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SITTING DAYS—2002

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

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- **PERTH**: 585 AM
- **HOBART**: 729 AM
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SENATE CONTENTS

WEDNESDAY, 20 MARCH

Migration Legislation Amendment (Transitional Movement) Bill 2002—
  First Reading ................................................................. 1031
  Second Reading ............................................................. 1031

Business—
  Rearrangement ............................................................... 1032

Winter Olympic and Paralympic Games ..................................................... 1037

Business—
  Consideration of Legislation ................................................... 1037

Business—
  Consideration of Legislation ................................................... 1045

States Grants (Primary and Secondary Education Assistance) Amendment
  Bill 2002—
  Second Reading ............................................................. 1049
  In Committee ................................................................. 1053

Matters of Public Interest—
  Zimbabwe ................................................................. 1067
  Attorney-General: Address to Senior Officers ............................ 1070
  Homosexual Legal Rights .................................................. 1073
  Telstra: Telecommunications Infrastructure ................................ 1076
  Superannuation: Quarterly Payments ........................................ 1078

Questions Without Notice—
  Privilege: Senator Heffernan .............................................. 1081
  Economy: Growth ........................................................... 1082
  Privilege: Senator Heffernan .............................................. 1082
  Car Industry ................................................................. 1083
  Privacy: Senator Heffernan .............................................. 1084
  Zimbabwe ................................................................. 1085
  Privilege: Senator Heffernan .............................................. 1086
  Taxation: Forest Plantation Industry ...................................... 1087
  Privilege: Senator Heffernan .............................................. 1087
  Social Security: Compliance .............................................. 1088
  Privilege: Senator Heffernan .............................................. 1089
  Stuart Shale Oil Project .................................................... 1090
  Privilege: Senator Heffernan .............................................. 1091
  Telecommunications: Media Services ...................................... 1092
  Health: Program Funding ................................................ 1093

Answers to Questions on Notice—
  Questions Nos 105, 107 and 115 ........................................... 1093

Questions Without Notice: Additional Answers—
  Telstra: Services and Sponsorship ....................................... 1094

Questions Without Notice: Take Note of Answers—
  Privilege: Senator Heffernan .............................................. 1094
  Taxation: Forest Plantation Industry ...................................... 1099

Petitions—
  Health: MRI Machine, Princess Margaret Hospital .................. 1100

Notices—
  Presentation ................................................................. 1100
Committees—
Selection of Bills Committee—Report .......................................................... 1102
Business—
Rearrangement ................................................................................................ 1111
Notices—
Postponement ................................................................................................. 1111
Committees—
Economics References Committee—Reference ............................................. 1111
Senate: Dress Code .............................................................................................. 1111
Human Rights: China .......................................................................................... 1112
Committees—
Privileges Committee—Reference ................................................................... 1112
Health: MRI Machine, Princess Margaret Hospital .......................................... 1112
Health: Nuclear Testing ...................................................................................... 1112
Health: Mental Illness ......................................................................................... 1113
Family Court: Property Issues—
Suspension of Standing Orders ....................................................................... 1113
Committees—
Community Affairs References Committee—Meeting ..................................... 1116
Employment, Workplace Relations and Education References Committee—
Reference ........................................................................................................... 1116
Scrutiny of Bills Committee—Report ............................................................... 1117
Delegation Reports—
Official Visits to the Assembly of the Republic, Portugal, and the Senate, Spain .............................................................................................................. 1117
Parliamentary Zone—
Proposal for Works .......................................................................................... 1117
Delegation Reports—
Parliamentary Delegation to the 47th Commonwealth Parliamentary Conference.............................................................................................................. 1117
Committees—
Membership ..................................................................................................... 1117
Health: Nuclear Testing—
Return to Order ............................................................................................. 1117
Notices—
Withdrawal ....................................................................................................... 1118
States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002—
In Committee .................................................................................................... 1118
First Speech ........................................................................................................ 1123
Committees—
Economics Legislation Committee—Report .................................................... 1127
States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002—
In Committee .................................................................................................... 1127
Third Reading ..................................................................................................... 1140
Taxation Laws Amendment (Baby Bonus) Bill 2002, Therapeutic Goods Amendment Bill (No. 1) 2002, Therapeutic Goods (Charges) Amendment Bill 2002,
Therapeutic Goods Amendment (Medical Devices) Bill 2002 and Taxation Laws Amendment Bill (No. 1) 2002—
First Reading ........................................................................................................... 1140
Second Reading ....................................................................................................... 1140
Business—
Rearrangement ........................................................................................................ 1144
Disability Services Amendment (Improved Quality Assurance) Bill 2002—
Second Reading ....................................................................................................... 1144
In Committee ........................................................................................................... 1145
Third Reading .......................................................................................................... 1146
Migration Legislation Amendment (Transitional Movement) Bill 2002—
Second Reading ....................................................................................................... 1146
In Committee ........................................................................................................... 1156
Third Reading .......................................................................................................... 1184
Adjournment—
Zimbabwe ............................................................................................................... 1185
Telstra: Services ..................................................................................................... 1186
Ah Toy, Lily ............................................................................................................ 1189
Brown, George ....................................................................................................... 1189
Documents—
Tabling ..................................................................................................................... 1191
Indexed Lists of Files .............................................................................................. 1191
Departmental and Agency Contracts ................................................................. 1191
Questions on Notice—
Minister for Agriculture, Fisheries and Forestry: Visit to the United States of America—(Question No. 12) .................................................................................. 1192
United States Farm Bill—(Question No. 14) ........................................................... 1193
Department of Health and Ageing: Freedom of Information Request—
(Question No. 90) .................................................................................................... 1193
The PRESIDENT (Senator the Hon. Margaret Reid) took the chair at 9.30 a.m., and read prayers.

MIGRATION LEGISLATION AMENDMENT (TRANSITIONAL MOVEMENT) BILL 2002

First Reading

Bill received from the House of Representatives.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.31 a.m.)—

I move:

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

Question agreed to.

Bill read a first time.

Second Reading

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.31 a.m.)—

I table a revised explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill amends the Migration Act 1958 to allow for certain non-citizens to be brought to Australia temporarily.

In September 2001, the parliament passed amendments to the Migration Act to provide a stronger statutory basis for the government’s strategy to stop persons seeking to enter Australia unlawfully by boat. The government’s actions and those amendments were in response to an increase in people smuggling activities, which led to larger numbers of persons using vessels to seek to enter Australia unlawfully.

That legislation gave support to the government’s intention that unauthorised boat arrivals should not be allowed to reach the Australian mainland.

The amendments provided power for unauthorised boat arrivals to be taken to ‘declared countries’, where their claims, if any, to asylum could be assessed.

The government’s strategy is starting to have results. There have been no boats attempting to breach our immigration controls for several months. Recent media reports indicate that people smuggling activity appears to have declined.

The government is also working with other countries to discourage people smuggling. The recent conference in Bali is a strong positive indication of the commitment of countries in our region to tackle people smuggling.

While continuing to be vigilant, the government recognises there are some situations where it may be necessary to bring to Australia some persons who have been taken to a declared country.

This bill proposes amendments which will allow such a person, called a “transitory person”, to be brought to Australia from one of the declared countries in exceptional circumstances.

The government will not be bringing persons who have been assessed as being refugees according to UNHCR guidelines to Australia under the provisions proposed by this bill.

The exceptional circumstances where a transitory person may be brought to Australia include:

- Situations where a person has a medical condition which cannot be adequately treated in the place where the person has been taken;
- Transit through Australia for, either return to their country of residence, or to a third country for resettlement; and
- Transfers to Australia in order to give evidence as a witness in a criminal trial, such as people smuggling prosecutions.

In order to maintain the integrity of Australia’s border controls it is necessary to ensure that the transitory person’s presence in Australia is as short as possible, and that action cannot be taken to delay that person’s removal from Australia.

The amendments proposed by the bill will ensure that these persons cannot apply for any visa and, thus, use our processes to delay their transit through Australia. Details of the measures are set out in the explanatory memorandum for the bill.

In order to ensure that our international obligations are met, there is a non-compellable power for the minister to allow a person to make an application for a specified class of visa. Where this power is exercised the minister must report to the parliament. Proposed sub-section 46b(5) requires that report to exclude information that could identify the person and thus protect their privacy. This provision is consistent with all other non-compellable powers in the migration act.
Finally, should a person be brought to Australia prior to completion of their refugee assessment process, the government will ensure that the refugee assessment process will be completed in a like manner to those remaining in offshore places. I commend the bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned to the first sitting day of the next period of sittings, in accordance with standing order 111.

BUSINESS

Rearrangement

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.32 a.m.)—At the request of the Manager of Government Business, Senator Ian Campbell, I move:

That on Wednesday, 20 March 2002:

(a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to midnight;

(b) the routine of business from 7.30 pm to 11.20 pm shall be government business only; and

(c) the question for the adjournment of the Senate shall be proposed at 11.20 pm.

Senator BARTLETT (Queensland) (9.32 a.m.)—I would like to speak to this motion. It is important to be clear what is actually being proposed here. The government is seeking to extend sitting hours tonight, on a Wednesday, beyond our normal 7.20 pm finishing time—to go through to midnight, with the adjournment starting at 11.20 pm. The Democrats have already expressed a number of times our disappointment at the fact that this government has put forward so few sitting days for the parliament, and for the Senate in particular. We have the smallest number of sitting days in a non-election year for about 40 years.

From the Democrats’ point of view, given the increasing workload that the Senate has in its primary role of assessing legislation—not to mention delegated legislation: regulations and the like—to be required to assess so many pieces of legislation in such a small number of sitting days is almost guaranteeing inadequate examination of very important issues. Whilst I will not expand on it in this debate, there is a bill in relation to migration issues that is obviously part of the government’s agenda for these extended hours. The bill is very significant, it has only just appeared, and the government is trying to railroad it through this week. These extensions of sitting hours at virtually no notice are basically a mechanism for trying to railroad legislation through without adequate scrutiny.

Some of the bills and issues that we will be considering have been around for a while through the previous parliament, and to that extent there may be an argument for debating them and passing them reasonably quickly. But it is a great breaching of the Senate’s responsibilities if we enable significant new pieces of legislation that have only just appeared to be debated at very short notice without proper scrutiny. It is very poor practice for the Senate to be agreeing to extend sitting hours through to midnight—solely because the government will not provide enough sitting days for us to consider legislation.

Instead of having a proper examination of the issues, we are basically having legislation by exhaustion, through until midnight, night after night. The government is trying to push through bills that have not been around for a sufficient length of time for proper consideration. It makes it impossible for there to be adequate time lines for committees to inquire into bills. Either we examine them, consider them and report this week or we put them off for nearly two months. As the Senate would be aware, but others may not, after this week we are not back here until 14 May, and then only for three sitting days. Then we are not back again until the second last week of June. It is a ridiculous scenario. There is an inadequate time line and an inadequate number of sitting days to properly consider legislation.

Let the Democrats emphasise that it is not just a matter of us as legislators having adequate time to consider legislation; it is a matter of whether the public as a whole have the opportunity to be aware of what is going on and to provide their input into significant pieces of legislation. The ability for this government to put through matters before the
public are even aware that they are up for debate, let alone aware that they have been debated and passed, is greatly increased every time the Senate agrees to motions like these, which allow bills to be debated, considered and passed in the late hours, night after night, particularly when legislation is being introduced at very short notice.

From the Democrats’ point of view, it is a combination of poor legislative practice plus poor accountability and poor transparency from the public point of view. The Democrats believe that this is an inappropriate motion and an inappropriate practice for us to be getting into. The Democrats would prefer motions to increase the number of sitting days. If we could have a sitting week or an extra couple of sitting weeks in April, that would be a much more responsible way of dealing with these issues and would be much less likely to impugn the reputation of parliament by rushing through significant matters without proper consideration and without the opportunity for public awareness in relation to them.

So it is a motion the Democrats are strongly opposed to. We do not think it is a desirable way to operate. I indicate that we would be supportive if the government were to move for extra sitting weeks to do this properly rather than have midnight sittings at very short notice. That would be the preferred way to go. But to simply have a government putting up the smallest number of sitting days in a non-election year for decades and then forcing us to extend to midnight night after night because they do not have enough time to get their legislation considered is just shoddy practice. It is very poor.

I should emphasise that this is not a matter of trying to delay legislation inappropriately. I do recognise and acknowledge the comments that Senator Ian Campbell has made from time to time about the difficulty of the timetable and the difficulty of the government getting through its business. I believe that, so far, the Democrats’ responsibility cannot be challenged in relation to the consideration of legislation. Even when we have been opposed to particular bills, we have not inappropriately or irresponsibly chewed up government business time just for the sake of it. We obviously will use what mechanisms we have available to us to get proper scrutiny of legislation, but we are sympathetic to the fact that there is a lot of legislation that the government and Senator Campbell in particular have the responsibility of trying to get through in the time available. We are sympathetic to trying to use that time responsibly and getting a balance between adequate consideration and adequate debate and actually getting through the business. I believe we have been responsible in relation to that, but if this is going to be a common approach—providing inadequate time and then extending the hours at short notice and having midnight sittings—it gets harder to be cooperative. From the Democrats’ point of view, it appears the government is acting in less than good faith if it provides inadequate sitting days and then just tries to extend the sitting hours to compensate, particularly when it uses that to try to get through legislation that has not had proper scrutiny—legislation that it introduces one week and it tries to have it passed through the whole parliament the next week. The arguments then put forward by people such as the Manager of Government Business have less substance. I am very sympathetic to the arguments he puts but only when the government actually acts responsibly from its side of the bargain. If it is going to try to railroad legislation through without proper scrutiny, it is much less appropriate for the Democrats and other senators to cooperate with that agenda.

I emphasise that the Democrats will be cooperative in trying to ensure that the government business is got through in a reasonable time, but we will not be supportive of processes that prevent proper scrutiny of important legislation or that enable railroading of important legislation through parliament in the dead of night without proper transparency and accountability. We are willing to be cooperative and responsible where possible but, as everyone says, these are issues that apply from all sides. We have already seen one example in this sitting fortnight of an attempt to try to slip a bill through without adequate committee examination. We will probably be revisiting that later today. The more that happens the harder it is for the
Democrats, and I think all of us, to be cooperative in this approach. Despite the fact that we oppose this, as an indication that we are not being unreasonable and chewing up time, I will not continue my remarks now, I will not speak for my full time, but I think it is important to highlight what is happening here and the dangerous consequences that are occurring. This is an important chamber. It is the last—

Senator Conroy—Bastion.

Senator Bartlett—bastion—thank you; I was going to use another word but that will do—the final hurdle, if you like, that stops complete power for the executive. If we allow this chamber to not operate in an effective way, then we are just rolling over and letting the executive get complete power, and that would be an abrogation of our responsibility and a weakening of the fundamental underpinnings of our entire system of democracy. So it is a serious matter and one that we need to note when motions like this are moved. I am assuming the government would not be moving this if they did not have support, so it will not surprise me when it gets through. But I do think that the concerns that the Democrats have on a broader process base need to be made, because I think it is a serious issue.

Senator CONROY (Victoria) (9.42 a.m.)—At the outset, I indicate that the opposition will support the government’s motion, but we do so with a great deal of misgiving. Senator Bartlett has outlined many of the reasons why this is an unsatisfactory set of circumstances. We have a situation where, since the election, parliament will have sat for a grand total of four weeks, yet we are now being asked to not sit again for seven weeks—until the time of the budget. At some point you have to say that this government is beginning to believe its own rhetoric. It is beginning to believe that just because it won an election it does not have to face scrutiny, it does not have to face accountability. If we have a continuation of this practice—and I can only agree with you, Senator Bartlett—we will be faced with a fundamental corrupting of the parliamentary process. We are having less and less opportunity to scrutinise the executive. I can understand why this government does not want any scrutiny of its behaviour, of its conduct, because we have seen a fundamental undermining in the recent six months of institutions such as the Defence Force. We have seen the humiliation that Admiral Barrie was forced to go through, the humiliation that this government has just subjected Justice Kirby to—though, at the end of the day, the humiliation was its own—and the lack of process and lack of scrutiny that has brought humiliation upon the office of the Governor-General. Now we are seeing the executive moving on to try to humiliate the processes of parliament.

Part of the reason the government has got into this mess is what happened prior to the last election, when the parliament did not sit—when the Senate’s processes, those vital Senate estimates committees, did not sit from June of last year until February this year, when they sat for a few days. The lack of scrutiny allowed the government to perpetrate a series of falsehoods, a series of issues that the Australian public was fundamentally misled on. That is why it is important that the Senate operate as the final check and balance—or bastion, as Senator Bartlett said—in a democratic society. If parliament had sat, we would not have seen the defence department misused as it was before the election. If parliament had sat, we would have got to the bottom of whether the photographs were really true, because parliament affords an opportunity to ask questions like, ‘Were those photos doctored before Peter Reith put them out? Did they have the dates removed from them?’ And the answer would have been very quickly achieved that, yes, Peter Reith and his office removed the dates and the captions. It would have taken one question in question time. It would have taken one question at a Senate estimates.

I understand why this government does not want us to have greater scrutiny. It does not want to have more question times; it wants to try and abuse the processes so that it does not have to face the scrutiny of senators. We would then not be able to get more details on the $5 billion loss that this government has inflicted on the Australian people because Peter Costello, the Treasurer, fell asleep at the roulette wheel. We would not
have this information that we got recently, if it were not for the parliamentary processes. We would not have been able to make this government accountable on all those sorts of issues. We would not have discovered that Peter Costello—

**The PRESIDENT**—Mr Costello, Senator.

**Senator CONROY**—Sorry, Madam President. We would not have discovered that Mr Costello received a report every year which detailed the size of the losses. He wants to stand up now and say, ‘I did not know anything about it. It is not my fault.’ But it was Treasury officials, through the parliamentary process, that revealed that Mr Costello received Treasury’s annual report that contained a table in it which listed the size of the losses. It was also revealed through the parliamentary and Senate processes that Mr Costello received advice from independent, expert analysts about how to conduct the portfolio. They recommended that he split the portfolio to reduce the risk of the size of the losses—

**Senator Calvert**—Madam President, I rise on a point of order. We are debating the extension of sitting hours. I think Senator Conroy seems to be straying from the subject. I wonder when he will return to what we are talking about.

**The PRESIDENT**—It is ranging very widely from the topic, Senator Conroy.

**Senator CONROY**—I appreciate that you are not taking the point of order, Madam President. Senator Calvert, this is about the democratic process, the abuse of it being undertaken, and the government’s arrogance in believing it does not have to face the scrutiny of the Australian public, the Australian parliament and this chamber. It is an arrogance—

**Senator Watson**—We are giving you more time.

**Senator CONROY**—Thank you, Senator Watson, I will take that interjection, because what this government should be doing is holding more sitting days. That is what this government should be doing, not forcing ridiculous sitting hours, not coming to the opposition, as it has done in the other place, saying, ‘This bill on the ASIO package and the border defence package is so incredibly important you have to pass it in 24 hours!’ That is not an acceptable parliamentary process. The Leader of the Opposition, Mr Crean, has written to the Prime Minister and told him to stop abusing the process, that this is parliament and it is not good enough to say, ‘It took us six months to write some legislation about terrorism and extending ASIO’s powers. We have had six months to work on it; you have got 24 hours.’ That is not good enough. It shows that this government has a disdain for parliament. It shows that this executive is not interested in scrutiny; it would rather try to ram through its legislation without appropriate checks and balances. That is what is at stake here.

Even though Labor is supporting this amendment, because we have to have an orderly process, we want to put on the record—like Mr Crean put on the record last week—that it is not good enough to try and ram legislation through parliament. This parliament, this Senate, has a role and it should be treated accordingly. Yes, Labor is supporting this and, yes, at times legislation is urgent and does need to be rushed through, but explain to this chamber, government ministers and senators, why it is that it took you six months to prepare legislation, which on 12 September you said was incredibly urgent. You took six months to prepare it, then you run it into the parliament and say to the opposition and the other minor parties, ‘You have got to pass this in 24 hours.’ That is not good enough. It is increasingly the pattern because this government does not want to expose the fact that the Pacific solution has collapsed. It does not want to tell Australians that when the Prime Minister, Mr Howard, said before the election that none of the people on *Tampa* ‘over my dead body’ will ever set foot on Australian soil, that it is slipping through a piece of legislation this week which is about bringing the people from Nauru onto Australian soil.

That is why parliamentary scrutiny is important; that is why this debate is important; that is why it is wide ranging, Senator Calvert and Senator Watson. This government told the Australian people before the election...
that not one of those people on Tampa, not one of those people picked up offshore, would set foot on Australian soil—'Over my dead body', Mr Howard told the Australian public. This government said that not one person would set foot on Australian soil, and yet what is it doing? It is coming crawling back into parliament, trying to rush this through so that Australians will not know they were misled before the election. The Pacific solution is no solution, and those refugees that failed the United Nations refugee tests are coming to Australia. There is a brand-new shiny detention centre being built on Christmas Island just to accommodate them, and when that is overflowing they will be put in some of the other centres.

That is why scrutiny is important and that is why, Labor believes, the government does not want to have more sitting days and weeks: that would mean more scrutiny and more question times and would expose the government to the sort of detailed forensic examination that would show that what it said it would do before the election is not what it is doing after the election. That is why it is important for the parliament to sit, and that is why Senator Bartlett's concerns are valid. Even though we are supporting this motion, we do it with a great deal of discomfort: I assure Senator Bartlett of that. We are deeply unhappy that this government is getting away with abusing the processes, ensuring that we are not able to properly examine legislation. Those are all valid points. It is not to say that, every time we all want to sit for as many days and weeks as we want, it is possible, but we are sitting a record low number of days—it is now four weeks until the May budget. I am willing to bet that, if you went away and counted the number of question times the former Prime Minister, Mr Keating, attended after he introduced the controversial roster which was so attacked by this government when it was in opposition, you would find that he actually attended more question times in that six months than Mr Howard will have attended—

**The PRESIDENT**—You are now straying somewhat from the motion before the chamber, Senator Conroy.

**Senator CONROY**—Thank you, Madam President, I have almost completed my remarks. I am willing to bet that Mr Keating probably attended more parliamentary question times on his reduced roster than Mr Howard is attending in this six months. And I am not surprised, because this government has a lot it wants to hide; it has a lot that it does not want the parliament and the Australian public to know about.

So, yes, we will cooperate for the orderly management of the Senate, because in the end you have to cooperate. But do not think we are satisfied. Mr Crean has put on record his frustration at this government's abuse of the House of Representatives, and on behalf of the opposition I want to put on record the fact that we are deeply uncomfortable with the way that this government is forcing through legislation with a lack of scrutiny. I would ask that the government consider its position in the future and not force the Senate to sit ridiculous hours because it cannot manage its time, saying, 'We have urgent bills that must go through'; I would ask that it have some consideration for the Australian public, at the end of the day, who deserve a parliament that is rigorous and examines legislation.

**Senator MACKAY (Tasmania)** (9.56 a.m.)—I will not take up much of the Senate's time. I just want to put a couple of things on the record in respect of the opposition's position in relation to this. I also echo the opposition's understanding of Senator Bartlett's comments, and I will not retraverse the issues covered by Senator Conroy, other than to reiterate statements that I made in the Senate last week: this is, in fact, an incredibly small number of sitting days for a post-election program. In the entire year, there are only 61 days for the Senate to sit, and that does not contrast particularly favourably with other post-election sitting periods. For example, in 1997 the Senate sat for 82 days, and in 1999 the Senate sat for 79 days; this year we only have 61 sitting days. Clearly, in anybody's book, that would be seen to be completely inadequate.

We are supporting the proposition, to be helpful and assist, as of course we always do, but I just want to highlight to the government
and those who may be listening that the opposition thus far in an ordinary sitting fort-night has agreed to additional sitting hours last Tuesday night and also last Thursday night into the early hours of Friday morning, including a guillotine in relation to the RFA legislation. We sat last night; we will be sitting tonight and, potentially, on Friday, depending on how things pan out. So we are being extremely cooperative. This is more directed towards government members in the other place: we do not want to hear criticism about the Senate being obstructive. I think we have gone out of our way to assist in this respect. From the opposition’s perspective, I would also put on record that we would have appreciated a leaders and whips meeting to have a look at the agenda. This is something the government may want to take on board. Perhaps that could have occurred earlier in the week. There are attempts to organise that today in respect of the remainder of the week’s program. That really sums up our position. We are supporting this, but we are doing so with the caveats that I have outlined.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (9.58 a.m.)—In response to the remarks by various senators, I would simply like to point out that there has been agreement that the Senate will sit tonight. The government is utilising the sitting days to consider what we consider high priority legislation in the time available, and we appreciate the cooperation of senators in dealing with this legislation.

Question agreed to.

Senator Brown—I would like to have my opposition to the motion recorded.

WINTER OLYMPIC AND PARALYMPIC GAMES

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (10.00 a.m.)—At the request of the Minister for the Arts and Sport, Senator Kemp, I move:

That the Senate—

(a) recognises the outstanding success of the Australian Winter Olympic and Paralympic teams competing at the 2002 Salt Lake City Olympics and Paralympics;

(b) congratulates the Australian Winter Olympic and Paralympic teams for their outstanding effort in achieving the best ever result for Australian teams in these competitions;

(c) conveys, on behalf of all Australians, the nations pride and congratulations for the performances of all athletes who represented Australia at these games, particularly the outstanding performances of our medal winners;

(d) expresses thanks and gratitude to the Australian Olympic Committee, the Australian Paralympic Committee and the team support staff and others who have worked so hard to prepare Australia’s most successful Winter Olympic and Paralympic teams to date; and

(e) notes the role of the Commonwealth in supporting the preparation of Australian athletes for the Winter Olympic and Paralympic Games, through the Australian Sports Commission and the Australian Institute of Sport.

Question agreed to.

BUSINESS

Consideration of Legislation

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (10.00 a.m.)—I move:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Migration Legislation Amendment (Transitional Movement) Bill 2002, allowing it to be considered during this period of sittings.

Senator BROWN (Tasmania) (10.00 a.m.)—I oppose this move because the Migration Legislation Amendment (Transitional Movement) Bill 2002 is being dumped on the Senate without adequate opportunity to look at the ramifications of it. It is a classic case of why we should be sitting more. This is another one of those bills that potentially removes the rights of people who are refugees or asylum seekers in this country and it has not been adequately explained by the government. There is a great deal of confusion about the provisions of this bill, but the wording of it does point to a further clamp-
down on the rights of people who may be in
Australia and certainly to the suspension of
their legal rights. I do not think that we
should be dealing with this in a peremptory
fashion. I believe this legislation should be
coming on in the budget session so that there
is due time for the parliament and people in
the community who are concerned about
these matters—and there are a large number
of people in the community and potentially
from outside of Australia who are interested
in the matter—to consider this legislation
with much more diligence than would be
allowed if the cut-off motion were applied
here.

I would also add, as a matter of general
principle, that the cut-off motion came
largely at the instigation of former Greens
WA Senator Christabel Chamarette so that
the Senate could consult with the community
and make sure that pieces of legislation just
like this one were adequately considered be-
fore they were debated and that they could
not be dumped at the end of a session on the
Senate for fast-tracking. This is a classic case
of where the cut-off motion should be ap-
plied. It is not a matter of whether one sup-
ports or opposes the bill; it is a matter of
getting clarification and consulting with the
community groups that are involved. I note
that the bill effectively suspends the legal
rights of people who have been brought to
this country. It makes the whole of Australia
an exclusion zone as far as those legal rights
are concerned. I, for one, want to investigate
that further. I want the opportunity to be able,
on behalf of the Australian Greens, to consult
with the community groups that will be in-
terested in this. This motion suspends the
ability to do that, and I am not going to sup-
port it.

Senator BARTLETT (Queensland)
(10.02 a.m.)—The Democrats strongly op-
pose this motion relating to the Migration
Legislation Amendment (Transitional
Movement) Bill 2002. It is again worth out-
lining the background to this particular issue
and the way that cut-off motions work for the
sake of those listening as well as for senators
in the chamber, who I am sure are listening
as well. I should correct Senator Brown who
may not be aware of the broader, older his-
tory of this. I certainly acknowledge the role
of Senator Chamarette in updating, or modi-
ifying, the way the cut-off motion works but
initially it was an initiative of the Democrats
and my Queensland predecessor Senator Mi-
chael Macklin back in the 1980s. Senator
Brown is correct that the principle is basi-
cally a mechanism to ensure that there is
proper scrutiny.

As is often said in relation to these mo-
tions—Senator Ray often puts it very well
and is quite effective at explaining the ra-
tionale in relation to decisions such as
these—the Senate quite regularly moves
motions to exempt bills from the cut-off.
Indeed, there is another motion following on
from this to exempt 12 other bills from the
cut-off, which the Democrats will be sup-
porting. But the very fact that the govern-
ment has moved a separate motion relating to
this migration bill emphasises that it is a spe-
cific, controversial and special bill. Even
without debating the content of it, which I
am sure we will have an opportunity to do
probably later on today, the process firstly
needs to be made clear in terms of what is
happening.

The Migration Legislation Amendment
(Transitional Movement) Bill 2002 was in-
roduced into the House of Representatives
and the whole parliament only last Wednes-
day, so it has been in the public arena for less
than seven days. Its provisions and what it
attempts to do have certainly not been de-
bated, flagged or foreshadowed by the gov-
ernment in any way, so it really is a measure
that has come out of the blue. The bill was
only introduced into this chamber this
morning. There was an attempt last week to
try and railroad the bill to and back from a
Senate committee before people were even
aware that it existed, and the government is
now trying to push the bill through this
week—today and tomorrow—without the
opportunity for proper examination of it.

It is no secret, and if people are not aware
now they certainly soon will be, that I and
the Democrats have great concerns about this
bill. But more broadly, in the context of this
motion, there is also a matter of some confu-
sion about how the bill will operate in prac-
tice and what it will mean not just in the next
couple of months but in the long term. If you are making dramatic changes, and this is another dramatic change to the legislation, the least you can do is have a proper look at it and make sure you know what you are doing to the processes and legal entitlements for asylum seekers and what the consequences will be.

I would have thought that the government, or at least the Labor Party, might have learned their lesson last year in the lead-up to the election when they allowed all those bills to go through without proper scrutiny. We actually had a bill debated in here and guillotined through while it was still before a legislation committee for examination—that was the absurdity of that situation. And we will have the same thing happen again if the Labor Party cooperates on a bill that has not been properly examined—one that again deals with modifying the so-called Pacific solution and that again deals with removing legal rights for asylum seekers—and allows it to be railroaded through without any proper opportunity to examine the consequences.

Let us forget about the principle for a moment; let us look at what is actually going to happen and what the consequences will be. Apart from what is contained in the bill that has just been introduced, the government is negotiating at the moment to put forward amendments to the bill. They have not been put forward yet; they were not circulated, as I understand it, when the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry introduced the bill. We are considering a motion to allow debate on this bill when none of us knows what the final version of the bill will be, because there are still very significant amendments to be brought forward that we have not seen yet which have potentially enormous consequences in the long term. Those amendments are still being finalised, and nobody knows what their wording is. Yet we are expected to allow that process to take place and to enable the Senate to pass that piece of legislation—legislation that is not even in its final form yet—by tomorrow.

It baffles me. Leaving aside the politics of it, the ideology and the different policy approaches, I cannot comprehend why the Labor Party is cooperating with this railroaded major piece of migration amendment legislation that will again dramatically impact on the legal rights of asylum seekers. Surely, the least we could do is to have a proper look at it and actually get some feedback about what it is going to mean, not just from legal advocates in Australia but from an international perspective. It is an international issue. Apart from the impact that it will have on individual asylum seekers, it is going to have an international impact.

Let it be emphasised that when Australia, as it has been doing, changes the way it deals with asylum seekers who arrive on its shores, those changes are noticed by the whole world. Because it is an issue that every country wrestles with as to how best to deal with it, when we make a significant, unprecedented change to the treatment of asylum seekers and to the legal processes for dealing with them, other countries look at that. They say, ‘That is what Australia is doing.’ We are making these changes that will have international ramifications without even knowing what we are doing—and, quite frankly, we do not know what we are doing in relation to this legislation; none of us does. It does not matter whether you support the so-called Pacific solution and the government’s approach; the least we can do as a chamber is to know what we are doing whilst we allow that to happen.

This is a classic textbook case of why the cut-off provision exists and why standing order 111 exists: to prevent government from pushing legislation through without adequate scrutiny if it is felt to be sufficiently significant. As I said before, there are another 12 bills that the Democrats will not oppose being exempted from this standing order because they are simple bills, they are mechanical bills such as appropriation bills, they are ones that have already had adequate scrutiny, they have been foreshadowed for a while or they are ones that we think are not of sufficient importance to require greater scrutiny.

Clearly, the Democrats’ view—and I cannot understand why it is not other people’s
view—is that this migration bill does require greater scrutiny. I find it breathtaking that the Senate would even contemplate allowing such a major bill to be waved through with barely a chance to examine what is in it. I have grave concerns about what is in it, but I am quite happy also to acknowledge that I am not fully across all the detail of how it will work in practice.

As I have said, there are amendments that have not even seen the light of day yet; I am fortunate enough to have some understanding of what they are likely to address. From that understanding, I know that they are amendments which propose a significant change to what the tasks of the Refugee Review Tribunal will be. There are issues in relation to both of those amendments, neither of which have appeared yet, that need to be properly examined. The operations of the Refugee Review Tribunal are regularly examined in detail by Senate estimates committees, which look at how it can operate more effectively. It has a big workload. We are not even able to examine what the amendments will mean just in terms of the mechanical operation of that tribunal.

If we give it the extra responsibilities that are likely to occur with these amendments that have not appeared yet, there are basic machinery issues such as what it will mean for the workload of that tribunal. Will it need more staff? Will it need more money? Will it mean longer processing times? The exploration of those machinery matters is fundamental, let alone the policy aspects, although they are important as well. By supporting the government’s motion, we will be opening up the ability of the government to prevent that scrutiny, to prevent those basic questions from being asked. When we get to the stage of considering the legislation, I will talk more broadly about the concerns that I have with that bill, and the counterproductive aspects for the government in relation to these sorts of approaches.

As I was saying in regard to the previous motion, I have a lot of sympathy when Senator Ian Campbell, in his capacity as the Manager of Government Business in the Senate, expresses concern about the difficulty of being able to get all of the government’s program through in the available time. The consequence of exempting bills like this from the cut-off and preventing proper scrutiny—preventing it from having decent consideration by a committee, preventing senators from being able to seek advice from experts in the field—is that the only avenue and forum available to us is in this chamber, in the Committee of the Whole, when the debate on the bill occurs, and we have to ask all of those questions of the minister in the chamber. It takes up an enormous amount of time to ask those questions that could be asked separately at committee hearings or by way of briefings, in private meetings or by seeking advice. You do not have the chance to do that, so you have to do it in the chamber, which means that it takes up an enormous amount of time.

The very idea that Senator Ian Campbell and government ministers put forward is undermined because, by doing this, it will mean that more Senate time will be chewed up on legislation than would otherwise happen. You are making it harder to get through all the business. There are any number of reasons why this is a particularly bad procedure that the government is trying to do and which, I assume, the Labor Party—they will speak for themselves shortly—will support. I cannot believe that nothing has been learnt. Let it be made clear again: this is a rerun of what happened in the week leading up to the last election when major migration legislation, making enormous changes that nobody knew the consequences of, including the government, was rammed through without examination or debate. It was guillotined and put in place. Yet that travesty of a process is now being compounded; straight after the election we are doing it again.

It is astonishing that, within a month of recommencing parliament, and after all the concerns that were raised about that disgraceful day in October when the package of bills were guillotined through the Senate, we are going to have the same thing again. I can tell you that it is almost definitely going to have to be the same thing again, because it is incumbent upon us, in terms of our responsibility as senators, to properly examine this bill. The Democrats will be taking that re-
sponsibility seriously. If we have no other mechanism, we will do it in this chamber on the floor because there are any number of questions which must be asked. It is not just a matter of us putting our views on the record; the Democrats will do that as well. Still to this day we have not had a proper opportunity to get the government fully on the record about how the bills passed last year will operate. I have a motion on the Notice Paper, which has been foreshadowed there for some time, about getting a Senate committee to examine the consequences of all those legislative changes last year. That still has not been done.

Forget about whether or not you support the policy. People have to work with the policy, whatever it is. People have to work within the law, and the hundreds of people who work around Australia trying to assist asylum seekers, people in the community and families are still wrestling with how this new process is working and what it is going to mean. We still do not know. The government do not even know. The government do not know what is going to happen on Manus Island or Nauru when those assessments are finished. This bill is being put through as yet another fall-back option for the government. If it falls over, the government will be able to bring people to Australia and detain them while they figure out, again, what they are going to do. It is compounding the travesty that occurred last year.

Without reflecting too much on the content of the bill which this motion relates to, purely from a procedural point of view, from a point of principle and our responsibilities, this is an appalling, counterproductive process. Again I say to the government that I quite genuinely believe we all have responsibility to be cooperative where possible in enabling proper consideration of business and enabling the government to get its program through. I believe the Democrats have not frustrated that process, despite our opposition to some measures, including very strong opposition to the Regional Forest Agreements Bill 2002. When this shonky process is engaged in, it makes it much more difficult to take a cooperative approach. Why should we be cooperative with the government getting through other measures when it foists this sort of rubbish on us? Why should we? If the government is going to treat the Senate with such contempt, why should the Senate not reciprocate in its attitude towards the government? It is a question that the government needs to consider because we do not operate in isolation; all of us operate as a group and try, despite our differing views in a policy sense, to enable issues to progress. It has to be a process that all of us undertake in a cooperative sense.

Obviously, the government has tabled reasons as to why this bill is urgent and needs to be pushed through this week. Quite frankly, the Democrats do not accept those reasons; they are not adequate. Clearly, this has been pushed through because the government does not want scrutiny of what it is doing and does not want a proper examination of what this legislation will mean. It is not an issue which has to happen now; it is not something that will not be able to be addressed in May when we come back.

It is worth making the point that, again, it is a problem of the government’s own making. The government has provided a record low number of sitting days in the Senate, for decades, to consider legislation. It is the government’s making that has meant that after this week we do not come back until 14 May; it is not the Democrats and it is not the Labor Party’s. This means we have a two-month gap before we can debate and pass legislation. Yet the government is expecting us, after giving us no time to debate legislation, to say, ‘Given that we haven’t got any time to debate it, we’d better push it all through without looking at what we’re doing.’ It is a ridiculous and contemptible approach, one which the Democrats strongly oppose. It is undermining the role of the parliament, the whole purpose of the Senate and the fabric of our democratic system.

Perhaps it is not a surprise that the government are doing that. If you look at everything that has come to light in relation to the government in the last month or two, it is no surprise that they have a contemptible approach, but it is a surprise that the ALP may be willing to cooperate with that approach. You would think that, after the ‘children
overboard’ approach, the least we could do would be to properly examine this bill to establish whether whatever the government is telling us about this bill bears up. I do not think it does. The blatant fact is that the government, when it comes to refugee issues, will say, ‘Whatever it takes; we’ll just make things up and cover up.’ This bill goes to the heart of the whole policy that the ‘children overboard’ issue was part of. I think the rationale they are using does not stack up. At least let us test it. We are not going to get that opportunity if we support this motion to exempt this bill from the cut-off. The Democrats strongly oppose the motion.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.22 a.m.)—The question before the chair is whether or not the Senate agrees to the cut-off motion applying to the Migration Legislation Amendment (Transitional Movement) Bill 2002—in other words, whether the Senate allows this bill to be debated before the end of the current sittings of the parliament this week. That is what we are talking about: whether the Migration Legislation Amendment (Transitional Movement) Bill be debated before the recess, before parliament resumes in the middle of May.

The principle that should always be applied to these questions when they are before the Senate is: if there is genuine urgency. The minister has outlined the reasons for urgency: because the bill is an integral part of the government strategy to preserve the integrity of Australia’s borders and the migration and humanitarian programs. The minister goes on to say that the amendments deal with matters that are urgent as some of these non-citizens may be required to enter Australia in exceptional circumstances including to receive urgent medical treatment or to provide evidence in people-smuggling prosecution. Those are the reasons for urgency that were circulated by the authority of the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock. This debate determines whether we bring the bill on for debate this week in the Senate.

It is true that the opposition has accepted the need for urgent passage of this bill. As we understand the situation, this bill is designed to cope with contingencies that are likely to occur before the parliament resumes in May. That is why we are going to agree with the cut-off motion and allow the Senate to debate it before the middle of May. We accept that the government has the right to put before the parliament its proposed solutions for those contingencies. We accept, given the time frames, that the bill cannot wait. That does not mean that this bill should not have adequate examination. That is a very different issue. Timing is one point; appropriate parliamentary scrutiny is another point. I am afraid that on this particular occasion I have to say that the Democrats own behaviour, particularly the performance of Senator Bartlett, has meant that the level of parliamentary scrutiny that the opposition would have liked to have seen applied to this bill will not occur.

Senator Bartlett interjecting—

Senator FAULKNER—The truth of the matter is that last week, when a scrutiny of bills report was brought before this chamber, it was Senator Bartlett on behalf of the Australian Democrats who refused leave to allow that report to be brought before the parliament and its recommendations agreed to. That meant that the recommendation to refer the Migration Legislation Amendment (Transitional Movement) Bill to a Senate committee could not be put, could not be agreed to, and the committee hearing could not take place. In my view, that is a disgrace.

Senator Bartlett interjecting—

Senator FAULKNER—I am not going to be lectured, and nor should the Senate be lectured, by Senator Bartlett on this matter, because we did need to have a Senate legislation committee look at this bill. It would have been worth while. It would have been a useful contribution. It would have added to the level of scrutiny on this particular bill. It would have assisted the public debate. It would have assisted the parliamentary consideration of this particular bill, but it was spiked by the Australian Democrats. The record stands on this. It is unfortunate that as a result of Senator Bartlett’s deliberate decision to stop a parliamentary committee inquiring into and reporting on this bill—as a
result of Senator Bartlett’s own actions—that will not take place.

Nevertheless, the principle that should apply to bills when you consider the cut-off motion, whether you debate a bill in a particular parliamentary sittings period, does not change just because of dog-in-the-mangerish behaviour from certain senators. The opposition is consistent in the way it looks at these issues: that is, if the issue is urgent, if the bill might have application to a period of time when the parliament is not sitting—in other words, if the contingencies that it deals with may well occur before the Senate sits again—then we believe the principle should apply that the Senate agree to consider the bill.

In this case, as a result of Senator Bartlett’s efforts, a parliamentary committee cannot consider the bill because of what the Australian Democrats have done. That is the unfortunate situation, but we deal with the circumstances as they arise. We deal with bills—as Senator Bartlett and Senator Brown have correctly said—on a case by case basis. That is the way one should apply the provisions of this standing order. It is certainly the approach that the opposition takes.

Some of the other criticisms that are made by the senators on the crossbenches are fair criticisms. There is a very inadequate number of sitting days; that is true. There are very few opportunities in terms of the sitting pattern for the Senate to consider the extraordinary amount of legislation before it. That has meant that in some areas with important legislation there have to be committee references. Senate legislation committees have a very significant amount of work to do, but the relevant committee does not have any work to do on this bill because it was stopped from providing that level of scrutiny.

There is no point beating around the bush on this—they are the facts of the matter. The fact is that the Democrats stymied committee consideration of this bill. The opposition wanted to see that committee consideration. Some will argue that it would not have been adequate and we could have had a longer period for committee hearings. Maybe that is true—one can always extend a committee hearing—but we believe, given the record of the relevant legislation committee, that it would have benefited the Senate’s debate in committee and the public interest if we had allowed that level of scrutiny. We are sorry that could not take place, but let the responsibility for that lie where it should, with the Australian Democrats. Let the responsibility for the sitting timetable, the pattern of sittings in the Senate, and the inadequate amount of time that the government has allowed for parliamentary sittings lie where it should, with the government.

Senator Bartlett—You supported it. Why is it their responsibility?

Senator Faulkner—You really do not understand how this works, Senator Bartlett. It is the government that brings down a sittings program, not the opposition. You say that we are all obligated to work within those constraints. You are absolutely right on that point. We are aware of those constraints. We are aware of the urgent legislation we have to deal with. The opposition has to take a responsible and consistent approach to dealing with legislation that comes before the chamber. We have done so in the past and we do so on this occasion.

In other words, because the Democrats have stymied the opportunity of this bill going to a parliamentary committee and because of its urgency—the bill is designed and written to deal with contingencies that are very likely to occur before the parliament resumes in May—we say that parliamentary consideration by the Senate of this bill is appropriate in this sittings period of the Senate. It is on that basis that we agree to support the cut-off motion, consistent with the approach that the Australian Labor Party has taken both in government and opposition.

Senator Harradine (Tasmania) (10.34 a.m.)—Lest the listeners—if there are any—to this debate consider that on these issues relating to immigration, refugees and the like Senator Bartlett does not do his homework, I want to put the record straight. I do not suggest that Senator Faulkner has so reflected upon Senator Bartlett in respect of that matter—
Senator Faulkner—I did not suggest he didn’t do his homework; I am talking about the process issue. I don’t know whether he does his homework or not.

Senator HARRADINE—Lest anyone gets that impression, that is not correct. He has a very strong record in regard to this matter. He is one who does his homework, examines the matters on their merits, makes his decision and ensures that it goes through his party. Senator Vicky Bourne, with me and others, did the hard yards and went through the detention centres and examined them. That committee made its recommendations to the Joint Standing Committee on Foreign Affairs, Defence and Trade and its report was presented in this parliament.

Senator Vicki Bourne and I added an addendum to that particular report, and had that recommendation contained in the addendum by Senator Bourne and me been adopted we would not have been seeing some of the problems that we see now in that particular area. But I believe that on this occasion, with all the best will in the world, the fact of the matter is that it was not referred and so we are now in this situation.

I have read and had regard to the reasons the government has given and which were incorporated into *Hansard* yesterday. I have also had a look at the second reading speech of the minister. I have to consider whether this is really an urgent bill and whether our opposition to the cut-off motion moved by Senator Troeth is likely to adversely impact on asylum seekers. One has to consider those matters and, if they are correct, it would be unjust, in my view, to not enable the legislation to be considered and properly amended before we get up. What are the situations which could adversely affect the health and wellbeing of asylum seekers? The amendments in the bill deal with:

... matters that are urgent, as some of these non-citizens may be required to enter Australia in exceptional circumstances, including to receive urgent medical treatment or to provide evidence in people smuggling prosecutions.

I have had to consider that carefully and, though I am regularly against the cut-off motions that sometimes come into this chamber, on this occasion, for the reason that some of the asylum seekers may be disadvantaged if certain parts of the legislation are not passed by this parliament before the end of this week and continue to be disadvantaged until we sit again in mid-April—

Senator Sherry—In May.

Senator HARRADINE—Mid-May. Thank you, Senator Sherry. For those reasons I will be supporting the cut-off motion. But let me say very clearly that when considering the bills the Senate will be even more entitled to excise those parts of the legislation which do not fall within the urgency reasons that have been put forward by the government. Let me make it clear to the government that I believe that the legislation should be examined, and let them not be surprised if the arguments are raised in accordance with their own arguments—in other words, whether this is urgent. Is it urgent to get through this legislation so that some of the asylum seekers may be able to enter Australia for urgent medical reasons, to receive urgent medical treatment, or to provide evidence in people-smuggling prosecutions? Okay, when the bill is being debated, let the government say, ‘Yes, we will agree to stick by the reasons that we gave for the cut-off motion, and if you want to amend those areas and excise those areas that do not relate to those matters then so be it.’

Senator ABETZ (Tasmania—Special Minister of State) (10.43 a.m.)—In closing the debate, the government believes that the Migration Legislation Amendment (Transitional Movement) Bill 2002 is an important part of its comprehensive measures to address the ongoing people-smuggling problem. These measures have given effect to the government’s determination that unauthorised boat arrivals should not be allowed to reach the Australian mainland, instead being placed in declared countries where their claims, if any, to asylum can be assessed. It is important that this bill be allowed to proceed through the Senate as it provides the
ability for the government to manage the orderly transition of people from declared countries into Australia under exceptional circumstances. By attempting to undermine the government strategy in those matters, the Australian Democrats will succeed only in undermining the government’s efforts to discourage people-smuggling. I welcome the support of the opposition and Senator Harradine for this bill to be brought to urgent consideration in this place and I remain disappointed that the Democrats continue to attempt to frustrate due consideration of this bill. Other honourable senators have referred to the fact that this bill has not been allowed to go to a Senate committee where members of the community can have input into it. That is a matter of regret, but that was a Democrat tactic and they have to live with that consequence.

The government is anxious to have this bill dealt with for some of the reasons outlined. Senator Harradine read some of the reasons, which includes allowing these asylum seekers and non-citizens to receive urgent medical treatment or provide evidence in people-smuggling prosecutions. I would have thought that that was clearly a matter of interest both for the asylum seekers themselves to be able to access that urgent medical treatment and also for Australia to be able to prosecute people smugglers. I would have thought that on those two grounds alone the Australian Democrats would have been supportive of the urgency of this bill.

Question put:
That the motion (Senator Troeth’s) be agreed to. The Senate divided. [10.50 a.m.]
(The President—Senator the Hon. Margaret Reid)

Ayes…………… 45
Noes…………… 9
Majority……… 36

AYES
Abetz, E. Barnett, G.
Bishop, T.M. Brandis, G.H.
Buckland, G. Calvert, P.H. *
Campbell, G. Carr, K.J.
Colbeck, R. Collins, J.M.A.

COONEY, B.C. CROSSIN, P.M.
Crane, A.W. DENNAN, K.J.
Crowley, R.A. EVANS, C.V.
Eggleston, A. HARRADINE, B.
Forshaw, M.G. HEFFERMAN, W.
Harris, L. HOGG, J.J.
Herron, J.J. KNOWLES, S.C.
Hutchins, S.P. LUDWIG, J.W.
Lightfoot, P.R. MACDONALD, J.A.L.
Lundy, K.A. MASON, B.J.
Mackay, S.M. MCGRATTAN, J.S.
McGauran, J.J. MCCLUSKEY, J.E.
O’Brien, K.W.K. PAYNE, M.A.
Ray, R.F. REID, M.E.
Scullion, N.G. SHERRY, N.J.
Tchen, T. TIERNY, J.W.
Troeth, J.M. WATSON, J.O.W.
West, S.M. NOES

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. * denotes teller

Question agreed to.

BUSINESS

Consideration of Legislation

Senator ABETZ (Tasmania—Special Minister of State) (10.54 a.m.)—At the request of Senator Troeth, I move:

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

Appropriation (Parliamentary Departments) Bill (No. 2) 2001-2002
Appropriation Bill (No. 3) 2001-2002
Appropriation Bill (No. 4) 2001-2002
Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002
Quarantine Amendment Bill 2002
Taxation Laws Amendment (Baby Bonus) Bill 2002
Taxation Laws Amendment Bill (No. 1) 2002
Therapeutic Goods Amendment Bill (No. 1) 2002
Therapeutic Goods (Charges) Amendment Bill 2002
Therapeutic Goods Amendment (Medical Devices) Bill 2002
Veterans’ Entitlements Amendment (Gold Card Extension) Bill 2002
Veterans’ Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2002.

Senator BARTLETT (Queensland) (10.54 a.m.)—I think it is appropriate to speak to this briefly, given the debate we have just had, to put the whole thing in context. I will not speak for long, despite accusations that may be made to the contrary. The Democrats are not simply wanting to waste time but I think the principle about what we are doing needs to go on the record. As we have just had with the previous issue—this is the same standing order that applies—these are 12 other bills that the government believes need to be debated in this session for a variety of reasons. The reason I speak to this—the Democrats are supporting this one, to emphasise that we are not trying to frustrate the government’s legislative process and program—is that there is a difference between these bills and the others. These are a range of appropriation bills that are obviously needed to fund government programs, and therefore it is appropriate that they may be passed—although, ironically, included in that is extra money for the Pacific solution that the Democrats strongly oppose.

The legislation includes a financial corporations bill that contains an amendment that was introduced in August last year, so it has been around for a lot of time, and a quarantine amendment bill that enables the introduction of national emergency measures in relation to animal health. There is also the baby bonus bill that was flagged during the election campaign, and a bill for tax laws relating to measures that were announced in October last year that have been around for that period of time. There are also therapeutic goods amendments that relate to bioterrorist activities, stemming obviously since September 11 and other therapeutic goods amendments that link back to the 1998 mutual recognition agreement, and a couple of the veterans bills which also relate to budget measures and other aspects announced during the election campaign. So there is a range of things that have all been foreshadowed in some way or other for some period of time or are standard administrative appropriation bills.

Let us compare that to the migration bill which was not foreshadowed at all, was only introduced on Wednesday of last week and is still not in its final form. I think the record has to be corrected in terms of the statements that are being made by the government and the opposition that somehow the Democrats prevented scrutiny of that bill by committee. What we prevented was a complete farce from occurring which would have not meant any examination of it. As I said, the bill that would have gone to the committee is not even the bill that this Senate will be addressing because there will be a couple of very major amendments that still have not seen the light of day, that the committee would not even have been aware of let alone able to examine and of course there would have been no opportunity for public input at all.

I also think that—again, looking at the reasons for urgency that are given—that is what the Senate has to consider. When the government wants to exempt bills from the cut-off they put forward reasons for urgency. The reasons put forward for these 12 bills are quite appropriate. The reasons given for the migration bill, like lots of things that this government says in relation to refugee issues, are simply a complete fabrication and a farce. People are already coming here for medical treatment. That has happened already. The evidence for people-smuggling trials is not going to occur until later in the year. There is no need for that to go through this week to enable those things happening and, as with so many other things in the refugee area, the public line the government puts is just a fabrication to cover up their real agenda. Again, I think the Democrats will cooperate with proper processes in this place and we will not frustrate the activities of the government in terms of their program but we certainly will not just sit back and let them get away with those sorts of fabrications and falsehoods about their rationale and their agenda.

The government’s record on refugee issues has been highlighted, since the election, as being built upon a myriad fabrications,
distortions and falsehoods. The 'children overboard' situation is, of course, a classic—but not the only, sadly—example of that. I think it is worth drawing to the Senate’s attention that any time anything to do with refugees come up the alarm bells, in terms of detecting distortions, need to go off very quickly. The government’s record in this area is so poor that you almost have to assume that, until we can demonstrate to the contrary, whatever rationale they use is yet another piece of fabrication and cover-up. That highlights again why we need to have proper scrutiny in those areas as opposed to the bills covered under these motions that have been around for a while and provide the opportunity for them to be passed more quickly if the government believes that is necessary. So the Democrats will be supporting this motion and I think, in speaking to it, it is simply appropriate to put on the record the vast distinction between these bills and the motion we have just passed exempting the migration bill from the cut-off.

Senator ROBERT RAY (Victoria) (10.59 a.m.)—I just want to intervene briefly to congratulate the government, albeit reluctantly, on what is not in this motion—and that is, the five security bills that have now gone off to a legislation committee for some mature consideration over the next recess. The problem with those five bills is not that there may be anything objectionable in them but that the opposition basically got their copies of the five bills last Tuesday at 7.30 p.m. To process all five bills before they were considered at 12 o’clock the next day in the House of Representatives meant that we had to read them—60 pages of complex legislation, 60 pages of complex explanatory memorandum—and have them considered by our policy committee at 10 o’clock that night and reported to caucus at 9 o’clock the next morning.

The view then being indicated to us by the government was that these bills were required to be passed through the House of Representatives that Wednesday and sent to this particular chamber and passed by tomorrow. Then, when we did not immediately sign up to that, we were accused of stonewalling or not being fair dinkum on some of these issues. I challenge anyone on the government side, no matter how bright they are, to sit down and absorb 60 pages of complex legislation across five bills and try to work out whether, in fact, every clause is okay. When you read some of this legislation, not only is it complex but also there is a wish list by departments to get things up that they have been trying to get up for 20 or 30 years.

However, to its credit—and I have to acknowledge this—the government has eventually said, no, this chamber will not consider those five bills, and they will go off for what I hope is the proper purpose of a legislative committee: not a circus of witnesses coming along, but the minister and department officials going through the legislation clause by clause, sorting it out. Then, when it comes back into this chamber in what I think will be June this year, we will not need a long and convoluted committee stage; we will only be able to target those areas that require either amendment or further elucidation by the government.

In conclusion, I am not sure how many bills have now been exempted from the cut-off that has been given to this government; it is in the region of 400. The amount that has been refused in that time I think is probably less than 10. That just raises the question: does the cut-off motion have any useful purpose? Today probably proves it has because a minority group in the Senate wanted to make points and, I suppose, it enabled that group to make those points today. But for a lot of the designers of the cut-off resolution in the mid-1990s, especially the absolute zealots in the now government who thought the cut-off motion was the best thing since sliced bread, basically it is a waste of time, although occasionally it might have its uses. Maybe the Procedure Committee should look at eliminating it as a feature of the Senate.

Senator BROWN (Tasmania) (11.03 a.m.)—I think Senator Ray might just have argued against himself—

Senator Robert Ray—I might have, yes.

Senator BROWN—by saying that a suite of five bills, which otherwise potentially would have been pushed onto the Senate, has been set aside for much better consideration
because the weapon of the cut-off bill is sitting there.

Senator Robert Ray—I don’t think that was the reason, but anyway—

Senator BROWN—I am fleshing it out a bit, Senator. Anyway, the Senate does need to defend itself against government pushing through legislation that cannot be considered adequately, and the cut-off is there to enable the Senate to do just that. That is wrong by the community. When legislation brought in here overnight has to be considered, and when there is a lot at stake, the community needs time to consider it. The parliament operates on behalf of the community; it is not just for parliamentarians and parties. Indeed, the community comes first. When the government presents legislation, the community has the right to view it, to feed its considered opinion back to its representatives and then to have its representatives put that case on the floor of the Senate. That cannot be done if legislation is brought in here overnight—or even over a week. We get complicated legislation, and people need to be able to consider it.

There are occasions when, to meet unforeseen circumstances, everything has to go on fast forward. But too often that is not the case. It is just a convenience for the government to push through legislation, which very often has taken it months and months to define. For the government to put it through the parliament within a matter of days or weeks is not a satisfactory process. I have a clear example of that hidden amongst this list of 12 bills, and it is the seventh on the list. Inconuously enough, it is the Taxation Laws Amendment Bill (No. 1) 2002. Mr Acting Deputy President, I am sure you will have picked up the fact that this applies to plantations. It gives tax exemptions to plantations of trees around the country, and with that comes the reality that plantations are very often put in place of native vegetation and native forests. In other words, the native forests are cut down and woodchipped so that the plantations can be put in with great tax incentives. What does it mean if this law goes through? For the taxpayers of Australia it means that an exemption—of $25 million, according to the government; but, on the assessment of my office, some $90 million—will go to the plantations industry at the expense of the taxpayers.

Just yesterday a State of the environment report was tabled in this chamber, which shows that the government—and, indeed, the Tasmanian government—has a record of failure when it comes to protecting native vegetation cover in the country. One of the worst environmental indices—and it is rapidly deteriorating—is the loss of native vegetation cover, ecosystems, gene pools and potentially very many species because of this rapid destruction of woodlands and forests in Australia. This relates to woodlands particularly in Queensland, but at an even greater percentage rate to the destruction of thousands of hectares of native forests in Tasmania for the woodchip industry. What happens when those forests are displaced? Plantations go in. This legislation will foster that process when, just yesterday, the government itself tabled a damning report saying, 'This is out of control; it needs to be brought back into control.' Here we have legislation which says, 'Well, put your foot on the accelerator,' when the report says, 'Put the foot on the brake'—and the government wants to exempt that from the cut-off. Where is the environmental impact assessment?

I can foreshadow that there will be debate on that matter. I will be moving to amend the legislation, and I hope that the opposition will be supporting it. In the wake of the report we got yesterday, it is entirely reasonable that the environmental impact of this legislation, which is very big, be known to this chamber before it votes for it. This is a classic case of where the cut-off should not be allowed, because there has not been due consideration. Certainly there is no opportunity for due consideration of the matter by the community, so I will not be supporting this motion. I may be the only one in here, but I will not support this motion when it provides for legislation such as this to be railroaded through this place without due consideration.

Senator LUDWIG (Queensland) (11.08 a.m.)—The opposition will be supporting the
cut-off in relation to the bills listed in the motion by the Special Minister for State. The Senate should understand that the list includes three appropriation bills which are necessary to be passed this week for the ordinary funds of this government. The legislative program put down for this week needs to be progressed. Exempting these bills from the cut-off is to allow for the presentation of these bills to the Senate so that the Senate can consider them. It is also worth considering that, of the bills that are before us in this cut-off motion, five of them are scheduled as non-controversial legislation to be considered later on on Thursday. They have been around for some time— as I suspect Robert Ray has said— and have had substantive consideration, so they should not come as a surprise. Two of them, the Taxation Laws Amendment Bill (No. 1) 2002 and the Therapeutic Goods Amendment Bill (No. 1) 2002, are also scheduled for debate later in the week. The government has proposed to present them to the Senate for consideration, and they will obviously be debated. Senator Brown has foreshadowed that there will be substantive debate on at least one, the Taxation Laws Amendment Bill (No. 1) 2002, as is his right. We will obviously contribute to that debate at the appropriate time. Therefore, from our perspective, the principle in determining the exemption from the cut-off remains. These are bills that require consideration before the end of the sitting. They are bills that need to pass, that need to be presented to the parliament, and, as a consequence, we will be supporting the motion.

Senator HARRADINE (Tasmania) (11.10 a.m.)—On this occasion, I will be supporting the motion by the Special Minister for State for the cut-off of certain bills, including the cut-off of the Taxation Laws Amendment Bill (No. 1) 2002. To do otherwise could jeopardise the interests of some taxpayers, and I do not want to be held responsible for that. Like Senator Ray, I would like to congratulate the government for some legislation that is not mentioned here, including any legislation that might be around the place in respect of cross-media ownership. It would not have been a wise thing for the government to bring that into the House and then bump it up here and expect that we would agree to a cut-off. So congratulations to the government for its perceptiveness.

Senator ABETZ (Tasmania—Special Minister of State) (11.11 a.m.)—The debate on this motion to exempt certain bills from the cut-off has been quite interesting. The Democrats used their time to try to explain and justify the unjustifiable in relation to a previous vote. Senators Ray and Harradine have used the opportunity to thank the government for something which was not in the motion. Senator Brown used the opportunity to speak and try to assert things that were not true. As we have come to expect from Senator Brown, no matter what the topic he will wangle in the issue of woodchips. We all know—especially those of us from Tasmania—that our forests are not harvested for woodchips but for sawlogs and veneers, and it makes good sense to use the by-product rather than burning it or simply letting it rot on the ground. Having said that, I appreciate the cooperation of the Senate and look forward to the vote.

Question agreed to.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2002

Second Reading

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

That this bill be now read a second time.

upon which Senator Allison had moved by way of an amendment:

At the end of the motion, add:

“but the Senate calls on the Government to undertake that from 2003 the Commonwealth will establish a Planned Educational Resource Allocation Committee to assess applications for funding for the establishment of new schools in each state and territory, and this committee:

(a) will comprise representatives of the Commonwealth Department of Education, Science and Training, government and non-government school employing authorities, parents and teacher unions;
(b) shall advise the Minister on the funding of new schools, taking into consideration the following:

(i) the duplication of educational services in an area,
(ii) the impact of the establishment of the new school on surrounding schools,
(iii) the willingness of the school to cooperate with other schools in the sharing of resources,
(iv) the level of determined community need for the new school,
(v) the financial viability of the new school,
(vi) the size of the new school, and
(vii) specific local, community or educational needs; and

(c) shall provide an annual report to Parliament on its assessments.”

Senator ABETZ (Tasmania—Special Minister of State) (11.13 a.m.)—As I understand it, on behalf of the government I am now summing up the debate on the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. In doing so, I want to thank honourable senators for their contributions during the second reading debate. The bill amends the States Grants (Primary and Secondary Education Assistance) Act, which authorised establishment assistance funding for the 2001-04 funding period. Establishment grants have been provided to assist new non-government schools with costs incurred in their formative years and to enable them to be more competitive with existing schools.

This bill aims to provide the necessary appropriation to enable payment of establishment grants. The States Grants (Primary and Secondary Education Assistance) Act 2000 clearly establishes an entitlement to establishment grant funding for new non-government schools. I hasten to add that these new non-government schools are schools that have been registered and accepted by the various state governments around the country as having achieved appropriate standards, deeming them appropriate for registration. The bill effectively codifies the eligibility and entitlement for each new school to these grants. There is no change to the existing entitlements of schools. The funding mechanism has been altered to a standing appropriation consistent with the general recurrent grants program arrangements. This reduces the likelihood of budgetary shortfalls arising simply as a result of difficulty in precisely forecasting, several years out, the numbers of new schools and their student enrolments.

A number of amendments have been proposed and the Greens have now circulated some amendments as well. This is very much an ideological debate by those that are opposed to this government. I say on behalf of the government that we support a dual system of education in this country: both a viable state education sector and a viable non-government sector. Indeed, the non-government sector has been used by the current Leader of the Opposition for his children; by his predecessor, Mr Beazley; by his predecessor, Mr Keating; and by his predecessor, Mr Hawke. So it seems that the use of non-government schooling for children is okay for the Labor elite who happen to hold good parliamentary jobs and are able to afford it, but are we going to afford the same sort of option to the truck driver who is not on a parliamentary salary and who might want to exercise the choice that was exercised by the four Labor leaders that I have just mentioned?

We also know from previous debates that the Democrats have a very strong view against these non-government schools and in fact have vilified them. I refer to a debate that took place on the States Grants (Primary and Secondary Education Assistance) Bill in 1996. In that debate the Democrats made a contribution which said:

Apart from a government ideologically bound to private education, who else came forward to support this bill? The Coordinating Committee of Jewish Day Schools …

Then we were given a list:
… the Australian Association of Christian Schools, the Anglican Schools Commission, the Christian parents controlled schools and the Lutheran schools. These groups support the bill …

Later on in the Australian Democrat contribution we as a government were told:

If you want to go down in history as being part of a government which places the interests of
small, fundamentalist and extreme schools at the expense of Australia’s public schooling system, then by all means vote for this bill.

If those sorts of vilifying and inappropriate comments were made about any other community group within our society, the headlines would have been quite stark and I am sure there would have been calls for the resignation of certain people, but it seems to be okay to denigrate Jewish schools—anything to do with the Judaeo-Christian ethic seems to be okay to denigrate.

We on the government side say that these schools have a right to exist. These people have made a contribution to society and they have a right to exercise choice in education for their children. It is interesting that some of the schools that are currently waiting for funding and waiting for this legislation to come through are part of a diverse group and include the Australian Islamic College in the marginal Labor seat of Swan. I hope Mr Wilkie, the member for Swan, explains to his electorate why he and the Labor Party are trying to withhold funds. Indeed, within that same electorate of Swan there is the Woodthorpe Drive Secondary School, and in my home state of Tasmania there is the Peregrine School in the electorate of Franklin and Trinity College in the electorate of Lyons—all have been denied funds.

Most revealing of all has been the frantic phone call from Ben from Bentleigh. Somebody rang up the office of Dr Nelson, the Minister for Education, Science and Training, just the other day and made some very strong representations about the Chabad Jewish day school—one of these nasty Jewish day schools, as the Democrats refer to them, or ‘extreme’ day schools. They were very concerned that moneys that they had been promised had not been delivered. Ben from Bentleigh happens to be an electorate officer who works for the federal Labor member for—you guessed it—Hotham, the Leader of the Opposition. Ben from his office phoned to inquire why the school was still having to wait for its extra $6,000.

To these small schools, $6,000 goes a long way, but this stark example shows how mean spirited the opposition to this legislation is. That $6,000 for this Jewish day school would make such a big difference and because it would make such a big difference a genuine electorate officer in Mr Simon Crean’s office was prepared to make very strong representations to Dr Nelson asking that this money be made available. Unfortunately, he was oblivious to the fact that the reason the money was not being made available was that the federal member for Hotham was deliberately ensuring that this legislation would not get through and therefore the funding for which the electorate officer was asking would not be forthcoming because of the federal member’s deliberate actions.

It is very interesting that the Labor opposition moved a number of amendments to the bill. When the bill was first introduced it was referred to a Senate committee, and the Labor Party voted for these principles some 15 months ago—on 7 December 2000, I think, when it got carried. Now, 15 months later, they are voting against these same principles. What has changed? I suppose the change has been that we now have the federal member for Hotham as the leader of the Australian Labor Party. The ex-ACTU boss is giving Australians a taste of what a Labor government would do in relation to diversity and educational choice for parents—the sort of choice he exercised himself and, might I add, was able to afford with or without government assistance but which the vast majority of Australians could not afford without government assistance.

The Labor amendments are going to add layers of administration and complexity to what is a very simple payment formula. By seeking to prescribe the criteria for what the Labor Party believes is a new school, over and above what is already in the States Grants Act and the administrative guidelines, Labor has shown that it cannot let go of its old discredited and unfair new schools policy. I note that the Australian Democrats are suggesting by their amendments that we go back to that discredited policy. Under the Labor amendments, only six of the 58 schools that are currently waiting for funding and that this bill will assist would retain eligibility for the current legislative entitlement of $750 per student. That just shows how these amendments will gut these proposals,
and it shows the mean spiritedness of the amendments and of the Labor Party’s attitude to these small new schools that, I submit to the Senate, have the right to exist and the right to government support, on the basis that all the state Labor governments around the country have approved these schools for registration. There is nothing wrong with these schools. They have met all the educational and other standards required of them by the state Labor governments all around Australia, but the federal Labor Party is saying, ‘We have this ideological hatred of private schooling and, therefore, we will not allow the funding to go through.’

We have Australian Democrat amendments as well, and the first amendment proposed deals with physical and emotional wellbeing in our schools. I think that is a very substantive issue and a very relevant and important one; but, as the Australian Democrats know, that is being discussed at a ministerial meeting shortly and, as the states have prime responsibility for state education, it is appropriate that any action taken by the federal government in this area be in consultation with the state governments. Dr Nel-son has committed himself to undertaking that contact and communication with the state government schools, and indeed with the representative organisations of the non-government schools, to see if a uniform approach can be adopted. We do not dismiss the Democrats’ general philosophy or rationale in this. We just say that it is a bit too early; let us work out a strategy with all the states and then move forward together. I have already mentioned that the Democrats’ other amendment would return to the old new schools policy.

Some comments have been made about state government education, and those comments ignore the fact that an extra $238 million was provided for government schools in the 2001 budget. Of the specific schools budget measures in the 2001 budget, 87 per cent of the funding was directed to the 69 per cent of students in the government sector. On a proportionate basis, this is $50 million more than government schools could expect on the basis of their enrolments and $20 million more than Senator Allison is seeking in her amendment. Of course, above and beyond that, the states are now absolutely rolling in GST money. The Labor state premiers say, ‘Terrible thing, this GST,’ but they grab every single last cent of it. All the money from the GST goes to the states. They are now so rolling in GST money that the state governments, if they are so inclined, can spend a lot more money on state education. The proof of that is, of course, the Queensland Labor Premier Mr Beattie announcing a $60 million package for state education, which he linked back to the GST funding his state has received. That puts the lie to other Labor premiers, such as Jim Bacon in my own home state of Tasmania who says that somehow the GST has hurt Tasmania. In fact, all the states are getting more money. Various states are using their money for different purposes. The Labor Premier of Queensland, Mr Beattie, is spending it on education; Mr Carr, the Labor Premier of New South Wales, says he can use it to cut payroll tax. You have some Labor premiers at least honest enough to say that the GST money is rolling in.

The state governments have to make their decisions and determine their own priorities and they cannot then pass the buck. At the end of the day, state government schools are called that because they are a state government responsibility. As a federal government, we contribute. We assist them, and we have now assisted them even further with the new tax regime and the GST moneys that will flow to the states. As a government, we would be willing to look at a review of the program and its operation: one would expect that of a government that is dynamic and continually seeking to improve public administration—education funding is no exception in that regard. But any review that we would undertake would be in the terms of the next quadrennium.

In summary, I urge the Senate to pass this bill unamended. The 58 schools awaiting their full entitlements, many of which serve poor communities, have waited far too long for their payments. Labor are punishing the students and families of these schools for no apparent reason other than for their own ideological indulgence. There is a very stark
list which outlines how Labor members have let schools down. The federal Labor member for Swan has let down two schools in his electorate, the federal member for Franklin has let down the Peregrine school, the federal Labor member for Lyons has let down Trinity College, the federal member for Hotham is letting down the Bentleigh Chabad Jewish Day School, and the list goes on. These 58 schools are all around Australia.

Why were these schools started? Because the mums and dads of the kids believed the sort of education these schools offer was the best for their children. Are honourable senators going to vote and deny parents the right to that choice or provide some assistance in the exercising of that choice? I especially appeal to Labor senators because they have now had a continuum of federal Labor leaders—the last four—who have all, on their substantial parliamentary salaries, exercised the option of private education. But they somehow do not want the truck driver or those on social welfare benefits to exercise that same option for their children. We strongly believe that a private education or non-government education should be not only the domain of the wealthy but also, to be a real choice for parents, an affordable and exercisable choice.

In the closing moments of this second reading debate, I will just say this. I still recall how, as a lawyer dealing with unfortunate family breakdowns, I often saw a situation where a mum—usually it was a mum—did some part-time work for no other reason than so that the family could afford the school fees, because they thought the best start in life they could provide for their children was an education. So mum and dad had agreed to make a sacrifice to look after their kids and provide them with an education. These mums and dads all around Australia are urging the Senate to pass this legislation. There are 58 new schools awaiting funding—even one in the Leader of the Opposition’s own electorate, which he is denying funding to. Unwittingly, his own office was so convinced of the urgency and need for the money that the electorate officer rang the federal minister for education for the money. How embarrassing! How humiliating for the Leader of the Opposition! It would be a good opportunity now, on the strength of Ben’s representations to Dr Nelson, for Mr Crean and the Labor Party to alter their attitude to this bill and to pass it.

The Acting Deputy President (Senator Crowley)—The question is that the amendment moved by Senator Allison be agreed to.

Question agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator Allison (Victoria) (11.33 a.m.)—by leave—I move Democrats amendments (1), (2), (R3) and (4) on sheet 2440 revised together:

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

1A After paragraph 15(b)

Insert:

(ba) The prescribed requirements for performance information to be reported in accordance with paragraph 15(b) shall include a requirement to report annually on progress being made to implement the detailed plan setting out the procedures for dealing with the physical, sexual and emotional abuse of students required by section 15A.

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

1B After section 15

Insert:

15A Specific condition: responsibilities of States in dealing with abuse of students

(1) A further condition is that a State must do each of the following not later than a date or dates determined by the Minister for the purposes of each paragraph:

(a) provide to the Minister a report on the administration of such legislation as is administered by the State relating to the protection of children and young persons in government and non-government schools;
(b) provide to the Minister a detailed plan setting out the procedures for and responsibilities of government schools in dealing with the physical, sexual and emotional abuse of students, either within or outside schools.

(2) A plan provided in accordance with paragraph (1)(b) must:
(a) indicate the ways in which government schools will seek to create an anti-abuse environment; and
(b) indicate the means by which government schools will communicate with students about their rights in relation to abuse; and
(c) indicate how the plan will be implemented; and
(d) be reviewed at least every four years by the Minister, with the first review being completed before the expiration of the 2008 program year; and
(e) be approved by the Minister; and
(f) be in accordance with the standards set out in the regulations to this Act.

(3) A further condition is that a State must have enacted legislation requiring the protection of children and young persons to receive grants in accordance with this Act.

(4) A further condition is that a current law of the State must require that teachers promptly report instances of abuse of students of which they become aware in the course of their employment.

(5) The requirement in subsection (4) to report may be either a requirement to report to the police or to a relevant government department or agency.

(6) The Minister shall consult with the relevant State Ministers about the application of the legislation referred to in subsection (4) to other employees of schools in addition to teachers.

(7) The conditions in this section are to apply to payments made to a State from the beginning of the program year 2003.

(8) This section is not intended to exclude or limit the concurrent operation of any law of a State or Territory.

(R3) Schedule 1, page 3 (after line 5), before item 1, insert:

1C After paragraph 23(b)
Insert:
(ba) The prescribed requirements for performance information to be reported in accordance with paragraph 23(b) shall include a requirement to report annually on progress being made to implement the detailed plan setting out the procedures for dealing with the physical, sexual and emotional abuse of students required by section 23A.

(4) Schedule 1, page 3 (after line 5), before item 1, insert:
1D After section 23
Insert:
23A Specific condition: responsibilities of relevant authorities in dealing with abuse of students
(1) A section 18 agreement must require the relevant authority to provide to the Minister not later than a date determined by the Minister a detailed plan setting out the procedures for and responsibilities of schools for which it is the relevant authority for the purpose of this section (relevant schools) in dealing with the physical, sexual and emotional abuse of students, either within or outside schools.

(2) A plan provided in accordance with subsection(1) must:
(a) indicate the ways in which the relevant schools will seek to create an anti-abuse environment; and
(b) indicate the means by which the relevant schools will communicate with students about their rights in relation to abuse; and
(c) indicate how the plan will be implemented; and
(d) be reviewed at least every four years by the Minister, with the first review being completed before the expiration of the 2008 program year; and
(e) be approved by the Minister; and
Before getting on to those amendments, I do need to respond to Senator Abetz’s remarks about the debate in 1996. I did not at any stage ever talk about nasty Jewish day schools. That is a ridiculous assertion. It is also true to say, Senator Abetz, that it was the Jewish day schools that complained bitterly about the SES funding model that this government developed because it does not benefit them. It is little wonder they need the establishment grants; they are doing very poorly out of the funding mechanism that your government introduced. I did talk about small and fundamentalist schools in that debate—

Senator Abetz—and extreme schools?

Senator ALLISON—and the minister does not deny there are small schools and fundamentalist schools. In fact, the Maharishi comes to mind, but I cannot remember the names of some of the other new schools. I am sure the minister is not denying there are both small and fundamentalist—

Senator Abetz—and extreme?

Senator ALLISON—schools in the non-government sector. There is nothing wrong, Senator Abetz, in pointing that out, just as there is nothing wrong in listing the number of schools that supported the legislation. That does not amount to vilification in my view and I am sure that view would be shared by others in this place.

But I will go to the amendments in hand. The purpose of these amendments is to ensure that all students, whether they are educated in the private or the public sector, are covered by a detailed plan to deal with child abuse that conforms to a minimum acceptable standard. The amendments will require the states and the relevant authorities in government and non-government school sectors, as a condition of funding, to submit a detailed plan that sets out: the procedures for, and responsibilities of, schools in dealing with the physical, sexual or emotional abuse of students either within or outside the school; the means by which schools will seek to create an anti-abuse environment; the means by which schools will communicate with students about their rights in relation to abuse; and how the state or relevant authority will implement the plan in schools under its jurisdiction. Our amendments will require that the plan be approved by the minister and be consistent with standards set out in the regulations to the act. Under the amendments, state legislation must require the mandatory reporting of abuse by teachers. Such reporting is not, as I understand it, presently required by legislation in Western Australia, but it is required elsewhere.

In addition, the amendments require the states to provide the Commonwealth minister with a report on the administration of legislation relating to the protection of children in government and non-government schools. States and relevant authorities will be required to report on implementing the plan for the purposes of the national report on schooling. These conditions would apply to payments to a state and to a relevant authority from the beginning of program year 2003.

The minister has argued, as Senator Abetz has today, that MCEETYA is a better forum for such a national approach. I point out that MCEETYA does not have any direct power over non-government schools; it is a consultative forum of education ministers. MCEETYA cannot require non-government schools to develop a plan related to how schools deal with the abuse of students. What MCEETYA can do is to try to gain agreement of the states to address the issues through registration requirements. However, that will take some time, if it is ever agreed, and the Democrats say that it is important that the Commonwealth act on this issue quickly, particularly in the current circumstances.

Some concerns have been raised in relation to the conflict with state regimes; however, our amendments allow states and relevant authorities to develop plans that are in accordance with state legislative regimes.
Except for the requirement that the current laws of a state have mandatory reporting of abuse by teachers—which all states except WA have, as I mentioned—there is no other requirement on the states to change their child protection regimes. Some may say, in response to this, that this issue should be the domain of the states, as Senator Abetz has said. I want to outline the fact that the states do have various guidelines for dealing with abuse in schools, as do some non-government school systems. However, we found that these vary in quality and content and in how prescriptive they are. Moreover, many of the guidelines seem to be more reactive than proactive in that they cover what teachers and other staff must do if they suspect abuse but do not cover as much what schools should do to create a safe environment for children. It is also true that some schools do not have any plans in place at all, but we cannot know what the extent of that is.

I asked the library to do a survey of school policies and guidelines, in both government and non-government school sectors, regarding the management of allegations of child sexual abuse within schools. It is not possible to know how many schools are taking this issue seriously, and, from our review of these plans, there is a great variety in quality, content and in how prescriptive they are. I think it is also fair to say that guidelines are implemented with various degrees of effectiveness and seriousness, and a lot of schools are so strapped for cash that they cannot afford to put the necessary training and procedures in place.

I have said that there are problems out there, but there are also some extremely good practices in dealing with bullying. Excellent work is being done in some states and in some schools to address abuse, and I will talk about that in more detail shortly. Abuse in schools has not been eliminated and, for this reason, it ought to be a matter of national importance instead of being handled, as it is at present, in what is best described as a piecemeal fashion.

Dr Peter Carnley, Primate of the Anglican Church in Australia said just last month:

We know that the damage caused by abuse is serious. It is especially serious when that abuse is perpetrated by people in positions of authority and influence over their victims.

Given the way the Anglican Church throughout the world is structured, it is necessary for each Diocese to adopt policies and procedures. However, General Synod can adopt framework legislation and encourage every Australian Diocese to do the same.

We agree with that. The reasoning is sound and, for that reason, we are saying that the federal government can and should take the initiative on this issue. There needs to be more than just encouragement and more action than just leaving it to the states and to individual private schools.

The fifth meeting of the Ministerial Council on Education, Employment, Training and Youth Affairs, or MCEETYA, way back in July 1996 agreed to the development of a national strategy in schooling to prevent paedophilia and other forms of child abuse. Almost a year later, in 1997, the sixth meeting of MCEETYA announced that a national strategy had been adopted, but there is still no publicly available information on the detail of this strategy, nor are there any reports to subsequent meetings of MCEETYA on the operation of the strategy.

It appears that this process, five years down the track, has become bogged down by delays relating to privacy legislation and by the ability of individual jurisdictions to release details of teachers who have had convictions for child abuse. It seems to me that this focus on black-listing teachers is hampering the process and, I would argue, should only ever be part of a much more holistic approach to the problem. Abuse by teachers, in terms of the number of cases, is probably only a small fraction of the total. Schools must deal with that effectively and decisively, but they are also asked to tackle the issue of abuse of students by other students. I point out that that is a very serious problem indeed in our schools. Very often teachers will be the first to know about abuse outside the school, and this too must be properly dealt with by teachers and schools.

At the beginning of the school year last year, a help line was set up in New South
Wales and it was flooded with calls in the first few days. The New South Wales Department of Community Services received 73,000 reports of child abuse in the year 2000, and 16 per cent of those came from schools. The number of children reported abused or neglected in Australia was a staggering 107,000 in 2000-01. South Australia did a study that found the overall cost of abuse and neglect in South Australia alone was $345 million.

In 1999-2000, schools in Queensland reported 2,093 cases of suspected abuse, which was a significant increase on the previous year. This increased reporting is largely due to the training of teachers. According to the Queensland Catholic Education Commission, teachers are now much clearer, as a result of that training, about what action should be taken. Last year, the Kids First Foundation called for more funding and for a national focus on child abuse prevention and treatment. They criticised the various standards of service delivery and the absence of national funding for child abuse programs. They noted there was the confusion amongst professionals who came into contact with children about when they should report suspected child abuse and to whom.

Professor Kim Oates, who has received national and international awards for his child protection work, said last year that Australia needed to take the problem more seriously. He said a lack of coordination and incompatible state and federal bureaucracies has led to the extent of child abuse being underestimated. He also said that research shows that the higher the self-esteem of the child, the more likely they were to resist abuse and that this was an area schools should be working on: helping to make children strong and confident.

As a former teacher, I see bullying as one of the most serious but preventable forms of child abuse in our schools. It can start very early in a child’s school experience and have a devastating and lifelong impact on individuals. I regularly visit the Quarry Hill Primary School in Bendigo, which is a very small primary school that some years ago set up a pilot program called ‘Solving the Jigsaw’. That program has had spectacular results in changing the atmosphere into one that is a much healthier environment for students. Bullying has virtually been eliminated. Even the bullying tendencies of teachers have changed dramatically in the period in which this program has been in place. That program has now been extended to 30 schools in the area. So convinced are the principals and the secondary schools that receive these students that schools have found the money necessary to implement the program. I would argue that this kind of program should be implemented across the country.

Last year we were appalled at the sexual assault or ‘bastardisation’, as it was called, that took place at Trinity Grammar boarding school. Alarming as that was, the denial by the school administration that there was a culture of bullying at the school, despite very strong evidence in the courts that this was the case, and the failure to take action to address it were quite serious and, in fact, made the situation worse. Bullying can take many forms. Peer pressure can lock children into stereotypical behaviour. There are plenty of examples of children who have been subjected to bullying going on to have depression. Studies have been done which demonstrate that this is an urgent and serious problem which we should be addressing.

It is time for a national approach. I am pleased that the minister has written to the state ministers responsible for education. I too have done that and I expect them to see value in this approach. We cannot allow the time wasted in the last five years to go on for another five years and perhaps another 10 years after that. It is necessary for the federal government to take the initiative on this.

We have done an enormous amount of work in consulting with groups about our amendments. We have support from ACSSO, the state school organisation parents group; from the education union; from the principals associations; and from individuals who have contacted us at various times on these issues, particularly on bullying. I am convinced that a national approach is the way to go. It is necessary to change cultures not just in bureaucracies, state governments and systems but also to bring this back down to the school
level. School communities have to talk about this issue to find proactive ways of dealing with it. That ought to mean that the federal government should be interested in funding the programs that are necessary, and I would like to see that. At this stage, if we can take this national approach—it would not be in place until next year—schools would have to do this in order to receive funding from the federal government. That is an appropriate carrot and stick approach to this issue. I would argue that, rather than being sidetracked by peripheral issues, it is time we took a proactive approach. It is time to see what we can do about the abuse of children, not just abuse by teachers—that is probably a very small percentage of the total—but abuse by other students and abuse outside the home.

Senator BROWN (Tasmania) (11.48 a.m.)—I support the amendments that Senator Allison has been flagging. The Greens will also have amendments to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. We do not support the bill in principle. As far as we are concerned, there is a very clear rule: public education ought to get public funds in this country and should provide to the fullest extent the education needs of every citizen as they are growing up, without fear or favour. However, this serial legislation, including the legislation now being presented to the parliament, is developing a two-tier system of education where, by using public largesse, the private school system is building on its ability to already provide facilities and opportunities which the public system simply cannot provide.

The bill goes further in entrenching and building on the disadvantage. I note that the minister says that some 60 schools are awaiting the advantage they will get from this legislation, but it does not pass my notice that there are nearly 7,000 schools in the public school system in Australia which are going to lose simply because the legislation will give some $7 million in the first instance, and $12 million all up, to the private school system. That money should be going to the public school system where it is so sorely needed. I understand and am very sympathetic to the wish of parents to improve their children’s education by sending them to private and specialty schools where a range of educational options are made available. The problem is that, with special funding going to the private school system to do that, the opportunity for the public school system to do exactly the same thing is diminished every time.

In talking with teachers in the public school system I have become more and more distracted and distraught on their behalf at the incredible load that is put on them as, piece by piece, the load is lifted off those in the private school system. Teachers feel the pressure of increased classroom sizes, and the necessity for them to deal with students the private school system will not take—those who can be unruly and disruptive—and the constriction in their ability to provide education, in the wider sense, is very harrowing. It is not just a matter for concern; it has become harrowing. The government and the opposition—insofar as it has supported this process down the line—need to ask themselves how far you can push the professionals in the public school system. If the public school system were being adequately funded, it would be able to compete with the private school system—not in the provision of famous sporting facilities, swimming pools, theatres and adventure education; the whole range that some private schools advertise to attract public school students—in simply being able to provide the sort of real and happy education experience which flows from happy teachers. Is the government aware of the strain being put on teachers in the public school system?

I note that Senator Abetz said that this is a matter for state governments. Surely that is not correct. The very fact that we are dealing here with legislation to disburse taxpayers’ money into the private school system says that it is not a matter for state governments; it is very much a matter for us in the federal arena to deal with. And it is not as simple as the government would have it. The public school system is funded at the state level and the government believes it is then the privilege of the federal parliament to put cream on the cake of the private school system. The
public school system is reliant on the state but, more and more, the private school system gets a direct run through to the people who ultimately design the tax laws and disburse the public moneys in this nation: those of us in this chamber and in the House of Representatives.

This legislation is going to further destabilise that mix between private and public education. It is going to greatly disadvantage public education. The total amount that can be paid to the private school sector is unlimited. While there are estimates here, the precedent raises the spectre of a big rush of moneys to new low and moderate fee schools out in the public arena and the segmenting of the school population according to location, the family’s financial status and the academic interest of parents. I think the latter point is very important. What do we do for those students who quite innocently have parents who do not have their children’s academic interests at heart? I think there is a role for the state to be involved to ensure that those students are not disadvantaged simply because they have uninterested parents. Anybody involved with the school system will know what a problem that is—that very often you inherit not only the difficulties and disadvantage but also the attitudes that are expressed in the home. The school is the place for us, as an egalitarian society, to ensure that children are not disadvantaged and to at least try to balance the life situation for students. But I am afraid that, instead of doing that, what is happening here is that we are further weighting the scales against the interests of already disadvantaged students.

There is the risk that, as more families are enticed into the private school sector, public education will be left with those who are most difficult to educate. That is not just a risk; that is a reality—it is occurring right now and it is compounding the disadvantage of the public education system. The Greens are putting forward amendments to help ensure that does not happen. A very interesting and groundbreaking amendment that the Greens are putting forward is that the private school system may not refuse entry to students on the basis of their academic or other difficulties. I will be talking about that after Senator Allison’s amendment—which I hope gets up—has been dealt with. We believe it is very important that we do not foster a system whereby those students who have difficulties, and therefore very often present difficulties for not only teachers but also their fellow students, are dumped out of the private school system into the public school system.

If the private school system is going to get the largesse that is inherent in this legislation—which has been increasing with almost every piece of legislation relating to education going through this parliament—it must not be able to cherry pick and further discriminate not only against students but also against the public school system. If there are difficulties with the implementation of the Greens groundbreaking amendment, I would like the opposition, in particular, to look at how those difficulties might be gotten around. I do not think there is another way. I make a special appeal to the opposition to regard very seriously the amendment that is coming up shortly. It is incredibly important.

We are not saying: let us discriminate against the private school system, which is being advantaged by the money that is flowing through this legislation. We are saying: let us not allow the private school system, which is being advantaged by this allocation of public moneys, to discriminate against the public, against children who are seeking an education who may be difficult, who may have some disadvantage, physical or otherwise, who may not be able to keep up with other children in their peer groups or who may need some special attention. Let us not have them discriminated against simply by being refused entry at the outset to the private school system or when they get into the private school system and are found to be needing special attention—or more particularly are found to be disrupting or difficult as far as the learning opportunities of their fellow students are concerned—let us not have them simply put into the public school system where they compound the inequality of education. That is not on. But it is happening now and it is time that we moved to redress that.
If the private school systems are going to be advantaged by the coalition and the Labor Party in terms of financial largesse, let the private schools not in turn discriminate against the public schools and their students by locking out or expelling those who prove to be difficult. Let the burden across the board be fair in giving help to those students who most need it and ensuring, indeed, that they stay within the education system and therefore become productive citizens when it comes to their time to leave school.

We will be moving amendments—and I will speak a little more about this further on—which also ensure that nearby public schools are not disadvantaged and have an appeal opportunity when a private school is established which is going to affect their enrolments and therefore their viability. We will be moving an amendment—and this is a very difficult one to frame, but the idea must be brought forward here and the Australian Greens are doing it—to give nearby public schools just compensation. Public schools take 70 per cent of the students; they should get 70 per cent of the funding. It is a pretty simple rule and we have that embodied in our amendments. The Greens also want to maintain the limit on the total amount of Commonwealth funds going to private schools, because if you do not do that you inherently disadvantage the public school system.

Finally, the matter of choice has arisen here—that in some way or other by ensuring that the public school system is not discriminated against you trammel choice. Of course you do not. Private enterprise offers opportunities in the open market to everybody, but when it comes to education, which is necessarily compulsory and which is crucial to everybody’s life opportunities, we need to make sure that the choice in the public education system is second to none. That is not the case at the moment. Funding is crucial to that. If people want to have private alternatives to the public school system, let them pay for that. Let them not socialise the funding of private education to give themselves an advantage. I think that is what is happening here. This legislation is counter to the principles of a free and open economy, a properly-running economy where you have the public sector looked after by government and the private sector free of government restriction and free of government largesse. Of course, nobody is going to suggest that in here because this is a classic example of the private sector wanting the government to use taxpayers’ money to its advantage. (Time expired)

Senator CARR (Victoria) (12.03 p.m.)—I would like to express the view of the opposition in regard to the amendments currently before the chair. Before doing so, can I just indicate that at the point at which the proposition was put before the chamber that the bill be taken as a whole I did seek to jump up but another senator was called. As a consequence, these amendments were moved, which prevented the normal process being followed: that is, a number of general questions being asked about the administration of the program. I would suggest, if it is appropriate, that I deal with these amendments and then come back to those general issues.

The issue before us is the issue of sexual abuse, and it is difficult, I would have thought, for any senator here to oppose me measures that would seek to prevent the sexual abuse of students in this country. It is beyond my comprehension that anyone in this chamber would be seeking to oppose such a notion. However, concerns have been raised about the administration of such a measure. I think that it is possible to see those as a separate issue. I think our approach is to separate out the issue from the administration of the program. In particular, we emphasise our implacable abhorrence of the sorts of practices that we have seen in recent times in some schools in this country. I could go into the details of some of these because, frankly, I have been disgusted by the sorts of events that have been revealed in some of our most established and prestigious centres in the school sector.

I do not believe anyone here would for a moment be able to disagree with that response. We do not actively oppose or block proposals which deal with this issue to safeguard the wellbeing of children at schools, no matter what the nature of the school. We also take the view that there is a role for the
Commonwealth in these matters. In fact, given that this parliament is appropriating $24 billion of public moneys for the education of children across 10,000 schools in this country, we clearly have a responsibility in regard to these matters. I think the notion that you can somehow or another just punt difficult issues to the states is one that has outlived its usefulness. The constitutional arrangements that occur in this country are constantly evolving in practice. We know how things are done in this country in terms of changing the constitutional arrangements: it is either by formal referendum or by agreement. We come back to this question about how the Commonwealth can influence policies of state governments in regard to schools education.

This government, of course, would not hesitate for a moment in its bid to tell the states that there should be benchmark testing. It does not hesitate for a moment to suggest that there be a whole range of conditions on Commonwealth money. The resources will be made available to facilitate compliance with the Commonwealth policy framework. While you could disagree with the individual arrangements entered into, and I always reserve the right to question whether or not a particular program is appropriate, the principle has been long established here that Commonwealth moneys can be paid to educational authorities, be they public or private, and that in return accountability mechanisms will be imposed and there will be conditionality on those arrangements. Otherwise, how do we account for the fact that this parliament currently appropriates $24 billion for the schools program? In return, the states are obliged to fulfil a whole series of requirements.

That being said—and we will be supporting this amendment—I think there is also a role for the Commonwealth in regard to its consultative responsibilities. That is an issue that does need to be taken up. We have a situation at the moment where the states have differing regimes in practice. Some states already have moved in the direction that Senator Allison is proposing; others have not. One of the great problems of our federation is the railway gauge mentality that exists within the states, dressed up as states rights, which essentially prevents a national approach being taken on critical issues such as this. Notwithstanding that, the best way to proceed is to seek agreement, in my judgment. This is a point that Senator Abetz has some trouble understanding because essentially he has a 19th century view of education or essentially an antediluvian view of what education is about. I am only too sure that he is more than happy to cultivate the fundamentalist religious sect vote in this country. We know that. I wonder if it extends to the Muslims. Is that the view you take: is it just Christians you are interested in or is it the Muslims as well? I take the view that we have a responsibility to cater for all children and to protect all children irrespective of the religious views of their parents. We will support this amendment, but I say to Senator Allison that there are clearly a whole series of other issues that need to be pursued.

Senator ABETZ (Tasmania—Special Minister of State) (12.12 p.m.)—What an amazing performance from Senator Carr just then. I make no apology for being supportive of and representing Christian fundamentalists; in fact, I seek to represent all Australians. In this list of schools that the Labor Party does not want to fund is the Australian Islamic College, Kewdale. The Labor Party has the audacity to suggest that somehow the Liberal Party and I would seek to fund only Christian schools. The list in front of Senator Carr puts the lie to it. He knows that what he was asserting is not correct, and he has to explain to the people of Australia what he has against Christian schools, Jewish schools, Islamic schools, Steiner schools—and the list goes on.

Senator McGauran—He is anti religion.

Senator ABETZ—He is anti anything that might be slightly diverse from his Karl Marx view of the world. This government and I will not disenfranchise any community group that has passed the test of the state Labor governments that entitles them to register a school. After the state government has said, ‘This institution is worthy and deserving of registration as a school, having passed all the tests,’ then it is appropriate, in the
Let us put the lie to some of the assertions that have just been made. Senator Brown said in his contribution that he wanted the 70 per cent of schoolchildren to get 70 per cent of the funding. In fact, in the last budget 87 or 89 per cent—in the 80s—of the funding went to 69 per cent of the students. So, to use Senator Brown’s Australian Greens logic, the state government sector of schooling would get less money. Everybody knows that, if the non-government sector were not in the marketplace, the state sector would have such a huge financial burden that it could not cope. The burden on the Australian taxpayer would be a lot greater than it currently is. Indeed, the taxpayers of Australia are being saved money by the mums and dads who make a private contribution to their kids’ education. As a result, the state does not have to pick up the full tab.

I will return to what Senator Allison said in her contribution: she admitted to calling schools ‘small and fundamentalist’—

Senator Allison—Some are.

Senator ABETZ—Some are; I accept that, Senator. But Senator Allison studiously avoided the use of the word she did use and that word was ‘extreme’. She then had the audacity to move an amendment saying that kids should be kept safe from being abused. I happen to agree with Senator Allison that kids should not be abused, but their mums and dads, our fellow Australians, should also not be abused in this place for wanting to send their children to what Senator Allison describes as ‘small, fundamentalist and extreme schools’.

Let us look at the word ‘small’. What is the matter with a small school? Nothing whatsoever. In Senator Allison’s contribution she contradicted herself and went on to tell us about a small school that she visits in Bendigo. By Senator Allison’s own definition there is nothing wrong with being small, unless of course you happen to be fundamentalist and extreme as well. Senator Allison now has to explain to this place what she means by fundamentalist. Does she mean the Jewish day schools, the Christian parent-controlled schools, the Anglican schools, the Lutheran schools or, indeed, the Islamic schools? Which fundamentalists is she actually talking about? Quite frankly, the easiest way out of this for Senator Allison would be to apologise for that hurtful term ‘extreme’. Let her name and identify half a dozen schools that she would describe as extreme and then possibly go to a parent meeting of that school association and explain why she believes that that school community is so extreme that they do not deserve funding.

We need to keep in mind that the state government has already registered these schools as being appropriate, as having the right curriculum, as having all the right requirements to be registered as a school. Yet Senator Allison and the Democrats seek to stigmatise and, as a result, those sort of stigmas attach. If you describe the mums and dads of Australia who send their kids to particular schools as being fundamentalist and extremist, guess what happens? The kids in the street pick up that sort of language and vilify and alienate the kids that go to these so-called extreme schools. I would have thought that that sort of language from the Australian Democrats especially was highly inappropriate. The Democrats are all for diversity except when it does not happen to suit them. That is the contradiction in their contribution.

Senator Brown in his contribution talked about a two-tier system of education. It is not a two-tier system of education, it is a parallel system of education—it is side by side. For Senator Brown to try to run the old hoary argument that this is the cream on the cake for the private system, clearly he does not move in the circles that I move in.

Senator Brown—I do agree with that.

Senator ABETZ—Senator Brown agrees that he does not move in the circles that I move in where mums and dads make huge personal sacrifices to send kids to non-government schools. They make huge sacrifices and Senator Brown acknowledges that his contribution in this debate is not based on any communication or discussion with those parents and, as such, he has disenfranchised those in this debate—the 30 or so per cent of students and mums and dads—who send
their kids to non-government schools. It is very interesting that about 25 per cent of people on social welfare benefits with children exercise the option of sending their children to a non-government school. But that is the cream on the cake for Senator Brown: these 25 per cent of families with kids who are on welfare payments should not be given the cream on the cake as well. This government says, unashamedly, that the sorts of choices exercised by the four previous Labor leaders in this country should also be the entitlement of parents on welfare benefits. We make no apology for this legislation and the stance we have taken on it.

The state governments have a clear constitutional responsibility for state schools. The federal government of course makes a contribution and that contribution to the state sector has increased in real terms as no state has increased its funding to state education. The reason why we have been able to increase the funding to state schools and non-government schools is because of our economic management. We have paid back Labor’s debt and instead of paying billions of dollars in interest we now have that extra money for health, education and Aboriginal welfare. As a result, each of those areas has received increased expenditure. Instead of making interest payments we are now investing in our children’s future—in their health and education. This government says that those parents who want to exercise choice are entitled to some government assistance. At the end of the day, it is still cheaper for the Australian taxpayer to help the non-government sector than it would be to throw all the children onto the government sector.

Senator Brown talked about difficult students supposedly not being required to go into the state system. In Senator Brown’s view of the world there would be no private schools, so where would those students be in any event? In the government sector. Where is the logic in that assertion?

Unfortunately, Senator Brown, the Labor Party and the Democrats are blinded by an ideology or, indeed, blinded by the marching orders provided to them by the Education Union. In relation to this particular amendment, I say to Senator Allison that MCEETYA is a consultative group, as she has indicated, but that does not mean that you cannot talk with them, agree with them and then unanimously implement a proposal and a solution that everybody agrees to. We can use the stick if need be, but our first port of call would be to seek to cooperate.

We will not be dividing on a number of amendments as they come up during this debate in order to save time, but that does not mean that we are not vehemently opposed to the amendments that are being put. I also want to place on the record that in the committee stage as soon as somebody speaks it allows somebody else to get up and it is basically an open-ended debate. As a result, the small parties often abuse that privilege and get up time and time again in relation to the same topic and play a tag team. We, as the government, are anxious to have this legislation go through. Therefore, my future contributions in relation to amendments that are proposed will be very limited. We, like the mums and dads of the 58 school communities right around Australia who are sweating on this legislation getting through, are very anxious to see this legislation get through without delay.

Senator ALLISON (Victoria) (12.24 p.m.)—This is going to be a very long debate indeed if Senator Abetz keeps making the kinds of provocative statements that he has just made because I will be forced to stand up each time and defend our position. I will go to the last point, first: Senator Abetz says that the government is vehemently opposed to these amendments. That surprises me, Senator Abetz, and perhaps you should check with Minister Nelson before proceeding with that line of argument. It is my understanding that the government is very inclined towards these amendments—

Senator Abetz interjecting—

Senator ALLISON—You had your go, Senator Abetz. Maybe you should leave the floor to me at this point in time. In fact, Minister Nelson sent a copy of those amendments to the state ministers and, as I mentioned in my contribution, I did as well. I think it is more a question of timing and whether or not the states should agree to this
before proceeding, which is the issue at hand, and not a question of vehemently opposing the amendments as you said just a couple of minutes ago.

The other issue I would like to talk about is the fact that every time there is a debate on education in this place, Senator Abetz, you get up again and claim that the Democrats have vilified non-government schools. There could be nothing further from the truth.

Senator Abetz—Just apologise and it will be over.

Senator ALLISON—I have no intention of apologising for something I did not say, Senator Abetz. I am not going to apologise for what you said, that is for sure. Another point I would like to make is that Senator Abetz challenges me to name schools which are extremist and fundamentalist. That is the oldest trick in the book, of course, Senator Abetz. You know, as well as I do, that I have no intention of naming any school at all.

Senator Abetz—You can’t name them.

Senator ALLISON—Senator Abetz says that I cannot name them. The government cannot name them either because it has no interest in this matter. The government is happy to fund whatever school manages to pass state government registration. As we all know, if you have a set of toilets and you promise to abide by the curriculum you will get state registration. To suggest that there are not any small, extremist or fundamentalist schools in our system is absurd to say the least.

Senator Abetz—Name them.

Senator ALLISON—you, quite frankly, do not know. There are plenty of schools that I could suggest, simply from the names of the schools, the Commonwealth government look at to see the sorts of practices operating in them. To come in here and suggest that none of the non-government schools that the government is aware of is small, extremist or fundamentalist is ridiculous.

I also do not stigmatise non-government schools. In fact, I pride myself with having a very good, close working relationship with non-government schools, which must disappoint you, Senator Abetz. I talk regularly with the Christian schools, I talk with the Lutheran schools, I talk with every part of the government and non-government school sectors. Let me tell you, Senator Abetz, that there is widespread support in that sector for these amendments. Quite a few schools in the non-government school sector—I will not name them in this instance; I will let them speak for themselves—have said that they have been totally frustrated by this MCEETYA process, they see it as going in the wrong direction and that 5½, nearly six, years is too long to wait for a national approach to this problem and some sort of emphasis on the part of the federal government to getting it right. It is a serious matter and it disappoints me, Senator Abetz, that you so readily resort to provocative remarks.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order, Senator Allison, you should address your remarks through the chair and not directly to Senator Abetz.

Senator ALLISON—I apologise, Mr Temporary Chairman. Senator Abetz should understand that those kinds of provocative remarks are not conducive to sensible debate in this place. I wish he had confined his comments to the amendments before us today instead of dragging up the good old chestnuts from years ago and twisting them and turning them to make it sound as though the Democrats are somehow opposed to certain kinds of schools in the non-government sector. That is a ridiculous thing to say. I have said in this place many times that public education in this country is fundamentally important and that your government has ignored the need for better funding for public education and has allowed the sorts of policies to be implemented which have seen non-government schools very much favoured over government schools in terms of resources.

Pretty much every week I see the results of those kinds of policies in our government sector. As Senator Brown said earlier, a lot of teachers and a lot of schools are struggling in a way that they have never done before in terms of dealing with the students they have to teach. A lot of that can be sheeted home to the fact that your government is disinterested in assisting and making sure that government
schools are well resourced. Senator Abetz, I invite you to keep up this kind of debate. If you do, I will be forced to keep defending our position and I think that it is not a sensible way to proceed if the government wants to get this legislation dealt with, as I understand it does.

Senator BROWN (Tasmania) (12.30 p.m.)—For the record, Senator Abetz said to Senator Allison that she should apologise for that hurtful word ‘extreme’. It is a word that he has used on more than 40 occasions in making accusations in this very chamber. He should set the example rather than expect other people to do it. I support the amendments.

Question agreed to.

Senator CARR (Victoria) (12.31 p.m.)—There are a few questions that arise in regard to the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002. I was wondering first of all if the minister could explain to the committee: on what basis does the Commonwealth estimate the four-year financial impact of this bill?

Senator ABETZ (Tasmania—Special Minister of State) (12.32 p.m.)—I would assume that it was on the best estimates available to us. When you make these sorts of predictions they have to be based on what are anticipated growth rates et cetera. That is the basis on which these figures have been determined.

Senator CARR (Victoria) (12.32 p.m.)—The financial impact statement indicates a figure of $11.9 million for the four-year period, which of course is substantially more than previous figures that have been indicated to us on the three occasions this bill has been presented to us, so we are seeing an increase of about $2 million on last year’s appropriation bill. First of all, I will ask you a direct question. Can you confirm that the funding commitment under this bill is in fact open-ended?

Senator ABETZ (Tasmania—Special Minister of State) (12.33 p.m.)—While Senator Abetz is considering his reply to Senator Carr on that question, and I know the lunch break is coming up, I want to foreshadow another question that he might get an answer to. Can he acquaint the committee with how many children have been expelled from the private school system over the last five years and could he acquaint the committee with what the reasons for the expulsions were? Is there a breakdown? Has the government got any knowledge of the matter? Secondly, what happens with children who are expelled from the private school system? If he does not have specific answers on that, I would like him to tell the committee what the options are for children who are expelled from the private school system. Where do they go to?

Senator CARR (Victoria) (12.34 p.m.)—I would ask the minister again: can he now confirm that this is in fact the fourth figure the department has presented for this bill? There was the first figure for the forward estimates in 2000 when the package first emerged. There was the appropriation bill figure last year of about $9 million. Towards the end of the year my recollection is that there was a figure of around $14 million and there is a figure now of about $11.9 million. My estimate is that over the period since 2000 we have seen increases in the establishment grant figures—for a new program—of something like 260 per cent in the first year through to about 200 per cent in the second year and 150 per cent or thereabouts in the third year. We have a doubling of the estimates from the time the original program was introduced—in the space of one triennium a doubling of the figure—and we have in fact four separate figures. I ask again: on what basis does the government make the calculation in the financial impact statement that this bill will have an impact of $11.9 million or can you confirm that in fact this is an open-ended budgetary commitment?

Senator ABETZ (Tasmania—Special Minister of State) (12.35 p.m.)—The projections are based on a average of 28 new schools each year with an average of 92 students per school. That is the basis of calculations. Those calculations are based on best estimates. If the demand is higher and more schools are registered by the state governments—and that is a very important limiting factor on the potential exposure: if the state government regimes around the country believe that they are appropriate schools—then
they of course will benefit from this program. In relation to the question asked by Senator Brown, he should go back to the parliament where he started life, and that is the state parliament. He knows full well that expulsions and matters of that nature are dealt with under state legislation and state regimes. Rather than addressing the question to me I think Paula Wriedt, the Minister for Education, would be a better port of call.

Senator CARR (Victoria) (12.37 p.m.)—The answer the Special Minister of State has just given me is quite extraordinary. He is now talking about an average of 28 schools and 92 enrolments. The average size of new non-government schools was, up until last year, 42 students. The figures I quoted before were from memory, and I want to correct them. Under this program, the establishment grants will increase by 350 per cent in 2001, 260 per cent in 2002 and 100 per cent in 2003. Of the 49 schools that were listed up until last year—and I now see the figure is going up to around 58—there were at least 13 schools in which there were quite serious problems with the guidelines that currently exist. There were issues of new campuses, split schools changing their names, schools simply extending their operations to include preschools and other such things, and schools that are really businesses—not for profit. There is a range of issues here that go to the administration of this program, and this is what concerns me. As I see it, and on the basis of the material we have had presented to us in estimates, there has been a massive blow-out in this program—a doubling of the estimates. That indicates to me that the planning capacity of the department is, at best, open to question. I think that is a reasonable assessment.

What troubles me as well is that in the context of the claims made about the general schools program—and I do want to keep to the specifics where I can—we were told that if there were a massive expansion in the government’s support for particularly elite category 1 schools there would be a control-on-the-fees regime. We were told that we are depriving poor schools of support, but in the context of the government’s failure to plan properly, to estimate in a reasonable way, the fees of the schools generally have been increased to a dramatic extent. Brighton Grammar School has had an 8.1 per cent increase; Carey Baptist Grammar, 10.6 per cent; Eltham College, 7.9 per cent; Firbank Anglican School, nine per cent; Haileybury College, 6.5 per cent; Presbyterian Ladies College in Melbourne, 7.7 per cent; Scotch College, 8.1 per cent; and the famous Wesley College, 19 per cent. We are not talking about poor schools in this case. The annual fees at Wesley College are $13,500 per child per year, with an increase in fees of 19 per cent. There are not too many truck drivers able to afford that sort of money.

The claim that the government made that they are in fact opening up these elite private schools to the working class has proved to be bogus. Their claims with regard to the establishment grants are equally bogus. We have here a new form of middle-class welfare by this government. They cannot give tax cuts, so they hand out massive subsidies to a group of people who are quite well off—in particular, to schools such as Wesley College, which has achieved a huge windfall of $3.8 million per annum under this package. I find these claims made by the government doubtful. Equally, we find doubtful the government’s claims that the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 has a financial impact of $11.9 million, given that this is the fourth time they have come before this parliament with a financial impact assessment and it has been wrong.

I would ask—and I know a break is coming up—whether there are any schools under this proposed program that have been found by the Commonwealth to be newly eligible for recurrent grants since 2001 but do not appear on the already published list of 58 schools eligible for establishment grants. Are there any further schools to be added to that list?

Senator BROWN (Tasmania) (12.42 p.m.)—I will be brief in order to give the Special Minister of State the opportunity to answer that very important question from Senator Carr. I want to flag that I will be asking further questions about the expulsion problem. It is not a matter just for state gov-
ernments; it is a matter that is being raised here in this chamber. As an amendment to this legislation, it is very much a matter of this federal legislation, and the minister has an obligation to give the information that is available in his department to the committee or to explain why he has no information, if that is the case. This is a very important issue. I will be pursuing it after the luncheon break. I will leave it at that. It will give the minister time to get the committee the information. I will now allow the minister the opportunity to answer Senator Carr’s question.

Senator ABETZ (Tasmania—Special Minister of State) (12.43 p.m.)—In the short time remaining, let me indicate that no new schools have been approved as yet for 2002, and if Senator Carr were across his topic he would or should have been aware of that. In relation to this massive blow-out, as Senator Carr describes it, he is basically saying that the mums and dads of Australia are appreciative of, and embracing, the federal government’s policy. The pent-up demand that was denied by the draconian legislation of the previous Labor government having been broken, the mums and dads of Australia are now seeking, with their own private resources, to establish schools. I know some people seek to describe that in derogatory terms, but we on this side celebrate diversity. We support and celebrate the mums and dads of Australia having choice in education. If they want to exercise that choice, and as long as the state governments approve of the schools that they want to operate, we are not going to discriminate against them in the fashion suggested by my colleague opposite.

Progress reported.

MATTERS OF PUBLIC INTEREST

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

Zimbabwe

Senator FERGUSON (South Australia) (12.45 p.m.)—It gives me a great deal of pleasure to speak today, a day when our Prime Minister in London has been able to get the agreement of both the President of South Africa, Mr Mbeki, and the President of Nigeria, Mr Obasanjo, to suspend Zimbabwe from the Commonwealth of Nations. I had the good fortune to be invited by the Commonwealth to be an independent observer at the most recent elections in Zimbabwe. It is the second time I have observed elections there, having led an Australian delegation in the year 2000 to observe what were then the parliamentary elections when, for the first time in over 20 years, a significant opposition party was able to present itself to the elections.

The deterioration of human rights in Zimbabwe, since the year 2000 when I was last there, has been alarming. Violence and intimidation were widespread. We have had reports over the past 18 months of this violence and intimidation, but to see it first-hand was an experience that I will not forget. I will give one example. At midnight on 2 March, just outside Guruve, a very small town in the far north of Zimbabwe near the Zambia-Mozambique border, where I spent most of my time, some brave person had the nerve to paint a ‘Movement for Democratic Change’, an MDC slogan, on the road. Following that, a local gang of ZANU-PF paramilitary youths moved into a village on the outskirts of the town and abducted eight young men they decided were responsible for this terrible travesty. They were taken by truck to a base camp, blindfolded and systematically beaten and brutalised. I made contact with three of these men in a safe house in Harare. They relayed to me first-hand the shocking details of the ordeal that they were put through. What really amazed me was that this was on the Wednesday prior to the elections. On the Friday, two days later, one young man was determined to return to Guruve to act as a polling agent for the opposition. The images that I have brought home from my two weeks in Zimbabwe as a member of that Commonwealth observer group will continue to haunt me. My time was spent largely in the two constituencies in the Zambezi Valley and on the escarpment near the border with Zambia and Mozambique. I spoke to participants in the election process from all sides of the political spectrum and I observed polling at many polling stations in
the region, as well as observing the process of counting the ballots. The criteria of free and fair elections were breached in every possible way. The three basic tenets of a democratic election process are freedom from violence; freedom of movement and association; and freedom of expression. On each of these counts, in the 2002 presidential elections in Zimbabwe, it failed. In the northernmost constituencies that I covered, no campaigning by the opposition was allowed, no opposition rallies were permitted and no information other than the government controlled propaganda was available. It was therefore of little surprise to me that President Mugabe polled more than 85 per cent of the vote throughout the region.

There are numerous accounts of violence in Zimbabwe. I will quote just a couple more. On 18 February, in the full view of the advance team of the Commonwealth’s observers, a group of about 1,000 ZANU-PF youths armed with clubs ran amok through the central business district of Harare, attacking MDC officers and supporters. On 22 February, a group of 200 youths armed with stones and clubs attacked the MDC officers in Kwekwe in the Midlands while members of the South African observer team were having a meeting with local MDC officials. Members of our team met numerous victims of politically motivated violence. Many had bruises, scars and axe wounds all over their bodies. One victim that was observed had the letters MDC carved in his back with a sharp knife. Another victim was chained alive in a coffin and immersed in water and threatened with drowning while being repeatedly interrogated about the identities of local MDC operatives. Members of our team in the Midlands met a woman who had been gang-raped by ZANU-PF youths because she was the sister of an MDC member. Members of our team were particularly disturbed by the number of politically motivated murders—I think there have been estimates of up to 150 people in the last 18 months—especially of MDC activists and supporters.

Numerous complaints were made to members of our group about the activities of a paramilitary youth group trained by the government under what is superficially known as the national youth training program. This national youth training program trained people in torture. Members of this group appear to have replaced the so-called war veterans as the leading perpetrators of politically motivated violence, intimidation and abduction during this campaign, especially in the rural areas. Our observers met dozens of victims of this group and saw enough other direct evidence of their activities to be seriously concerned. Members of the youth group appeared to operate mostly at night and in uniform. Its members set up illegal roadblocks and intimidated opposition supporters, confiscating national identity cards of known or suspected MDC supporters which they needed in order to vote, and forced many from their homes and areas of residence. They are but a few examples of the many that were put by our group in our debriefings, which took over six hours, of the 60 members of the Commonwealth observer groups.

I fear for the short-term future of Zimbabwe and its people. This beautiful and proud country that was once the breadbasket of Africa is rapidly becoming a basket case. As a direct consequence of the takeover and settlement of white owned farms under President Mugabe, Zimbabwe has gone from being a food-exporting nation to being one which is currently importing staple produce. The rule of law is almost non-existent. State sponsored violence is the order of the day. The economy is in absolute tatters, with unemployment at 60 per cent and no separation of powers or effective application of the rule of law. The official exchange rate is currently 56 Zimbabwe dollars to $US1 when at the time of Mugabe’s assent to power in 1980 one Zimbabwe dollar bought $US1.48c. Although the official rate was 56 Zimbabwe dollars to $US1, we were able to buy 300 Zimbabwe dollars to $US1 from a change bureau just around the corner from our hotel.

Against this background, I have never met so many brave people, both black and white, who are determined to fight for their democratic rights against such terrible odds. The two weeks I spent in Zimbabwe have had a profound effect on me, and I hope the spirit of these brave people and their drive for
democratic government is not diminished by this electoral experience and that Zimbabwe can regain the prominent position it held in southern Africa 20 years ago.

I was fortunate to be on this delegation with Julie Bishop, Kevin Rudd and Bill Gray, an ex-electoral commissioner. By way of explanation, I want to make some comments about an article written by Laurie Oakes in the Bulletin this week in which he puts a point of view which refers to both me and to the member for Curtin, Julie Bishop, and in doing so he uses information totally supplied to him by the shadow minister, Mr Kevin Rudd. I preface that by saying that I do not believe that a Commonwealth observer mission of any sort is the place for either a minister or a shadow minister in any government or parliament throughout the Commonwealth. Ministers and shadow ministers have policy decisions to make. Sometimes those are made before, pre-empting any announcements that might be made in the future. In this case, the Labor Party’s shadow foreign minister called for sanctions on Zimbabwe in January and then at a later stage asked to become a member of the Commonwealth observer group. Of course, in the newspaper controlled by the government in Zimbabwe, it was written up in very bold print that the Australians were sending an observer who had already called for sanctions and how impartial would his observations be. We were invited as independent people to be part of the Commonwealth observers group. What really disturbs me about Laurie Oakes’ article is that he never rang me or Julie Bishop to confirm whether any of the things that were said in letters written by Mr Rudd were true.

Julie Bishop was in Zimbabwe for three weeks. I was there for two weeks and Kevin Rudd was the last to arrive and had planned to be the first to leave, on the Monday before the count had even taken place. He then extended that to Wednesday and then to Thursday, and he finally came home on the Saturday; and he then had the hide to say, ‘Senator Ferguson and Julie Bishop had to return to Australia around midday on Friday,’ when we had always planned to come home on Friday. The report was somewhat late because we had one extra day of counting before we were able to start writing and processing the report. Laurie Oakes said:

By that stage the observer group has not progressed very far at all in its detailed consideration, paragraph by paragraph, of what turned out to be a 46-page document.

Nothing could be further from the truth. On the Thursday we went through the draft, and we put all the paragraphs in place so that it was a complete draft to put before the committee the next morning. Mr Rudd was not present all the time anyway, I might say. When the work was being done on the Thursday, he seemed to spend most of his time outside the room on the telephone, contacting Australian media outlets to make sure he was well heard in Australia. In fact, the basis of the report was finalised on the Thursday night. It was put to the committee on the Friday morning. We all worked in different working groups: some on the law, some on the poll and the count, some on the basic registrations. We all worked in different areas, and it all came together on the Friday.

In fulfilling his own ego, Mr Rudd then claimed that he was responsible for half the useful recommendations put into the final report—something I refused to believe—and he said it was done only at his insistence. I happen to know that there were a number of people from black countries in Africa like Botswana and Gambia, from the Caribbean states and, particularly, from Guyana, who were pushing very hard for a stronger statement than the one that had been presented. They spoke very strongly in favour of that. After we left at midday, although Mr Rudd says they did not finally conclude until 11 o’clock that night, there were in fact very few changes made to that document. I have copies of the draft and I have a copy of the final document, and there are almost no changes in the final document from the draft we made the day before. We were assured that would be the case.

Mrs Bishop and I could not get onto a different plane to come back to Australia. We were flying to Perth, and I was then flying on to Adelaide, and it was impossible to delay our departure to any later than the Friday
lunchtime. For Laurie Oakes to have written up in the Bulletin these misleading comments by the Labor Party’s shadow minister for foreign affairs, without at least telephoning either Julie Bishop or me to confirm whether or not the facts were accurate and to find out whether there was any truth in the statements Mr Rudd was making, does him no credit. To take them at face value and put them down as fact without making any attempt to verify whether or not the statements were true beggars all description. Laurie Oakes is supposedly one of the senior journalists in this place, and he has been for some time. If he is going to be selective about who he talks to and if he is going to promote one particular cause, he does himself no favours and he certainly does the media in general a disservice.

My time is nearly up. I can only reiterate that this was an experience that was physically exhausting and emotionally draining for me. It is one that I will never forget for the rest of my life. I wish the people of Zimbabwe well.

Attorney-General: Address to Senior Officers

Senator LUDWIG (Queensland)  (1.00 p.m.)—I want to take this opportunity today to comment on the Attorney-General’s address to senior officers in the Attorney-General’s Department. I do not agree that the coalition’s promises of making it easier for Australians to solve their legal problems is anywhere near achieved. The coalition has not demonstrated that their reforms of the justice system have or will make the law faster, simpler and cheaper for all Australians. Sometimes it is easier to use slogans in lieu of good policy initiatives, and the development and implementation of them. The recently finalised additional estimates around the statement that government reforms have made the law faster, simpler and cheaper for all Australians rings a little hollow, I must say. Even where reforms have been introduced, they have been done in such a way that their true value has been significantly diminished.

Turning to the Federal Magistrates Service in the address, the service is now a reality—that is a given. Labor does not oppose the establishment, but it did question the efficiency of establishing a whole separate court structure. What we now have is 16 federal magistrates to replace a greater number of judicial registrars of the Family Court of Australia, whose numbers have been greatly reduced. The issue that now confronts us is whether this is a change for the better. Is there a better system now in place to meet the needs of the clients? I think the jury is still out on this. Clearly there is no turning back in the short term. The task we now face is to make the system work more efficiently and cooperatively to ensure that justice administration is better served in the federal system. Is the government up to the task? I think not. Is the slogan of this government real or rhetoric? Considerably more work needs to be undertaken to ensure the service fulfils its tasks. There is no mention of this in the government’s portfolio priorities announced on 5 February 2002. You would have expected more from the address.

In my view the Federal Magistrates Service can and will serve the public effectively; however, the service will increasingly be required to do more and varied work while I suspect the government will starve it of resources. The government has said that the magistrates will have responsibilities for a range of issues, including bankruptcy and immigration, and I suspect a few more areas will be heaped upon them as well. However, I imagine the obligation placed upon the service is to reduce the Family Court delays while maintaining the proper administration of justice.

With reduced funding the likely outcome will be a hurried and overworked service, which will inevitably experience lengthy delays. The government has done very little to address these matters and I suspect will inevitably come up with a stopgap solution, as is their way. The government has said that its ‘family law reforms are helping to reduce the emotional and financial strains of separation and divorce.’ A major factor of stress during a marriage break-up and/or separation is delays and waiting times for hearings. The coalition has set the bar. It is up to them to demonstrate that they can reduce the waiting
times, the stress and the inconvenience that it
causes.

In his address, the Attorney-General also
discussed privacy issues. The privacy legis-
lation is but one other area that Labor will be
monitoring closely. To date the establishment
of a new privacy regime appears to be well
received. The more difficult task will be to
overcome any obstacles that arise from gaps
within the privacy laws themselves. During
the debate on the new privacy laws, Labor
was instrumental in putting forward changes
to the legislation that strengthened the pow-
ers of the Privacy Commission and provided
greater protection for Australians' personal
information. However, more improvements
are needed to incorporate the invasion of IT
in relation to personal details. The current
laws do not, for example, apply to employee
records nor do they differentiate between the
protection of the personal information of adults and that of their children—despite the
fact that information provided by children,
particularly via the Internet, requires special
protection. These are areas that need to be
addressed and which the government is yet
to act on despite assurances to the contrary.
Labor will continue to call for action in these
areas.

The government’s agenda is the other
topic that the Attorney-General discussed
during his speech to his departmental offi-
cers. The government has set out to:

... introduce age discrimination legislation and to
take other steps to reinforce our reputation as a
world leader in the area of human rights ... [and] to
ratify the Statute of the International Criminal
Court.

No doubt the Senate will work cooperatively
on these aims. There is a need to have proper
age discrimination legislation. The reputation
of this government in the area of human
rights and the International Criminal Court
are matters that similarly must be addressed.
As a member of the Joint Standing Commit-
tee on Treaties, I, along with my colleagues,
have spent a considerable amount of time on
this issue of the International Criminal Court
and there is a need to spend a little more time
in respect of that issue, and the bill has yet to
be presented.

The government also released an exposure
draft that was valuable in the process; how-
ever, the matter is still some way off. While
on this topic of treaties, I take the opportu-
nity to encourage the government to engage
in the process and make timely responses to
the committee reports that have been sub-
mitted. Many reports do not require a re-
sponse from the government but, between
April and September last year, there were a
number of reports that have required a re-
sponse. This government has been tardy in
providing a response to ensure that the work
of the treaties committee is kept up to date
and that responses are provided in a timely
and effective manner.

I turn to the other areas which were ad-
dressed in the speech by the Attorney-
General to the departmental officers. Touch-
ing on the topic of the Administrative Ap-
peals Tribunal, the Attorney-General indi-
icated that he was keen to see the establish-
ment of an administrative review tribunal.
Labor, similarly, is keen to see this happen.
However, a considerable amount of work is
required to be undertaken. Labor opposed the
ART that the coalition introduced in the 40th
parliament, for very good reasons. Those
reasons remain valid. Our touchstones were,
and remain, that the introduction of the ART
should not compromise either the quality or
the independence of the review of govern-
ment decisions. I urge the Attorney-General
not to take the easy road and simply drag out
the last model, with all its attendant prob-
lems. Administrative law in this country does
require a second look.

It was intended that the bill would provide
a fundamental reform of the system of fed-
eral merits review. The ART was to replace
four merits review tribunals: the Administra-
tive Appeals Tribunal, the Social Security
Appeals Tribunal, the Migration Review Tri-
bunal and the Refugee Review Tribunal. Its
genesis was the Administrative Review
Council’s report Better decisions, which was
a review of the Commonwealth merits re-
view tribunals. The council’s view was that a
single tribunal should be established to re-
place the existing federal merits review tri-
bunals. The catchcry was that the ART
would provide an accessible mechanism for
reviewing decisions that was fair, just, economical, informal and quick. This was to enable the tribunal to review decisions in a non-adversarial way and to allow the tribunal to have multiple procedures to resolve issues. However, the bill did not get Labor’s support, as I indicated. It did not meet the high expectations that were set for it. As outlined in a minority report of Labor and Democrat senators in an inquiry by the Legal and Constitutional Committee, there was a belief that there was merit in the concept of merging the separate administrative review bodies into one, but the model was so flawed and so dramatically departed from ARC Report 39 that in the end Labor could not support it.

If the Attorney-General is serious about another look, I urge him to sit down with the shadow Attorney-General and work through the issues in a bipartisan way. In my view, there is considerable scope for reaching an agreement in principle on an administrative review tribunal. As I understand it, the Attorney-General has requested the Civil Justice Division to prepare an options paper on the future of this project, which in my view misses the mark entirely. There is considerable scope for an options paper to be used as the mechanism to go forward. However, to limit it to a document to advise his cabinet colleagues of the most appropriate way forward smacks of a way out, not a way forward.

In his speech, the Attorney-General also turned to family law matters. He referred to the ‘Pathways’ report. It is worth spending a short amount of the Senate’s time on the report. Before I comment on the Attorney-General’s remarks, I should say that the report was produced by the Family Law Pathways Advisory Group in July 2001. The report was titled *Out of the maze*. The reason for producing the report was to find a way of achieving better outcomes for family members, in particular children, following the dissolution of a marriage or relationship. Of course, it was predicated on the concept of ‘parental responsibility’. Part VII of the Family Law Act 1975 emphasises that parents and the courts should actively consider the best interests of the children when making decisions about their care and welfare.

The report made a number of recommendations across a broad range of matters. They also recommended more specifically that the family law system should perform specific key functions, including, amongst others, the provision of education for the community, young people and professionals; provision of information that is accessible, comprehensive, appropriate and targeted; assessment and referral; service and intervention options to help family decision making; and ongoing support. It is disappointing, to say the least, that the Attorney-General is not leading in this area. It seems that the Prime Minister’s task force set up to take this forward has yet to make a visible statement. As the Attorney-General himself said, ‘There is a need for much work to be done in this area.’ Until this work commences, it is not visible. The Attorney-General needs to roll up his sleeves and take the matter forward. The Family Law Act is his responsibility and the Attorney-General should not shirk his responsibility.

I turn to another area which came under some scrutiny in relation to the departmental report—legal aid. It was disappointing to see that the Attorney-General’s only concern with the whole area of legal aid was for a national fee scale for legal aid work. The government’s priority in this area is clear. The issue of access to the law for those in need is being ignored.

**Senator Brandis**—That’s rubbish.

**Senator Ludwig**—As you would understand, Senator Brandis, deep cuts to legal aid since 1996 continue to hurt those people who are deserving of assistance but who are unable to meet the guidelines that now severely restrict the availability of legal aid funding.

I now turn to something that Senator Brandis would be interested in—reform of the legal profession. The Attorney-General made some comments to his departmental officers in this area. As the reform of the legal profession is missing from the speech, it can only be surmised that the Attorney-General has abdicated his responsibility to the state attorneys-general. That is the sole ‘statement’ that he made in that area—nothing.
Senator Brandis—The state attorneys-general regulate the legal profession. That is not the responsibility of the Attorney-General.

Senator Ludwig—The coordination role and leadership of law reform is lost on this government, as it seems to be on Senator Brandis. I am confident that the states will, however, be able to bring about significant law reform for the betterment of not only the profession but also the public, who will be the winners out of the process. It is disappointing to see that Senator Brandis does not support the people who could win out of the system of a properly regulated and reformed law profession, led by the Attorney-General, rather than ignored by him. Victoria is well on the track of reforming its regulatory framework; New South Wales and Queensland are too.

In conclusion, the Attorney-General’s address covered a wide range of areas which I will further talk about in other forums, including this Senate. However, the address did not outline all the areas within the law that the opposition would see as needing attention. The Attorney-General has confined his remarks, it seems, to a very narrow, limited agenda that neglects legal aid.

Homosexual Legal Rights

Senator Greig (Western Australia) (1.15 p.m.)—This afternoon I want to try to give voice to some of the anger and the very real fear that many in the Australian community feel following Senator Heffernan’s now infamous speech to this chamber last week and the resulting wave of homophobia that swept the country. Homophobia takes many forms: some are subtle, some are blatant, some are insidious and some are vicious. Gay and lesbian people, sadly, are used to the tall poppies in their community, those with profile and positions of power and influence, being attacked. When this happens, all gay and lesbian people feel the pain and anger of that attack. The appalling allegations against Justice Kirby were felt very personally and very deeply by many people.

Senator Heffernan has offered a strong apology to the judge and, graciously, His Honour has accepted. Senator Heffernan’s apology also went to the High Court, the parliament, the Senate and his colleagues. What is missing, I think, is an apology to the gay community. In his statement of apology, Senator Heffernan has said that he does not condone discrimination against homosexuals and that there is no link between homosexuality and paedophilia. This statement is very welcome, but without legislation to back it up, I also think it is very hollow. Homophobia most obviously exists in the form of legislation, both state and federal, which continues to deny to gay and lesbian citizens the same rights and responsibilities as all other Australians. Australia is one of the very few places in the Western world that has no anti-discrimination legislation to protect people on the basis of sexuality from discrimination and vilification. It is one thing to say you do not support this form of discrimination but quite another to actually do something about it.

The fear in much of the gay community is of the damage caused by repeated allegations from people in public life that homosexuality and paedophilia are one and the same. It is an insidious but deeply entrenched mythology. Sadly, much of the damage caused is to the psychological health and wellbeing of gay and lesbian youth, a group in our community with a shocking record of suicide. Many gay and lesbian people rightly fear the hatred and violence that sometimes emanates from this belief and rightly fear the consequences of antigay legislation that is founded on this mythology.

Amongst the vast array of innuendo and allegation contained within the senator’s speech, there is one thing he said that I could strongly agree with. That is the fact that previous criminal prohibitions against gay males ensure that older gay men are today regarded as criminals in a way that does not apply to heterosexual males. In age of consent laws the goalposts are often shifted, to the disadvantage of gay males. There is no logic in this. In 1984, homosexuality was decriminalised in New South Wales but the consent age remains at 18—two years above that for heterosexual couples and lesbians. In his speech, Senator Heffernan has said:
... I believe there is an urgent need in New South Wales to retrospectively legislate to protect people, including some high profile political, judicial, legal and media figures, many of whom presently still lead double lives, and provide these people with legal relief from prosecution for pre-May 1984 lifestyle ... offences.

He is absolutely correct, but his argument is grossly inadequate to address the broader and more comprehensive dilemmas caused by the existing antigay laws in New South Wales, let alone those that were in place almost 20 years ago. There is a profound contradiction in the senator’s arguments, and it is this contradiction which rightly gives rise to accusations of homophobia. On the one hand the senator calls for the retrospective abolition of antigay laws prior to 1984, while on the other hand vehemently opposing moves to remove the existing antigay laws in that state, which were established in 1984.

The existing antigay laws in New South Wales ensure that gay males aged 16 and 17 are currently deemed to be criminals. If they engage in consenting sex with partners of a similar or older age, they are subject to prosecution and jail terms. This law does not apply to heterosexuals or lesbians, who can lawfully consent to sexual behaviour at 16 years of age. Repeated attempts to abolish this antigay law and to equalise the gay consent age with that of heterosexual couples has been fiercely resisted by the Liberal Party of New South Wales and remains fiercely resisted by the senator. What supporters of Senator Heffernan’s argument utterly fail to comprehend is that providing legal relief from prosecutions and equalising the consent ages is exactly the same thing. If legislation were passed along the lines advocated by Senator Heffernan, it would still mean that 16- and 17-year-old gay males in New South Wales would find themselves in a position of vulnerability to blackmail, compromise and police entrapment, as is currently the case. A gay 17-year-old male studying law in New South Wales today will be a compromised member of the judiciary in 30 years time. Why? Because he is subject to the existing criminal sanctions in New South Wales against gay men in exactly the same way that gay men were compromised prior to 1984.

Senator Heffernan has also failed to recognise and acknowledge that antigay age of consent laws exist beyond New South Wales. Every state and territory has a sorry tale of repealing antigay laws only in recent years, with the exception of South Australia, which equalised its consent ages in 1975. As it now stands, New South Wales, WA and the Northern Territory are the last remaining jurisdictions in Australia where antigay consent ages exist. The most outrageous of these are in my home state, Western Australia. In fact, they are the worst in the Western world. They ensure that all sexually active gay males aged between 16 and 21 are deemed to be criminals and face up to five years imprisonment. These laws are currently under review and repeal by the WA parliament, but I would point out to the senator that once again it is his side of politics, the Liberal Party, which is fiercely resisting this reform and wants the antigay laws to remain.

The Wood royal commission in New South Wales, on which Senator Heffernan drew heavily as a resource for his arguments, made some 140 recommendations to the government to minimise opportunities for police corruption. First amongst these was the recommendation of the call to equalise consent ages in that state. Yet, despite this, law reform is still not forthcoming in New South Wales and is fiercely resisted by the Liberal Party in that state. I would say to Senator Heffernan that, if he is genuine and serious about legislative reform to alleviate gay men from compromise, entrapment and blackmail, he must call on his Liberal colleagues in that state to support the current bill before that state’s upper house—and in the name of the Australian Democrats—which aims for the umpteenth time to finally abolish the antigay laws from that state. Age of consent reform would make life easier for young gay males both in a social and legal sense.

Through the media and the parliament, both Senator Heffernan and the Prime Minister have drawn attention to allegations, now discredited, that a judge had engaged the services of a male prostitute aged 17 years and six months. In so doing, the allegation became focused not on the matter of a judge
with a prostitute but on a judge with an underage male prostitute. Let us be clear about this: if the prostitute in this alleged scenario were female, the question of age of consent would not have come into it. The male prostitute in this alleged scenario is only deemed to be underage by virtue of the antigay laws.

Perhaps without realising it, Senator Hef- fernan has proved that the existence of antigay laws do in fact especially compromise gay men and expose them to criminal penalty to which heterosexual people cannot fall foul. But the hypocrisy of expressing concern about this damaging legal dynamic while at the same time using it to besmirch a member of the judiciary was indefensible.

The anger felt across the nation by all gay and lesbian people over this incident is principally because the attack on Justice Kirby is seen as an attack on all homosexual people. The innuendo about ‘promoting causes to impressionable young men’ is rooted in the ‘recruitment’ mythology of antigay groups. Gay and lesbian people have heard all this nonsense before.

The anger in the gay community is also due to the use of antigay laws to deem gay men as criminals and then, in a bizarre catch-22 situation, to use that criminal status to compromise gay men and to justify the need for these laws by evidence of the fact that gay men are likely to fall foul of them. Can anyone imagine the legal and social chaos that would be caused if heterosexual couples, where one or both partners were aged 16 and 17 years, were deemed to be illegal? Yet this is the reality faced by many gay males.

Antigay rhetoric, especially from people in public positions, and especially antigay rhetoric that equates, implies or confuses paedophilia with homosexuality, raises the temperature of homophobia in the nation. Antigay outbursts give licence to those who would condemn, attack and vilify. The attack on Justice Kirby seems to be yet another case of a gay person in public life condemned for little more than his openness about his sexuality. For as long as some gay and lesbian people pop their heads above the trenches to declare their sexuality, there will be homophobic thugs ready and willing to kick them. This fear and anger will remain so long as the antigay laws remain, and so long as people make use of the antigay laws both to prosecute and to persecute those who simply happen to not be heterosexual.

In response to this, I will give notice today that it is my intention to introduce a private member’s bill introducing homosexual anti-vilification legislation in Australia. This prevention of incitement to hatred legislation would be based on the existing New South Wales model and would be in the same vein as the existing racial vilification laws. Once implemented, it would include words to this effect:

A person must not, by a public act, incite hatred towards, serious contempt for, or severe ridicule of, a person or group of persons on the ground of the homosexuality of the person or members of the group by means which include:

(a) threatening physical harm towards, or towards any property of, the person or group of persons, or

(b) inciting others to threaten physical harm towards, or towards any property of, the person or group of persons.

The bill would also include penalties similar to those which exist in New South Wales and under federal law that could be imposed for people who breach these laws.

We have heard much in recent days both from the government and from the opposition, who claim not to support discrimination against gay and lesbian people and to be strongly opposed to vilification of gay and lesbian people, but we have seen no legislative response to address that. While the Democrats’ sexuality discrimination bill has been on the Notice Paper for some six years, it has not progressed, as is often the fate of private members’ bills.

I think this is a good time to progress a bill which simply says to the community that it shall be unlawful to incite hatred towards or to vilify people on the basis of their sexuality. Given the mood of the electorate in response to recent events and the statements of support for opposition to vilification that have come from both the government and the opposition, I sincerely call on both sides of the House to support this bill. It is my intention to give notice of it today and hopefully to address it when the Senate resumes for the
1076 SENA TE Wednesday, 20 March 2002

budget sitting later this year. I hope it attracts support.

Telstra: Telecommunications Infrastructure

Senator MACKAY (Tasmania) (1.27 p.m.)—Today I would like to speak about Telstra’s record of management of its copper network and the resulting effect this is having on the quality of telecommunications services provided to customers, particularly those in regional Australia, for there is no doubt in my mind that Telstra is putting its corporate interests first and neglecting its public interest role as the owner and operator of telecommunications infrastructure in Australia.

Telstra does have an important duty to its shareholders, but it must strike a proper balance between this and its duty to customers who, by necessity, rely on Telstra’s telecommunications infrastructure. I do not believe that Telstra has this balance right at present, and part-privatisation has put undue pressure on Telstra to satisfy what could be described as conflicting responsibilities.

Since the coalition’s privatisation program started, tens of thousands of jobs have been slashed and Telstra’s capital expenditure budget has been drastically reduced. The result is that Telstra’s telecommunications infrastructure is not being adequately maintained. Customers are experiencing the effects of continuing deteriorations in the network, in part due to Telstra’s failure to repair faults which in some cases are years and years old.

The evidence I cite with regard to the claims I make today about the state of the Telstra network is the information contained in what is called Telstra’s E71 database. After almost a year of asking and asking, and after all the diversionary excuses had been used, Telstra finally released its 2,000-page faults database last September, known first and foremost as E71s, which is the acronym for the fault, and later recast in the incarnation of ‘total order management system’. Until that time the database had been secret. The government and Telstra had refused to release it. We had to go to enormous lengths to get that information, but finally we did.

The database, when we got it, revealed over 100,000 faults in our copper network. This database identifies faults reported by the technicians themselves—this is what the database is—and not customer initiated faults. The customers in fact did not know that these faults existed until Labor obtained that documentation. This material—that is, the 100,000 faults—was not considered at all by the Besley inquiry.

This material, the 100,000 faults, was not considered at all by the Besley inquiry. In a cursory examination of just the first 100 pages, Labor identified at least 50 faults deemed by Telstra technicians themselves as ‘urgent’ and 20 that had been deemed by Telstra technicians themselves as ‘dangerous’. Some were years old, dating back to 1997. Out of all the faults listed, the technicians deemed about 20 per cent as ‘urgent’. That 20 per cent equated to over 20,000 faults. At the time that the Labor Party received the database, Senator Alston was claiming that there was no threat to customer services from this database. In fact he said at the time when the information was released:

The government expects that a desperate and dishonest Labor Party will seek to use the database to run a baseless scare campaign about the state of the Telstra network and— I emphasise this bit—falsely claim that there is some threat to customer services.

I am quoting from a press release from Senator Alston on 18 September last year. What has recurred in relation to the use of pair gain technology, which was inter alia a critical part of the database, with the Boulder family, seems to prove otherwise. Clearly there has been a threat to customer service. Labor knew at the time that this database revealed the true state of the network, and the difficulty in having it made available and the level of obfuscation and difficulty we had in getting hold of it proved that fact.

It was clear at the time that Telstra had something to hide. The database revealed that faults in our copper network were many and varied. Some of the reports included the following comments from technicians. One was ‘constantly breaking down and dangerous’; ‘replaced 32 metres of cable in pipe,
school fax—urgent—service out of order’ was another; ‘new cable required, urgent, 70 per cent customer affected’—these are comments directly from the database—'every wire has LIR causing noise, customers unable to use fax or modem’ was another. These are just a few that we picked.

Some of these faults are clearly related to what is called pair gain technology being in place. Others, however, are due to more minor problems, which can then evolve into more major service-affecting ones as the deterioration progresses. For example—this was another thing that was in the database—a rat-chewed cable which is exposed to rain will deteriorate under those weather conditions. The damaged cable may have first been reported as a minor fault by a technician, but in the event of a downpour of rain customers will find their phone line is suddenly out of order. This example also explains why heavy rain in February this year had such a devastating impact on telephone services, leaving many people without service for several days, and which led to Telstra declaring a ‘mass service disruption’, as they term it. The flow-on effects of Telstra’s inadequate level of maintenance of its network cannot be ignored by Telstra or the government.

The system known as pair gain was only ever intended as a stop-gap measure pending proper cabling provision, but it has now become the norm. A 6x16 is a type of pair gain which is older technology, but it still exists. What it means is that five lines are shared between 16 people. If five people jump on the line at the same time, then the other 11 people cannot use the line at all. That is the reality with some of the older technology in relation to pair gain.

In relation to the copper network, under normal circumstances each customer should be allocated a cable, which is referred to as a telephone pair. But in order to save billions of dollars, Telstra had been piggy-bucking phone lines for years, but the problem is, as Senator Alston would know, that a short-term vision for the network is not sustainable in the long term. Despite that, I have even heard that Telstra are pair gaining off an existing pair gain system, which I think is an absolute disaster waiting to happen.

There will come a point where the Telstra network just falls over. In the meantime, Australians are unknowingly sharing telephone lines with their neighbours, which not only jeopardises the performance of the network but also can and has endangered people’s lives. I am sure that every senator in this place would be interested in this information. The ACA report on the investigation into the provision and maintenance of telephone services to the Boulding family recommended on page 20 that Telstra integrate its customer and faults management systems. This would make a lot of sense, considering that problems with faulty cables often then become problems that affect customer services. The Boulding case is an example of that.

The problem falls into both management systems. Technicians do not appear to have had access to all of the information that would help them properly repair faults so that that fault does not immediately recur within less than a day, as happened in the case of the Boulding family. Further, what would be better would be to have those management systems such as the E71 faults database locally coordinated and managed in each region rather than in a central point in Melbourne or Sydney. It would make more sense for regions to have their own budgets for the instant repair of such faults. I think that everybody would agree that that is axiomatic.

Since the beginning of the government’s privatisation agenda, Telstra has shed tens of thousands of jobs—around 40,000 in fact. This has been through the whole of Telstra and its subsidiaries. One subsidiary that has lost many jobs and continues to do so is Network Design and Construction. NDC are the people who are responsible for building the network and often repairing the network. The government’s agenda, Minister Alston’s agenda, to sell off NDC has meant that jobs have been shed from every part of regional Australia all to make it more attractive for purchase. The irony is that these NDC workers are the ones who could fix many of these maintenance and repair problems in the cop-
per network. Now, while NDC is no longer on the market pro tem, jobs are continuing to be shed—like those in Bendigo at the moment.

We won’t forget Mr Howard’s sincerely meant but more honoured in the breach than in the observance Nyngan declaration that, if any government jobs were to go in regional Australia, a red light would flash in his office and he would stop it. The Bendigo workers must feel very burnt by that declaration. Not only are their jobs going to go, but the faults continue to remain unfixed, waiting for repair, with fewer and fewer technicians available to fix them. In fact, 800 jobs, further redundancies, have gone from Network Design and Construction.

The death of a child is a terrible event that should never under any circumstances be exploited for political reasons, and that is not my intention here today. However, the Australian Communications Authority and the PriceWaterhouse Coopers reports into this tragedy which were released last week—and I congratulate the government for releasing both of those—do paint a disturbing picture of Telstra’s current operations.

It is my belief that Telstra has rationalised its operations to the extent that it is failing its public duty to adequately maintain the telecommunications network. Corners are being cut, shortcuts are being taken and corporate interests are dominating Telstra’s priorities. We on this side of the chamber believe that the further privatisation of Telstra would see these trends not only continue but quite likely increase. That is why we remain implacably opposed to the further privatisation of Telstra, and we will take every opportunity to restate this position.

I would also like to ask those senators who are in the chamber to inquire in relation to the E71 database which has 100,000 faults, 20,000 deemed urgent by Telstra technicians. It may be worth inquiring why that database was not considered in relation to the Besley inquiry because I am sure that if the Besley inquiry had been made aware of this—and I am sure that they were not but I could be wrong—they would have looked into it. One of the things that has emerged from the E71 database is that we have 20,000-odd faults waiting to happen and in the queue we have several thousand more that are likely to become urgent.

The other issue I would like to restate is this issue of pair gain technology. When you have got anecdotal evidence—and we will attempt to substantiate it—of pair gains being put on pair gains, you really do have a disastrous situation in relation to the Telstra network. I wish to make those statements today and call on Telstra and the minister to address the issues in relation to this database which have not been adequately addressed as yet. I give notice that we will be pursuing this issue into the future.

Superannuation: Quarterly Payments

Senator SHERRY (Tasmania) (1.39 p.m.)—In the House of Representatives last Monday, my colleague Mr Mark Latham, in representing me as shadow minister for retirement incomes including superannuation, presented the Superannuation Guarantee (Administration) Amendment Bill 2002. The bill amends the Superannuation Guarantee (Administration) Act 1992 to require all employers to remit superannuation guarantee payments at least quarterly rather than annually from 1 July 2002 onwards. For convenience to business, contributions will be paid on the BAS reporting date for each quarter. Labor has taken the lead on the urgent need for quarterly superannuation contributions.

The former shadow Assistant Treasurer, Mr Kelvin Thomson, introduced a bill on this matter in 2000 and again in 2001. But the Liberal government allowed both of these bills to lapse. The bill we introduced on 11 March was our third private member’s bill on this issue, but we have heard nothing from the Minister for Revenue and Assistant Treasurer, Senator Coonan, who has responsibility for superannuation and who has been missing in action on superannuation for more than three months except for a now infamous dabble with an assertion that superannuation can replace the current age pension. But more on that on another occasion. Since Senator Coonan appears to have now taken a vow of silence on quarterly contributions, I will fill in some of the background to the government’s approach on this issue.
First was their attempted deal with the Democrats on so-called superannuation choice, commonly known as deregulation of the retail section of the superannuation industry. As part of this failed deal, the government agreed to support quarterly contributions. So-called choice fell over. But importantly the government had acknowledged, albeit begrudgingly, that quarterly superannuation was a good idea. There is no necessary link between quarterly superannuation contributions and so-called choice and the government has no excuse for failing to support quarterly payments, especially when Labor has provided it with the necessary legislation.

In August 2001, the Senate Select Committee on Superannuation and Financial Services made recommendations. The committee included three Liberal senators, including Senator Watson, who is currently chairing the Senate. I might say, even though he is a Liberal Party senator and obviously we share a different political perspective, Senator Watson has always been a very hard working and impressive Chair of the Senate Select Committee on Superannuation and Financial Services. The committee recommended that employers be required to make contributions for their employees on at least a quarterly basis. The Senate inquiry illustrated the almost universal support for quarterly contributions amongst employer and employee representatives and other relevant organisations. Support has come from groups including the Australian Chamber of Commerce and Industry, the Institute of Chartered Accountants, the Investment and Financial Services Association, CPA Australia and the government’s own superannuation regulator, APRA.

On 5 November last year, the Prime Minister announced that the government would, at long last, introduce legislation for quarterly contributions. Not unusually for this government, there is a catch. Quarterly contributions will not be implemented until July 2003, and I suspect there will be a further catch when we see the actual detail of the legislation in that it will probably be bundled with other superannuation initiatives. But Australian workers deserve better than this.

Had the government supported Labor’s first private member’s bill in October 2000 all eligible employees would have received quarterly contributions from July 2001. Had they supported our second bill, quarterly contributions would have applied from July 2002. The retirement savings of Australian workers go lower the longer the government waits to legislate. That is why Labor has introduced its third private member’s bill on the matter and that is why I suspect Senator Coonan has failed to respond. She is embarrassed by the mean and tricky one-year delay that Mr Howard intends to impose in respect of this important initiative.

Labor’s bill will commence on 1 July this year, a year ahead of the government’s proposal. Under Labor’s bill the first quarterly payment will not be due until 28 October. Any employers who fail to make this first contribution will need to lodge a superannuation guarantee statement before 14 November.

Regular contributions by employers, on behalf of their employees, are central to Australia’s compulsory universal superannuation that Labor established in 1992. When the Labor government introduced the superannuation guarantee, we originally proposed that payments be made quarterly, but at that time we agreed to annual payments to give employers time to settle into the new system. As I have said earlier, almost all employers now fulfil their superannuation obligations. However, a significant minority of employers only pay annually or do not pay at all. The time has come to require all employers to make contributions every quarter. This will protect the interests of both employees and employers. Employers who pay quarterly or more frequently should not be at a competitive disadvantage to those who do not pay their workers’ superannuation so conscientiously. A worker whose employer pays their superannuation annually is disadvantaged because their superannuation for an entire year—if we take a figure of $3,500 for a full-time average worker, the average wage at the moment being approximately $44,000—has not been earning compound interest in their superannuation fund. Quarterly payments will therefore mean higher
investment earnings and higher retirement incomes for employees. Of course, the interest they miss out on as a result of yearly payments compounds over 10, 20 or 30 years into a much more significant sum of money.

Quarterly contributions will reduce the likelihood of employers defaulting on their superannuation obligations altogether when times are tough. As Mr Leo Bator, the Deputy Commissioner of Taxation, said to the Senate inquiry into superannuation guarantee compliance on 17 October last year:

Smaller debts paid more frequently are probably going to be beneficial to both the employer and the employee.

The tax office received some 11,100 complaints about unpaid super in 2001 and have admitted that the amount of outstanding SG payments is about $104 million.

I and other Labor members of parliament—and I am sure Senator Watson as well—have received numerous inquiries from individuals whose super has not been paid and where little or no action appears to have been taken by the ATO. I raised a number of these cases directly with the ATO in Senate estimates last month. They included two constituents of the member for Hasluck, Ms Sharryn Jackson, who are owed $5,703 and $7,034 by their respective employers and a resident of the electorate of Ryan who is owed superannuation by three employers, Aardvark Security, Allied South Pacific Protection and Traffic Control Services. He has received most of his superannuation from Aardvark Security but Allied South Pacific Protection and Traffic Control Services owe him around $1,000 and $3,000 respectively. I am left wondering what, if anything, this man’s local Liberal member thinks about the urgent need for quarterly superannuation contributions or about SG enforcements.

A number of employees have approached my office on the north-west coast of Tasmania with similar concerns about their superannuation. These include several current and former employees of a fibreglass fabrication business called Fibretech—a business that seems determined to pay little or no superannuation at all—and a former employee of Dimec, an automatic electrical business trading in Devonport until 1997. Dimec was placed into liquidation in May last year with little chance of superannuation entitlements being recovered.

The government’s inadequate employee entitlements scheme does not cover lost superannuation, which is all the more reason to provide for more frequent contributions to help prevent problems like those experienced by employees around the country from occurring again in the future. The government’s failure to provide for the loss of superannuation contributions that are required by law under the superannuation guarantee is a major flaw of the flawed approach in respect of employee entitlements. In the earlier example I gave of a worker on average full-time wages with superannuation contributions of $3,500 a year, the worker misses out on those $3,500 a year superannuation contributions as a result of the employer going into bankruptcy. That quantum of money compounds through to retirement to a figure of $10,000 to $20,000, depending on the number of years left to retirement. This is a major sum of money and a significant part of the final retirement income that an employee would receive as a result of Labor’s initiative, the superannuation guarantee.

The government has provided no reason why working Australians must wait until 2003 for legislation to make their superannuation entitlements more secure. Proposals for quarterly contributions have been on the table for a number of years and are already well known to the relevant stakeholders. The ATO and Australian businesses will have more than seven months to prepare before the first contribution is due, provided the government sees fit to support Labor’s legislation and expedite it through the parliament.

I urge the government to support Labor’s bill. If the government cannot bring itself to do this, I urge Senator Coonan, who coincidentally is in the chamber, to demand that the Prime Minister bring forward the start date for his election announcement and introduce legislation forthwith. The Prime Minister has given many verbal assurances in respect of employee entitlements—verbal assurances followed through with some partial action.
The government owes it to Australian workers to follow Labor’s lead on this issue.

**Sitting suspended from 1.51 p.m. to 2 p.m.**

**QUESTIONS WITHOUT NOTICE**

**Privilege: Senator Heffernan**

**Senator FAULKNER (2.00 p.m.)—**My question is directed to Senator Abetz, the Special Minister of State. Minister, I refer to the concluded departmental investigations, to which you and Minister Abbott referred yesterday, which found that the purported Comcar records could not be authenticated and that there had been no inappropriate use of Comcars in relation to those matters raised by Senator Heffernan last week in the Senate. Can the minister now inform the Senate what precise matters were investigated by his department? What was the result, and who was informed of the results of these investigations?

**Senator ABETZ—**The honourable senator is quite right. The document to which Senator Faulkner refers was the document shown on the front page of a newspaper. For the record, it gives me the opportunity to stop those on the other side and others from trawling misinformation. It is one of these unfortunate situations in this place where somebody has had a document believing it to be honest and then unfortunately finds the information not to be as he may have suspected.

In relation to the 1994 document, I indicate to the honourable senator that the document was never presented to the department. The department first saw it when it was on the front page of a particular newspaper on, I believe, Sunday. As a result of its publication on Sunday, although Monday was a public holiday in Canberra, nevertheless officers went about examining certain aspects of the document. That document, as Senator Faulkner would be aware, is now in the hands of the Australian Federal Police, and certain consequences might flow from that investigation. I do not think it is appropriate for me to identify publicly the information that led to the department believing the document could not be authenticated. I would love to go through it chapter and verse, but unfortunately—or fortunately indeed—it is in the hands of the Australian Federal Police, and I believe they are best qualified to determine its authenticity. What was right and wrong about the document is best left in the hands of the Australian Federal Police as opposed to the super sleuths over there, or indeed me trying to use whatever forensic skills I might have. The people best suited to do this are the Australian Federal Police. That is where it ought to be left. But, for the record and so Mr Crean no longer perpetuates the myths he did on the 7.30 Report last night, the actual document, as it was printed, was first submitted to the department through the newspapers.

**Senator FAULKNER—**Madam President, I ask a supplementary question. I thank the minister for the information he has provided about the document he has described as the 1994 document. I ask him whether there were concluded departmental investigations then about any other Comcar records provided by Senator Heffernan or relating to the matters Senator Heffernan raised in the Senate—in other words, the alleged inappropriate use of Comcars by Justice Michael Kirby. If so, when were those matters investigated by his department? What was the result of those matters and who was informed of the result of those investigations? I am talking here about concluded departmental investigations.

**Senator ABETZ—**I think Senator Heffernan in his speech to the Senate indicated he had sought certain information from the department. I can confirm an FOI request was made by Senator Heffernan. The documentation he was after had been destroyed pursuant to the Archives Act and therefore the department was unable to authenticate that information which had been provided—which in fact was not the complete work sheet but only extracts. As a result, there were no telltale signs on it such as registration numbers, driver details and things of that nature. This is a situation where, as the opposition asks more questions, the clearer it will become that Senator Heffernan was on a frolic of his own and the information we as a government had provided is quite clear and we as a government were not involved.
Economy: Growth

Senator TCHEN (2.05 p.m.)—Back to the state of the nation—

Opposition senators interjecting—

The PRESIDENT—Order! I cannot hear you, Senator. I have called you to order. We will start again.

Senator TCHEN—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan. Would the minister update the Senate with any new economic data that demonstrate the benefits of the Howard government’s responsible economic management for Australian families and workers? Is the minister aware of any alternative policies?

Senator COONAN—I thank Senator Tchen for that important question. There is good news on the economic landscape today. The Westpac-Melbourne Institute leading index of economic activity was released today, and it demonstrates that the Howard government’s management of the Australian economy is continuing to create jobs and prosperity within the Australian community. The press release from Mr Bill Evans, General Manager, Economics, of Westpac, states, ‘This reading of the leading index gives further convincing evidence of the momentum building in the Australian economy.’ This is all the more remarkable because the performance of the Australian economy has come about during a period of global economic downturn, which has seen countries such as the United States, Japan, Germany and Singapore experience recession over the past year. Thanks to the economic initiatives of the government, including the first home buyers scheme, continuing tax reform, $12 billion in tax cuts for families and businesses, our low interest rate and low inflation policies, and the strengthening of consumer and business confidence, the Australian economy has defied the global downturn.

As last week’s national account figures demonstrate, Australia’s growth increased by 4.1 per cent in 2001—10 times the average of the OECD countries. This good economic news comes on top of last week’s positive labour force figures, which indicate that unemployment fell to 6.6 per cent in February 2002. In total, some 950,600 new jobs have been created since the coalition came to office. Interestingly, this averages out at a rate of 440 new jobs per day under the coalition. How does this compare with Labor’s record in government? At the height of Labor’s appalling unemployment record, which reached a top of 10.9 per cent, 212 jobs per day were being lost. It is hard to forget Labor’s interest rate blow-out, when interest rates reached a record 18 per cent and business rates reached around 20 per cent. Last week, the ACCI survey of industrial trends for the March quarter demonstrated a similar sharp rebound in business confidence. It highlighted that manufacturing outputs increased, profit expectations remained firm, and businesses have indicated their capital expenditure plans will strengthen further over the next 12 months. None of this would be possible without the responsible economic management of the coalition. It is also a testament to the resilience of the Australian business community.

I was asked about some alternative policies. The Labor Party is not interested in hearing about the good economic news that just keeps on coming under the sound economic management of the coalition. It must be very demoralising to come to question time, again and again, without any policies. There must come a point, though, when the opposition has to go beyond simply opposing every policy position put up by the government. Instead of coming up with some policies that would help Australian businesses and Australian families, what do we see? We see the Labor Party caught up in a crisis with key unions threatening to quit. Is it any wonder that, with no policies, federal Labor is having trouble explaining to its supporters what it stands for? Victorian Trades Hall Council Secretary, Mr Leigh Hubbard, got it dead right when he said, ‘At the moment, the ALP is not relevant to a whole range of constituencies.’ In stark contrast, the Howard government is getting on with the job and delivering for Australian families and Australian workers.

Privilege: Senator Heffernan

Senator CONROY (2.10 p.m.)—My question is addressed to Senator Abetz, the
Special Minister of State. Can the minister confirm that, in 2000, the then secretary to the Department of Finance and Administration, Dr Peter Boxall, was provided with copies of Comcar documents—or documents which purported to be Comcar documents—by the Brisbane Courier-Mail journalist Mr Paul Whittaker when he was pursuing an FOI request very similar to Senator Heffernan’s? Can he confirm that Dr Boxall investigated the authenticity of the documents, and can he clarify what those documents were? Can he further indicate how the investigation into the documents was conducted? What was the specific departmental finding and what was the date of the finding?

Senator ABETZ—It is somewhat funny, isn’t it? We have a situation where Senator Heffernan has offered a full and unreserved apology, His Honour Justice Kirby has had the good grace to accept it, and the time has now come to move on. But the Australian Labor Party, who are absolutely devoid of any policy proposals or initiatives, have to keep trawling through the gutter with innuendo in relation to this matter. It will not get them anywhere in the polls.

Senator Carr—What about the answer?

Senator ABETZ—I do have a very specific answer. The former secretary to the department Dr Peter Boxall has indicated to me that he has had the opportunity to review a detailed chronology of the events in relation to Senator Heffernan’s and Mr Paul Whittaker’s contacts with the Department of Finance and Administration. This material, provided by the department, confirms Dr Boxall’s recollection that he had had no contact with Mr Whittaker. It also confirms his recollection that at no time did Mr Whittaker provide supporting documents. He can ask the question a third or a fourth time, but the answer is going to be the same. I do not know how often Senate question time has to be treated as a remedial school for elements of the opposition—they are very slow learners. I have given a very clear answer. Dr Boxall has indicated the situation and I have nothing further to add. He did not receive the documents—end of story.

Car Industry

Senator FERGUSON (2.15 p.m.)—My question is to the Minister representing the Minister for Industry, Tourism and Resources, Senator Minchin. Can the minister advise the Senate how the car industry continues to prosper under the Howard government’s strong economic management? What is the government doing to provide ongoing certainty to this important industry? Minister, are you aware of any alternative policies?

Senator MINCHIN—I do appreciate a question from Senator Ferguson who, unlike the opposition, is interested in things that matter to Australians such as jobs and affordable cars—not like the muckraking questions which the Labor Party indulge in. Like many great Australian industries, the Australian car industry is prospering under
our government’s economic policies. Indeed, the last four years have been the best four years the Australian car industry has ever enjoyed. It is looking forward to another very good year this year. I am happy to report that we have just had the best January and February sales in the history of this industry. Not only are domestic sales very strong, based on those figures, but our exports are increasing dramatically. Total exports in the year 2001 were nearly $5 billion, an increase of 20 per cent on the previous year. Automotive exports have practically doubled under our government.

As a South Australian, I am pleased to say—and I am sure that Senator Ferguson would be pleased—that companies like Mitsubishi, based in Adelaide, are helping to make this happen. I am sure we are all very pleased that Mitsubishi have had a nearly $200 million turnaround, from a loss of $185 million in 2000 to a profit of $16 million last year. They have done a tremendous job on exports with a 60 per cent increase, mostly to the US and the Middle East. I congratulate the managing director, Tom Phillips, and his workers at the Adelaide plant for what is a stunning turnaround. It shows what can be done with good leadership and good cooperation from the work force. It confirms that Mitsubishi are going to be in Australia for a very long time to come.

We also had one of the great names in world automotive circles come out here, Bob Lutz from General Motors. He said that Holden, the Australian arm of General Motors, as far as he is concerned, is the world leader in their worldwide organisation, and he looks forward to the export of Holden products to the US in their thousands. Australian workers and Australian management can take a lot of credit for a great performance, but it is a fact, I am afraid to say, that government policies have been absolutely critical to this performance. First and foremost, we have delivered a very strong economy which is giving Australians the consumer confidence to purchase Australian and other automobiles.

As Senator Coonan said, we have had solid growth—the best in the OECD—10 times the average at four per cent in the last calendar year; very low interest rates, which are critical to consumer confidence and the purchase of motor vehicles; and low unemployment. We assisted this industry enormously by freezing car tariffs for five years and providing an industry assistance scheme amounting to $2.8 billion to help them adjust. The best thing we have done was to get rid of Labor’s wholesale sales tax on motor vehicles, which has represented a saving to the ordinary Australian—someone the Labor Party has forgotten—of something like $2,000 per motor vehicle.

The Labor Party has spent the last 18 months or so talking down this industry. Mr McMullan used every opportunity he could when he was shadow industry minister to talk down this industry, salivating at the prospect that the industry might suffer from the transition to the new tax. It did not; the industry has performed outstandingly. We are continuing to support this industry by already honouring our election commitment to initiate an inquiry immediately into assistance arrangements for the industry post 2005. The Treasurer will announce the composition of that inquiry and the members of it very shortly. We want this industry to prosper. We want to put in place as soon as possible certain industry arrangements for post 2005. This is yet another great Australian industry that is going gangbusters on the basis of our fantastic economic management.

(Time expired)

Privilege: Senator Heffernan

Senator COOK (2.20 p.m.)—My question is to Senator Abetz, the Special Minister of State. Is the minister aware that the former Comcar driver at the centre of the forged documents affair has been identified in today’s media as Mr Wayne Patterson? Can the minister inform the Senate how long and over what period Mr Patterson was a driver for the Prime Minister, Mr Howard?

Senator ABETZ—It is passing strange, is it not, that parliamentary privilege is allegedly not to be abused, according to those on the other side, yet they are willing to name somebody, when nothing has been proven in relation to the gentleman to whom they referred, and quote a newspaper report as proof? It may well turn out to be right; it may
well turn out to be wrong. But, as I indicated earlier, this matter is now in the hands of the Australian Federal Police. Senator Cook might think he is a supersleuth and he may well be right, but I am not going to make a judgment on whether or not the gentleman was in fact involved with the document that has been referred to. Allow the Australian Federal Police to conduct its investigation and determine who was the producer of that document. Senator Cook’s assertion may well be right, but it may also be wrong. I am not going to speculate on that.

In relation to whether a particular driver drove the Prime Minister and for what period, that I do not know; I can have a look at that. But, really, it beggars belief that the opposition, which pretends to be the alternate government of this nation, seeks to ask questions about who drove the Prime Minister and when as opposed to asking the question: who has driven the Australian economy to get 4.1 per cent growth and to get unemployment down to 6.6 per cent? That is the sort of question that Senator Cook ought to be asking about, not questions about who is driving the Prime Minister’s car. He should ask about the economic policies of this country which are delivering dividends by the spade load to the Australian people.

Senator COOK—Madam President, I ask a supplementary question. Could the minister have official Comcar records checked and inform the Senate on how many occasions Prime Minister Howard, Senator Heffernan and Mr Patterson were in the same Comcar together?

Government senators interjecting—

The PRESIDENT—Senators on my right will come to order so that question time can continue.

Senator COOK—Has the minister, his office or his department had any contact with Mr Patterson since Senator Heffernan launched his attack on Justice Kirby?

Senator ABETZ—It is small picture stuff, isn’t it? Here is the opposition wanting to find out these peculiar details as though that will somehow advance the agenda of this nation. We used to believe that Senator Cook wrote all the questions for the opposition in the previous government and that, because he was so appalling at that, they got rid of him and he has now been put onto the back bench. But I think he was allowed a pen today and I think he penned his own question today. So, Senator Conroy, whoever has taken over question time questions should insist that Senator Cook not be allowed to write his own questions. What a humiliating performance from a former Deputy Leader of the Opposition. Of course, I am not going to ask the department to waste its resources so that you can pursue your own personal fantasies.

Zimbabwe

Senator BOURNE (2.25 p.m.)—My question is directed to Senator Hill, the Minister representing the Minister for Foreign Affairs. Is the government considering further sanctions against Zimbabwe? In particular, is the government considering targeted sanctions against members of the Zimbabwean government?

Senator HILL—I think all honourable senators would congratulate the Prime Minister on his leadership of the group of three in London—otherwise known as the Commonwealth Chairpersons Committee on Zimbabwe—and on the decisions that were made by that group. I remind the Senate that the Prime Minister of Australia together with the Presidents of South Africa and Nigeria jointly agreed to suspend Zimbabwe from the councils of the Commonwealth for one year; to engage with Zimbabwe to promote reconciliation; to address current issues of desperate food shortages, economic recovery, the restoration of political stability, the rule of law and the conduct of future elections; and mandate the Secretary-General of the Commonwealth to engage with Zimbabwe on electoral reform, as recommended by the observer’s report. In other words, the group of three determined a mix of, in effect, penalty and opportunity for Zimbabwe to be restored to a position of acceptable democracy and, in particular, so the desperate food shortages and the current economic crises could be addressed in a sympathetic way. So, in the minds of the group of three, a mixture of those decision is the best way to move forward on this particular issue.
In answer to a question subsequent to delivering that outcome, the Prime Minister said he did not see that bilateral sanctions to be imposed by Australia would be appropriate at this time. I interpret that to mean that he believes that the decisions made by the two presidents and the Australian Prime Minister should be given a chance to work before any other option should be considered. I think that is a reasonable way to approach the matter. Senator Bourne, who no doubt has read the statement, will see that the emphasis is very much on looking to promote the concept of reconciliation to try to find a peaceful way forward in Zimbabwe and to do it with a series, as I said, of incentives and some penalties, and to engender a spirit of cooperation that is believed by the heads of government to give the best chance of a peaceful and constructive way forward for the benefit of all of the people of Zimbabwe.

Senator BOURNE—Madam President, I ask a supplementary question. I thank the minister for his answer. I think the Prime Minister probably got the best he could out of that meeting, and we do congratulate him on that. I am sure the minister has been contacted, as I have, by people from Zimbabwe and by friends of people in Zimbabwe who see this as the end of a line of terror followed by illegitimacy and appeasement. I am sure we do not want them to see it that way. Minister, you did say that the Prime Minister wanted this to be given a chance to work. Minister, at what point do you think it will be known that this has worked or not worked and at what point will we reconsider having further sanctions on Zimbabwe?

Senator HILL—I also wanted to mention—so I will mention it now—that, in the spirit of goodwill and of the sentiment of the three leaders, Australia has announced a contribution of $2 million in food aid through the World Food Program for the people of Zimbabwe. On the broader question of how long it should be given to work, it does not seem that the three heads of government set a specific time frame. But they did say that the committee will actively promote the implementation of all of the goals contained in this statement, in consultation with the Commonwealth Secretary-General, and will meet at the request of the Commonwealth chairperson in office. I interpret that to mean that it is going to be an ongoing process and that the three heads of government will be looking for significant progress within a reasonable time frame.

Privilege: Senator Heffernan

Senator MACKAY (2.30 p.m.)—My question is to Senator Ellison, the Minister for Justice and Customs. Minister, I refer to the meeting between former superintendent Mike Woodhouse, who headed the original New South Wales Police investigation into Senator Heffernan’s allegations against Justice Kirby three years ago, and the Prime Minister late on Monday this week.

Is the minister aware that Mr Woodhouse confirmed to the Prime Minister that the same purported Comcar document being relied on by Senator Heffernan until this week was found to be a fake by the New South Wales Police three years ago? Did the New South Wales Police ever pass this information on to the AFP or any other agency, to the minister’s knowledge, when they made this finding three years ago? If they did, what action did the Commonwealth take?

Senator ELLISON—I am very wary as to what I divulge in relation to what are operational details in relation to a state police force or to the Australian Federal Police for that matter. I will take the question on notice and get back to the senator, if there is anything I am able to advise her of.

Senator MACKAY—Madam President, I ask a supplementary question. When the department, separately, came to the same view in the year 2000 as the New South Wales Police—that the document was a fake—what action did the Commonwealth take to refer this potentially fraudulent creation of a purported Commonwealth document to the Federal Police for investigation? If the Commonwealth did not take action, why not?

Senator ELLISON—I take it that Senator Mackay is referring to the document which is the subject of a referral to the AFP. If that is the case, I am not going to comment on that. The opposition needs to be reminded that, in these cases, matters which are either poten-
tially under investigation or under investigation by the police are not commented on and that such a question is inappropriate.

**Taxation: Forest Plantation Industry**

Senator MURPHY (2.32 p.m.)—My question is to the Minister for Revenue and Assistant Treasurer, Senator Coonan, and relates to the estimated cost to revenue of the introduction of the 12-month tax rule for the plantation industry. It is estimated that between $800 million and $1 billion will be invested in the agribusiness sector in the next financial year and that between 70 and 80 per cent of these funds will go directly into the plantation sector equating to between $560 million and $700 million. Assuming that investors in this sector will be in the top marginal tax rate of 48.5 per cent and that companies receiving the funds will pay tax at the company rate of 30 per cent then the tax differential is 18.5 per cent. We can add around another 1.5 per cent to that for those investors who have used these investments to avoid the 15 per cent super surcharge. This gives a total tax differential of around 20 per cent. Minister, does this not mean that the real cost to revenue for the introduction of the 12-month rule is more like $100 million per annum and not $25 million per annum as estimated by the government?

Senator COONAN—Thank you, Senator Murphy, for the question. Senator Murphy, I can understand how, now that you have moved away from the Labor Party, you are struggling a bit to understand the impact on revenue of just about any announcement. If you truly want to learn what affects revenue collections, I suggest you read the budget papers. I also suggest that looking at the Mid-Year Economic and Fiscal Outlook will help you. Apart from your specific question, if there is anything further that I can add, I can arrange a briefing for you.

Senator MURPHY—Madam President, I ask a supplementary question. I am always keen to learn, Minister. Given the response, is the minister prepared to provide the Senate with the modelling used to establish the revenue costs for the introduction of the 12-month rule for the plantation sector?

Senator COONAN—I have already said that I will arrange a briefing for you. Twice a year we publish a guide to reflect the variation to economic conditions and, with respect to your specific question, I will arrange a briefing.

**Privilege: Senator Heffernan**

Senator CONROY (2.34 p.m.)—My question is to Senator Abetz, the Special Minister of State. In relation to the minister’s denial a short while ago that Dr Boxall had any contact with the Courier-Mail journalist, Mr Paul Whittaker, I ask: did any other DOFA officials have contact with Mr Whittaker? Did Mr Whittaker provide copies of purported Comcar documents to the department? Were those documents examined by Comcar staff and did those staff conclude that they were bogus?

Senator ABETZ—As Senator Kemp reminds me, Senator Conroy had very small shoes to fill when he became Deputy Leader of the Opposition in the Senate and he is really living up to that requirement. This is a pathetic trawling exercise by the opposition. First of all, they try to get some information on Dr Boxall, there was an absolute, ‘No’ to that, so now the scope of the question is anybody whatsoever in the Department of Finance and Administration.

Senator Ian Macdonald—You should know what the cleaning lady was doing, Senator Abetz.

Senator ABETZ—Senator Macdonald quite rightly interjects that I am supposed to know what the cleaner in the department did and what they might not have done. The simple fact is that there was no contact between Mr Whittaker and Dr Boxall and you cannot recover your position now having been given an absolute no on that. You cannot try to recover your position now by asking a trawling question in relation to who else in the department may or may not have done something. It is on the record, as I understand it, that a freedom of information request was made by the journalist in question and, as a result, as one might expect, the normal FOI course would be adopted and therefore it might stand to reason that some contact may have been had in pursuance of
that FOI request. It is as though that is some great revelation to them. My goodness.

Senator Evans is a very slow individual if he thinks that that is some revelation. That has been trawled through the media now for a number of days. There was an FOI request from this particular journalist, and the department, through the FOI officer et cetera, dealt with that request in the appropriate manner. So of course there was contact. But, as to whether I am going to trawl through and indicate names and who and when and how, fortunately the department has a lot better things to do. We as a government are more concerned about keeping the growth rate at 4.1 per cent, keeping unemployment at 6.6 per cent, and falling, and giving good economic governance to this country rather than reacting to a smear campaign of the opposition.

Senator CONROY—Madam President, I ask a supplementary question. Will the minister check with his department on the who, what and when and get back to us—

Senator Abetz interjecting—

Senator CONROY—Hansard is not able to record that you said no, so I just put it on the record for you, Senator Abetz. What precisely were the documents that Mr Whittaker provided to the department? Were they the extracts from the 1992 Comcar records which Senator Heffernan referred to in his infamous address-in-reply speech?

Senator ABETZ—I do not think Senator Conroy understands the nature of an FOI request. You usually make an FOI request because you do not have the particular document. So why a journalist would provide documents and then say, ‘Can you provide that to me?’ I do not know. The FOI request was dealt with in the normal way. If there was anything improper in the handling of the FOI requests, one would suspect that the people making the FOI requests would be the ones complaining and not an opposition that is trying to beat up some myth around this and hopes that its fantasies might become fact.

Social Security: Compliance

Senator PAYNE (2.39 p.m.)—My question is to the Minister for Family and Community Services, Senator Vanstone. Will the minister inform the Senate of recent changes to social security rules to assist genuine job seekers? Further, is the minister aware of recent media reports on social security penalties based on particular individual cases, and can the minister advise the Senate what the effect of these reports is on public debate?

Senator VANSTONE—I thank Senator Payne for the question. On 4 March the government made some major policy changes to breaching of welfare recipients. We introduced temporary suspension of payments where a job seeker fails to meet their obligations and simply cannot be contacted. We broadened the breach waiver provisions, meaning that if someone is going to be breached and lose some of their dole payments and they accept going on a Work for the Dole program or a community support program they would have the breach waived. We extended that to include going on a rehabilitation program or engaging in formal vocational training, providing more opportunities to help yourself and get a waiver of a breach. We reduced the penalties for failing to attend an interview by roughly half and we also committed to investing more in job seekers by greater monitoring of their preparing for work agreements.

Professor Pearce reported about a week later, and his recommendations were not dissimilar to the announcements made by the government. This process has provided a very interesting test of good faith for some in the media, because we had a situation where the government made some announcements and some people in the welfare sector welcomed those announcements. Then Professor Pearce made some announcements and suggested that the government had in fact borrowed his work, meaning we were both on the same track. The media and welfare sector welcomed his report. Nonetheless, the government is still subject to criticism. How can this be? If we have taken recommendations from the Pearce report which is so welcomed, if we are doing these things, why are we still being criticised?

I am concerned about some reporting in relation to this matter. In particular, as a gen-
eral principle, I am very concerned about the use of individual welfare recipients and their difficult circumstances for people to make political points. I use the example—without using the name, which was used in the media—of a customer with a mental illness. This is a very sad story of a family desperately trying to help their son get into a better situation with his life. The argument was that this young bloke had some mental difficulty, that we have consistently breached him, and that we are a mean and difficult government. When the facts are checked, this customer, on the advice I have, was never breached at all.

The customer was trying to live in independent accommodation. His family were desperately trying to get that. They knew that would mean he would have to put his forms in fortnightly to get his payments. When he missed putting in his forms he missed getting payments, but when he put in his forms he got the payments. He was not breached. In fact, during this period Centrelink acknowledged the problem that he had and he was exempted from an activity test to acknowledge the difficulty he had while other matters could progress, and he is now in a much better situation. As best I know, the journalist concerned did not bother to contact anyone in my office to ascertain the circumstances of this family, who have now had the matter raised again in order to correct the record. There is another example I will mention. Senator Payne, if I do not get to the end of this you might provide me with the opportunity to do so.

Opposition Senators—Oh!

Senator VANSTONE—The opposition may go, ‘Oh,’ but this is an important point, because the media informs the public about what the government is doing. If we are doing the wrong thing, we should be chastised by the public, but the media should get it right when they tell the public what we are doing. I use a couple of examples. One is in relation to family tax benefit, where people were able to read in the paper that a woman had left work to look after her sick son—(Time expired)

Senator PAYNE—I ask a supplementary question, Madam President. The minister has detailed a number of recent media reports on those particular individual cases, but I ask whether the minister is able to discuss the effect of those reports on public debate with the Senate.

Senator VANSTONE—This example involved a woman whom the media claims had left work to look after her sick son and because she had left work she had had an overpayment of family tax benefit and she now had a debt. What was not in the media was that that particular family’s income exceeded the estimate that they provided to Centrelink by $36,000 and that the family had not updated their income estimate with Centrelink. So yes, they did have an overpayment because they underdeclared by $36,000.

Then there is the case of a recent release by Ms Jennie George about two families with family tax benefit. The advice that I have from Centrelink is that one family does not even have a debt. They have probably been contacted by us to encourage them to adjust their estimates to make sure they do not incur a debt. Somehow this has been used to suggest that they do. The other family in the release raised by Ms George ‘forgot’ to mention that the family’s actual income was $56,000 more than the estimate that they provided to Centrelink and that they did not update their estimate during the year.

Privilege: Senator Heffernan

Senator JACINTA COLLINS (2.45 p.m.)—My question is to the Minister for Justice and Customs, Senator Ellison. I refer to the Australian Federal Police investigation to which Senator Abetz referred a short while ago. When does the minister expect this investigation to be concluded, bearing in mind that the New South Wales Police concluded their reinvestigation into the Heffernan allegations in the space of 24 hours? Will the minister undertake to make available to the parliament the results of this investigation?

Senator ELLISON—the first part of that question is one which is not capable of an answer. It is an inappropriate question. I cannot dictate how long a police investigation will take or estimate—

Senator Abetz—Nor should he.
Senator ELLISON—and nor should I, as Senator Abetz has correctly said. Nor should I, as the minister responsible, be able to have any bearing on the matter—it is a matter for the Australian Federal Police. The opposition ought to have a good look at the sort of questions it is asking. I am being asked to estimate how long a police investigation will take. That is an entirely inappropriate question and it is something for the Australian Federal Police. The second part of Senator Collins’s question is also a matter for the Australian Federal Police and is a question which remains rightly in their domain.

Senator JACINTA COLLINS—I ask a supplementary question, Madam President. Will the Australian Federal Police be liaising with the New South Wales Police on the results of their earlier investigation? If so, is it the case that the Australian Federal Police investigation should be concluded expeditiously? Again, I ask the minister a very relevant and pertinent question on this matter: will the results of this investigation be made public?

Senator ELLISON—Those are operational matters and I will not go into them while the matter has been referred to the Australian Federal Police for investigation. It is an inappropriate question.

Stuart Shale Oil Project

Senator ALLISON (2.47 p.m.)—My question is to the minister representing the Minister for Industry, Tourism and Resources. Can the minister confirm that the developer of the Stuart shale oil project in Queensland recently asked for further financial assistance from the Commonwealth? If so, how much was asked for and on what basis and what has been the government’s response?

Senator MINCHIN—As everyone who follows the press reports will know, the company has indicated that, as a result of what I think is outrageous behaviour by Greenpeace, certain oil refineries are not in a position to take the product from the Stuart shale oil project. I think that is very unfortunate. As the former industry minister, I join with Labor Premier Beattie in saying that the actions of Greenpeace are outrageous. This project provides the opportunity for Australia to have a remarkably significant and secure supply of oil well into the future. This is at a time when our known and existing reserves in Bass Strait and other places are running down very rapidly, exposing us to reliance on Middle East imports, fluctuations in the exchange rates and the costs thereto, and the infringement of our national security as a result.

The current industry minister, this government and I, as the former industry minister, have been supportive of that project and we have joined with Labor Premier Beattie in wanting to see that project succeed. We all know that it has had some environmental difficulties, mostly relating to fumes and smell in relation to its production process, but it is rapidly overcoming those difficulties. It does present an enormous opportunity for Australia to have a strong and long-term supply of indigenous oil. They are producing commercial product and they have been supplying that product to Australian refineries.

Unfortunately, as a result of Greenpeace’s activities some of the refineries are saying they are not prepared to have their customers bullied and harassed by Greenpeace activists if they use this product in their refineries. I think that is outrageous and this parliament should condemn that sort of action. It is true that the company has indicated to the government the position it faces if Australian refineries continue to feel bullied and harassed into not taking the shale oil product. At the moment the company is keeping the government informed of developments. The government has an excise arrangement with the company which runs to about 2005 and at some point the continuation of that arrangement will have to be considered. Senator Allison, at this stage all that is happening is that the company is keeping us informed of developments. The government has an excise arrangement with the company which runs to about 2005 and at some point the continuation of that arrangement will have to be considered. Senator Allison, at this stage all that is happening is that the company is keeping us informed of developments and we have indicated very strongly our condemnation of Greenpeace’s activities in relation to this project.

Senator ALLISON—I ask a supplementary question, Madam President. The minister has not answered my question at all and I repeat it: how much was asked for by the Stuart shale oil project developers? Have they again asked the government to extend
the excise exemption for their oil and what is
the government’s position on that request? Is
it likely that SPP will need ongoing financial
assistance from the government given that
they recently said that they will continue to
incur operating losses during the develop-
ment of stages 1, 2 and 3? Can the minister
confirm that these ongoing operating losses
are a result of their technology rather than
any action Greenpeace might have taken?

Senator MINCHIN—As I think Senator
Allison would know, we provide an effective
exemption from excise on petrol refined
from naphtha produced from shale oil. We do
it quite deliberately because we want this
industry to proceed. The excise exemption is
only available if that naphtha is refined in
Australia. That is what is causing the com-
pany problems with Greenpeace’s outrageous
activity. The excise exemption is capped at
600,000 barrels of oil a year and will cease,
as I said before, in 2005. To date the project
has received approximately $2.8 million in
excise exemption. We are meeting with pro-
ponents of this project in relation to the
question of any extension to that excise ex-
emption, but we have made no decision on
that matter.

Privilege: Senator Heffernan

Senator LUDWIG (2.52 p.m.)—My
question without notice is directed to Senator
Ellison, the minister representing the Attor-
ney-General. Does the minister agree with
the Attorney-General’s statement yesterday
that there was no need for him as the nation’s
first law officer to defend Justice Kirby or
the High Court from the despicable attack by
Senator Heffernan? Does the minister sup-
port the Attorney-General’s reasoning for
this spineless position when he states that
‘Justice Kirby’s conduct as a High Court
judge was not in question’? Has the Attor-
ney-General even read Senator Heffernan’s
speech last Tuesday night when he said,
amongst other things, about Justice Kirby’s
role as a judge:
This judge ... clearly is not fit and proper to sit in
judgment of people charged with sex offences
against children.
Why has the nation’s first law officer main-
tained his refusal to defend a High Court
judge from this baseless attack or, if he
thought the attack had any credibility, why
did he not act to have the allegations prop-
erly investigated?

Senator ELLISON—Senator Ludwig’s
question is without any foundation. He obvi-
ously has not seen the statement by the At-
torney-General dated 19 March where he
said:
As I have said previously, Justice Kirby is a dis-
tinguished jurist with an enormous capacity for
work. He enjoys a fine legal reputation in Austra-
lia and is held in high standing overseas. He has
made a very significant contribution to public life
in Australia. I have known him for just on 40
years and our paths have crossed on many occa-
sions.
He then went on to say that it is regrettable
that the judge received this distressing pub-
clicity over the last few days. He also stated:
The public, I am confident, will accept that the
allegations have been completely withdrawn.
I think that the Attorney-General has
summed it up there very well. In fact, last
week he stated that the judge has a fine legal
reputation. Senator Ludwig has obviously
chosen to ignore those comments.

Opposition senators interjecting—

The PRESIDENT—Order! Senators on
my left should be aware that I need to hear
the answer that is being given. At the present
time it is very difficult.

Senator ELLISON—The matters raised
by Senator Heffernan have been the subject
of a statement by him, withdrawing and
apologising for those matters. The matter is
now finished. That is the conclusion of it. It
has been dealt with.

In relation to the High Court, which was
the other part of Senator Ludwig’s question,
there has been no attack on the High Court,
and the Attorney-General has made that very
clear. A lot of people have tried to beat up
this whole matter as an attack on the High
Court, and the Attorney-General has rejected
that. The Attorney-General has said that the
judge in question enjoys a very good reputa-
tion and he has made a statement to that ef-
fact. He has said that it is regrettable, in rela-
tion to the events that have taken place, that
the judge has had that adverse publicity. I do
not think the Attorney-General can be any
clearer than that. I think that his conduct has been appropriate.

Senator LUDWIG—Madam President, I ask a supplementary question. Didn’t Senator Heffernan also state last Tuesday night that ‘this judge fails the test of public trust and judicial legitimacy as set out by the Chief Justice of the High Court’? Given that this is clearly an attack by Senator Heffernan on the institution of the High Court and all the judges of that court, why did the Attorney-General not immediately act to either defend the court or to have the allegation fully investigated? The Attorney-General did neither.

Senator Abetz—Madam President, I raise a point of order. Is it appropriate for somebody to again repeat and quote what has been determined to be a breach of privilege and therefore trawl the allegations through the chamber again? I would ask for your ruling on that. It seems strange that if you cannot say something in the chamber because it breaches standing orders you should not be allowed to then regurgitate it in the form of a question.

The PRESIDENT—As I understand it, Senator Ludwig is asking a question about the conduct of the Attorney-General and is referring to a speech which was made in this chamber. I do not think there is a point of order, but I shall have a look at your point of view more closely.

Senator ELLISON—I have nothing further to add to my previous answer other than to say that Senator Heffernan made a comprehensive statement whereby he apologised for statements he had previously made and withdrew from his previous stance on this matter. I think it does the Senate no great service for Senator Ludwig to trawl through that statement and repeat what was said. The matter is finished. I stand by what I said in relation to the Attorney-General.

Opposition senators interjecting—

The PRESIDENT—Senators on my left will come to order to allow question time to proceed.

Senator Chris Evans interjecting—

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

Telecommunications: Media Services

Senator BRANDIS (2.59 p.m.)—My question is directed to the Minister for Communications, Information Technology and the Arts, Senator Alston. Will the minister inform the Senate of the government’s commitment to ensuring consumers continue to benefit from strong competition in telecommunications? What is the role of Telstra in delivering new media services to the Australian public? Is the minister aware of any alternative proposals in this area and what their impact would be?

Senator ALSTON—This is a very important question from Senator Brandis, because he would be aware of the virtues of competition, particularly in the telecommunications arena. In 1997 we introduced full and open competition and, since that time, we have issued more than 70 carrier licences, international calls have fallen by about a third and domestic long-distance calls have fallen by about a half—or it might be the other way around. But, in any event, there have been significant changes across the board in terms of price reductions, improved quality of services and a better range of products. Of course, we have had a couple of finetuning examples of making the regime even more transparent, requiring more information to be made available and speeding up the process. We are now responding to the Productivity Commission.

There is a lot happening on this front, and I would have thought that there would be universal agreement across this chamber that competition has delivered the goods in telecommunications. Certainly that was the position of the Labor Party prior to the last election because, whenever the issue was raised, Mr Smith, the then shadow minister, was running around claiming credit, saying: ‘Really, all of these changes were drafted by Michael Lee. The Labor Party put the regime in place and was very proud of it.’

Now, of course, you have this guy out there, Mr Tanner, who seems to be a constituency of one. Not a day goes by when he is not running his own agenda on issues. He is clearly a part-time shadow communications minister and a full-time aspirant for a leadership position, and that means that he is
determined to distance himself from the Labor Party on all of these issues. He is now saying that the competition regime is failing and that we have a regulatory regime that is supposed to deliver but does not. In other words, the regime they claim to have invented six months ago is now something he thinks is on the nose. Similarly, he is saying that Telstra should not be investing in a mobile phone network or a wholesale data network in Hong Kong and other parts of Asia and that these are inappropriate investments. Of course, before the election Mr Smith was saying that these investments do not put Telstra’s domestic infrastructure at risk and provide the company with an ability to secure the delivery of communication services across Australia. So you have these diametrically opposed views.

I do not know where Mr Tanner is coming from. How does he suddenly decide that Telstra should be basically a low-grade, backwater utility—mums and dads and widows and orphans—with no growth strategy? Basically, he wants to put them in a straitjacket. Not only does he not want them to be involved in any offshore activity—despite the fact that they probably invested in at least a dozen countries under Labor—but he also wants to say that they should not be involved in media organisations. Of course, Telstra had a 10 per cent stake in Channel 7 some years ago under the Labor Party.

We had Mr Beazley saying just before the election that Telstra’s recent consideration of acquiring PBL did not go ahead but not having access to scrip transfers was not a critical factor. Again, the Labor Party has an entirely different view from the view of the loose cannon, Mr Tanner, who seems to be out there running his own agenda. I think we all know what is really going on here: he still hankers for what he was canvassing with Macquarie Bank before the election—in other words, he is in break-up mode. He wants to hive off Telstra’s retail services from its infrastructure. He wants to turn it into an absolute basket case, controlled by government, where you would never get any decent price increases and where you would never have any opportunity for new technology to flow through. So all I ask is whether Mr Crean is just going to sit back and cop this sort of nonsense because, quite clearly, none of this is done in consultation. I would be amazed if any of this has been through shadow cabinet. (Time expired)

Health: Program Funding

Senator McLUCAS (3.03 p.m.)—My question is addressed to Senator Patterson, the Minister for Health and Ageing. Can the minister confirm that the Prime Minister has now received the reports he requested from the departments of health and finance concerning the Wooldridge House scandal? In the interests of transparency and accountability, when will those reports be tabled in parliament? If they cannot be tabled today, why can’t they be?

Senator PATTERSON—This is another example of the Labor Party asking: ‘When was this done? Where will it been done? What were people wearing?’ I just want to remind honourable senators that the Prime Minister has received those reports. He issued a statement on Sunday saying that he will look at those reports and that he has referred them to the Auditor-General. When he gets the report back from the Auditor-General, he will make a decision as to what he will do with those two reports.

Senator McLUCAS—Madam President, I ask a supplementary question. I understand from your answer that the Prime Minister has sent those reports to the Auditor-General, but can you just confirm that for the record? Also, will those reports be provided in full to the parliament?

Senator PATTERSON—He has received the reports and he said, ‘I have decided to send the reports to the Auditor-General, Mr Barrett.’ He will report back, I presume, and issue another statement when he receives that report back from the Auditor-General.

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

ANSWERS TO QUESTIONS ON NOTICE

Questions Nos 105, 107 and 115

Senator ALSTON (3.06 p.m.)—I table a document that provides explanations for de-
lays in answers being provided to Senate questions.

QUESTIONS WITHOUT NOTICE: ADDITIONAL ANSWERS

Telstra: Services and Sponsorship

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (3.06 p.m.)—I seek leave to incorporate in Hansard a further response to a question asked by Senator Harris of me in question time yesterday.

Leave granted.

The answer read as follows—

On 19 March 2002 Senator Harris asked me a Question Without Notice regarding:

• whether Telstra has included or intends to include expiry dates on phone-cards and would this expiry date affect the use of these phone cards for emergency calls?
• whether Telstra shut down the Easymail service as of 13 March 2002?
• whether Telstra is providing considerable sponsorship for racing cars?

I undertook to provide additional information: I seek leave to incorporate the response in Hansard.

Although Telstra is partially government-owned, Telstra has been an independent corporation since 1992 and its board and management are responsible for the day to day running of the company’s operations.

Telstra has advised as follows about the matters raised by Senator Harris:

Phone card expiry dates

There are two basic types of phone cards—pre-paid phone cards for use at public pay phones and “Say G’day” and “Phoneaway” cards for use from any telephone service using an access number.

The current pre-paid phone cards cannot be topped up or the credit value transferred to another card. The expiry date is clearly printed on the card and these cards must have at least an 18 month usage life when sold.

Prior to the introduction of the current phonecard system, pre-paid phone cards did not have an expiry date. However, on the introduction of the new card system, Telstra introduced a replacement program whereby customers could arrange to receive a replacement card for the remaining value, so as not to disadvantage customers holding old cards. This program is still available.

The “Say G’day” and “Phoneaway Cards” also have at least an 18 months usage life and can be recharged when the credit is exhausted. While credit remaining on these after their expiry date is not redeemable, customers can transfer the remaining credit to another pre-paid card prior to the expiry date of the old card.

All prepaid cards have an expiry date to ensure that Telstra can manage its phonecard systems. It enables Telstra to make technical changes to its operations and to enable replacement by more modern alternatives. It also enables Telstra to remove expired card numbers from the system to ensure that there are no ongoing capacity problems.

When the credit limit on a phone card has been exhausted or the card has passed its expiry date, no calls can be made using that card.

However, access to the 000 emergency service is available from any telephone without the need for phone cards.

Apart from 000, Telstra also offers reverse charge calls for situations where people do not have the coins or card to pay for such calls.

Easymail

Telstra was planning to shut down its Easymail service on 13 March. However, in response to customer feedback, the closure date has been delayed until May 2002.

Telstra is now also offering an Easymail forwarding facility for one year. Telstra has advised that it will be contacting its Easymail customers in March with further details, including arrangements for alternative services.

Racing Sponsorship

On 29 January 2002 Telstra announced its continued support of Australia’s latest Formula One driver, Mark Webber, who has been appointed to the Minardi team.

Telstra has supported Mark Webber for a number of years through its subsidiary Pacific Access.

QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

Privilege: Senator Heffernan

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.07 p.m.)—I move:

That the Senate take note of the answers given by the Special Minister of State (Senator Abetz) and the Minister for Justice and Customs (Senator Ellison) to questions without notice asked today relating to remarks made by Senator Heffernan concerning a judge of the High Court of Australia.

Today we have heard further fudging by Senator Abetz over the status of the investi-
igation into the phoney Comcar records that were used by Senator Heffernan to smear Justice Michael Kirby in the Senate chamber. Instead of the obfuscation by Senator Abetz, it would have been much better just to come clean and tell the truth to the Senate about the status of those departmental investigations. Were extracts of the documents checked by the Department of Finance and Administration two years ago and found to be bogus? Were there other bogus documents checked by the department?

What we do know is that some two years before Mr Crean and Mr Brereton discredited the document that appeared in the Sun-Herald newspaper—which, I might say, took them less than 24 hours—forged material had been discredited by a departmental investigation. If the Department of Finance and Administration found documentary evidence, apparently being peddled around the place by Senator Heffernan, to be forged, you would think the red flag would go up. You would think someone might just accept some of the warning signals—and that in the year 2000. Wouldn’t Senator Heffernan have been told—and the Prime Minister and the Secretary of the Department of the Prime Minister and Cabinet, Mr Moore-Wilton? Everyone in the government was aware of Senator Heffernan’s obsession. Documents prepared as vicious slanders were floating around the corridors of Parliament House, and this behaviour probably could have been killed stone dead about two years ago.

We hear of a Commonwealth car driver, Mr Wayne Patterson, who says in today’s Courier-Mail that the document published on the weekend was an example of things. We do not know what that means. I hope some of the police investigations now being carried out get to the bottom of that. We do not know whether this meant the document was prepared to show Senator Heffernan what to look out for in genuine Comcar dockets. Maybe those matters will be investigated now. But we are entitled to an explanation of what was investigated in the Department of Finance and Administration, who conducted the investigations, what the findings were of those investigations and who was told.

Senator Faulkner—

I make this point, Senator Calvert, because it is an important point. We know that the integrity of an eminent judge has been smeared in this chamber. We know an apology was offered and was accepted. But I also make the point, of course, that the professionalism of Commonwealth car drivers has been questioned. I think it ought to be placed on the record that as far as I am concerned—and I believe many colleagues in this place think the same way—the professionalism of Commonwealth car drivers is not in question. I hope that the government would accept that as well.

Senator Abetz seems to think that this issue is over. He thinks that this is small picture stuff. But I have to say that is absolutely self-inflicted amnesia on Senator Abetz’s part. What the opposition is on about here is one of the most grievous acts of abuse of the parliamentary process that we have seen in the history of this place. As we now know, it involves a forged document. Mr Howard said it is boring. Senator Abetz said it is time to move on. That is wishful thinking and they know it. The parliament and the Australian people are entitled to proper answers.

(Time expired)

Senator Lightfoot (Western Australia) (3.12 p.m.)—If one were to take seriously the words that Senator Faulkner has said—that he and his party, the Australian Labor Party, represent a bastion of all things that are decent, wholesome and good for politics and for Australia—we would have no argument except that what Senator Faulkner says is completely duplicitous. Does Senator Faulkner believe that we hold sacred all the institutions in Australia and that he and his colleagues, his confreres in the party, would not attack those? Does Senator Faulkner believe that nowhere in Australia have ALP members attacked institutions and individual people?

Let me mention just a few instances where they have. I am not just talking about the slander of the Baillieu family, and a dead man at that, which is about as low as you can go. I am not just talking about the slander of Justice Callinan, a recent and a great addition to what is already a great fraternity of High Court judges. And I am not just talking about
those other people who have been slandered in this place on a daily basis. I can think, though, more specifically of when I was in state parliament. A woman whose name was Penny Easton had a mother—a delightful woman—whose name is Mrs Barbara Campbell. False documents were tabled by the current member of another place, Dr Carmen Lawrence, and simultaneously by the Hon. John Halden in the upper house of Western Australia, that were so slanderous, so upsetting and so devastating in the obvious lies that these documents contained that this poor, dear woman—Senator Cook interjecting—

Senator LIGHTFOOT—whom I happened to know very well, a very decent woman, a hardworking woman, a mother, a woman who had put herself through law school at mature age—

Senator Cook interjecting—

Senator LIGHTFOOT—took her life as a result of them. Is that decency? Is that appropriate? Is that all? I will tell you what it is all—Senator Cook interjecting—

Senator LIGHTFOOT—Let me continue and I will get on, if I have time, about Senator Cook and the black hole that he left when he lied to the Australian people.

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

Senator LIGHTFOOT—Do you know what a member of another place, the federal member for Perth, Mr Stephen Smith, said?

The DEPUTY PRESIDENT—Senator Lightfoot, I believe you also uttered some words that were unparliamentary. Please withdraw them.

Senator LIGHTFOOT—if I uttered words that were unparliamentary, then of course I would be happy to withdraw those insofar as they are unparliamentary or even offensive. A member in the other place, Mr Stephen Smith, the member for Perth, said about the Easton inquiry that was set up by the Western Australian government:

... any judge, any former judge, any would-be judge who lends himself or herself to a political stunt, to do any political damage to Carmen Lawrence needs to understand that he or she will be the subject of political attack by friends of Carmen Lawrence.

He said that on 8 May 1995, as quoted in the Australian. What did the former Prime Minister Mr Keating say? I do not like talking about former prime ministers, but on this occasion the seriousness of the situation warrants that I say this. Mr Keating said, ‘Even if it is found against Carmen Lawrence, so what?’ He is talking about the royal commission set-up—‘So what? I mean, it is a political matter.’ He is saying that the royal commission did not have the skill or did not have the integrity to bring down a decision that was not political. Mr Keating went on to say:

This thing is that there is no question here about any serious illegality or misappropriation or maladministration of public duties. This is really about an inquiry into what was going on politically in the former cabinet.

This is not to take note of a young woman, a young mother, who died as a result of misinformation being tabled in parliament and the misuse of parliament to an absolute degree. We are talking about people who are yet to apologise. Yet on this side of the House we have the Hon. Bill Heffernan—and I am not defending what he said because it was quite patently wrong—who at least has apologised in a fashion that must be acceptable to everyone; he is genuinely and sincerely sorry. When is the other side going to apologise about Ms Penny Easton taking her life?

(Time expired)

Senator CONROY (Victoria) (3.17 p.m.)—It is appropriate that the government wheel out Senator Lightfoot to defend Senator Heffernan today because there was only one Liberal member of parliament anywhere in this country—not Senator Brandis, not Senator Hill, not Senator Calvert—who was prepared last week to defend Senator Heffernan publicly, and on the weekend who was the bunny? For anyone who has not guessed yet, it was Senator Lightfoot. Senator Lightfoot came out all guns blazing on behalf of Senator Heffernan on the weekend. Senator Lightfoot probably still thinks the bogus document was real. What a joke of a defence—trying to find a way to justify what Senator Heffernan got up to. It is a joke,
Senator Lightfoot, and you should apologise along with Senator Heffernan.

But I am indebted to Michelle Grattan in today’s Sydney Morning Herald for the first line in the first paragraph of her piece today. The truth was always out there. The first line says:

When they wanted to find the truth, it took John Howard and Bill Heffernan no time at all.

And that is what today’s question time goes to the heart of: when did the Prime Minister and the Department of Finance and Administration know? Why can’t we get a simple answer? We had stonewalling all day yesterday. What documents were the department supplied with? What documents were supplied to the FOI officer? Why won’t Senator Abetz just say, ‘No documents were supplied’? What did he say? He said, ‘It would be very unusual if, when employing an FOI officer, you gave them documents.’ Yes, we agree, Senator Abetz, but what about answering the question?

You were quite willing to be specific about Dr Boxall, but you are not prepared to rule out that the department was supplied documents by the Courier-Mail journalist Mr Paul Whittaker. All it would have taken to put this issue to bed for Senator Abetz is a no. Where was it? He bravely wanted to specifically defend Dr Boxall on Dr Boxall’s recollections, and we accept that. But we want to know: who received the documents, who looked at them, who tested them and who passed them onto the department for verification? The department admits that it received some documentation from Senator Heffernan that purported to be departmental records, but it says they were fabrications, they were bogus. What did the department do? Somebody is out there—in other words, Senator Heffernan—peddling extracts from Comcar records that turn out to be bogus and the department does nothing. Why? Why weren’t the police called in to investigate the bogus documents? Who supplied them would have perhaps been the first question.

Perhaps if Senator Heffernan had received a phone call from the AFP, ‘Come in, Senator Heffernan, we’d like to talk to you about these bogus documents you’re circulating and that you’ve given to the department,’ we would not have gone through this last tragic week, this last pathetic week, because the AFP investigation would have got to the heart of who bodged up these documents, and then Senator Heffernan perhaps would not have believed this same individual, as Senator Heffernan has indicated that he got both sets of documents from the same person. If the department had done its job or, more importantly, if the minister of the day had done his job and referred the matter to the AFP, the AFP would have had Senator Heffernan and the Comcar driver in—even though they would have spoilt his Olympics—and we would have got to the bottom of who was producing fake, bogus, fraudulent documents and we would not have had to put Justice Kirby through the last four years of smear and innuendo from the ghost who stalks these corridors.

Parliament would be well served if Senator Heffernan took the advice of his leader and not only resigned but also did the big walk into the snow. That is what should happen here: Senator Heffernan should give it away because he has brought his leader, his party and this parliament into disrepute, and it is disgraceful to see a cover-up still continuing from Senator Abetz and this government. These are simple questions. They are not about what the police investigations are looking at; they are about process. (Time expired)

Senator BRANDIS (Queensland) (3.22 p.m.)—I think we need to draw back from the partisanship of this and recognise that these are issues of very peculiar sensitivity. When Senator Heffernan stood in this place on Tuesday evening last week and gave a speech that we all regret was ever given, he caused terrible harm. He caused terrible harm. He caused terrible hurt to Justice Kirby and to Justice Kirby’s loved ones and family. Senator Heffernan now regrets that. He caused harm to the reputation of the High Court, and many believe that he caused harm to this institution. But I believe that Senator Heffernan, though he acted wrongly, acted in good faith, in the sense that he believed in what he was saying. We now know that he was misled. Anybody who was in this chamber at half past three yesterday afternoon and heard Senator Heffernan’s un-
reserved retraction and apology to Justice Kirby could not but have been moved and struck by the dignity with which Senator Heffernan humbled himself to do that. He ought to have done so, and he did so as a gentleman.

Shortly afterwards, Justice Kirby issued a statement. That statement was tabled in this place. It is in the press this morning. I do not think it has ever been read in this place. Let me read an extract from it. Justice Kirby said:

I accept Senator Heffernan’s apology and reach out my hand in a spirit of reconciliation. I hope that my ordeal will show the wrongs that hate of homosexuals can lead to.

Out of this sorry episode, Australians should emerge with a heightened respect for the dignity of all minorities. And a determination to be more careful in future to uphold our national institutions—the Parliament and the Judiciary.

That was a most gracious and magnanimous statement under the circumstances, and it should be accepted by all in this place, putting party conflict behind us, in the spirit in which it was intended, just as Justice Kirby graciously accepted Senator Heffernan’s unreserved apology and retraction in the spirit in which it was intended.

I am sure that, if there is one man in Australia today who does not want to see this issue being drawn down into the mire of party political point scoring, it is Justice Kirby. In the cities and towns of this nation I believe the Australian people have had a surplus of this in the last eight days. They have seen a most eminent and distinguished man, Justice Kirby, besmirched by false allegations. They have seen a very significant parliamentarian, Senator Heffernan, humbled, and they have seen him withdraw his allegations with dignity. We have seen the victim of those allegations respond with grace and forgiveness. Surely, that ought to be the end of it. It does the High Court no good, it does this chamber no good, it does Mr Justice Kirby no good for this to be now used by an opposition as an occasion for cheap party political point scoring. Let us heed what the Australian people plainly want and put this episode behind us and get on with the business of governing.
The Commission believes it is important for the Federal Parliament to establish a general standing procedure in advance of any controversy or crisis in atmosphere surrounding a particular allegation. This is particularly where we are now, I suspect. But recommendation 12 goes on to say: The Federal Parliament should develop and adopt a protocol governing the receipt ...

And it goes on. So we find no answer at the time the report was made by the Attorney-General, no answer to the recommendation by the Attorney-General, but when it is convenient, when the High Court has been attacked and he fails in his defence of it, he finds a paragraph and a recommendation to rely on. It is particularly poor form really to reach back and grab it. He is now going to deal with the protocol. We hope he does. We will keep him to the task. If he is going to develop a protocol, then let us see it developed.

You then go back and look at what he said and his view about the judiciary and their own defence. The Attorney-General made a speech titled ‘Who Speaks for the Judges?’ presented on 3 November 1996. I understand he has gone back to this speech a number of times in justifying why he does not defend the High Court or individuals within the High Court. It is interesting to see that, on the issue of privilege, paragraph 34 states:

This may be appropriate where criticism might significantly impair public confidence in the justice system. Furthermore, attacks from parliamentarians, particularly when made under protection of parliamentary privilege, are matters upon which the advice or support of the Attorney-General might properly be sought or given. It is in the interests of all arms of government that the integrity of democratic systems including a strong and independent judiciary be entrenched and properly understood by the Australian people.

The Attorney-General has failed his own test. He set himself a test in a speech, paragraph 34, and he fails. He does not go back and say anything about this. That is where he should have defended the judiciary. (Time expired)

Question agreed to.

**Taxation: Forest Plantation Industry**

**Senator MURPHY** (Tasmania) (3.32 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Revenue and Assistant Treasurer (Senator Coonan) to a question without notice asked by Senator Murphy today relating to taxation and forest industries.

Despite the fact that she seems to take a very patronising view towards those who ask a question of her, the reality is that the Minister for Revenue and Assistant Treasurer simply does not have a clue. I asked the minister about the revenue implications of the government’s proposed reintroduction of the 12-month rule for the forest plantation industry. The government revenue cost estimate for that is $25 million per annum. Mind you, that is for the coming financial year—the next financial year—and then somehow it drops to $5 million for the subsequent financial year.

The reality is that, on the figures I read out in my question to the minister, it is going to be more like $100 million per year. That is the point the minister failed to address in her response. As I said, she just wants to go on with some patronising nonsense instead of taking a very important question. Even based on today’s figures and last year’s figures for investment in the forest plantation sector, the revenue costs are way above anything the government has put into its calculations. I say again to the minister: bring out the modelling. If the government feels that $25 million is the figure, then put the modelling on the table so the modelling can be assessed. Do it now so that the Senate is able to make a real judgment about the costs of the introduction of this legislation.

I support the reintroduction of the 12-month rule. I want it to be accurately costed and to reflect real costs. That is what is important. For this minister to stand up and respond to me saying, ‘I do not understand,’ I challenge the minister: bring out the modelling and let us have a look at it; let us have a proper analysis of it and test the theory of the government as to the cost of the $25 million. If I am wrong, I will apologise to the minister for that. But I want to see whether or not the modelling will stack up against the modelling I have had done. I asked a question of the minister last week about mass marketed schemes. Again, she had no idea at all.
Senator Cook—You caught her out.

Senator MURPHY—I take Senator Cook’s interjection: I caught her out. That is true. The Taxation Office has agreed that tests of commercial viability can be and indeed are conducted, yet the minister did not seem to have a clue about that. When the Taxation Office today issues a product ruling for any investment scheme, it actually does a commercial viability test. It has to make sure there is a reasonable expectation of profit derived from a tax effective investment so that there is some return to revenue. That is my point with regard to the question I asked today. If this costs the government $100 million and the expectation is that it will get the money back in 10 years, the net present value of that money is at least 50 per cent less. That is the reality for the government. I say to the minister: bring out the modelling, give us a look at it, and we will see what the costs really are.

Question agreed to.

PETITIONS

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

Health: MRI Machine, Princess Margaret Hospital

To the honourable the President and members of the Senate in parliament assembled.
The petition of the undersigned shows:
The federal government refuses to grant an operating licence to Princess Margaret Hospital for a magnetic resonance imaging machine.
Your petitioners ask/request that the Senate should:
Immediately grant an operating licence to Princess Margaret Hospital to operate a magnetic resonance imaging machine.
by Senator Ian Campbell (from 2,939 citizens)
Petition received.

NOTICES

Presentation

Senator Mark Bishop to move on the next day of sitting:
That the Senate notes that:
(a) the French Government plans to construct a new three runway airport, estimated to cost $A19 billion, in Northern France covering eight World War 1 cemeteries containing 1200 graves, including those of 61 Australians who fell in action;
(b) these plans will also affect a large unknown number of those lost in action but never found;
(c) this proposal has enormous consequences for the memories of many Australian families and therefore must be resisted;
(d) the Australian Government has had significant prior notice of these plans and has been dilatory in protesting to the French;
(e) the Australian Government has only in recent days made representations to the Commonwealth War Graves Commission; and
(f) as yet no formal representations have been made to the French Government by the Australian Government to register Australian objection to the desecration of this land by such a development.

Senator Cooney to move on the next day of sitting:
That the Standing Committee for the Scrutiny of Bills be authorised to hold a public hearing on the provisions of the Criminal Code Amendment (Espionage and Related Offences) Bill 2002, the Security Legislation Amendment (Terrorism) Bill 2002 [No. 2] and the Suppression of the Financing of Terrorism Bill 2002 for the purposes of clarifying points raised by the committee’s legal adviser in relation to the above bills.

Senator Bartlett to move on the next day of sitting:
That the following bill be introduced: A Bill for an Act to amend the Great Barrier Reef Marine Park Act 1975 to provide for an extension of the boundaries of the Marine Park. Great Barrier Reef Marine Park (Boundary Extension) Amendment Bill 2002.

Senator Forshaw to move on the next day of sitting:
(1) That the following matter be referred to the Finance and Public Administration References Committee for inquiry and report by 12 December 2002:
Recruitment and training in the Australian Public Service (APS).
(2) That, in considering this matter, the committee examine and report on the following issues:
(a) recruitment, including:
   (i) the trends in recruitment to the APS over recent years,
   (ii) the trends, in particular, in relation to the recruitment to the APS of young people, both graduates and non graduates,
   (iii) the employment opportunities for young people in the APS, and
   (iv) the efficiency and effectiveness of the devolved arrangements for recruitment in the APS;
(b) training and development, including:
   (i) the trends in expenditure on training and development in the APS over recent years,
   (ii) the methods used to identify training needs in the APS,
   (iii) the methods used to evaluate training and development provided in the APS,
   (iv) the extent of accredited and articulated training offered in the APS,
   (v) the processes used in the APS to evaluate training providers and training courses,
   (vi) the adequacy of training and career development opportunities available to APS employees in regional areas,
   (vii) the efficiency and effectiveness of the devolved arrangements for training in the APS,
   (viii) the value for money represented by the training and development dollars spent in the APS, and
   (ix) the ways training and development offered to APS employees could be improved in order to enhance the skills of APS employees;
(c) the role of the Public Service Commissioner pursuant to section 41(1)(i) of the Public Service Act 1999 in coordinating and supporting APS-wide training and career development opportunities in the APS; and
(d) any other issues relevant to the terms of reference but not referred to above which arise in the course of the inquiry.

Senator Crane to move on the next day of sitting:
That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on Thursday, 21 March 2002, from 4 pm, to take evidence for the committee’s inquiry into the administration by the Department of Transport and Regional Services of Australian Motor Vehicle Standards under the Motor Vehicles Standards Act 1989 and Regulations.

Senator Brown to move on the next day of sitting:
That the Senate—
   (a) notes:
      (i) that illegal coltan mining in the World Heritage areas of Kahuzi-Biega National Park and the Okapi Reserve is destroying wildlife, forests and habitat, particularly the Grauer gorilla, the forest antelope, the elephant and the chimpanzee, in the Democratic Republic of the Congo,
      (ii) that world demand for coltan is exploding for use in the electronics industry, in particular for mobile phones,
      (iii) the call by the World Conservation Union to boycott coltan produced in World Heritage sites in the Democratic Republic of the Congo,
      (iv) the report to the United Nations (UN) Security Council by a UN-appointed panel of experts for a moratorium for a specific period on the purchase and importing of precious products such as coltan, diamonds, gold, copper, cobalt, timber and coffee originating in areas where foreign troops are present in the Democratic Republic of the Congo and in territories under the control of rebels,
      (v) that the Democratic Republic of the Congo produces less than a quarter of the world’s coltan while Australia currently meets 40 per cent of world demand and is capable of producing up to 60 per cent of world demand from reserves in Western Australia; and
   (b) calls on the Government to ban the importation into Australia of all mobile phones and electronic goods that contain coltan produced outside Australia.
Senator Brown to move on the next day of sitting:

That photographs of any senator may be taken by the media in the chamber whenever that senator has the call.

Senator Brown to move on the next day of sitting:

That the Senate considers that Basslink should be required to place powerlines underground in Victoria and Tasmania if it should proceed.

Senator TCHEN (Victoria) (3.37 p.m.)—I give notice that 15 sitting days after today I shall move that the Fuel Quality Standards Regulations 2001, as contained in Statutory Rules 2001 No. 236 and made under the Fuel Quality Standards Act 2000, be disallowed. I seek leave to incorporate in Hansard a short summary of the committee’s concerns with these regulations.

Leave granted.

The summary read as follows—


The Regulations provide for the implementation of a national fuel standards scheme. Paragraph 5(2)(b) provides that the fee payable on an application for approval for a variation of a fuel standard may be waived or reduced if the Minister thinks that the fee would cause financial hardship for the applicant. However, no criteria are specified for determining financial hardship. Paragraph 5(2)(c) provides that the fee must be refunded if the application is withdrawn before it is considered. It is not clear how an applicant will know when an application is to be considered. That is, it is not clear how long a period an applicant will have to be able to withdraw an application before losing the benefit of a fees refund. An associated problem is that it is not clear what is meant by the term ‘considered’. Does it mean ‘considered by the Minister’?

The Minister for the Environment and Heritage advised the Committee that guidance on these matters is provided by the department’s Procedures Manual for Approvals. The Committee has written further to the Minister concerning the use of a departmental manual in these circumstances.

Senator Greig to move on 16 May 2002:

That the following bill be introduced: A Bill for an Act to prohibit certain conduct involving the vilification and incitement to hatred of people on the ground of sexuality, and for related purposes. Sexuality Anti-Vilification Bill 2002.

COMMITTEES

Selection of Bills Committee

Report

Senator CALVERT (Tasmania) (3.39 p.m.)—I present the second report of 2002 of the Selection of Bills Committee, and I seek leave to have the report incorporated in Hansard.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE

REPORT NO. 2 OF 2002

1. The committee met on Tuesday, 19 March 2002.

2. The committee resolved to reconsider its proposed Report no. 2 of 2002, for the presentation of which leave was refused on 14 March 2002.

3. The committee considered a proposal to refer the provisions of the Migration Legislation Amendment (Transitional Movement) Bill 2002 to a committee but was unable to reach agreement on a reporting date (see appendix 5 for statement of reasons for referral).

Senator Ian Campbell, noting the reasons why leave had been refused for the presentation of the committee’s draft report on 14 March 2002, expressed a view that the referral of the Migration Legislation Amendment (Transitional Movement) Bill 2002 should not now proceed. He also noted standing order 33(1)(b) (about voting at deliberative meetings held during sittings of the Senate) and that the committee’s usual method of proceeding was to reserve disagreements for resolution by the Senate.

4. The committee resolved to recommend—

(a) That the provisions of the following bills be referred to committees as follows:
<table>
<thead>
<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation Committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Criminal Code Amendment (Espionage and Related Offences) Bill 2002</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>26 April 2002</td>
</tr>
<tr>
<td>(see appendix 1 &amp; 1A for statements of reasons for referral)</td>
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<td></td>
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<tr>
<td>(see appendix 2 for statement of reasons for referral)</td>
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</tr>
<tr>
<td>Migration Legislation Amendment (Procedural Fairness) Bill 2002</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>15 May 2002</td>
</tr>
<tr>
<td>(see appendix 3 for statement of reasons for referral)</td>
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<td></td>
</tr>
<tr>
<td>Migration Legislation Amendment Bill (No. 1) 2002</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>15 May 2002</td>
</tr>
<tr>
<td>(see appendix 4 for statement of reasons for referral)</td>
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<tr>
<td>(see appendix 6 for statement of reasons for referral)</td>
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<tr>
<td>Suppression of the Financing of Terrorism Bill 2002</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
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<td>Legal and Constitutional</td>
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</tr>
<tr>
<td>(see appendix 6 for statement of reasons for referral)</td>
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<tr>
<td>Telecommunications Interception Legislation Amendment Bill 2002</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
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</tr>
<tr>
<td>(see appendix 6 for statement of reasons for referral)</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>Workplace Relations Amendment (Fair Termination) Bill 2002</td>
<td>Immediately</td>
<td>Employment, Workplace Relations and Education</td>
<td>14 May 2002</td>
</tr>
<tr>
<td>(see appendix 7 for statement of reasons for referral)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Workplace Relations Amendment (Genuine Bargaining) Bill 2002</td>
<td>Immediately</td>
<td>Employment, Workplace Relations and Education</td>
<td>14 May 2002</td>
</tr>
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<td>(see appendix 7 for statement of reasons for referral)</td>
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<tr>
<td>Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002</td>
<td>Immediately</td>
<td>Employment, Workplace Relations and Education</td>
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<td>(see appendix 7 for statement of reasons for referral)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Bill title | Stage at which referred | Legislation Committee | Reporting date
---|---|---|---
Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002 (see appendix 7 for statement of reasons for referral) | Immediately | Employment, Workplace Relations and Education | 14 May 2002

(b) That the following bills be **referred** to committees as follows:

<table>
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<tr>
<th>Bill title</th>
<th>Stage at which referred</th>
<th>Legislation Committee</th>
<th>Reporting date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Migration Legislation Amendment (Transitional Movement) Bill 2002 (see appendix 5 for statement of reasons for referral)</td>
<td>Immediately</td>
<td>Legal and Constitutional</td>
<td>14 May 2002</td>
</tr>
<tr>
<td>Workplace Relations Amendment (Fair Dismissal) Bill 2002 (see appendix 7 for statement of reasons for referral)</td>
<td>Immediately</td>
<td>Employment, Workplace Relations and Education</td>
<td>14 May 2002</td>
</tr>
</tbody>
</table>

(c) That the following bills **not** be referred to committees:

- Aboriginal and Torres Strait Islander Commission Amendment Bill 2002
- Financial Corporations (Transfer of Assets and Liabilities) Amendment Bill 2002
- Horticulture Marketing and Research and Development Services (Amendment) Bill 2002
- Ministers of State (Post-Retirement Employment Restrictions) Bill 2002
- Quarantine Amendment Bill 2002
- Space Activities Amendment Bill 2002
- Taxation Laws Amendment (Baby Bonus) Bill 2002
- Trade Practices Amendment (Small Business Protection) Bill 2002
- Veterans’ Entitlements Amendment (Gold Card Extension) Bill 2002
- Jurisdiction of Courts Legislation Amendment Bill 2002
- Plant Breeder’s Rights Amendment Bill 2002
- Social Security and Veterans’ Entitlements Legislation Amendment (Disposal of Assets—Integrity of Means Testing) Bill 2002
- Taxation Laws Amendment Bill (No. 2) 2002.

(Paul Calvert)
**Chair**
20 March 2002
Appendix 1

**Proposal to refer a bill to a committee**

**Name of bill(s):**
Criminal Code Amendment (Espionage and Related Offences) Bill 2002

**Reasons for referral/principal issues for consideration**

To allow the committee to scrutinise the provisions of the bill. There is bipartisan support for the committee to scrutinise the provisions of the bill at the earliest possible time, prior to the introduction of the bill into the Senate.

**Possible submissions or evidence from:**
Attorney-General’s Department;
Members of the Australia intelligence community;
Commonwealth Director of Public Prosecutions;
Australian Federal Police;
State and Territory Government departments; and
Representatives of the print and electronic media.

Committee to which bill is referred:
Prior to the debate of the bill in the House of Representatives and introduction of the bill into the Senate, the provisions of the bill be referred to the Senate Legal and Constitutional Legislation Committee.
The bill was introduced into the House of Representatives on 13 March 2002.
Possible hearing date:
To be determined by the committee.
Possible reporting date(s):
26 April 2002
(signed)
Paul Calvert
Whip/Selection of Bills Committee member

Appendix 1A
Proposal to refer a bill to a committee
Name of bill(s): Criminal Code Amendment (Espionage and Related Offences) Bill 2002
Reasons for referral/principal issues for consideration
Significant issues contained in this bill, including major increase in penalties for espionage, and relating to a number of recent prosecutions, such as Lappas and Wispealire. The government has also significantly changed this bill from that originally tabled, with the removal of provisions relating to non-security official secrets.
Possible submissions or evidence from:
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date:
TBA
Possible reporting date(s):
To be determined by the committee.
(signed)
Sue Mackay
Whip/Selection of Bills Committee member

Appendix 2
Proposal to refer a bill to a committee
Name of bill(s): Family Law Amendment (Child Protection Convention) Bill 2002
Reasons for referral/principal issues for consideration
Whether the bill properly meets Australia’s obligations under the convention.
Possible submissions or evidence from:
Child advocacy groups, family law experts
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date: TBA
Possible reporting date(s):
To be determined by the committee.
(signed)
Sue Mackay
Whip/Selection of Bills Committee member

Appendix 3
Proposal to refer a bill to a committee
Name of bill(s): Migration Legislation Amendment (Procedural Fairness) Bill 2002
Reasons for referral/principal issues for consideration
The bill impacts upon application of natural justice to immigration decisions and the impact of the changes need to be examined.
Possible submissions or evidence from:
UNHCR
Refugee Council
Amnesty International
Immigration Advice & Rights Centre
The Australian Law Council
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date:
Possible reporting date(s): 22 April 2002
(signed)
Vicki Bourne
Whip/Selection of Bills Committee member

Appendix 4
Proposal to refer a bill to a committee
Name of bill(s): Migration Legislation Amendment Bill (No. 1) 2002
Reasons for referral/principal issues for consideration
This bill makes a number of changes to the operation of the Migration Act, particularly to certain visa-related matters. The impact of the proposed changes requires full examination.
Possible submissions or evidence from:
UNHCR
Refugee Council
Amnesty International
Immigration Advice & Rights Centre
The Australian Law Council
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date:
Possible reporting date(s): 22 April 2002
Vicki Bourne
Whip/Selection of Bills Committee member

Appendix 5
Proposal to refer a bill to a committee
Name of bill(s):
Migration Legislation Amendment (Transitional Movement) Bill 2002

Reasons for referral/principal issues for consideration
To allow the committee to consider the proposals in the bill.
Possible submissions or evidence from:
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date:
Possible reporting date(s): 22 April 2002
Vicki Bourne
Whip/Selection of Bills Committee member

Appendix 6
Proposal to refer a bill to a committee
Name of bill(s):
Security Legislation Amendment (Terrorism) Bill 2002
Suppression of the Financing of Terrorism Bill 2002
Criminal Code Amendment (Suppression of Terrorist Bombings) Bill 2002
Border Security Legislation Amendment Bill 2002
Telecommunications Interception Legislation Amendment Bill 2002

Reasons for referral/principal issues for consideration
To allow all non-government stakeholders to undertake a comprehensive scrutiny of the numerous and detailed matters in this 120 page package. Significant issues include creation of new offences, imposition of life sentence penalties, capacity to proscribe organisations, expansion of executive power, increase in policing powers for customs service and telecommunication powers.
Possible submissions or evidence from:
A broad range of legal, civil liberties and public interest organisations.
Committee to which bill is referred:
Senate Legal and Constitutional Legislation Committee.
Possible hearing date:
Possible reporting date(s): 3 May 2002
Sue Mackay
Whip/Selection of Bills Committee member

Appendix 7
Proposal to refer a bill to a committee
Name of bill(s):
Workplace Relations Amendment (Fair Termination) Bill 2002
Workplace Relations Amendment (Genuine Bargaining) Bill 2002
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002
Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002
Workplace Relations Amendment (Fair Dismissal) Bill 2002

Reasons for referral/principal issues for consideration
Workplace Relations Amendment (Fair Dismissal) Bill 2002
Impact of changes to small business employment thresholds
Workplace Relations Amendment (Fair Termination) Bill 2002
Appropriateness of 12 month exclusion for casuals and permanent filing fee
Workplace Relations Amendment (Genuine Bargaining) Bill 2002
Workplace Relations Amendment (Secret Ballots for Protected Action) Bill 2002
Extent to which enactment would diminish capacity for legitimate industrial action
Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2002
Appropriateness of legislation while matter sub-judice; new provisions of the bill.

Possible submissions or evidence from:
Union and employer groups, Department of Employment and Workplace Relations

Committee to which bill is referred:
Senate Employment, Workplace Relations and Education Legislation Committee.

Possible hearing date: TBA
Possible reporting date(s): 14 May 2002

Possible submissions or evidence from:
Union and employer groups, Department of Employment and Workplace Relations
Committee to which bill is referred:
Senate Employment, Workplace Relations and Education Legislation Committee.
Possible hearing date: TBA
Possible reporting date(s): 14 May 2002

As mentioned earlier today, the Migration Legislation Amendment (Transitional Movement) Bill 2002 is an important part of the government’s measures to address the ongoing problem of people-smuggling. The government’s strategy in this area is starting to have results. No boats have attempted to breach our immigration controls in several months. Despite speculation about the impact of the monsoon season on boat arrivals, recent media reports indicate that people-smuggling activity is declining. Despite the claims of the Australian Democrats earlier today, their efforts to subject this bill to greater scrutiny are not about upholding the parliamentary process; rather, this is part of a deliberate, ongoing effort to undermine the government’s strategy on people-smuggling—a strategy that was endorsed by this parliament and by the Australian people late last year.

Attempts by the Australian Democrats to stymie this legislation include the Selection of Bills Committee meeting on 13 March 2002, when the government initiated a reference of the migration bill to the Legal and Constitutional Legislation Committee, with a reporting date of 19 March 2002. This reference was proposed to allow the committee to consider the bill and to enable consideration by the Senate prior to the end of the autumn sitting period. The Democrats denied leave for the Selection of Bills Committee report to be tabled on 14 March, resulting in the report not being tabled prior to the Senate rising on 14 March. This action resulted in the bill not being referred to the Legal and Constitutional Legislation Committee last week. The Selection of Bills Committee met again on 19 March and reconsidered the proposed referrals of bills. The report now being tabled indicates that the Selection of Bills Committee considered the proposed reference of the migration bill and it says:

Senator CALVERT—I move:
That the report be adopted.

Senator ABETZ (Tasmania—Special Minister of State) (3.39 p.m.)—I move the following amendment to the motion:
At the end of the motion add the words:
“and, in respect of the Migration Legislation Amendment (Transitional Movement) Bill 2002, the bill not be referred to the Legal and Constitutional Legislation Committee for inquiry and report.”

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“and, in respect of the Migration Legislation Amendment (Transitional Movement) Bill 2002, the bill not be referred to the Legal and Constitutional Legislation Committee for inquiry and report.”

As mentioned earlier today, the Migration Legislation Amendment (Transitional Movement) Bill 2002 is an important part of the government’s measures to address the ongoing problem of people-smuggling. The government’s strategy in this area is starting to have results. No boats have attempted to breach our immigration controls in several months. Despite speculation about the impact of the monsoon season on boat arrivals, recent media reports indicate that people-smuggling activity is declining. Despite the claims of the Australian Democrats earlier today, their efforts to subject this bill to greater scrutiny are not about upholding the parliamentary process; rather, this is part of a deliberate, ongoing effort to undermine the government’s strategy on people-smuggling—a strategy that was endorsed by this parliament and by the Australian people late last year.
are basically a load of rubbish. The Senate has been misled about the reasons for urgency that were put forward by the minister as part of the government’s strategy to combat people-smuggling. That was not the reason given in relation to why this is urgent, and nothing that he just mentioned gives any indication about why it is urgent. That is germane to this question because this report is about having proper consideration of the bill and the reasons why the bill needs proper consideration. What I did last week in not giving leave for the report to be tabled at an inappropriate time was not to prevent it from going to a committee; it was to defer until this week consideration of it going to a committee. Now we see the government trying to prevent it from being considered by the committee.

In speaking to this motion and the amendment moved by the minister, it is worth putting the broader situation in context. The bill was introduced in the House of Representatives a week ago, on Wednesday last week. The meeting of the Selection of Bills Committee which occurred after that was a special meeting called to consider referral of workplace relations and security legislation that had been put forward. The migration bill was not even on the agenda. The government ambushed the committee with its own reference without the committee even being aware that the bill had been introduced, let alone that it was going to be on the agenda. Then they have the hide to complain when we want to defer consideration of their report.

A clear highlighting of why this is just another shonky exercise by the government in railroad through yet more dubious legislation without proper scrutiny can be seen in the rest of the report. There are two other bills here—in fact, a lot of bills have been referred, including the security legislation and the workplace relations legislation—but these two are migration bills, both of which were introduced at the same time, some of the content of which also had not been foreshadowed. The Democrats proposed that they be referred to a committee. We suggested a reporting date in the middle of April and the government said, ‘That’s fine. Actually, you have some more time. Don’t bother reporting back until 15 May,’ which is what is in the report.

Obviously, we do not mind having more time; to some extent, it is academic because the Senate does not resume until 14 May anyway. On the one hand, we have recognition that two migration bills, including a significant one dealing with procedural fairness, need proper scrutiny until May; yet the government is trying to railroad through this week this bill dealing with transitional movement, which is far more significant and has potentially much greater ramifications.

I remind the Senate that the reasons given this morning as to why it is urgent are that some of the people on Nauru or Manus Island may be required to enter Australia in exceptional circumstances, including receiving urgent medical treatment or providing evidence in people-smuggling prosecutions. The government know that there are not going to be any people-smuggling prosecutions between now and May which they need to get people to Australia for. They have already had people who needed urgent medical treatment come to Australia without this legislation existing. Unless they are expecting a mass outbreak of some serious disease on Manus Island, then the suggestion that there is going to be a big wave of people needing urgent medical treatment is also ridiculous.

The government are putting forward completely false reasons as to why this bill is urgent. That falsity is being compounded by this action in preventing scrutiny of the legislation in any proper sense. It is ridiculous to even go to the pretence of referring a serious bill like this to a committee one day after it has introduced a report, particularly as there are two major amendments to this bill which still have not seen the light of day—nobody knows what they are. We do not even know the content of the bill. How we can refer a bill to a committee when a core part of it does not yet exist is simply absurd,
but it is as absurd as all the other fabrications and distortions of this government on issues to do with refugees, so I suppose we should not be surprised.

**Senator ROBERT RAY (Victoria) (3.48 p.m.)—**The only contribution that Senator Bartlett made that was unknown to me is his claim that they were ambushed at the Selection of Bills Committee—I did not know that in terms of this migration legislation. I will take his word that that is true, but it is a bit dissembling to say that the problem is the way it was knocked back. The fact is that the Democrats used—properly, if you like—the procedure of this place to talk out discussion on this so that the Senate could not make a decision last week. They talked it out to a point where debate was guillotined so that the Senate was prevented from making a decision to refer to a committee.

The view of the opposition is that the government has indicated that this is the one bill which it regards as urgent for this session. It also indicated, I think, that it would like the unfair dismissal industrial relation bills and the security bills put through, but, after discussion, it decided to allow them to come back in the following session so that they could be explored through the legislative process. Those two packages of bills are far more complex than this particular migration bill. Senator Bartlett is probably right when he makes the point that he would like to see the two substantive amendments that have been promised; so would I. On this occasion, the migration legislation will not be so complex that we will not be able to deal with it in the committee stage without having to go to the legislation committee for advice. It would have been preferable for the Democrats to allow it to go to that committee for at least a day's hearing. Forget what they say here today: they deliberately held it up last week so that it would not be considered this week. That is the truth of the matter and it is legitimate, but do not claim otherwise. That is exactly what they have done.

Senator Bartlett is probably right when he says the only two reasons for this bill to go through are ill-health and the problems that occasions through medivaccing and having to give evidence—but there are two much larger categories of people that this may affect. It may well be that people on Manus and Nauru are classified as refugees. They will then need to go to their country of resettlement, be it Finland, Ireland or wherever else. Almost certainly, they are going to have to transit Australia to do so. They fall into two classes: the class that is covered by the Border Protection Bill 2001, which affects only those who land on Australian territory; and those who are intercepted at sea, who have no legislative coverage—probably by accident or oversight last time. If any of those in the second category need to be repatriated out of Australia to a third country for resettlement, there is nothing in the current law to stop them from making a fresh set of refugee claims in Australia which, having already had their refugee status confirmed in either Nauru or Manus Island, is not desirable, or there could be a fourth category of those who have had refugee status not granted. They may have to be repatriated to the country they came from and you do not want to start the whole process again in Australia.

We will debate the merits of it, but it is wider than just the two categories that Senator Bartlett highlighted in terms of its effect. Therein may lie some of the urgency to have these matters settled before we resume on 14 May. It has to be conceded that it would be much better to have a legislation committee inquiry on this. It would have been better to have it as originally proposed—it was not perfect—but that was the choice you made. You thought by knocking off the committee last week that this legislation could not be considered at all this week. Your bluff has been called on that particular one and, therefore, it will not go to a legislation committee.

I do not think that is the end of the world. I think legislative committees have a pretty patchy record overall. In any event, we are well away from the original reason for setting up legislation committees. They were originally meant to virtually substitute for the committee stage in this chamber. Now they are an excuse to invite everyone along. And it is a good excuse, provided we do not fob people off and say, ‘Come and put your views to the committee,’ rather than us trying
to use some intellectual rigour to assess those views. I think you would concede that there is a danger in that as well. I personally think that there is enough urgency in this piece of legislation for it to be considered this week. I think Senator Abetz’s resolution therefore has merit.

Senator Faulkner (New South Wales—Leader of the Opposition in the Senate) (3.53 p.m.)—I made a contribution on this matter at 10.22 a.m. today, and I commended it—

Senator Abetz—And 30 seconds?

Senator Faulkner—Yes, it was actually 30 seconds, according to this turn I have of the Hansard pink. I commended this to the Senate when we were dealing with the issue of an exemption of this particular bill from the cut-off. There is no point in the Senate beating around the bush: the reason this bill is not going to a legislation committee is that the Australian Democrats, particularly Senator Bartlett, decided on a device to block it. As Senator Ray properly said to the Senate, that is their right. It would not be the first time that senators in this chamber have decided to use the opportunities that the standing orders provide to get a certain result. But it was an intended result. The intention of the Australian Democrats was to block this bill going to the Legal and Constitutional Legislation Committee.

How it was done was very simple. The Selection of Bills Committee report was introduced late on Thursday last week. It was introduced late and therefore required leave of the Senate to be introduced at a time that was not the normal time for introduction on the Senate’s routine of business. Therefore, the Chairman of the Selection of Bills Committee was required to seek leave. Leave was not granted to introduce the Selection of Bills Committee report which contained a recommendation for reference of the Migration Legislation Amendment (Transitional Movement) Bill 2002 to the legislation committee. As leave was not granted, the Manager of Government Business in the Senate moved to suspend standing orders. That motion was talked out. It did not matter whether it was talked out or not, the substantive motion would have been talked out anyway. It was always going to be a dead duck because a deliberate decision had been made not to allow this matter to be finalised before the guillotine came into effect at 4 o’clock on Thursday afternoon. They are the facts of the matter.

The opposition, as I said this morning, always tries to be consistent on these issues. Therefore, if any senator wants to see a bill referred to a legislation committee via the Selection of Bills Committee process, that ought to occur. We have been very consistent in trying to ensure that that process is accepted around the chamber—often to our own disadvantage, when we are ready to debate a bill in the chamber itself. We have been very consistent. This was a deliberate attempt to stymie a committee hearing on the bill. I identified it in this chamber in a speech at the time. No-one demurred; everyone understood what was happening.

Senator Abetz—Disagreed.

Senator Faulkner—You did not disagree; the government actually agreed on this.

Senator Abetz—No, I was explaining what you meant.

Senator Faulkner—Every now and again the government gets something right, and agreeing with me on that occasion was one of those that you can chalk up on the record. The situation is this: it was identified at the time, we all knew what was happening and, frankly, suggestions to the contrary—if any suggestions are being made—are false. The truth is that a parliamentary tactic was used, the procedures of the place were used, the standing orders of the Senate were used, to stop a committee hearing. That is fair enough. You are entitled to do that. The Australian Democrats can do that. The opposition itself has at times used procedural devices—once or twice that has happened—when we have thought that it was in the best interests of the views we were progressing in this chamber. On this occasion it was the Australian Democrats. But the problem is that you cannot have your cake and eat it too. We now do not have an opportunity to send that bill to a committee, and that is unfortunate. The decision of our caucus—the federal
parliamentary Labor Party—was that we wanted it to go to a committee for as thorough an examination as possible in a constrained time period, which is before the end of these sittings. And that gets to the next issue: should the bill be dealt with this session? (Time expired)

Question agreed to.

Original question, as amended, agreed to.

BUSINESS

Rearrangement

Senator ABETZ (Tasmania—Special Minister of State) (3.58 p.m.)—by leave—I move:

That consideration of the business before the Senate today be interrupted at approximately 5 pm, but not so as to interrupt a senator speaking, to enable Senator Barnett to make his first speech without any question before the chair.

Question agreed to.

Senator CALVERT (Tasmania) (3.59 p.m.)—by leave—On behalf of Senator Brandis, I move:

That the presentation of the report of the Economics Legislation Committee on the provisions of the Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002 and a related bill be postponed to a later hour of the day.

Question agreed to.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 2 standing in the name of the Leader of the Australian Democrats (Senator Stott Despoja) for today, relating to the reference of matters to the Standing Committee of Privileges, postponed till 21 March 2002.

General business notice of motion no. 24 standing in the name of Senator Bourne for today, relating to measures to resolve tensions between India and Pakistan, postponed till 21 March 2002.


General business notice of motion no. 14 standing in the name of Senator Harris for today, relating to the establishment of a select committee on the Lindeberg grievance, postponed till 16 May 2002.

General business notice of motion no. 43 standing in the name of Senator Bartlett for today, proposing an order for the production of documents relating to the proposed Paradise Dam, postponed till 21 March 2002.

General business notice of motion no. 10 standing in the name of Senator Murphy for today, relating to the establishment of a select committee on forestry and plantation matters, postponed till 21 March 2002.

COMMITTEES

Economics References Committee

Reference

Senator MACKAY (Tasmania) (4.00 p.m.)—as amended, by leave—On behalf of Senator Collins, I move the motion as amended:

That the following matter be referred to the Economics References Committee for inquiry and report by 27 August 2002:

(a) the impact of public liability insurance for small business and community and sporting organisations; and

(b) the impact of professional indemnity insurance, including Directors and Officers Insurance, for small business;

with particular reference to:

(c) the cost of such insurance;

(d) reasons for the increase in premiums for such insurance; and

(e) schemes, arrangements or reforms that can reduce the cost of such insurance and/or better calculate and pool risk.

Question agreed to.

SENATE: DRESS CODE

Senator BROWN (Tasmania) (4.01 p.m.)—I move:

That the Senate does not require media representatives in the Senate gallery, or senators’ advisers, to wear coats.

Question agreed to.
HUMAN RIGHTS: CHINA

Senator BROWN (Tasmania) (4.01 p.m.)—as amended, by leave—I move the motion as amended:

That the Senate—

(a) expresses its concern about reports that two Australians, amongst a party of ten members of Falun Gong arrested by police in Beijing on 8 March 2002, were beaten by the police; and

(b) calls on the Australian Government to obtain an explanation from China.

Question agreed to.

COMMITTEES

Privileges Committee

Reference

Senator ROBERT RAY (Victoria) (4.02 p.m.)—I move:

That the following matter be referred to the Committee of Privileges:

The desirability and efficacy of engaging counsel to represent the Senate in court and other tribunal proceedings on questions involving parliamentary privilege affecting the Senate or senators.

Question agreed to.

HEALTH: MRI MACHINE, PRINCESS MARGARET HOSPITAL

Senator COOK (Western Australia) (4.03 p.m.)—I move:

That the Senate—

(a) notes:

(i) that Princess Margaret Hospital is the only major children’s hospital in Australia without a magnetic resonance imaging (MRI) machine,

(ii) the unsatisfactory situation in which 200 Western Australian children are awaiting MRI appointments at another public hospital without specialist services for children,

(iii) that the Western Australian Government has agreed to fund the purchase of an MRI machine at a cost of $2 million, provided the Commonwealth provides a Medicare licence for it,

(iv) the refusal of the Minister for Health and Ageing (Senator Patterson) to provide a Medicare licence for an MRI machine at Princess Margaret Hospital, and

(v) that the Commonwealth has provided four Medicare licences for MRI machines to private health providers in Western Australia and only two to public hospitals, none of which provide specialist paediatric services; and

(b) calls on the Minister to alleviate the chronic need for the provision of an MRI machine at Princess Margaret Hospital by immediately providing a Medicare licence for such an MRI machine.

Question agreed to.

HEALTH: NUCLEAR TESTING

Senator BARTLETT (Queensland) (4.03 p.m.)—On behalf of Senator Allison, I move:

That there be laid on the table by the Minister for Defence (Senator Hill), no later than immediately after motions to take note of answers on 20 March 2002, the following documents:

That the Senate—

(a) expresses its concern about reports that two Australians, amongst a party of ten members of Falun Gong arrested by police in Beijing on 8 March 2002, were beaten by the police; and

(b) calls on the Australian Government to obtain an explanation from China.

R225.040 Health Physics—Tolerances ingested and inhaled materials

R225.041 Health Physics—External Radiations

R216.010 Chemical Warfare Testing Sites—Report by Joint Aus/US Survey Team

R217.025 Effect of Personnel of Atomic Testing at Maralinga

R100.018 DCMO Brisbane and Amberley

R208.010 Certificates for wounds and hurts

R065.015 Likelihood of Clandestine introduction of Nuclear Weapons into Australia

R065.046 UK Testing at Woomera of Missiles with Nuclear Warheads

R210.004 Radiation Dose Records
Senator BARTLETT (Queensland) (4.04 p.m.)—On behalf of Senator Allison, I move:

That the Senate—

(a) notes that:

(i) Sane Australia, a national charity helping people affected by mental illness, said in the week beginning 17 March 2002 that despite two national mental health plans and a 30 per cent increase in funding in the 1990s, there has been very little real progress in the care of people with mental illness,

(ii) many Australians are not receiving effective treatment from public mental health systems, often leading to tragic situations,

(iii) there is no coherent Australia-wide system of rehabilitation for people with a psychiatric disability,

(iv) there are few specialist programs to help those with a mental illness and coexisting alcohol and drug problems,

(v) family and other carers are not routinely provided with education and support,

(vi) Australia still has eight different Mental Health Acts not in harmony with each other, and

(vii) Australia spends only 5 per cent of its health budget on psychiatric services while other Organisation for Economic Co-operation and Development countries allocate closer to 10 per cent; and

(b) urges the Federal Government to take a national approach to seriously address these issues.

Question agreed to.

FAMILY COURT: PROPERTY ISSUES

Senator GREIG (Western Australia) (4.04 p.m.)—I ask that general business notice of motion No. 35, standing in my name for today and relating to the jurisdiction for settlement of property issues for de facto couples, be taken as a formal motion.

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

Senator Harradine—Yes.

The DEPUTY PRESIDENT—There is an objection.

Suspension of Standing Orders

Senator GREIG (Western Australia) (4.05 p.m.)—Pursuant to contingent notice, and at the request of the Leader of the Australian Democrats, Senator Natasha Stott Despoja, I move:

That so much of the standing orders be suspended as would prevent Senator Stott Despoja moving a motion relating to the conduct of the business of this Senate, namely a motion to give precedence to general business notice of motion No. 35.

This motion is urgent and should be discussed today principally for two reasons. Firstly, there has been a really horrible wave of homophobia across the country in the last few days and I suspect that is happening again. What this motion deals with, in part, is the recognition of same sex couples as de facto couples under federal law, or at least for the purposes of Family Court property disputes and their settlement. The reason that we ought to support this motion today is that it would send the right message; it would send a positive message—

Senator Mackay—Madam Deputy President, I raise a point of a order. I seek clarification from Senator Greig as to whether he intends to move an amendment in relation to the motion on the Notice Paper.

Senator GREIG—Senator Mackay is referring to Labor’s proposal that the motion ought to have been amended. That has been done in accordance with the opposition’s wishes. I was saying that there are two key reasons why this motion should proceed today: firstly, I think it is important that the federal government acknowledge the existence of same sex couples as a way of sending a positive message in light of the wave of homophobia that has swept the country in the
last few days; and, secondly, it is important because the Attorney-General announced recently that he was considering legislation that would allow a transfer of the jurisdictions in terms of the way in which de facto couples were dealt with under family law or within family courts between state jurisdictions and the Commonwealth. There was recently a meeting of attorneys-general, including the federal Attorney-General, where this issue was discussed.

As it happens, legislation is being discussed and debated at this very point in time in the Western Australian jurisdiction, in my home state, which would grant same sex couples access to the Family Court under state jurisdiction. In those jurisdictions where the recognition of same sex couples is granted under the Family Court system—and that currently includes New South Wales and Victoria, I understand, and very soon my home state of Western Australia—it is only fair on the parliaments in those jurisdictions to know what exactly it is that is going to happen at the Commonwealth level. I think it is important that this chamber send a message to the government that it wants a system that does not discriminate.

My belief is that, firstly, we need to send a positive message of nondiscrimination to the gay and lesbian community and, secondly, that we need to send a message to the government so that it recognises the calls from all chief ministers and premiers in all the territories and state jurisdictions that this reform is positive and necessary and something the government should do. So we should take the opportunity today for the Senate to send that message to the Attorney on the basis that legislation is forthcoming to this chamber, once it passes the House of Representatives, to deal with that. So for those two reasons I argue that the matter is urgent and must be considered today.

Senator BROWN (Tasmania) (4.08 p.m.)—I support Senator Greig’s motion and I congratulate him and the Democrats on bringing this motion forward. The motion, if passed, would be an injunction to the government from the Senate to catch up with public sentiment on the matter of discrimination against same sex couples. It simply accords with the view of the state Attorneys-General in the matter and would have the legislation come from the government. One would presume, if the opposition is to support this, and I think it will, that that would allow for the end of discrimination on property issues for de facto couples and see that they are settled in the Family Court.

The motion asks the government to ensure that such legislation would include the need for avoiding limitation of existing rights under state legislation for same sex couples and also ensure that an equitable legislative regime is proposed which eliminates any disadvantage or discrimination against all de facto couples, whether of the same or opposite sex. This legislation is not cutting edge. It follows legislation that has been passed by several states in Australia but many countries and jurisdictions overseas. I think that Senator Greig is absolutely right that it is a very timely opportunity for the government to respond to recent events in a positive fashion. The motion is an important one. It will be a breakthrough for the Senate if it is passed and it will be an advance for this country. It will open up an opportunity for the Howard government to catch up with the mood of the nation.

Senator HARRADINE (Tasmania) (4.11 p.m.)—Here we are: because I called this not formal, I am accused by Senator Greig of homophobia. I challenge him or anyone in this chamber or outside of this chamber to say when I ever supported unjust discrimination against persons because of their homosexuality. I challenge them to say when I did—in all my past life in the trade union movement or in the political arena. It is so unfair for Senator Greig to suggest that this is a matter of homophobia. I am an Independent senator here representing the state of Tasmania. I am entitled to know precisely what is behind the motions that are put forward. It is so unfair for Senator Greig to suggest that this is a matter of homophobia. I am an Independent senator here representing the state of Tasmania. I am entitled to know precisely what is behind the motions that are put forward. I am expected to agree to a situation where there has been no debate. I think this is a matter of such importance that there should be debate. That is what I am talking about: there should be debate.

The notice of motion talks about calling on the government, in bringing forward legislation on this matter, to ensure that such
federal legislation will in no way limit existing rights under state legislation. How many in this chamber can honestly say that they know what all the state legislation does? What are you suggesting we are signing up to here? How many in this chamber know not only what existing state legislation but what future state legislation we are supposed to sign up to? As we know, under the Constitution, legislation of the federal parliament overrules the states. The interesting thing is that the motion calls on the government to ensure that:

… an equitable legislative regime is proposed which eliminates any disadvantage or discrimination against all de facto couples whether they are of the same or opposite sex. There is the nub of it. This is an attempt to get backdoor recognition of same sex couples as having marriage status relationship similar to a de facto couple, which is recognised as having a marriage like status. This is trying to get the Senate to sign up to that. I do not think that ought to be done without great consideration.

I disagree with Senator Brown: I do not think the public believes that that ought to be the situation. The family law legislation is perfectly clear—it talks about the need to preserve and protect the institution of marriage as the ‘union of a man and a woman to the exclusion of all others voluntarily entered into for life’. That is what the family law legislation says and we are now being asked by way of this motion to sign up to something that is quite contrary to the Family Law Act and what is in the Marriage Act. Whether you agree with the motion or not, I believe it is a matter that ought to be subject to proper debate—not snuck through by calling for a notice of motion to be taken as formal.

Senator ROBERT RAY (Victoria) (4.15 p.m.)—Some time ago I raised whether we should abolish formal notices of motion. I raised that with the Procedure Committee because I was sick of getting squeezed on resolutions of principle. Quite often those resolutions contained 90 per cent of things I could agree with and 10 per cent of things I could not. Either you declared them not formal and they would disappear or you had to suspend standing orders and have an unlimited debate, or you had to knock them through without debate—to me, that is the problem. Time and time again, parties and individuals in this chamber are getting squeezed on these particular matters of principle.

I read the motion and I do not have a lot of difficulty with it per se, but I have difficulty with suspending standing orders and then having to have a one-, two-, three- or four-hour debate at this stage of the session. I am afraid that is not on. One thing I will not accuse Senator Greig of is trying to stall the proceedings. I know he is not trying to do that—Senator Bartlett would love him to do it. He is not trying to do that and I accept that, I accept the sincerity with which Senator Greig is putting this forward as a principle, but it is very difficult for this Senate to adopt these resolutions constantly without any debate at all. On that point, Senator Harradine is absolutely right.

This also raises the fact that the government has botched its program so much that people like Senator Greig cannot be given general business time. We have given up more general business time overall on this side of the chamber than has ever been given up before—Thursday after Thursday, we are turning over to government business, later sittings et cetera. You have to have some sympathy with Senator Greig because he is not getting an opportunity to have a full debate on this particular matter. I have to say that today is not the day. You can say, ‘You would argue, Senator Ray, that the day is never there.’ But no, I will not argue that.

Senator Brown—When is the day?

Senator ROBERT RAY—Exactly—the day will come, I think, Senator Brown. To put a motion like this through, a major principle, without debate, was not on, so declaring it not formal was probably the appropriate course of action. There is only one question before us: are we going to spend the rest of the day and half of tomorrow, or whatever, debating this particular matter or not? The answer is that we were never signed up for it. If we were forced to be in a position to have to vote on this as a formal motion, we can
indicate now that we would have supported it.

We are not about to vote for a suspension of standing orders and an endless debate at a time when we have a range of serious legislation which can hopefully be finished off by 6.30 tomorrow night. As it is, I suspect we will be sitting here well into Friday afternoon trying to get through what is now a limited government program. It is not a wish list because they have cut it right back—everything has been put aside, all the bluffing and all that. The government now has its minimum demands on the table, which we do not regard as unreasonable. We would like to see those matters resolved before we leave here on either Thursday night or Friday. Therefore, the suspension of standing orders may have an element of urgency but it is not warranted at this stage.

Senator ABETZ (Tasmania—Special Minister of State) (4.19 p.m.)—The government will be opposing the proposal put forward by Senator Greig in relation to the consideration of this motion. The government has an agenda that has been put before this chamber. Urgent legislation is required to be passed before we resume for the budget session. As Senator Ray indicated, we have the rest of today and tomorrow and possibly the early hours of Friday morning—let us hope not. There is a tight schedule to be worked through and this is not the time or the place for a debate on this matter, which has a certain gravity about it, as Senator Harradine pointed out. Indeed, I would doubt that any of us sitting around the chamber at the moment could answer the question that Senator Harradine posed. That aside, the government wants to get on with the agenda. I invite the Senate to reject the motion and allow us to deal with the business that is before the Senate so that we can hopefully catch our flights on Friday morning back to our electorates.

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

The Senate divided. [4.24 p.m.]

(The Deputy President—Senator S.M. West)
References Committee for inquiry and report by 19 November 2002:

Small business employment, with particular reference to:

(a) the effect of government regulation on employment in small business, specifically including the areas of workplace relations, taxation, superannuation, occupational health and safety, local government, planning and tenancy laws;

(b) the special needs and circumstances of small businesses, and the key factors that have an effect on the capacity of small businesses to employ more people;

(c) the extent to which the complexity and duplication of regulation by Commonwealth, state and territory governments inhibits growth or performance in the small business sector; and

(d) measures that would enhance the capacity of small businesses to employ more people.

Question agreed to.

Scrutiny of Bills Committee

Senator MACKAY (Tasmania) (4.29 p.m.)—On behalf of Senator Cooney, I present the third report of 2002 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills Alert Digest No. 3 of 2002, dated 20 March 2002.

Ordered that the report be printed.

DELEGATION REPORTS

Official Visits to the Assembly of the Republic, Portugal, and the Senate, Spain

The ACTING DEPUTY PRESIDENT (Senator Hogg) (4.29 p.m.)—I present the report of the President’s official visits to the Assembly of the Republic, Portugal, and the Senate, Spain, which took place in January 2002.

PARLIAMENTARY ZONE

Proposal for Works

Senator ABETZ (Tasmania—Special Minister of State) (4.30 p.m.)—In accordance with the provisions of the Parliament Act 1974, I present a proposal for approval of works within the Parliamentary Zone, together with supporting documentation, relating to the temporary works associated with the National Capital ‘Canberra 400’ V8 Supercar race carnival. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator ABETZ—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 and Canberra Tourism and Events Corporation for temporary works within the Parliamentary Zone, associated with the National Capital ‘Canberra 400’ V8 Supercar race carnival.

DELEGATION REPORTS

Parliamentary Delegation to the 47th Commonwealth Parliamentary Conference

Senator LIGHTFOOT (Western Australia) (4.30 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the 47th Commonwealth Parliamentary Conference, which took place in Australia from 2 to 14 September 2001.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Hogg) Madam President has received letters from party leaders seeking variations to the membership of committees.

Senator ABETZ (Tasmania—Special Minister of State) (4.31 p.m.)—by leave—I move:

That senators be discharged from and appointed to committees as follows:

A Certain Maritime Incident—Select Committee—

Appointed: Senator Ferguson
Discharged: Senator Heffernan

Community Affairs References Committee—

Substitute member: Senator West to replace Senator Gibbs from 21 March to 28 March 2002.

Question agreed to.

HEALTH: NUCLEAR TESTING

Return to Order

Senator ABETZ (Tasmania—Special Minister of State) (4.32 p.m.)—I seek leave
to read a brief interim response to the Senate’s return to order, motion No. 31 moved by Senator Bartlett on behalf of Senator Allison.

Leave granted.

Senator ABETZ—I thank the Senate. I have advice from the Department of Defence in relation to the documents sought by the Senate today. National Archives records indicate that some of the documents have restrictions on access that may prevent tabling. Apparently, some documents were provided in confidence by foreign governments, and disclosure would require consultation and consent. I also am advised that Defence provided the documents to the Royal Commission into Atomic Testing in Australia in 1986. Royal commission documents remain under the control of the Department of the Prime Minister and Cabinet and are no longer controlled by the department of origin. I am advised that Prime Minister and Cabinet is now the approving authority for publication of these documents. I have requested that Defence liaise with Prime Minister and Cabinet to advise me which documents may be tabled. Unfortunately, this process will delay a final response to the Senate’s request. I shall advise the Senate when I have received further information.

NOTICES
Withdrawal

Senator BARTLETT (Queensland) (4.34 p.m.)—If the Senate is willing to give me leave to make a one-minute statement, I will withdraw Business of the Senate, notice of motion No. 5.

Leave granted.

Senator BARTLETT—I thank the Senate. Despite the inference, I think, made by Senator Ray just recently, I am not trying to chew up time unnecessarily to prevent debate on the Migration Legislation Amendment (Transitional Movement) Bill 2002, which is the subject of my notice of motion. Given that the Senate has just decided to amend the Selection of Bills Committee report not to send this bill to a committee, it is fairly redundant to proceed with this notice of motion. I would like as much time as possible in this chamber to consider the bill, given that we are not going to be able to consider it in a committee.

In withdrawing this notice of motion, I do need to correct the statement made by Senator Faulkner. He said that it was the intention of the Democrats to block this bill going to a committee. The fact that I have this notice of motion on the Notice Paper pretty clearly shows that it is not the Democrats’ intention to block the bill going to a committee. It was our intention to try to send it to a committee with a proper hearing, which it would not have got under the rushed approach that was being tried by the government last week. I think it is important to put that on the record. Hopefully, we can move on to the substantive issue when the bill comes on for debate later. The Democrats wanted it to go to a committee. We wanted it to get a proper hearing, not a rush through before anybody even knew the bill existed. That is why this notice of motion was put forward. But, given the matter has been determined already, I will withdraw it.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—The notice of motion is withdrawn.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2002
In Committee
Consideration resumed.

The TEMPORARY CHAIRMAN (Senator Hogg)—The committee is considering the States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 as amended. The question is that the bill as amended be agreed to.

Senator CARR (Victoria) (4.36 p.m.)—Senator Brown was dealing with an amendment. He is not here. If it is the wish of the committee, I would like to move opposition amendments to schedule 1, item 1.

Senator Abetz interjecting—

Senator CARR—My understanding is that Democrat amendments (1) to (4) have been carried.

Senator Abetz—You are right, sorry.
The TEMPORARY CHAIRMAN—The next business on the running sheet is the Greens’ amendment.

Senator CARR—They are not here, so I would move the opposition amendment, which is the next amendment, if that is the wish of the committee.

The TEMPORARY CHAIRMAN—Can we deal with yours without having dealt with the Greens’ amendment first?

Senator CARR—Yes, they are separate matters.

Senator Abetz—If Senator Brown is not even in the chamber and does not want to pursue the amendment, I am wondering how serious he is and whether we deal with it.

Senator CARR—Senator Abetz, we have a lot of work to do here. We are serious about processing these amendments. We believe they are worthy of the consideration of this chamber. Gratuitous abuse of other senators will not facilitate that. I would urge you, in the interests of what you perceive to be the government program, to bear in mind just how much work there is before us. I would therefore move the amendments standing in my name listed as amendments to schedule 1, item 1.

The TEMPORARY CHAIRMAN—You are moving R1 on sheet 2442 revised? Is that correct?

Senator CARR—That is the one. I move:

(1) Schedule 1, item 1, page 4 (after line 9), after subsection (4), insert:

(4A) Where the Minister varies the list in accordance with this section, the Minister must do so in accordance with such criteria for the identification of a new school as shall be prescribed.

This amendment seeks to vary the list in accordance with the section so that established criteria for the identification of new schools—

Senator Abetz—The advisers are asking whether the revised amendments have been circulated.

The TEMPORARY CHAIRMAN—Senator Carr, the issue is whether the revised amendments have been circulated. The Deputy Clerk advises me that that is not the case at this stage. Is that correct?

Senator CARR—The amendment that I am speaking to, which is listed here as 2442 on the sheet that I have before me, was distributed—and I asked for it to be distributed—yesterday. This is not a revised amendment.

The TEMPORARY CHAIRMAN—It is not a revised amendment.

Senator Abetz—We are right now, thank you.

Senator CARR—If I might speak to this amendment, what concerns us here is to provide a mechanism to establish criteria for identifying whether new schools are in genuine need. It is not sufficient, in our judgment, to rely on state registration procedures to do this. As we have been able to highlight through a range of processes, there are at least 13 schools that we have identified amongst this list of 49 at the time—I understand it has now grown to 58—where it would appear that reliance upon state registration has led to a situation where schools have been registered as new schools which are arguably outside the current guidelines. Those schools are really branches of an existing school—they are just new campuses and the schools have essentially just changed their names; I can go to the detail of these if required—or schools that have effectively extended their levels and are not in fact new schools.

State registration bodies have responsibility for assuring the quality of education in all schools, such as for curriculum, teaching qualifications, health and safety conditions and, in some states, discipline. They are matters which go to the standards of educational provision, not to the issue of criteria for an automatic access—and I emphasise that—to Commonwealth moneys. They are in fact serving entirely differing purposes. That is why it is a grave error in public policy to rely upon a state to administer a Commonwealth program which is, in effect, open ended and which does not take into account the requirements of the Commonwealth guidelines but operates on an entirely different basis.
What we have then is the situation, for instance, of the Christian College Highton and the Christian College Institute of Senior Education, in Highton, which is a senior campus of a school which was created and separately registered. They have the same registration address; 12 of the 13 directors are the same for the registered company; they have the same address in relation to their registration as a registered training organisation. We have the All Souls St Gabriel School at Charters Towers in Queensland, which we have discussed on previous occasions, essentially with the same people, same staff, same students, same board of governors. And so it goes on. There are numerous examples of this.

We have the Hills Montessori School in Sydney, which has an existing preschool that has catered for three- to five-year-olds for over 20 years. It is not a new school, but it has been registered as a new school. There are several other examples that we can point to on the list where Montessori schools are extending their program. We have the ludicrous situation—this really concerns me—where a school in Australia that receives Commonwealth funding has an enrolment of one. A school with one student! How can you possibly run a school program with a school of one? How do you provide the breadth of curriculum and the facilities with a school of one?

That is the basis on which we are now operating. We can have in this country a registered school with only one student in it. As I have said before, it reminds me very much of the old Sir Humphrey Appleby scene in the Yes, Minister series where there was a hospital with no patients. What we have in this country is schools without students, getting Commonwealth funding.

This is where the whole notion of choice has gone off the rails—absolutely off the rails. We have a situation where the concept of choice is easier to use as a rhetorical term than in an operational sense. Providing choice for some actually undermines the choices of others. A country of our size and with our financial basis, our budgetary strength, is not able to provide infinite options in regard to funding. That is why it is important to establish the question of need. We should be funding schools on the basis of real need, not on the basis of some ideological obsession, as has been the case with this government.

We have a situation that we have seen in various places around the country and that highlights the points I have been making. The way this program is currently operating concerns me. The Labor Party believes that we need to assist genuine new schools to meet legitimate start-up costs. We also need to develop criteria to ensure that real needs are actually met, not to assist schools that are appreciably operating in another disguise. We need to pay particular attention to who owns the schools, to the governing bodies and to the actual operations of the school. We cannot have a situation where the guidelines seem to be so openly flouted. This department and this government know about these problems but they rely on the one assumption that if the schools are registered by the state they automatically have access to Commonwealth moneys. No wonder this program has been blown out so badly; no wonder there have been four attempts to get the estimates on the budgetary requirements; no wonder we have schools that are really schools for profit slipping through the administrative net, to the point where, for instance, we have the case of Reddam House school in Sydney and Murdoch College in Perth which, it would appear to me, have not been properly examined by departmental officials because they are relying on state government officials to do the work that the Commonwealth should be doing. This is a Commonwealth program and it requires proper accountability mechanisms. Currently those mechanisms are not in existence.

The TEMPORARY CHAIRMAN (Senator Hogg)—Before calling other speakers, I want to make sure that I correct something I said earlier. We are now working from a new revised running sheet, which is revised (3). The amendment that is being put forward by Senator Carr is amendment (1) on sheet 2442—no longer revised. I understand that maybe there is a revised set of
amendments but they are not forthcoming at this stage. We are operating from sheet 2442.

Senator Carr—That is not revised. That has been distributed.

The TEMPORARY CHAIRMAN—That has been distributed and I want to make sure that those who are participating in the debate are clearly aware of that fact. The question is that the amendment moved by Senator Carr be agreed to.

Question agreed to.

Senator BROWN (Tasmania) (4.47 p.m.)—I move Greens amendment R3 on sheet 2470 revised:

(R3) Schedule 1, page 3 (after line 5), before item 1, insert:

1A After subsection 18(5)
Insert:

(6) The Minister must refuse to authorise, or may delay, a payment to a State under this Act for a non-government school if:

(a) the school has an enrolment policy which would exclude a child on the grounds of:

(i) academic ability;

(ii) behavioural difficulty or special need including physical or intellectual disability or learning difficulty; or

(b) the school has a discipline policy which would exclude or expel a child on the grounds of:

(i) academic ability;

(ii) behavioural difficulty or special need including physical or intellectual disability or learning difficulty.

If the school changes its enrolment or discipline policies within five years of receiving an establishment grant and such change contravenes paragraph (a) or (b), any payment is subject to section 27.

I remind the committee that this amendment ensures that to qualify for establishment grants the private school involved has to have a policy that would ensure it does not restrict or exclude children on the basis of their academic ability, behavioural difficulty or special needs, including physical or intellectual disability or learning difficulty. It would ensure that we do not have a process whereby if there are special requirements in education to help children who are disadvantaged in any way they are rejected from the private system and simply put across to the public system because they are an expense.

There is a great deal of anecdotal evidence to show that this is the case. For example, an unruly child may be hyperactive or difficult in some other way. In the classroom that can lead to distractions for fellow pupils and to a great deal of extra attention and care from the teacher or teachers involved. But it is also a difficulty for the child involved. Unless they get special attention, this can very easily lead to them being denied the special assistance required to help them engage in other educational or work opportunities further down the line.

If they do require special attention, that does require extra resources. We all ought to know of anecdotes where children rejected from the private school system have simply gone to the public school system because no one else would take them. 'Cherry picking', as it is called, is inherent in this process. I do not like that term because I think that no kid is a cherry above any other child. But the meaning here is that there is selectivity by some private schools, whereby they reject the extra time, care and monetary needs that these children require. For example, it is easy to expel such children from a school and leave it to their parents to find a place for them in the public school system. That should not happen. The Greens amendment aims to make sure that it does not happen, to make sure that neither the children nor the public school system are disadvantaged by private schools rejecting, quite unfairly, such students. It is a pretty simple and fair matter and I recommend this amendment to the committee.

Senator ALLISON (Victoria) (4.51 p.m.)—I indicate Australian Democrat support for the amendment. It is a good one, although I do not think the rejection of students difficult to teach—if we might put them in that category—is across the board in non-government schools. If we were to typ-
ify the sorts of schools that do, it is probably those that are at the wealthier end of the spectrum. This is an amendment and a condition that many schools will not have any difficulty with, but I would argue that none should. The Democrats are supportive.

Senator CARR (Victoria) (4.52 p.m.)—The opposition acknowledges the strength of the sentiments behind this amendment. We have argued these views ourselves for a considerable length of time. In fact, the value of the amendment goes to the main act rather than to this states grants bill—that is, it should apply to all schools, in my judgment, not just to new schools. Therefore, we suggest it would be more appropriate that these particular measures be undertaken in another form and we are not supporting them in this particular form.

Senator BROWN (Tasmania) (4.52 p.m.)—That is a default, and we see that so often from the opposition. When the opportunity comes up to support an excellent amendment which the opposition says it agrees to, it says, ‘But not now.’ That is, frankly, not good enough. This amendment is inherently a commonsense one; it makes good sense. The opposition supports it but says, ‘Some other time.’ That is not satisfactory. I ask Senator Carr to think about this matter again. This amendment should be supported, and the time for it to be supported is now. Certainly, I agree with him: it should extend right across the board to the allocation of moneys to the private school system. But let us set that principle in place now and then extend it when the opportunity comes. Let us not block it now and then consider it when a further opportunity comes. That is not good enough.

Senator ABETZ (Tasmania—Special Minister of State) (4.53 p.m.)—It seems that what is sought by the amendment is to establish one rule for the non-government sector but allow for other rules for the government sector, because there are in fact government schools that have selective enrolments on the basis of academic ability. So if you allow state government schools to do it, why on earth would you not allow non-government schools to do it?

I remember, when I went through the state government school system, at Taroona High School, that people were expelled from state government schools as well. So let us not have this pretence that people are only expelled from schools in the non-government sector. They are expelled from schools in both sectors because, at the end of the day, those that are in authority determine that that is the best course of action for the wellbeing of all the other students.

The amendment also ignores—and this is something that those opposed to our philosophical approach seem to do all the time—the views of parents. Many school councils—even, as I understand it, in state government schools—determine particular discipline policies for those schools. That would be the same in state government schools and non-government schools, so it is far too prescriptive and in fact would set a criterion which is not even applicable to state government schools. The government will oppose this amendment.

Senator BROWN (Tasmania) (4.55 p.m.)—Earlier today I asked Senator Abetz, on behalf of the government, to supply the committee with the figures on this matter. He has had all day to do so. I notice that he has not, and I have no doubt that he will not, because there is an inherent discriminatory potential and reality involved in this by some schools in the private sector. Where the private sector is going to get the largesse of taxpayers’ money it ought to measure up to the public sector. The public sector does have a range—it is one that is there with government input, it is one that serves the public and it is one that ultimately does absorb the most difficult youngsters. But that is not the case with the private sector, and this is an attempt to bring fairness across the system. Every senator will know that that is required. Why should we not, as legislators, when giving taxpayers’ money to the private sector, expect that the private sector will act with full responsibility and take its share of responsibility for helping children, no matter what their gifts, attributes or difficulties are? That is what this amendment is about.

I appeal to the opposition to look at it again and take this opportunity, in the name
of fairness, to adopt this Australian Greens’ amendment to ensure that the private school system does take fair responsibility in providing special education requirements, special care and the added attention that some children need in the school systems.

Progress reported.

FIRST SPEECH

The PRESIDENT—Before I call Senator Barnett, I remind honourable senators that this is his first speech. I therefore ask that the usual courtesies be extended to him.

Senator BARNETT (Tasmania) (4.58 p.m.)—What an honour and a privilege it is to stand in the Senate chamber as a representative of the Australian people and as an advocate of the great state of Tasmania. I am profoundly grateful and filled with anticipation at this opportunity to strive in my role as a senator for a better quality of life for Tasmania and my country. This is indeed a rare opportunity to walk with my fellow Australians towards the fulfilment of our potential and the realisation of our dreams.

I pay tribute to my predecessor, former Senator the Hon. Brian Gibson, for his eight years of service in this place, and his special expertise and contribution on behalf of the business community. The honour bestowed on me by the rank and file members of the Liberal Party in Tasmania for the opportunity to stand in this place is appreciated, and I look forward to crystallising in the hearts and minds of the Tasmanian public the benefits of a returned coalition government at the next election and, in doing so, to ensuring not only the return of a full complement of Tasmanian Liberal senators but the winning back of House of Representatives seats.

I thank my Senate colleagues, members of the House of Representatives and others for their kind welcome following my swearing-in last Monday, 11 March. One of the greatest prizes of life is the chance to work hard at work worth doing and I look forward to, in collaboration with my parliamentary colleagues, claiming this prize.

I wish to acknowledge my family and close friends in the gallery, some who have travelled far to be here in this chamber today. It means a great deal. Thank you. They are aware of my earnest and sustained desire to be a participant in the councils of national decision making and specifically the federal parliament. I am a believer in the uniquely human capacity for faith, imagination and dreams, and today’s first speech is the fulfilment of a dream, a lifelong dream conceived in my mind as a child. My father died of a degenerative disease on 25 May 1985. Although none of us can claim objectivity about our fathers, mine should take much of the credit for the inspiration and values instilled in me, for providing the light that guided my steps to this place. He was a man of enterprise who saw solutions rather than problems. He pioneered the export of live sheep from Tasmania. He did what people said could not be done. In one sense I have had a privileged upbringing—but these same virtues are available to all who care to seek them out.

As the proud owner of a desk belonging to one of colonial Tasmania’s early premiers, Sir Richard Dry, I have often thought of the decisions made for good government in past years, sitting and contemplating at that desk what is required of those in politics. To those Australians I hope to help in my Senate career I would say from the outset that dreams don’t work unless we do. They require determination and perseverance. I have had my knock-backs, my knockdowns, but I have never been knocked out and I know in my heart that with the support of family and friends and by the grace of God we can achieve our dreams.

I was raised as a fifth-generation Tasmanian on a beautiful farm at Hagley, a rural and regional part of northern Tasmania, before studying at the University of Tasmania in Hobart and then practising law in Melbourne. My dream of working in the USA was achieved in the mid-1980s when I was an advocate for Australian rural and trading businesses in a Washington DC law firm. In 1988 at the age of 25 years I became the youngest senior adviser ever to work for an Australian premier. Electoral defeat some 18 months later demonstrated the benefits of government and the disempowerment of opposition. The defeat, however, was the catalyst for my entry into the small business
arena where I established and then managed for 12½ years my government affairs and public relations business prior to my entry to the Senate.

Based on this experience I can say unequivocally that people are the most important asset of any business. Building and growing relationships with staff, clients and others is vital and rewarding. Recruiting good people and keeping them is a lesson that I have learned during this time. Small business can adapt to and take advantage of change more quickly than its competitors. The new world of IT has enhanced opportunities for small business. If all levels of government can help to maintain low interest rates and low taxes, cut back red tape, free up the industrial relations system, ensure a fair trading environment and remove rather than impose obstacles, then small business will prosper and do well. Small business is already the nation’s pre-eminent jobs generator, providing three out of every five new jobs. It provides the vital infrastructure and cash flow especially needed in regional communities. In Tasmania we have an estimated 23,000 small businesses employing 36 per cent of all employees. Tasmania has more than 50 per cent of the private sector work force and this is the highest percentage of any state. Tasmania truly is a small business state.

Research released only yesterday shows that of Australia’s 1.2 million small businesses approximately 600,000 have started since the Howard government came to office in 1996, an outstanding achievement. Eighty-two per cent of all small businesses are micro businesses, employing five employees or less, and the overwhelming majority are without a union-dominated work force. Over 30 per cent of all small businesses are now operated by women and this percentage is growing fast. Best of all, the small business work ethic is supreme. Small business owners and operators have mortgages not only on their businesses but on their homes. Their necks are on the line. And unlike colleagues in other sectors they cannot walk away from a wrong decision or an unsuccessful venture without paying a personal cost. They stand accountable for their actions and are responsible for their decisions. This is a principle that is vitally important to us in the political arena as well as to all Australians.

I am proud to be a member of a government committed to encouraging a vibrant business sector. The needs of small business should dominate the thinking and activity of government. Members of parliament at all levels should not be dominated by the cosy nexus of big government, big business, big unions. That is a triumvirate well able to take care of itself. We should remould the bureaucracy into a role of small business auxiliary rather than small business adversary. The Public Service is there to serve the public, not to serve itself. The Public Service is there to achieve results for the wider community, not to achieve a process as an end in itself. My vision of Australia is a land of boundless opportunity underpinned by an entrepreneurial, pioneering spirit, a can-do attitude—the envy of the world. Like home ownership and share ownership, I envisage an Australia with levels of small business ownership amongst the highest in the world.

The tragedy of 11 September 2001 has caused all of us to reflect that this could have happened in Australia. It could have happened to you or to me. Life is not to be taken for granted. Australia’s response, led by our Prime Minister, demonstrated resolve and courage in the same way as it did some two years earlier during the liberation of East Timor. As the grandson of a World War I veteran, I say thank you to our servicemen and women in the Australian armed forces past, present and future. They are prepared to place themselves in the way of harm and danger to protect the freedoms that make our way of life in this country the envy of the world.

We should double our efforts to protect the things that we hold dear, whether they be our family or friends, the freedoms we enjoy or the environment in which we live. Starting at home, parenthood provides the archway or, if you like, the protective cover under which our children can securely grow and thrive. In difficult times a carefully built and strong archway can help to avoid the disunity and despair experienced as a result of family breakdown.
I commit to playing my part in replacing the complacency, apathy and frustration often prevalent in the community with encouragement and hope. The high levels of community cynicism and disrespect shown for our public institutions and those in authority are a sad but often fair indictment of us. I believe we as politicians should embrace this criticism as a challenge from our employers and simply strive to do better.

We all have a deeply personal responsibility to stand by our word, deliver on our promises and demonstrate respect for both our peers and our constituents. It is far easier to denigrate and tear down than to build. The easy option, the quick fix and the path of least resistance is rarely the right path towards a long-term solution.

While tourism and the new and knowledge economy will be playing a growing role in our prosperity in the future, we cannot neglect the traditional industries such as forestry, farming, mining, fishing and manufacturing upon which our standard of living has been built. The rural sector and its dependent downstream processing enterprises last year contributed 33 per cent of Tasmania’s gross state product.

Our three-year election cycle and our almost insatiable appetite for media coverage produce a political focus on the immediate, often to the neglect of the important. Developing long-term plans, such as in business, is essential to good government.

As a former professional advocate for Australia’s aged care industry, I am aware of the importance of access to quality aged care whilst maintaining a viable industry. This is important because older Australians deserve respect and dignity. There is cause to fear that our fast-ageing population may not be matched by a commitment to adequate resources to meet future needs. Lifting national savings and encouraging capital into the sector are trends I hope to accelerate at every opportunity.

Although volunteers contributed over 700 million hours of voluntary work in the year 2000, we ought not, by the absence of remuneration, undervalue their contribution. The value of unpaid volunteer and community work in Australia has been estimated at more than $24 billion per annum. One in every three adult Australians, or nearly 4.5 million people, volunteer their services and skills in a community organisation. Our urban dwellers would do well to emulate the community mindedness of the regions. Why do I say that? The volunteer rate was 28 per cent for capital cities, while for outside of the metropolis it was 38 per cent. Tasmania has one of the highest levels of volunteer work in the nation, a level which gives me great pride and confidence in my fellow islanders.

Volunteers provide the moral spinal cord of our economic and social fabric. It is the volunteer character of this activity that creates and replenishes the relationships of trust that are our greatest assets as a nation in times of need and crisis. The morale of our volunteers, however, is now under pressure. Our multibillion dollar investment in social capital is at risk of dissipation and disintegration for a range of reasons. The spiralling cost of public liability insurance is a significant threat. For example, Diabetes Australia Ltd, in which I declare an interest as a director, is facing a 500 per cent increase, from $24,000 per annum to $130,000 per annum. At the inception of the Liberal Party our founder said:

We believe as we always have that our only freedom is a brave acceptance of individual responsibility.

Many in our legal fraternity now recognise the proliferation of class actions and aggressive advertising, especially of accident and personal injury legal services through the availability of no-win, no-fee arrangements. These trends are counterproductive, and we should endeavour to retard this rights based litigious culture and encourage a greater focus on our responsibilities. It is time for the pendulum to swing back.

As a government and community, I believe we need a paradigm shift in our thinking, in how we view our multibillion investment in social capital. Recognition with annual certificates or even the celebration of the International Year of the Volunteer is important but not enough. Volunteers who have met certain criteria in terms of hours of work and out-of-pocket expenses incurred should
be paid the costs of their travel, postage, phone, fax and out-of-pocket expenses, whether it be directly or via changes to our tax system. This is not intended as an encroachment on the concept of voluntaryism but, rather, an acknowledgment that a large proportion of these unsung Australian heroes engaged in voluntary work have scarce personal resources to draw on.

A more generous approach to community and non-profit organisations is also recommended by the re-establishment and expansion of the small equipment grants, which last year saw 2,835 voluntary organisations receive $7 million. Volunteers save Australia an absolute fortune—around $66 million a day—and helping them in financially modest ways is appropriate public policy.

I referred earlier to knock-backs. On 14 January 1997, following two months of losing weight, constant tiredness, insatiable thirst and going to the toilet, I was diagnosed with type 1, or insulin-dependent, diabetes. Although starting a regime of five injections a day, I soon learned that, with regular exercise, an appropriate diet and constant interchange with my wife, Kate, I could live a normal, healthy lifestyle. Experience is not what happens to you; it is what you do and how you respond to what happens to you. I gained a whole new perspective on life, being granted a special empathy for those with disabilities.

There is more good news: we have a growing economy and, by comparative standards, a strong health system. For example, the cost of managing one’s diabetes in the USA is eight to 16 times more expensive than it is in Australia. Let us not take that for granted. One million other Australians also have diabetes, with the vast majority having type 2 or late-onset diabetes. Sadly, however, half that number—500,000 Australians—are undiagnosed. These people are guaranteed to suffer serious health problems and a likely premature death without a diagnosis. In Tasmania, 25,000 people have diabetes—12,500 people are undiagnosed. A diagnosis of diabetes is good news, because if managed carefully one can live a normal, healthy lifestyle.

One’s HbA1c is the measure used to monitor blood glucose control. For people with diabetes, it is a measure equally as important as blood pressure and cholesterol. A one per cent decrease in one’s HbA1c results in the following reductions in diabetes complications: death by diabetes, a 21 per cent reduction; heart failure, a 16 per cent reduction; stroke, a 12 per cent reduction; cataract, a 19 per cent reduction; amputation, a 43 per cent reduction. In Tasmania last year, we had 67 amputations of the leg as a result of diabetes.

Sadly, because of our Western lifestyle and proclivity for fast foods and limited exercise, diabetes is now an epidemic. For Australia’s indigenous people, it is, tragically, worse still. A member of that community is eight times more likely to contract diabetes than the average Australian. A major education and information campaign is required to find the 500,000 Australians who are undiagnosed. Support and commitment from all levels of government, GPs, the medical fraternity, health professionals, the private sector and the general public is required to achieve this goal.

In conclusion, I have been inspired by a number of great leaders and people, including Abraham Lincoln for his perseverance and determination; Nelson Mandela for his demonstration of grace following years of oppression and pain; Dame Enid Lyons, a distinguished Tasmanian and the first woman representative in the House of Representatives, for her love of family and her pioneering spirit; Sir Robert Menzies for his oratory and leadership skills; my mother, Lady Ferrall, for her generous and gracious spirit and consistent love; my late father and grandparents; and, most significant of all, Jesus Christ, who led by example in love and humility as a servant of the people.

At the start of this new chapter as a member of parliament, I have asked myself what I would want written on my political epitaph. I would hope that at the conclusion of my political life the people who stand in judgment will say that Guy Barnett had a can-do attitude; he encouraged others to achieve their dreams; he was effective and a pioneer; he cared and had compassion; he had a passion
for life and a vision for his state and his country; and, finally, more than his work, he loved his wife and family.

COMMITTEES
Economics Legislation Committee
Report
Senator CALVERT (Tasmania) (5.19 p.m.)—On behalf of the Chair of the Economics Legislation Committee, Senator Brandis, I present the report of the committee on the provisions of the Taxation Laws Amendment (Superannuation) Bill (No. 1) 2002 and a related bill.

Ordered that the report be printed.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL 2002
In Committee
Consideration resumed.
Senator ABETZ (Tasmania—Special Minister of State) (5.20 p.m.)—I take this opportunity to publicly congratulate Senator Guy Barnett on a fantastic first speech and wish him all the best for what I am sure will be a very distinguished career.

Honourable senators—Hear, hear!

Senator ABETZ—Senator Barnett and I go back a long way, to university days, and I am delighted that he is here with me in the Senate. To his friends in the gallery, many of whom I know: have a drink for me because I am on duty down here.

Before the fantastic speech by Senator Barnett, a few propositions were put to me by a senator and some quite false assertions were made in relation to expulsions. Indeed, those who have any understanding and knowledge of the non-government sector know that from time to time students that have been expelled from the state system end up in the non-government sector and, because of different regimes, things happen to work well for them. The converse is also true: some that get expelled from the non-government sector do well in a government school. To try to put one set of restrictions on the non-government sector is inappropriate.

In relation to the number of expulsions, once again Senator Brown finds it very difficult to stick to the facts. He asked me prior to lunch about the number of expulsions, and I indicated to him—I did not answer it—that that was a matter for state governments. State governments have that responsibility. The federal government does not keep statistics in relation to expulsions from the state school systems; the state governments do that. He should make inquiries of the state government authorities around Australia.

We, as a federal government, do not want to take that role away from state governments. I think in general terms they do a good job in trying circumstances. I do not think the education system would be enhanced in any way by trying to determine school expulsions from Canberra, as opposed to leaving it to those who are closer, on the ground—namely, the state government system.

Question negatived.

Senator ALLISON (Victoria) (5.23 p.m.)—by leave—I move Democrats amendments (5) and (6) on sheet 2440:

(5) Schedule 1, item 1, page 4 (line 14), omit the formula, substitute the following formula:

\[
\text{Establishment amount for the program year} \times \left( \text{Number of primary students for the school for the program year not exceeding 60 students} + \text{Number of secondary students for the school for the program year not exceeding 60 students where the school is a secondary school or 30 students where the school is a combined primary and secondary school} \right)
\]
These amendments will restrict the per capita establishment grants to schools which have 60 students in a primary school or a secondary school for both the first and second year of funding or 90 students for a combined primary and secondary school. I acknowledge at the outset, because no doubt Senator Abetz will point this out, that this is an arbitrary figure, but it is nonetheless an accountability measure—an attempt on our part to find a way of making sure that we do not have a situation where so-called new schools start with enormous enrolments and qualify for the establishment grants.

If they do start with enormous enrolments, one of three things can generally be argued to be the case, I think, and I am sure the government could follow this if it chose to. Those students will be from a previous school and this will be a new campus of the same school or, as Senator Carr mentioned earlier, this will be the same school setting up with the same directors and school principal and essentially the same students and qualifying for this funding when it ought not or this will be a school which may well be poaching students from existing schools in the immediate region. So our amendments are an attempt to say that a reasonable start for a school is probably two grades. That, as I understand it, is how most new schools begin. They start with preps or with year 7, and then they build the school year after year. I think I recall the minister saying that the average size of new schools in terms of students was well below either the 60 figure or the 90 figure that we are suggesting would be reasonable. These amendments certainly would stop schools starting off with over 700 students. I commend them to the Senate. As I said, I realise the figures are arbitrary; nonetheless, they attempt to get rid of what is clearly an abuse of this generous entitlement by schools that are not really new schools and are, for whatever reason, able to get around the guidelines that are in place, get past the government on this issue and qualify for establishment grants.

**Senator CARR (Victoria)** (5.26 p.m.)—The opposition will not be supporting these amendments, because we believe that our amendments (3) and (4) establish essentially the same intent as I understand the Democrats amendments are doing but in a better way. The Democrats amendments, in our judgment, are arbitrary, and we would argue in favour of the amendments which I will move in a few minutes.

Question negatived.

**Senator CARR (Victoria)** (5.27 p.m.) by leave—I move opposition amendments (3) and (4) on sheet 2442:

3) Schedule 1, item 1, page 4 (lines 16 to 21), omit the definition of establishment amount, substitute the following definition:

establishment amount for the program year is as prescribed in accordance with the principle that the amount of a grant allocated to each school will be in direct proportion to the SES score for the school set out in Schedule 4 of this Act so that the largest grant is made to the school with the lowest ranked SES score and the smallest grant is made to the school with the highest ranked SES score.

4) Schedule 1, item 1, page 4 (line 28) to page 5 (line 2), omit the definition of establishment amount, substitute the following definition:

establishment amount for the program year is as prescribed in accordance with the principle that the amount of a grant allocated to each school will be in direct proportion to the SES score for the school set out in Schedule 4 of this Act so that the largest grant is made to the school with the lowest ranked SES score and the smallest grant is made to
Amendment (3) relates to primary schools and amendment (4) relates to secondary schools. Both amendments go to the issue of the amount of the grant allocation under schedule 4 of this act. The States Grants (Primary and Secondary Education Assistance) Amendment Bill 2002 provides a fixed per capita establishment grant for every eligible school, without regard to their circumstances. This is inconsistent with the basic principles of need. Our amendments are intended to provide a differential per capita establishment grant, based on relative need. Grants would be paid on a sliding scale, depending on each school’s SES score. I want to emphasise that this should not be seen in any way as an acceptance of the SES model by us. When we get into government, I am sure there will be other tools available but, given the facilities currently in operation, because it is the only tool currently available, it is the only means by which we can allocate moneys under the current legislative framework.

What we are seeking to do here is basically to provide a logic which would make the establishment grant program consistent with the recurrent grants program and to make sure that the funds are distributed according to a measure of need. What we are seeking to do here is to ensure that all schools will receive a per capita amount. For the wealthiest schools, where the Commonwealth support is at the lowest end—and, I would argue, quite rightly so—the proposed establishment grant of $500 per student would increase the general recurrent grant by almost 80 per cent in primary and 55 per cent in secondary in the first year. For the poorest school communities with the lowest SES scores, the proposed uniform grant of $500 would be increased on general current grants of only 14 per cent for primary and 11 per cent for secondary. Quite clearly, there is a discrepancy in the way in which the government has approached this. I can only presume this is an administrative oversight. I would hate to think we would have to go through yet another series of arguments to demonstrate why it is that the government continues to provide such privileged treatment to those that are already wealthy. Then again no doubt the minister would be able to explain to me why it is that the recurrent grant paid by this arrangement is so favourable to the wealthy schools.

The resource poor schools obviously are in need of greater assistance. Schools such as Reddam House in Sydney, I believe, is one that clearly cannot be seen in the same category—given they have new marble bathrooms and the various other facilities that make it look like a TV studio, as we have already indicated—as schools such as the Ballarat Steiner School, which basically began life in the local village hall in Bungaree. The opposition is prepared to state the principle of differential grants based on need in the legislation and through our amendments to allow the government to bring back the dollar amounts in regulations. That is the approach we are taking here. We are expecting there to be integrity in the government’s response. We clearly need to establish what the budgetary implications are of the government’s current bill. It is our assumption that current arrangements would lead to a situation which is essentially open-ended. Our measures would provide for a sliding scale of grants to show allocations of $500 in the first year and $250 in the second year which are about the middle point of scale on a range of schools eligible for establishment grants. I commend the amendments to the chamber.

Senator ALLISON (Victoria) (5.31 p.m.)—I indicate the support of the Democrats for these amendments. Having said that, I also indicate this does not suggest that we believe the SES score is an entirely suitable measure of need. As we all know, there are enormous anomalies in the way the SES score is working, but it may be better than no measure at all and it certainly will move some schools into a more equitable situation. It is a step in the right direction, but the Democrats would like on the record our acknowledgment that the SES is far from a proper tool to be doing this.

Question agreed to.
Senator CARR (Victoria) (5.32 p.m.)—I move opposition amendment (2) on sheet 2442:

(2) Schedule 1, item 1, page 5 (after line 2), after subsection (6), insert:

(7) Expenditure of a payment made in accordance with this section shall be restricted to the purposes of such recurrent establishment costs as may be prescribed.

This amendment seeks to establish the ineligibility of establishment grants funding for a school where the school derives income from school fees and where the average level of the amount of fees derived by the school is equal to an excess of the amount equivalent to a per capita GSRC. We are suggesting schools that are very wealthy are clearly in a different category from schools that are hard up.

Some schools receive from tuition fees alone funding equivalent to the higher or the recurrent resources in government schools. I have indicated to the chamber before that there are schools operating in this country—and I will just list a few—with high fees. Wesley College, for instance, is currently on $13,500 per year per child. We have Toorak College in Melbourne, $12,220 per child. We have Brighton Grammar at $13,075 per child. We have Geelong College, $11,528 per child. We have Geelong Grammar—where the fees for each child are $15,820. If you are a boarder in Geelong, I understand the fees are now up to $20,000 per year. At Geelong College, I understand, you can bring your pony along if you really need to. They have stables and various other facilities available. They are obviously a struggling school. Clearly there are differentials—

Senator Abetz—Glad you brought its donkey along.

Senator CARR—You mentioned donkeys, Minister, and I have no doubt I could speak at length about the number of donkeys that have dreamt up a scheme like this. It is an extraordinary proposition. You have facilities available for your pet ponies. They are clearly in a different category from a local school that is actually in such a difficult situation.
be moved by—that there are schools operating in this country which cater for the wealthy. Extraordinary wealth is exhibited by these schools; you just have to look at the facilities that are available. That is quite inequitable compared with schools which are not able to attract the high-fee incomes that the category 1 schools can attract. These are elite schools. Therefore, there needs to be a method of allocating funds to provide genuine equality of opportunity for all Australians. That is not the current situation.

In terms of the policy framework that is being pursued by the Commonwealth, we acknowledge that there are high-fee schools which are receiving per capita grants from both Commonwealth and state governments and that the way in which these are allocated under the SES formula is unfair. There are schools that operate at least 30 per cent above the funding that is provided to public schools. When they are able to charge fees in excess of $10,000 to $15,000, they operate at two to three times the level of resources that are available for public schools. There is a similar pattern for Catholic parish schools, which make up 65 per cent of the non-government sector. There are clearly disparities in the availability of resources, and this is having quite a serious impact on the education system in this country. We argue that there ought to be genuine equality of opportunity and that the only way to do that is with a policy setting that aims to achieve that result.

Question agreed to.

Senator ALLISON (Victoria) (5.41 p.m.)—I move request (1) on sheet 2441 for an amendment.

That the House of Representatives be requested to make the following amendment:

(1) Schedule 1, page 5 (after line 6), after item 3, insert:

3A Schedule 3 (table)

Repeal the table, substitute:

<table>
<thead>
<tr>
<th>Capital grants for government schools</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Column 1</strong></td>
</tr>
<tr>
<td>Program Year</td>
</tr>
<tr>
<td>--------------</td>
</tr>
<tr>
<td>2002</td>
</tr>
<tr>
<td>2003</td>
</tr>
<tr>
<td>2004</td>
</tr>
<tr>
<td>2005</td>
</tr>
<tr>
<td>2006</td>
</tr>
<tr>
<td>2007</td>
</tr>
</tbody>
</table>

Note 1: Amounts for 2005, 2006 and 2007 will be inserted by an amending Act.

Note 2: The operation of section 106 may affect the amount of the grants.

The TEMPORARY CHAIRMAN (Senator Forshaw)—Is it the wish of the committee that the statements of reasons accompanying the request be incorporated in Hansard. There being no objection, it is so ordered.

The statements read as follows—

Statement pursuant to the order of the Senate of 26 June 2000—

The amendment is circulated as a request because it would have the effect of increasing expenditure under the appropriation in section 111 of the States Grants (Primary and Secondary Education Assistance) Act 2000 by $30 million. It therefore increases the “proposed charge or burden on the people” within the meaning of the third paragraph of section 53 of the Constitution.

Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000—

The Senate has treated as requests amendments which increase expenditure out of appropriations an Act amended by the bill. This request is therefore in accordance with the precedents of the Senate.

This amendment is a recycled ALP amendment from the previous debate on this subject. We feel that it is important that the federal government does not forget that the public sector exists, and there ought to be provision for government schools in this legislation. This is an arbitrary request that capital grants for government schools be increased in the order of $30 million. As I have said earlier in this debate, I spend a lot of time in government schools, and it is disappointing that so many of them exist in poor conditions. Very few government schools have no need of temporary classrooms—so-called portables—and some of these are in appalling condition and are unsuitable places for students to learn and for teachers to
teach. Very often they are inadequate in size and planning, and they are very uncomfortable spaces because they are very hot in summer and very cold in winter—and often they leak as well. That is just one example of the poor facilities that government schools often have to put up with.

I know that there are lots of schools in the non-government sector where money is tight as well, and I have visited a lot of those, but it is rare to find the same sort of struggle for facilities that you so often see in government schools. Schools have to raise money themselves. They very often do not have indoor gymnasium equipment or facilities, and this would go some small way to redressing the imbalance. I know that there is a separate budget for capital works and that is not strictly part of what this legislation is about, but it is a gesture as much as anything. I would welcome the government’s support of this gesture when this request reaches the House of Representatives, because the 70 per cent of students in the government sector would feel that they were not being entirely forgotten by this government when it comes to handing out money. That is the purpose of this request. As I said, this request was moved by the ALP last time around, and I would welcome their support.

Senator CARR (Victoria) (5.45 p.m.)—This is clearly one of those interesting occasions where the Democrats have moved an amendment that Labor have moved in the past. I emphasise that we are committed to fair and equitable funding for all schools, including government schools. One of our great concerns has been—we are quite serious about this—the share of Commonwealth funds going to government schools since the election of this government in 1996.

What the minister obviously did not have pointed out to him by his officials before he was given the note is that since 1996 Commonwealth funding to all government schools stood at 43 per cent. By 2004, Commonwealth funding will be down to less than 34 per cent. That is an extraordinary shift in anyone’s language—moving from 43 per cent down to 34 per cent. In my view, the attitude of essentially undermining the public education system in Australia that is being pursued by this government is in sharp contrast to the traditional view that Liberal governments have pursued. Take for example Robert Menzies’ attitude—you will not hear me quote Robert Menzies too often—that the Commonwealth’s responsibility lies primarily with public education and public schools. In 1945 he said:

If adequate resources are not available to the states, they will cut their coats according to their cloth and that ought not be allowed to happen. As a nation, we cannot afford to do anything less than our best in a campaign, the result of which will be to determine whether in the New World we are to be a nation of strong, self-reliant, trained and civilised people or whether we are to be content with second-rate standards and more devoted to the pursuit of material advantage than to the achievement of genuine, humane community spirit.

Those are the sorts of lofty values that were expressed by Menzies. That is not the approach being pursued by this government.

Labor are committed to genuine equality of opportunity for all Australians. This government is committed to the provision of special, privileged assistance to those who are already privileged. It is important for the Senate to be clear as to Labor’s view on this issue. In all conscience, we cannot hold up this piece of legislation in that light as an example of good public policy, because it continues the trend established in the original states grants bill. The legislation we have before us goes to a program, however, of ancillary assistance, of additional funding for new non-government schools.

The principles have to be brought to bear, and I have demonstrated they have been brought to bear by the opposition in our assessment of this legislation that allocates public funds for schools. What is sorely needed is a return to a rational and equitable system of public funding for children in all schools across this country. That is what we are committed to. We are looking for a comprehensive policy review. My colleague Ms Macklin is undertaking a comprehensive policy review of assistance that should be led by the Commonwealth to the children of this country. That will lead, in my judgment, to a new policy framework which will see schools funded under a Labor government on
the basis of need—and that is all schools, not just government schools and not just non-government schools or newly established schools.

Last year, when this legislation was debated, we sought to increase funding under the Commonwealth establishment grants program. We are contemplating a situation where we might well have assumed we would be in government after the last election. If it were not for the particular directions followed by the Howard government in regard to certain issues of race, it may well have occurred. It may well have occurred had this government not adopted such a despicable position with regard to the manipulation of the race card. Had a Labor government been elected, there would have been the opportunity to undertake a thorough revamp of the establishment grants program, especially its administration and eligibility criteria, to bring funding to government schools. In that context, the measures it was appropriate to pursue at that time are not those being proposed today—they were entirely different circumstances. We are now faced with the circumstance where Australian schools are to be subject to the deprivations of Dr Kemp and the Howard government—and, whether he likes it or not, Dr Nelson is becoming the inheritor of Dr Kemp’s ideology.

These circumstances behove the opposition to seek amendments to this legislation that will strengthen the positive public policy implications in terms of the establishment grants program and target funds to needier schools rather than the wealthier schools. The ones that do not need it should not get it. We ought to be able to provide a mechanism to clean up the administrative nightmare—in my opinion, the shameful mess—which has resulted from the failure of this government to face up to its responsibilities with regard to this area of schools policy. That remains our priority. We cannot support the Democrats amendment, because our priority is to establish an improved administrative framework in terms of this government.

Senator ABETZ (Tasmania—Special Minister of State) (5.53 p.m.)—As Senator Allison indicated, this is a recycled ALP amendment—which even the ALP do not believe is worthy of support. Senator Carr sought to make some points in his contribution, but the facts need to be pointed out. Senator Carr referred to an alleged decrease from 43 per cent to 34 per cent in relation to funding by the Commonwealth for state government schools, which represents a nine per cent difference. Let me make two points about that. During the same period, non-government school enrolments increased not by nine per cent but by 16 per cent. Therefore, for the number of students it looks after, the state government sector in fact got an increase in real terms.

This is a philosophical argument that has been bantered backwards and forwards during the course of this debate. The Australian Labor Party and others are locked into a fixed ideological position which is often based on the politics of envy. Basically, we as a government say that, if people are prepared to invest from their private funds in the education of their children, they should not be denied access to support to which they would otherwise be entitled to, albeit on a different basis to those who are more in need. I wanted to clarify that for the record so that, in the event that any people trawl through the Hansard or anyone perhaps is listening, there is no suggestion that what Senator Carr is asserting is in fact the truth. It is part of the truth but, as is so often his wont, he can quote a bit of the truth but misrepresent the total position, and that has unfortunately occurred throughout this debate. Just for the record, of the specific schools budget measures in the 2001 budget, 87 per cent of the funding was directed to the 69 per cent of students in the government sector.

That is the beauty of this government. This government has increased funding to both the government and non-government sectors—and the mums and dads of Australia realise and accept that. We do not try to play the wedge politics of division between the mums and dads to choose state education as opposed to non-government education. We say that both sectors should be looked after and should not be denigrated by the sort of terminology that we have had to listen to during the course of this debate. We as a government are supportive of both systems.
Indeed, our very own Prime Minister is the product of the state system, as am I, and we are both committed to its adequate and ongoing funding.

Senator BROWN (Tasmania) (5.56 p.m.)—The mums and dads of Australia, by and large, send their children to public schools. That is the first thing to be said. Many of the mums and dads of Australia do not have the choices that are open to some of the mums and dads who are fortunately able to select between private schools and the public school system. The public school system is set up to ensure that there is a fair opportunity for every child who goes out the door in the morning to have her or his educational needs fulfilled and life opportunities opened up. But in the last decade or so the overall funding of education—if you compare it with spending at the start of the last decade—has dropped by more than $1 billion in this country. We are way back in the field when it comes to the proportion of the gross domestic product that goes into education. That has happened not only under the Howard government but also under previous Labor governments, but it has been accelerating.

One of the great problems is that, at the moment, not only has the number of dollars going into education diminished but also there is a diversionary process. That involves diverting money to the private school sector. No-one is going to say that that sector should not be there and no-one is going to say that anybody’s choice to go to that sector should be enhanced beyond the already discriminatory positions that families find themselves in—where some people have the money and some people have not. What the Australian Greens are arguing is that we are here dealing with public funding and we are dealing with public education, and those two things go together. Private funding and private education go together as well. I know the arguments there are across the line on that, but what I am concerned about is the continually increasing difficulties for people in the public education system—not least the teachers and the students. The Democrats amendment moved by Senator Allison—which was the Labor Party’s position but this has apparently now been abandoned—attempts to help hold the line as far as funding of the public school system in Australia is concerned, and the Australian Greens support it.

The TEMPORARY CHAIRMAN (Senator Forshaw)—The question is that the request for an amendment moved by Senator Allison be agreed to.

Question negatived.

Senator BROWN (Tasmania) (5.59 p.m.)—I move Australian Greens amendment (R1) on sheet 2470:

(R1) Schedule 1, item 1, page 5 (after line 2), after subsection (6), insert:

(7) Where a new school applies for an establishment amount in accordance with this section:

(a) the Minister must cause all government schools within a 10 kilometre radius of the school making the application to be notified of that application;

(b) a school which has been notified in accordance with paragraph (a) may make a submission notifying that payment of an establishment amount is a risk to its viability, diversity or enrolment numbers;

(c) a submission made in accordance with paragraph (b) will be considered by the Ministerial Council on Education and Youth Affairs or its delegate;

(d) following consideration in accordance with paragraph (c), the Council may make a determination that a school is ineligible for establishment grant funding.

(8) The Minister may not make a determination in accordance with subsection (1) or (2) until the requirements in subsection (7) have been met.

This amendment means that, where new private schools are set up, the nearby public schools will have the opportunity to notify the government about the effect that will have on their enrolments and, therefore, on their financial viability. These things do not happen in isolation. There is a real concern that, where you get public school students being inveigled across to the private school system, they not only leave and go to the other school but also take money with them.
It is public money, and it is a lot of public money. That further squeezes the ability of the public schools not only to survive but to produce the comprehensive and varied opportunities in education that the private school system is so good at advertising at the moment.

I recommend this amendment. It will allow government schools within a 10-kilometre radius of a new private school to make application and to notify ministers that there is a risk to their viability, their diversity and their enrolment numbers. It will also allow them to approach the Ministerial Council on Education, Employment, Training and Youth Affairs or their delegate to inform them about this so that the council can then make a determination as to whether the private school that wishes to apply is eligible or otherwise for the establishment grant. The minister, finally, may not make a determination about this until that advice from the council is forthcoming. It is a system that says, ‘Let us hear back from the community which is going to be affected and the public school system that is going to be affected. Let us make sure that the impact on them of the establishment grants that we are dealing with here is known and fully assessed before we proceed.’

Senator CARR (Victoria) (6.02 p.m.)—I indicate to Senator Brown that the Labor Party does support the principle of this planned provision. I have indicated already that the McKinley report on these matters— and there are two volumes of that report: 1995 and 1996—highlighted some important issues which remain valid in our considerations today. In particular, on the so-called issue of choice I think that the general rhetorical concept, which is worked so hard by the other side of the chamber on these matters, is very difficult to translate into a particular program which actually guarantees at the same time equality of opportunity. There is clearly a major contradiction in the way in which that principle is applied to the actual operations of schools. As I put it before, I think it is simply the case that the question of one person’s choice may well be at the expense of another person’s choice. That is apparent, I think, if you know anything about education at all.

In fact, the question of choice is not an unambiguous good; increasing choices for some obviously has effects on others. If you take a certain block of students away from a particular school, that undermines the capacity for other students in the school in terms of the curriculum offerings, the teachers that are available, the facilities that are available and so on and so forth.

In terms of the general principle there is considerable merit, but your amendments, Senator Brown, we unfortunately did not have the opportunity to discuss with you. We did offer the opportunity to you to do that, but we did not hear back from you. It would have been better for us, I think, to have had an understanding of the way in which you have drafted this proposition. The source of the formula listed here is not clear to us; the intent of the formula is not clear to us. In that context, it is difficult for us to agree to it. Furthermore, if you look at your amendment, it goes to the issue of funding for government schools, not necessarily the issue of funding for establishment purposes for non-government schools. In that context, if it is in fact about planned provision for public education then there is a need for a much more substantive consideration of these issues and it ought to be done properly. This amendment does not fulfil those criteria and we are not able to support it.

Senator ALLISON (Victoria) (6.05 p.m.)—I just want to indicate that, likewise, the Democrats think that this is a worthy objective, but I draw Senator Brown’s attention to the second reading amendment where we set out to put in place what is commonly known as planned educational provision where there is a multiplicity of methods by which the establishment of a new school needs to be judged. I think it is a fine idea to invite schools around the immediate area of a new school to make submissions but I am concerned about the distance over which this would take place—a 10-kilometre radius is a 20-kilometre diameter—and if you put that kind of circle over any metropolitan area, you will pick up a great number of schools.
So administratively it would be, I think, quite difficult.

I am also a little unclear as to the role of the Ministerial Council on Education, Employment, Training and Youth Affairs. In doing this, it seems that this body might not be the proper one for such an arrangement. Like the ALP, I think that it is a worthy objective. I think that what we are getting at here is a better way of planning new schools so that money is not wasted on those which will turn out to be unviable or those which will make other schools unviable. It is useful to have such a tool but, in our view, the Democrats second reading amendment does this with greater effectiveness.

Senator BROWN (Tasmania) (6.07 p.m.)—I do not accept either of those arguments. The fact is that we have now had three amendments come up in a row, one of which was the Labor Party’s own amendment last time around, about which the Labor Party has effectively said, ‘What a great idea—we oppose it. It is the sort of sentiment that we support, but give us the opportunity and we will vote it down.’ That is part of the problem with the process whereby the public school system is losing out. The Labor Party is just not sticking to the principle it espouses when it gets the opportunity to drive it home using the numbers that we have here in the Senate.

I recognise that these are difficult matters to implement, but you cannot abandon the pursuit of finding the legislative tools that are required to make sure that this runaway diversion of funds from the public school system is halted and the consideration it is having on the millions of children who go to the public school system, which is becoming very much a second-class system. We need to assess the impact of that and then do something about it. That is the important thing, doing something about it. There may be only one Australian Green in this place but we have been able, with the help of people in the education community, to come up with at least a device. I do not accept that, because that device may be imperfect, therefore you abandon the effort to make things fairer. If it is not good enough, where is the Labor amendment that is doing better? I accept Senator Allison saying that a second reading amendment would have been an alternative, but this amendment is real, it is here and it is now.

Senator Allison—My second reading amendment has been passed.

Senator BROWN—Yes, but it is not implementing this provision, and this is not in conflict with it. Might I add to Senator Allison that the reason for introducing the ministerial council is to ensure that at the end of the day the federal minister for education simply cannot ignore this provision, because we know that the federal government is biased against the public school system. So, yes, I accept that this is an imperfect instrument, but it is better than not having one, and the Labor Party should be supporting it.

Senator ALLISON (Victoria) (6.10 p.m.)—Just to make it clear what the second reading amendment does, I will quickly run through the first part of it. It is to establish:

... a Planned Educational Resource Allocation Committee to assess applications for funding for the establishment of new schools in each State and Territory. This committee will comprise representatives of the Commonwealth Department of Education, Science and Training, government and non-government school employing authorities, parents and teacher unions. This Committee shall advise the Minister on the funding of new schools, taking into consideration the following:

(i) the duplication of educational services in an area;
(ii) the impact of the establishment of the new school on surrounding schools;
(iii) the willingness of the school to cooperate with other schools in the sharing of resources;
(iv) the level of determined community need for the new school;
(v) the financial viability of the new school;
and a couple of other measures. So the second reading amendment may not be in conflict, but certainly the requirements under this amendment would be. I guess, taken care of already in the amendment that was put up.

Senator BROWN (Tasmania) (6.11 p.m.)—I thank Senator Allison for that, but the answer is not quite. While the Democrats amendment is advisory, the Greens amendment takes the action that gives the ministerial council the ability to make a determin-
tion here in response to the community. That is very different to giving advice to the minister, because we by and large know what happens when you advise a minister of the Howard government in favour of the public school system. The private school system is going to have the wherewithal to carry the day there because that is the way lobbying is going currently. I reiterate that we are seeing a rapid deterioration of the ability of the public school system to deliver anything like the facilities and opportunities of the wealthy private school system. That is the reality.

The question we have to ask in this egalitarian country of ours is whether it is right that millions of students are having their ability to have a varied, opportunity enhancing and skills enhancing education diminished so that those in already wealthy schools can have their opportunities and advantages enhanced. My answer to that is, yes, the choice is there for people to privately establish schools and develop them and give alternatives to the public school system. But we are in a nation where the public school system is being seriously eroded in its ability to give the sort of education to Australian children that we all want for them. Without investing in Australian children to the degree which is going to maximise their opportunities, we are selling short the future of the country itself.

It is easy to come up with rhetoric like that but that is the reality, and you have to do the comparison on two scores. Firstly, how were we funding public education in this nation 10 to 20 years ago? The answer is billions of dollars ahead of where we are now. The second indicator is, how do we rate with similar countries around the world, the OECD nations, for example? We are right at the back of the pack. Injecting $1 billion, $2 billion or $3 billion more into public education would simply bring us up to mid-range. We are many billions of dollars short of being at the front, where Australians would expect their public school system should be. Yet here we are dealing with legislation which is giving millions more to the private school system, which opens up opportunities for a minority of children. I would like to see the public school system be able to give the options that the private school system is increasingly able to give as more and more public funding goes across to it. But you cannot do that unless you give the public school system the funding, and in doing so you have to vote an endorsement to the teachers, and indeed the administrators, in the public school system who strive so hard not to be demoralised by this process that is occurring in Australia.

The Senate has the opportunity to say to this government that enough is enough, that we are going to turn around this imbalance and this drift towards disadvantage in the public school system. It is a real disadvantage. I am not saying that the public school system is doing well so why don’t we give some to the private school system. I am saying the public school system is doing poorly in terms of funding. As the dollars dry up for the public school system, it is very easy for the government, for ministers and Prime Minister Howard to simply say, ‘If the teachers do better the results will stay up.’ Go and speak to those teachers, ask them about the esteem they have for the system and about the happiness with which they are able to deliver education today, as against 10 or 20 years ago. It is unfair but, worse than that, it is creating disadvantage for a great number of young Australians. Yes, these Greens amendments are tough: there is lateral thinking in them. But they are to deal with the disadvantage that the government is dishing up through this and other pieces of legislation we have seen go through this place since 1996. I say to both the Democrats and the Labor Party: support this amendment from the Australian Greens. If you do not support it, where is the alternative with teeth in it?

Question negatived.

Senator BROWN (Tasmania) (6.16 p.m.)—I move:

(R2) Schedule 1, item 1, page 5 (after line 2), after subsection (6), insert:

(9) Where a new school receives an establishment amount in accordance with this section:

(a) all government schools shall be eligible for a stabilisation grant if they are within a 10 kilometre radius of a new school receiving an establishment amount;
the amount under paragraph (a) for a program year in relation to a school must not exceed the amount worked out using the formula:

\[
\text{Establishment amount for the program year} = \left( \frac{\text{Number of primary students for the school for the program year}}{\text{Number of secondary students for the school for the program year}} \right) \times 2.33
\]

This amendment reads that where a new school receives an establishment amount in accordance with this section—remember this is for a new school in the private sector—then, firstly, all government schools shall be eligible for a stabilisation grant if they are within the 10-kilometre radius of that school and, secondly, the amount will be worked out under a formula, which is given there, which basically says that 70 per cent goes to the public school system and 30 per cent goes to the private school system.

I admit that this is a fairly blunt instrument, but I challenge those who say that it is and ask them to come up with something better. Let us not ignore this opportunity to ensure that public schools in the region of those private schools that are getting largesse through this legislation get their fair amount. Seventy per cent of children go to the public school system and 30 per cent goes to the private school system.

Senator CARR (Victoria) (6.18 p.m.)—As I indicated in my previous remarks the origins of the formula that Senator Brown has proposed are not clear and it seems somewhat arbitrary in its construction. We are not able to support this amendment.

Senator ALLISON (Victoria) (6.19 p.m.)—Could Senator Brown explain a little more how that formula would work. This is a matter I raised with him earlier today. I am not able to understand what it means in terms of the revenue impact and the size of the grants. As I said earlier, the 10-kilometre radius is a very big area and we should have some idea of what the implications of that would be.

Senator BROWN (Tasmania) (6.19 p.m.)—I can answer Senator Allison. It means that if $30 goes to an establishment grant for a private school then $70 will go to the public system in that area as a stabilisation grant—that is, to help them offset the clear disadvantage that they will have through loss of students and loss of income under this process.

Senator ALLISON (Victoria) (6.20 p.m.)—I think that would be problematic if you were to consider the likelihood that there could be one or two schools in a particular area of this size. We actually had a look at what 10 kilometres would mean in metropolitan areas. When we looked at a circle on a map, you could get 44 schools in one area. If what you are saying is that 30 per cent would go to the new school being established and that the 70 per cent left would be distributed to the rest of the schools, it would be a very small amount indeed and probably not worth the arrangement.

Senator BROWN (Tasmania) (6.21 p.m.)—Anything that will help redress the imbalance here has to be considered and should be supported. That is why this amendment by the Greens should be supported.

Question negatived.

Senator CARR (Victoria) (6.21 p.m.)—I move: Schedule 1, item 1, page 5 (after line 2), after section 75, insert:

75A Review of grants to provide establishment assistance
(1) The Minister must cause a review of establishment grants to be conducted by the Department of Education Science and Training.
(2) The review is to include an assessment of the extent to which payments made in accordance with this Act have been
successful in meeting the recurrent establishment costs of new schools with particular reference to the:

(a) eligibility; and

(b) accountability and transparency; and

(c) administration of the payment of establishment grants.

(3) In conducting the review required by this section, the Department must establish and consult with an external reference group representative of school authorities and organisations.

(4) A report of the review conducted in accordance with this section must be made publicly available before the expiration of the 2003 calendar year.

This revised amendment (6), like all our propositions moved today, is very reasonable and fair and is moved to address the concerns that have been expressed right across the education community. There are deep issues in regard to the problems with the administration of this program, in regard to the eligibility of schools under this program and in regard to the accountability mechanisms under this program.

The Labor Party has very deep concerns regarding the equity of this program. A series of administrative anomalies and apparent misallocations of funds have been identified from the very beginning of this program. We have genuinely sought to propose changes which would strengthen the administration of this program and target funding to schools that actually need it. We have provided the government with plenty of flexibility and plenty of opportunity to address those concerns. We have, in fact, been remarkably unprescriptive with the detail.

We hold these amendments very strongly. The issue we have particular concerns about—and I want to emphasise this so that the government understands—is the review. It is critical to our approach to this bill. What we are proposing here and what we want an understanding from the government on is that the review will address the fundamental concerns we have pursued throughout this debate—that is, the eligibility of schools for establishment grants, the accountability of the schools receiving those grants, the transparency of operation of the program and the effectiveness and efficiency of the administration of the government’s program. That is why we are proposing that the review include an assessment of the extent to which payments, made in accordance with the act, have been successful in meeting the recurrent establishment grant cost of schools and that it look at eligibility, accountability and administration.

We are proposing the establishment of a representative reference group of school authorities and organisations that would allow people who are actually deeply concerned about these matters to have an input into the review of the government’s program, that the report be made public and that it be concluded in 18 months. There is plenty of time for the government to see how it is running. I have obviously expressed my deep concern about the program using the evidence available to the opposition. I trust that this amendment finds the support of the chamber. I do not expect the government to support it, but I strongly urge the government to think about the message that will go from this chamber to the House and will come back to us tomorrow, presumably.

Senator ALLISON (Victoria) (6.25 p.m.)—I indicate the Democrats’ support for this amendment. I think it is essential that we have a review of the establishment grants. They are, after all, open-ended. Serious questions have been raised about accountability and the extent to which this is going to be an impost on taxpayers. I think the terms of reference that have been established by the ALP are good. I too suggest to the government that they seriously think about supporting this amendment.

Senator BROWN (Tasmania) (6.25 p.m.)—The Australian Greens’ pivotal vote will go to supporting this amendment.

Amendment agreed to.

Senator BROWN (Tasmania) (6.26 p.m.)—The Australian Greens oppose the item in the following terms:

(4) Schedule 1, item 4, page 5 (lines 7 and 8), TO BE OPPOSED.

The Greens oppose the item because we want to maintain the limit on the total amount of Commonwealth funds going to
private schools. I have argued that throughout this debate. The public school system is very much in need of those funds. I think we should have a limit on them until we can redress the imbalance. That explains our opposition to this particular item.

The TEMPORARY CHAIRMAN (Senator Bartlett)—The question is that item 4 of schedule 1 stand as printed.

Question agreed to.

Senator Brown—Was it agreed to because the opposition supported it?

The TEMPORARY CHAIRMAN—My understanding is that Senator Carr voted with the government that the item stand as printed.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ABETZ (Tasmania—Special Minister of State) (6.28 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bills read a first time.

Second Reading

Senator ABETZ (Tasmania—Special Minister of State) (6.29 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—

TAXATION LAWS AMENDMENT (BABY BONUS) BILL 2002
THERAPEUTIC GOODS AMENDMENT BILL (No. 1) 2002
THERAPEUTIC GOODS (CHARGES) AMENDMENT BILL 2002
THERAPEUTIC GOODS AMENDMENT (MEDICAL DEVICES) BILL 2002
TAXATION LAWS AMENDMENT BILL (No. 1) 2002

First Reading

Bills received from the House of Representatives.

Senator ABETZ (Tasmania—Special Minister of State) (6.29 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 three of 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 agreed to.

Bills read a first time.

Since its election in March of 1996 the Coalition has put in place a succession of initiatives providing practical financial assistance to families. The $2 billion Family Tax Initiative was introduced in January of 1997. This initiative increased the tax free threshold for families with children and introduced additional benefits for single income families with one child under five. The increases in tax free thresholds made available under the Family Tax Initiative were doubled as part of the New Tax System which commenced on 1 July 2000, providing another $2 billion annually of further benefits to families. As part of the New Tax System the Coalition also simplified the Family Benefits structure and improved the incentives for families to work by easing the income test for Family Tax Benefit and cutting income taxes.

Families with children deserve assistance with the cost of raising children. Financial assistance to families is a very direct way of supporting our most important institution—the family—and investing in our most important resource—our children.

One of the largest costs that families face with the birth of their first child is the loss of a second income. Generally speaking, a couple goes from two incomes down to one, at the same time as they have the additional cost of a new baby. Whilst Family Tax Benefit A and Family Tax Benefit B help families these benefits do not amount to the same as a second income. The arrival of a child generally leads to a large fluctuation in the family’s income. There are some occupations that experience fluctuating incomes that are allowed to average their incomes for tax purposes, farmers and artists are examples. By averaging their incomes they reduce tax liability over the average period. They can do this by taking
advantage of the tax free threshold in bad years which would otherwise be unused to reduce tax in the good years.

A mother on a salary of $30,000 in the full year before the birth of a baby would pay $5,380 in tax on that income. If she averaged that $30,000 over 5 years when she was out of the workforce with a child then her income would be $6,000 per annum. This is the tax free threshold and she would pay no tax at all.

Recognising the family that experiences a fluctuating income where a mother leaves the workforce to look after a child, the Coalition announced during the recent Federal Election, that it would introduce a system which effectively averages income over 5 years and allows a mother to claim back the tax paid on her income in the year prior to the birth of the child.

The First Child Tax Refund or the Baby Bonus as it became known during the election campaign and as it will now be known as a consequence of this bill, will be available from 1 July 2002 and will apply to the family’s first child born on or after 1 July 2001.

The maximum annual refund of $2,500 equates to one fifth of the tax paid on a salary of $52,666. It is estimated that some 93 per cent of partnered women without children earn this amount or less. Those with a base year salary over this amount will still be able to claim back a refund of $2,500 but not higher. To ensure that mothers on low incomes, including those who are not in the workforce, also benefit from the measure a minimum annual payment of $500 will be available for those with taxable incomes of $25,000 or less in the year that they make their claim.

Where the mother returns to work and the father stays at home the Baby Bonus will be able to be transferred to the father. Parents returning to work on a part-time basis will still be able to receive the Baby Bonus with a reduction according to the income they earn upon returning to the workforce. For example, if a parent returns to work and earns one third of the income they earned before they had the child, the Baby Bonus will be reduced by one third. The Baby Bonus will also be available to parents who adopt a child under five years of age on or after 1 July 2001.

To ensure that families who already have a child do not miss out, the Baby Bonus will also be available to the first child born on or after 1 July 2001 for families who already have children. The Baby Bonus can be claimed in tax returns from 1 July 2002, or, for those who do not lodge tax returns on a separate form that will be available from the Tax Office.

This is targeted help for hundreds of thousands of families. We expect that around 245,000 mothers and their families will benefit from the Baby Bonus in the first year and eventually it will deliver benefits to some 600,000 families at any one time.

This is the implementation of a solid policy that only this Government has the credentials to deliver. During the campaign we made a pledge to families and now we are delivering on budget, on time and in full.

Full details of these measures are contained in the explanatory memorandum and I commend the bill.

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THERAPEUTIC GOODS AMENDMENT BILL (No 1) 2002

I am pleased to introduce the Therapeutic Goods Amendment Bill (No 1) 2002.

The amendments provided for in this bill are necessary to strengthen the ability of the Commonwealth to plan for, and respond to, national emergencies in which there is the potential for large numbers of people to require emergency pharmaceutical treatment.

Examples of such emergencies would include acts of bioterrorism or the emergence of a new, highly contagious disease in Australia.

Either of these circumstances may result in the need for emergency pharmaceutical treatment of large numbers of people to counteract the effect of such substances or diseases.

The recent bioterrorist activities in the United States have highlighted the need for nations to be prepared for chemical, biological and radiological disasters.

The Government in its planning has placed a high priority on the availability of pharmaceutical treatments (antibiotics, vaccines and chemical antidotes) to counteract the effects of chemical and biological weapons.

The Government in its planning has placed a high priority on the availability of pharmaceutical treatments (antibiotics, vaccines and chemical antidotes) to counteract the effects of chemical and biological weapons.

There are two main issues that need to be addressed in relation to pharmaceuticals.

Firstly, the rarity of likely agents used in these terrorist activities is such that some of the recommended drugs for prevention and treatment are not registered and therefore not readily available in Australia.

However, in the event of a chemical, biological or radiological disaster such treatments will need to be supplied to many casualties with minimum delay. Some of the other recommended treatments, particularly antibiotics, are marketed but
not approved for indications associated with the pathogens that could be used for bioterrorism.

Secondly, as many countries round the world face the same problem, we have to be able to deal with the possibility of global shortages of antibiotic treatments and vaccines.

It is therefore important that Australia has the capacity to stockpile the essential pharmaceutical agents that may be expected to meet a crisis.

Australia has a very strong and efficient drug regulation scheme, administered by the Therapeutic Goods Administration. The Australian system is acknowledged as one of the best in the world and ensures that all products are adequately evaluated for quality, safety and efficacy before being allowed to be sold to the Australian public.

Currently there is no workable provision within the Therapeutic Goods Act by which the counter disaster personnel can receive ready approval for supply of unregistered products to mass casualties in emergency situations.

Late last year the Government made a number of amendments to the Therapeutic Goods Regulations that allowed for some contingency planning to take place. This ensured that Australia was prepared for possible terrorist threats. These changes were intended only as an interim measure.

This bill amends the Therapeutic Goods Act to enable the Minister for Health and Ageing to make a decision, either in the case of a real emergency situation, or in order to plan for the possibility of an emergency situation, to allow the importation, manufacture or supply of unapproved products which are needed to treat patients in an emergency.

The proposed amendment would allow for specified essential unapproved therapeutic goods (such as antibiotics, vaccines and chemical antidotes) to be imported and supplied in Australia. The specified products would be those that are considered by the Minister to be essential to the protection of public health.

Because products cannot be fully identified at this time, and may change over time, it is not proposed that a list be included in the legislation. Not having the list of products in legislation will also enable rapid changes to be made.

However, to ensure adequate control of goods that may be stockpiled for such emergencies, it is intended that only the Minister or the Secretary can specify what products are to be exempted from the usual regulatory scrutiny of goods before their supply to the general public.

The amendments in the bill will also enable the Minister to impose conditions on the exemption, where it is necessary to do so in the national interest to counteract a potential or actual threat to public health.

Examples of such conditions are requirements about where and how the goods are to be stored, where they are to be sourced from and the kinds of records that must be kept about the goods.

The decision by the Minister to exempt products necessary to meet an emergency will be subject to public scrutiny through tabling in both Houses of the Parliament and the gazettal of the decision.

As some details of an exemption may be particularly sensitive, restrictions on notification of all details of the exemption may be necessary. It would not be in the interests of public safety for example to release details such as the location where specific goods are being stored.

A number of measures are also included which will strengthen the offence provisions of the legislation to ensure that tight control is maintained over the importation and use of these unapproved therapeutic goods.

Therapeutic Goods (Charges) Amendment Bill 2002

Currently the Therapeutic Goods (Charges) Act 1989 allows for annual charges to be payable in respect of ‘listing’ or ‘registration’ of therapeutic goods. Under the draft Therapeutic Goods Amendment (Medical Devices) Bill 2002, medical devices will be ‘included’ rather than ‘listed’ or ‘registered’ on the Australian Register of Therapeutic Goods. The amendments in the Therapeutic Goods (Charges) Amendment Bill 2002 will allow charges to be payable for medical devices that are ‘included’ on the Australian Register of Therapeutic Goods.

I commend this bill.

Therapeutic Goods Amendment (Medical Devices) Bill 2002

I am pleased to introduce the Therapeutic Goods Amendment (Medical Devices) Bill 2002.

This bill, and the Therapeutic Goods (Charges) Amendment Bill 2001, were first introduced into Parliament on 29 March 2001 and passed by the House of Representatives on 6 August 2001. However, these bills were not debated in the Senate before Parliament was prorogued.

Medical devices include a wide range of products such as lasers, syringes, condoms, contact lenses, X-ray equipment, heart rate monitors, pacemak-
ers, heart valves and baby incubators. Medical devices are health care products that generally involve advice and intervention from health care professionals and which throughout the world are subject to regulation and control separate and distinct from consumer goods.

The amendments provided for in this bill are necessary to allow the introduction of a world leading, internationally harmonised framework for regulation of medical devices in Australia. The legislation adopts the global model developed by the Global Harmonisation Task Force, comprising the regulators of Europe, the USA, Canada, Japan and Australia. The amendments will allow better protection of public health while also facilitating access to new technologies.

The amendments will benefit consumers through a comprehensive risk management and risk assessment system. Medical devices will be classified on the degree of risk involved in their use. The new system will appropriately identify and manage any risks associated with new and emerging technologies.

Medical device safety will be improved under the new framework. All devices will have to meet substantive requirements for quality, safety and performance for the protection of patients and users. The technical expression of these requirements is ensured by international standards. Manufacturers of all medical devices will need to meet quality management systems requirements. Under the current system only 50% of manufacturers are required to meet these requirements.

Given the sensitivity of certain high-risk devices, this new legislation provides for these devices to be fully assessed by the TGA before they are marketed in Australia. This would exclude such devices from the scope of any mutual recognition agreement Australia may have with other countries. The Government considers this to be a particularly important provision given the risks associated with these particular devices.

The scope of lower risk medical devices included in the Australian Register of Therapeutic Goods will also increase, allowing for a more effective post-market monitoring system that will ensure consumers continue to be protected from unsafe products.

There will also be an increased emphasis on post-market activities, with the requirement for manufacturers and sponsors to report adverse events involving their medical devices to the TGA within specified timeframes. Australia's involvement in an international post-market vigilance system should reduce the likelihood of repeated adverse events and influence the development of safer and more effective technologies.

Australian consumers need, and benefit from, access to a wide range of medical devices, including new technologies. By dollar value, approximately 90% of medical devices used by Australians are imported and the Australian medical devices market is approximately 1% of the global market. It is therefore imperative that Australia has a regulatory system aligned with world’s best practice that ensures a high degree of medical device safety, performance and quality and also allows timely access to new devices.

The new internationally harmonised regulatory requirements will facilitate the operation of the Australia–European Union Mutual Recognition Agreement (MRA) by avoiding unnecessary or unique regulation which make Australian access to international markets less competitive.

Applications for entry on the Australian Register of Therapeutic Goods will be streamlined using a new electronic lodgement process. Low risk devices will be notified to the Therapeutic Goods Administration enabling sponsors to market these products without undue delay.

Transitional arrangements for the new system allow five years for products currently on the Register to meet the new requirements and a two year transition period for some new products not meeting manufacturing standards.

There has been extensive consultation on the proposal since 1998 with consumers, the medical devices industry, professional groups and the States and Territories. There is strong support for the proposed new regulatory reforms amongst all these groups.

There is a provision in this bill to facilitate tracking of implantable devices. This will support the work being undertaken by the Council for Safety and Quality in Health Care, which has been tasked by the State and Federal Health Ministers, to examine a system to track patients with implanted medical devices. The Government is awaiting the recommendations of this Council.

In summary, the introduction of an internationally harmonised medical device regulatory system for Australia will ensure better protection of public health while facilitating access to new technologies.

This bill is being introduced in conjunction with the Therapeutic Goods (Charges) Amendment Bill 2002.

I commend this bill.
The plantation forestry industry plays a vital role in the Government’s National Forest Policy. The policy supports the expansion of Australia’s commercial softwood and hardwood plantations to provide an economical, reliable and high quality wood resource for industry. The Policy is an important strategy for the ecologically sustainable development of Australian forests.

This bill includes a measure to stimulate investment in plantation forestry managed agreements, by providing an immediate tax deduction for specific prepaid expenditure invested in one of these agreements. It will apply to the component of the investment that relates to seasonally dependent agronomic activities occurring during the establishment period. The prepaid activities will have to be completed within twelve months of the activity commencing and by the end of the following income year. At the same time, managers of these investments will have to include the pre-payments in assessable income in the year in which the investors can claim the deductions, rather than when the work is done.

Without this stimulation, there is concern that plantation targets for the sustainable development of Australia’s forests would not be met.

The bill also includes an amendment to the non-commercial losses rules, to remove an unintended limitation on the Commissioner of Taxation’s discretion under the rules. The amendment will allow the Commissioner’s discretion to be exercised in all the relevant years where this is consistent with the nature of the business activity, regardless of whether a profit is made or one of the tests has been met on a one-off basis during that time. This has particular relevance for the plantation forestry industry, where normal practices such as thinning may produce a one-off profit or passing of a test.

I commend this bill.

Debate (on motion by Senator Carr) adjourned.

Ordered that the Therapeutic Goods Amendment (Medical Devices) Bill 2002 and the Therapeutic Goods Amendment (Charges) Amendment Bill 2002 bills be listed on the Notice Paper as one order of the day and the remaining bills be listed as separate orders of the day.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Business
Rearrangement

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.30 p.m.)—I move:

That intervening business be postponed till after consideration of government business order of the day no. 3 (Disability Services Amendment (Improved Quality Assurance) Bill 2002) and the order of the day relating to the Migration Legislation Amendment (Transitional Movement) Bill 2002.

Question agreed to.

Disability Services Amendment (Improved Quality Assurance) Bill 2002
Second Reading

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

That this bill be now read a second time.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.30 p.m.)—I want to commence the summary by thanking all the contributors to this debate and to point out that I firmly believe this is a very firm statement of the government’s commitment to ensuring quality services for people with disabilities. We are very pleased to receive support from the Labor Party and the Democrats for this Disability Services Amendment (Improved Quality Assurance) Bill 2002. I am sure someone can beat it in terms of the time period it has had for extensive consultation, but it must be in there as one of the most consulted on bills that I have been involved with.

The bill provides time for services to address what deficiencies they might have at the moment. From January 2005, if it is not a quality service it will not be funded. That might seem a long way away, but we are in 2002. These services do need time to adjust. The important thing is that we have all come to some agreement about how to move towards that and at that time we will be able to say that if it is a Commonwealth funded
service they can rely on quality being delivered to people with a disability.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator MURRAY (Western Australia) (7.33 p.m.)—Rather than call attention to the state of the house, I advise you that I am waiting for Senator Allison to turn up. She thought another bill was coming up first.

The TEMPORARY CHAIRMAN (Senator Knowles)—You just wish to make some very valuable comments on this bill, Senator?

Senator MURRAY—Well, perhaps I can. If I can make some general comments to the minister, I must say the nature of disability needs in my own state was recently drawn attention to by several protests, which the chair would probably be aware of, which relate to the lack of accommodation in that area for people with disabilities. When people with disabilities resort to being on the corners of streets signalling at motorists going by and so on, it is an unusual occurrence. In those circumstances I think that they are drawing attention to a genuine and very difficult need which has not yet been properly satisfied. Perhaps, Minister, whilst we are in the general section of this debate, you might wish to indicate to us what particular assistance is being developed by the government with regard to the need for accommodation for those with disabilities.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.34 p.m.)—I would be happy to try and get some information for you on that. I do not have it with me at the moment, and I certainly cannot invent it in the time period that it takes for Senator Allison to get here. I am sorry, I was talking to Senator Minchin, who is about to be the duty minister, and said he might as well go if there is going to be a debate on this, because I will be here. But, if I heard correctly, the latter part of your question is a reflection of what you said earlier: you are concerned with accommodation for people with disabilities as opposed to the employment services that we are really talking about here.

In terms of accommodation, under what we have now agreed to call the Commonwealth, state and territories disability bill, the Commonwealth takes responsibility for employment services and the state for accommodation services. Even though the Commonwealth makes a contribution to the accommodation services, it is very clear in the bill that accommodation services are the state problem, and we make a contribution. Since you have started me on this point, I will just take a minute. I have not been terribly happy with the state minister from your state, who has occasionally chosen to say, ‘Well, the Commonwealth won’t outline what it will do in the new agreement. The Commonwealth is only putting in’—and then nominates whatever the specific amount is for Western Australia that we put into accommodation.

What she fails to do—and I believe in this sense she misleads the Western Australian public—is to say, ‘Oh, and by the way the Commonwealth does not have the major responsibility for accommodation; they have it for employment services,’ and mention how much we spend there. Nor does she mention how much we spend in all the other things we do for disability affected Australians—for example the income support payments that we make and some other services that are not directly involved with the Commonwealth-state disability agreement. I think it is very misleading to take the amount of money that we put into accommodation, which is really a contribution to a state responsibility, and then complain we are not doing enough.

We have done a substantial amount of new and interesting things for people with disabilities, or we are about to do them. They were outlined in the last budget in Australians Working Together. If you want some more information on accommodation for people with disabilities in the west, the first port of call would of course be the state minister, but my department would have some information about the services that we know get SAAP funding for example, and if you want some of that information just inti-
mate to me before I leave the chamber and we will get a brief together for you.

Bill agreed to.

Bill reported without amendment; report adopted.

**Third Reading**

**Senator VANSTONE** (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.38 p.m.)—I move:

That this bill be now read a third time.

Question agreed to.

Bill read a third time.

**MIGRATION LEGISLATION AMENDMENT (TRANSITIONAL MOVEMENT) BILL 2002**

**Second Reading**

Debate resumed.

**Senator SHERRY** (Tasmania) (7.38 p.m.)—This evening the Senate is considering the Migration Legislation Amendment (Transitional Movement) Bill 2002. This legislation could be summed up as legislation that is required to patch up legislation that the government initiated last year. It has been very apparent since the election that the government’s plasterboard, if you like, has developed a number of serious cracks on a number of serious issues. In particular, in the area of issues relating to migration it is well known that the so-called ‘children overboard’ affair where we know that no children ever went overboard—the truth very quickly went overboard but certainly no children ever went overboard during that affair—we have had—

**Senator McGauran**—The boat sank.

**Senator SHERRY**—Senator McGauran, do you really want to maintain the fiction after we have seen doctored photographs and false reports? I certainly hope you have the same hope I have to be out of here by Friday. To progress further with the cracks that have developed in the government’s plasterboard, we have had the problems with the Treasurer’s management of the currency swap deals—a potential $5 billion loss—the Wooldridge health fiasco and the Heffernan debacle. It has been one mess after another. But here we are tonight attempting to patch up problems that have arisen from the government’s approach to the legislation it initiated last year.

We have asylum seekers under the so-called Pacific solution on Manus Island and on Nauru. They fall, for legal purposes, into two classes: those who are referred to under current legislation as offshore entry persons and those who are not covered by the parameters of that definition. What is the difference? An offshore entry person is a person who touched Ashmore Reef or Christmas Island after they were excised from the migration zone. For that category of person, the current legislation provides that if they were brought to Australia for any purpose—whether it be a medical evacuation, whether it be because they were required to give evidence in people-smuggling trials or whether it be for any other purpose—they would be barred from making an onshore Australian protection claim.

Then there is another set of asylum seekers, and they are persons who are intercepted at sea. These are persons who never touched Ashmore Reef or Christmas Island. The most celebrated of those in the media are the persons who were on the *Tampa*. But there have been a number of other at-sea intercepts, and the basic reason we have this bill is that when the government drafted and brought before the parliament late last year its package of legislation in relation to asylum seekers it forgot to deal with this first class of person—the class of person who was intercepted at sea, the class of person who does not fall within the definition of being an offshore entry and, consequently, the class of person who, if they were brought to Australia, would be unable to make an onshore protection claim.

So the legislation we are dealing with is a bandaid solution to the so-called Pacific solution. The government would not have required this patch or bandaid if they had dealt with the matter appropriately in the first instance, and they failed to do so. Why did they fail to do so? We all know—and the Labor Party has consistently said—that the so-called Pacific solution was more about
getting a solution to re-elect the government of the day as part of their election strategy and for however long they could sustain it beyond election day. It was not very long. Rather than being a comprehensive long-term solution to the issue of asylum seekers, it was conceived and implemented in haste. Its primary purpose was for electoral advantage rather than being an appropriate and proper public policy instrument in dealing with the question of asylum seekers, and this is now very clearly starting to show.

We saw a number of announcements—I think it was two—approximately two weeks ago that further demonstrate the unravelling of the so-called Pacific solution. The first of these related to the government announcement to construct a 1,200-person detention facility on Christmas Island. I put the simple proposition to the Senate that, if the so-called Pacific solution is working, if the so-called Pacific solution is deterring further arrivals, why would the Australian government be building a 1,200-person detention facility, unless the government has simply taken leave of its senses and decided to start constructing buildings which will be perpetually empty? One would have to assume that it is engaging in this construction project because it expects further arrivals. So the so-called Pacific solution is deterring further arrivals, why would the Australian government be building a 1,200-person detention facility, unless the government has simply taken leave of its senses and decided to start constructing buildings which will be perpetually empty? One would have to assume that it is engaging in this construction project because it expects further arrivals. So the so-called Pacific solution, on the government’s own announced plans, is not working. It is not deterring further arrivals, and the government is making provision for significant numbers of further arrivals.

Then we have this legislation which makes very clear another part of the unravelling of the so-called Pacific solution. The public imagery that the government has always used in relation to the Pacific solution is that the asylum seekers would never, ever—a promise made over and over again by the Prime Minister; those ‘never, ever’ words still run through my memory in respect to another matter—under any circumstances set foot on Australian soil. That is what the government has always claimed. Indeed, I remember going to polling booths during the election campaign—Senator McGauran has got a wry smile—and seeing grand banners with the Prime Minister’s pronouncement, ‘We will determine who sets foot in Australia.’ It may have contributed to and worked for your re-election, but this bill directly contradicts the Prime Minister’s never, ever promise in what it represents. The government engaged in the so-called Pacific solution because it was going to be tough on the question of who came to Australia and it was going to keep all of these asylum seekers off Australian soil and put them on Manus Island and Nauru. We do know from the time of the Tampa—and let us remember that this legislation applies directly to people who were on the Tampa—that the Prime Minister was very clear about this question. Let me refer at this point to a story that was carried in the Weekend Australian around the time of the Tampa crisis. It was headed ‘PM weighs his anger in stormy seas’, using what I think from looking at these headlines was a mixed metaphor. But, in any event, the first two paragraphs of this article say:

John Howard—

that is the newspaper’s reference—strode into the Australian’s Parliament House office late on Wednesday night bristling with nervous energy. "That boat will never land in our waters, never!" he emphatically told a small group of reporters.

Aside from the fact that I do not think a boat can land in waters, it went on:

The politician whose career is a testament to his stubbornness, appeared to be operating on pure adrenaline at the end of one of the most dramatic days of his Prime Ministership. Howard’s eyes bulged; his face reddened and he shifted restlessly as he spoke.

All of us I think would be quite grateful we were not witnessing this incident. I think another senator in this place might have witnessed something approaching this earlier in the week. We can only pity the group of reporters that was subject to this display. This was the imagery: ‘We will keep these people from Australia!’ It was reminiscent of a British Prime Minister: ‘We shall fight them on the beaches, we shall fight in the hills’. The Prime Minister was so excited about it that his face reddened and his eyes bulged. He was always going to keep these people away from Australia. Not only did he make this statement to the Australian but he was
asked by radio presenter Neil Mitchell on 3AW:

Is there any circumstance under which you would allow them to land in Australia?

The Prime Minister responded:

Our position is they should not be allowed to land in Australia.

And it went on and on with various language being used, including ‘never, ever’. Were these people going to be allowed to arrive in Australia? Under no circumstances. As I alluded to earlier, when the Prime Minister makes a promise, with those famous words ‘never, ever’, we know what the most likely outcome is. As the Australian people know, there is generally a complete reversal, and that is what is happening in this case.

We know from this legislation before the Senate, and as discussed before the House, that true to form, when the Prime Minister is out there saying over his dead body will asylum seekers off the Tampa gain access to Australian soil, more likely than not the complete reversal is about to happen—albeit of course after the election, not before the election. This bill tells us that the government wants legislative authority to allow this complete reversal to occur. This bill is legislative authority for the government to bring the Tampa asylum seekers and other asylum seekers who are intercepted at sea—you guessed it—onshore, where we were told they were never, ever going to be.

As I indicated earlier, the government could have dealt with these matters last year. If they are going to deal with these matters now, they should make it perfectly clear that they are doing this, because they are intending to breach the promises they made to the Australian community that these asylum seekers would never come to Australia. Of course, the Australian people are capable of weighing the worth of the word of the Prime Minister, Mr Howard, who gave assurances in respect to these matters.

I now come to the Labor Party’s position on the bill, and in stating my concerns about the legislation I have regard to an amendment I understand will be moved by the government that does take into account at least a part of the concerns that I outline here tonight and were outlined by my colleague our shadow minister for migration, Ms Gillard, in the other place who, I might say, is doing a great job in that capacity. I would like to address some of those concerns in detail. The Labor Party understands that people who are currently held on Nauru or on Manus Island and who fall into the category of not being covered by the current legislation—that is, that they were intercepted at sea and that, currently, if brought to Australia, they could make onshore protection claims—might from time to time require to be medically evacuated to Australia.

As we understand it, that has happened on at least one occasion from Nauru. On that occasion, the government engaged in a bit of a fiction, frankly, by giving that person a special entry permit that was timed to expire at midnight on the day they arrived. They entered Australia lawfully so that the department could not be accused of people-smuggling, but once the clock struck midnight they were in Australia unlawfully so that they could not make an onshore protection claim. Presumably there were some farcical arrangements about keeping the asylum seeker in question incommunicado for the period up to midnight so that they could not make an onshore protection claim. Presumably they were given their anaesthetic as they got off the plane—even if it might have been four or five hours until their treatment—so they could not sign a claim form between then and midnight. This is the sort of—

Senator Hutchins—Maybe Julian spoke to them for two hours.

Senator SHERRY—In the interests of pressing on, we will ignore that remark, but I do want it recorded in Hansard. To move on, one can only speculate about what would have happened if the plane had been delayed and landed after midnight and the Department of Immigration and Multicultural and Indigenous Affairs itself had been responsible for bringing someone into Australia unlawfully. That could well have happened. It could have happened if they had been on an Ansett flight, I suppose. We know, of course, that medical evacuations have occurred under these circumstances.
In relation to this piece of legislation, Labor accepts that there is nothing about the circumstances of being involved in a medical evacuation that ought to affect the substance of someone's legal rights. We understand that the legislation is, therefore, required to prevent someone who is medically evacuated to Australia from making an onshore claim. We take the same view about persons who might be brought to Australia to give evidence during people-smuggling trials. There is nothing about the circumstances of being required to be a witness in a trial of any nature that ought to change the legal position of an asylum seeker in relation to making an onshore protection claim.

Labor accepts that, when processing is fully completed on Nauru and on Manus Island, there will be a number of people who will be found to be genuine refugees and that some of those genuine refugees will be found long-term homes in third countries—that is, there will be other nations on the planet who will step forward and say that they are prepared to accept and look after those genuine refugees in the long term. Labor accepts that those persons may need to be transited through Australia on their way to their long-term homes—in fact, it may only be possible to transit them through Australia, given the fairly isolated nature of Nauru and their economy and the airline that is staggering through the sky at the present time. Labor accepts that they ought not to be able to make an onshore protection claim during that transit. That would be absurd. We understand the 1951 Convention Relating to the Status of Refugees is not about asylum seekers forum shopping about which developed nation they would like to go to as they go through departure lounges. If they have a place where they are going to be safe and secure, they ought not to be able to make an onshore claim in transit to that place.

Then we come to the category of persons who are found not to be genuine refugees. Labor understands about that and always has. In government, Labor implemented a system whereby such persons were removed from Australia, either to their country of origin or to a third country in which they had a right to live. Labor has always understood that. The way in which the government occasionally tries to characterise us as not understanding and not being prepared to implement such a policy is really all about electoral misrepresentation and little about the truth. We accept that people who do not pass the test of being genuine refugees need to be removed. In some circumstances removals happen quickly, and in some circumstances they are very difficult.

In the positive suggestions made by my colleague Ms Gillard in the other place, we are saying that if such persons who are not genuine refugees are brought back to Australia and held in Australian centres pending removal and if the government is for some reason unable to affect that removal within six months, despite the asylum seekers cooperating with the process—so we are not in the business of saying anyone should be rewarded for non-cooperation—those persons should be able to have their claims assessed by the Refugee Review Tribunal. We want to be absolutely clear about this: we do not want the clock started again on processing. Processing of these asylum seekers has happened in Nauru and in PNG. Some of that processing may have been done by the UNHCR and some may have been done by the immigration department. We are not asking for that processing to be done again; rather we are asking that, where the government has not been able to remove them, the limited numbers of asylum seekers who are in that situation complete the processing they would have been entitled to had they come to Australia at the outset—that is, they go to the Refugee Review Tribunal.

I come to the second and very important positive suggestion made in my colleague's speech in the second reading debate in the other place. It is a very important and positive initiative. We all know that many of the asylum seekers presently in Australia, on Manus Island and on Nauru come from Afghanistan. Why did they come? Some came because they were fleeing the Taliban; some came because they were fleeing other sources of persecution; many came because the nation was unstable. We know that Afghanistan has been involved in a war, and still is. It is a war against terrorism, in which
we have fielded troops. We know that Afghanistan is the most mined nation on earth. We know that the new government is struggling to stabilise the nation, and we know that there are major infrastructure problems and major problems with food, with shelter and with meeting people’s medical needs. For persons from Afghanistan currently in Australia, there will be a time when most of them can go home. Some of them will be found to be genuine refugees because they were persecuted for reasons other than the Taliban regime. I am not speaking about that class of person; I am speaking about the people who, although they have been found not to be genuine refugees, cannot return home in the short term because of the situation in Afghanistan but will be able to return home at some point. I am sure that all of us in the Senate hope that point comes soon and that Afghanistan stabilises quickly, within six to 12 months, so that the people who are there and the people who return can rebuild their lives in safety and in peace. (Time expired)

Senator BARTLETT (Queensland) (7.58 p.m.)—I rise to speak on behalf of the Australian Democrats to the Migration Legislation Amendment (Transitional Movement) Bill 2002. It is a fairly small bill but a very significant bill. I think it is one that requires appropriate scrutiny because it puts in place yet another new and, in my view, unprecedented approach to dealing with people and their potential for claiming protection and seeking asylum under the Refugee Convention.

The public would be well aware, and the Senate would remember, the shameful day last year when six bills were guillotined through this place. A couple of them had been introduced just the previous week with dramatic new powers, a dramatic removal of rights for a whole range of people, including Australians, and a complete inability for the Senate to be able to scrutinise the consequences of that package of legislation. Indeed, the Senate even now has not had much opportunity to scrutinise the consequences of those changes or the way the so-called Pacific solution and the various other aspects of this government’s handling of asylum and refugee matters is being conducted. Unfortu-
think of any other motivation for the Labor Party's decision to allow this bill to be rushed through in such a disgracefully speedy manner.

For those who were not listening earlier today, this bill was introduced only a week ago in the House of Representatives. There was no foreshadowing by the government or the minister that any move along these lines was being considered. Two other bills came in at the same time. The government was quite happy to send those two bills to a Senate committee for extensive consideration with a report back in May. But this one, which is probably the most far-reaching, is basically being railroaded through. Attempts by the Democrats to get a meaningful Senate inquiry were stymied. Instead, we are having to debate this in the chamber without any opportunity for proper broad input and scrutiny.

I should emphasise that, as always, the Democrats will attempt to be cooperative. But there are significant issues raised by this legislation, as well as the package of legislation last year that this relates to. We have not had the opportunity to get information and answers to questions on the record. Certainly the Democrats will be using the committee stage of this debate to explore some of those issues and some of the very significant precedents occurring as a consequence of this legislation.

The government should note before they try to suggest there is any attempt by the Democrats to filibuster or frustrate the government's program that we have not stacked the speakers list. I am the only Democrat speaker on this bill. If we were simply wanting to hold this off and try to talk it out and force it to be not considered until May, then we would be stacking the speakers list with all of my colleagues. We have not done that, and I mention that to the government, although the relevant minister who should be here when the committee stage comes on is not at the moment. Perhaps his advisers can pass on to him my comment of good faith. It is a demonstration of good faith and I hope the minister will respond by actually giving answers to the questions we ask in the committee stage. Many times ministers tend not to really provide much in the way of answers to direct questions in the committee stage, particularly if they feel it is just a deliberate filibustering process. I hope the government can recognise, by the fact we have only one Democrat speaker in the second reading debate, that if we do ask extensive questions it is not because it is a filibuster but because there are important questions we need to get answers to on the record—answers on the record not just for the satisfaction or the intellectual curiosity of the Democrats but for the assistance of the many people in Australia who are concerned about these issues and the many people in Australia who work tirelessly to assist asylum seekers. There is still a lot of uncertainty and confusion in the general community about how the new migration act and rules operate in practice and what they are going to mean. There is still confusion about what the future holds for the people on Manus Island and Nauru. This bill obviously links very much to that uncertainty. It will not remove uncertainty, but it will give the government even more flexibility to do whatever it wants with those people, with their having no rights at all.

I want to examine more specifically what is contained in this bill. I will not talk to the government amendments yet, because they are not part of the bill, but I will talk to those in the committee stage. I will say that the amendments are very significant. I know that they have been sorted out in consultation with the ALP and, to some extent, that consultation has been communicated to the Democrats. I acknowledge that. The amendments basically create a new area of activity for the Refugee Review Tribunal—that is a pretty significant thing to do—and another power for the secretary to the department; that is, the power to eliminate a person's rights without any opportunity for appeal in a whole new area of activity. I will be exploring those amendments later.

We have had a farcical time frame for this legislation. We have had one week from when it first appeared—one week with the initial bill and we have had five minutes with these amendments. We have not had the whole bill for even a week. So to suggest that there could have been any meaningful com-
mittee inquiry into this bill, with a one-day hearing last Friday, is a joke. We would not even have been inquiring into the final bill. We would have had a significant new section, as represented by these amendments, that the committee would not have been able to inquire into. It would not have even been aware they were being contemplated. That again highlights the flaw in this process. I know the government does not care about that, but I am concerned that the ALP is apparently willing to allow that to go unchallenged. It is about appropriate processes in the chamber and treating the parliament with some measure of respect, not with such a level of contempt. When this sort of thing happens, it does make it very difficult to be cooperative on other issues.

The bill creates yet another category of person. There have been many new categories—new visa categories, new criteria, new definitions of people, and new boxes that people get slotted into—created in the last few years but particularly in the last six months. Under this bill we will now have a new category under the Migration Act of a transitory person. In shorthand, a transitory person is someone who has been intercepted at sea and taken to one of the offshore entry places—Manus Island, Nauru or any of the places that have been excised from the migration zone. Basically it is anybody who got to Christmas Island or Cocos (Keeling) Islands or who got intercepted at sea and taken to one of the other places. The reason why this category is being created is to allow people who are defined as transitory persons to enter mainland Australia but not to have access to any rights. Basically, it will mean that, even if they get into Australia, they are not in Australia for the purposes of the Migration Act. In effect, this extends the excision zone by another means. So we no longer excise Christmas Island or Cocos (Keeling) Islands. For these so-called transitory people, we would excise all of Australia. Australia will no longer be in the migration zone for the purposes of this category of transitory people. That is the effect of it.

This is actually a massive expansion; it is not a retreat, in the view of the Democrats, as has been suggested by the Leader of the Opposition and others. It is not a retreat from the Pacific solution; it is locking in the intent of it, which was to remove asylum seekers from the processes that have been built up over years of proper assessment of asylum claims. All of these people will now be removed from those processes. They will be in Australia but they will not be able to engage in our protection obligations. That is a very serious degradation, in the Democrats’ view. It may be that there is a short-term benefit for some people who are on Nauru and Manus Island. Transitory persons will still be under detention when they are brought into Australia. Technically they are not in detention on Nauru and Manus Island, they are in a processing centre, but when they are brought to Australia they will be in detention. There is possibly an argument that it is better to be detained at Port Hedland than on Manus Island. I do not know, because I have not been to Manus Island. I have been to Port Hedland, Villawood, Woomera and the like, but I have not been to Manus Island or Nauru, so I do not know what the conditions are like there. There is possibly an argument that, if you are going to be detained without any rights whatsoever, you may as well be detained somewhere in Australia where you might be able to get a visitor or two rather than being detained in Nauru. The Democrats do not think that is sufficient reason for allowing such a dramatic removal of legal rights from a whole class of people—and it is not just the people who are on Nauru now.

When you look at legislation you have to look at how it could be used, not just at how the government says it is going to be used. The minister might say, ‘We need this in case someone gets sick and we have to bring them to Australia to get hospital treatment,’ but the fact is that that has already happened with one or two people and, as I understand it, the sky did not fall in. I do not think the so-called integrity of our immigration system was compromised as a consequence. I do not think that is sufficient reason for a massive precedent like this. I do not think you can rely on what the government says it needs to do. When you look at what this legislation empowers it to do should it choose to use it or what it empowers a future government to do. If you look at the history of
amendments to the Migration Act over many years, it is very rare when extra powers are given to a government or when legal rights are removed from individuals for those changes to be wound back. So, once we put this in place, it will be pretty hard to wind it back again. This bill does not wind back what was done last year; it extends it.

Transitory persons might be, in the short term, people who are in Nauru. In the longer term, they could be anybody who is intercepted and put on Christmas Island for a day. That is how I understand it, and I will try to confirm that with the minister during the debate. Coincidentally or not, we are proposing to build a new detention centre on Christmas Island. People could be taken there for as short a time as desired and then moved on to Australia, but they will not be able to access Australia’s protection regimes or engage Australia’s protection obligations. That will be in place permanently. There is a bar on transitory persons undertaking certain legal proceedings. You do not get much more precise than that. Transitory persons will not have access to these legal rights. They will not be able to undertake any proceedings against the Commonwealth in any court as to their status as a transitory person or regarding their transfer to Australia.

Section 198B of the bill creates a power for a Commonwealth officer to bring a transitory person to Australia. It includes the power to place the person on a vessel or vehicle, restrain the person, remove the person or use such force as is necessary and reasonable. Those actions cannot be challenged in any way. That Commonwealth officer has absolute power. No-one has any legal redress in terms of how they use that force and how they use that power.

Apart from preventing any legal procedures occurring at all in relation to transitory persons, section 498AB(2) has effect despite anything else in this act or in any other law. This overrides every other law in the Commonwealth except the Constitution. Antidiscrimination law, human rights law, any law is overridden by this bill in relation to transitory persons. They are basically put outside the law while they are inside Australia—outside the Migration Act, outside any other Australian law in terms of their rights. It is not just a retreat by this government, an acknowledgment that the Pacific solution has failed; in a sense, it is a victory for this government because it will mean that it will not need to intercept people and send them to Nauru to deprive them of their rights. The government can have them in Australia and deprive them of their rights. It will be much cheaper, which is one positive thing, I suppose, but they are still people with no rights whatsoever.

It is worth noting that—and this was an amendment made in the House of Representatives; I guess it is a positive one—the transitory person category does not apply to people who have been assessed to be a refugee for the purposes of the Refugee Convention. It will apply only to people who have had their initial claim for asylum rejected by whoever makes that assessment. Currently for the people on Nauru, apart from the initial people from the Tampa, that assessment is being made by Australian departmental officials, but it excludes those people from having any right to appeal, and currently they have no access to legal advice or assistance either. So they could get through that flawed process, be brought to Australia for any reason and still be subject to this flawed process where they have no rights. It is a significant advance in many ways from what the government managed to do by ramming legislation through the Senate last year with the support of the Labor Party. It is a matter of great disappointment to the Democrats that again this is able to be done by this government with the support of the Labor Party.

At the minimum, we should have had a bit of time to look at this. Last year we had the travesty where a bill was forced to be debated in this chamber while it was still before a Senate committee that had not even started looking at it. This time around we have not even been able to get it to a committee. It is that level of cynicism that is behind this approach on refugee law. It is a great tragedy that it always seems to be the refugees and asylum seekers, who are already among the most powerless, who so often are the victims of railroaded legislation. Sadly, this is not unusual. The action before the election might
have been the worst example, but it has not been the only example. When bills eliminating rights appear, they tend to relate to migration or refugee matters. *(Time expired)*

**Senator COONEY (Victoria) (8.18 p.m.)—**The Migration Legislation Amendment (Transitional Movement) Bill 2002 is a further piece of law in a field which is tortured by a war between concepts and facts which has its origins in legislation. I say that because I see some people here from the Department of Immigration and Multicultural and Indigenous Affairs for whom I have the highest admiration. I often think that the department is much criticised for problems which are created by legislators, and it is only fair that I should say that. If I explain what I mean by that, perhaps it will be clearer to those who are listening.

Australia, as has been said again and again in these debates, is a signatory to the Convention Relating to the Status of Refugees and to a protocol which extended the cover of that convention throughout the world. In 1951, when the convention was made, it applied only to Europe. Australia has freely signed that convention and the protocol with full knowledge of what it meant. The effect of it has been brought into domestic law. Australia could free itself of the effects of that convention by giving 12 months notice to the United Nations. It has chosen not to do that. Therefore, it has chosen to have a regime operating in Australia where people who are within its borders claim refugee status and, if it is established that they are refugees, then the regime says that Australia cannot return them to the place where they were persecuted. This is a circumstance, a regime, a system set up by legislation to enable Australia to carry out its duties under the convention which it signed freely and with full knowledge.

In reality, the convention applies only to those people who are in Australia when they make their application for refugee status. Australia has a very good system of bringing to Australia those refugees who make their application overseas, are processed overseas and are declared to be refugees. When you think about it, the convention does not really apply to their situation.

Australia has set up a system to look after those people who come here in an authorised manner, perhaps on a visitors visa. When they get here they make a claim for refugee status and are processed. I might also say that while they are being processed they are not held in detention. Others come here in an unauthorised fashion but they do not come here in a criminal fashion. The reason they do not come here in a criminal fashion is that it would be in contravention of the convention to make their actions a criminal offence. They are treated differently.

We have established a system which we really do not want people to use. If they enter Australia’s waters, they can make an application. So, to stop them from getting themselves in a position where they can apply, we have a very tortuous system to keep them from entering Australia. If they are refugees, we have knowingly and freely undertaken to keep them from entering Australia. If they are refugees, we have knowingly and freely undertaken to keep them here. It is the law itself which creates a situation which we who have brought this law into operation want to avoid. So we create the situation, we sign the convention, we ratify the convention and we bring the convention into domestic law, but we really do not want to have it operate—except, I suppose, in respect of people who come here by plane on a visitors visa and who have papers when they get here.

I do not think we object to that, but we do object to those people who come here in a way that you might well imagine refugees would. So, to stop them coming here to apply under our law, we create all sorts of problems. We try to keep them out. We turn them away from our waters, we declare certain parts of Australia not to be parts of Australia for this purpose and we send them off to Pacific islands—and we do that in the heat of an election campaign. This proved to be a very effective strategy because, as a result of what was done, impetus was given to the government’s election campaign and it played a very significant part in the government’s return to office. But, having sent them off to Pacific islands in the heat of an election campaign, the situation now arises where the reality of them being on those islands means that they have to be brought to
Australia for particular purposes—and so this legislation is brought in.

Tonight criticism has been made of the Labor Party’s stance. But in this context it must be said that Labor has improved the legislation that has been brought in here by the government and, by the amendments that have been introduced, the government agrees that there has been an improvement. Given the controversy and the sorts of things that Senator Bartlett has talked about, there are still huge problems in this area, but at least these amendments are a step in the right direction. I think that should be taken into account—and taken into account in a way which gives credit to the Labor Party. To be fair to Senator Bartlett, I think he concedes that, although he says, of course, that the amendments do not go anywhere near far enough. I should pay tribute to Senator Bartlett in this context because he has, over the years, struggled to get a situation in Australia where the way we treat refugees has some semblance to the concepts advanced by the treaty to which we have signed up.

There is some unreality in this legislation because it in effect says, ‘Even though these people come within the borders of Australia’—and I would have thought that that was the situation within the concept which the convention contains as it was written in 1951—‘it is not Australia for the purpose of the convention.’ This, of course, is recreating Australia by definition, but that does not make it any less a country. It seems to me that, if you looked at this in terms of how things really are, you would see that, if they have come into Australia, they have come into Australia for the purpose of the convention. Nevertheless, the legislation is as it is put forward here tonight.

As a result of the efforts of the Labor Party, people who come here, who are here for a particular time and who are here under particular circumstances can access the system which allows them to claim refugee status and if they establish it under that system then they can remain here. There are some problems that we will come to, no doubt, in the committee stage. If I look at 198D(1), ‘Certificate of non-cooperation’, it says:

If the Secretary is satisfied that a transitory person has engaged in uncooperative conduct, either before or after the person was brought to Australia, then the Secretary may issue a certificate to that effect to the Tribunal.

Uncooperative conduct is defined as:

... refusing or failing to cooperate with relevant authorities in connection with any of the following:

(a) attempts to return the person to a country where the person formerly resided;
(b) attempts to facilitate the entry or stay of the person in another country;
(c) the detention of the person in a country in respect of which a declaration is in force under subsection 198A(3).

This, I think, creates a difficulty for anybody who is going to access the new provisions because it says that if they do not go when they are asked, even though they can apply to the tribunal, nevertheless the fact that they have not gone will be held against them. So there is some strain in the legislation—strain in the sense that the concepts of the Refugee Convention, the legislation and the facts do not sit happily together. In any event, we will see what occurs during the debate in the committee stage.

There is one other matter that I should raise when I say the fault lies mainly with legislation rather than with the department. The other piece of legislation is, of course, that establishing mandatory detention. This says that if a person is in Australia, having come here as an unauthorised person, then he or she must be held in detention until there is an outcome in terms of defining whether or not that person is a refugee. That means the department has to keep the person locked up, and that creates the situation we have been experiencing over the last few years, and it has got worse and worse as time has gone on. In any event, this is another piece of legislation created by this conflict between concepts and reality. As Senator Sherry says, it is an advance on what was there before. It will be interesting to see how the committee stage goes.

There is one other thing I would like to say before I sit down. During the week, in this chamber, there has been an event that dealt with the reputation of a judge. A judge
is entitled to his reputation, and in the case in point that has been vindicated, but so is everybody else entitled to their reputation. I am entitled to my reputation; you are entitled to yours, Mr Acting Deputy President. In a society that believes that one person is as good as another—an idea that comes from the teachings of many people, going back to the Galilean carpenter of 2,000 years ago—and that everybody is on the same level until proven otherwise, we should accept that, just as we are entitled to our reputation and the Justice of the High Court is entitled to his reputation, so these people who come by boat are entitled to their reputations. We should not turn them aside as a job lot; every person is entitled to be considered on his or her merits—not as part of the group. The denigration that has gone on in respect of these people is produced mainly by the conflict between the concepts behind the convention and the reality of our stance towards the asylum seekers. If we think about this, we will see that it is time that we began to consider people as individuals and not as a group that we have simply labelled in a very nasty way.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.36 p.m.)—I thank all of those senators who have contributed to the debate on this bill. This bill amends the Migration Act 1958 to allow persons who have been taken to offshore places to be brought to Australia in exceptional circumstances. These exceptional circumstances include: situations where a person has a medical condition which cannot be adequately treated in the place where that person has been taken; the transit of a person through Australia for either return to their country of residence or travel to a third country for resettlement; and transfer to Australia in order to give evidence as a witness in a criminal trial, such as a people-smuggling prosecution. The bill excludes a person who has been assessed as a refugee for the purposes of the Refugees Convention from the definition of a transitory person. This means that a person assessed to be a refugee cannot be brought to Australia in exceptional circumstances and is not a transitory person as such.

I would like to foreshadow that during the committee stage I will be moving amendments on behalf of the government. Those amendments will entitle certain transitory persons who are brought to Australia in exceptional circumstances to make a request to the Refugee Review Tribunal for an assessment of whether they are covered by the definition of a refugee in article 1A of the Refugee Convention. Broadly speaking, an article 1A refugee is a person who is outside his or her country of nationality and has a well-founded fear of persecution. This fear may be for reasons of race, religion, nationality, membership of a particular social group or political opinion. A transitory person will only be entitled to an assessment where he or she has been in Australia for a continuous period of six months or more and has cooperated with relevant authorities in relation to certain matters. For example, where relevant, a transitory person must have cooperated with the relevant authorities in relation to his or her removal from Australia.

In summary, this bill ensures that transitory persons may be brought to Australia in exceptional circumstances without compromising Australia's immigration processes. I thank the opposition for its constructive engagement in relation to this bill and the amendment sought by the government. I think it was Senator Bartlett who indicated that he would be asking questions and would be obliged if those questions could be answered this evening in order to expedite the debate. I have advised him that the officials and I will endeavour to do just that, and of course in relation to any other questions that might be raised. I commend the bill to the Senate.

Question agreed to.

Bill read a second time.

In Committee

Bill—by leave—taken as a whole.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.40 p.m.)—I table a supplementary explanatory memorandum relating to the government amendment to be moved to this bill. The memorandum was circulated in the chamber today, 20 March 2002. I move government
amendment No. 1, dealing with sections 198C and 198D:

(1) Schedule 1, item 5, page 5 (after line 18), after section 198B, insert:

198C Certain transitory persons entitled to assessment of refugee status

(1) If a transitory person is brought to Australia under section 198B and remains in Australia for a continuous period of 6 months, then the person is entitled to make a request under this section.

(2) The person may make a request to the Refugee Review Tribunal for an assessment of whether the person is covered by the definition of refugee in Article 1A of the Refugees Convention as amended by the Refugees Protocol.

(3) On receiving such a request, the Tribunal must notify the Secretary. The Tribunal cannot commence the assessment earlier than 14 days after notifying the Secretary.

(4) The Tribunal cannot commence, or continue, the assessment at any time when a certificate by the Secretary is in force under section 198D.

(5) Divisions 4, 6, 7 and 7A of Part 7 apply for the purposes of the assessment in the same way as they apply to a review by the Tribunal under Part 7.

(6) Subject to section 441G, the Tribunal must notify the person and the Minister of its decision on the request.

(7) The decision of the Tribunal is final and cannot be challenged in any court. However, this is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

(8) If the Tribunal decides that the person is covered by the definition of refugee in Article 1A of the Refugees Convention as amended by the Refugees Protocol:

(a) the Minister must determine a class of visa in relation to the person for the purposes of this subsection; and

(b) if the person later makes an application for a visa of that class, then section 46B does not apply to the application.

(9) A person who has made a request under this section is not entitled to make any further request under this section while the person remains in Australia.

198D Certificate of non-cooperation

(1) If the Secretary is satisfied that a transitory person has engaged in uncooperative conduct, either before or after the person was brought to Australia, then the Secretary may issue a certificate to that effect to the Tribunal.

(2) A decision of the Secretary to issue, revoke or vary a certificate is final and cannot be challenged in any court. However, this is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

Note: Subsection 33(3) of the Acts Interpretation Act 1901 allows the certificate to be revoked or varied.

(3) In this section:

uncooperative conduct means refusing or failing to cooperate with relevant authorities in connection with any of the following:

(a) attempts to return the person to a country where the person formerly resided;

(b) attempts to facilitate the entry or stay of the person in another country;

(c) the detention of the person in a country in respect of which a declaration is in force under subsection 198A(3).

There has been discussion with the opposition in relation to this government amendment. The purpose of this amendment is to entitle certain transitory persons to make a request to the Refugee Review Tribunal for an assessment of whether they fall within the definition of a refugee in article 1A of the Refugee Convention. The amendments contained in this government amendment are in relation to discussions which have taken place with the opposition. The entitlement I mentioned will only be available to a transitory person who has been in Australia for a continuous period of six months and who has cooperated with relevant authorities in relation to certain matters.

Where the transitory person is engaged in uncooperative conduct in relation to certain matters, the secretary may issue a certificate
to that effect to the Refugee Review Tribunal. While such a certificate is in force, the Refugee Review Tribunal cannot commence or continue an assessment of the transitory person. The secretary, however, can revoke such a certificate where the transitory person ceases to engage in uncooperative conduct. The Refugee Review Tribunal would then commence or continue an assessment of whether the transitory person falls within the definition of a refugee in article 1A of the Refugee Convention.

The amendments also provide that a person who is assessed to fall within the definition of a refugee in article 1A of the Refugee Convention is entitled to apply for a visa of a specified class. It is the government’s intention that only substantive visas will be specified for this purpose. Once again I thank the opposition for the constructive dialogue that we have had in relation to this amendment. I commend the amendment to the Senate.

Senator BROWN (Tasmania) (8.42 p.m.)—I want to make it clear at this point that the Australian Greens oppose this legislation, notwithstanding the amendment. The phrase ‘transitory person’ is obviously one of convenience. I have a clear recollection of the government’s refusal to allow the MV Tamapa into Australian waters after, at the government’s convenience, that vessel had picked up some hundreds of people to the north of Australia last year. Many of those people were then shipped to Nauru and other places outside Australia in the run-up to the last election campaign.

It is convenient to have actions taken by the Australian government against the interests of such people and then not follow through in any way which would enable those people to have their rights asserted when they are near or in Australia. The minister has explained very clearly to the parliament that this legislation will create in this class of transitory people people who are deprived of rights. It will be convenient to bring them to Australia if they get very ill, for example, because the Australian government has refused them entry to the country and sent them somewhere else where the medical facilities that are required to attend to their illness do not exist. So bring them to Australia but suspend their rights while they get that essential medical treatment.

It may be that it is convenient for the government to bring them to this country so that it can prosecute people-smugglers, or for some other legal purposes, but, in doing so, it suspends the rights of these people in this country. It may even be convenient for the government to have the people brought through Australia en route to some other destination, because there is no alternative, but in that process all their rights are suspended. Of course this does not happen to other travellers coming to Australia, particularly people of wealth and means—their rights are not being suspended here tonight. It is part of the government’s pursuit of separating out the have-nots from the haves at its convenience so that these people can be used in one way or another that helps the government’s conscience but, nevertheless, deprives these people of their rights. That has not happened in the past and I do not support that process.

The Australian Greens do not support the process and we do not support this legislation. It is making this country a place where certain persons can be deprived of their rights. Where is this process going to end? Which next group of people in or coming to Australia will be deprived of their rights through this process? The government is victimising those with the least ability to defend their rights—they are not even in the country at the moment. I am surprised that the opposition is supporting this, by the way. You can concoct an argument to say, quite speciously, that what the government is doing is a good thing. It is nothing of the sort and I will not support it. I just wanted to make that clear.

Senator BARTLETT (Queensland) (8.46 p.m.)—The committee has before it some government amendments which have just been moved. I understand three Democrat amendments are being circulated. These Democrat amendments are not very complicated. I recognise that it is not necessarily the minister’s fault that this bill has been brought forward, particularly given he is just representing the immigration minister in this chamber, but presumably it is the responsi-
bility of the Manager of Government Business.

As I have said a couple of times today, it is very difficult to take a cooperative approach when the government treats the Senate in such a contemptuous way. I will not revisit all the arguments about how this bill has been rushed on and is being railroaded through this week. We extended sitting hours until midnight last night and again tonight. It is my understanding that tomorrow we are likely to remove—for the second week running—general business. This is the only time when non-government senators get to initiate business of their own and that opportunity will be removed tomorrow. It is also my understanding—again, yet to be proven—that, if necessary, the Senate will be sitting on Friday for as long as it takes to get this legislation through. Why the government is obsessed with getting this one bill through this week, rather than on 14 May, is beyond me. But it does highlight that it could not possibly be in case a few people get sick or the government needs to bring people here for trials of people-smugglers. There is no way that that could be the only reason for this rush. There may be other exceptional circumstances, as the minister has said, when these powers will be used. It is easy to guess what may occur between now and May that might make the government want to have this legislation in place.

I make those comments by way of introduction. Normally, I would apologise for circulating amendments this late. However, this bill has only been around a week and the government amendments were only circulated one hour ago. Not only has it been agreed that the bill will be pushed through this week, rather than on 14 May, is beyond me. But it does highlight that it could not possibly be in case a few people get sick or the government needs to bring people here for trials of people-smugglers. There is no way that that could be the only reason for this rush. There may be other exceptional circumstances, as the minister has said, when these powers will be used. It is easy to guess what may occur between now and May that might make the government want to have this legislation in place.

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matter was drawn specifically to the Senate’s attention. As the Bills Digest says, the bill was introduced into the House of Representatives on 13 March, which is only a week ago. Normally, when the committee has concerns about a trespass on people’s rights and liberties it writes to the minister with its concerns, it tables a report drawing it to the Senate’s attention that concerns exist, and it gets the response back from the minister and tables it in the chamber along with its view as to whether or not it adequately addresses its concern. It is for the Senate to determine whether or not it takes on board those concerns. It cannot really take them on board if it does not know they exist, which is why I am drawing them to the Senate’s attention.

The Senate certainly cannot take on board the minister’s response if the government rushes the bill through so quickly that the minister does not have time to respond. It is probably an appropriate starting point to ask the minister to respond to the concerns raised by the Scrutiny of Bills Committee. I will touch on those concerns briefly. As has been explained already, this bill proposes to allow a new category of persons called ‘transitory persons’ to be brought to Australia without a visa for a temporary purpose but bars them from making a valid application for any visa while in Australia, stops legal proceedings being taken in relation to the transitory person’s presence and provides clear statutory authority to remove the person from Australia.

As the committee says, this section of the bill will prohibit various rights of action, which would presumably otherwise be available, from being pursued in any court against the Commonwealth, an officer of the Commonwealth or a person acting on behalf of the Commonwealth. The explanatory memorandum to the bill does not indicate the reason for this abrogation of common law rights. Therefore, the committee seeks the minister’s advice as to the reasons for abrogating these rights and draws that to the Senate’s attention, as it may be considered to trespass unduly on personal rights and liberties. Initially, I would ask the minister to respond to the committee’s request to provide a reason why those common law rights have been abrogated.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.54 p.m.)—In relation to the question of why there is a bar on legal proceedings, can I say that the rationale is to maintain the integrity of Australia’s border controls. It is necessary to ensure that the transitory person’s presence in Australia is as short as possible and that action cannot be taken to delay that person’s removal from Australia. The bar is intended to ensure that the person follows the correct legal avenue to be recognised as a refugee and granted refuge within Australia or a third country. The government’s intention is that those who seek to enter Australia unlawfully should be required to undergo assessment in a declared country before their claims to refugee status can be assessed and they can be resettled in Australia or a third country. This provision is consistent with the bar on certain legal proceedings relating to offshore entry persons. I think that deals with the question Senator Bartlett raised here. There may have been another issue that he mentioned in relation to the report, but I understood that to be the concern.

Senator BARTLETT (Queensland) (8.56 p.m.)—Thank you for that answer, Minister. In terms of the operation and provisions of the bill, can I initially confirm that ‘transitory persons’ is not a visa category but just a legal definition and, therefore, such people will still be in Australia without visas as unauthorised non-citizens and will be in detention while they are here. The minister outlined that under the bill as amended in the other place this provision does not apply to people assessed to be refugees. As you said in your statement, that will mean that they will not be able to be brought to Australia for emergency temporary purposes.

What happens to people assessed to be refugees who are on Nauru or Manus Island, for example, and are at that stage where places are being sought for them—whether it is Australia or somewhere else? Obviously, if it is Australia they will come here. If Australia has not agreed to accept them and they have been assessed as refugees—but they have not been able to find anywhere to send
them, which I assume the minister will concede is a possible scenario—and they do need urgent medical attention, where do they go? I think it would be helpful for the minister to outline that.

I would also like the minister to clarify those who fall into the category of ‘transitory’. A lot of the statements that have been made have been assumed to apply to people who have had their claim for refugee status assessed but rejected and who are on Nauru, for example, while we try to sort out how to make them return or to send them somewhere else. Would that category also apply to people who have not been assessed yet—those who have not been through a determination process? I presume some of those are still on Manus Island, Christmas Island and elsewhere. Would it be the case that basically, once someone is on Christmas Island even for a day, and is in that process, they do not need to be assessed in any way but can then immediately fall under this category of ‘transitory’, should, for whatever reason, the government wish to bring them to Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (8.58 p.m.)—Three questions were raised by Senator Bartlett. Firstly, Senator Bartlett sought confirmation in relation to a transitory person being in detention while in Australia. I can confirm that the provision of this bill is that the transitory person would be kept in detention while in Australia. The second question related to whether a refugee could come to Australia from a place such as Manus Island if there was some urgent need for it. Yes, that could take place and a visa could be granted. I think the example Senator Bartlett was thinking of was medical treatment, and that could be done.

I think the last question was whether someone on, say, Christmas Island could be brought to Australia and classed as a transitory person and thereby circumvent the Migration Act. I am not sure that I understood Senator Bartlett correctly there. He might want to clarify that last question of the three.

Senator BARTLETT (Queensland) (9.01 p.m.)—Thank you for that clarification. The minister and the Senate might forgive me slightly for querying aspects of how the legislation that was passed last year operates, because we did not get a chance to do it last year and this bill is germane to those acts. Sometimes I may need to traverse back to clarify what has occurred as a consequence of the legislation passed last year. As I understand it, under the legislation passed last year people on Christmas Island or the other Australian territories that have been excised are excluded from the migration zone. They are not able to apply for visas and are basically in the same or a very similar legal situation to people on Manus Island. So I guess the same question arises there. If people are on Christmas Island and are either still being assessed or have been assessed and rejected, what happens if they need medical treatment or if you need them in Australia for people-smuggling trials or whatever? If those people come into Austra-
lia, potentially they would then be able to engage our protection obligations—is that correct?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.03 p.m.)—I understand Senator Bartlett’s question is: if someone from Christmas Island were brought to Australia for the purposes of giving evidence in a people-smuggling case, would the same provisions apply to them as would apply to someone from, say, Manus or Nauru? I am advised that that would not be the case. I am advised that they would come within section 46A, which is headed ‘Visa applications by offshore entry persons’. That states:

(1) An application for a visa is not a valid application if it is made by an offshore entry person who:

(a) is in Australia; and

(b) is an unlawful non-citizen.

That would apply to anyone coming to Australia in those circumstances. They would be barred under that section from making an application. They would not, however, be barred pursuant to this bill.

Senator COONEY (Victoria) (9.04 p.m.)—It may help, Minister, if you could perhaps clarify what you meant by a refugee. Do you mean a person who is in fact a refugee or a person who has been declared to be a refugee by Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.05 p.m.)—When we say ‘refugee’ we mean a person who has been assessed as being a refugee.

Senator COONEY (Victoria) (9.05 p.m.)—Thank you. I think that would make things a lot clearer. So a person could in fact be a refugee but not be declared to be one. I think that is quite apparent from what you say. Can I just make another comment and perhaps ask a question arising out of the matters that Senator Bartlett has brought up. The jurisdiction of the courts, and in particular the Federal Court, is ousted by this legislation. When I talk about ‘this legislation’ I mean the legislation in general in this area. That means that the third arm of government, the judicial arm, cannot exercise the power that it would normally exercise in this area because of its outing by the first arm, the parliament, and this is done on the basis of legislation from the government. This could be seen as an attack on the judiciary. It is a matter of some concern, given the events of recent days, particularly in respect of the High Court judge, Justice Kirby, a person whose reputation was assailed in a most unfortunate, unfair and wrong way, and given the fact that the Attorney-General says, ‘It is not up to me to protect these judges’—or any judge, for that matter. Is there not a danger that the problem will arise that we seem to be here in an exercise of denigrating the judicial system?

What you get in the end is the need for judges to put forward their own case. I notice that during the week Justice Nicholson, the Chief Justice of the Family Court, was moved to make a statement about the issue of Justice Kirby, and I notice that the former Chief Justice of the High Court, Sir Anthony Mason, has decided to do the same. Has the government thought of the consequences of its attempted outing of judicial power in this area? Has it thought about the effect that has in a situation where the Attorney feels unable to protect the standing of judges, the status of judges and the reputation of judges and about the fact that judges such as the Chief Justice, Alistair Nicholson, have had to get up and make a statement? Has the government thought of the danger this causes to the whole system?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.08 p.m.)—The Migration Legislation Amendment (Transitional Movement) Bill 2002 does in clause 6. In proposed section 494AB(3) it states:

Nothing in this section is intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

So the original jurisdiction of the High Court still operates. In no way has this bill sought to exclude that. In fact, I do not think it could. But it does not and it makes it very clear that the High Court still has jurisdiction. So it is not a case of excluding any judicial action. The High Court’s jurisdiction is still very much available.
Senator COONEY (Victoria) (9.09 p.m.)—The effect, as I read it, of having 494AB(3) in there is just to state the obvious—that the parliament cannot oust the jurisdiction of the High Court because it is contained in the Constitution. Its being there suggests, I think, that the Migration Legislation Amendment (Transitional Movement) Bill 2002 would like to oust the jurisdiction of the High Court if it could. I think that subsection emphasises what I am saying—that there is a real problem arising in the community of the appearance, and an appearance is a very bad thing to have in this situation, of parliament trying to throw out the chapter 3 courts, insofar as they can, and stop them from exercising their jurisdiction in Australia. It is the immigration legislation today, the industrial legislation tomorrow and perhaps the Family Court jurisdiction the day after. Because of that, you have the problem of judges and ex-judges having to get up and defend themselves and their courts. If we are going to have legislation such as this and an approach by the Attorney-General of not in any way raising his voice to protect the judicial system, we are going to have a situation where the courts themselves have got to get into the political arena, which is a very bad thing. I am wondering whether the government could reconsider its situation.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.12 p.m.)—This debate was largely conducted last year with the package of legislation that we dealt with then. That dealt with a streamlining of process, if you like, in relation to the avenues of legal action that might be available to someone making an application for asylum in Australia and yet come here unlawfully. It is not the government’s intention, or the government’s intention to give any appearance of an intention, to oust the jurisdiction of the High Court. In fact, it is worth while stating that in the Migration Legislation Amendment (Transitional Movement) Bill 2002 the High Court still has jurisdiction. It is obvious, of course, but I think it does not hurt to state the obvious. It makes it very clear to people looking at this that the High Court still has jurisdiction—it makes it very clear in simple terms to anyone who comes to this bill—and that the High Court has application. It is more informative to put it there in an obvious way rather than to just leave it out and let them go and seek legal advice.

Senator COONEY (Victoria) (9.13 p.m.)—I know we want to progress this, but I think it is important to look at the way the government and the Migration Legislation Amendment (Transitional Movement) Bill 2002 approach the court system. What is going to happen is that there will be, I should imagine, a whole stream of prerogative writs taken off to the High Court. The High Court should really be a place that hears the final appeals from courts around Australia and sets the law for Australia insofar as the law is going to be advanced by the common law system. That is what the High Court should be, rather than be a court at first instance, which this legislation makes it. It is a very worrying trend that this government has set in train a system that takes away the time that the High Court should be devoting to hearing appeals and setting the law for Australia and making it in effect a court of first instance where it has to deal with writs coming up to it. It seems absurd in those circumstances that you would take away the jurisdiction of the courts that should be dealing with that part of the law and transfer it to the High Court.

Senator BARTLETT (Queensland) (9.15 p.m.)—I have a few more questions about the circumstances people might find themselves in, before I address the specifics relating to the amendment. Given that this bill applies to offshore entry people who have been taken to Nauru and Manus Island, how long will Nauru and PNG allow people to stay there and what are the guarantees that Australia has given that they will not stay there longer than a certain period of time? What is the current status of the assessment process? The New Zealand government took more than 100 people off the *Tampa* and processed and assessed them and, incidentally, approved most of them—if not all of them, all but one. Whether they were approved or not, it assessed them all within a month or two yet it is now more than six months—I think the *Tampa* was in August—and those people not taken by New Zealand are still waiting to
have their applications processed. All the Manus Island people have certainly been there since last year. What is the period of time for processing and what are the expectations in terms of final decisions? Are those decisions going to be announced all at once, or will they dribble out? What happens if the government is not able to find somewhere for people to go when the time frame that Australia has under the agreement runs out? Is Australia trying to find someone else to take on board all those people who are assessed as refugees but that Australia does not want to take? What about all those who have been unsuccessful but cannot be returned anywhere, which is likely to be the case given that a number of people are from Iraq? As I understand it, that is one of the countries it is difficult to return people to against their will. What will happen in circumstances where they are not assessed as refugees but are not able to be returned to their country of origin?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.17 p.m.)—No decisions have yet been handed down by either the UNHCR or the Department of Immigration and Multicultural and Indigenous Affairs. It is anticipated a significant number of decisions will start flowing in the next month or so. Negotiations are continuing with Nauru and PNG in relation to the length of time that these people can stay there. Negotiations are being conducted on the basis that there is an ability to accommodate them until the end of the year—not that they will stay there for that period. However, that is subject to negotiation.

Senator BARTLETT (Queensland) (9.18 p.m.)—Thank you. To clarify that, potentially people may be able to stay on these islands until the end of the year, subject to negotiations. Is that basically what you said, in shorthand?

Senator Ellison—Yes.

Senator BARTLETT—Thank you. The statement by the minister that a number of decisions are expected to start appearing over the course of the next month makes me wonder, again, whether that fact may be more behind the urgency of this bill than the fear that there might be a number of people catching malaria or something in the next month or two.

Obviously, amongst those people who are assessed there will be some whose case applications will be rejected. Given what we have seen in detention centres here, with people in those circumstances occasionally reacting badly, I think it is reasonable to assume that it is possible to have some people on Manus or Nauru reacting badly to the news of a bad result. Is it possible for the sorts of provisions we are introducing tonight to be used, for example, to remove people like that—people who are perhaps seen as unruly or disruptive? Could the government take them out of Nauru and put them in Woomera, for example, to try to assist with the atmosphere in those original camps? Could this legislation be used for that type of circumstance?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.20 p.m.)—We have to remember that we are talking about jurisdictions that are not within Australia. Nauru and Manus Island are not jurisdictions where Australia can legislate. It is really a question in the first instance for the local authorities—whether a person’s behaviour constitutes an offence or whether that person should be removed as a result of that behaviour. There are provisions in this bill which do relate to removal of people and they are contained in section 198B. I think, ‘Power to bring transitory persons to Australia.’ There are powers listed there in relation to doing a number of things within or outside Australia:

(a) place the person on a vehicle or vessel;
(b) restrain the person on a vehicle or vessel;
(c) remove the person from a vehicle or vessel;
(d) use such force as is necessary and reasonable.

I think that is fairly well spelt out in the bill. Primarily the authorities in Nauru and the island of Manus have jurisdiction in relation to the person’s conduct and whether that attracts any sanction.

Senator SHERRY (Tasmania) (9.22 p.m.)—I do need to indicate the position of the Labor opposition to the amendment that the government has moved. I wish to do that
now. The circumstances the minister has outlined are correct. Following the concerns outlined by our shadow minister Ms Gillard in the other place, concerns that I also touched on tonight in my contribution, the government has taken up at least some of the suggestions made and they are reflected in the amendment we have before us moved by the government. For the reasons that Ms Gillard and I have touched on, we will be supporting the amendment moved by the government.

I will just touch on one other matter, as Senator Bartlett raised it again. I know we have debated it twice today already. That matter is the issue of the referral of the bill to a committee. We did have the opportunity, as Senator Bartlett knows, to refer the matter to a legislation committee. Regrettably, the actions of Senator Bartlett last week on the Selection of Bills Committee effectively blocked such a move. Whatever Senator Bartlett’s view of a legislation committee hearing is, and I think he has made clear his dim view of it, I certainly know, having participated in many legislation committee hearings over a number of years, that they are an effective forum for hearing from the community and from the various interested groups, parties and individuals about their concerns about pieces of legislation. I was just looking at the make-up of the Legal and Constitutional Legislation Committee, and I saw that my colleague Senator Cooney, who is in the chamber tonight, is a member. He always makes a perceptive and valuable contribution in his questioning. If the bill had gone to the legislation committee which, as I say, by your actions, Senator Bartlett, you prevented from occurring, I am sure the committee would have had sufficient time to ask some at least of the questions we are dealing with tonight and to obtain some answers. It is not my intention to go over that ground again, but I felt it necessary just to mention that in indicating the Labor opposition’s support for the amendment we have before us.

Senator HARRADINE (Tasmania) (9.25 p.m.)—Are we dealing with the government amendment?

The TEMPORARY CHAIRMAN (Senator Hogg)—Yes, the question before the chair is the amendment moved by the minister on sheet VW 240, the government amendment.

Senator HARRADINE—Under those circumstances, with the greatest respect to Senator Sherry, the remarks he made are irrelevant, because we have only had this particular amendment for, I think, about 3½ hours.

Senator BARTLETT (Queensland) (9.26 p.m.)—I think Senator Harradine put it particularly well. These very significant amendments, which I will ask a question of the minister about in a moment, only appeared tonight. They are, in my view, quite major amendments which really should require at least questioning of the officials from the Refugee Review Tribunal themselves, given that they affect them so directly. We would not have had that opportunity if the attempts by the government, with the apparent support of the opposition, to have a sham hearing last week had been successful. I will not go back over that again because I also think it is time we moved on from that debate, but given that it has been raised again it is important to correct the record once more. The actions I took did not block the bill from going to committee. What they did was postpone the debate on the appropriate reporting date of such a reference until this week. What we had today was a motion to refer the bill to a committee which was defeated by the vote of the opposition and the government. So it was a government and opposition vote that stopped it going to a committee; it was not the Democrats’ actions. The Democrats’ actions were basically to try to ensure that there would be a proper examination rather than a minimalist one.

I should hasten to add that I am not reflecting on the ability of the committee. Being a participant on it myself on a number of occasions, I think it is quite a good one—there are good skills there from people from all parties—but the fact is that we would not have had the full bill to examine. Senator Sherry quite rightly made a suggestion about the value of legislation committees: you can get people in with expertise to provide you
with their views. But that could not have happened, because the people with expertise did not even know the bill existed; they certainly would not have had the opportunity to develop their understanding of the issues. Even after the bill has been around for a week, some of the people in Australia with the best legal knowledge about these issues are still exploring aspects of this, particularly its consequences. That point needs to be made. Obviously, we are focusing here and now on the content of the bill and how it is likely to be used in the short term, but you also have to look at what it is going to mean in a broader context down the track and what it is going to mean in a global context when other countries see that Australia is progressing further down this path of removing people’s legal rights while they are in our country. It is time we examined what impact this is having on the international community. That is why the Democrats have had a motion on notice to have a broader Senate inquiry into this whole issue.

The other unfortunate point to raise is that we already have a Senate inquiry under way. That is the so-called ‘children overboard’ inquiry. That is not just about that; it also has a term of reference about the Pacific solution. Again, if only we had had the chance to have this bill debated less inappropriately quickly, we might have been able to examine things through that committee. I am sure that committee, which is holding at least seven days of hearings during the break, will include hearings with department officials and others—hopefully the UNHCR and others—about the operation of the Pacific solution. I could have asked all these questions then instead of asking them now.

Again, I make the point I made this morning: the government might think this helps facilitate their program by doing this sort of thing and fast-tracking, but it actually means we chew up more time in the chamber. We are asking these questions that we could otherwise ask in committee hearings. I will not revisit that again unless I am required to by somebody again misrepresenting the Democrats’ actions in this regard.

Just before I go to the amendment, I would like to follow up the minister’s last answer, which talked about jurisdictional issues and the fact that people on Manus Island and Nauru are basically not under Australia’s jurisdiction. Proposed section 198B, about the power given to a Commonwealth officer, actually includes quite a large number of people and, as it says here, includes members of the Australian Defence Force. They have the power under this proposed section to place a person on a vehicle or vessel, restrain a person on a vehicle or vessel, remove a person from a vehicle or vessel and use such force as is necessary and reasonable. Also, under a later section, all these exercises of powers are exempt from any proceeding under any court. The wording is that no proceedings relating to the exercise of those powers by a Commonwealth officer can be instituted or continued in any court. The wording is that no proceedings relating to the exercise of those powers by a Commonwealth officer can be instituted or continued in any court.

The two questions I ask following on from the minister’s comment about jurisdictional issues are: firstly, do these powers under this bill apply to a Commonwealth officer in Nauru or PNG? Surely the laws of PNG and Nauru would apply there, not this law. Secondly, in proceedings against the Commonwealth in any court, does that include any foreign court? Does it mean the exercise of powers is exempt from court proceedings in Nauru and PNG as well? If not, I presume some of these powers detailed here—such as placing people on vehicles and vessels or removing them—and protection, if you like, or exemption from legal action, apply to actions taken in Nauru or PNG, or any other country that is not Australia for that matter. We have already seen some of the difficulties involved with removing people from vessels to get them onto Nauru. And does the bar on court proceedings apply to courts overseas?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.32 p.m.)—I am advised that the courts in Nauru and Manus still have jurisdiction. This bill does not attempt to oust that jurisdiction. If there were any action by a Commonwealth officer in those two countries which attracted the sanction of the law in those two coun-
tries, then the jurisdiction of those courts in those countries would apply. This bill is saying it is in Australia that you have the situation where the possible action to a court is limited and only in Australia. But it does say the High Court still has its jurisdiction, and that remains throughout. That is the situation. It is not a question of Australian law overriding the law in Nauru or Manus Island.

Senator BARTLETT (Queensland) (9.33 p.m.)—Proposed section 198B of the bill states that a Commonwealth officer can bring a transitory person to Australia from a country or place outside Australia. The power includes the power to do certain things within or outside Australia. So, surely, that proposed section is empowering people to do things outside Australia, outside our jurisdiction, including in someone else’s jurisdiction. How does that gel with the minister’s answer?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.34 p.m.)—That is talking from a domestic point of view in Australia. It is not saying these people can do all things willy-nilly in a foreign jurisdiction and they do not attract any potential sanction of the law in that foreign jurisdiction. It is saying they have the power to do any of the following things within or outside Australia as far as Australian domestic law is concerned. That is what it is saying. It is in relation to the operation of Australian law only.

Senator BARTLETT (Queensland) (9.35 p.m.)—The amendment contains two distinct parts. Again, for the benefit of those following this debate, the amendments, as Senator Sherry said, were generated following concerns expressed by the Labor Party. I acknowledge and thank both the opposition shadow minister, Ms Gillard, and the minister—or at least his staff—for keeping me informed as much as possible of what they were considering and, I guess, to some extent taking on my feedback. I do not know whether that feedback had any impact in terms of the end product, although there were one or two improvements. That may or may not have had anything to do with what I said, but either way it is always good where possible to be somewhere in the loop. Nonetheless, the amendments, even in the form they are in now, I really only managed to get hold of today and I have tried to get some feedback from people on them. I have a number of questions on this amendment. I think it is very significant and, in general, is a bit of an improvement. It provides a little bit of extra reasonableness, if you like, for people if they end up being stuck in Australia for a long period of time. But the amendment does raise a lot of issues as to how things should be approached. The first part of the amendment enables transitory people, if they are in Australia for six months or more, to request the Refugee Review Tribunal to assess whether they are a refugee. That is unusual, for reasons I will go into in a moment.

The second part of the amendment prevents people from exercising their right, even if they have been here six months, if the secretary to the department believes that they have been engaged in uncooperative conduct. This is an another aspect to migration law again, and I think we are just building problem on problem in the way we keep going down this path. Be that as it may, I guess we will have a category of people under this certificate who are certified uncooperative transitory people, and the powers and mechanisms for that raise issues that I need to ask questions about as well.

My reading of this amendment—and the minister can correct me if I am wrong—is that, firstly, it provides a whole new power and area of activity to the Refugee Review Tribunal, outside the normal processes of the Migration Act, in that it requires the Refugee Review Tribunal to make an initial assessment. So they are not actually reviewing the person’s decision, from Manus Island or wherever; they are actually making a fresh decision. This would mean that the Refugee Review Tribunal would not actually be reviewing a decision but making a fresh decision, which is a bit of a misnomer for the Refugee Review Tribunal.

The second unusual aspect is that, according to my understanding of the amendment, when someone makes a request to the tribunal to make such an assessment, the tribunal has to notify the secretary to the de-
partment, and they cannot do anything for 14 days after they have notified the secretary. Presumably it will take them a little while to notify the secretary. I understand that that is unprecedented and that the tribunal is not currently required to notify the department if someone has applied for a review.

The third unusual aspect is that this new power of the tribunal cannot actually operate if the secretary whacks in an non-cooperation certificate over the top of it. They can be stopped at any stage of assessing, I presume, because the amendment says that the tribunal cannot commence or continue their assessment once a certificate of non-cooperation is issued by the secretary. So they could quite literally be one minute away from the rubber stamp saying ‘this is a refugee’ and the certificate of non-cooperation can come down from above, and that would be it. There is no appeal against a certificate of non-cooperation, and the tribunal cannot go any further whilst that is in force.

The decision of the tribunal is final and cannot be challenged in any court, which again extends even further the prohibition on appeals. Currently people can appeal Refugee Review Tribunal decisions to the Federal Court—under extraordinarily limited grounds, but they can do so. In effect, that appears to remove any scope for challenge, under any sort of procedural fairness or anything else, except for the High Court’s original jurisdiction.

Those are just a few of the aspects. I have some questions in relation to other parts, because I am not sure precisely how it will work. It is a one-off go, as well; you only get the one shot. You cannot, if you are here for another six months, get another go. Given that we have an amendment that gives a brand new power to the RRT, it is not actually a review at all; we make it completely beyond any sort of challenge to a court. The review is subject to being stopped at any stage by a non-appealable action by the departmental secretary. The tribunal now, as I understand it, for the first time have to notify the secretary and wait 14 days before they start assessing things, thereby giving the secretary time to get the person out of the country before they can be assessed. Those are four things in this amendment which, on their own, are new.

The key things I would like to ask for starters, other than verifying that all my assessments are correct, are: given that this has all been done very quickly in the last five or six days, has the Refugee Review Tribunal been consulted about this amendment? If so, in what way, and what was their view? Has there been any assessment about what this could mean for the workload of the RRT? Are there any financial implications or implications in terms of extending the overall processing time for everybody because of the increased workload for the RRT? Have those issues been considered and addressed, either with or without consultation with the RRT?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.42 p.m.)—For a start, I am not so sure that you consult with the High Court or the Federal Court when you are looking at making various laws. They are decision makers, not necessarily policy makers. Senator Bartlett said that the decision by the secretary was non-appealable. Of course, the original jurisdiction, the High Court, remains, and the secretary would have to make that decision based on the facts. There could well be an application to an agreed person by way of a prerogative writ to the High Court. So I would take issue with the statement that there is no appeal in relation to the secretary’s certificate.

In relation to the application to the Refugee Review Tribunal, it is a de novo application—a fresh application—and it comes third after a consideration offshore as to the person’s status and an administrative review mechanism which can be looked at. The application to the Refugee Review Tribunal for assessment, which is spelled out in the bill, is not dissimilar to the application which is available for a protection visa. There are differences, and Senator Bartlett has mentioned them, in relation to the suspension of the assessment by the Refugee Review Tribunal by virtue of the certificate. That is something which is contained in this bill and is not contained elsewhere in migration legislation, and it is for the reasons that have been mentioned by the government. This application
to the Refugee Review Tribunal is one which would come in the course of events, after two other decision making processes have been gone through.

Senator BARTLETT (Queensland) (9.45 p.m.)—Could I clarify that point. My understanding from the answers the minister gave before is that it is possible for us to have transitory people in Australia who have not gone all the way through an assessment procedure, who may have been part of the way through but need to be removed for whatever reason. I thought we established that point earlier on, in which case this would be the only assessment because they would not have had those two other ones. I presume, from the way the minister’s response was framed, that there has not been any consultation with the Refugee Review Tribunal. I acknowledge that that is not essential when you are making laws but it is not too bad an idea to at least let them know that this new, extra power and responsibility is likely to be put upon them and to get feedback from them about whether they saw any problems. Again, that is the sort of thing a Senate committee can do quite effectively if it has the opportunity.

One of the criteria that the RRT have to use in making their new decision is whether the person is covered by the definition of ‘refugee’ in article 1A of the refugee convention as amended by the protocol. Can I ascertain from the minister how that definition of ‘refugee’ in article 1A equates with the criteria the RRT have to use in determining people’s suitability for protection visas in Australia? Is it exactly the same? Is it a mirror image? Are there different aspects in terms of the definition that they have to assess against?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.47 p.m.)—I understand that, in relation to this application, they still have to show a fear of persecution, as I mentioned earlier, in relation to race, religion, political opinion or the other matters I have mentioned. The difference is that they do not have any resort to the Administrative Appeals Tribunal which would be available, or could be available, under an application for a protection visa in relation to character matters. I am advised that that is the difference. I think Senator Bartlett was asking what the difference is between the protection visa route and this one. Certainly, there are similarities in what they have to make out concerning the fear of persecution but, as far as the character aspect goes, the protection visa has an avenue for appeal where this one does not in relation to that particular matter.

Senator BARTLETT (Queensland) (9.48 p.m.)—I thank the minister for his answer. Concerning the changes that were made last year via Migration Legislation Amendment Bill (No. 6) 2001, which included changes to the definition of refugee status under Australian law, does the criterion that is going to be used by the RRT to make these fresh assessments match that criterion as it is now amended and operates under the general migration act?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.49 p.m.)—The answer to that is yes.

Senator BARTLETT (Queensland) (9.49 p.m.)—Can the minister clarify a previous question that I do not think was specifically responded to. Has there been any consideration of the likely or possible impact on the workload of the RRT or the costs or overall determination time, given this potential extra and different type of activity? I also ask: why is the 14-day requirement in there? This is the requirement that the tribunal has to notify the secretary on receiving a request and that they have to wait 14 days before they can begin assessing. I understand that it is different, but I would like to know why that has been put in there.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.50 p.m.)—I will take that question on notice, Senator Bartlett. There is a reason for that, but I had best make sure that I have the answer.

Senator COONEY (Victoria) (9.50 p.m.)—I can understand giving 14 days notice so that the secretary can prepare the case, I suppose. I do not know that you have answered the question that Senator Bartlett asked originally about uncooperative con-
duct. The difficulty is that the secretary can ask the person to leave and go to some other country for one of three reasons: there is a country where the person formerly resided, they are going off to another country, or they are going off under section 198A(3). If the secretary does give 14 days notice and 198A(3) applies, then he can simply say, ‘You’ve got to leave the country.’ That would be the effective way out of this and the test of whether or not the person complies is whether or not he or she leaves the country. If he or she leaves the country, then there is really no case to be put before the tribunal because he or she has been put out of the country. There does seem to be a contradiction there. I can understand that you have to give notice to prepare a case, but it does seem unfair if the person giving the notice is then able to say, ‘Clear out, and if you do not clear out that is evidence that enables me to stop the hearing going on.’

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.52 p.m.)—That involves the previous question which we are taking on notice. We will get back to Senator Bartlett.

Senator BARTLETT (Queensland) (9.53 p.m.)—I have a few further questions that relate to this. With respect to the requirement under part (8) of the first amendment that, if the assessment by the Refugee Review Tribunal is successful, the minister must determine a class of visa in relation to the person and then the person later makes an application for that visa, my understanding is, firstly, that the minister is not required to determine that that class of visa be a substantive visa. There are a variety of them. It could be a tourist visa, as Senator Bartlett has said. It does not include a bridging visa. Section 46B, which is excluded where the application can be made—that is, after a favourable assessment is made—talks about an application for a visa not being able to be made by a transitory person in those circumstances. So it could be any substantive visa other than a bridging visa. I think that covers the situation in relation to Senator Bartlett’s concern.

I have had further advice in relation to the 14-day period. This was introduced in order that the secretary has a period within which to investigate the conduct of the transitory person. The secretary could choose to issue a certificate if there is found to be any uncooperative conduct or choose not to take any action. That 14-day period is an opportunity for the secretary to make that investigation—not so much to prepare his or her case, but more to investigate the conduct of the person concerned.

Secondly, I am curious as to why it is split into two parts—that is, if they are successful in the RRT, they do not get the visa; what happens is that the minister must decide on, it seems, any class of visa and then the person has to apply for it and they can only apply for that one, as I read it. So would it still be the case, if the minister says that they can apply for a spouse visa or something, that the person—even though they have been determined to be a refugee by the RRT—would not have the power to apply for a refugee visa? If the minister determines a class of visa for that person—even if it is a protection visa, for example—the person has to apply. Does that mean they then go back into the usual primary decision making procedure through the migration department? Is it theoretically possible that the migration department determining officer could say, ‘You don’t meet the criteria’? What happens then?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.56 p.m.)—There were a number of questions there. Firstly, the class of visa has to be a substantive visa. There are a variety of them. It could be a tourist visa, as Senator Bartlett has said. It does not include a bridging visa. Section 46B, which is excluded where the application can be made—that is, after a favourable assessment is made—talks about an application for a visa not being able to be made by a transitory person in those circumstances. So it could be any substantive visa other than a bridging visa. I think that covers the situation in relation to Senator Bartlett’s concern.
were not answered, particularly the scenario where the minister determines a class of visa—for argument’s sake, let us say it is a protection visa—and the person then makes an application for it. I assume that there is no guarantee that that application will be successful. What happens in such a scenario? If they do get, for example, a tourist visa—as the minister mentioned—what happens when the tourist visa runs out? This is a tourist visa issued to somebody who it has been determined is a refugee. So what happens when the tourist visa—or, for that matter, any visa—runs out? In what part of the amendment does it say that it has to be a substantive visa rather than a bridging visa? Can you clarify why that is actually the case? I take the minister at his word that that is the case, but I cannot see where it says that.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (9.59 p.m.)—In relation to the question of what can happen where this person applies for a visa—whether that person can be rejected and what action is available to that person—once the assessment has been made by the Refugee Review Tribunal that the person comes within the definition of a refugee under the convention, then that person has available to him or her all the avenues of appeal and action that anyone would have under the migration laws of Australia.

Senator Bartlett said, ‘What about if a visa is not granted or if they are given a tourist visa for a limited time and they then have that taken off them’—all manner of things obstruct their way, if you like. The advantage they have, once they have been assessed by the RRT as coming within the convention, is that they have these avenues of appeal available to them under the migration laws of Australia so that if they do not have a satisfactory decision, they can appeal that. That is not available to a transitory person in accordance with this bill. So once they have been assessed as coming under the convention, it takes them out of the transitory person category and they have got those avenues of action available to them.

The other part of Senator Bartlett’s question is in relation to why a bridging visa is not included. I think that is because it is not a substantive visa but I will just check on that. I am advised that the basis for this is in the tabling speech in relation to this amendment. The government stated:

The amendments also provide that a person who is assessed to fall within the definition of a refugee in article 1A of the refugee convention is entitled to apply for a visa of a specified class. It is the government’s intention that only substantive visas will be specified for this purpose.

That is the authority for the position I have outlined.

Senator BARTLETT (Queensland) (10.01 p.m.)—We have not touched much on the certificate of non-cooperation. This, basically, is a certificate that the secretary of the department can issue as a determination that the transitory person has been engaged in uncooperative conduct, not just while they are here but even before they have got here. Uncooperative conduct is defined to mean that they do not cooperate with attempts to return the person to a country where they formerly resided, attempts to facilitate the entry or stay of that person into another country or cooperate with their detention in a country.

Firstly, I want to assess that definition of uncooperative conduct in relation to persons not cooperating with relevant authorities in connection with their detention in a country in respect of the declaration under section 198A(3). I am assuming but would like to clarify: does that include people being detained on Manus Island and Nauru? My understanding is that technically they are not in detention. Would that include the people who are in Indonesia, the people who are in a camp in Pakistan and the people who are in any other places of detention? I presume that 198A(3)—I do not have it in front of me—is Pacific solution related. So, firstly, could that mean uncooperative activities in detention on Manus Island or Nauru?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.04 p.m.)—It only relates to declared countries and those are Nauru and Manus Island.

Senator Bartlett—Is it the case that those people are seen as being legally in detention?
Senator ELLISON—I would have to say that they are regarded as being in detention, but if there is a need to change that advice to Senator Bartlett, I will do so. I will check on that. Certainly, my understanding would be that they would be regarded as being in detention.

Senator BARTLETT (Queensland) (10.04 p.m.)—In relation to this certificate—and, again, I think it is worth emphasising that this is a decision that is made by the secretary—I presume that that decision making power is delegated in the same way as all other decision making powers in the act can be delegated. Could that be confirmed for me? It is worth emphasising that this decision to issue a certificate of non-cooperation is, according to the amendment, ‘Final and cannot be challenged in any court,’ with the proviso, of course, of the original jurisdiction of the High Court. This would mean that somebody would have to go straight to the High Court to challenge the issuing of the certificate.

The minister has just said that the reason why this 14-day period was put in there, the 14-day period before the tribunal can start assessing someone’s case, is to give the department time to check if the person has been uncooperative. I presume that that does not just mean check whether or not they have already got a certificate out against them but actually go and investigate their behaviour. Surely the concerns would have been raised and a certificate could be issued, or is it likely that the government would only bother issuing these sorts of certificates once people have spent six months in Australia? Is that the intention in terms of how it is going to operate?

The other aspect, I guess, is could this definition of uncooperative conduct include behaviour that has already occurred before this legislation goes through? The easy example to think of is the people that were uncooperative in getting off the boat, I think it was the Manoora, at Nauru initially. Would that type of behaviour come under the definition of uncooperative conduct because they were failing to cooperate in relation to their detention? Firstly, is that the sort of behaviour that would be likely to be seen as unco-operative, so that we can get a sense of what the sort of threshold is, and, secondly, can it apply to behaviour that people have already done before the legislation is even passed?

It is quite obvious that this legislation may end up applying to people who are on Nauru; that is no secret. By the time anybody is here as a transitory person for six months or more—and that obviously cannot occur until after this legislation goes through—the activities of people getting off the boat at Nauru would be more than 12 months old, and that is more than six months before this idea of noncooperation even existed. Could that type of activity be used against somebody even 12 months down the track? Once the minister sees that, because the RRT has notified them under that 14-day period, they can basically go back and assess that. What is the standard of proof that is required? In relation to both the determination of refugee status undertaken offshore on the Pacific island and decisions like this by the secretary about the certificate, what guarantee is there that those decisions have been subject to the requirements of procedural fairness? I will leave it at that for the moment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.08 p.m.)—Once again Senator Bartlett has got a number of questions there. Firstly, there is an ability for the secretary to delegate that decision making process in relation to the issue of a certificate. No decision has yet been made as to whether there will be a delegation of that, but in the event I would imagine it would only be to a senior official. Senator Bartlett asked whether the certificate would only be used near the end of the six-month period. That is not right. The certificate there can only be issued in relation to the circumstances mentioned in subsection 198D(3), and that is the failure to cooperate as outlined there.

Could this relate to the refusal to leave a vessel such as the Manoora? It would have to depend on the circumstances, I would say to Senator Bartlett. Of course, yes, it could, but most likely it would not. It would depend on the circumstances. There may be some violence involved in that which could be an aggravating feature. It is really hard to talk in
a hypothetical sense but certainly that is something which could come within the contemplation of uncooperative behaviour. It would depend on the aggravating circumstances. Standard of proof is really one which is more akin to legal proceedings. This is an administrative situation where the authority would have to be satisfied that the person was uncooperative and fulfilled the criteria mentioned in that subsection (3) that I have mentioned. It is not a question of there being a case made out as such, but bear in mind that the certificate that could be issued is the subject of an appeal and so the secretary would have to be very careful that the decision was made on the facts concerned and properly made.

Senator BARTLETT (Queensland)  (10.11 p.m.)—I thank the minister. In terms of the six-month requirement under the entitlement that is in amendment 198C, it states that if someone is brought to Australia under the transitional movement provisions and remains in Australia for a continuous period of six months then they can engage the RRT. I have two more questions in relation to that. Firstly, is the government under any obligation to not remove that person from Australia once their case is being assessed by the RRT, or are they still able to remove them up until the time when a determination is made? Secondly, in terms of the operation of the six-month provision, is it possible that, if someone is here for five months and is sent back to Nauru for a day and comes back again, the clock starts again? Given that it says six continuous months, I presume that is one continuous period rather than a cumulative six months.

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (10.12 p.m.)—To answer the last question first, whether the six-month period is continuous or could be cumulative, I am advised that it is a continuous period. The first question was: if a person was removed before the RRT had made an assessment, could that assessment still be made by the RRT and the person get the benefit of that assessment if it was favourable? I understand there is some question in relation to that and I will seek advice. I am advised that, in view of the non-refoulement obligations of Australia, removal of a person while such an assessment was under way would not be likely. I think that removes the first concern that Senator Bartlett had. In relation to the question whether, if they were removed in any event, that process would still continue, I will take the question on notice.

Senator COONEY (Victoria)  (10.14 p.m.)—One of the purposes for which the system could bring a person to Australia is to be a witness in a criminal case, most likely a people-smuggling case. You are going to have a witness who is in the custody of the Commonwealth—which is bringing these proceedings—for a considerable time, and also a person in the custody of the Commonwealth where the Commonwealth can reward or punish that person depending on what the purport of the evidence of that person was. Have you given any thought to that issue?

Senator ELLISON (Western Australia—Minister for Justice and Customs)  (10.15 p.m.)—That would be suborning a witness and that would be very serious indeed. If any Commonwealth official made out to a potential witness that his or her case might be influenced by the evidence they gave in court, that would be a very serious matter. That is certainly something that the government would abhor and we do not believe there is anything in this legislation and this proposed scheme which would allow that.

Senator Cooney—The situation itself is a very interesting one, isn’t it?

Senator ELLISON—It is an interesting situation. Senator Cooney, I always find your comments interesting. This is something that the government sees as necessary. You often have, for instance, prisoners in the custody of police who give evidence for the defence against the prosecution. You find this in the judicial system. It could be a person who is in the company of Commonwealth officials and is giving evidence which may or may not be favourable to the Commonwealth. The fact is that if anyone was found to be interfering with the evidence of a witness that would be a very serious offence.
Senator COONEY (Victoria) (10.16 p.m.)—I think this is what Senator Bartlett was getting at: this system could only work with the complete goodwill on the part of the department and the secretary. As the legislation is framed, unless it is done with goodwill—even in a beneficial way—it really is not going to work as it should, is it?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.17 p.m.)—Not only goodwill but also competence. That is the point I make about the decision to issue a certificate being subject to appeal. It certainly could not be done on a whim or a fancy. The action for a prerogative writ would still be available to an agreed person if the secretary had malice or was incompetent in issuing the certificate.

Senator COONEY (Victoria) (10.17 p.m.)—If you go by prerogative writ it is going to be very costly. You are asking somebody from outside the system to come in and know about prerogative writs and to take a process that is likely to be very expensive. That is why I say this has to be done with goodwill, because in reality it is an administrative process, even though in theory there may be an appeal to the High Court.

Senator BARTLETT (Queensland) (10.18 p.m.)—The final aspect I want to go to on this amendment concerns the six-month component. This links back to what was being said earlier about all the people being in detention in Australia and, obviously, for at least six months for those to whom this amendment applies. They could well have been detained on Manus Island or elsewhere for a while before that and, in fact, will have been in the initial stages.

The minister would be aware that there has been a number of allegations in relation to the conduct of some private security providers in Australian detention centres. I do not want to get into a debate about mandatory detention, but I want to refer to how it will operate because there will be people in detention. The minister has acknowledged there have been a number of claims, which have not been verified or otherwise, about provocative and confronting behaviour by some private security providers. Will specific guidelines be drawn up and will a guarantee be provided that the secretary’s discretion in relation to non-cooperation certificates will only be exercised in terms of an independent assessment, subject to specific guidelines? I know you have six months at least to draw up those guidelines, but could the minister indicate that such guidelines will be drawn up and be able to be examined? Can the government guarantee that the secretary’s use of that discretion to issue non-cooperation certificates will not be exercised solely on the basis of the say-so of private security providers? A guard from a detention centre may report that detainee so-and-so has been aggressive or violent or whatever. Will there be further action taken to test claims like those by detention centre officers rather than just relying solely on their word? Will there be an independent investigation of the allegations or the evidence of non-cooperation?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.21 p.m.)—I think Senator Bartlett is saying that we have these guidelines in Australia and is asking whether they will apply in Nauru or on Manus Island. This bill does not relate to detention in Australia. If that is the premise of Senator Bartlett’s question, then I would leave it there. But in case he does have a concern and wants to follow on with a further question I can say that detention on Nauru and Manus Island is overseen by the International Organisation of Migration, IOM. In relation to governance, the jurisdictions of New Guinea and Nauru apply. It is in that environment that the assessment would be made of a person’s uncooperative behaviour or otherwise. The assessment could be made in relation to behaviour within Australia. I understand Senator Bartlett’s question to be whether these guidelines will be transposing from Australia to Nauru and Manus Island. A different regime applies there because the IOM is overseeing that in a foreign jurisdiction.

I think that answers both scenarios in relation to Senator Bartlett’s concern. Of course, the authorities would have to rely on the factual situation. As I said to Senator Cooney, the secretary cannot issue a certificate on a whim or a fancy. I do not see how guidelines are relevant to the issuing of a
certificate. That is something that the secretary has to satisfy himself or herself of, regardless of whether it is within or outside Australia.

Senator BARTLETT (Queensland) (10.23 p.m.)—In terms of having guidelines to assist in coming to a decision about non-cooperation, I do not think it is unrealistic to have broad guidelines to flesh out the issues so you get consistency in determinations of what meets uncooperative behaviour according to the definition here. Refusing to cooperate in connection with detention can mean pretty much anything. I am not suggesting that it will be used capriciously, but it is not very specific. Even refusing to cooperate with attempts to return could mean a lot of things. It does not just mean someone handcuffing themselves to the steps on the way up to the plane to prevent them being removed. It could mean any number of things. It deals with the issue of thresholds. My question was: will guidelines be drawn up to more fully inform the secretary what constitutes uncooperative conduct? I do not think it is uncommon for those sorts of policy guidelines to be adopted whether for immigration or social security decisions.

This bill relates to detention. The minister confirmed, in relation to an earlier question, that these transitory people would, in relation to this amendment, be detained in Australia for at least six months because they would be deemed to be unauthorised non-citizens because they do not have visas. These people would be in detention under the provisions of this bill and because of the status that they hold as a result of this bill. Would people who were in detention as transitory persons for six months be advised either before or when their six months comes up? Would legal advice be provided to them stating that they have been here for six months so they can apply to the RRT or do they just hope that somebody tells them about it? I would suspect that it would not be likely that people would know about this. I think it is important, when giving people this right, that they know about it. There are provisions, as the minister would be well aware, under the act that actually make it less easy for people to be made aware of what their legal rights are in relation to refugee matters.

The other question goes to the issue of detention in these circumstances. I imagine the minister or, if not him, his advisers would be aware that, in the case of A. v. Australia, the human rights committee came to the view that Australia’s policy of detaining asylum seekers was arbitrary within the meaning of article 9 of the International Convention on Civil and Political Rights if it was not for legitimate reasons—namely, lack of cooperation or likelihood of absconding. Of course, the government’s response has been that it is for legitimate reasons such as lack of cooperation. What we have here is a power for the secretary to determine whether or not someone is being cooperative. By omission or non-action that acknowledges that they are being cooperative. That being the case, if a person who has been in detention for at least six months prior to requesting a fresh decision of the RRT is being cooperative, does that not remove a rationale or justification for detention and does that not make that detention arbitrary because it is not for legitimate reasons?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.27 p.m.)—The government does not share the view that Senator Bartlett does in relation to the case of A. v. Australia that he mentioned. That decision held that the detention of ‘A’ was arbitrary, but the policy of the government was not. In any event, the government does not agree that the detention of ‘A’ in that case was arbitrary. Can I say that cooperative behaviour or not, the government does not agree that the detention, in this case, of a person transitory or otherwise is arbitrary. We believe that the government is entitled to have such a policy in relation to people who enter Australia unlawfully and in order to protect Australia’s borders and preserve the integrity of our migration policy and regime. I think that is a matter of opinion that I will have to agree to disagree with Senator Bartlett on.

Senator BARTLETT (Queensland) (10.28 p.m.)—I will just make a final comment on these amendments. There are other amendments to come, of course, and other
questions about the bill as a whole that I want to pursue. The Democrats' attitude to this amendment is obviously to some extent academic. It has the support of the government and opposition. The dangers of these types of amendments are worth commenting on nonetheless. Quite clearly, it is a positive in that at least some people that are here for six months as transitory people will have another avenue open to them that they would not otherwise have had without this amendment. They will be able to get an assessment of their case by the RRT. But it does also create a number of precedents, as I outlined earlier, such as having to pause for 14 days after notifying the secretary of the department.

I am not saying a secretary would actively go out and try to find reasons but nonetheless this is put in there so the secretary has the opportunity to ascertain whether or not a noncooperation certificate may be appropriate, and therefore remove the right. He can remove that right without any appeal except to the High Court. So again we have a precedent where by virtue of an administrative decision of the secretary or their delegate, a decision that is non-appellable except direct to the High Court, these rights can be removed. If you accept that as an appropriate principle for removal of a right to have a refugee status determined, then that is a dangerous precedent.

In response to my question earlier about whether or not people could be removed from Australia whilst their case was still being considered by the RRT, the minister said that that is not likely and that is not the intent and the government would not do that. I accept his commitment in relation to that and welcome it, but I had certainly read from his answer—he can correct me if I am wrong—that there is actually no legal obligation. There may be an obligation under refoulement provisions of the Refugee Convention, but it would be quite within the realms of possibility for a future minister or government to argue that they are not engaged because the person has not been found to be a refugee. We have seen plenty of flexible interpretations of refugee issues in recent years.

When we pass legislation we have to look not just at what this government is going to do with it next week but at what a future government might be able to use it for. That has been the problem with a lot of changes that have been made over the last few years: they operate as the thin end of the wedge. Once a principle is established then the government is able to bring in another similar provision, apply it to somewhere else and say, 'This has already been done, so we are just making it consistent.' There are plenty of examples of that. What we are doing here is introducing a principle where a determination of a person's refugee status can be halted by virtue of an unappealable administrative decision of the secretary of the department. I think that is a dangerous precedent. We have a situation where a person can be having their case assessed by the RRT and there is no legal provision to prevent that person being removed. The government said they would not do that and I welcome that but, as I read it, there is no legal obligation for a future government not to remove someone once their assessment is under way.

That does not apply at the moment. If a person is in Australia, even if they are in detention as an unauthorised non-citizen, if they have a case before the RRT then they cannot be removed. I am sure the minister will confirm that, because it is a source of great frustration. If they have a case before the High Court they cannot be removed. As I understand it they cannot be removed until they have exhausted all available avenues, if they wish to exhaust them all. Yet here, even if someone has a case before the RRT, they could be. Again, that is a very dangerous precedent because, once you accept as justifiable under law that somebody can have made a claim for assessment but that does not require Australia to keep them here, then it is quite a short step to accepting that for every person that has a case before the RRT. I am not saying that is this government's agenda. I am just saying that is a history that we have often seen in relation to aspects of the Migration Act.

We saw it, and it has now been expanded, with the temporary safe haven visa legislation—which people at the time broadly wel-
comed because it meant that people from Kosovo could be removed to a safer situation. That bill introduced principles that had never been seen before—of people being in Australia but not being able to apply for protection; of the minister having absolute power over whether or not they could stay; and of not having any appeal against that decision of the minister. There were significant precedents which in many ways we could see flow on to the temporary protection visas that then occurred—because the safe haven visas were limited term visas as well, completely under the discretion of the minister. It raises difficulties when an amendment in some ways ameliorates a situation but also introduces precedents that may then be used to justify future expansions of that core principle. It is probably not a dilemma for the Senate but it is a dilemma for me—it does not matter to the Senate because it is going to get through anyway. It is appropriate to again emphasise why trying to patch up legislation is bad in principle: amendments often can have unexpected consequences down the track, and I think that is not desirable. Be that as it may, the amendment is going to get through.

It is worth acknowledging the efforts by the opposition, because it is a concern with the whole bill. The government is saying, ‘Well, it is only going to be used in emergency situations or unusual circumstances and it is for as short a time as possible,’ but because there are no restrictions under the bill there is no prevention of this or a future government being able to bring people into Australia under this category of transitional persons with no rights whatsoever and have them here for an undetermined length of time. Given that we have people that have been in detention here in Australia for three or four years—not a lot, but we have had some; we have some currently in detention who have been detained for a number of years, in some cases partly because of the difficulty of being able to return them to their country of origin—it is quite feasible that some of these people under this transitional movement provision could end up in that category as well, languishing indefinitely in Australian detention centres. We cannot leave them languishing indefinitely in Nauru or in New Guinea, because we have agreed that we will not leave them there indefinitely.

This then provides the out where we can bring them back to Australia and have them languish here instead. I am not saying the government are locking them up, throwing away the key and forgetting about them. They are obviously trying very hard to remove them if possible, but the fact is that already it is proving very difficult to do so with some people. This will provide a mechanism for the government to be able to indefinitely mandatorily detain people who will have no access to any sort of legal redress other than this provision that has been put forward in this amendment that has been generated thanks to efforts of the Labor Party. That is why it is understandable that it could be seen as a positive amendment, but I do note the dangers that apply in introducing such new precedents in relation to determination of decisions.

Question agreed to.

Senator BARTLETT (Queensland) (10.38 p.m.)—by leave—I move Democrats amendments (1) and (2) as circulated earlier:

(1) Schedule 1, item 3, page 4 (lines 28 to 31), omit subsection (7).

(2) Schedule 1, item 6, page 6 (lines 5 and 6), omit subsection (2).

These amendments are fairly straightforward. I will use them to raise some other questions that circle around particular aspects of the Migration Legislation Amendment (Transitional Movement) Bill 2002. The first item relates to removing a part of the bill that enables the Minister for Immigration and Multicultural and Indigenous Affairs not to have to consider any requests for lifting the bar on transitory people applying for a visa. This, again, is another example of a precedent that has now become widespread in the Migration Act: the non-compellable decisions of the minister. The minister has the power to make these decisions but no-one can force him to even think about making a decision if he does not want to do so.

I am assuming, with these amendments, that the Labor Party is in a position where it cannot really move and cannot accept them. I
hope that is not the case and that it can consider these amendments on their merits. But I recognise that Senator Sherry is merely the opposition’s representative in this place and in effect has to operate on instructions. I would assume that the Labor Party feels it has reached an agreement with the minister and cannot move from that. I hope that is not the case, as I think the points here are worth considering. I believe it is about time we tried to reverse some of these precedents that we put in place in the Migration Act.

I will specify the bit that this applies to. As has become clear in this debate, people who are transitory persons cannot apply for any sort of visa in Australia. They can apply but it is not valid, to be technically correct, so they cannot make a valid application. However, if the minister thinks it is in the public interest, he or she can determine that that bar does not apply. In effect, he can ‘lift the bar’, which is the jargon that is used, and he can determine that overall. He can say they can apply for anything. He can say, ‘I’ll let you apply for a tourist visa, a visitor visa, a protection visa or whatever.’ That is purely and solely the prerogative of the minister personally.

It cannot be delegated under this legislation. It is solely the minister’s power. But—and this is the bit that I am seeking to omit—the minister does not have a duty to consider whether to exercise that power regardless of whether he is requested to do so by anybody else. This is a provision that is in place in other aspects of the act, and I am sure the government will use that as a justification. They will say, ‘It’s already there; let’s keep it and let’s ensure that it operates consistently.’ That may be the case but, in the Democrats’ view, it should not be there, because it means we are giving the minister total personal power—only he can make the decision that something is in the public interest and that a person should be allowed to apply for a visa. It is solely in his absolute power.

His failure to exercise that power cannot be appealed, and no-one can make him even consider it. No-one can make him even sit down and divert any of his mind to whether it might be in the public interest. The minister may just decide, ‘I’m not interested in whether something is in the public interest, so I’m not even going to look at it.’ I am not saying that this minister does that. He has a stronger record than any of his predecessors in exercising his power towards people in a favourable way and waiving some of the restrictions that are in the act, so it is not specifically aimed at the current minister.

The principle of giving a minister such absolute, total, individual power is very dangerous. It is dangerous, particularly given that it is a power that is exercised basically outside any review, any sort of transparency even. The minister is required to table a statement saying when he uses it, but he does not have to say—in fact he is not allowed to say—who he has used it for; and I am not suggesting he should. He is not able to identify the person in any way. So there is no way of determining who has been the beneficiary of the use of this power, and that raises questions about protections against misuse of a power. If you have absolute power to do something—without review, without appeal, without any obligations as to whether or not you use it—there is a danger of misuse as well as non-use of the power.

It is a principle that the Democrats believe is undesirable. We would prefer to make it appealable. If the minister has to make a decision that something is in the public interest, there should be a definition of that and it should be able to be appealed if he is ignoring the public interest. But we are not moving that way. We recognise that that is a bigger step to take, given the widespread use of that sort of definition. But at least there should be a requirement that the minister has to consider whether it is appropriate to use the power and whether something is in the public interest once it is brought to his attention. It is not an ideal process—it is an informal administrative process—but the least that you could expect from it is that if someone has a compelling case the minister of the day has to look at it, has to open the envelope and read the request.

I would also say that I am not sure this is an ideal use of a minister’s time. I am not and have never been a minister—and most of you would suggest that I am not likely ever to be one—so I do not profess to know pre-
ciscely what takes up the time of a minister, but I think it is reasonably likely they are pretty busy people. So I am not sure it is a terribly good idea for them to have their time used up having to make personal decisions—which they do; they are the only person who can exercise this power—in relation to all these sorts of applications. The minister of the day may make his personal decisions by making a personal decision to ignore all of these requests, which is what some previous ministers have done in relation to section 417 of the act—or it appears that way. The number of requests under section 417 of the act that occur nowadays is quite enormous. I cannot remember the numbers off the top of my head, but there is certainly more than one a day that the minister has to consider individually. Potentially—and again nobody knows—there could be thousands of people in Australia under this provision of the bill. If Nauru falls in a heap, if Manus falls in a heap, if we cannot find anywhere to place the refugees or if we cannot find ways to send the Iraqis back, we could have quite a large number of people in Australia under this provision as transitory people, and they could be here for some time. You could get hundreds of applications going to the minister, who would be the only person who could consider exercising the power of it being in the public interest.

Apart from the issues of absolute power, this is also not necessarily the role of a minister of the Crown—particularly to have elected officials. Usually, the minister does not issue visas; the department issues visas. This power is not in issuing a visa; it is enabling someone to apply for a visa. But it is obviously a very important power in that you do not have a chance of getting a visa if you are not even allowed to apply for one. So to have that sort of power in the hands of elected officials, or just one elected official, is dangerous. The consequences of that have not been fully understood. It opens dangers that need to be acknowledged. I am not impugning in any way the current minister, or indeed previous ministers, but we have seen—not with this minister but with other ministers in this government—allegations in recent times of pretty dodgy uses of their power in former ministers taking up employment with companies closely related to their previous activities.

This demonstrates that there is potential for misuse of ministerial power in all sorts of ways. Again—not impugning the current minister; in fact he would be one of the least likely to fall for those sorts of dangers, based on what I know of him—it is an extra risk. It is extra power. When we give extra power to the executive, and to a minister in particular, we have to look at whether it is a good idea. We have separation of powers for good reason: to keep these things in balance between the parliament, the courts and the ministry. This basically puts the whole power in the ministry; the courts are out of it and parliament is out of it. That is an indication of an undesirable power that is out of the balance.

The amendment does not go all the way to addressing those concerns, I should acknowledge, but it does say that if we are going to give this power to a minister the least we can do is to make sure that he or she is obliged to consider using it. That goes to the core of this particular amendment. It would be a worthwhile improvement to admit this section.

**Senator SHERRY** (Tasmania) (10.50 p.m.)—In that contribution, Senator Bartlett has put forward the principle of why the minister should have any power to award a visa. I understand that is a power that has existed for a long time. My adviser is not able to tell me the exact date—perhaps the minister could let us know in his response to this amendment—but it is a power that has existed for a long time. My adviser is not able to tell me the exact date—perhaps the minister could let us know in his response to this amendment—but it is a power that has been around for many years and perhaps we could find out precisely how many.

Senator Bartlett correctly made the observation that I am a representational minister in this place; this is not my specific portfolio responsibility. Nevertheless, Senator Bartlett, you may have seen our shadow minister, Ms Gillard, here a little earlier. I have consulted with her on these amendments; I do not believe they were sent to her office earlier. This is not a criticism, because I understand the time constraints that the Democrats have had to act under. I have consulted with her about the three amendments.
With respect to the amendment we are considering at the present time, Labor believes the minister needs to be able to award a visa without specifying ahead of time what type it will be, as that would restrict the options available to the minister—and I believe options have been there for many years. Basically, that leaves a capacity to the minister to exercise or not exercise those powers, depending on the facts and circumstances of the case, and for that reason the Labor Party will not be supporting the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.52 p.m.)—In answer to Senator Sherry’s question, I believe that non-compellable discretion has been in existence since 1989, when codification was introduced by Senator Ray, the then minister. The government believes that there is no need to change that. We will, therefore, be opposing these amendments.

Senator BARTLETT (Queensland) (10.52 p.m.)—I have moved both my amendments together, but I have only spoken to the first one. I have a sense of the likely vote, but I would like to speak to my second amendment, just in case people might want to vote differently on the second one. I think this one is rather more important, without suggesting that my previous comments were of no consequence.

This amendment goes to the section of the act to do with preventing any legal proceedings relating to transitory persons. As the original explanatory memorandum outlined, the amendments proposed by the bill will, among other things, stop legal proceedings being taken in relation to the transitory person’s presence in Australia. They also stop legal proceedings in relation to the person exercising their powers under section 198B, which says:

(1) An officer may, for a temporary purpose, bring a transitory person to Australia from a country or place outside Australia ....
(2) The power under subsection (1) includes the power to ...
(d) use such force as is necessary and reasonable.

Section 494AB prevents:
(b) proceedings relating to the status of a transitory person as an unlawful non-citizen during any part of the ineligibility period;
(c) proceedings relating to the detention of a transitory person who is brought to Australia under section 198B, being a detention based on the status of the person as an unlawful non-citizen;
(d) proceedings relating to the removal of a transitory person from Australia under this Act.

That is a pretty comprehensive bar on legal proceedings for transitory people. They are cut out of the legal process, pretty much. They cannot apply for visas; they cannot appeal about anything; they cannot take any proceedings relating to how they were restrained or removed or the use of force in that activity; they cannot take any action about their migration status at all; and they cannot take any action about detention issues either. I will speak to my amendment first, but there are other questions germane to that part of the bill that I would like to put to the minister. I will resolve my amendment first, because it is fairly self-contained.

My amendment seeks to remove a component of that power—basically, section 494AB is the section that prevents transitory people undertaking any legal proceedings. What follows as part of that is that this section—that is, this prevention of any legal proceedings—has effect despite anything else in the Migration Act or any other law. It puts it outside of and above every other law in Australia, except, I presume, the Constitution. That is pretty strong. From recollection, it is already in the act. It was put in the act as part of the bills that were guillotined through last year. Again I talk about precedent: if we once accept the precedent that a provision can apply regardless of any other act in the country in a migration and refugee area, we will do it again. We are doing it again, or the government is trying to do it again here.

It seems pretty clear that, if this has effect despite anything else in the act, it means that, for example, antidiscrimination legislation does not apply in relation to the exercise of this power—any sort of legislation relating to legal rights and proceedings does not apply. Basically, any other law at all does not apply.
This is above the law. Apart from that being objectionable in principle, the question you have to ask is: why? Why does this have to be above every other law? What law is the government worried about it being affected by? Is there any one in particular, or is it just a safety net, just to make sure? If so, isn’t that a strange principle, that you exempt yourself from every other law in the country, just in case? I would appreciate it if the minister could outline why we have to have such a provision in this bill and in the other sections of the act. I am sure he will, in speaking to my amendment. Are there any other specific laws the government has in mind in exempting this provision or this section from every other law in Australia? As I say, it seems a very extreme provision to the Democrats. We would, at least, appreciate the minister putting on the record why the government sees it as necessary—or not just necessary but desirable.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.59 p.m.)—I think Senator Bartlett cast the net rather widely when he said this excludes it from every other law in the country. I reiterate that the original jurisdiction of the High Court remains. The bar on certain legal proceedings is only in relation to those matters specified in section 494AB. They are specified, and that has been introduced or proposed by the government in order to maintain the integrity of Australia’s border controls and to ensure that the transitory person’s presence in Australia is as short as possible and that action cannot be taken to delay that person’s removal from Australia. I think I explained earlier why there was a bar to proceedings.

I might very briefly say that a transitory person will be placed in immigration detention once they enter the Australian migration zone and become an unlawful non-citizen. Any person who is in the Australian migration zone without a visa and by virtue of that fact becomes an unlawful non-citizen must be placed in detention. Except for limited circumstances, a transitory person will have the same rights as any other person placed in immigration detention.

The two exceptions are that they will not be able to take legal proceedings in relation to their transfer to, detention in or removal from Australia and they will also not be able to make a valid visa application within Australia unless the minister determines it is in the public interest to do so. That transitory person, however, will be able to exercise any other legal rights available to them while in Australia. For example, they could take a civil action for negligence. So they are not precluded from all the other laws, they do have certain rights, but there is a limitation in relation to those specific matters which I have mentioned in relation to section 494AB.

Senator BARTLETT (Queensland) (11.01 p.m.)—I recognise the minister’s justification that this is essential to ensure the integrity of Australia’s border controls. I must say that justification is being used to justify an awful lot of things these days. The integrity of our migration system and the integrity of our border controls will be used to justify the budget deficit next. It seems to be the mantra to justify any removal of rights.

Senator Sherry—I think it is wearing a bit thin.

Senator BARTLETT—It might be Mr Costello’s excuse for his $5 billion gambling loss at the rate we are going. I appreciate the minister’s answer, which clarifies my understanding, he will be pleased to know, but it does not go to the core of my amendments. I recognise it is only a bar on particular legal proceedings. The question I have and it is why I moved this amendment is: why does that bar have effect regardless of every other law in the country except the High Court under the Constitution? Why is it necessary to make that extra requirement? What laws do the government have in mind that they think might negate the purpose of this provision? It seems to me a very significant extra provision to put in on principle unless there is a very good reason.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that amendments (1) and (2) on schedule 2483 moved by Senator Bartlett be agreed to.
Senator BARTLETT (Queensland) (11.02 p.m.)—I note the minister has not responded to that one. I am getting a bit tired of standing up and sitting down myself. I think it is an important principle. It is a question I would have asked last year if the Senate had had a chance to examine the bills properly. The answer the minister gave before did not go to this component of the bill. I have never been able to ascertain why this is necessary and I think it is a principle it would be worth while having on the record from the government, the minister, the representatives or the officials. It might be a wonderfully simple reason my humble mind cannot get around, but it would be useful to have it on the record. Nonetheless, if the minister is not willing to answer, we cannot do much about it.

There are some other aspects of the powers to bring transitory persons to Australia I want to ask some questions on, but in the interests of keeping the debate logical we could just put the question on my amendments and resolve that at least before we move on—as a demonstration I am not just chewing up time for fun.

Question negatived.

Senator BARTLETT (Queensland) (11.04 p.m.)—I move:

Schedule 1, page 6 (after line 15), at the end of the Schedule, add:

7 Cessation of operation of Part

The amendments made by this Schedule cease to operate on 30 June 2002.

I have a third amendment here which is a sunset clause, the nature of which all senators would be aware of. I am moving this, I guess, to test the genuineness of the government’s assertions that this is an urgent matter. We still have not heard much of a justification from my point of view about why it is urgent and what the government is expecting to happen over the next month or two that makes it urgent. Given particularly that the Senate has not had an opportunity as yet, even six months down the track, to adequately examine the operation of the whole Pacific solution, I am hopeful the Senate committee that was established will provide an opportunity. It may give us a better idea of whether we are going down the right track or going even further down the wrong track. In the meantime, if we are introducing legislation before we are able to fully inform ourselves of the situation it is applying to, it is prudent to put in place a sunset clause. I do not particularly care whether it is the end of the year rather than 30 June, if people feel that way, but again I think it is appropriate to have that protection in place.

We have seen before the government make lots of promises and guarantees about how something will operate and what it will do and will not do, particularly in the area of law, I might say. The Senate passes things in good faith and then we find out things do not apply that way at all. I think this bill is another example. The government is talking as though it is going to be a rare occurrence, it is not going to happen very often, exceptional circumstances, for as short a time as possible; but there is no definition of what are going to be exceptional circumstances or what is temporary. At the same time, whether it is or is not intended to be used for other purposes or in other ways, the fact is it provides powers to that effect. It is a wise principle in such circumstances, when you are giving extended powers to a government or removing rights and powers from individuals, to provide a mechanism to be able to check down the track whether or not it has gone according to plan, whether or not it was a good idea or whether or not it is actually causing problems that were unanticipated or not revealed at the time.

If the government is genuine in saying that this legislation is absolutely super urgent and that we have got to sit up until midnight and rush through this, along with a whole lot of other legislation, then the least it could do is to agree to a sunset clause so that there would be time for it to be reviewed and so that there is a mechanism for forcing it to implement a more permanent system after there has been some genuine scrutiny. I assume that even the government—and I would think almost all senators—would acknowledge that there has not been time for proper scrutiny of this legislation. As I said, we still have not had the chance to properly scrutinise the action and the impacts of the
legislation we passed in the final sitting week before the election was called. In those circumstances, the Senate is continuing to skate on thin ice, because we are not sure of the full impacts of what we have done, let alone the full impacts of what we are doing here tonight. For that reason, a sunset clause would be desirable, in the Democrats’ view.

I note for the record that the Democrats moved sunset clause amendments to a number of the migration bills that were guillotined through this place leading up to the election, and those amendments were not accepted. That was a great pity. When the government put up their border protection legislation, which was so appalling that even the Labor Party would not support it, we offered to put a sunset clause on it if it would be passed, which shows that the government accept the principle that you have to rush through legislation because it is urgent. If legislation does significant things, the least you can do is to provide the ability to see how it works by virtue of a sunset clause. It is a proposal the government have made. In hindsight, whilst their bill was extraordinarily objectionable, we may have ended up with a less appalling outcome than what we got: a whole package of bills rushed through about four weeks later. But that is an unknown, of course.

This amendment repeats that offer and provides that protection, and I think it is a sensible amendment for that reason. People will find it difficult to be sure about how aspects of this legislation will operate, and the insertion of a sunset clause provides some protection in relation to that and some ability for the parliament to play a monitoring role rather than just handing over all this power to the executive indefinitely. As I said, I would not be overly fussed if the date were to be pushed back a bit. It is 30 June basically because we do have some sitting days—not many, with this government—before 30 June. We have a fortnight of sittings before 30 June, so that would provide opportunity for updated legislation—or even the same legislation if it has been determined that it has been working—to be put through and considered by this chamber.

Senator SHERRY (Tasmania) (11.11 p.m.)—I indicate the opposition’s concerns about this amendment. On the issue of urgency, my understanding is that there have been cases already that fall within that category, and that is in the area of medical treatment. I referred to the ludicrous way in which one person—and I know there have been a number of other cases—was brought into Australia and needed medical treatment. This bill does go to that category of person, and it does deal with the issue of medical treatment in a much less absurd way than has been exercised for the small number of people so far who have been brought into Australia to receive medical treatment.

Labor believe that it is in everyone’s interest not to limit the time period. We do not know when the Nauru and Manus processing will be completed. It is better to be able to bring those people back to Australia if they need the medical treatment, or if they need to be here to give evidence in people-smuggling cases, or if they are being transmitted through Australia. For those reasons, we will not be supporting the amendment.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.12 p.m.)—I concur with the remarks of Senator Sherry and I will not take up the Senate’s time by repeating them. The government opposes this amendment.

Senator HARRADINE (Tasmania) (11.13 p.m.)—I support the amendment, for the reasons that have been outlined quite cogently by Senator Bartlett.

Senator BARTLETT (Queensland) (11.13 p.m.)—Further to the situations that are likely to apply, which I think were touched on by Senator Sherry rather than by the minister, I refer to the Bills Digest—and I think the library has done a very good job in getting this out in such a short time, given the truncated process we have had for consideration of this. The Bills Digest mentions situations where the legislation could apply, and it talks about scenarios where agreements between Australia and nations such as Nauru could break down and other arrangements would need to be made quickly. It states, ‘Under that scenario, of course, it would not only be ‘transitory persons’ in
The question I have there is again in relation to the situation in Nauru or PNG. If we are reaching a phase, as the minister said earlier, where we are about to get a significant number of determinations made—and I am assuming they would be made in the period between now and when we come back in May, which is germane to the issue of the urgency of this bill—those people who are rejected will obviously be on Manus Island or Nauru for a period of time. Is it a potential contingency use of this legislation for that group to be brought to Australia at any stage, to be put into detention here? Is there any threshold in terms of exceptional circumstances or the reasons why they have to be brought here? Could they be brought here because it is administratively convenient?

Obviously, it would need to be with the permission of Nauru, given that they are in that jurisdiction, but I cannot imagine they would object terribly much if we wanted to bring the refugees to Australia and detain them here. So the question I have is whether or not this scenario could engage the use of this bill; whether there is any threshold of reasons why the government want to bring people to Australia. They have talked about medical emergency and they have talked about criminal trials. Does there need to be a reason other than that Australia now thinks it is administratively desirable to bring all the rejected people back to Australia?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.16 p.m.)—The answer is no.

Question negatived.

The TEMPORARY CHAIRMAN (Senator Cook)—The question is that the bill, as amended, be agreed to.

Senator BARTLETT (Queensland) (11.16 p.m.)—I was just engaging in a sideways conversation with the Manager of Government Business, which is probably difficult to do while I still have a question for the minister. Section 198B talks about ‘temporary purpose’ but it is not defined, as I see it, as a length of time. Given that under the law we are passing here it has to be for a temporary purpose, is there a definition of ‘temporary’ that comes into play?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.17 p.m.)—No, there is no definition of ‘temporary purpose’.

Senator BARTLETT (Queensland) (11.17 p.m.)—I have a question in relation to the determinations that are made in Nauru and PNG that I think is relevant, given that it goes to what the minister said before about how they would already have had determinations made. I want to clarify what constitutional authority or other legal authority the members of the department are using to make determinations, given that they are in another jurisdiction in the case of asylum seekers who are going to be brought here. What head of power are those officials operating under?

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.19 p.m.)—I move:

That this bill be now read a third time.

Senator BARTLETT (Queensland) (11.19 p.m.)—Again, as a sign of my cooperation, I enabled debate to finish on the Migration Legislation Amendment (Transitional Movement) Bill 2002 so that things can progress. Obviously, the third reading stage can go for only a limited period of time. I hope that is appreciated by the minister because I had many further questions to ask. We have committee hearings coming up in which I will pursue them further. I also think it is appropriate to make a final statement on this legislation which I will do tomorrow when the debate continues.

Debate interrupted.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Order! It being 11.20 p.m., I propose the question:

That the Senate do now adjourn.
Zimbabwe

Senator PAYNE (New South Wales) (11.20 p.m.)—I rise to commend the decision and achievement of Prime Minister John Howard, the President of South Africa, Mr Thabo Mbeki and the President of Nigeria, Mr Obasanjo, as the three members of the Commonwealth chairpersons committee on Zimbabwe. The Zimbabwean elections earlier this month were clearly marred by a high level of politically motivated violence and did not reflect the will of the electorate. In making these remarks, I want to particularly note the contribution of our colleague Senator Alan Ferguson in the matters of public interest debate today. Anyone who listened to or read those remarks could not have been unmoved and could not have helped feeling very compelled by those remarks and by the style and sincerity with which Senator Ferguson carried out his duties, particularly when compared to reports of Mr Rudd.

Like others in this parliament, I have concerned constituents—supporters of and former residents and citizens of Zimbabwe—who were very pleased to see Australian observers there and participating in this process. There was an overall reduction in the number of booths since the parliamentary elections in 2000. Importantly, in the cities of Harare and Bulawayo, booth numbers were reduced. People in the cities had to contend with voting for three different tiers of government, and it was the urban area that had recorded a strong level of support for the opposition. Resources in rural areas, where support for the Zanu PF was stronger, were not stretched in the same way. Indeed, booth numbers were increased in those areas. The extension of time for voting in urban areas was simply ignored by the government.

I understand that the news was dominated by the Zimbabwean Broadcasting Corporation, which it is felt demonstrated significant bias towards the president’s party. Government owned ‘Zimpapers’ dominated the print media. The Commonwealth Observer Group for the election has highlighted the fact that the Mugabe government fostered the so-called ministry of youth training program—an obvious militia movement which I think Senator Ferguson described as ‘training people in torture’. As an observer to several UN ballots in East Timor in the past, this is a process I understand well and equally abhor.

The decision that has been taken is to suspend Zimbabwe from the Commonwealth for a year and to engage Zimbabwe to promote reconciliation and to address food shortages, the need for economic recovery, restoration of the rule of law, future elections and electoral reform. This is an approach which I believe to be fair and balanced but which will require, in my view, energetic monitoring. Many commentators expected there would not be a suspension. And, of course, there will be those who would have preferred that a harsher punishment of the Mugabe regime be implemented. But the desperate economic need and food shortages that exist mean that such action would likely hurt those who are, in this case, most disadvantaged. I note today that Switzerland has committed itself to sanctions which may include the freezing of some Swiss bank accounts and other assets.

The agreement reached between Prime Minister Howard and his Nigerian and South African counterparts highlights that, contrary to some reports, the Commonwealth is not split along racial lines. Many of the media reports promoted this idea post CHOGM in Coolum. The reports of the Commonwealth Observer Group and those of our own participants in that group from this parliament show that there was significant displeasure amongst black African observers over the way that basic democratic freedoms were denied. I note the question raised by Senator Bourne in this chamber in question time this afternoon and also note her concerns that some may see the action as an appeasement. I trust the commitment to a review of the decisions taken by the Commonwealth chairpersons committee on Zimbabwe, at the request of the Commonwealth chairperson in office, will allay those concerns somewhat.

In a situation like this, short of invading a country, the options for bringing about change are limited unless you resort to sanctions. With a country as poor as Zimbabwe, I am not sure whether sanctions do more damage than good. I think at this stage, in a very complex situation, this mix of international
pressure and internal advocacy is an appropriate course to take. Zimbabwe is suffering widespread starvation, its inflation rate is 160 per cent and its unemployment rate is 60 per cent. Applying harsh sanctions is perhaps not the best first step. We have a growing commercial relationship with Zimbabwe, but it is modest. They are ranked 116th of the countries in the world which import Australian goods. So economic sanctions from Australia would probably have little effect. I do note the importance of the Australian decision to contribute $2 million in food aid through the World Food Program, which can only assist in helping the poorest in this area.

One option available to the international community down the track might be sporting sanctions. The cricket tour ban on South Africa and the ban on the rugby tour of Fiji had an effect. There are some who would contend that the banning of Zimbabwe from participating in the Commonwealth Games later this year might also have an effect. I understand the Australian Cricket Board is persisting with its tour despite today’s travel warning from the government.

I think it is important that the Commonwealth is not seen just as a promoter of democratic ideals and a facilitator of free and fair elections—though those are two very important aspects of the Commonwealth’s operation. As a nation we are an active member and supporter of the modern Commonwealth of Nations and value its role in advancing the interests of developing countries and small states in world affairs, including implementing appropriate development assistance programs. The Commonwealth has earned a unique profile as an association which is dedicated to the promotion of a set of fundamental political principles of enormous importance here—those of democracy, good governance and the rule of law—and it has made its mark in the pursuit of democratic principles.

The Commonwealth’s networks and its interests range very widely and it contributes to immensely diverse issues, like youth affairs, gender equity, human rights, health and education. It has some well-known programs. The Commonwealth Fund for Technical Cooperation, not surprisingly, provides technical assistance. The Commonwealth’s Trade and Investment Access Facility has helped with practical advice on economic issues and assists small nation states to cope with multilateral trade processes and surviving in the new economy. The organisation was a key factor in breaking down South Africa’s system of apartheid. In New York the Commonwealth Small States Office assists developing member countries with their representation at the United Nations.

Given the importance of these programs to the prosperity of developing nations, the decision taken today by the Commonwealth chairpersons committee on Zimbabwe is a decision which not only is good for Zimbabwean citizens but also will, I hope, reinforce the value of the Commonwealth of Nations for some of the more recent doubters of its efficacy and relevance. As the member for Curtin, Julie Bishop—a member of the Commonwealth Observer Group—has stated: ‘The Commonwealth response is the key to steering Zimbabwe back on track.’

I am sure that all members of the Senate will recognise that there are those who have suffered much in their fight to participate in the democratic process and will also recognise how fortunate we are to participate in a free and fair democratic process in contrast. We hope that the future of Zimbabwe is much brighter than its recent past.

Telstra: Services

Senator LUNGY (Australian Capital Territory) (11.28 p.m.)—Mr Acting Deputy President Lightfoot, have you ever wondered why your Internet connection is so slow? If so, you are not the only one, because thousands of Australians share the same frustration. More often than not, the blame for slow Internet connections is levelled at ISPs, modems or computer configurations. However, recent evidence I extracted from Telstra at Senate estimates hearings has shed new light on the mysteries of the world wide wait. It is Telstra’s fault. Telstra admitted to the extensive use of pair gain technology, which effectively splits a line into two or more lines. This has the effect of reducing Internet connection speeds, sometimes significantly.
The use of pair gains, according to Telstra, has the most common effect of reducing Internet connection speeds to around 26 kilobits. ‘So what?’ you ask. For Internet users who have bought a 56-kilobit modem, this is half the speed that they were looking forward to. Far from advising customers of the physical constraints of this pair gain infrastructure, Telstra’s response to consumer complaints about slow Internet connection speeds appears to be to aggressively reject responsibility and insinuate that ISPs or indeed the consumers themselves are responsible.

I would like to quote from one of the responses I have had to the web site survey that I have done on this issue. From Baulkham Hills, the author of this response wrote:

I previously had ADSL and could get speeds up to 56K (via modem) at my previous residence in Baulkham Hills. I then moved two streets round the corner (500 metres away) and lodged a Moving Home Telstra application form to relocate my existing phone service along with my Telstra ADSL service. My phone service was relocated to my new residence (along with the same phone number as before) but I was then told after I relocated that I couldn’t get ADSL on the new line and that I could only manage speeds of 26K via a modem. I was, and still am, furious. I work in the IT industry and Internet access is critical to my own small business and to have a service taken away from me after I relocated 500 metres around the corner from where I previously lived (staying within the same Telstra exchange). I thought Telstra’s policy was never to downgrade your service if you relocate. Well I have been downgraded to a level that is totally unacceptable. I was getting faster download speeds 5 years ago using a 14.4K modem when the Internet was just starting out in Australia. What can I do?

This is just one example of the close to 1,000 individual stories I have received from around Australia on this issue. It is no wonder that morale in Telstra is low amongst their employees. Telstra management prevent their employees—the techies and the help desk staff—from disclosing the existence of a pair gain, at least in the first instance. In estimates Telstra admitted that it is not policy to fess up and tell customers if they are in fact on a pair gain and that that could be the reason for their slow Internet connection speeds. To appreciate the extent of this farce and the incredible frustration felt by so many people it is worth exploring Telstra’s motivation for using pair gain technology in the first place.

Public comments from Telstra to date shed some light, with Telstra spokespeople unequivocally citing cost cutting as the motivation. This would indicate that, as Telstra died up their books in preparation for privatisation in the mid-nineties, the company deliberately exploited ways in which they could maximise profits and minimise expenditure. Pair gain technology was perfect. There were minimal infrastructure costs but rent could be charged on a whole new line, and voila: maximum revenue generation. This has recently been reinforced once again as it has come to light that Telstra have again reduced their capital expenditure, saying that they will not make any investments unless they get a return on that investment within two quarters, or six months.

But there is another serious price being paid for Telstra’s cost cutting. This pair gain arrangement prevents access to ADSL, a technology that allows a broadband type of service to be delivered across the existing copper network. This exposes, I think, as completely farcical the claims of the CEO, Ziggy Switkowski, that Telstra is committed to providing broadband. The use of various forms of pair gain technology by Telstra in pursuit of cost savings on infrastructure, building and maintenance has led to a barrier preventing many customers from being able to access ADSL. Not only are customers that are further away than 3.5 kilometres from an ADSL enabled exchange unable to access this service, but anyone on a pair gain cannot do so either. If Telstra cannot physically deliver this service then no-one else can. So, regardless of what line-sharing agreements or ACCC declarations are made, no-one else can get an ADSL service to those people; it is physically impossible.

There is, effectively, a category of Telstra customers that cannot get ADSL from Telstra or from anyone else. See if you fit this definition: firstly, if you are on an exchange that has not been upgraded to enable ADSL; secondly, if you are outside about a 3.5 kilometre radius of an exchange that has had that upgrade; thirdly, if you have a pair gain or...
are on another type of technology called a RIM network; and, fourthly, if you do not qualify for the extended zone subsidies for a satellite connection. If you fit any one of those categories then you are not able to access this service that Telstra is spending a lot of money advertising at the moment. There are people in metropolitan, regional and rural Australia affected by these descriptions. Just how many people there are, I do not know. I have asked these questions of Telstra in relation to pair gains. They are due to respond very soon and I look forward to their response. In the meantime, my pair gains victims web site has had an extraordinary response and I am pleased to inform the Senate that the Telecommunications Industry Ombudsman is taking a close look at this issue, as well as the ACCC.

Telstra’s pitiful defence in all of this is that they provide a service specification, not a bandwidth specification. This means that, provided they do not promise a connection speed, they think it does not matter if they provide you with a connection that is physically incapable of providing more than, say, 14.4 kilobits, 24 kilobits or 28.8 kilobits. Given that a voice connection only needs a maximum of 8 kilobits, as I understand it, it seems that the degradation of bandwidth because of pair gains is only noticed when the line is used for a dial-up Internet connection and you can actually see the connection speed on your computer in the bottom right-hand corner.

Maybe the market would not mind so much if Telstra did not make you pay through the nose for alternative solutions like ISDN, cable modem or satellite, which is what they pitch to disgruntled customers who complain about the lack of bandwidth or, in fact, have the good fortune to discover that the cause of it is indeed a pair gain. Again, I would like to read very briefly from a response that I received through my web site. This is correspondence that a consumer has received from Telstra. Telstra offered this person three other options when it was discovered that the consumer was unable to get ADSL, which were:

1. You may try providing a different telephone number to see if it is capable of having an ADSL connection,
2. you might try checking the availability for Big Pond cable, or
3. you may apply for Big Pond satellite connection, which is an alternative broadband solution.

So, as you can see, Telstra is actually using that disgruntledness to pitch other more expensive services to customers that they have failed to deliver ADSL to because of pair gain technology. Clearly, as more and more Australians go online, this legacy of cost cutting by Telstra will be more and more exposed. Telstra have created a rod for their own back. Interestingly, they turn yet again to the coalition to get bailed out, and the recently announced $50 million Internet Assistance Program is going to help Telstra reach a paltry minimum of 19.2 kilobits connection speed. Taxpayers will be tipping another bucket load of money down the toilet to help Telstra keep providing inferior services.

Part of this program is a ‘self-help’ site. This little number offers any number of reasons why you may not be able to achieve optimal speeds on your modem. But, you guessed it, the words ‘pair gain’ cannot be found. So it seems the coalition is happy to support Telstra hiding the awful truth from its customers. This is not the first time Telstra has benefited from a grant from the coalition. There have been many, either directly or indirectly, under Networking the Nation and such programs.

Now we have a picture as to Telstra’s efforts with broadband on the ground at the grassroots of telecommunications customers, it is worth comparing that experience with the rhetoric emanating from Ziggy Switkowski himself, most recently at the World Congress on IT in Adelaide. There were several aspects of his speech that were noteworthy, but most disgraceful of all was that he used the example of the jointly funded Launceston broadband project as a reason why Telstra did not believe there was a demand for broadband in Australia. This project was not promoted and, according to Michelle O’Byrne, the local member, any community
members who found out about it would have loved to have used it. *(Time expired)*

Ah Toy, Lily
Brown, George

Senator CROSSIN *(Northern Territory)*
(11.38 p.m.)—Tonight I would like to pay tribute to two Territorians who in the last five months have passed away and have left a fantastic legacy in the Territory. I believe that it is my duty to record in this parliament for the annals of history the contribution that they have both made. I refer to Lily Ah Toy, a famous woman of Chinese descent, and George Brown, who was the Lord Mayor of the City of Darwin.

Firstly, let me turn to Lily Ah Toy. Following her death, our resident historian in Darwin, Peter Forrest, said in the *Northern Territory News* about this fantastic woman:

Lily Ah Toy was a serene and gracious lady. Serene because she had learned how to live through the most difficult circumstances; gracious because she didn’t forget how to be considerate and kind when fortune smiled more kindly on her.

Lily Ah Toy passed away on 15 November last year. With Lily’s death the Territory has lost a link with its past. Her story is truly a Territorian story, and in telling her story I want to speak about the important contribution that the Chinese community has made to the development of Darwin and the Top End.

I have no doubt that in the celebrations of the Chinese New Year that occurred some weeks ago there would have been many people of Chinese descent who had a saddened heart and who would have thought about Lily Ah Toy having been with them last year but not this.

Lily’s father, Wong Yueng, came to the Northern Territory from Hong Kong in the 1880s. In Darwin he married Linoy Moo, who was born in Darwin in 1891. So their history and their contribution to the Territory span more than 100 years. Their daughter Wong Woo Len was born in Darwin on 24 October 1917. As a child she began to be called Wu Len, or Lily in English, and was known as Lily Wong until her marriage. Lily’s father was a timber getter and a fencer in the Territory until his death in 1926. Their household was a strictly Chinese one in those days, with Chinese clothes and herbal remedies. Buddhism and Taoism were the prevailing faiths.

In 1931 Lily Ah Toy left school to work in domestic service for 10 shillings a week. Her first job was at the Myilly Point residence of Lyle Tivendale, who was a health inspector in those times and a senior public servant. She worked there for three years. She would probably say that this was one of the better places she worked in because this was the place where she met the man who was to become her husband, Jimmy Ah Toy. Jimmy used to come around to the house hawking vegetables. This is where they met and finally married in 1936.

They began their married life in Pine Creek, which is about 120 kilometres south of Darwin, working in Jimmy’s family store and bakery. For the record, the Pine Creek general store is still there a century later. In fact, if you go to Pine Creek you must go to the Ah Toy store and meet the family. As she mentioned when she spoke to Peter Forrest last year, luckily she did not know about honeymoons because once she arrived in Pine Creek she started work straightaway in the bakery while Jimmy worked in the shop. She said:

I would work in the bakehouse, cook and get the water from the well and water the garden. Pine Creek was an interesting place.

There were still a lot of prospectors about, and there were still people living in Chinatown. They were there until the bombing of Katherine, then everyone was evacuated.

Jimmy and Lily’s eldest son, Edward, was born in 1937, then Laurence, Joyce and Grace, with sister Elaine born later in Adelaide. Lily and Jimmy had the only wireless in Pine Creek, which was operated from a battery they took out of the truck. She told how the people would gather at their place to listen to what Japan was doing when it invaded China. The family will tell you that they had no idea that the Japanese would ever get as far as Australia and it was a terrible shock when they got the air raid warnings.

Eventually they were evacuated from Pine Creek and taken to Adelaide, where Jimmy worked in the munitions works and then in a
canvas factory. In 1945 they returned to Pine Creek, but the Ah Toys found that their shop had been looted and stripped of everything moveable. Despite the severe circumstances in which they returned, they started again—pretty typical of Territorians, who have endured so much, such as Cyclone Tracey and the Katherine floods some years ago.

Hundreds of people who lived on farms and stations, buffalo shooters and people in camps and mining centres everywhere between the East Alligator and Daly Rivers were glad the Ah Toys did stay, and they would be glad about that to this day. Their store and credit made it possible for life to begin again in that region. In 1947 the Ah Toys opened a business in Darwin, and Jimmy spent most of his time there while Lily managed the Pine Creek store. Jimmy died in 1991.

To summarise her life I should say that there were many hundreds of people at Lily’s memorial service who paid tribute not only to the work that she had done in the Territory but also to her family. Peter Forrest said:

Everyone who has known Lily felt a similar personal loss. The Territory has lost a link with its past and a woman who has built bridges to its future.

Secondly, I want to pay tribute to George Brown. George Brown unfortunately passed away in Darwin on 8 January this year. A ballot was conducted last weekend for the next Lord Mayor of Darwin. Sadly, that election was made necessary because of the passing of one of the best known people, and a most loved rogue, to have ever held office in Darwin City Council. He had been the Lord Mayor for the last 10 years and passed away after suffering a stroke in his mayoral office.

George has been described as a larrikin, a colourful character and a man of the people. While certain aspects of his character had reached a level of notoriety, it would be a pity if those anecdotes overshadowed the underlying nature of a man who had a distinct vision for Darwin and who pursued it fearlessly. We will never forget the time he got up on national television and displayed his Playboy boxer shorts to prove to everyone that, yes, in Darwin, mango madness truly does grip you just prior to the wet season, or the time he tried to prove to Territorians and to the police that after one and a half bottles of red wine he was still able to drive a car quite safely. But that was George, and George always gave people a laugh. He was one of those characters that the Territory is so well remembered for.

His story, in at least one respect, is the story of many Territorians. He came for a quick visit and fell in love with the tropical lifestyle. He arrived in the Territory in 1967 for a golfing weekend and, as I understand it, sent a letter back to his boss saying ‘not coming back.’ He never left the place. Within a couple of years of settling in Darwin, George was employed in the parks and gardens division of the Darwin City Council. He is probably one of the very few people in the Territory, if not in this country, who actually started working for the city council of which he later became the mayor. He took charge of the Darwin Botanic Gardens, and the decision to name the gardens in his honour, which was done by the Martin government some weeks ago, bears testimony to his central role in making the gardens what they are today.

On 16 January, the Northern Territory government renamed the Darwin Botanic Gardens in honour of the late Lord Mayor George Brown. They will now be known as the George Brown Botanic Gardens. During his time at the botanical gardens, George began giving advice on a weekly gardening show on the radio. He was always keen to share his encyclopaedic knowledge of tropical gardens. His generous spirit and his passion for gardens meant that after becoming Lord Mayor he continued to do his show. He was hard working and took every opportunity to promote the city. I pay tribute to Noreen his wife and their children. George had a vision for Darwin which was green and multicultural, and I am sure that when the new mayor takes up his or her office in the coming weeks that vision will live on. The Territory has lost a great personality, a terrific rogue but someone who certainly had Darwin and the Territory in his heart.

Senate adjourned at 11.48 p.m.
**DOCUMENTS**

**Tabling**

The following government documents were tabled:

- **Advance to the Finance Minister**—Statement and supporting applications for issues—February 2002.
- **Australian Communications Authority**—National relay service provider performance—Report for 2000-01.
- **Australian Fisheries Management Authority Selection Committee**—Report for 2000-01.
- **Department of Agriculture, Fisheries and Forestry**—Report—Innovating rural Australia: Research and development corporation outcomes, 2001.
- **Maritime Industry Finance Company Limited**—Report for the period 1 July to 31 December 2001, under clause 9 of the deed of grant between the Maritime Industry Finance Company and the Commonwealth of Australia.
- **Productivity Commission**—Report—No. 15—Cost recovery by government agencies, 16 August 2001—Addendum.
- **Takeovers Panel**—Report for 2000-01.

**Tabling**

The following documents were tabled by the Clerk:

- **Airports Act**—Regulations—Statutory Rules 2002 No. 49.
- **Defence Act**—Determination under section 58B—Defence Determination 2002/3.

**Indexed Lists of Files**

The following document was tabled pursuant to the order of the Senate of 30 May 1996 as amended 3 December 1998:

- Indexed lists of departmental and agency files for the period 1 January to 30 June 2001—Statements of compliance—
  - Australian Electoral Commission.
  - Commonwealth Grants Commission.
  - ComSuper.
  - Department of Finance and Administration.

**Departmental and Agency Contracts**

The following documents were tabled pursuant to the order of the Senate of 20 June 2001, as amended on 27 September 2001:

- Departmental and agency contracts—Letters of advice—
  - Department of Industry, Tourism and Resources.
  - Geoscience Australia.
  - Industrial Property Australia.
QUESTIONS ON NOTICE

The following answers to questions were circulated:

Minister for Agriculture, Fisheries and Forestry: Visit to the United States of America
(Question No. 12)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 22 January 2002:

With reference to the Minister’s visit to the United States of America (US) in early December 2001:

(1) (a) Who travelled with the Minister; (b) what was the cost of the trip; and (c) who met that cost.

(2) (a) Who initiated the visit; (b) when was the final decision made to visit the US; and (c) when was the itinerary for the visit finalised.

(3) Who did the Minister meet during his visit to the US and what were the times and dates on which each meeting took place.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) (a) Mr Michael Taylor, Secretary, AFFA
    Mr Peter Corish, Director, Cotton Australia
    Mr Keith Perrett, President, Grains Council of Australia
    Mr Peter Lavery, Chairman, Trade Committee, Australian Dairy Industry Council
    Mr Lyall Howard, Deputy Director, National Farmers Federation
    Mr David Whitrow, Senior Adviser, Office of the Hon Warren Truss MP
    Dr Simon Hearn, Executive Manager, Market Access & Biosecurity, AFFA
    Mr Allan McKinnon, Special Negotiator for Agriculture, Office of Trade Negotiations, Department of Foreign Affairs and Trade

    (b) The costs for the Minister and his Senior Adviser would normally be available through the Minister for Finance.

    (c) The Minister’s costs were met by the Department of Finance and Administration. The costs of the Government officials were met by respective Departments (AFFA and DFAT). Participating industry representatives met all of their own costs.

(2) (a) The visit was initiated as a result of Government / industry consultations in the Agricultural Trade Consultative Group’s Steering Committee and in consultation with the Australian Embassy in Washington and with the Minister and his office.

    (b) The final decision to proceed with the visit to the US was made on 5 December 2001.

    (c) The itinerary for the visit was developed over a period of time with some appointments not confirmed until the delegation’s arrival in Washington.

(3) The program of meetings during the visit was as follows:

In Washington

Australian Industry Representatives at 11:00am on Monday, 10 December 2001:
Meat and Livestock Australia, AWB Ltd, Australian Dairy Corporation


Hon Ann M Veneman, United States Secretary for Agriculture—4:30pm Monday, 10 December 2001.

Mr Charles Connor, Special Assistant to the President for Agricultural Trade and Food Assistance—9:30am Tuesday 11 December 2001.

Hon Ron Kind (D—WI) Member, House of Representatives Committee on Agriculture—2:00pm Tuesday, 11 December 2001.
Hon Charles Grassley (R—IA) Ranking Member, Senate Finance Committee—3pm Tuesday, 11 December 2001.

Hon Charles Stenholm (D—TX) Ranking Member, House of Representatives Committee on Agriculture—11:30am Wednesday, 12 December 2001.

In addition, the Minister was the special guest at a reception hosted by the Australia America Association—Washington DC, at the Australian Embassy—6:00pm Tuesday, 11 December 2001.

In Chicago
Mr Bob Stallman, President, American Farm Bureau Federation (AFBF)—9:30am Thursday, 13 December 2001.

United States Farm Bill
(Question No. 14)

Senator O’Brien asked the Minister representing the Minister for Agriculture, Fisheries and Forestry, upon notice, on 23 January 2002:

(1) In 2000 and 2001 on how many occasions did the Minister or his office seek a briefing, or receive a briefing, on proposed assistance to farmers in the United States of America (US) through the US Farm Bill.

(2) In 2000 and 2001 on how many occasions was the Minister or his office provided with a briefing, at the initiative of the department, on the proposed assistance to farmers in the US through the US Farm Bill.

(3) In each case: (a) what was the nature of the briefing; (b) was the briefing in written form; and (c) on what date was the briefing provided to the Minister or his office.

Senator Ian Macdonald—The Minister for Agriculture, Fisheries and Forestry has provided the following answer to the honourable senator’s question:

(1) Developments in US agricultural policy have consistently been a high priority for the Minister and the AFFA portfolio including during the previous Administration which significantly increased support to the US farm sector in its last years. The Minister has received briefings as required on US developments including in the lead up to commencement of the new Farm Bill process.

The strategy to be employed by the Government concerning the new US Farm Bill through a partnership with industry was initially recommended to the Minister by the Department in a Minute dated 6 March 2001. Since that time the Minister or his office has continued to receive briefings on a regular basis. These briefings included formal Minutes, oral updates at regular portfolio business planning meetings and circulation by the Department of Farm Bill Newsletters. Fifteen such briefings have been identified during 2001. This does not include all of the more informal communications by email or telephone between the Department and the Minister’s office.

(2) See answer to (1).

(3) (a) Briefings conveyed updates or factual information about the development of the new Farm Bill in the US Congress and the implications, and where relevant, advised of or recommended response action.

(b) The majority of briefings were in written form.

(c) Briefings have been provided regularly since 6 March 2001.

Department of Health and Ageing: Freedom of Information Request
(Question No. 90)

Senator Robert Ray asked the Minister for Health and Ageing, upon notice, on 14 February 2002:

(1) How many Freedom of Information (FOI) requests were received by the department in the 1999-2000 financial year.

(2) (a) How many of those requests have been finalised; (b) how many are pending; and (c) how many were refused and, in each instance, on what grounds.

(3) On how many occasions have costs been waived for the processing of FOI requests.

Senator Patterson—The answer to the honourable senator’s question is as follows:
(1) 74 FOI requests were received by the Department in 1999-2000 financial year.

(2) As of 30 August 2000, 69 requests had been completed and five were pending. Of the requests completed, 13 requests for access to documents were refused in full and 27 were refused in part. Of the 13 requests for access that were refused, nine requests were refused with reference to multiple exemption provisions of the FOI Act. The most common exemption provisions applied overall were section 43 (business affairs), section 41 (personal information), section 24A (documents do not exist) and section 40 (documents concerning certain operations of an agency). Other exemptions used included section 37 (documents affecting enforcement of law and protection of public safety), section 36 (internal working documents), section 38 (documents to which secrecy provisions of enactments apply), section 12 (documents available through other means), section 33A (Commonwealth/State relations), section 33 (documents affecting national security, defence or international relations), section 25 (information as to existence of certain documents) and section 24 (requests may be refused in certain cases).

Of the 27 requests for access that were refused in part, 21 requests were refused in part with reference to multiple exemption provisions of the FOI Act. The most common exemption provisions applied overall were section 43, section 41 and section 22 (deletion of irrelevant or exempt material). Other exemptions used included section 36, section 45 (documents containing material obtained in confidence), section 40, section 12, section 38, section 42 (documents subject to legal professional privilege) and section 33A.

(3) In 17 cases the $30.00 application fee and associated costs were formally waived.