would be glad that there is a voice of opposition tonight.

This government has managed to create a crisis around asylum seekers and it has propagated many myths. The facts are that asylum seekers illegally entering Australia are being processed according to law. If they are not genuine refugees, then they are sent home. We do not have an open door policy in this country; we are not a soft touch. In fact, by international standards, very few asylum seekers come to Australia—and Senator Harradine and others of my colleagues have made this point. For example, Sweden receives twice as many asylum seekers per capita as Australia, yet in Sweden it is against the law to detain children for longer than a few days, and women and children are housed in open accommodation near their male relatives.

How tough do we need to get in order to deter refugees from Afghanistan or from Iraq? Tougher than the Taliban, presumably; tougher than Saddam Hussein. This legislation tonight does nothing to stem the flow or address the causes of refugee flows. We are exposed to increasing evidence of the appalling conditions and human rights abuses in Afghanistan. The circumstances in Afghanistan can be expected to worsen in the future. I do not think that is a surprise to anyone.

To date, our treatment of these asylum seekers has been to denigrate them, depict them as criminals or incarcerate them in detention centres. We refuse them information and refuse them contact with the outside world. We have done this to children: not just to adults but to children. If they were found to be genuine refugees, then they were released from the camps and dumped in major cities with barely enough to live on and little access to education, employment or health services. We give them a temporary protection visa to increase their sense of uncertainty and we rule out any chance of their family joining them here in Australia.

But no, that is not tough enough. Now the government is upping the stakes. The government wants to turn them around; the government wants to risk them drowning. It wants to close the doors to genuine refugees, and the rhetoric has escalated now. I only need to think of the comment on a doorstop this morning by one member of parliament—shame on him—suggesting that people should no longer be fed on the boat. But the rhetoric has escalated: they are not just called ‘illegals’ now; they are accused of being potential terrorists. It embarrasses me that that correlation has been made explicitly or even alluded to in recent days. Some coalition ministers in past weeks have claimed that there are links between asylum seekers and terrorism. This is cynical scaremongering in light of the tragic attacks in the United States and it is without basis in fact.

Those people do not mention that Australia already returns those who do not pass background checks or who are found not to be genuine refugees. They do not mention that terrorists are much more likely to enter legally on tourist visas than to do so as asylum seekers. If you were a terrorist, would you really get into a leaky boat for a few months and then sit in a mandatory detention centre for potentially years or would you fly here on a tourist visa? Let us get realistic. The opportunity to link terrorism and boat people and to create unnecessary fear and distrust in the Australian population towards asylum seekers is apparently electorally irresistible to some members of this government.

Defence against terrorism and our treatment of asylum seekers are both important issues—no-one denies that. But they are very separate issues. We must be able to speak openly and honestly about these issues. I say that because I think some of the debate in the chamber that I heard today and took part in and some of the comments I have read in the media and heard at doorstops have been an attempt to censor those people who might want to debate these issues in a little more detail. We should be able to have these debates without accusations of treason—being traitors—being made against those who would defend asylum seekers. We have actually been called this; people have been accused of being traitors and of being treacherous.
Senator Bartlett—Peter Slipper again.

Senator STOTT DESPOJA—Indeed, I acknowledge that interjection by Senator Bartlett: again by Mr Peter Slipper. We have heard it from members of the government, just as we have heard from talkback hosts. Oddly enough, I expect a higher standard in this place. I have to say the exchanges in the chamber today that accused members of my party and me of not sympathising with victims and having sympathy for terrorists and not condemning the actions in the United States left me cold. I look forward to Senator Knowles and others coming in here tomorrow and explaining their actions. It was contemptible.

Amid the debate and speculation on the causes of the terrorist attacks in the United States, we should recognise a basic truth: terrorists have lost compassion and respect for human life and we need to fight that enemy in our own hearts as well. Those responsible for terrorism cannot be identified by a religion or race but by their actions. This is not about where people come from, what they wear or what god they worship. A war has been declared on terrorism, not on Muslims. If we inflame racial and religious based hatred and intolerance, the terrorists will have struck another blow.

In the aftermath of the terrible tragedy in the US, some members of this government have shamelessly attempted to draw a link between the so-called boat people and the sorts of terrorist attacks that have occurred. This style of vilification is used to harden public opinion, to generate fear and to draw political advantage from tragedy. The government will claim credit for addressing this fear that they created by instituting draconian legislation aimed at denying asylum seekers basic rights. This is an exercise in the utmost political opportunism and cynicism.

Last week, I received correspondence from Dr Penelope Mathew, a senior lecturer in law at the Australian National University. Dr Matthew wrote:

As someone who has family in the United States and who studied for her doctorate in refugee law at Columbia University in New York City, I am deeply hurt by the political usage of the tragic loss of life there. I fear for Australia’s tradition as a country that believes in freedom and I am gravely concerned for the safety of fellow Australians who are Muslims or who have Middle Eastern origins or background as a result of the linkage between the events in New York and the arrival of asylum seekers in Australia.

The Australian Democrats condemn those who are making unsubstantiated and irresponsible claims suggesting a link between terrorist activities and asylum seekers. They are taking advantage of a tragic situation for political purposes.

The government believes it has community support for this legislation. I suspect that, while many Australians may generally support a tough approach to asylum seekers, they would not support the extraordinary measures contained in the bills before us—certainly if those unprecedented and arbitrary powers were fully publicised. Unfortunately, the rushed manner in which this legislation has been brought to the Senate has not allowed the community the level of consultation that it normally would have. Had we done so, it would have laid bare all the flaws for all to see.

In this regard, I note the comment of the President of the Human Rights and Equal Opportunity Commission:

... it is a disappointing departure from established Australian legislative tradition that changes to fundamental human rights guarantees could be made in haste without extensive consultation and public debate. The parliamentary committee system allows for detailed consideration of proposed legislation and public comment on laws that, if enacted, would seriously affect existing rights.

The government and the opposition have opposed the reference of some of these bills to a Senate inquiry. Again, on behalf of the Democrats, I call on both the parties to suspend debate and refer these bills to a committee so that they can be properly considered.

It is important to outline some of the policies and the principles underlying this legislation and to clearly indicate how it departs radically from Australian traditions and violates our international obligations:

It is unnecessary, discriminatory, impractical and contrary to human rights norms to set up various categories of person by arbitrary reference to geography.
That is a quote from HREOC. A refugee is a person who has a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion in his or her country. These people are fleeing persecution, torture or threat of execution, in some cases because of the god that they worship or political opinions that they hold. These bills propose to narrow the definition of a refugee in Australian law to the point where genuine refugees will find it very difficult to meet the new standard. The UNHCR has expressed concern that Australia is in danger of failing to meet its core obligation not to return people to their place of persecution.

Not only are these bills inconsistent with basic humanitarian commitments, they vest arbitrary powers in Commonwealth officers. For example, it is a fundamental principle that no person can be arbitrarily detained by the state. Imprisonment without trial is a nightmare unknown in the free world. In our legal system, the ancient writ of habeas corpus is available to test the lawfulness of any detention. These bills override that right. The consequential provisions bill empowers any officer to detain a suspected unlawful ‘not-citizen’ in any of the new exercised offshore places. It also provides that proceedings relating to the lawfulness of the detention of an offshore entry person may not be instituted or continued in any court.

This is the sort of law that you might expect in the days of Stalinist Russia. It is arbitrary detention by the states without access to the courts. For how long can the government detain people under this power? One year? Two years? Ten years? There seems to be no limit. What conditions must they or can they be kept in? Nothing is specified. What happens to children who are detained under this power? Under guideline 5 of the United Nations High Commissioner for Refugees’ guidelines on detention of asylum seekers, where children are detained all efforts must be made to have them released from detention and placed in other accommodation. Why is no attempt being made to incorporate this requirement into the legislation before us? How long will innocent children be detained and in what conditions?

This bill empowers the government to go far beyond what is necessary to achieve its stated objectives. If it only wants to detain people for short periods of time for the purpose of sending them to another country then the detention powers should be and could be limited in that way. It is dangerous to assume that no future government will abuse these very broad powers. We do not know—we cannot know—how they would be used. As former US President John Adams said: Nip the shoots of arbitrary power in the bud. It is the only maxim which can ever preserve the liberties of any people.

This principle applies not only to the imprisonment without trial provisions but also to the mandatory sentencing positions.

The enforcement powers bill provides for a mandatory minimum sentence for people-smuggling of five years for the first offence and eight years for repeat offenders. It is a key aspect and a key objective of our legal system to individualise justice. The parliament prescribes rules of general applications, but of course the courts determine and examine the circumstances of each case and make rulings on the individual merits. The very different behaviour and circumstances of different offenders demand different responses. In Australia, it has always been the case that every accused gets their day in court, where they will be heard by an independent judge and will be heard without prejudice and without regard to opinion polls or political expediency. Mandatory sentencing is a crude form of punishment that interferes with the proper and impartial administration of justice.

The mandatory sentencing provisions also illustrate the government’s priorities. Mandatory sentencing is a resource intensive policy that is likely only to affect the minor players who operate these vessels. Surely our response would have been better directed at combating people smuggling at its source rather than at the lowest and most expendable level. Our primary obligation to genuine refugees who come within our borders is to ensure that they are not compelled to return to their country of origin and face threat. Yet these bills contemplate the expulsion of genuine refugees from Australian territory.
The only assurance they are given is that Australia will send them to what it considers to be a safe third country.

What of the views of that safe third country, presumably a poorer, more densely populated country than Australia? What if that is the case, as we have seen recently? It is totally inappropriate for Australia, a relatively wealthy country, to be sending asylum seekers to developing nations, as it is likely to do under this legislation. Australia is part of a global approach to refugees, in which it must bear its fair share of the burden. Sending asylum seekers who arrive on our shores to other nations is inconsistent with the principles of solidarity and burden sharing that underpin the global refugee system. Under the bill the minister will determine a list of safe third countries. That determination will not be subject to review. The proposal to use a list of countries does not account for the fact that some countries are safe for some refugees but not others. Refugees who are to be sent to a country where they are not safe will have no right in law to question the minister’s blanket declaration that a country is in fact a safe third country. There is evidence that the implementation of the safe third country concept in Europe has already led to the return of refugees to the country from which they have fled.

The government has been outsourcing the handling of asylum seekers to detention centres. Now they are outsourcing the problem to small, poor island nations, like Nauru and Kiribati, that are not necessarily signatories to the United Nations convention on refugees. The government has been stingy—particularly this government—with support for our Pacific neighbours. But now that it has discovered the mutual obligation concept in foreign aid we can expect to see a lot more of the Nauru option being exercised, despite the fact that it is actually an expensive option. A book published this year, Asylum Seekers: Australia’s Response to Refugees, by Don McMaster, an Australian academic, predicted that the Howard government would spend the equivalent of $200 million this financial year locating, removing and detaining asylum seekers. That turned out to be a vast underestimate. That was before the government started on the more expensive option, while contributing only $20 million to UNHCR refugee support programs. This government’s strategy is all about turning refugees away; it is not about addressing the cause of refugee movements.

Sadly, it is not just the financial costs that we need to keep track of; the cost to our international reputation is incalculable. The government is trying to outsource the refugee issue and to wash its hands of what happens to asylum seekers. It is not only hypocritical; it is irresponsible, it is expensive and it is inhumane. Throughout the debate tonight, the Democrats are going to continue to put these issues on notice. I have many more pages, dot points, articles and press releases from concerned groups—be they community groups, church groups, leaders in our community and people who are not necessarily of our political persuasion, people from other political parties—and we are going to get them on record. It is a shameful process that we are going through this evening, and the Democrats are going to continue to expose the flaws in the legislation. We are going to do exactly what this house of review is intended for: we are going to ensure that this legislation is properly scrutinised.

Senator COONEY (Victoria) (9.08 p.m.)—The Migration Amendment (Excision from Migration Zone) Bill 2001 and related bills are directed at people not because they are not refugees but because they might be. In other words, if there were no doubt that the people coming down to Australia were not refugees, we would not have this legislation. The point of this legislation is to make sure that those people who may be refugees do not get here.

Australia signed up to the 1951 refugee convention in Mr Robert Gordon Menzies’ era—I will come back to that later on. In 1967 there was a protocol which extended the cover of the convention; that was also signed up to by Australia. Through those instruments, Australia has committed itself to giving succour, to giving help, to people who arrive on our shores and are refugees.

We say, ‘We’ll accept them as refugees and we won’t send them back.’ The legislation we are discussing now is about ensuring that
people who might be refugees do not get a chance to show it. I think that is quite clear, and I do not think that any pretence has been made about it. People say, ‘There are too many people coming down who might be refugees; we’ve got to stop them,’ so we create laws and conditions which stop them coming.

You hear terms such as the ‘pull factor’ and the ‘push factor’. We cannot do much about the push factor: we cannot do much about the sorts of regimes that the Taliban or Saddam Hussein comprise. We cannot do much about those regimes, but they drive these people out. You might well imagine that they are not the sorts of regimes you would like to live in, whether in Iraq or in Afghanistan. You can understand why people leave and want to find a place where they can be safe. They come down here and we say, ‘Look, there are too many of you; we just can’t take you in. We’re going to create conditions which stop you coming.’ I think that is how we put it, and I think it is proper and right that when we talk about this legislation we realise what we are doing.

The other point about these bills is that they are a massive attack on the quality control exercised by the judiciary over migration legislation; and, in that context, they are a massive attack on the judiciary itself. A lot of attacks have been made by this government on the judiciary. The judiciary underpins the civil society in which we live. People have attacked the judges. They have said, ‘It is not the judges that make the law; it is parliament that makes the law.’ I can understand what they are saying, but it is the judges that interpret the law; and if you are going to have a separation of powers that is to be remembered. A huge attack has been made upon the judges of this country in this legislation and other legislation that has gone before it.

One example is the mandatory sentencing in the legislation. I will quote from proposed new section 233C of the Migration Act. I will give you an example of what it would require a judge to do in a situation involving, say, our children. I am old enough now to have children in their 30s—perhaps they are too old for this example. Let us say that children in their 20s go off to Bali. When they get over there, they meet half a dozen people from the United States, from England, from France. As a bit of a lark—do not get me wrong; they should not do this—they bring them back to Australia by yacht and let them land in Darwin without any visas, intending to keep them here for perhaps three or four weeks. If they are caught, a judge is obliged to give those young Australians—whose forebears may have been here for generations—five years imprisonment. Is that a fair thing?

Senator Calvert interjecting—

Senator COONEY—I see there is some question about this, but that is what the Border Protection (Validation and Enforcement Powers) Bill 2001 says, Senator Calvert. I will read it to you:

**233C Mandatory penalties for certain offences**

This section applies if a person is convicted of an offence under section 232A or 233A, unless it is established on the balance of probabilities that the person was aged under 18 years when the offence was committed.

Senator Calvert, if you go to section 232 of the Migration Act, it says:

A person who:

(a) organises or facilitates the bringing or coming to Australia, or the entry or proposed entry into Australia, of a group of 5 or more people; and

(b) does so knowing the people would become, upon entry into Australia, unlawful non-citizens;

is guilty of an offence ...

The young person of 25 arranges to bring over his friends from the United States, the United Kingdom and France—no money involved, he just brings them across. For doing that a judge, no matter how he himself feels, is obliged to sentence that young person to five years jail. That shows you just how draconian this legislation is.

I mentioned Sir Robert Gordon Menzies before. I must confess I come from a family that did not hang pictures of Sir Robert Gordon Menzies on the wall or necessarily agree with his approach to life, but he had a respect for law. The founder of your party, Mr Acting Deputy President Chapman, had a great respect for the law, judges and the judiciary. In fact, when he went to the Mel-
bourne bar he read with a person who later became a Chief Justice of the High Court of Australia, Sir Owen Dixon, who is well known. Sir Owen Dixon was called the greatest common lawyer of his time throughout the common law world. It is a tragedy that a party founded by Sir Robert Gordon Menzies, a person that read with Sir Owen Dixon, should be introducing this sort of legislation which does not give proper respect, proper consideration and proper adherence to a judicial system which can keep quality control on a very important part of the law.

If the quality control exercised by courts goes from this area of the law, it starts to go from other areas of the law. I see, for example, that on my side of the chamber are Senator Collins and Senator Ludwig, both of whom have been great advocates in matters arising under the Workplace Relations Act or its predecessors. It is migration law today and workplace relations law tomorrow—that is what is happening here. I think it is proper we understand and comprehend fully what is happening, as I have explained, with the separation of powers and the law itself. Of course the legislation cannot set aside the constitutional authority of the High Court, but you can see that it would like to. Nevertheless, it restricts the power of the Federal Court in a way that is most unjustified.

This series of legislation also deals with excising from Australia, for particular purposes, parts of Australia that some of us hold dear. The Migration Amendment (Excision from Migration Zone) Bill 2001, in proposed section 5 (1), says that an ‘excised offshore place’ includes ‘any island that forms part of a State or Territory and is prescribed for the purposes of this paragraph’. I have some concern about that because I was born on King Island a long time ago, and the government can now pass a regulation which excises King Island from Australia for a particular purpose. I think that is very alarming, and I hope Senator Calvert gets up and protects me on this.

Senator Calvert—We wouldn’t get any decent cheese. What happens to the cheese?

Senator COONEY—What would happen to the cheese? It also means I would have to get a second passport. This legislation is not only draconian but quite bizarre. It is directed against some powerless people. This is not legislation that has arisen overnight; it has resulted from years of demonising people who come to Australia.

Senator Calvert—Come off it!

Senator COONEY—Senator Calvert, I am right on this.

Senator Calvert—Then why is the Labor Party supporting it?

Senator COONEY—No matter who supports it, the fact of the matter remains that people are being demonised. If we are charged with a criminal offence, there is a process that we go through. The people against whom this legislation is directed—even under this legislation—are not charged with a criminal offence, yet they are treated as if they were criminals. They are locked up behind razor wire. I must confess that razor wire has always churned my stomach; it was not used even in Pentridge in the early days, as I remember. When I used to go out there, it was barbed wire and then they went to razor wire to be particularly restrictive. But you have razor wire there and you have people locked up simply because they want to get out of a place of horror. Even if they are not asylum seekers, they have come from a place of horror which I venture to say none of us here would be able to live in.

They come out here, crushed in spirit in many cases, certainly crushed in terms of having a future. Because of that, because we do not like them coming down in their boats, we demonise them, we lock them up and we make certain that they are not going to get what I would call ‘a fair go’. They come because they want to get away from a situation of terror and horror, and so we, who do not quite like this, fix them up so that the message gets back to others who might follow them. I am not sure how the message is going to get back to Afghanistan and Iraq about what happens here. I do not think their press or their television or their media generally are noted for their freedom. We are hitting these people hard because we do not like them and because they are a threat to our lifestyle, a threat to the sort of country we
like to think we are in. I am very happy with
the way things are, and I do not want things
to change, but I hope I have some sort of
regard for others.

I must apologise for this sort of moral
feeling I have, for this sense of wanting to do
the right thing, it probably comes from my
mother and father. Not many people can re-
member the Depression but I can. There used
to be people carrying their swags and they
would come to the door and knock and ask
my mother for help. She might give them
meat or milk or bread. This was up in the
Mallee, up in Culgoa, which I might say was
the place where I got my first award, which
was for the best recitation of *Humpty Dun-
pity* in bubs. I should say that there was
probably a bit of corruption involved, as my
mother was secretary of the mothers club. I
do not know whether she had any influence
because of that. In any event, there was dust
and people were without work because it was
the Depression.

Looking about the Senate, I do not think
anybody here was around in the Depression.
Swaggies or tramps or whatever you want to
call them would come and knock on the door
and people used to say, ‘You should not give
them these things, Mrs Cooney, because they
might be thieves or have criminal records or
all sorts of things.’ I remember that she used
to say, ‘Look, they might be all those things,
but they might also be returned soldiers from
the First World War’ and many of them were—
but in any event they are all human
beings.’ Just because they were down on
their luck, just because the dust was blowing
in their faces and they had nowhere to go to
hide from it, just because they did not have
enough food and their clothes were worn and
they did not have money, they were,never-
theless, human beings. A lot of them went on
to become soldiers in the Second World War.

All I am saying is that it is very easy to
judge people and to turn away. It would have
been very easy for my mother to slam the
flywire screen, to shut the door in their faces
and say, ‘We have got rid of that undesir-
able.’ That would have been easy enough but
she had decency and compassion, and an
understanding of what human nature ought
to be about and of what we ought to do, and
she did it. She had every justification to turn
them away. Others turned them away, but she
did not. That left a big impression on me.

I will tell another story, about my father
this time. After the war, when refugees—
‘reffos’ as we used to call them—came out
from Europe, we demonised them. They
were ‘dagoes’, and you have all heard
accounts of those times. There was one stage
when a particular nationality was accused of
being too ready to go for the knives. I was at
home at the tea table one night, and I said,
‘Yes, that’s right, that nationality use knives
the whole time; they are dreadful.’ I
remember my father saying, Yes, son,
Australians don’t use knives; they use broken
beer bottles.’ It was true. We are all made up
of the forces of both light and darkness. It is
easy enough for us to look at people and say,
‘They are full of light and there is no
darkness.’ It is easy enough for us to look at
people and say, ‘They are all darkness and no
light.’ We are all a mixture of that and, when
we are looking at these people coming down
in boats, we should remember that they are
all people. *Time expired*

Senator BOURNE (New South Wales)
(9.28 p.m.)—I agree with every word that
Senator Cooney said in the last 20 minutes,
and I must say that his mother has a lot to
answer for. She has obviously turned him
into one of the great humanitarians of this
parliament. I am not saying this lightly.
There are a lot of people who would proba-
ably rather that she had not done that, but I am
very pleased that she did. At the moment, the
Senate, as we all know, is discussing the Mi-
gration Amendment (Excision from Migra-
tion Zone) Bill 2001, the Migration Amend-
ment (Excision from Migration Zone) (Con-
sequential Provisions) Bill 2001, the Border
Protection (Validation and Enforcement
Powers) Bill 2001, the Migration Legislation
Amendment Bill (No. 6) 2001, the Migration
Legislation Amendment Bill (No. 5) 2001,
the Migration Legislation Amendment Bill
(No. 1) 2001 and the Migration Legislation
Amendment (Judicial Review) Bill 1998
[2001].

It is an impressive list, particularly as
there are so many bills on it, but we will end
up with little time to discuss them. It seems
particularly contrary to how the Senate generally does things for the Migration Legislation Amendment Bill (No. 6) 2001 to still be in a committee. Not only have we not seen that report; we are not likely to before we vote on it. That is really not the way the Senate works. It is not the way the Senate has worked in the past and it should not be the way the Senate is working at the moment. I find that somewhat upsetting and shocking.

It is interesting to note that throughout the whole saga of the *Tampa* and what followed this government has worked hard to convince the Australian public of the need to send a message to people smugglers. Some ministers appear to be saying that, by making life even more miserable for people fleeing torture and persecution, they will somehow deter the people who profit from the misery of others by bringing refugees here but, at the same time, the government has been ignoring the other message that our treatment of refugees has been sending. We have clearly told the world that Australia is prepared to shirk its international obligations where there is political gain to be made at home. Obviously we are all expecting an election, and we are all expecting it pretty quickly.

We have all heard the explanations of what is going on on talkback radio and we have seen the polls. We have seen that there are many people in Australia who I think have been encouraged and influenced by various people within the government and others to believe the worst of everybody arriving on our shores, to believe, as we have heard this evening, that there are people coming to Australia who are—and government members are saying there is no doubt about it—linked to terrorists and will probably do shocking things to Australians if they are allowed to stay and we may not even know about it. That is absolute rubbish. There is no proof of this. People are saying this because it suits their political ends. They should be absolutely ashamed of themselves for doing that.

I have been to two meetings over the last couple of weeks at which this has been brought to my attention. People have asked me why on earth the Australian Democrats will not agree to legislation which will stop terrorists coming into this country. That is the impression these people are getting. Ordinary Australians are coming up to me at meetings and saying, ‘There are terrorists coming into this country. The government is trying to stop them and you are trying to allow them to come in.’ It is absolutely shocking that they think that. It is shocking that they are being made so fearful—that they believe that their lives are at risk. One woman believed her life was at risk because of this. That was purely and simply because one member of the government in particular wants to make a political point. It probably will not help him at all in the upcoming election. Perhaps he believes it. It is really sad if he believes it.

Somebody who really knows what they are talking about ought to talk to him and tell him that we are not allowing terrorists into this country, that the background checks of people who come in and ask for refugee status, who come in on the leaky boats, are far more rigorous than they are for those who ask for tourist visas. The stringency involved is huge. These people are not allowed out of jail—and those detention centres are jail—until we are absolutely positive that they are not terrorists. If they were, they would be either sent back or put in jail, and there is no way they would be allowed out. We have in this country Australians who believe, through what some members of the government are saying, that there are terrorists coming to our shores in leaky boats—yes, likely!—and that the lives of those Australians sitting in ordinary little towns in New South Wales, in Sydney, in the suburbs, are at risk. They honestly believe that. It is appalling and disgusting that anybody would say that, either for their own political gain or through huge and unforgivable ignorance.

The other thing that comes of that is that we end up with a terrible problem with some Australians disliking other Australians because of their racial background or religion. Years ago Mr Ruddock started a debate that I think has led in that direction. It was exacerbated hugely by the whole debate about the *Tampa* and then, on 11 September, with bombings in America—and they were
bombings. That has been blown out of all proportion. Many government members have a lot to answer for in that regard. It is very bad.

I have a couple of quotes from Malcolm Fraser. I hesitate to quote him—poor Mr Fraser—because I know his words are dragged out whenever we try to say something reasonable about refugees. No doubt the government hates it and probably Mr Fraser is not that keen either—the poor man—but he did put these words on the record and so will I. The first quote is from the Sydney Morning Herald of 18 September when he talked about former Labor minister Arthur Calwell. He said:

Only seven years after the 1930s Depression, Arthur Calwell persuaded the ACTU to accept a major immigration program in Australia’s national interest. The ACTU did not put it to the vote. If they had, there would have been an 80 per cent majority against it. ... governments provided a lead and Australians accepted that lead. We are a better country as a consequence.

He is absolutely right, and I bet he is right about the ACTU as well. The other quote I have from is from the newsletter ‘Justice Trends’, the newsletter of the Australian Catholic Social Justice Council. Mr Fraser’s comments on Australia’s refugee policy go from page 1 to page 4. The article states at the end:

But Mr Fraser quoted figures which show that at the end of their period of detention, most unauthorised refugees are ultimately given permission to stay in Australia. “The Parliamentary Library Research Service has advised me that in the year ending 30 June 1999, 97 per cent of Iraqi and 92 per cent of Afghan boat people were given refugee status. In the following six months, 96.2 per cent of Iraqis and 90.4 per cent of Afghans were given refugee status.

“We know the Minister has learnt that many countries treat these categories of refugees more humanely than we have in Australia. It is a blot on our reputation ... What we do damages Australia’s name as a compassionate and humane country.”

Stating that Australia is “seriously out of step” with international protocols regarding refugees and asylum seekers, Mr Fraser said, “Our approach to the problem is indeed a breach of the Universal Declaration of Human Rights conventions.”

Mr Fraser said Australia’s present policies could cause long-term damage to our international standing.

“A country like Australia, which, despite the exceptions, has a good reputation in relation to human rights, needs to protect its reputation astutely. It is that reputation that allows us to use our voice in the forums of the world to advance the cause of human rights around the world.

“When we put ourselves in the wrong, we damage our capacity for advocacy and soil the reputation we have gained over 50 years.”

I could not agree with that more. We have gained a very good reputation over 50 years, and some of the things that this government has done over the last six years have really put that reputation at risk. A number of times I have spoken to people at the United Nations in particular and at the ILO and they have said to me: ‘What on earth is going on in that country of yours? I don’t understand it. How can you do these things?’ I do not understand it either. I do not know how these things happen. I do not know how the government can do these things. I guess that the government does not really care. I guess they do not mind what anybody internationally thinks of us. But international opinion is usually something that we ought to take notice of. If everybody else thinks that we are doing the wrong thing, we are not necessarily doing the right thing; in fact, the odds are that we are doing the wrong thing. Internationally, this is not making us look particularly good. I apologise to Mr Fraser for quoting him so extensively.

Australia may not be a superpower, but we are more than capable of meeting the challenges that being a member of a global community presents. We are by far the largest economy in our immediate region. We have strong and stable institutions, one of the highest standards of living in the world and we are a relatively rich and confident society. For our near neighbours, such as Nauru, life is not that easy. The challenges of economic development and democratisation make playing an active role in the international community more difficult but, despite our relative strength, we are asking our neighbours—Nauru for a start, and there are oth-
ers—to unfairly shoulder what really ought to be Australia’s burden in relation to this.

With the end of the Cold War the international community began to talk about a new world order. It was said that capitalism had emerged victorious and that the threat of Cold War aggression had passed. But the Cold War has been replaced by a new threat. As those dreadful events on 11 September so tragically demonstrated, the new enemy no longer adheres to national boundaries or uses traditional military methods to wage war. We now face a world, as tragic as it is, in which biological, chemical and cyberwarfare are realities that we have to face. Globalisation has meant that there is an interdependency of the world’s economies and that environmental devastation looms—environmental devastation is pretty inexorable—not so much for us here but certainly for many countries in the Pacific and elsewhere around the world.

Australia cannot meet these challenges on its own. The so-called revolution in military affairs and the need to maintain interoperability with our strategic partners is stretching the capacity of Australia to provide for our traditional defence needs. Already, our forces are stretched to capacity in operations in East Timor, in Bougainville, in the Gulf—we are still there—and in patrolling our coastline for refugees.

Our security interests lie in building confidence in the international community. We must work to foster institutions that will enable nations to cooperate in the face of these new threats. Australia has a proud record of working to build international institutions. It is a bit of an old record now, but it is still a proud one. Clearly, at the end of the Second World War we believed that to avoid the horrors of war we needed a strong international community. Indeed, our own Dr. H.V. Evatt was President of the UN General Assembly when the Universal Declaration of Human Rights was passed. Australians—not just Labor Party Australians such as Doc Evatt but conservative party Australians as well—worked very hard on that and on the two major protocols: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Unfortunately, the government appears to have lost sight of all of this. The recent refugee legislation is draconian. ‘Draconian’ is not a word that I use very often, but I think that it is appropriate. This is part of a disturbing pattern in Australia that is contributing to an erosion of the international rule of law. It has included attacks on the UN committee system—we had attacks on the UN today; that was outrageous and I guess another story—the non-ratification of very significant treaties, including the one on the International Criminal Court, although I still hope that we will ratify that, and the refusal to commit to the Kyoto protocol on climate change, not to mention the optional protocol to CEDAW, the Convention on the Elimination of Discrimination Against Women. These are things that we ought to be doing, and I do not understand why we are not.

By telling the world that we are prepared to deny the right of asylum seekers to seek refuge in our country, we are telling the world that we do not believe in the universality of human rights, and of course we do. There are a lot of countries out there that would rather that human rights were not universal—but it is basic: of course they are. We do believe in that. I do not know why we are doing this. We are telling the world that principles of international law have no place here and that Fortress Australia is more important to us than responding compassionately to genuine human need. That is what it looks like from both outside and inside. I honestly cannot understand it. At this time more than ever our future lies in accepting our part in the international community. A little compassion is a very small price to pay to go towards a safer world for everyone. Denying the rights of asylum seekers just cannot be justified in any terms.

I have a little time left and there are two other things that I would like to share with the Senate. The first is an article from the Canberra Times of Tuesday, 4 September written by Dr William Maley, Associate Professor of Politics, University College, at the Australian Defence Force Academy. He was talking about the whole question of asylum
seekers and the way Australia treats them. I will not read all of it but will just read as much as I can. I want to read another small article as well. Dr Maley says:

Australians such as Ruddock say that they—this is the asylum seekers who come to Australia’s shores by boat—should apply for orderly resettlement through the Australian “offshore” program. But to obtain a “Special Humanitarian Program” visa—that is, a visa that you can get through the offshore program—one must have a sponsor in Australia, and be in excellent health. There is no reason to expect that the most truly desperate will be able to meet either of these conditions.

Those people who get such a visa have to find money to pay their airfares, which shows how hollow is the claim that those who can find the money to pay a people smuggler are somehow the undeserving rich. And in any case, the current processing time for a “Special Humanitarian Program” visa is 122 weeks! It is hardly an exaggeration to say that a person who can afford to wait that has no need for resettlement. The offshore program offers not a place in a queue, but a ticket in a lottery.

Therefore, many Afghans buy their way to Indonesia. Indonesia is itself neither a party to the 1951 Refugee Convention, nor a consolidated and stable democracy. Those who think that refugees are safe there should try living as fringe dwellers in Indonesia.

It is, however, a point in the smuggling chain at which cooperative action to interdict the flow of smuggled persons might have some effect. But given Australia’s handling of the Tampa crisis, why should Indonesia feel disposed to cooperate? From Jakarta’s perspective, Australia is a large and wealthy country confronted with a trickle of refugees.

Actually, from many perspectives in our near neighbourhood, Australia is a large and wealthy country confronted with a trickle of refugees. If you look at the number of refugees going into places around Afghanistan, you will find that this is well and truly a trickle of refugees. I do not think I will have time to read the last piece that I would like to read. I will finish off by saying that I believe that we should be looking at this in a long-term way. I have agreed with most speakers tonight who have said some very interesting things on long-term solutions. Mr Acting Deputy President McKiernan, you said some very interesting things, and I agreed with a lot of what you said too. I must say that on immigration I do not often do that, but I did on this matter.

The one long-term thing we ought to be looking at—the one thing that is so desperately necessary to the world to try to fix this problem—is to have an international conference that looks at the whole crisis in Afghanistan. It was necessary before 11 September; there were hundreds of thousands of refugees then. There are probably more now. It is more necessary now. Australia should be looking at that as the first solution. We should not be looking at a lot of the stuff that is in the legislation before us tonight.

Senator MACKAY (Tasmania) (9.48 p.m.)—The two bills that I would like to talk about tonight are the Migration Amendment (Excision from Migration Zone) Bill 2001 and the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001. As the shadow minister for territories, I intend to concentrate on these two bills, given that they affect the status of Christmas and Cocos islands as well as Ashmore Reef and a number of other parts of the IOTs.

Having been shadow minister for territories for the last three years, I have had ample opportunity to question the Minister for Regional Services, Territories and Local Government and the department on the issue of the impact of the arrival of asylum seekers on these islands, and on Christmas Island in particular. Today I intend to draw attention to the impact the government’s policy on the run has had on Christmas and Cocos islands, and in particular highlight the lack of consultation with the islanders which has been the biggest worry and concern by them.

I note that the minister for territories, Senator Ian Macdonald, visited Christmas Island over the weekend just past, together with the Minister for Immigration and Multicultural Affairs, Mr Ruddock. This visit was, of course, welcomed by the islanders, who have been desperate for information about the government’s plans for Christmas Island. I hope that their questions were indeed an-
swered to their satisfaction. I will talk more about this visit later.

The arrival of asylum seekers on Christmas Island and other Indian Ocean territory islands is not a new issue. It has been happening on an increasing basis for many years now. Mr Acting Deputy President McKiernan, I think you yourself highlighted the figures over the last five or six years—figures that have been increasing exponentially.

As shadow minister for territories, I have on several occasions in past estimates hearings—for example in December 1999 and February 2000—taken the opportunity to find out what steps were being initiated by the minister and the department to help the residents on Christmas Island, and Cocos now, to deal with this issue. The arrival of asylum seekers has had a big impact on Christmas Island, and on Cocos as well. Despite the fact that asylum seekers have been arriving in increasing numbers, the infrastructure to deal with these asylum seekers is extremely limited.

Labor has been on the case for many years in relation to this; it is not something that is being talked about just now. In December 1999, during Senate estimates hearings, I questioned the minister for territories on what steps were being taken to deal with the arrival of asylum seekers on Christmas Island. This was the subject of the following exchange:

Senator MACKAY—The fact that the detention facilities are inadequate, and they are facing a number of problems.

Senator Ian Macdonald—We do not anticipate and we do not encourage illegals to come to the island. We do not want to build detention facilities because it is not appropriate that they should be on Christmas Island ...

Senator MACKAY—I understand. It is increasing, though. We can assume that there will be more and more and that is what Minister Ruddock has been saying.

He had been saying that at that point. The exchange continued:

Senator Ian Macdonald—I would hope there are not ... We cannot start building the thing in anticipation that someone is going to suddenly pop up over the horizon. When they do, we do what we can.

This is typical of the head in the sand attitude that this minister has been taking to this issue. His own colleague Minister Ruddock was saying that there was going to be an increasing problem, but the minister responsible for territories had a different view, which, as it turned out, was the less accurate one.

Many of us on this side of the Senate were truly alarmed at the wide ranging powers that were contained in the original Border Protection Bill 2001, which was rushed into parliament on 29 August. The powers granted to the government would have been extremely broad. The new bill before the parliament on this subject differs substantially from that original bill. In fact, as one of my colleagues said, the original Border Protection Bill would have given the government the legal authority to blow up the asylum seekers and the ships they arrived on. I followed a line of questions to Minister Macdonald about the lack of facilities for dealing with asylum seekers on Christmas Island. In asking the minister what steps would be taken by the department to ensure that the asylum seekers were not left on Christmas Island, where there were no facilities for them, the following exchange took place:

Senator Ian Macdonald—Ensure that what sort of thing doesn’t occur again?

Senator MACKAY—People stuck on the island in an inadequate facility which is supposed to be a sports centre.

Senator Ian Macdonald—Short of bombing them as they appear on the horizon, we really have little control over whether they turn up.

Senator MACKAY—that is my point.

Senator Ian Macdonald—as I say, short of bombing them, we are unable to stop them coming there.

At the time I thought the minister was merely being facetious, certainly injudicious and intemperate with regard to this sensitive issue. I assumed he was not serious. I assumed at the time he also was not representing the government’s actual position. Now I am assuming that he was not foreshadowing how the government may have used the unfettered powers of the original border protection legislation rejected by Labor. I am sure I am pretty right in my assumptions.
Basically, it was another silly statement from Senator Macdonald, which I rightly dismissed at the time as being puerile. Certainly, in retrospect, it was not helpful to the government’s position or to anybody else’s position.

Senator Macdonald claims to support the people of Christmas Island and he went to great lengths in an answer to a coalition question on 30 August to tell us how much he supports them. There is no doubt that during the *Tampa* crisis, which was a crisis of the government’s own fabrication, the people of Christmas Island showed great compassion and empathy for the plight of those asylum seekers and the captain and crew of the *Tampa*.

Residents of Christmas Island have a genuine desire to assist and cooperate with the government but are also very sympathetic to the plight of the asylum seekers. This attitude is not surprising, given the multicultural nature of Christmas Island and Cocos Island, in which 60 per cent of the population of around 1,800 people are of Chinese origin, 21 per cent Malay and 19 per cent Anglo-Australian. This attitude was in stark contrast to the asylum seekers’ treatment by the government, who enlisted the SAS to deal with these desperate people.

As we now know, on 27 August, the cabinet office ordered Bill Taylor, the Administrator of Christmas Island, to close Flying Fish Cove, which is the only port on the island. The government took the extraordinary step of closing down an Australian port, most probably to prevent islander boats from going out to the *Tampa* and communicating with the asylum seekers. This would have foiled the government’s plans. This was all part of the government’s highly contentious policy on the run dealing with the asylum seekers.

The Christmas Islanders were not under any direct threat themselves. The port was closed down to protect the government’s political interests. The consequent impact of this extraordinary step on the daily routine of the islanders and businesses on Christmas Island was immense. A cargo supply boat was stopped at Cocos Island and was unable to proceed to Christmas Island. Phosphate ships were unable to dock, local tourism and diving businesses normally using the port were affected and the largely Chinese population were prevented from taking their fishing boats out as they would normally do on a daily basis. Everybody’s routine was affected. The worst aspect of this episode from the islanders’ point of view is that they were not consulted. They did not know what was happening. The administrator was apparently gagged, so the only source that the Christmas Islanders had about what was happening in their own port came from mainland television and radio programs.

Given all this, you may start to understand why I found the minister’s answer to the question on 30 August very difficult to digest. The difficulties faced by the Christmas and Cocos Islanders during the *Tampa* crisis were largely of the government’s own making. The islanders bore the brunt of the inconvenience from the port closing but this was not something that was in their interest as islands under threat, or even in the national interest; it was in the government’s political interests. Probably the minister rightly owed them some gratitude for their forbearance under these trying circumstances.

Minister Macdonald attempted to characterise the government’s so-called border protection actions with regard to the *Tampa* as somehow being of help in the difficulties faced by the Christmas Islanders—in this instance—in dealing with asylum seekers. I think he was attempting to confuse this with the real need the island community has long had for some adequate and proper infrastructure to deal with the processing of asylum seekers, which he has known about for many years. At long last, it appears that the government will be providing funding towards this need for adequate infrastructure, as was announced on the weekend.

Throughout the course of the extraordinary events surrounding the *Tampa* episode, I think many people were impressed with the compassion and willingness to help that was demonstrated by the Christmas Islanders towards the asylum seekers. There was a very good statement issued by a number of groups on Christmas Island, which unfortu-
nately I do not have time to read, basically expressing concern and gratitude and sympathy for the actions of the captain of the *Tampa*.

The Christmas Islanders were not consulted about the changes to the migration zone laws which the government announced on 8 September. When the government announced that it was going to excise Christmas Island and Cocos Island from the migration zone, no-one knew what the impact would be on the residents. They had to wait for more than a week to find out whether or not their rights would be affected. For more than a week, the islanders and those with an interest in the welfare of the residents of the islands had to wait with some apprehension, given all that had occurred, to find out what the government’s plans were. Now we have seen the legislation and, despite the fact that those people were not consulted and that they have major concerns about the impact of the legislation in the communities, it seems their rights as Australian citizens will not be directly affected in terms of the Migration Act as a result of this legislation, because the legislation refers to those people who are unauthorised and who arrive at those communities as an ‘offshore entry person’.

The concerns of the IOTs were also raised in a letter from Mr Kim Beazley to the minister for immigration, at the request of Mr Warren Snowdon, the member for the Northern Territory. Some of the issues remained unresolved, despite the meeting the two ministers convened on Christmas Island on the weekend. As we know, it was not until this weekend just passed that the ministers visited the island. The islanders sought reassurances from the ministers about the effect of the government’s legislation on their rights.

I deplore the fact that it took so long for this meeting to take place and for the islanders to receive this reassurance, and I hope that their fears have now been allayed. However, there is still a lot of detail that they have not been provided with. For example, how long will asylum seekers be kept on Christmas Island? I have heard suggestions that it will be for two weeks, but we do not know where the government got that figure from or what the basis for that estimation is. I think that came from Mr Ruddock. How many DIMA staff will be located on Christmas Island to deal with the processing of the asylum seekers? Where will the asylum seekers go after they have been processed? Given all of this, questions still remain: why weren’t the plans explained more clearly and much earlier to the islanders? What was achieved by leaving them in the dark for so long, without any consultation on these changes? And why haven’t all these questions been clarified?

I have written to both ministers about these questions, and I hope that there will be an expeditious response to them. My office has been in constant contact with people on Christmas and Cocos islands. I can say first-hand that the islanders were not even given the courtesy of being informed about events during the *Tampa* crisis. The government’s administrator, who lives on the island, was gagged and said nothing. DIMA people who arrived on the island at the time told the islanders nothing. It takes days for the islanders to get an Australian newspaper, so they could not even find out what was going on that way. They were completely in the dark. It is not fair to treat a community affected by asylum seekers in this way. They are the ones who live there; they are the ones who should know first off what is occurring there.

In a last ditch effort, both ministers have finally visited and talked to the community. But it is too late; their intentions for future asylum seekers have basically been stitched up. This occurred just a day or two before this major legislation was to come into the Senate. It was good that the ministers’ visit was an open forum for everybody, but I have to say that it is something that could have been done a long time ago. The islanders knew that something was going on. Whilst they were waiting for consultation, there was a great deal of activity—digging of trenches, clearing of land—which was pretty much a dead giveaway to the islanders that something was happening. They knew something was going on but nobody bothered talking to them. With both the *Tampa* issue and this, the people on Christmas and Cocos islands have been dealt with in a totally inappropri-
ate way. I am aware that both DTRS and DIMA will work together in erecting de-montable buildings. They will be up by the end of October to replace the already insuffi-cient sports hall and the tents at Flying Fish Cove, which will be lost with the onset of the wet.

It appears, according to what I have been told, that the chosen site for the supposedly temporary holding facility for processing asylum seekers that the government announced on the weekend could have been better located. Perhaps that is the price of lack of consultation with the local commu-nity. The temporary centre is to be located only 50 metres away from the island’s rubbish tip, where clearly there is a problem with odour and a large centipede population. There was no consultation to identify an appropriate space, and the site chosen is seen by the islanders as too close to the town cen-tre. The Commonwealth has a lot of vacant Crown land on Christmas Island, and I am sure that it could find something more ac-ceptable from a health basis. The islanders have expressed to me that they would prefer somewhere a bit more out of town. Despite the welcoming news about the money and the processing facility, the islanders still have legitimate concerns.

I would like to reiterate that the islanders and we in the Labor Party have been pushing for some time to establish a facility for asy-lum seekers that is fit for human habitation— not an overcrowded gym. For many years, the islanders have had to house asylum seek-ers in their existing sports hall, which ac-commodates only around 200 and which did not even have adequate toilets until a couple of months ago—after the islanders had been waiting and waiting for years for this gov-ernment to provide them. In fact, the current sports hall did not even comply with the health provisions of the health act until the ablation block was finally built, and it still has no cooking facilities.

As I said earlier, I have asked repeatedly in estimates about the provision of some infra-structure for the housing of asylum seek-ers. I certainly hope that more consultation and thought will go into the site chosen for the multipurpose centre, sports hall process-ing facility, to be built by mid next year. With regard to this new proposed $8 million centre, clarification on the length of stay of the refugees is critical. The islanders have informed my office that they do not want a community, multifunctional centre ending up as a detention centre. To repeat: they do not want a detention centre on the island.

As I indicated before, the Australian newspaper states that Minister Ruddock has emphasised the temporary facility will house people for only two weeks. But asylum seek-ers in the past have been required to stay in the local gym—without the changes I have already described—for up to six weeks. We are talking about an area that is extremely affected by cyclones, the wet and so on. There is a fear on the island that either the temporary facility to be built near the rubbish dump in two weeks time will become a deten-tion centre or the $8 million to $10 sports processing facility will in the long term be-come a detention centre. If neither of these facilities is to become a permanent detention centre, I want a commitment on behalf of the people who live on these islands that that is the case. To this end, I have written to Min-isters Ruddock and Macdonald today seeking reassurance, and I await a response.

The administrator is a Commonwealth representative on Christmas Island and should engage with the shire as the chief body for the community, but he is not doing so. I would like to know why this is the case. I would like to know why the administrator was gagged during the Tampa crisis. How on earth did it help communication for the peo-ple living on Christmas and Cocos islands for the administrator to be gagged on what was happening? How did this help the situa-tion? How did this help the residents? My office has received a number of communica-tions from people on Christmas Island. They were very scared during this whole period with the SAS there and with their port closed. They had no idea what was going on. I am aware that it costs around $300,000 per annum to have the administrator on Christ-mas Island, so the least he can do is inform the shire of the government’s intentions. Surely his job as the administrator is to ad-
vise the people on Christmas and Cocos islands.

Along with the residents of Christmas and Cocos islands, we await the government’s response on these critical issues regarding the plans for the so-called processing centre. I note that no consultation has taken place with the residents on Cocos Island, who have also been affected by these developments, particularly most recently with the Sri Lankans. These requests for reassurance should be ignored neither by the government nor the ministers concerned. I believe that the consultation process between the government and the residents should have begun much earlier, but now their having belatedly commenced they should continue to clarify these remaining issues as a matter of urgency.

In conclusion, I want to re-emphasise the feelings of people on Christmas Island in particular during the Tampa crisis. I have to say that they felt fear and uncertainty. They were not getting information from anybody. We were in communication with them to the extent that we could be by phone, but it really was senseless. There is no reason why they could not have been dealt into what was going on. One of them described it to me as like being part of a Steven Segal movie except in real life. I would like to reiterate that we would like responses from the two ministers with respect to the questions that we have asked.

Senator GREIG (Western Australia) (10.07 p.m.)—I, too, rise tonight on behalf of the Australian Democrats to speak to these seven migration bills that aim to change Australia’s refugee regime. Only last month I stood in this chamber and brought to the attention of the Senate, as a matter of urgency, the issue of mandatory sentencing in the Northern Territory. I argued not only that mandatory sentencing of juvenile offenders for petty offences is shameful in a society such as Australia, but I also argued against the very principle of mandatory sentencing. In this country we have a complex but comprehensive network of laws covering all contingencies. Some of these laws are old, having been in place since colonial days but, in the main, our laws serve their purpose and serve it well. The judiciary is, or should certainly be, well versed in these laws and should use them appropriately and prudently. I believe this is done in the vast majority of cases with sentences handed down on a case-by-case basis, given the specific circumstances of each case and based on the merits of each case.

Mandatory sentencing, as the term indicates, means there is no leeway, no discretion and no alternative. Judges and magistrates are compelled to sentence in a preordained way regardless of any special circumstances and regardless of whether the judge agrees with the predetermined sentence. We have heard many judges, magistrates and law professionals speak out against the Northern Territory’s regime of mandatory sentencing. Outgoing Federal Court judge Marcus Einfeld spoke out against the regime despite warnings from the Attorney-General, Mr Daryl Williams, and other politicians who believed that the government and the judiciary should not interfere with one another. Justice Einfeld said that sentencing should be an issue for the courts. He said:

When the Parliament injects itself into the fixing of sentences, it is causing distortions in the system that are completely unreasonable and are open to the suggestion that they are racist.

Justice Ken Crispin during the admission of new legal practitioners in Canberra recently said that many people thought that ever more lenient sentences left society vulnerable to the hordes of criminals sweeping the country and that heavier sentences would save us. He said that this is simply not true. He said:

Mandatory sentencing is driven by misapprehension, insecurity and resentment and could be more likely to create crime than prevent it.

We have very effective laws already in place and we have learned judges, magistrates and legal practitioners who enforce these laws. Mandatory sentencing is an unwarranted intrusion into our judicial system. There is simply no place for it.

Tonight I stand here in this chamber once again to argue against mandatory detention and mandatory sentencing but this time in regard to, and in the context of, those people who have come to Australia, albeit uninvited, seeking refuge from danger, torture
and often death. Asylum seekers are not illegal. Under Australian law and international law a person is entitled to make an application for refugee asylum in another country when they allege they are escaping persecution. Article 14 of the Universal Declaration of Human Rights states:

Everyone has the right to seek and to enjoy in other countries, asylum from persecution.

People who arrive on our shores without prior authorisation from Australia, with no documents, or false documents, are not illegals: they are asylum seekers, a legal status under international law. They have committed no crime. We have laws in place, very effective and internationally acceptable laws, which cover the situation. To introduce, or try to introduce, a regime of mandatory sentencing regardless of the current laws and in spite of an individual’s specific circumstances is plainly wrong.

Australia receives very few refugees by world standards. In 2001, Australia will receive only 12,000 refugees through its humanitarian program. This number has remained static for three years despite the ever-increasing number of refugees worldwide. According to Amnesty International, one in every 115 people on earth is a refugee and a new refugee is created every 21 seconds. Refugees resettle all over the world, but the distribution of refugees across the world is far from equal. For example, Tanzania hosts one refugee for every 76 Tanzanians. Britain hosts one refugee for every 530 Brits. Australia hosts one refugee for every 1,583 Australians.

Because of Australia’s location and our vast coastline we have always been vulnerable to the prospect of irregular people movements and no doubt this has occurred over the years. It was only when the more organised groups in specific numbers began to arrive in the 1970s following the Vietnam War that the term ‘boat people’ came about and it became an issue of serious concern. At first, boat people from Vietnam were held in ‘loose detention’, housed but unable to leave the migrant centre during processing and required to report for rollcall daily. They were not, however, fenced in. By the late 1980s the next wave of boat people came from Cambodia. Again, these people were detained in unfenced accommodation and required to report daily to the Australian Protective Service.

Then in 1992 the Migration Reform Act was adopted. This law mandated detention for unauthorised non-citizens. The fences went up. The law applies to visa overstayers as well as unauthorised arrivals, but in practice overstayers are treated differently from unauthorised arrivals and are granted bridging visas whilst their claims are assessed. Asylum seekers, on the other hand, are detained in custody while their claims are assessed. Asylum seekers are not criminals and detention should be minimal, if at all.

On a human rights level, the detention of refugees contravenes many United Nations international instruments to which Australia is signatory, the most relevant of which are the UN Convention relating to the Status of Refugees 1951 and the UN Protocol relating to the Status of Refugees 1967. While numerous critics of detention policy have outlined how Australia’s mandatory detention regime contravenes our international obligations, governments continue to argue in favour of our national security. Although Australia’s detention regime is considered unique and harsh by Western standards, it has not stopped the flow of refugees to Australian shores. The numbers of refugees and their origins are changing as time goes by. In 1998-99, three-quarters of detainees were held for less than one month. In that year, one-third of all unauthorised arrivals—many of whom were from China—failed to make satisfactory claims for refugee status and were turned around quickly, mostly within 28 days.

Since then, with the rapid increase in boat arrivals and the change in source countries, the rate of processing has slowed significantly, despite the hiring of more staff. By the end of December 2000, of the 2,023 people in detention, 31 per cent had been held for less than one month but 18 per cent were in for longer than one year. The Minister for Immigration and Multicultural Affairs has made it harder and harder for refugees and asylum seekers, claiming that a tougher detention regime would deter them, but this is
clearly not working. It is not reducing numbers, but it is increasing antagonism within the community, increasing suffering for the people concerned and costing taxpayers more and more each day.

In June this year, in the same week as World Refugee Day, the Joint Standing Committee on Foreign Affairs, Defence and Trade released a significant report on detention centres. The report highlighted the problems of the conditions in detention centres and various other aspects. It recommended that detainees not be kept locked up indefinitely, that there be scope for a time limit and that people not be detained beyond that time limit unless there were justifiable and clearly defined reasons for it. This approach is broadly in accord with approaches in practise in many other countries.

There are alternatives to the mandatory detention of refugees. At a cost of approximately $104 a day per head, the policy of detention is very expensive. Community-based alternatives to mandatory detention are implemented internationally and within the current Australian parole system. A select committee of the New South Wales parliament costed alternatives to incarceration, including home detention and transitional housing. The average costs of community-based programs are $5.95 per person per day for parole, $3.94 per person per day for probation and $58.83 per person per day for home detention—which represents significant savings for the costs of refugee incarceration. These options are clearly more economically efficient and much more humane than mandatory detention.

Sweden receives similar numbers of asylum seekers to Australia, despite having less than half our population. In Sweden, detention is only used to establish a person’s identity and to conduct criminal screening. Most detainees are released within a very short time, particularly if they have relatives or friends living in Sweden. Of the 17,000 asylum seekers currently in Sweden, 10,000 reside outside the detention centres. Children are only detained for the minimum possible time: a maximum of six days.

The bills we have before us tonight are bad law. They do not have the full support of the Australian population, despite claims to the contrary. I receive almost every day in my office letters, faxes, emails and telephone calls from concerned and compassionate Australians who are desperate for me, as an elected member of parliament, to record and reflect their disapproval of these proposed laws. In promoting and pushing these migration laws, which are aimed specifically at those wretched souls who arrive on our shores in rickety fishing boats, the government is pushing its election agenda in the lead-up to the coming poll. For times to come, when the next generations look back, I clearly state that the Australian Democrats do not support these bills. We have argued against these laws and we maintain our opposition to them.

The Democrats have four key points of opposition to the legislation which appears as a package before us tonight. Firstly, simply as part of Democrat policy, our immigration program should be based on non-discrimination and should give priority to refugees and to family reunion. Secondly, we argue that this legislation is the worst single attack on rights of refugees and asylum seekers in our nation’s history. Thirdly, we argue that this legislation undermines the rule of law and the separation of powers, and, finally, breaches the fundamental core of the refugee convention by increasing the risk of people being returned to a situation of persecution. These bills undermine fundamental tenets of humans rights.

We, as a country, have watched in horror at the events in America. We have watched in horror the documentaries that outline the tragic circumstances facing millions of people in Afghanistan. In both cases, it has been pointed out to our populace that there is a difference between governments in Western democracies and governments which ignore human rights. The bills in this series of legislation before the Senate tonight ignore these human rights. They blur the fundamental tenets of our democracy by limiting the court’s ability to review Commonwealth actions. They create tiers of rights for genuine refugees based on their circumstances and they separate families for indefinite periods of time. They deny family members
individual rights, restrict refugees from undertaking activities Australians take for granted and allow culturally subjective criteria to be used when determining the validity of refugee claims.

The bills arise from the expressed desire of the government to control migration. Controlling migration is not problematic: it is well established in international law that sovereign states have the right to regulate the entry into and residence of non-nationals into their own territory. Refugees, however, are not migrants. Refugee law derives from obligations under international refugee law, which has been partially incorporated into Australian law. The refugee and humanitarian program is an integral part of Australia’s migration program but it, unlike other areas of immigration, is derived from international legal obligations which Australia has entered into. The 1951 convention and the 1967 protocol relating to the status of refugees have been signed and ratified by Australia. The assumption of protection and obligations of protection for those that meet the definition of refugee have been assumed into the incorporation of this definition and into municipal law.

The consequence of this package of bills is that the distinction between refugees and migrants is further blurred. The application of international obligations with regard to refugees has very little to do with offshore selection of refugees who make up the bulk of Australia’s official humanitarian intake. The Australian government is obliged through its commitment to the refugee convention to recognise onshore claims of asylum and to process these claims against the convention definition.

The Senate Legal and Constitutional Committee hearing into the Migration Legislation Amendment Bill (No. 6) 2001 heard evidence from the UNHCR of the threat to Australia’s obligation regarding the fundamental tenet of refoulment. The bills before us multiply that threat. There are grave concerns raised by Amnesty, UNHCR, the National Council of Churches and refugee organisations across Australia that we will increase the risk of sending genuine refugees back to countries where their liberty and life are threatened. In order to blur the lines between migrants and refugees, the government has mounted a public campaign to justify the introduction of these bills. They have talked about the abuse of the system by those who are not genuine refugees—in other words, people fleeing economic hardship, slipping through the refugee net and gaining permanent residence in Australia.

The reality is that slippage in this area cannot damage these people; it cannot hurt genuine refugees or Australians. However, tightening the definition of a refugee, the access refugees have to judicial review of decisions and the methods of assessment can and will lead to people being sent back to their death and to children being forced to remain in detention for unspecified amounts of time before they are returned to danger. These risks are too high. They outweigh any argument the government can attempt to mount. This is why those who are working directly in this area—the UNHCR, Amnesty, hundreds of lawyers, refugee groups and churches—have told the Australian parliament, repeatedly, not to pass such retrograde legislation.

In conclusion, I would like to refer briefly to two emails I have received from constituents. I raise that particularly because, Acting Deputy President McKiernan, you spoke earlier of your own liaison with electors in Western Australia. You said, quite correctly, that the majority of Western Australians would support the package of legislation we have before us. But I have always taken the view that we should do what is right in this chamber and not necessarily what is popular. Amongst those voices of dissent we have heard from my state is the Anglican Social Responsibilities Commission. They emailed me today to express their utter opposition to any attempts to reduce the rights of asylum seekers in Australia and Australian sovereign territory. They argue, rightly, that:

Bills before the Senate at present, which seek to limit rights to judicial review of decisions, to excise sovereign territory from the Australian Migration Zone, to limit the rights of those granted Temporary Protection visas, and set in place further ‘border protection measures’ have been conceived and presented in haste and without due care for the wider ramifications.
A second email I received only a short while ago was from a lawyer in Rivervale in Western Australia who says in part in her email that she is a lawyer who practices extensively in the area of migration. She says:

It is an area that has been under systematic review and attack. These amendments will set the area of refugee law and Australia's human rights record back ... We spend more money and resources trying to prevent a small trickle of people from coming here than we do on addressing the root causes of these problems. I urge you to oppose these amendments or at least allow a full consideration of the consequences by allowing the Senate Committee to investigate them. Thank you for considering my concerns.

To those people who have expressed dissent from Western Australia, I say, we hear your concerns, we share them and we condemn this legislation.

Senator BROWN (Tasmania) (10.27 p.m.)—One of the more outrageous components of these seven migration bills, which comprehensively wind back not just the rights of asylum seekers but Australians who are interested in their welfare, is the introduction for the first time ever of mandatory sentencing into federal law. Let me tell you what a very prominent Australian had to say about mandatory sentencing very recently:

Mandatory sentencing breaches both international human rights provisions as well as longstanding common law principles. ... mandatory sentencing breaches the fundamental common law principle of proportionality, which requires that the particular circumstances of an offence and an offender need to be taken into account in the process of sentencing.

That was the Hon. Kim Beazley, Leader of the Opposition, speaking in this parliament just last year. We have there a Labor Party quite properly defending not just the rights of citizens of this country or people within its boundaries to have access to the courts—which are being cut by this legislation—but the right of the courts to determine what the fit and proper sentence is for people who break the law. That is a time-honoured principle and the opposition was supporting it. But suddenly we have the situation where the opposition has done a 180-degree about-turn and is here assisting Prime Minister Howard to bring mandatory sentencing into the laws of this land.

What an extraordinary turnaround of self-interest, of reneging on principle and of turncoating on Australian values and, in the process, breaching international covenants, many of which the Labor Party moved—

Senator Bolkus interjecting—

Senator BROWN—The main target at the moment for me, Senator Bolkus, is the Labor opposition, which is failing to do its job. If it were not for the Labor opposition, this legislation would not be going through here, full stop—if the Labor Party were standing by its principle. I will tell you who is going to see this legislation get through this place in the next 24 hours: the Labor Party. So that is whom I am addressing myself to principally. After some decent reflection, the Labor Party, if it does not come to its senses, might at least return to its values and stand against these seven bills which erode so many of the laws and principles it once stood for. I do not forgive the Howard government for setting this process under way.

Members will know that at least one piece of legislation here is to rip away the rights of asylum seekers and refugees in this country to appeal to the courts. The Labor Party has been opposing that for three years now, but all of a sudden there is a change of tack. It has now dumped the refugees, it has dumped the humanitarian principle and it has dumped the whole process of people coming to this country being welcomed and getting a fair go to slide across and stand on the same base as the Hon. John Howard. That base is of course not just about mandatory sentencing or about removing access to the courts; it gives a change in definition of refugees, which has been condemned by people working in the field. There is also a narrowing of the word 'persecution' in a way which was not meant by international law.

It retrospectively makes legal any illegal action that Mr Ruddock or his officers may have undertaken since the federal government asked the Tampa to go to the aid of a sinking ship with 430 or so asylum seekers on it and then refused that ship access to
Australian waters. Quite extraordinarily, it gives Minister Ruddock the power to regulate to excise from Australia, as far as the law is concerned, any Australian island, including my home state of Tasmania. He will argue of course that a regulation has got to come into this place before that can occur. The way things are going here we would need to be very careful of that, because the next tranche of bills to come in here will probably remove that facility as well.

It is not just that Mr Beazley has moved onto Mr Howard’s base. When you follow this game you will find that somebody was occupying the base before Mr Howard. Who was it? Pauline Hanson’s One Nation. They were quite firmly on that base. They skidded in there first, calling for the boats to be turned back willy-nilly. Then Ms Hanson, thinking faster than Mr Howard, in the wake of the *Tampa* said, ‘Let’s convert Christmas Island into an island outside the Australian laws.’ Within a week Mr Howard did it. Within a week of that the Labor Party was backing them up. So there you have it: the Labor Party supporting Mr Howard, supporting One Nation policy. That is what this package is: Labor and One Nation coming together with Mr Howard in the middle—on fundamental law, infringing a brace of international covenants en route. Other members have referred to some of those.

Isn’t it remarkable that in this 50th anniversary year of the refugee convention it should be Australia that is trampling it into the dust, trying to change the very definition of ‘refugee’ in a way which, if emulated in other countries, is going to bring untold hardship to untold thousands—if not millions—of people further down the line? The Refugee and Immigration Legal Centre has appealed to this chamber—through the Labor Party, not least—to refuse this legislation, through which it says:

... the Federal Government is sending a strong signal that it intends to downgrade its international commitment to refugees.

I keep hearing the Minister for Immigration and Multicultural Affairs on our airwaves about what rotters these asylum seekers are. He says that some of them actually have money in their pockets; they have paid intermediaries.

**Senator McGauran**—Pakistanis.

**Senator BROWN**—‘Pakistanis,’ intervenes the not helpful member for racial discrimination opposite.

**Government senators interjecting**—

**Senator BROWN**—He can discriminate who they are from where he is sitting. I do not happen to have the information, but he interjects, so he must know. I am referring here to the amount of money needed to get into this country. Did you know, Mr Acting Deputy President, that if you have a quarter of a million bucks in your wallet you can walk straight in, a la the Minister for Immigration and Multicultural Affairs, Mr Ruddock, and the Howard government’s principles? If you are wealthy you can get a ticket here, but if you happen to be poor and you gather all your life savings and those of a number of relatives and you come here then you are vilified as a criminal by the same people. They have lost that heart that is required to understand that people are people and should not be treated according to how much money they have in their pockets but should be understood for the aspirations they have in life and the wish that everybody has to be somewhere that is secure and safe, particularly when you come from a place like Afghanistan.

Just today we were debating the potential for a war, with the United States having declared war and, de facto, that war going to Afghanistan. The Prime Minister of this country has committed Australia—that means Australians in the defence services—to the hilt to President Bush’s declaration of war. In Afghanistan, a country of some 20-plus million people, war has ravaged their homeland for decades—no period worse than the last decade when the religious fanatics of the Taliban took over the country, funded at first in no small degree by the United States of America. They are there now; they are in full power and they are causing huge misery. You know the story: no education allowed for women; no music; no children playing; execution for the most minor things, the latest one being using a satellite phone; Hindu
people being required to wear patches to identify them—I wonder where we have heard that before—and the blowing up in Bamiyan of ancient Buddhist monuments of world value.

More than three million people have fled that country. I ask the members of this chamber: who of you would not have joined them? Who of you wants to live under a regime like that? The absolutely horrendous and unforgivable acts of terrorism in the United States have been ascribed to Mr bin Laden, who is in Afghanistan but is a Saudi Arabian. But, whoever may have caused those acts, the million people now on the move in Afghanistan did not. The Taliban hierarchy may have had something to do with it, I do not know, but I can tell you that the million people on the roads in Afghanistan now—men, women and children—did not. Pakistan and other countries, simply because they cannot withstand the flood of refugees, have closed the door to them, so those people are locked in tonight, awaiting an American bombardment. Can you imagine what is going on inside their hearts? Can you imagine the insecurity they feel?

But here in the Southern Hemisphere the Hon. John Howard, backed by the Hon. Kim Beazley, is trying to lock our doors as well to stop a dribble of people from the millions in the refugee camps from getting to this country. These people are being vilified as criminals and worse by other members of the coalition parties. These people are escaping mind-bendingly despicable conditions, and the best we can do in this country is have a government and an opposition get together and say, ‘How do we shut them out? How do we take away their rights when they get here? How do we ensure that the norms of this country are denied such people?’ I agree: we have to turn back illegitimate people coming to this country if they are Pakistanis or other people under the guise of being Afghan. That is not beyond our wisdom. By the way, if there are terrorists, the most dangerous ones are not coming here by boat; they are coming here through the wealth stream. They have got money in their pockets, and they tend to come here by aeroplane, not by boat. We need to be increasing the prohibition on their being able to act in their dastardly way in this country—but that is not what the sinking boats are about.

The government has been able to turn a sinking boat into a national emergency in the run-up to an election. Just a fortnight ago, the Leader of the Opposition was chiding the Prime Minister and saying, ‘You are making legislation on the run for electoral purposes.’ He pointed out that well over 100 such boats had sailed into Australian waters during John Howard’s period as Prime Minister but that he had not acted in this way then. But, nine weeks out from an election, the Prime Minister suddenly has this suite of bills not only to deny these people fundamental rights which they will find in other countries but to start breaking up Australia: excising offshore islands from the Australian legal system so that these people can be sent to other countries in our region—poor countries like Nauru and Kiribati that we can buy out. The government does not want to know about it when it comes to global warming and spending money on the coal industry to save the islanders from becoming refugees further down the line. But now, when there is an election in train, the Prime Minister can find $100 million to waste on the *Tampa* affair. If he had acted properly under the existing law, those people could have been brought ashore and would have been well into the immigration process by now. Isn’t it incredible that Labor is backing this? Isn’t it just extraordinary that there is no leadership, no gump- tion? There is a failure of spirit, of principle and of courage from the opposition in its about-turn to support the government in this despicable legislation.

On behalf of the Greens, I will be moving a number of amendments to the bills, and I will refer to just three of the seven bills in that regard. As far as the Border Protection (Validation and Enforcement Powers) Bill 2001 is concerned, I will be moving to amend the section which allows for retrospective validation of some apparently illegal and unspecified activities by the government or its minions in the *Tampa* affair? If there was no illegality in what Mr Howard and Mr Ruddock—the honourable gentlemen
from the House of Representatives—did, why bring in this retrospectivity? In the committee stage, I will be pursuing the government to come clean on just what it is that frightens it as far as the law of this land is concerned and as far as it has stood until now. The Liberal Party, as you would know, Madam Acting Deputy President Knowles, does not like retrospective legislation and, as you would know, citizens out there cannot retrospectively change the law when they find themselves breaking it—nor should politicians or governments.

I will also be moving an amendment to this suite of legislation to remove mandatory sentencing and the power to search asylum seekers without a warrant—this business of just looking around for somebody to assist you to strip search people on these ships! Just two weeks ago, we were dealing in here with strip search legislation which allows, in detention centres around the country, the searching of children. Now we are getting into a much less restricted search of people, excluding minors, on board these ships. We are seeing here a serial erosion of long-held principles in terms of the administration of justice, which must concern everybody who holds civil liberties and human rights as being important.

When we come to the bill dealing with an excised zone, I will be moving to overturn the provision in the bill that bans an asylum seeker, who lands on an excised zone like Christmas Island, from instigating any court proceedings. There will also be an amendment to remove the provisions that allow the minister to excise Tasmania from the migration zone. Of course, under this legislation, it is not just Tasmania; it is any of the islands around the country. I do not know where the government’s definition of an island ends up—in their thinking, they could excise the whole of Australia from their migration laws. In reality of course they cannot do it. But how dare the government and the opposition be so sloppy to follow it, to even allow in the books something that suggests that Tasmania can be treated differently from the rest of the country when it comes to the implementation of national laws. I will not have a bar of that. I will be moving to amend it, and I will be seeking a lot of information on these matters when we move into the committee stage. I oppose all pieces of legislation.

Senator BOLKUS (South Australia) (10.47 p.m.)—There is a sense of deja vu in this debate tonight, and I will put it in that context as we near the end of the second reading debate on the migration legislation. It is deja vu in the sense that we are leading up to a federal election and once again there is the whiff of race issues in the air. Last time, as I am sure the Senate will remember, many of us went through an enormous degree of anguish when the government tried to turn white against black Australian in this country. It was the Wik legislation, which took the most time of any bill in this parliament for the parliament to canvass, debate and deliberate upon. It was legislation put up by the government in order to drive a deep wedge into our community.

We all remember the fear campaigns before the last election based on people being warned that their backyards were in danger. There were maps of Australia with great chunks cut out of them and assertions by the government that these chunks were in black hands and that the rest was in danger. All these assertions and fears were perpetrated at the highest level of the government. We can remember, for instance, Senator Harradine going through an enormous degree of anguish as to what he would do with that legislation, and I think at the end of the day he made the decision of saving Australia from a race election. It is no coincidence that once again this country is held to ransom on a similar issue by the same person, this Prime Minister.

I think it is generally accepted by those who take a deep interest in politics that there is no level to which he will not stoop and there is no risk that he would impose on the nation that is too low for him. That is what we have here again this evening: in the lead-up to an election the whistle blower is out there blowing the whistle and unfortunately this time it is Muslim Australia that is the target. As I say, there is no level too low. In that respect, let us consider where Australia has found itself over recent weeks and months as a consequence of this legislation.
and this government. Our closest neighbours, New Zealand and Indonesia, hardly talk to us. The head of the Indonesian government will not answer phone calls from this Prime Minister. Our relations with that country have hardly ever been so bad. It is a similar situation with New Zealand. We are at verbal war with both those countries.

We picked on Norway in the course of this little incident. Do we think Norway is insignificant to us? We should not: Norway has always been an alliance partner, Norway is a country with which we have had a strong relationship and Norway is a source of migrants to this country. Norway, when it comes around to critical issues such as climate change, will be there waiting for us with a baseball bat to get even for what we have done to it over recent months. But that does not bother the Prime Minister: any relationship is dispensable as he tries to save his political skin. In that context, what do we do? We heavy the weakest nations in the world, Nauru and Kiribati, to find a way out for this Prime Minister.

We have tarnished our image internationally and regionally, and not just with individual countries. Over the years the UNHCR have been quite critical of the way we have taken in both migrants and refugees from around the world, but in this instance we once again put them in a difficult situation and in a hard spot. In this context what are we actually finding happening? We are finding that the Prime Minister and the immigration minister are spending millions of dollars to achieve a result that they could have achieved in different ways had they actually been on the ball at the start of this particular process. This Prime Minister cons the Australian taxpayers with their money. Let there be no mistake about it: with the way this incident is going, there will be no change given to the Australian taxpayer out of at least $150 million.

Let me go to the one issue the Prime Minister does not like to talk about, and which his immigration minister hardly ever talks about, and that is the main contextual game. As a former minister for immigration, I am fully aware of the benefits of immigration to Australia. The Australian people have generously embraced migrants from all parts of the world. In turn, migrants have made and continue to make an enormous contribution to this country, no matter where they come from. Our record as a nation of migrants is internationally respected.

Our success, however, did not come without a great deal of planning and commitment by successive governments and by the Australian people. It is an achievement which we as a nation should be proud of, but it is one we hardly ever talk about under this government. I quite firmly believe that our success as a country which receives migrants and the success of our immigration program probably come from two major sources. Firstly, we have a settlement program at home which welcomes, supports and respects diversity, assisting people in their most needy moments, providing leadership directions which make them welcome, and we have a multicultural policy which respects their diversity and their cultures.

Secondly, and as importantly, I think the success of our migration policy program comes directly from the fact that as a nation we control who can come in. We have always shown firmness tempered by compassion. We have always controlled the size and the composition of the program. In accordance with our fundamental democratic values and our culture of a fair go, we now accept migrants without discriminating on the basis of colour, race or creed. We have always protected our borders, and I believe we must always do this. As an immigration minister, this principle was of paramount importance to me. It was the foundation piece of my approach to the job, and over the years it has also provided the basis on which public confidence in respect of the migration program has rested.

I suppose I come to this part of the debate somewhat angered by where we are. I support the legislation, but I support it because I think that, because of incompetence, ineptitude and, I suppose, design on the part of the Prime Minister, the Australian nation does not have an option but to support this legislation and to allow it through. I am angry, for instance, that this Prime Minister was claiming that only he and his government
hold the view that our borders are important. His claims are false, and they do not reflect Australia's migration history. At the same time that he is making these claims, Mr Howard is engaging in a designed campaign of misrepresentation. It is a campaign which uses the false claim that he is the only person concerned about our border as a smoke-screen to avoid his responsibilities and the real issues facing this nation: health, education, aged care, the GST and the environment.

There is an alternative way, but it is the way that was not taken by this minister and by this government. As a consequence of their not taking the opportunity at the right time, we now find ourselves in this difficult situation. For instance, in 1994 as immigration minister, I was also confronted with the arrival of a seemingly endless stream of boats from southern China. They kept on coming. I remember full well on Christmas Eve in 1994 there was boat after boat, with the prospect of tens of thousands more people to come. They were waiting in boats in the south of China. They were people who had already been provided protection by the Chinese. They had fled from Vietnam some time before.

The Australian public may not remember this incident, because the problem was handled quite expeditiously and effectively and it did not cost the Australian taxpayer a bucketload. Within a few weeks of the first arrivals, we had organised an effective response, together with immigration department officials. It was a response which included a quick return of boat people to China—ultimately about 1,000 of them—and the arrest of people smugglers, who were called snakeheads in those days, in China. We had Indonesian cooperation, which we do not have now, which involved the prevention of departures. Most importantly, the United Nations High Commissioner for Refugees endorsed all our actions. Everything was done in cooperation, in a regional arrangement, embracing the interests of China, Indonesia and UNHCR but ultimately protecting Australia's borders, and it did not cost the $130 million to $150 million that the current exercise is costing the Australian taxpayer. It cost in the vicinity of $3 million, and we were criticised at the time because the Howard opposition believed it cost too much.

In 1989, the then Minister for Immigration, Local Government and Ethnic Affairs, Senator Robert Ray, was faced with a similar prospect, with over 100,000 potential asylum seekers seeking refuge in our region. Once again, in cooperation with the UNHCR and some 76 countries around the world, Australia was involved in organising an orderly international process. We developed the CPA—the comprehensive plan of action—to process these people. As a consequence, some 83,000 refugees have been resettled under the CPA, including some 18,000 in Australia. Over 70,000 were deemed not to be refugees and returned to Vietnam. Once again, all this was done at minimal expense but without confrontation or offence to neighbours and while working cooperatively in a regional and international context.

Mr Ruddock warned Australia some 12 months ago that we would be the destination for over 10,000 asylum seekers. Yet between that warning and recent days he did nothing to try to organise an international response to the problem. Sure, there were some light media events in some parts of the world telling people not to come here, but there was no meaningful engagement of international multilateral organisations or any bilateral engagement to ensure that there was some process in place. We could always have anticipated that there would be asylum seekers from Afghanistan. There have been over the years. As minister for immigration, I put in place some pretty effective and comprehensive mechanisms to check those people for any links to terrorism or war crimes. It was an expensive thing to do, and it was comprehensive, but it was important.

But Mr Ruddock was the one who warned us, and then he sat on his hands for 12 months. This is the minister who allowed 136 boats to arrive in Australia with no adequate response. It was only after the 137th boat arrived that he decided to act. By the time this exercise is over, the Australian taxpayer will be left with no change out of about $150 million. Club Nauru will be no
more than a transit post for these people, 90 per cent of whom we can expect to settle in Australia. Let there be no confusion out in the electorate: some 430 out of the 630 people on Australian boats in Nauru at the moment will finish up in Australia and the others will probably get here through New Zealand. So we are going to be paying a bucketload of money, and at the end of the day most of these people will come here because of the inadequate program and policy put in place by a minister who was caught on the hop. At the end of the day also I suppose, the population of Nauru and probably Kiribati will probably thank us for their sports centres, their health care programs and the other bribes paid for by this Prime Minister on behalf of the Australian taxpayer. As I said, I am angry at current developments, because I think they do depict a false sense of history and policy over the years—a picture which this Prime Minister is keen to depict because it suits his electoral purposes. The Australian taxpayer has now been asked to pay $150 million to provide a transit post for people who will ultimately end up here but, in the process, will save this Prime Minister's skin. I am sure that progressively they will not think it is a good deal.

I support this legislation because it is the only option, but I am concerned about where it takes Australia. As immigration minister in 1995, I had the pleasure of launching a book. I will read some excerpts from that book. It was about a man called Emmanuel Attard, written by Mark Caruana and Barry York. Emmanuel Attard was a man of special dignity, charm, intelligence, patience and reserve. He was born in the village of Qala, in Gozo, Malta, in 1898. At the time of his birth, Australia did not exist as a nation; it was six separate colonies. Malta’s population was about 180,000. The life of Emmanuel Attard had, in its first seven decades, spanned all of, I suppose, the transition of the world at the turn of the century. He lived through a depression and through two world wars. The book states:

In the first global conflagration, he served at Gallipoli with the Malta Labour Corps and, in 1917, enlisted with the Australian Forces and served on Europe’s Western Front.

Mr Attard was 96 years old when I launched the book. I hope that he is still alive now; I have had no contact with him since that time. Mr Attard was one of 214 Maltese migrants who travelled to Australia on the French mail boat, the Gange, in 1916. The Gange had assumed almost legendary status among Maltese-Australians as a tale of grave injustice and as an indictment of Australian racism. Emmanuel Attard was one man who experienced it. The 214 men who travelled to Australia on that French mail boat in 1916 had every right to believe that they would be allowed to disembark at an Australian port, but they were denied entry. They were declared prohibited immigrants and compelled to stay on the ship until it reached its final destination, the Pacific island of New Caledonia. Don’t things ever stay the same!

There the men languished for nearly 10 weeks, until finally being returned to Sydney, where they were detained for approximately 20 days on an old hulk in Berry’s Bay, Sydney Harbour. Finally, after a storm of protest about their treatment, the Australian Prime Minister, Billy Hughes, allowed them to disembark. Why did they finish up in New Caledonia? How did that happen? When they arrived in Australia—and they arrived here as British subjects—they expected that they would be allowed on board but when they reached Melbourne the actual prohibition took place. This is documented in the logbook of the Gange’s captain. When they reached Melbourne, the men were declared prohibited immigrants after failing the infamous dictation test which was applied to them in the Dutch language. Off they went to New Caledonia for 10 weeks. Why were they refused entry? According to the book:

Essentially, the answer lay in two factors: the Maltese had become the meat in a domestic political sandwich and there was hostility in Australian society to any immigrants regarded as ‘non-white’. The Australian people in those days were generally racist. In October 1916, for example, the Australian Workers Union described the Maltese as ‘The Black Menace’. In Australian immigration policy, the Maltese were regarded as ‘semi-white’ until 1944 when, at the instigation of Australian External Affairs Minister, Herbert Vere Evatt, and after persistent lobbying by Malta’s High Commissioner, Captain Henry Curmi, they
were reclassified as ‘white British subjects of European descent’.

It is ironic that some 86 years further down the track we are now debating a similar situation. Responses have not changed all that much but you would have thought that during that intervening 86 years governments would have learned from the mistakes of the past—but I do not think this government has.

The Maltese remained on the Gange until it reached Noumea. They were there for 10 weeks. They were returned to Sydney on the St Louis on 22 February 1917 and stayed on the old hulk for some time. In Emmanuel Attard’s case, he accepted an offer to be allowed into Australia so long as he join the armed services; he did that. His other colleagues on the boat were not prepared to do that.

It is amazing when you look back that since those days Australia has become the home of probably 350,000 or so Maltese migrants, all of whom have settled here and are a model community in terms of the migration process. It is also interesting to note that Mr Attard lived in Adelaide—and it is a coincidence that I had not realised earlier that he lived very close to where my parents lived. He talks in his memoirs of an old Afghan—he calls him an African, although he was actually an Afghan—Mohammed Allum. Mr Attard talks about him with enthusiasm. I remember Mr Mohammed Allum. He was a herbalist who had an old house down the road from my primary school, Sturt Street Primary School. There was a degree of mystery around Mr Allum because he, I suppose, in those days seemed to be somewhat of a witch doctor dealing in herbal medicine. He was Islamic and as a consequence there was this degree of mystery, uncertainty and fear about him. It is also interesting to note in that context that it was around that time that the first mosque was built in South Australia just off Little Sturt Street around the corner from where Mohammed Allum lived.

Eighty-six years later, we are still as a nation going through the same fear and the same concerns and the same need to protect our borders. For some period there in the eighties and nineties we found a better way of doing it. Unfortunately for this country’s reputation, this government dropped the ball and missed the opportunity to do something effective over the last 12 months. We now find ourselves in a position where this parliament, I believe, does not have an option but to support this legislation, recognising full well that this is not the best way to go.

Senator ALLISON (Victoria) (11.07 p.m.)—I have listened carefully to Senator Bolkus and to other Labor members in this debate, and I must say that I am puzzled to hear the great concern expressed by Senator Bolkus and others about where this legislation takes Australia and discussion about grave injustices. Senator Bolkus says that we are now debating a situation similar to one some years before. He speaks of the mistakes of the past, that we are still going through the same sorts of problems and that in the eighties we found a way forward which has now been lost. Nonetheless, Senator Bolkus says that he has no option but to support this legislation. This is in spite of the fact that these migration bills undermine fundamental tenants of human rights. The Democrats have said this over and over again, and we will keep saying it.

This series of bills before the Senate ignores human rights. These bills create tiers of rights for genuine refugees based on their circumstances and they separate families for indefinite periods of time. They deny family members individual rights, restrict refugees from undertaking activities Australians take for granted and allow culturally subjective criteria to be used when determining the validity of refugee claims. That having been said, you would expect the Labor Party to join with the Democrats and vote down this legislation. But clearly they are not doing that. Their ‘no option’, as Senator Bolkus says, has got more to do with popular attitudes to immigration than with sensible attitudes about the way we treat refugees, asylum seekers and even immigrants in this country.

In this debate I want to raise the matter of education. There are already restrictions on refugee access to education in this country. State primary and secondary schools were told quite recently by the government that they would need to charge full fees for chil-
dren of refugees, for instance, on temporary visas. If you are currently on a temporary visa regime, there is no access to higher education facilities unless, of course, you can pay full fees, and this is completely out of the question for the vast majority of refugees in this country. Schooling in detention centres, although available, is clearly not adequate or appropriate. I go to the Joint Standing Committee on Foreign Affairs, Defence and Trade's inquiry into immigration detention centres, which made a very important recommendation, recommendation No. 2, which said:

The Committee recommends that the Department of Immigration and Multicultural Affairs negotiate agreements with state and territory Governments and non-government schools to enable children in detention centres to gain access to nearby schools:

- To ensure that all school age persons in detention centres are given the access to the level of education that they require, and
- Reports to the Committee on progress on these negotiations with relevant states and territories by not later than 6 months after the tabling of this report.

The thrust of these recommendations is that children should be integrated into general community schools, rather than being treated separately. Separate treatment of them in fact contravenes article 22 of the United Nations refugee convention, which requires countries to provide them with the same public education that is provided to nationals—in other words, those Australians who are out in the broader community. I would argue that, no matter how many teachers or facilities are provided, schools within detention centres could never be described as the same public education that is provided to nationals.

In the Woomera centre, for instance, there are three education buildings—a kindergarten, a recreation centre and a library—and there are two teachers provided for 364 students, including 148 adult learners. Among the detainees there were seven teachers who work under the supervision of the ACM teachers. One detainees at Woomera expressed concern about the education of children. Another said that there were not enough teachers. That stands to reason when you look at the figures. A third said that, although there were classes for small children, no English classes had been provided and she had been there for about a month. One of the detainees working at the centre claimed that books and notebooks necessary for students and books for the library had not been provided. Although there was a childcare centre at Woomera, there were no properly qualified carers and young children left there were not looked after properly.

At the Villawood centre, a mother who had been at the centre for nearly a month said that the school only operated for a couple of days a week. She was also concerned that children were in together, regardless of age. Another mother at the Villawood Detention Centre said that her 14-year-old daughter could not go to school at all. There were 11 children at Maribyrnong, but the three older children were at that stage unable to attend the local high school. One of these, a 15-year-old youth, said that his situation was ‘exhausting and depressing’.

The committee was often told how difficult detention was for children of all ages— isolation, the shame of having left another country only to end up in a centre and the lack of education. Problems for young children in particular were raised. The committee was told of their confusion about their surroundings, their sense of loss when playmates leave, the lack of places where they could feel free to play properly and the general stress of their situation. Children often have arrived alone and may be living with unfamiliar carers. They may have developmental difficulties, seeming in some instances to be mature beyond their years. This is just a selection of the instances that the report noted in detention centres in this country. But, of course, what we are facing here is a set of bills which make access to education much more difficult than it currently is, which is difficult enough in the first place.

By expanding the use of temporary protection visas, limiting adult education and limiting access for children to get schooling, this series of bills offends again against the most fundamental tenets of human rights: the right of young people, of children, to gain an education. Australia is in a very good posi-
tion to be able to offer such education. I think it is fair to say that we are proud of the history of this country in offering scholarships to students from overseas countries, even providing teachers from this country to other places. We have regarded education as being a very important service to young people—and adults, for that matter. It is very disheartening to me to see presented in this place a group of bills which would make it more difficult for asylum seekers and refugees in this country to access our very good education system.

There are many reasons for rejecting this legislation. Again, it is very disappointing and alarming that the Labor Party would say that at this point in time there is no option but for them to support these bills. The Democrats do not hold that view. We believe that there are many people—the churches, immigration groups, ordinary individuals—who have said that this is not Australia, this is not the way we treat refugees, this is an abuse of human rights, and this is not what we feel good about. Many people have said to me that they are ashamed to be Australian and that they want us to reject this bill, which we are very happy to do, because to them it is a fundamental tenet of human rights to be able to offer education to young people in a way that ensures their perpetual access to education.

I do not propose to speak for much longer, but I urge the government to rethink this legislation and to find a way in which we can provide schooling for young people who are in this country. It is not their fault they arrive here as refugees or asylum seekers. They are brought to this country by their parents. Very few set off of their own accord. We ought to afford them the same kind of rights that we offer our own children, and they include the right to an education. Whether it is learning English, education in their own languages or for adults to improve their prospects of employment, whether in Australia or elsewhere, Australia has a very strong obligation to honour those commitments. I want to finish with a quote from somebody I admire enormously, and that is Justice Marcus Einfeld, who said, not so long ago:

Refugees and those seeking asylum are not illegal migrants—or illegals, as this government has been so wont to call them—a fact that various nations seem to have forgotten.

If there is one message I want to leave with the Senate this evening, it is that asylum seekers are not illegal migrants, illegals or any of those derogatory descriptions; they are people who are fleeing their country, for whatever reason, and they ought to be treated as human beings and not treated in the way that this government has over the past few weeks. It has made many of us ashamed to be part of this country. I urge the Senate to reject these pieces of legislation, as much for the children of asylum seekers as for our own sense of what we are in this country and how we regard human rights in this place.

Senator SHERRY (Tasmania) (11.19 p.m.)—This is a cognate debate dealing with seven pieces of legislation in respect of changing the basis for access to people’s entry into Australia. Included in this is a piece of legislation termed the Border Protection (Validation and Enforcement Powers) Bill 2001. The debate is taking place in a very charged atmosphere in the Australian community. I have had a very significant number of phone calls and emails about the matters we are dealing with. I think it is a matter of regret that community attitudes have polarised so rapidly into black and white, with sweeping generalisations being made about people who are attempting to access this country and also, on top of that, the horrific circumstances of what occurred in the United States just over a week ago.

I make no apologies for the fact that I speak in support of the package of legislation the Senate is considering. I believe it is necessary, and I will outline briefly my reasons for speaking in support. The Labor Party has always supported a position of controlling, to some extent, the flow of illegal migrants into Australia. I follow on from the comments by Senator Allison: these people are attempting to enter Australia illegally; they are attempting to circumvent the normal proce-
dures that are laid down for access to this country. They are the procedures that Australia as a sovereign nation has a right to expect to be observed in allowing access to this country. That has been so since Australian Federation.

Approximately three weeks ago, the government presented us with a piece of legislation which I refer to as ‘Border Protection Mark I’. This was the most incredible piece of legislation. I say, without fear of contradiction, that it was the most extraordinary and extreme piece of legislation that has ever been presented to this parliament in just over 100 years of federation. In Border Protection Mark I, all existing Australian laws were to be overridden, including laws against assault and murder. Someone operating under that legislation could have bashed or killed people on boats containing immigrants, including the ship’s captain, the crew and the Australian citizens. Even in wartime, never has such an extraordinary piece of legislation been presented to the Australian parliament.

One of the most disappointing aspects of the approach by the Liberal-National Party is that there is a very high proportion of lawyers who are members of the Liberal-National Party and very few of them contributed to the debate in any meaningful or effective way in an attempt to justify the extraordinary range of powers that this parliament was asked to confer in these circumstances. The Liberal-National Party came up with the extraordinary positioning that these powers were not necessary, so why seek them in the first place? I, for one, will never vote for parliament to delegate, through its elected representatives, the power to kill people. That is what we were asked to do. That is why my Labor colleagues, with full justification, voted against Border Protection Mark I.

We did not even see the legislation. The approach of the government in presenting that to the Labor opposition was quite extraordinary. The recent decision by the Federal Court that the use of the military and associated powers to stop the *Tampa* was legal proves that the government’s retrospective and dangerous legislation was unnecessary. That is the last point I want to make about Border Protection Mark I conferring powers to kill in this country, and conferring them retrospectively. It was the most incredible piece of legislation that this country has ever seen.

Part of the package we are considering tonight I dub ‘Border Protection Mark II’. This is very different in the scope of the powers that we are asked to support. After what I would term the dictatorial powers—to override all Australian laws—conferred in Border Protection Mark I, the government realised that it had to come up with something that was much more soundly based in principle and in basic human rights and common law. The government has done that with the package of legislation that is being presented this evening. Border Protection Mark II provides a workable and legal solution to *Tampa*-type crises and it strengthens our immigration laws. It is very different from the first bill that my Labor colleagues opposed and rejected here three weeks ago. Consequently, for other reasons that I will outline shortly, my Labor Party colleagues will be supporting the package of legislation in the Senate this evening.

It is the Labor Party that has been firm and consistent in its position. The Liberal Party has certainly tried to look tough—and I will speculate on the reasons again a little later—but it has had to back down from the draconian legislation that was presented in this chamber three weeks ago. The Labor Party is also supporting other legislation to prevent illegal immigrants from landing on some offshore islands that, whilst they are part of Australia legally, are closer to Indonesia than to mainland Australia. Over the last 10 years, 13,000 boat people have arrived in Australia. Eleven thousand of the 13,000 have arrived since Mr Howard became Prime Minister, just over five years ago. What is often forgotten in this debate is that the vast majority of the illegal entrants into Australia do not come by boat at all; they come by plane—approximately 40,000 to 50,000 of them each year—and they breach their visa requirements.

A lot has been said in this debate about compassion for our fellow human beings. I have certainly received extensive comments
from members of the community, in a variety of forums and communications, on this issue. We have had heart-rending tales—and I accept they are heart-rending—about the conditions in detention camps, the conditions that the boat people are fleeing from. I have no doubt that the vast majority of people attempting to enter this country by boat or plane are refugees. I have no doubt they are genuine refugees fleeing horrific conditions in the countries of their origin and in the camps where they have been located for various lengths of time. I have no doubt about that whatsoever. But when we talk about compassion and when we are making judgments about compassion, are we to allow people who have the ability to pay for illegal entry into Australia, whether it is by boat or by plane, any greater consideration in terms of compassion than the millions of people that are scattered around the world, that are dispossessed and desperate refugees in camps in places like Rwanda, Burundi, Sudan and Kosovo? Are people who can pay their way to Australia, who have the $4,000, $5,000 or $10,000, entitled to any greater compassion than the people who are still stuck in those camps? I say no, they are not.

The reality is that Australia has a cap on the level of migration and the level of refugees allowed into this country. Personally, I am a high population man. I believe we should have a high level of migration and a higher refugee intake into Australia. But there will always be a cap. We can argue about what the cap will be but there will always be a limit to the total number of people allowed into Australia. I will not go into the reasons today, because they are not central to this debate. I am a high migration person and I believe Australia should have a much larger population than we currently have. I do not care where they come from. I do not care about their country of origin, or their race, or their religion. It does not worry me one bit. I think we should have more people coming into this country.

Whilst you have a cap on migration and on refugees, the reality is that, if you allow people into this country who pay their way—and ultimately many of them are accepted because they are legitimate refugees—they knock off someone who is stuck in a camp in Afghanistan or Rwanda or Burundi or the Sudan. One of those people who goes through the correct process is removed from entry into Australia. That is not compassion. I do not support that as a process for assessing people who want entry into Australia.

These boats must be stopped before they arrive. I accept that, once they are in Australian waters, that becomes legally very difficult to do. That is why the Labor Party wants to set up a coast guard. Today, in the other place, our leader, Mr Kim Beazley, presented a private member’s bill to do just that. A coast guard is a very necessary arm of government. It is needed to intercept these people smugglers and drug runners before they arrive in Australian waters.

I have had many migrants say to me, ‘We have come through the proper process. We have been screened properly. We have entered Australia in the right way. Why do we allow people into Australia who are not screened in the right way?’ I use the word ‘screening’. I must say that ‘processing’ is a word I do not like. ‘Processing’ was the terminology used by the Nazi regime when assessing who went to the gas chambers in the various camps. So I prefer the word ‘screening’.

We have to ask ourselves: given that 11,000 illegal refugees have entered Australia, in many different boats, since Mr Howard became Prime Minister more than five years ago, why did the Prime Minister suddenly take a stand on the *Tampa*? What was so magic about the *Tampa* some four or five weeks ago? I do not think it is coincidence. There is an election due in four or five weeks. What we have seen in terms of the approach of this government is that it wants to win an election at any cost.

**Senator Hill**—But you support it.

**Senator SHERRY**—Senator Hill—a person who has a considerable amount of academic legal learning—put forward that disgraceful Border Protection Mark 1 to this Senate some four or five weeks ago. From someone who has a level of legal understanding and a level of legal standing within the Australian community, that speech was one of the most pathetic justifications for the
dictatorial powers that the government sought to obtain in that Border Protection Mark 1. What we have got here is a political exercise by the government of the day to maximise its chances of winning the election.

I want to refer here to the appalling comments made by the Minister for Defence, Mr Reith, about two weeks ago when he connected publicly the events in the United States—the deaths of 5,000 people—with the illegal entry of boat people into Australia. He directly connected illegal boat people and terrorism. He directly played on the deaths of 5,000 people in the United States to the Australian community. I have rarely seen such an outrageous attempt at political division in this country.

The truth is that, if you were a terrorist trying to enter Australia, why would you take the risk of attempting to get on a boat when you have probably got a 50 per cent chance of survival? The truth is that, when you come into Australia as an illegal boat person, you are locked up for two years at least while background security checks are carried out, not just into whether you are a legitimate refugee but into a whole range of areas of your background. The truth is that a person who is a refugee and who is allowed ultimately to stay in Australia could not possibly be a terrorist after that range of checks. A terrorist can go out and buy a passport for $10,000 or $15,000 and an illegal visa, then hop on a plane to be in Australia in two days. Why would they sit in a camp and run the risk of being picked up by Australian security after two years of background checks?

We saw a most appalling attempt by the Minister for Defence, Mr Reith, to develop a theme—an outrageous lie was told—that connected the terrorism in the United States with the illegal entry of boat people into Australia. I have rarely seen such an appalling attempt at political opportunism—to use the deaths of 5,000 people to create emotion charged connections with boat people entering Australia.

One other thing that this government should be doing—and Minister Reith’s time would be better spent developing this approach—is ensuring that we have a better relationship with Indonesia when it comes to dealing with the issue of illegal boat people. Indonesia is a staging post, a processing post, if you like, for those who profit from the attempted entry of illegals into Australia. The Prime Minister, Mr Howard, is still waiting, after about three weeks, for that phone call from President Megawati of Indonesia in response to the Prime Minister’s phone call for greater cooperation in this area. The Australian government needs to make a much greater effort in developing a cooperative relationship with the Indonesian government, because ultimately that is the only effective way we will be able to minimise the flow of refugees seeking to enter Australia.

The government is desperate to win an election on this issue. It is absolutely desperate to deflect the Australian community from the true issues and the longer term issues associated with the GST, the health system, the education system and the privatisation of Telstra. It is desperate to find anything it can. It is an indictment of this government that it will seek re-election on any issue whatsoever. Make no mistake about it: the issue of illegal immigrants coming into Australia is subliminal but it taps into some of the worst aspects of some in the Australian community, and we have seen the blatant racism amongst a number of Australians. I am sad to say that it does not shock me, but this is the way the government has determined it is to be re-elected in this country.

I am glad to say that the Liberal-National Party has backed down almost totally on Border Protection Mark 1. Border protection was to confer total power to kill people in this country. Never has there been an attempt to confer such power on any Australian government, even in wartime. This government would do better to copy Labor’s very clear policies on a coastguard, which would be an effective instrument for minimising the problems we have with refugees in this country.

Senator MURRAY (Western Australia) (11.39 p.m.)—As I have listened to the parade of speakers from our side and from the Labor side, it has depressed me again to see what a weary business the numbers business is. The conservatives, mostly with their hard
hearts, have got it over the liberals and are carrying the day. On the Labor side, the ‘whatever it takes’ men and women have got it over the humanists. They are going to carry the day and they are all going to line up together. I sometimes wonder whether you will ever find an issue over which you might actually break out in a sweat and exercise yourself in an act of conscience. Anyway, we are not like that. As a consequence, the journalists lampoon us and maintain that we can be relied upon to have a number of different positions at any one time.

However, mostly the Democrats are very consistent. We all have nuances in this area, but we are strong on this stuff—because this is pretty bad law. The people that talk to me quietly in the corridors from Labor and from the Liberal side—I must say I have not had anyone from the National Party turning up—are uncomfortable, and rightly so. It is all very well to be uncomfortable about it, but they are actually going to pass something into law which, if you agree with its overall thrust, should at least be considerably improved. So the numbers business is a bit sad and a bit wearing at times.

Let us go through some of the principles that we hold to. The Democrats are not an open door party. We too believe that immigration numbers have to have a cap, that there is a limit to how many Australia can take. We too believe that for refugees, as a component of our intake, there has to be a cap. We cannot take on everyone who is disadvantaged in the world. On those two aspects we are at one, I think, with probably every parliamentarian in the place. I do not know anyone who is an open door person or a no cap person. We believe we should comply with international law and the commitments we have made in international law. Here we start to get disagreement, because others do not.

We believe that you should not attack rights, principles, access and fundamental commitments just because you have concerns—legitimate concerns—about screening, processing, administrative activities and difficulties and cost or time considerations. Those are legitimate things to be addressed, but you should not address them and at the same time attack the rights and the principles. It minimises the issue a bit, but it is like the unfair dismissal issue. To address the unfair dismissal problems of process, cost and time, and legitimate concerns about that, the conservatives in the coalition again overcame the liberals and attacked the right to unfair dismissal. In that instance, because it was a union matter, the Labor Party were on the side of the angels. But on this one, with their election prospects at stake, their attitude is one of ‘whatever it takes, mate’.

The other principle which I will pick on briefly in terms of the Democrats’ policy is that we take a non-discriminatory view to the admission of refugees and immigrants. Obviously you want people to become Australians, but it is very difficult for first generation immigrants or refugees to readily do so. I know that some people, long into the third, fourth or fifth generation, particularly those with Irish blood in them, retain an attachment to their past. There is nothing wrong with or strange about that.

One of the things I have heard tonight is that we should draw on our experiences and our pasts. One of the persons in this chamber who is really good at that and who does it in a very human and quite enchanting way is Senator Barney Cooney. He talks about his mum, his dad, his kids and the lessons he has learned from his experiences with them. In this matter I draw on my history. Not many in this place know each other’s history and some of us are a bit private about some aspects, but everybody can tell by my accent and by some of the strange things I say—and do, probably—that I am not Australian born. I was brought up in southern Africa.

The destruction of the rule of law, the destruction of the morality of parliamentarians and the assumption of laws that have at their heart immorality will come back and bite you. They will. I have friends and acquaintances in Zimbabwe—as it is now known—who have screamed in the jails in Zimbabwe where they have been detained without trial, where they have been tortured and held in the most abominable conditions by Mr Mugabe’s merry band of thugs. What laws are they operating under? They are operating under laws that were introduced by people
like you and me. Under Ian Smith’s mob, there was the Law and Order Maintenance Act—the removal of habeas corpus and detention without trial. I was deported from South Africa because I refused to accept the notion that people should be banned, held in their homes without access to other people or detained at the mercy—which is probably too nice a word to use—of the police or the security forces. With their heavy kind of humour, I suppose, the South African secret service was known as the Bureau of State Security, BOSS. What a wonderful acronym! They were the boss, all right, because parliamentarians gave them the laws to be the bosses.

The lawyers who pack the ranks of the coalition and the unionists who pack the ranks of the Labor Party forget, with their abrogation of principles in these matters, that these laws will come back and bite them. You cannot easily take away the essential civil protections we have in democracies—which have been hard won over centuries—and not suffer for it. They will come back and bite you, as they did to those of my friends or acquaintances who fell foul of the Law and Order Maintenance Act which Ian Smith, with his own little band of thugs, introduced. Do not do it. It does not make sense. The threat is not big enough.

What are you talking about? Several thousand people coming in on boats, the boat people, and five, six or even 10 times that number coming in much more easily, the plane people, with stamped tourist visas. By all means address the legitimate issues that people are concerned about, by all means address screening, process, identity, cost and time, by all means, introduce the security measures which are necessary in a difficult and dangerous world, but do not give people arbitrary powers over defenceless and disadvantaged people. Do not do it and, for goodness sake, do not do it in the name of that which is most precious to us all: elections. People have fought, died and shed their blood for the right to vote, and in the name of getting yourselves up in an election you pursue the kinds of laws which are exhibited in this stuff. Some elements in these bills, which are probably perfectly reasonable, can be adapted and amended. It is not all vile and awful, but there are other elements in them which are just not acceptable.

It is well established in international law that sovereign states have the right to regulate the entry into and residence of non-nationals in their territories. I agree with that, and my party agrees with that. Regulation is carried out by the Department of Immigration and Multicultural Affairs in keeping with the Migration Act 1958, which finds its validity in section 51 of the Australian constitution. It is also well established in international law that this regulation of entry should not breach international obligations. Unlike other areas of immigration, the refugee and humanitarian program is derived from international legal obligations into which Australia has entered. In that sense, to paraphrase former US President, John Kennedy, ‘Ich bin ein Berliner,’ we are globalist. We are globalist because we respond to international law and fulfil our international obligations.

The obligations towards refugees arise from three principle sources of international law: the 1951 Convention Relating to the Status of Refugees and the subsequent 1967 Protocol Relating to the Status of Refugees; the International Covenant on Civil and Political Rights; and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. These obligations include the principle of non-refoulement and protection against differential treatment. But they have a far deeper root. They have a deep root in all the religions: we should look after those who are in trouble.

The United Nations Convention Relating to the Status of Refugees 1951 and the United Nations Protocol Relating to the Status of Refugees 1967 have been signed and ratified by Australia. The assumption of protection and obligation to protection for those who meet the definition of refugee have been assumed by the incorporation of this definition into our law. Consequently, a criterion for protection visas is that the applicant for the visa is a non-citizen in Australia to whom Australia has protection obligations under the refugee convention as amended by
the refugee protocol. These two instruments define a refugee as any person whom:

... owing to a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality or habitual residence, if stateless and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

It is all very well, when you look into the face of a mad mullah or one of those head whacking people who look like they have just popped out of a mental asylum, to be able to demonise them. That is pretty easy. Fortunately, television sets can show us the real faces. You look in those real faces of refugees. They are different, you know, from those mad, brow beating people. Where else do you see people—kids—whacking their heads backwards and forwards but in institutions for the mentally insane? It is ridiculous stuff. The people I see as refugees do not seem to me to be of those sorts.

I have a sneaking suspicion that in amongst them are ethnic minorities. I have noticed all these people—let us deal with the one country which people are focusing on—are referred to as Afghans. That is very interesting: they are Afghans. Do you know in South Africa there are eight black nations with different languages who do not understand each other? But people will refer to them as blacks. We do not refer to people as Europeans easily because we come from that stock: we will actually differentiate them and refer to them as Spanish or Swedish. If we are familiar with a country, say Italy, we might refer to them as Piedmontese, Tuscans or Sicilians.

Afghans come in just as many varieties of people. And many of them are ethnic minorities and are running away from people who abuse their women, who cover them up, who will not let them be educated, who execute and humiliate and kill and who are in the exercise of exterminating those who do not agree with their fascist ways. They do not represent Islam; they represent a nasty mob. But that is not all Afghani people. It is a faction, a sect, a group, and people who are fleeing from that have every right to flee from that. I do not say that you should not screen them and throw out the frauds and those who do not qualify. Yes, I am all for that. But do not demonise them; do not turn naked prejudice and a fear that we all have of that which is foreign, unknown or bothersome into this kind of law to win an election. What a travesty of the democratic ideal.

Fortunately, we do have parliamentarians who will express an alternative view and we do have parliamentary institutions which will. One of those is the Scrutiny of Bills Committee. On the Border Protection (Validation and Enforcement Powers) Bill 2001, it asks why ‘any action’ would be validated. It asks whether these provisions have the effect of making lawful acts which are currently unlawful or which would be unlawful if they occurred in Australia. What are we doing here? We have a Constitution which legitimately sets up geographically distinct places called states. Now we are going to distinguish places within them with different laws and different laws for different people within different parts of Australia; and different acts which in different parts of Australia are lawful but in these particular cases are unlawful. Are we mad? Where is the rule of law in that? Where is the consistency? Where is the principle, all you lawyers over there, all you principled unionists on this side? What are you on about? If you are going to deal with this matter as a matter of principle and a matter of law, let it be consistent and let it be something which can stand up in international eyes among civil societies which value law.

These things are retrospective. Sometimes we have retrospection. This happens to be detrimentally retrospective and dangerously retrospective. It is not capable of having appropriate review. In the detention and search of persons, the Scrutiny of Bills Committee asks why it is thought necessary to prohibit the institution of proceedings in relation to presumably otherwise unlawful detentions. You know what is wrong with the lawyers who deal with this? Do you know what their problem is? They are trained to argue any case. Morality does not matter. They carry a brief; whatever the brief they will argue it. That is what they are doing here. What is the Labor Party saying? It is saying, ‘Whatever it takes, mate. This will help us win the elec-
tion. We are going to pander to the lowest common denominator in this stuff.' The Scrutiny of Bills Committee, with regard to the excising of parts of Australia, wants to know why it is retrospective, the Scrutiny of Bills Committee wants to know why there is a ban on certain legal proceedings and the Scrutiny of Bills Committee wants to know why the right to silence is being attacked. Either that is a principle of our law or it is not.

What I do not get with all this is why you choose to go too far. I accept that conservatives have a different view to Democrats, I accept we have perhaps softer hearts in some of these areas, I accept the Labor Party has a tougher view on things; but why do you want to go this far? Why do you want to stain the legal principles by which our society has in the past been judged by going just that bit too far with regard to the rights of individuals who are disadvantaged and helpless on our shores—a few thousand of them? That is at the heart of my unease. What are your motives? I think that your motives at this time, in this place, are base—because I do not think that either of you would do the same in another month.

(Time expired)

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being nearly midnight, pursuant to order I propose the question:

That the Senate do now adjourn.

Youth Initiatives

Senator LUNDY (Australian Capital Territory) (11.59 p.m.)—I rise tonight to inform the Senate about several youth initiatives that have taken place in recent months or are due to take place around the nation. The National Conference of Young People was held last weekend in Perth as part of the Centenary of Federation celebrations. The conference kicked off a series of innovative youth festivals currently taking place in Western Australia until the end of the month. The national conference considered questions about Australia’s history, global role and responsibilities, national values and the part governments must play in shaping our future, all from the perspective of young people who made up the 350 delegates at the conference.

I would like to read to the parliament a short but very moving statement presented to state and federal members of parliament by the young Australians attending at the conclusion of the conference. Called A Declaration from the Young People of Australia on this Centenary of Federation of the Nation, it said:

Imagine Australia. Our people, our community, our land; we belong.

We have the right to dream, live and succeed in a country we can call home.

We believe education is for everyone; a nation that learns, grows.

We are a country committed to upholding human rights in Australia and throughout the world without compromise.

We embrace community spirit. We are aware, we are active, we are involved.

This beautifully written declaration means so much more in the light of the tragic events engulfing the world as we speak.

Last week the National Youth Roundtable members presented here in Parliament House the findings of their individual projects based on consultations with young people from their local community. These presentations raised a variety of diverse issues facing Australian young people and a range of possible solutions: for example, the provision of greater entertainment opportunities for young people as a crime prevention strategy and post release programs for juveniles in custody; culturally appropriate health care services programs; greater access to youth specific information on drugs in school; the use of drug abuse survivors in drug education programs; and sustainable and commercial utilisation of Australia’s flora and fauna.

Many of the young people who came here were visiting Canberra for the first time and found the experience of having access to
some politicians rewarding—although I, once again, regret to inform the Senate that the opposition was not allowed to consult directly with roundtable members. It was, nonetheless, a rewarding experience for the participants.

The Centenary of Federation YMCA Youth Parliament was held in July this year and brought over 100 young Australians together from around Australia. Youth parliamentarians devised and drafted bills on issues of federal and youth importance prior to the meeting of the parliament. These bills were debated and enacted by the youth governor-general. Examples of National Youth Parliament bills included equal service pensions and medical assistance for Australian veterans; compulsory dyslexia testing and teenage parenting initiatives; optional voting for 16-year-olds; equal resources to secondary schools; restriction of university places to full fee paying students; abolition of uranium mining; and a national fast train link. The National Youth Parliament acts were presented to the government during the closing ceremony and will form part of what is a growing bank of the expression of many young people and their views of our future.

The This Is Not Art Festival is Australia’s largest annual gathering of young media makers, musicians, artists and writers and occurs in Newcastle during September and October. This Is Not Art is the umbrella term for four separate media and digital arts festivals held over five days including the National Young Writers Festival; Electrofringe, a festival of new media and digital arts; the National Student Media Conference; and the Sound Summit which was formerly the National Independent Electronic Labels Conference.

Important upcoming youth events include the Noise festival, a national media based arts festival showcasing the creative work of young Australians managed by the Australia Council. In October Noise will be launched across Australia through the Internet, TV, radio and print media. With the media as its exhibition space, Noise will create a forum to explore the creative culture of young Australians and those who support them.

The Commonwealth Youth Forum is going to be held on the Gold Coast from 30 September to 8 October. The forum will coincide with the Commonwealth Heads of Government Meeting which will be held in Brisbane from 6 to 9 October 2001. The aim of this forum is to challenge young people to identify development strategies that they can implement in their communities on their return home. Specifically, the forum will, firstly, enable young people to identify their vision for the Commonwealth in the 21st century and, secondly, address issues of concern to young people throughout the Commonwealth and assist in developing community action plans. The outcomes of the forum will be published and made available to CHOGM and the Commonwealth secretariat for consideration in future policy directions and decision making.

Events that include youth participation in political processes, broader democratic structures and emerging youth cultures support the active engagement and inclusion of young people in the Australian community. By supporting young people in both cultural activities and consultation forums, decision makers can gain valuable information and insights into a range of issues affecting young people, from the most basic needs of food and shelter to those enabling young people already engaged in society to further develop their potential through activities such as the arts and leadership.

The participation of young people in activities where they are involved in the design and agenda setting is empowering and provides countless benefits for both the young people and the wider community. Most importantly, they help young people feel valued, included and passionate. Just as the sixties and seventies served as a period of social and democratic resurgence for the teenage baby boomers, so too have events of this era shocked, inspired and ignited passions of this younger generation. Significant recent events have served to emotively engage many young people who may have been previously apathetic and disillusioned with partisan politics.

It is an unfortunate reality that activism is often inspired by tragedy, frustration, fear
and/or anger. Regardless of the motivation, however, young people are better able to focus on their responses if they are empowered with the knowledge of civic participation. It is our responsibility to ensure that young people are engaged fully in society. Gough Whitlam, as opposition leader in 1973, during the debate on the lowering of the voting age from 21 to 18, said:

Young people become alienated from existing institutions if they feel no one will listen and no one will lead.

Labor’s challenge is to prevent youth cynicism and frustration about governments and politicians and make sure there are plenty of doors open to young people who are inspired to become active, whatever the motivation or the issue may be. It is incumbent on us, the political representatives of all Australians but in particular of those not eligible to vote by virtue of their age, to put their sentiments and expressions into action and deliver on their hopes and dreams.

I would also like to take this opportunity to urge all young people to update their electoral enrolment details now, due to new enrolment procedures tabled in the parliament last Thursday. Just weeks out from a federal election, the coalition has changed the electoral enrolment system by bringing in stringent new witnessing and identification requirements that will make it even harder for young people to enrol to vote. These new regulations have implications for first-time voters and young people. *(Time expired)*

**Lindsay Electorate: Defence Land**

Senator HUTCHINS (New South Wales) *(12.10 a.m.)*—I rise tonight to speak once again on an issue that is of great concern to people living in the federal electorate of Lindsay in Sydney’s outer western suburbs. I wish to report to the Senate some recent occurrences on the now interim heritage listed former RAAF site at Orchard Hills. This site received an interim heritage listing earlier this year, so it was claimed, thanks to the efforts of the member for Lindsay, Miss Jackie Kelly. Senators may recall me speaking on this issue back in June this year when I outlined to the Senate the extent of the member for Lindsay’s hypocrisy regarding former Defence land in her electorate. The site at Orchard Hills contains approximately 2,000 hectares of land, some of which is the environmentally precious Cumberland Plain woodland and Sydney coastal flat forest.

Miss Kelly trumpeted her so-called success in securing an interim listing of the site at Orchard Hills in what I perceive to be a cynical attempt to deflect attention from the one issue that is currently burning hot in Lindsay. The fanfare with which Miss Kelly claimed credit for securing the interim listing was done with a clear intention to mislead and deceive voters in her electorate, annoyed at her inaction over the ADI site at St Marys. The ADI site is a similarly sized site with similarly environmental precious land as at the Orchard Hills site. The difference is that Miss Kelly’s government, in spite of the site’s full heritage listing, currently harbours plans to build 8,000 houses on the site, in a massive development that would add up to 25,000 people to the already rapidly expanding population of Sydney’s western suburbs. That is what people in Lindsay are really angry about.

They are angry about the traffic congestion that is going to be added to their already congested roads, they are angry about the difficulty their local schools, hospitals and infrastructure are going to have in coping with the extra 25,000 people and they are angry that at least 200 hectares of environmentally precious Cumberland Plain woodland, Western Sydney’s local environmental heritage, is under threat. But what they are most annoyed about is the fact that their local member has sat back and done nothing to stop this massive overdevelopment. They are annoyed at the insult they received when she would not even turn up to speak at a rally against the ADI development with other local representatives, like the former Penrith mayor and Labor candidate for Lindsay, David Bradbury. Like every other issue that affects people living in her electorate, the member for Lindsay has not even raised the issue in this parliament. In fact, it has now been 1,188 days since the member for Lindsay spoke about her electorate at all in the federal parliament. She has just three days left to break her duck.
Back in June, the member for Lindsay pulled a stunt and tried to confuse the people of Lindsay by saying that she was all for saving the former defence land and stopping overdevelopment. The member for Lindsay put out a few press releases to the local paper and bragged and carped on about her amazing achievement in supposedly securing an interim listing for the Orchard Hills defence site. But what is the real worth of an interim listing? Has the member for Lindsay, who was described recently in the *Sydney Morning Herald* as being ‘an unusually unsophisticated politician’, truly ensured the protection of this site from housing development? Has the member for Lindsay succeeded with the Orchard Hills RAAF site where she failed at the St Marys ADI site? Has she secured saving this one site where she failed to secure Australia’s tourism industry?

I bring to the Senate’s attention a few reports that have recently come to my attention from people living in the electorate of Lindsay. The first report is that the demolition of former RAAF buildings on the site has begun. The second is that, following the commencement of these demolition activities, there have been sightings of large numbers of privately owned vehicles parked within the site’s administrative premises. This is at a time when, as with most government owned former defence sites, you need a security clearance to get into the Orchard Hills RAAF site. We have to ask why and for what purpose are the former RAAF buildings being demolished? Who are the owners of these cars that have suddenly swamped the site?

Senators will notice that this week’s legislative program includes the resumption of the debate on the Environment and Heritage Legislation Amendment Bill (No. 2) 2000 [2001] and the Australian Heritage Council Bill. I voiced my opposition to these bills last month because they abolish the Register of the National Estate. The bills would remove the protection that thousands of sites currently listed on the Register of the National Estate enjoy due to their environmental or historical heritage value. There are many such sites on the heritage list in Western Sydney: one of them is now potentially the Orchard Hills RAAF site.

But what is the interim listing worth when a few months later the government turns around and introduces legislation to abolish the protections the member for Lindsay is supposed to have secured? What will it be worth when the member for Lindsay stands up in the House of Representatives, as I am sure she will, and votes for the abolition of the Register of the National Estate? You have to treat an interim heritage listing under this federal government with a great deal of suspicion and scepticism, and you have to question its worth when the government is putting forward legislation to abolish the heritage list altogether. When buildings start being demolished and flash cars—the kind of cars that wealthy developers own—start being spotted visiting the Orchard Hills site, you have to start asking what is going on. You have to ask the question of what the government’s real agenda is. Could it be that the federal government is lining up a series of developers who are just waiting for the heritage bills to pass through parliament so they can start building? I certainly hope this is not the case because Western Sydney cannot handle more massive development. But it certainly is the sort of thing you would expect from this mean and tricky government, and it is certainly the sort of thing you would expect from a member who is fast becoming completely out of touch.

**Senate adjourned at 12.16 a.m.**

**DOCUMENTS Tabling**

The following documents were tabled by the Clerk:

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Roads: Murrumbateman Bypass  
(Question No. 3599)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 6 June 2001:

With reference to the Rural and Regional Affairs and Transport Legislation Committee’s hearing of 31 May 2001, during which the Director of the Roads Program in the Department, Mr Ed Cory, advised that the total Commonwealth expenditure on the Murrumbateman bypass from March 1996 is $643,000:

(1) In addition to the answers to be provided, to questions on notice during the estimates hearing, can the Minister confirm that the actual appropriation for this project in 1996-97 was $300,000, in 1997-98 was $500,000 and in 1998-99 was $300,000.

(2) What was the level of expenditure in each of the above financial years.

(3) (a) What was the appropriation for the 1999-2000 and the 2000-01 financial years; and (b) what was the actual expenditure in those years.

(4) Can the Minister provide an explanation for the difference between the appropriations provided for in the above financial years and the actual level of expenditure provided to the committee by Mr Cory.

(5) If the difference between the appropriated funds and actual expenditure in the above financial years was an underspend, in each year, what was the cause of the underspend.

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

(1) to (3) There are no specific Budget appropriations for projects such as the Murrumbateman bypass. All funding is allocated from a single appropriation for each financial year for the Federal roads budget. State and Territory road authorities are informed of indicative allocations for individual projects.

Indicative allocations for the planning of the Murrumbateman bypass were: 1996/97 – Nil (this was subsequently adjusted to $300,000 following a mid-year review of allocations); 1997/98 - $500,000; 1998/99 - $300,000; 1999/2000 - $200,000; and 2000/01 - $500,000. These amounts are not cumulative. They are also adjusted each year, having regard to advice received from State and Territory road authorities on progress of payments and expected funding needs.

Actual expenditure on planning for the Murrumbateman bypass, reported by the NSW Roads and Traffic Authority (RTA) against which Federal funds were paid were as follows: 1996/97 – Nil; 1997/98 - $93,000; 1998/99 - $164,921; 1999/2000 - $232,440; and 2000/01 - $241,133 a total of $731,494. This amount is higher than the $643,000 quoted by Mr Cory at the Rural and Regional Affairs and Transport Legislation Committee’s hearing of 31 May 2001, because of updated advice provided by the RTA.

(4) and (5) The RTA’s actual expenditure, as reported, was less than anticipated in the RTA’s funding requests and hence less than the indicative allocations for each financial year, except 1999/2000.

The level of investigation required and time taken to assess issues varies significantly from one project to another and as a result it is difficult to predict precisely how much will be required for a given project. Consequently, differences often occur between forecasts of expenditure at the start of the financial year, and actual expenditure.

Civil Aviation Safety Authority: Flight West Airlines  
(Question No. 3644)

Senator O’Brien asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 22 June 2001:

(1) Since January 1999, on how many occasions has Flight West Airlines been subjected to scheduled or unscheduled audits.
(2) Since January 1999, on how many occasions has the Civil Aviation Safety Authority issued a non-compliance notice (NCN) or a request for corrective action (RCA) to Flight West Airlines.  

(3) In each case: (a) when was the NCN or RCA issued; (b) what action was taken by the airline in response; and (c) when was that action taken.  

(4) Since 1999, has there been any inquiry or review into the ability of the airline’s management to properly comply with the terms of its Air Operating Certificate; if so: (a) what was the nature of the inquiry or review; (b) when did each inquiry or review take place; (c) what was the outcome of each inquiry or review; and (d) on each occasion, what was the response from the airline.  

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

The Civil Aviation Safety Authority (CASA) has provided the following advice:  

(1) CASA has conducted six audits of Flight West Airlines (FWA) since 1999. Three of these were scheduled audits, and the remaining three were special (or unscheduled) audits.  

(2) and (3) CASA does not believe it would be appropriate to provide this level of operational detail regarding an individual operator. In addition, CASA holds the view that disclosure of information on the outcomes of an audit process could prejudice an operator’s commercial interests and could also prejudice CASA’s ability to obtain information from other operators during the course of normal investigations where compulsory extraction powers are not used.  

However, a show cause notice was issued on 12 April 2001. This required the operator to demonstrate why its Air Operator Certificate should not be cancelled. FWA representatives subsequently attended an informal conference, run by CASA legal counsel, and submitted a proposal to replace management, implement additional changes and introduce improvements to address the breaches of legislation identified in the show-cause notice. The implementation of these changes were proceeding under strict supervision of CASA senior flying operation and airworthiness inspectors when the company chose to go into voluntary liquidation three weeks later.  

(4) Whilst again it is not considered appropriate to provide this level of operational detail regarding the operator, CASA can confirm that reviews of FWA were conducted on three separate occasions since 1999. The first review coincided with a scheduled audit and the subsequent reviews were conducted as special audits. On each occasion FWA were clearly told the outcome of the review, including the necessary remedial actions, and given an opportunity to address the findings.  

Environment and Heritage Portfolio: Missing Computer Equipment  

(Question No. 3725)  

Senator Faulkner asked the Minister for the Environment and Heritage, 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 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 computers; (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 been commenced; and (d) in how many cases has action been concluded and with what result.  

(3) How many of the 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) How many of the documents etc. referred to in (3) were classified for security or any other purpose and, if any, what was the security classification involved.  

(5) (a) How many of the documents etc. referred to in (3) have been recovered; and (b) how many documents etc. referred to 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. referred to in (3) and (4).

Senator Hill—The answer to the honourable senator’s question is as follows:

The details provided below relate to desktop computers, or any other item of computer hardware, other than laptop computers.

(1) Yes
   (a) Nil
   (b) One monitor
   (c) $2000
   (d) $2000
   (e) Replaced

(2) Yes
   (a) One
   (b) One
   (c) Nil
   (d) Not applicable

(3) Not applicable

(4) Not applicable

(5) (a) and (b) Not applicable

(6) Departmental security procedures have been reviewed. Where necessary blinds have been fitted to ground floor windows which are shut at close of business each day to ensure attractive items of equipment are not in public view. Security patrols are required to report any lapses of this policy.

Communications, Information Technology and the Arts Portfolio: Missing Computer Equipment

(Question No. 3726)

Senator Faulkner asked the Minister for Communications, Information Technology and the Arts, 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 this 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) or (4).

Senator Alston—The answer to the honourable senator’s question is as follows:

Only the ABC, Telstra and Australia Post have reported any desktop and related computer hardware lost or stolen.
ABC

(1) Yes, several items of hardware have been stolen
   (a) None have been lost
   (b) Stolen
      • 1 x network router
      • 1 x desktop PC RAM memory
   (c) Total value of these items - $2000
   (d) Normal replacement value per item
      Network router, $2000
      PC RAM, $400
   (e) None of the stolen items have been recovered
      PC RAM replaced.

(2) The police have not investigated any of the incidents
   (a) to (d) N/A

(3) None of the stolen items carried ABC information.

(4) N/A

(5) N/A

(6) N/A

TELSTRA

(1) (a) Telstra has identified through a physical audit some 470 units. A unit comprising any one of
      either a CPU, a monitor or a keyboard. Units were either lost or misplaced, as a result of re-
      organisations or staff relocations where managers have lost track of units, or units have been
      disposed of by proper means but without appropriate register adjustments.
      
      (b) 28 units have been stolen.
      (c) As the equipment was on a lease arrangement, the payout cost to Telstra was some
      $228,000.
      (d) The replacement costs of stolen units is, on average, $2,000. Lost units would not be re-
      placed.
      (e) In the majority of cases, those stolen units will have been replaced, either through insurance,
      or new acquisitions.

(2) Yes the police were asked to investigate these incidents
   (a) All stolen units are subject to a police investigation.
   (b) The police investigation usually takes the form of a site visit and the preparation of a Police
      report. Follow-up police investigation is not usually undertaken, except when a stash of
      stolen property has been detected, not necessarily Telstra equipment. On that basis, all po-
      lice investigations are normally concluded the day of the incident.
   (c) No legal action has been commenced to Telstra’s knowledge.
   (d) N/A.

(3) Telstra is not aware of the number of lost or stolen items that may have held Telstra information.

(4) Telstra considers it unlikely that documents etc held on the lost or stolen items would have been
    classified as secure documents.

(5) Not known to Telstra.

(6) Telstra’s normal course of action is for the appropriate level of management to counsel staff in-
    volved.

AUSTRALIA POST

(1) Yes, a number of desktop and other items of computer hardware have been stolen.
    (a) None have been lost.
Stolen
4 hard drives
2 monitors
1 keyboard
2 powerpoint projectors
1 palmtop computer and
1 docking station.
(c) The total value of these items was $23,000.
(d) The normal replacement value per item is unknown. Some items have been replaced.

(2) The police have been requested to investigate all of these incidents.
(a) All.
(b) All investigations have been concluded.
(c) No legal action has been commenced.
(d) N/A

(3) Four items were believed to contain Australia Post documents.
(4) None of the documents was classified.
(5) None of the documents has been recovered.
(6) No disciplinary action taken. The security of Australia Post property was covered in Staff Information Bulletins and Executive briefings.

Communications, Information Technology and the Arts Portfolio: Missing Laptop Computers

(Question No. 3745)

Senator Faulkner asked the Minister for Communications, Information Technology and the Arts, 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 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 computers; (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) what was the security classification involved.

(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) or (4).

Senator Alston—The answer to the honourable senator’s question is as follows:
Answering only for those agencies reporting the loss or theft of laptop computers.

Department of Communications, Information Technology and The Arts

(1) One laptop computer has been reported stolen.
   (a) None reported lost.
   (b) One reported stolen.
(c) Total value approximately $4,000.
(d) Average replacement value $4,000.
(e) Not replaced.

(2) The police have been requested to investigate the incident.
   (c) One.
   (b) Investigation not concluded.
   (c) No legal action commenced.
   (d) N/A

(3) The one stolen laptop computer held departmental documents.

(4) (a) No documents were classified for security purposes.
        (b) N/A

(5) (a) No documents recovered.
        (b) N/A

(6) No disciplinary or other action taken.

**ABC**

(1) Yes, the ABC has had 10 laptop computers stolen.
   (a) None lost.
   (b) Ten laptops stolen.
   (c) Total value $51,550.
   (d) Average replacement cost per computer $5,155.
   (e) Two (2) computers have been recovered, eight (8) have been replaced.

(2) The police have been asked to investigate these incidents.
   (a) All ten have been investigated.
   (b) One (1) police investigation has been completed;
       • Offender caught
       • Two computers recovered.
           Remaining investigations pending to best of ABC knowledge.
   (c) One case of legal action commenced.
   (d) One case concluded;
       • Offender arrested and convicted.

(3) Eight (8) computers carried non-sensitive ABC-related material.

(4) None of the documents was classified for security.

(5) No documents have been recovered.

(6) The ABC has not taken any disciplinary action.

**TELSTRA**

(1) Yes, a number of laptop computers have been lost or stolen from Telstra.
   (a) Telstra has identified, through a physical audit some 170 laptops as being either lost or misplaced as a result of either reorganisations or staff relocations where managers have lost track of units or units have been disposed of by proper means but without appropriate register adjustments.
   (b) 187 laptop computers have been stolen.
   (c) As the equipment was on a lease arrangement, the payout cost to Telstra was some $106,000.
   (d) The replacement cost of stolen units is, on average, $3,500. Lost units would not be replaced.
   (e) In the majority of cases, those stolen units will have been replaced, either through insurance, or new acquisitions.
(2) All stolen units are subject to a police investigation.
   (a) The police investigation usually takes the form of a site visit and the preparation of a police report. Follow-up police investigation is not usually undertaken, except when a stash of stolen property has been detected, not necessarily Telstra equipment. On that basis, all Police investigations are normally concluded the day of the incident.
   (b) No legal action has been commenced to Telstra’s knowledge.
   (c) N/A

(3) Telstra is not aware of the number of lost or stolen computers that may have held Telstra information.

(4) Telstra considers it unlikely that documents etc held on the lost or stolen computers would have been classified as secure documents.

(5) Not known to Telstra.

(6) Telstra’s normal course of action is for the appropriate level of management to counsel staff involved.

AUSTRALIA POST
(1) Yes, a number of laptop computers have been stolen.
   (a) None have been lost.
   (b) Stolen, 17.
   (c) The total value of these items was $84,000.
   (d) The normal replacement value per item $5,000.
   (e) All stolen items have been replaced.

(2) The police have been requested to investigate all 17 of these incidents
   (a) All 17.
   (b) All 17 investigations have been concluded.
   (c) No legal action commenced.
   (d) N/A

(3) All 17 items were believed to contain Australia Post documents.

(4) None of the documents was classified.

(5) None of the documents has been recovered.

(6) No disciplinary action taken. The security of Australia Post property was covered in Staff Information Bulletins and Executive briefings.

FILM AUSTRALIA
(1) Yes, one laptop computer has been stolen.
   (a) No laptop computers have been lost.
   (b) One laptop computer has been stolen.
   (c) Valued at $4,570.
   (d) $4,570 replacement value.
   (e) Replaced.

(2) The theft was reported to the police. No further action was taken.
   (a) to (d) N/A

(3) None to the best of Film Australia’s knowledge.

(4) (a) None to the best of Film Australia’s knowledge.
   (b) N/A

(5) N/A

(6) Nil
AUSTRALIA COUNCIL
(1) Yes, one mini-laptop has been lost.
   (a) One mini-laptop lost.
   (b) None.
   (c) Total value $300.
   (d) $1,300 replacement value.
   (e) Replaced.
(2) The police have not be requested to investigate.
   (a) to (d) N/A
(3) The one mini-laptop did contain Australia Council documents.
(4) (a) None of the documents was classified for security reasons
   (b) N/A
(5) No documents recovered.
(6) None.

National Science and Technology Centre QUESTACON
(1) Yes one laptop computer has been lost.
   (a) Nil.
   (b) One laptop lost.
   (c) $7,308 at invoice date 24 August 1999.
   (d) N/A
   (e) Not recovered - not replaced.
(2) The police have been requested to investigate.
   (a) The one incident has been investigated;
      • stolen when inside a locked cupboard at secured home.
   (b) Investigation not concluded.
   (c) N/A
   (d) N/A
(3) Nil
(4) N/A
(5) N/A
(6) Nil, laptop was assigned under NSTC asset policy, theft reported immediately, police informed so as to begin investigation.

NATIONAL MUSEUM OF AUSTRALIA
(1) Yes one laptop computer has been stolen.
   (a) No laptops have been lost.
   (b) One laptop stolen:
      • from private residence 19 May 2001.
   (c) Valued at approximately $2,000.
   (d) Replacement value $3,000.
   (e) Replaced.
(2) Yes the police have been asked to investigate the incident.
   (a) the one incident was investigated.
   (b) Investigation incomplete.
   (c) No legal action commenced.
   (d) N/A
(3) Nil
(4) N/A
(5) N/A
(6) Nil

NATIONAL LIBRARY OF AUSTRALIA

(1) Yes, two laptop computers have been stolen.
   (a) No laptop computers have been lost.
   (b) Two laptop computers have been stolen.
   (c) Total value $5,000.
   (d) Replacement value per unit $2,500.
   (e) Nil recovered, two replaced.

(2) Yes, the police were requested to investigate both incidents.
   (a) One investigation, but both computers were recorded with the police.
   (b) One investigation completed.
   (c) No legal action commenced.
   (d) N/A

(3) One laptop was believed to contain National Library information.
(4) (a) None of the documents had a security classification.
   (b) N/A

(5) None of the documents has been recovered.
(6) No disciplinary action. Other action:
   • Audit and report from Deloittes sought and received,
   • All laptops engraved with Library name,
   • Security procedures reviewed and changed,
   • Staff awareness raising in relation to security procedures undertaken.

Office of the Status of Women: Appropriation and Staffing
(Question No. 3790)

Senator Mackay asked the Minister Assisting the Prime Minister for the Status of Women, upon notice, on 3 August 2001:

(1) (a) How many full-time equivalent staff are currently working within the Office of the Status of Women; and (b) at what levels are they employed.
(2) (a) How many full-time equivalent staff worked within the Office of the Status of Women as at 30 June 2000; and (b) at what levels were they employed.
(3) (a) How many full-time equivalent staff worked within the Office of the Status of Women as at 30 June 1999; and (b) at what levels were they employed.
(4) (a) How many full-time equivalent staff worked within the Office of the Status of Women as at 30 June 1998; and (b) at what levels were they employed.
(5) (a) How many full-time equivalent staff worked within the Office of the Status of Women as at 30 June 1997; and (b) at what levels were they employed.
(6) (a) What was the appropriation for the Office of the Status of Women for the 2000-01 financial year; and (b) what was the actual expenditure.
(7) (a) What was the appropriation for the Office of the Status of Women for the 1999-2000 financial year; and (b) what was the actual expenditure.
(8) (a) What was the appropriation for the Office of the Status of Women for the 1998-99 financial year; and (b) what was the actual expenditure.
(9) (a) What was the appropriation for the Office of the Status of Women for the 1997-98 financial year; and (b) what was the actual expenditure.
Senator Vanstone—The answer to the honourable senator’s question is as follows.

I am advised by the Office of the Status of Women:

(1) (a) 37
    (b) OSW staff are employed at the Graduate level through to SES Band 2.
(2) (a) 33
    (b) OSW staff are employed at the Graduate level through to SES Band 2.
(3) (a) 29.5
    (b) OSW staff are employed at the Graduate level through to SES Band 2.
(4) (a) 27
    (b) OSW staff are employed at the Graduate level through to SES Band 2.
(5) (a) 28.5
    (b) OSW staff are employed at the Graduate level through to SES Band 2.
(6) (a) $12,243,000
    (b) $11,005,544
(7) (a) $8,787,000
    (b) $9,748,000
(8) (a) $9,284,000
    (b) $7,890,698
(9) (a) $6,115,000
    (b) $6,029,000.

Fuel: Consumption Targets
(Question No. 3791)

Senator Allison asked the Minister for the Environment and Heritage, upon notice, on 6 August 2001:

(1) What progress has the Government made in its negotiations with the automotive industry with regard to national average fuel consumption targets for new passenger vehicles.
(2) Have these negotiations included consideration of incentives for automotive manufacturers to produce hybrid petrol/electric vehicles in Australia; if not, why not.
(3) What is the time line for setting fuel consumption targets for the Commonwealth Government vehicle Fleet.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) The Government is continuing to negotiate with the Federal Chamber of Automotive Industries (FCAI) on these issues. Negotiations had been delayed pending resolution of fuel quality standards.
(2) Development of hybrid petrol/electric vehicles, and their subsequent penetration of the Australian automotive fleet will be an important step in reducing the overall fuel consumption of the Australian passenger vehicle fleet. However, given the current very large price differential between these vehicles and conventional vehicles, offering a subsidy for purchasers of hybrid vehicles is not considered a cost effective greenhouse response at this stage. No Australian manufacturer has indicated that they will be producing a production hybrid vehicle in the time frame of the National Average Fuel Consumption negotiations of 2010.
(3) It is anticipated that both Commonwealth fleet targets and finalised strategies for achieving them will be announced by the end 2001. Progress has been delayed by the necessity to await finalisation of the fuel quality standards, which impacts on the choice of future technologies available to automotive manufacturers, and consequently on their fuel efficiency. This delay will not impact on the Commonwealth commitment to meet the relevant target in 2003.

Environment: Threatened Bird Species
(Question No. 3834)

Senator Brown asked the Minister for the Environment and Heritage, upon notice, on 8 August 2001:
(1) Can the Minister confirm that the proposed wind farm site at Woolnorth in north west Tasmania is situated in an area with the highest Wedge-Tailed Eagle (endangered) densities in Tasmania.

(2) Can the Minister confirm that there is no primary data regarding the pattern of landscape usage of these birds, especially, how they respond to a major change in the landscape.

(3) Can the Minister confirm that the risk assessment undertaken by the proponent does not take into account either the turbulence around the towers or blades and the possible sink effect on the species, i.e. if nesting pairs on the site are killed and a repeating cycle occurs where replacement pairs move into the vicinity and are also killed.

(4) Can the Minister confirm that no radio telemetry of the eagles has been undertaken to date and therefore, there is no baseline data upon which to estimate back ground turnover and hence changes to populations as a result of the wind farm.

(5) Can the Minister confirm that no neighbouring control area has been established to monitor the eagles; if so, will the Minister require such a control area to be established.

(6) Will the Minister require that a fixed number of at least 20 eagles be tagged for the radio telemetry study and that the number is maintained by additional tagging if birds are lost.

(7) Does the Minister agree that the only agreed approach for reducing bird mortalities is to locate wind farms in areas of low bird usage, and that this and the precautionary principle should inform his decision regarding this proposal.

(8) Is the Minister aware of the inadequacies in the monitoring regime that is being proposed to determine the level of impact on the avifauna, in particular, the concept of predator fencing and the nature of sampling for dead birds.

(9) Can the Minister confirm that the fencing of turbines to restrict predators will only protect against terrestrial predators/mammal carnivores and will not protect against corvids, currawongs, butcher-birds, ravens and eagles and hence if the turbines kill birds, the dead birds will disappear rapidly and simply checking the interior of the fence will be no indication of the bird mortality rate.

(10) (a) Does the Minister agree that fencing only a small sample of three turbines out of a possible 43 is not sufficient random sample of turbines to give any indication of mortality rates; and (b) should more turbines be fenced to better sample the whole site.

(11) Does the Minister agree that the distance from the base of the turbine to the outer perimeter of the fence should be far enough to allow for the impact of turbulence as well as for the impact of the blades.

(12) Does the Minister agree that the proposed sampling of dead birds every 4 days is inadequate given that the existing data shows that the half-life for small birds is 24 hours.

(13) With reference to the above questions, can the Minister confirm that less than half of the small birds killed over 4 days would be there after 4 days.

(14) Does the Minister agree that the monitoring regime has been designed to make certain that no dead birds are found.

Senator Hill—The answer to the honourable senator’s question is as follows:

(1) No. This species typically has a wide range, anywhere from 20-30km2 to 1200km2, it is a top-order predator, highly territorial and therefore unlikely to be found in great densities. It is due to its low population densities that this species is at risk.

(2) No, it is known that this species does not respond well to clearing of the landscape nor does it nest where human densities are high. However, there is still some conjecture over how the species will react to this type of development, hence the focus on further monitoring.

(3) Yes. Comments from the Wedge Tailed Eagle Recovery Team indicate that the assessment did not account for impacts from turbulence or sink effects. However, the risk assessment assessed the risk of bird strike with the turbines.

(4) No radio telemetry has been undertaken of eagles at the Woolnorth site. This does not indicate that there is no baseline data on eagle usage of the Woolnorth site.

(5) Adequate monitoring to protect the species is required as a condition of approval.

(6) Adequate monitoring to protect the species is required as a condition of approval.

(7) The precautionary principle has been taken into account in assessing and approving the proposal.
On 23 August 2001 I approved the taking of this action subject to strict conditions to protect listed migratory species and listed threatened species. The conditions include a requirement for the proponent to submit for my approval and implement a plan which, among other things, sets out a comprehensive monitoring regime for the Orange Bellied Parrot and the Wedge-tailed Eagle. The monitoring regime must be adequate to detect any effect the action has on listed bird species.

**Tobacco Industry**

*(Question No. 3843)*

Senator McLucas asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 21 August 2001:

(1) Has the Commonwealth Government, via either the Deputy Prime Minister, the Minister for Agriculture, Fisheries and Forestry and/or their respective offices and departments, received a submission from the Queensland Tobacco Marketing Co-operative Association Limited, titled ‘Queensland Tobacco Industry Restructuring Requirement’, after a request from the Federal Government to hire a consultant; if so: (a) when did the Commonwealth receive that submission; (b) what is the nature of the submission, and in particular what is requested of the Commonwealth by way of restructuring assistance; (c) has the Commonwealth responded to that submission; if so, what is the nature of the response; and (d) if the Commonwealth has not yet responded to that submission does it intend to do so; if so, when might that response be expected.

(2) Does the Minister acknowledge that the Queensland Government has spent over $45 million to assist in the restructuring of the Queensland tobacco industry in three separate adjustment schemes since 1987-88.

(3) Can the Minister advise how much the Commonwealth Government has spent to assist the restructuring of the Queensland tobacco industry over the same period, and can the details of that expenditure be provided in terms of financial year and specific projects.

(4) (a) How much did the Commonwealth raise by way of the excise on tobacco products in the 2000-01 financial year; (b) how much does the Commonwealth expect to raise by way of the excise on tobacco products in the 2001-02 financial year; and (c) are there any forward revenue projections in this area for the 2002-03 financial year.

(5) In view of the answer to (4), is the Commonwealth Government prepared to fund a restructuring scheme for the tobacco growing industry along the lines the Queensland Tobacco Marketing Co-operative Association Limited has proposed in its submission, from the revenue it receives from the tobacco products excise; if not, why not.

(6) With reference to a media release dated 24 July 2001, in which the Minister made the following statement, ‘Around $40 million has been provided for the tobacco industry adjustment on the Atherton Tablelands over the last 8 years…’: (a) is this Commonwealth Government or Queensland Government money that the Minister is referring to; and (b) if any part of it is Commonwealth money, can details of that expenditure be provided both in terms of financial year and specific projects.

(7) With reference to the announcement in the same media release that British American Tobacco Australia (BATA) is now prepared to offer to purchase a million kilograms of tobacco leaf from North Queensland in the 2002 season: (a) is that amount of leaf for one season only or has BATA given a commitment to purchasing that amount of leaf in subsequent seasons; (b) if the answer to (a) is that the purchase of leaf is for one season only, how does the Minister expect the industry to survive in subsequent years given previous announcements by BATA that it will cease purchasing leaf from North Queensland; and (c) what may have induced BATA to change its policy in regard to the purchase of leaf from North Queensland, given that BATA had announced on 21 June 2001 that it would not be purchasing leaf from North Queensland in future.

(8) Can the Minister advise whether there was any meeting or communication between 21 June 2001 and 24 July 2001, between either the Deputy Prime Minister, the Minister for Agriculture, Fisheries and Forestry and/or the respective officers and departments, with BATA on the matter of tobacco leaf purchases from North Queensland; if so: (a) what was the nature of that communication; and (b) was any inducement or concession offered by the Commonwealth, or any of its representatives, to BATA to change its position from that expressed on 21 June 2001; if so, what was the nature of that inducement or concession.
With regard to the offer by BATA to purchase up to one million kilograms of tobacco leaf from North Queensland: (a) is it true that this quantity, when added to the quantity already offered to the Queensland Tobacco Marketing Co-operative by the other tobacco manufacturer, Philip Morris Ltd, represents less than 35 per cent of the productive capacity of the existing tobacco growers in North Queensland; if so, can the Minister explain how any North Queensland grower is supposed to achieve viability from the growing of tobacco leaf this season; and (b) if the Minister does not agree with the 35 per cent figure quoted in (a), can he advise what he considers the actual figure to be and explain how he arrives at this figure.

With reference to the media release dated 24 July 2001, which the Minister made the statement, ‘I assure tobacco growers and their communities that the Federal Government will continue to take all necessary steps to assist those in genuine need’: (a) what ‘necessary steps’ are being contemplated; (b) how much money is involved; (c) when can a public announcement be expected which sets out details of the Government’s plans; and (d) how does the Minister define ‘those in genuine need’.

With reference to the media release dated 24 July 2001, which states that, ‘Mr Truss also noted the lack of any substantive support from State Governments for the tobacco growers during their recent difficulties’: how does the Minister reconcile this statement with the payments made by the Queensland Rural Adjustment Authority on behalf of the Queensland Government in the 2001-02 financial year to Queensland growers who participated under what are referred to as ‘Option 2’ and ‘Option 3’ of the Queensland Tobacco Assistance Package 1997.

Would an increase of 5 cents a packet per year on total tobacco consumption over 3 years satisfy the restructure amount required by the North Queensland growers based on their submission noting that the Federal Government receives 20 cents per cigarette.

Did Ministers Anderson and Truss instruct the North Queensland farmers to put in a submission to the Federal Government justifying the exit package, after negotiations between BATA, Philip Morris and the Federal Government broke down.

**Senator Alston**—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) In March, the Department of Agriculture, Fisheries and Forestry – Australia received a submission from the Queensland Tobacco Marketing Co-operative Association Ltd (QTM) entitled “Queensland Tobacco Industry Restructuring Requirements”. The submission did not follow a request from the Federal Government to hire a consultant.

(b) The submission was a 118 page document with a stated purpose to “assess the impacts of issues forcing the closure of the tobacco industry and thereby supporting the preparation of a submission for the Federal Government to consider a possible restructuring package for the tobacco growing industry”. The submission outlined several possible methods for determining what it termed “restructuring assistance” but was essentially individual “buy out” payments to growers, with total amounts ranging between $49,039,105 and $127,807,603. Based upon figures provided in the submission, a grower producing 40,000 kilograms of tobacco per year could be entitled to over $1 million.

(c) On 24 July 2001 I issued the following media release:

AFFA01/200WT
24 July 2001

Tobacco growers urged to finalise contracts

The Federal Minister for Agriculture, Warren Truss, today urged tobacco growers in Queensland and Victoria to finalise contract negotiations with manufacturers Philip Morris and British American Tobacco Australia (BATA) following offers by the companies to purchase Australian leaf in the years ahead.

Mr Truss said he was pleased that the tobacco companies had now committed themselves to continue to use Australian tobacco following earlier advice that BATA would phase out purchase of local leaf.

"In particular, I welcome BATA’s offer last week to purchase a total of 1 million kilograms of leaf from North Queensland in the 2002 season and to consider further commercial negotiations with the growers on the Atherton Tablelands.\n\n"In particular, I welcome BATA’s offer last week to purchase a total of 1 million kilograms of leaf from North Queensland in the 2002 season and to consider further commercial negotiations with the growers on the Atherton Tablelands."
"It now appears that many growers in both Queensland and Victoria will have viable contract
options with the manufacturers and I urge the tobacco cooperatives in each State to finalise
contracts as soon as possible so that farmers can make decisions about their future," he said.
The Government has undertaken extensive consultation with key stakeholders, most recently
in a meeting between Mr. Truss, the Deputy Prime Minister, John Anderson and representa-
tives of BATA and Philip Morris.
"The manufacturers provided details of their purchasing intentions and following the latest
offers, I believe there is now the potential for an ongoing viable tobacco industry in Austra-
lia," Mr Truss said.
"The contracts being offered to Victorian growers are more attractive than those in North
Queensland. As a result, there will be a need for further restructuring in the tobacco produc-
tion industry.
"Around $40 million has been provided for tobacco industry adjustment on the Atherton Ta-
bleland over the last eight years and those programs will continue to provide benefits to ex-
isting farmers for the 2002 season.
"Where tobacco farmers choose to leave farming, counselling, retraining assistance, welfare
support and exit payments will be available under the Federal Government’s Farm Help —
Supporting Farmers Through Change Program."
Mr Truss said, the Federal Government is confident that the Atherton tableland region has
the potential for economic growth and is looking at ways to provide support to achieve this.
The Government will be discussing with the community ways in which it can best assist the
region to realise these opportunities.
"The Federal Government will continue to do all that it can to protect the infrastructure of
local communities and regions and to develop new industries," said Mr Truss.
Mr. Truss also noted the lack of any substantive support from state governments for the to-
bacco growers during their recent difficulties.
"It surprises me that there have been no offers of assistance for growers from the states, par-
ticularly the Queensland Government.
"I assure tobacco growers and their communities that the Federal Government will continue
to take all necessary steps to assist those in genuine need.
"Meanwhile, I urge the growers cooperatives to conclude negotiations with the manufactur-
ers so that farmers can be aware of their options."
Tobacco growing in Australia is a comparatively small industry, concentrated in the Myrtle-
ford area in Victoria and the Mareeba region in North Queensland, with a few growers in
South Queensland.
There are approximately 286 tobacco growers in Australia who last season produced ap-
proximately 7 million kilograms of tobacco.
Mr Truss paid tribute to the tobacco industry leadership for the tenacious way in which they
had worked to deliver the best possible outcome.
Remzi Mulla and Angi Rigoni have been a tower of strength to the tobacco industry and are
to be congratulated for their efforts on behalf of tobacco growers.

I also indicated to Mr Angie Rigoni (chairman of the Tobacco Cooperative of Victoria) and Mr
Remzi Mulla (chairman of QTM) that the Government would not be offering tobacco growers a
‘buy out’ package.
(d) See previous answer.

(2) Yes.
(3) The Queensland tobacco industry has always been the responsibility of the Queensland Govern-
ment, as evidenced by its previous actions. The Commonwealth has therefore not provided direct
funds to individual growers on the basis of their participation in tobacco growing. The Govern-
ment has however supported regional adjustment programs on the Atherton Tableland.
(4) (a) Calculating excise revenue is not within my portfolio responsibilities. I note that Budget Paper No.1, 2000-2001 (at page 5-15) estimated $4,610 million would be raised through excise on tobacco products in the 2000-2001 financial year.

(b) Budget Paper No.1, 2001-2002 (at page 5-15) estimates $4,605 million will be raised through excise on tobacco products in the 2001-2002 financial year.

(c) Forward revenue projections are not within my portfolio responsibilities.

(5) See the media release quoted in the answer to Question (1) (c) and the answer provided to Question (3).

(6) (a) Queensland Government money.

(b) See previous answer.

(7) (a) See the media release quoted in the answer to Question (1) (c).

(b) See the media release quoted in the answer to Question (1) (c).

(c) I am unaware of any inducements to BATA to change its policy.

(8) (a) The Government held ongoing discussions with all relevant parties, including the tobacco manufacturers, throughout its deliberation of this issue. This included discussions with BATA between 21 June 2001 and 24 July 2001.

(b) All purchasing decisions made by the manufacturers are commercial matters, and the Government did not offer any inducement or concession to BATA to change its position. Consistent with its decision not to offer a ‘buy out’ package to tobacco growers, the Government did confirm to BATA that it would not impose any new or additional tobacco excise increases for the purposes of tobacco industry adjustment.

(9) (a) The exact amount of tobacco grown for the upcoming season, as a percentage of the productive capacity of existing tobacco growers, will depend upon the outcome of commercial negotiations between the growers and the manufacturers. I note that a total crop of approximately two million kilograms would represent a reduction of approximately one third on last season’s crop. I have acknowledged that there may be a need for further structural adjustment of the tobacco growing industry in North Queensland, once negotiations between the growers and the manufacturers have concluded.

(b) See previous answer.

(10) (a) As mentioned in my media release of 24 July 2001, Commonwealth programs such as Farm Help may be available to those who choose to leave tobacco farming.

(b) Farm Help has various components, including income support, re-establishment grants, retraining assistance, and financial advice (subject to income and off-farm assets tests).

(c) Further details on Farm Help and the Commonwealth’s other assistance programs for primary producers can be found at www.affa.gov.au.

(d) To be eligible for assistance under Farm Help, an applicant must be a farmer when applying (and have been so for a continuous period of at least two years beforehand), must be unable to borrow further against their assets (and will need to provide a letter from their bank confirming this), and must still be in control of their farm. Income and off-farm assets tests are applied to determine the level of assistance.

(11) The Queensland Government has not addressed the recent difficulties experienced by the Queensland tobacco growers or provided any constructive input into the Commonwealth’s deliberations on this issue. The payments made in the 2001-2002 financial year to Queensland growers are the final instalments of a scheme that was implemented five years ago, and are not related to the recent difficulties. The Queensland Minister for Primary Industries and Rural Communities, the Hon Henry Palaszczuk MP, has made numerous unhelpful statements on this issue (in the media and to tobacco growers) and his Government has ignored the recent difficulties and sought to distance itself from what has traditionally been a state issue.

(12) Estimates of revenue earned from theoretical excise increases are not within my portfolio responsibilities.
The Commonwealth indicated that it would consider a submission from the tobacco growing industry. The tobacco growing industry chose to provide two submissions, one from Victoria and the other from Queensland.

**Job Network**

(Question No. 3844)


Senator Alston—The Minister for Employment Services has provided the following answers to the honourable senator’s questions:

**Q1.** (a) What are the other emerging practices which have raised concerns during the course of this inquiry (as mentioned in paragraph 38); (b) how prevalent are such practices; and (c) why did the report not address this issue.

A1. (a) and (b) As stated in paragraph 38 of the report “The Enquiry has contributed to the separate policy review established by the Secretary since this Enquiry commenced.” The Job Matching Policy Review 24 July 2001 discloses the outcomes.

(c) Paragraph 38 indicates the Report did address the issue. It was addressed by contributing to the separate policy review established by the Secretary since this Enquiry commenced.

**Q2.** Further to paragraph 5, has IPA Personnel Pty Ltd or Drake Employment Services Pty Ltd been applying strategies which are ‘inappropriate under ESC2’ or which ‘appear to meet the letter but not the spirit of ESC2’ (Paragraph 12); if so, why were these not investigated and outlined as with Leonie Green and Associates.

A2. Paragraph 5 of the Report states: “Unlike in the LGA matters, the Department’s internal monitoring by Contract Managers and ICUs has not identified any information raising concerns about use of their LHCs for placements outside contract conditions. No evidence emerged during the Enquiry that suggested any breach of the contractual obligations of IPA Personnel Pty Ltd and Drake Employment Services Pty Ltd.”

**Q3.** (a) When did concerns regarding Employment Plus, Whyalla, first come to the department’s attention; (b) what action was taken; (c) was EmploymentPlus applying strategies, other than those publicised in the Advertiser of 6 August 2001, regarding claims for people employed without assistance from Employment Plus, which are ‘inappropriate under ESC2’ or which ‘appear to meet the letter but not the spirit of ESC2’ (eg. when clients find their own jobs, incentives are offered to employers and job seekers for information so as to lodge dummy vacancies on the national database network and fill them, and inflated cost of training provided through a related labour hire firm); and (d) will the Employment Plus star rating need re-evaluation.

A3. (a) Concerns relating to some Job Matching claims made by Employment Plus, Whyalla, first came to the attention of the Department through our normal contract monitoring processes in October 2000.

(b) The Department commenced inquiries, including an examination of claims made, to determine the facts. The Department’s Investigation and Compliance Unit in South Australia followed up the matter with job seekers and employers. Employment Plus were notified of our concerns and have been undertaking their own investigation in cooperation with the Department. They suspended the manager of their Whyalla/Port Lincoln sites and one other staff member and appointed a senior member of staff from their Melbourne Head Office to investigate. Subsequently a third member of staff was suspended. The manager and one staff member who were suspended have subsequently resigned.

The investigation is continuing and if sufficient admissible evidence is found the matter will be referred to the Commonwealth Director of Public Prosecutions (DPP).

(c) The matters being investigated are the actions of individual employees of Employment Plus and not strategies adopted or condoned by Employment Plus.
(d) All Star Ratings are regularly re-evaluated: each re-evaluation takes into account disallowed claims.

Q4. Have any inappropriate strategies spread through regional South Australia.
A4. No.

Q5. Do the policy revisions ruling out the use of the resulting job matching outcome fee to fund a few days work experience for an Intensive Assistance client relate to the IPA Personnel Pty Ltd strategy raised in estimates.
A5. General Contract Variation No.4 of the Clause 3.6 of Part B of the Employment Services Contract 2000-2003 is varied by inserting: (p) work experience whether paid or unpaid.

Q6. (a) How many Job Network members have been identified regarding concerns with ‘job splitting’; and (b) how will ‘job splitting’ be defined.
A6. (a) None.
   (b) ‘Job Splitting’ means the design of a job vacancy purposely to create short duration vacancies which increase or maximise Job Matching Outcomes but which are not related to the time constraints of the employer or do not consider job seeker needs.

Q7. How many Job Network members have been claiming job matching outcome fees for filling vacancies in their own offices.
A7. Data has not been recorded relating to this. The Employment Services Contract 2000-2003 did not preclude this practice.

Q8. What was the process for the development of the job matching policy revisions.
A8. Usual policy development practices were followed. This included consultation with the appropriate programme managers and, on this occasion, the National Employment Services Association (NESA) and was informed by the Enquiry.

Q9. Why is there no person from outside the department included in the new ‘independent’ Fraud and Compliance Committee.
A9. and A10. The question of identifying a person with the necessary experience and qualifications but without any conflict of interest is under consideration.

Q10. How many complaints relating to Leonie Green and Associates’ placement strategies have been lodged with the department since the start of 2001.
A11. This information was previously provided in response to question W126. In the period 1 January 2001 to 30 June 2001, there were 171 complaints recorded in the SEMORE/JQIS database about Leonie Green & Associates Pty Limited covering 61 out of 69 sites. Of these 105 were ‘service quality issues’ 19 were ‘policy issues’ and 23 were ‘vacancy issues’. The remainder were about miscellaneous issues.

Q12. Did the Leonie Green and Associates job outcome spike in February cause any review of the situation by the department; if so, what actions were taken; if not, why not.
A12. Paragraph 32 of the Report details the events surrounding the ALH placements and the actions taken.

Q13. When did the department first become aware of the letter of 10 May 2001, from the Leonie Green and Associates Lilydale office, that stated that job seekers would never be ‘offered an opportunity again where you are paid to look for employment’.
A13. Paragraph 32 (xii) of the Report states: “On 22 May 2001 Centrelink raised concerns with the Victoria State Office about the letter sent on 10 May 2001 to job seekers by the Lilydale office of LGA”

Q14. What action does the department take when it believes that a Job Network member’s records that relate to a claimed job matching fee lack accuracy.
A14. The Department undertakes a range of activities to determine the accuracy of the records and investigates the reason for any inaccuracies.
Q15. How and why can a Job Network member bring forward its placement capacity (as claimed in the report where Leonie Green and Associates asked if it could bring forward 50 job matching places of their contracted capacity in the central and northern Queensland regions on 8 February 2001).

A15. There are six Milestone Periods of six calendar months each for the second Employment Services Contract (the Contract). For Job Matching, Job Network members (JNMs) are set a “target” for each Milestone Period of the Contract. At any time, JNMs may ask the Department to consider requests to vary their contracted numbers. When approved, these requests are usually facilitated by “bringing forward” places from the JNMs’ future Milestones. Clause 3.1 of Part B of the Contract states “…If the Provider considers that the Contracted Number for the Milestone Period is too low, the Provider shall negotiate a review of that number with the Contract Manager.”

Q16. Do all Job Network members have a contracted capacity and the ability to bring placements forward.

A16. Intensive Assistance (IA) and Job Search Training (JST) providers have a “Contracted Capacity” attached to their services.

For JST, “Contracted Capacity” means the maximum number of Eligible Job Seekers to whom the JNM may, at any point in time, provide JST services.

For IA, “Contracted Capacity” means the number of Eligible Job Seekers that the JNM can assist in a Region, Employment Service Area or site at a single point in time.

There is no “Contracted Capacity” attached to Job Matching. However, Job Matching providers do have a “Contracted Number”, which means the maximum number of eligible job seekers the provider may place into job vacancies and receive a Job Matching fee.

All JNMs may lodge a request to bring forward Job Matching places at any time.

Q17. Can the bringing forward of a Job Network member’s placement capacity affect a member’s star rating by bolstering their position around a milestone.

A17. No.

Q18. (a) Did the department approve the advance placements requested by Leonie Green and Associates on 8 February 2001; and (b) have any other such requests been considered; if so, can details be provided.

A18. (a) The Department approved the bringing forward of 50 places in the Townsville Employment Service Area (ESA), Central and Northern Queensland Region, as requested by LGA on 8 February 2001.

(b) The Department also approved other requests for the bringing forward of Job Matching places by LGA as detailed below:

<table>
<thead>
<tr>
<th>Date of Request</th>
<th>Employment Services Area (ESA)</th>
<th>Region</th>
<th>Date approved</th>
<th>Number of places</th>
</tr>
</thead>
<tbody>
<tr>
<td>30 Apr 01</td>
<td>South West Brisbane</td>
<td>Brisbane</td>
<td>4 May 01</td>
<td>100</td>
</tr>
<tr>
<td>28 May 01</td>
<td>East</td>
<td>Melbourne</td>
<td>6 Jul 01</td>
<td>30</td>
</tr>
<tr>
<td>3 Jul 01</td>
<td>Inner East</td>
<td>Melbourne</td>
<td>6 Jul 01</td>
<td>40</td>
</tr>
<tr>
<td>13 Jul 01</td>
<td>Townsville</td>
<td>Central and Northern Queensland</td>
<td>17 Jul 01</td>
<td>30</td>
</tr>
</tbody>
</table>

Q19. Has the department now determined what were the main reasons for the blockage to the flow of relevant information to senior management in the Job Network Group, despite continued input from external sources (as mentioned in paragraph 32 (ix)).

A19. Paragraphs 33 and 34 of the Report detail the actions taken in relation to the concerns mentioned in paragraph 32 (ix).

Q20. Why does the report ignore the internal e-mail communication raised in estimates, in which a departmental officer seeks to rationalise as appropriate the Leonie Green and Associates letter dated 10 May 2001 forwarded by Centrelink (paragraph 35).

A20. The Report does not ignore the internal e-mail communications. Paragraph 35 states: “The letter dated 10 May 2001 should not have been sent, as LGA management has acknowledged. The De-
partmental staff to whose attention the letter dated 10 May 2001 came either did not read it, or did not comprehend its import, as it disclosed a practice clearly prohibited by ESC2. Centrelink, having properly raised its concerns, should have been informed accordingly. In this instance those Departmental staff did not seek any advice or guidance within the State Office or from National Office, so even local management remained unaware of the matter until it was raised at Senate Estimates."

Q21. What policy settings, code of conduct clauses and ESC2 conditions are to be reviewed as a result of this inquiry.

A21. The Enquiry contributed to the separate policy review established by the Secretary. The Job Matching Policy Review 24 July 2001 details the issues reviewed.

Q22. Since the introduction of the Job Network’s star rating system, what changes have occurred in the criteria which forms the basis of the rating system.

A22. There have been no changes to the criteria that form the basis of the rating system. All criteria for Job Matching, Job Search Training (JST) and Intensive Assistance (IA) were identified both in the earliest development of the performance ratings method and in the information sessions conducted for JN members in April 2001. In the case of the longer term employment outcomes identified as criteria for IA and JST, data have only recently become available for all JN members allowing for future incorporation of these outcomes in formal performance assessment.

For IA, future ratings will account for final outcomes which reflect employment of a minimum 26 weeks duration or completion of two semesters education or training. Final outcomes do not replace shorter term performance measures such as interim outcomes - 13 weeks employment or completion of a semesters education/training – that serve as a criterion relating to specific disadvantaged job seeker groups and IA participants in general.

For JST, future ratings will account for JST outcomes which are achieved when a participant is employed for minimum of 13 weeks. These outcomes are additional to the shorter term job placements and the reductions in participants’ dependence on income support that are also JST performance criteria.

Along with up-dated ratings for other services future releases will, for the first time, include ratings for current New Enterprise Incentive Scheme (NEIS) providers. Outcomes data for NEIS participants who are assisted for a full 12 months have not previously been available.

Mining: Ok Tedi Mine
(Question No. 3855)

Senator Bourne asked the Minister representing the Minister for Foreign Affairs, upon notice, on 27 August:

With reference to the announcement that BHP is expected to quit Ok Tedi:

(1) Is the Minister aware that BHP has still evidently not made any commitment to cleaning up, rehabilitation, restoration or repairing the damage created by the Ok Tedi mine?

(2) Does the Minister realise that if the Ok Tedi mine was located within Australia, rather than in Papua New Guinea, BHP would be liable for cleaning up, rehabilitation, restoration and repairing the damage caused to the environment, including to farming lands and fisheries?

(3) Does the Minister agree that it is time for all Australian companies that operate overseas to be bound by Australian law for environmental, human rights, industrial and other protections, and does he further agree that enforcing such legal obligations not only promotes Australian international reputation but will also set new international standards which have positive long-term outcomes.

Senator Hill—The Minister for Foreign Affairs has provided the following answer to the honourable senator’s question:

(1) BHP and the PNG government are currently negotiating the terms of BHP’s exit from the Ok Tedi mine. Until these negotiations are complete I am not in a position to comment on the commitment BHP may or may not have accepted with regard to the cleaning up, rehabilitation, restoration or repairing of the damage created by the mine.

(2) and (3) The Government expects Australian companies to employ best practice environmental management wherever in the world they operate.
Television Captioning Standards
(Question No. 3860)

Senator Harris asked the Minister for Communications, Information Technology and the Arts, upon notice, on 29 August 2001:
(1) Did the Government pass a resolution that people with hearing difficulties should be able to receive television programs with captions Australia-wide.
(2) Does the Government recognise that people with reading difficulties also need the same consideration as the hearing impaired.
(3) Will the Government give people with reading difficulties the same consideration given to those with hearing difficulties.
(4) What is the Government’s position on people with reading difficulties.

Senator Alston—The answer to the honourable senator’s question is as follows:
(1) Regulations made under the Broadcasting Services Act 1992 (BSA) determine standards to be observed by commercial television licensees and the national broadcasters in relation to the captioning of television programs for the deaf and hearing impaired. The captioning standards require holders of commercial television broadcasting licences and national broadcasters to caption television programs transmitted during prime viewing hours (6pm to 10.30pm) and television news programs and television current affairs programs transmitted at any time. There are limited exceptions to these requirements: for example, programs or parts of programs in a language other than English; and programs or parts of programs providing music without English words and incidental or background music; and “unscripted” material (such as interviewee grabs and live interviews or crosses) in regional news programs.

The standards apply to commercial and national broadcasting services from the date at which their respective services commence broadcasting in the digital mode, which commenced in metropolitan areas from 1 January 2001 and in regional areas will occur progressively prior to 31 December 2003. The standards apply to both digital and analog transmissions.
(2), (3) and (4) In January 1999 the Department of Communications, Information Technology and the Arts released an issues paper, Review of Captioning Standards, inviting comment on issues associated with the review of the captioning requirements of the Broadcasting Services Act 1992 (BSA). The issues paper also raised the question of access to television programs for persons with vision impairment.

While there was significant community interest at the time in captioning, there was a very limited response to the issues related to vision impairment. The captioning standards have imposed significant new practical and financial requirements on television broadcasters and the Government considers that it is appropriate to allow the broadcasters some time to adjust to those new requirements before considering any further obligations.

It is expected that the adoption of digital technologies will improve the capacity of television receivers to address the special needs of different groups in the community.

Australian Broadcasting Corporation: Carnarvon, Western Australia
(Question No. 3873)

Senator Bourne asked the Minister for Communications, Information Technology and the Arts, upon notice, on 6 September 2001:
With reference to the rollout of radio services to regional and remote areas by the Australian Broadcasting Corporation (ABC):
(1) What plans does the ABC have, if any, for providing the remote community of Carnarvon, Western Australia, with the Triple J radio service.
(2) Is the Minister aware that the local community has raised up to $5 000 to meet the costs associated with the installation of a transmission facility.
(3) Can the Minister provide additional details of any government funding programs which the Carnarvon community might apply to obtain the remainder of the funds required to install a transmission facility (the total estimated at $10 000).
Can the Minister advise whether the collection of any or all of the costs associated with the installation of the transmitter will guarantee that Carnarvon will be provided with the ABC’s Triple J radio service.

Senator Alston—The answer to the honourable senator’s question is as follows:

(1) The ABC has advised that it has no current plans to extend the Triple J network to Carnarvon.

(2) No. In July 2001 the Office of the Hon Dr David Kemp MP did, however, forward a representation the Minister had received from the Triple J 4 Carnarvon Group (WA) seeking funding assistance to establish a Triple J self-help retransmission service. That representation gave no indication that the community had raised any funds towards the establishment of the service.

(3) There are currently no Government programs available that would offer financial assistance towards the establishment of a Triple J self-help service by Carnarvon or any other Australian community. I understand that the Department of Communications, Information Technology and the Arts has already conveyed this information to the Triple J 4 Carnarvon Group (WA), along with some suggestions on how it could seek to minimise its establishment costs.

In relation to ongoing costs, the Department has advised the Group that communities that are able to locate their self-help equipment on National Transmission Network (NTN) sites may be eligible to pay subsidised site access rates for a period of 10 years under the Regional Communications Partnership’s Self-help Subsidy Scheme.

The $10 million Scheme has been jointly established by the Commonwealth and ntel – the owner of the NTN. (The Commonwealth’s $5 million contribution was sourced from the Television Fund established with proceeds from the second sale of Telstra shares.) In relation to the retransmission of national broadcasting services, such as ABC Triple J radio, groups would be charged a fixed rate of $250 per annum plus GST.

As ntel is responsible for administering this Scheme, self-help groups seeking subsidised access to NTN sites should contact ntel in the first instance. All enquiries should be directed to ntel’s Facility Leasing and Property Manager (tel: 02 6256 8075 / fax: 02 6256 8041)

(4) There should be no impediment to the Carnarvon community establishing a Triple J self-help service provided the Australian Broadcasting Authority is able to identify a suitable frequency and sufficient funds are raised (or committed) to meet all of the establishment and ongoing operations and maintenance costs for the new service.
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