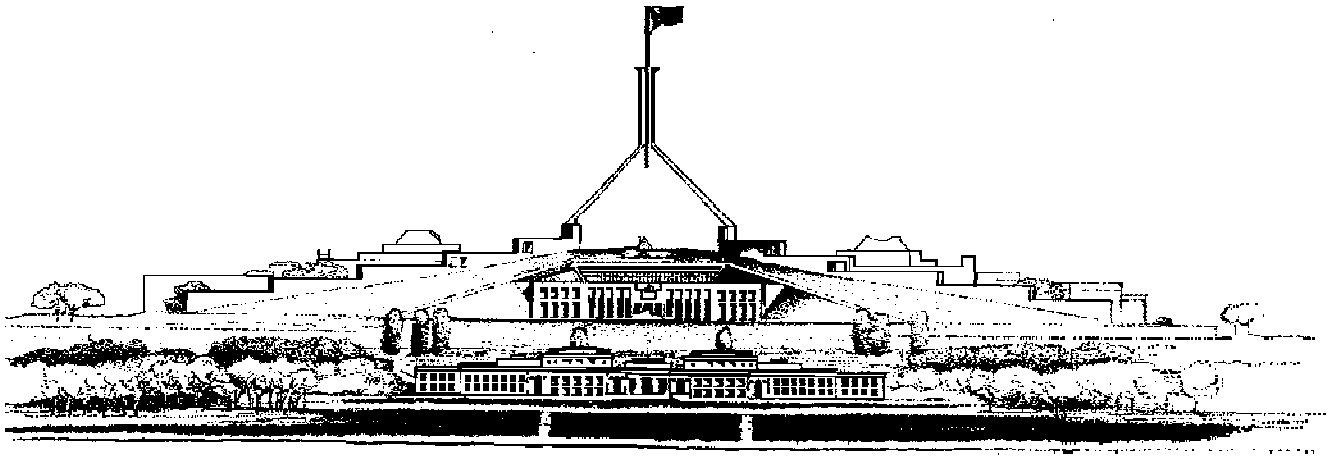
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

WEDNESDAY, 1 APRIL 1998

THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—SIXTH PERIOD

BY AUTHORITY OF THE SENATE
CANBERRA

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Wednesday, 1 April 1998

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

DAYS AND HOURS OF MEETING

Senator IAN CAMPBELL—I seek leave to move a motion in relation to sitting hours so that the Senate can sit until midnight tonight.

The PRESIDENT—Is leave granted?

Senator Faulkner—I am not aware of the motion. Before Senator Campbell seeks leave, could I take a point of order?

The PRESIDENT—Yes, you may take a point of order, Senator Faulkner.

Senator Faulkner—On a point of order, I was not aware of the motion, but if this is a matter that has been dealt with by the Manager and the Whips and they are aware of it, I am obviously relaxed about it.

The PRESIDENT—I wondered if it had anything to do with the date.

Senator Faulkner—Is it an April Fools' Day joke?

The PRESIDENT—It is 1 April, and I have not heard of this proposition, but I am interested to hear your views on it.

Senator Faulkner—If it is an April Fools' Day joke, let's get on with it. It is really good news.

Senator IAN CAMPBELL—Please refuse leave. I refuse leave for myself.

CRIMES AMENDMENT (ENFORCEMENT OF FINES) BILL 1998

First Reading

Motion (by **Senator Ian Campbell**) agreed to:

That the following bill be introduced: a bill for an act to amend the Crimes Act 1914, and for related purposes.

Motion (by **Senator Ian Campbell**) agreed to:

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

Bill read a first time.

Second Reading

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.33 a.m.)—I table the explanatory memorandum 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 sections 3B and 15A of the Crimes Act 1914.

State and Territory fine enforcement laws are applied to federal offenders by section 15A of the Crimes Act 1914. In recent years, a number of States have enacted new fine enforcement procedures that may not be covered by section 15A. It has therefore become necessary to update the wording of section 15A.

The New South Wales Fines Act 1996 provides a good example of the diversity of fine enforcement mechanisms that are increasingly becoming available under State and Territory law. The New South Wales act provides for a series of steps where a person defaults in payment of fine. After warnings have been given, a person's driver's licence is to be suspended and then cancelled. A person's vehicle registration may also be cancelled. If these measures are unavailable or ineffective, civil enforcement action may be instituted, such as the seizure of property or the garnishment of wages. If the fine remains unpaid, community service may ordered. Imprisonment as the option of last resort for non-compliance with a community service order.

The wording of the existing section 15A of the Commonwealth Crimes Act does not make it clear that State and Territory laws providing for licence or registration cancellation, or civil enforcement action, apply to federal offenders. Without the amendments proposed by this bill, States and Territories could be uncertain as to the fine enforcement procedures available in respect of federal offenders.

The amendments to section 15A ensure that States and Territories can continue to apply the procedures they would apply in the enforcement of fines against State or Territory offenders, to federal offenders.

However, the requirements of the Commonwealth Constitution necessitate special rules for federal offenders in one respect. Some State and Territory laws allow serious penalties, such as community service orders and imprisonment, to be imposed for

fine default on the order of a justice of the peace or an administrative agency.

Under the separation of powers requirements of the Commonwealth Constitution, such orders may only be made in respect of a federal offender by a court exercising federal judicial power. Under the amended section 15A, there will be a special procedure for the making of such orders against a federal offender by a magistrate. Those orders will then feed back into the normal State or Territory enforcement system.

The amendments to section 3B of the Crimes Act proposed in this bill will ensure that administrative arrangements, made between the Commonwealth and each State and Territory under the Crimes Act, are capable of extending to new enforcement procedures. Existing arrangements will continue in force.

In summary, this bill is designed to ensure that the full range of State and Territory fine enforcement procedures are available in respect of federal offenders. This will maximise the likelihood that a fine is actually paid, rather than being 'cut out' by the imprisonment of a fine defaulter, at the taxpayer's expense.

The financial impact of the amendments is not quantifiable. The amendments will not require additional funding, but will facilitate the use of more efficient fine enforcement procedures.

I commend the bill to the Senate.

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

PUBLIC SERVICE BILL 1997 [No. 2]

PUBLIC EMPLOYMENT (CONSEQUENTIAL AND TRANSITIONAL) AMENDMENT BILL 1997 [No. 2]

PARLIAMENTARY SERVICE BILL 1997 [No. 2]

In Committee

Consideration resumed from 30 March.

PUBLIC SERVICE BILL 1997 [No. 2]

The bill.

Senator ALLISON (Victoria) (9.35 a.m.)—by leave—I move:

(1) Clause 8, page 6 (line 11), omit "This", substitute "Subject to subsection 20(1A), this".

(2) Clause 20, page 12 (after line 7), after subclause (1), insert:

(1A) An Agency Head must not enter into an Australian Workplace Agreement, within the meaning of the *Workplace Relations Act 1996*, with an APS employee.

(1B) The regulations may prescribe exemptions from the requirement set out in subsection (1A), in relation to particular categories of APS employees.

Note: For example, a particular category of APS employees could include "SES employees of the X Agency".

My amendments, as I indicated during second reading speeches, do allow disallowable regulations to determine that certain categories of employees are appropriate to become the subject of Australian workplace agreements, but they ensure that those determinations are reviewable by the parliament.

We think that there is little doubt that AWAs can lead to patronage and cronyism and, of course, it is usually women who lose out under such arrangements, as Senator Margetts pointed out. There is a large gap between executive levels and those further down the hierarchy. This has increased in industry and it is a trend we do not want to see emerge in the public service as well.

I put these amendments again for all of the reasons that I have previously mentioned and recommend them to the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.36 a.m.)—I indicate to the committee that the opposition will again be supporting the Democrats' amendments. We note, of course, that amendment No. 1 is simply a consequential amendment reflecting the proposed new clause 20(1A). We believe the Democrats' amendment is in fact entirely consistent with the government's original intention with regard to AWAs in the public service. We do find it hard to understand why the government is making such a fuss about this issue.

We do note that Mr Reith, the minister who previously had responsibility for Public Service matters in his discussion paper, *Towards a best practice Australian Public Service*, said:

. . . AWAs are likely to be a particularly favourable option for discrete categories of employment . . . for example . . . Senior Executives.

It went on to say that certified agreements:

are likely to continue to be the most prevalent form of agreement for APS agencies.

The Democrats' amendment, as I see it, will simply ensure that that is the case.

I should point out to the government that the amendment provides for regulations which may prescribe exemptions for particular categories of APS employees and cites SES employees of individual agencies as an example, which is precisely what Mr Reith had in mind. It is for those reasons that the opposition will again be supporting amendments 1 and 2 on sheet 898 that have been moved by Senator Allison on behalf of the Democrats.

Amendments agreed to.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.38 a.m.)—I seek leave to have the votes of the coalition senators recorded for the noes.

Leave granted.

Bill, as amended, agreed to.

PUBLIC EMPLOYMENT (CONSEQUENTIAL AND TRANSITIONAL) AMENDMENT BILL 1997 [No. 2]

The bill.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.40 a.m.)—by leave—I move:

(1) Clause 5, page 8 (after line 2), after subclause (2), insert:

Merit Protection Commissioner

(2A) At the commencing time, the person holding office as the Merit Protection Commissioner under the *Merit Protection (Australian Government Employees) Act 1984* becomes the Merit Protection Commissioner under the new Act, as if he or she had been appointed as the Merit Protection Commissioner under the new Act for a period equal to the unexpired part of his or her term under the old Act.

(2) Clauses 6 and 7, page 9 (line 21) to page 10 (line 23), omit the clauses, substitute:

6 Rights of first- and second-tier persons

First- and second-tier persons retain all the rights conferred on them by the old Act, except for rights to reassessment for reintegration or reappointment.

(3) Clause 9, page 11 (lines 6 to 12), omit subclauses (2) and (3), substitute:

(2) A continued determination may be amended or revoked by the Agency Head in the same way as if it had actually been made under section 24 of the new Act, provided that no provision of the determination is diminished or revoked unless that provision is incorporated in an award or certified agreement.

(3) Unless it is sooner revoked, a continued determination (including any amendments made by an Agency Head under section 24 of the new Act) ceases to be in force on the third anniversary of the commencing time.

The amendments that I am moving to this bill are again those which the Senate supported in November last year. Amendment No. 1 simply reflects the government's belated decision to maintain the office of Merit Protection Commissioner. It provides the same protection to the current incumbent of that office as the legislation provides to all other offices which are being maintained under this legislation, including, for example, the office of Public Service Commissioner.

The second amendment before the committee preserves mobility rights for those who currently have them. As I argued, I hope persuasively in the earlier debate, we regard it as an infringement of principles of natural justice to remove these rights. Many of those who have them, including those who work in Parliament House under the MOPS Act, will have made decisions about their current employment on the basis they would continue to have those rights.

Amendment 3 is designed to prevent agency heads from amending or revoking a determination in a way which diminishes any provisions in an award or certified agreement. It also provides for a sunset period of three years, which will allow sufficient time to renegotiate conditions in continuing determinations. I again commend those three amendments to the committee.

Amendments agreed to.

All government senators, by leave, recorded their votes for the noes.

Bill, as amended, agreed to.

PARLIAMENTARY SERVICE BILL 1997 [NO. 2]

The bill.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (9.43 a.m.)—I wish to make a short statement which will possibly speed things up even more. The coalition remains opposed to these amendments. I think that was made clear in the second reading debate. We shall not be calling further divisions on these matters in the committee stage. There is no doubt that these issues were well canvassed in the debate in the Senate some four months ago, and I will not seek to re-visit all those amendments, even though I respect the fact that members of the opposition and minor parties may seek to restate their positions. So rather than calling for a division on each occasion and having our votes recorded, I just want it recorded that the coalition will be opposing all of these amendments.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.43 a.m.)—by leave—I move:

(1) Clause 3, page 2 (after line 11), after paragraph (b), insert:

(ba) to define the powers and responsibilities of Secretaries and the Parliamentary Service Commissioner; and

(2) Clause 7, page 5 (after line 3), after the definition of ***insolvent under administration***, insert:

merit, in relation to the engagement and promotion of employees, means assessment of the relative suitability of candidates for employment or promotion using a competitive selection process, where the assessment is:

(a) based on the relationship between a candidate's work-related qualities and the work-related qualities identified by the Department as required for the job; and

(b) the sole consideration in a decision to engage or promote an employee.

(3) Clause 10, page 7 (lines 29 and 30), omit "a fair, flexible, safe and rewarding workplace", substitute:

its employees with:

(i) a fair, flexible, safe, healthy and rewarding workplace free from harassment; and

(ii) remuneration rates and conditions of employment commensurate with their responsibilities; and

(iii) fair and consistent treatment, free of arbitrary or capricious administrative acts or decisions; and

(iv) the right to be represented by unions; and

(v) opportunities for appropriate training and development; and

(vi) opportunities for appropriate participation in the decision-making processes of the Department in which they are employed.

(4) Clause 10, page 8 (line 4), at the end of subclause (1), add:

; (l) the Parliamentary Service promotes equity in employment;

(m) the Parliamentary Service provides a fair system of review of decisions taken in respect of Parliamentary Service employees

(5) Clause 10, page 8 (lines 5 to 16), omit subclause (2).

(6) Clause 11, page 8 (line 19), omit "may", substitute "must".

Note: The heading to clause 11 is replaced with the heading "Commissioner must give advice to Presiding Officers about Parliamentary Service Values".

(7) Clause 11, page 8 (after line 23), at the end of the clause, add:

(2) The Presiding Officers must issue written determinations under section 70 in relation to each of the Parliamentary Service Values, having regard to any advice received from the Commissioner under subsection (1).

(3) If a determination issued under subsection (2) is not in accordance with advice received from the Commissioner, the Presiding Officers must cause to be laid before each House of the Parliament a report explaining why they have not accepted the Commissioner's advice.

(8) Clause 14, page 10 (line 17), at the end of the clause, add "and are subject to sanctions for breaches of the Code, to be determined by the relevant Presiding Officer on the recommendation of the Parliamentary Service Commissioner".

(9) Clause 15, page 10 (lines 23 and 24), omit "include the following", substitute "are".

(10) Clause 15, page 10 (line 29), at the end of subclause (2), add:

; (f) admonishment.

(11) Clause 15, page 11 (lines 3 and 4), omit "The procedures must have due regard to procedural fairness.", substitute "The procedures must be based on minimum standards, determined by the Presiding Officers, after consulting the Commissioner, and must have due regard to procedural fairness.".

(12) Clause 16, page 11 (after line 15), after paragraph (a), insert:

(aa) the Merit Protection Commissioner or a person authorised for the purposes of this section by the Merit Protection Commissioner; or

(13) Clause 17, page 11 (after line 23), at the end of the clause, add:

(2) A breach of subsection (1) is to be treated as a breach of the Code of Conduct.

(14) Clause 22, page 14 (after line 20), at the end of the clause, add:

(5) Subject to this Act and to relevant awards and certified agreements, a Secretary must engage a person as a Parliamentary Service employee on a permanent basis unless subsection (6) or (7) applies.

(6) A Secretary may engage a person as a Parliamentary Service employee on a fixed term of less than 6 months if, in the Secretary's opinion, the need for temporary assistance will not adversely affect the maintenance of a career service or a stable workforce.

(7) A Secretary may engage a person as a Parliamentary Service employee on a fixed term of more than 6 months if, in the Secretary's opinion, the employee is required to perform duties in relation to a project or task that has a fixed duration and:

(a) the Secretary determines that the duties require skills or ability that is not, or cannot be made, available within the Department; or

(b) in the case of a vacancy caused by a permanent officer being placed temporarily in another position or being on long term leave, there is no suitable permanent employee to fill the temporary vacancy.

(15) Page 14 (after line 20), after clause 22, insert:

22A Engagement and promotion based on merit

The engagement or promotion of a Parliamentary Service employee for any period in excess of 3 months must be on the basis of merit.

(16) Clause 23, page 14 (line 27), after "time to time", insert "but may not diminish any such provisions".

(17) Clause 24, page 15 (lines 12 to 14), omit ". For this purpose, ***award*** and ***certified agreement*** have the same meanings as in the *Workplace Relations Act 1996*.", substitute ", but may not diminish any such provisions.".

(18) Clause 24, page 15 (line 17), at the end of subclause (3), add ", provided any such determination does not diminish any provision of an award or certified agreement as in force at a particular time or as in force from time to time".

(19) Clause 24, page 15 (after line 19), at the end of the clause, add:

(5) For the purposes of this section, ***award*** and ***certified agreement*** have the same meanings as in the *Workplace Relations Act 1996*.

(20) Clause 25, page 15 (line 22), after "Department,", insert "consistent with any provision in an award or certified agreement,".

(21) Clause 25, page 15 (after line 23), at the end of the clause, add:

(2) An employee may apply to the Secretary to decline a proposed transfer within 7 days after the employee receives notice of the transfer. The transfer is not to take effect unless the Secretary rejects the application.

(22) Page 16 (after line 19), after clause 26, insert:

26A Compulsory moves between Parliamentary Departments and between the Parliamentary Service and the Australian Public Service

(1) The Commissioner may:

(a) with the agreement of the Presiding Officers, move an excess Parliamentary Service employee to another Parliamentary Department; or

(b) with the agreement of the Public Service Commissioner, move a transitional excess Parliamentary Service employee to an APS Agency.

(2) For the purposes of this section:

(a) a Parliamentary Service employee is an ***excess Parliamentary Service employee*** if, and only if, the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Department; and

(b) a Parliamentary Service employee is a ***transitional excess Parliamentary Service employee*** if, and only if, the employee was covered by the *Public Service Act 1922* at the time immediately before this Act commenced and the Secretary has notified the Commissioner in writing that the employee is excess to the requirements of the Parliamentary Service.

(23) Clause 28, page 16 (lines 25 to 29), omit subclause (1), substitute:

(1) A Secretary may at any time following due process, by notice in writing, terminate the employment of a Parliamentary Service employee in the Department if, in the opinion of the Secretary, termination is justified on any of the following grounds:

(a) unsatisfactory work performance;

(b) physical or mental incapacity;

(c) loss of essential qualifications;

(d) a serious breach of the Code of Conduct;

(e) being excess to the requirements of the Department.

Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to termination of employment.

(24) Clause 28, page 17 (lines 1 and 2), omit subclause (3).

(25) Clause 30, page 17 (after line 20), after subclause (2), insert:

(2A) If a Secretary or the Commissioner receives any non-Commonwealth remuneration for performing duties as a Secretary or the Commissioner, as the case may be, then the Presiding Officers may give a notice in writing to the Secretary or the Commissioner in relation to the whole, or a specified part, of the remuneration.

(2B) The amount notified by the Presiding Officers:

(a) is taken to have been received by the Secretary or the Commissioner on behalf of the Commonwealth; and

(b) may be recovered by the Commonwealth from the Secretary or the Commissioner as a debt in a court of competent jurisdiction.

(26) Clause 32, page 18 (after line 17), after subclause (2), insert:

(2A) An application for review of a Parliamentary Service action (other than action which involves or has resulted in termination of employment) in respect of promotion to determine who is the most meritorious officer, redeployment, inefficiency or misconduct is to be determined by a Review Committee consisting of:

(a) an independent convenor nominated by the Merit Protection Commissioner; and

(b) a nominee of the relevant Secretary; and

(c) an employee representative nominated in accordance with the determinations or in accordance with the provisions of an award or a certified agreement.

Note: The *Workplace Relations Act 1996* has rules and entitlements that apply to the termination of employment.

(2B) For the purposes of paragraph (2A)(c), the provisions of an award or certified agreement prevail over the provisions of the determinations to the extent of any inconsistency.

(2C) A determination by a Review Committee is binding on the relevant Secretary.

(2D) The Merit Protection Commissioner is to make recommendations to the relevant Secretary in respect of an application for review of any Parliamentary Service action, other than an action included in subsection (2A), which has not been satisfactorily resolved by the Department.

(27) Clause 35, page 19 (lines 18 to 20), omit the clause, substitute:

35 Presiding Officers' determinations on SES matters

(1) Following the receipt of advice from the Commissioner, the Presiding Officers must issue determinations in writing about employment matters relating to SES employees, including engagement, promotion, redeployment, mobility and termination.

(2) If a determination issued under subsection (1) is not in accordance with advice received from the Commissioner, the

Presiding Officers must cause to be laid before each House of the Parliament a report explaining why they have not accepted the Commissioner's advice.

(28) Clause 37, page 20 (lines 4 to 6), omit the clause, substitute:

37 Termination of employment

In the case of termination of the employment of an SES employee, the Commissioner must certify that the termination meets the minimum requirements specified in a determination issued under section 35 and that the termination is in the best interests of the Parliamentary Service.

(29) Clause 47, page 25 (line 11), after "functions", insert ", powers and protections".

(30) Clause 47, page 25 (after line 13), at the end of the clause, add:

(2) Determinations referred to in subsection (1) are to adopt regulations made for the purposes of subsection 33(1) of the *Public Service Act 1997*, with or without modifications.

(31) Clause 48, page 25 (lines 16 and 17), omit "to the Parliamentary Service Commissioner".

(32) Clause 48, page 25 (line 18), at the end of subclause (1), add "to the Presiding Officers for presentation to the Parliament".

(33) Clause 48, page 25 (lines 19 and 20), omit subclause (2).

(34) Clause 60, page 31 (lines 8 and 9), omit subclause (3).

(35) Clause 62, page 32 (lines 15 and 16), omit "after receiving a report from the Commissioner", substitute "on the advice of the Remuneration Tribunal and are to be published in the *Gazette*".

(36) Clause 64, page 33 (after line 16), at the end of the clause, add:

(2) The report is to be prepared in accordance with guidelines approved by the Joint Committee of Public Accounts and Audit on behalf of the Parliament.

(37) Clauses 76 and 77, page 43 (line 16) to page 44 (line 19), omit the clauses, substitute:

76 Rights of first- and second-tier persons

First- and second-tier persons retain all the rights conferred on them by the old Act, except for rights to reassessment for reintegration or reappointment.

(38) Clause 78, page 44 (lines 24 to 29), omit subclauses (2) and (3), substitute:

(2) A continued determination may be amended or revoked by the Secretary in the same way as if it had actually been made under section 24, provided that no provision of the determination is diminished or revoked unless that provision is incorporated in an award or certified agreement.

(3) Unless it is sooner revoked, a continued determination (including any amendments made by a Secretary under section 24) ceases to be in force on the third anniversary of the commencing time.

Again, the amendments that I am moving here on behalf of the opposition are logical extensions of those which the Senate passed in relation to the Public Service Bill. They are also identical to amendments which were agreed to by the Senate in November last year. There is one small exception to that, so I will perhaps concentrate my remarks around that particular matter.

The committee might recall what was a lengthy debate last year on the amendment—which is amendment No. 22 on sheet 889 now before us—that deals with the redeployment of parliamentary service officers. At that time, the President of the Senate was concerned about the separation of powers issue and the propriety of the Parliamentary Service Commissioner exercising powers independently of the Presiding Officers of the parliament. We have accommodated that concern by slightly altering our amendments to require the agreement of both Presiding Officers in the case of a parliamentary service officer being redeployed from one House to another. So, with that small exception, the package of amendments remains identical to those that we debated at length previously in the committee. I commend those amendments to the committee.

Amendments agreed to.

All government senators, by leave, recorded their votes for the noes.

Senator ALLISON (Victoria) (9.46 a.m.)—by leave—I move:

(1) Clause 8, page 6 (line 21), after "subsections", insert "21(1A),".

(2) Clause 21, page 13 (after line 27), after subclause (1), insert:

(1A) A Secretary must not enter into an Australian Workplace Agreement, within the meaning of the *Workplace Relations Act 1996*, with a Parliamentary Service employee.

(1B) The determinations may prescribe exemptions from the requirement set out in subsection (1A), in relation to particular categories of Parliamentary Service employees.

Note: For example, a particular category of Parliamentary Service employees could include "SES employees of the X Department".

These amendments are identical to those for the Public Service Bill 1997 [No. 2]. I commend them to the committee.

Amendments agreed to.

All government senators, by leave, recorded their votes for the noes.

Bill, as amended, agreed to.

Bills reported with amendments; report adopted.

Third Reading

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

CHILD CARE LEGISLATION AMENDMENT BILL 1998

Second Reading

Consideration resumed from 31 March, on motion by **Senator Ellison**:

That the bill be now read a second time.

Question resolved in the affirmative.

Bill read a second time, and passed through its remaining stages without amendment or debate.

(Quorum formed)

INTERNATIONAL MONETARY AGREEMENTS AMENDMENT BILL 1998

Second Reading

Consideration resumed from 31 March, on motion by **Senator Vanstone**:

That this bill be now read a second time.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator MARGETTS (Western Australia) (9.53 a.m.)—I move:

(1) Schedule 1, item 2, page 3 (line 20), after paragraph (1)(b), insert:

and (c) the Treasurer is satisfied that the activities of the Fund, including the terms and conditions of the loans it makes, are consistent with:

(i) international human rights norms, including those set out in the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination Against Women*; and

(ii) international environmental instruments, including the *Rio Declaration on Environment and Development*, *Agenda 21* and the *Convention on Biological Diversity*;

In the Greens (WA) opinion, the International Monetary Agreements Amendment Bill 1998 is far from satisfactory. It gives an open cheque, a standing order, for fairly large chunks of money, in anybody's language, to be deducted, on what in recent times has looked like a not infrequent basis, to rescue Western banks which have got into unsecured loans and got their fingers burnt due to what appears to be greed.

It is not unreasonable to expect that in a bill like this we have some kind of basis upon which this decision takes place. The government has said that this is about transparency, that it is a process over which there is some control by the parliament. So here we go with our amendment. We are asking that at schedule 1, item 2, the following be inserted: the Treasurer is satisfied that the activities of the fund, including the terms and conditions of the loans it makes, are consistent with, one, human rights norms, including those set out in the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Racial Discrimination; and the Convention

on the Elimination of All Forms of Discrimination Against Women.

The second is that they are consistent with international environmental instruments, including the Rio Declaration on Environment and Development, Agenda 21 and the Convention on Biological Diversity. This is a similar amendment to the one I moved the last time we dealt with the bill on the International Monetary Fund. I believe the Senate and the community know more about the issue than when we dealt with it last time, and I believe the Labor Party are more concerned with the issue than they were the last time we dealt with this bill.

It does not seem an unreasonable thing to abide by these international covenants. These are our international commitments anyway, and it would seem quite extraordinary if large chunks of Australian taxpayers' money were given out which did not abide by these basic covenants. Hopefully, they will never be needed. I would like to think that we would not be giving out loans that were in breach of these basic international commitments. I urge the Senate to support what is a very reasonable commitment to the loaning of very large amounts of money.

Senator KEMP (Victoria—Assistant Treasurer) (9.55 a.m.)—As always, I was waiting as a matter of courtesy to see whether my esteemed colleague Senator Peter Cook was going to rise to his feet. I noticed that he did not, so I rose to my feet. We have listened to the arguments which have been put by Senator Margetts. She raised a number of issues in her remarks. I think all of us are concerned about issues of human rights, Senator, and this government gives no ground to any party in our concern on issues of human rights.

Senator Brown—Like in East Timor.

Senator KEMP—Senator Brown, you wish to raise diversions and make comments, but I repeat: this government gives no ground to any major or minor political party or independents on issues of human rights. Equally, on issues concerning discrimination, this government inevitably, and always, takes a strong and responsible line. On protecting the environment, this government has a record second to none.

Senator Margetts—Oh, what?

Senator KEMP—Senator Margetts says, 'Oh, rot.' That is very familiar, Senator Margetts.

Senator Margetts—No, I said, 'Oh, what?'

Senator KEMP—I beg your pardon. The *Hansard* will have that record undoubtedly corrected. I do not want to delay the International Monetary Agreements Amendment Bill 1998. We have put forward a massive program to assist the environment—perhaps the largest program to assist the environment that any political party has ever put before the parliament.

Where was Senator Margetts when she was tested on this issue? Senator Margetts, to your undying shame you went missing in action. Therefore, every time you trumpet your so-called concern for the environment, I shall be reminding you of that. As one environment group said, I think it was the World Wide Fund for Nature, 'Given a choice between phones and the environment, we would pick the environment every time.' You did not support us on the issue of the Natural Heritage Trust, much to the despair of many of the environment groups around you. Senator, when you made that decision, you lost the right to stand up in this parliament and bag other parties about their concern for the environment. Do not provoke me, Senator. It is early in the morning, and normally I am in a very good mood at this time of the morning.

Senator, we can understand the direction from which you purportedly are coming. All of us in this place, as I have said, have a great concern for the environment. All of us have a great concern for human rights. Some of us are able to deliver, like us; others, like yourself, are not able to deliver. Any sort of assistance from the IMF typically is made to assist countries in great crisis. The conditions of those loans are to ensure that the economic conditions which have affected these countries can be dealt with in a sensible and effective manner to the benefit of the people of those countries. Senator, I will not be supporting the amendment you have moved.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.00 a.m.)—I might say, Madam Chair, that my reluctance to seek your call before the government was not occasioned by slowness on my part, it was deliberate. I did want to hear what the government's arguments were with respect to this amendment, because I heard of this amendment just as I entered the chamber this morning. To be honest, I needed a moment or two to cogitate on what the implications of it were before I could express a position from the opposition's point of view.

There are a number of implications of this that I am still not too sure of. I do not have a perfect view. That is to say, I do not come down with a black view, a white view or a black and white view. There are shades of grey here that need to be weighed and considered. In weighing and considering them, I come to the conclusion that we will not support this amendment.

I say that for a number of reasons. Let me get these down on the record. Firstly, what we have here is three countries, Thailand, Indonesia and South Korea, which have received support from the IMF. The IMF has been invited by those countries to provide support. In essence, to put it in layman's terms, these countries have gone bankrupt and they have called in a white knight to rescue them—and there are conditions attached to the loans. Those conditions go to removing some of the problems inherent in those economies that gave rise to the crisis in the first place.

I think one point to note here is that the IMF was invited in by the sovereign governments of these nations. We, as a country, along with many others that bankroll the IMF, are very keen to see the money we put up, which is Australian taxpayers' money, is used well and the assurances that we give, which are backed by Australian taxpayer's money, are well founded. That is to say, we are not blowing our money because there will be no change. The conditions under which this money is directed and the conditions that attach to the delivery of that bail-out will be observed so that we are not in a position of repeating the cycle. That is essentially what we are talking about here.

They are reasonable and prudent concerns from an Australian point of view. What this amendment does is propose to go beyond those concerns over economic prudent protection of our investment through the role of the IMF, to imposing further and additional conditions on the recipient country that may not be included. I say 'may not', because I am not as familiar with all of the conditions imposed in the present situation.

I do not have any automatic rejection of that idea. But I do make an observation, because the first provision here is about human rights. In terms of the human rights of people in Thailand, Indonesia and South Korea—let us use them as the examples—we have different styles of government structure, that is true. One may quibble or argue and do so with considerable force in the case of say, Indonesia, as to the quality of the democracy in those countries. One may be able to argue all that. But, in terms of human rights, the most fundamental human right of all is the right to food, to shelter, to clothing and to a reasonable protection from the vicissitudes of economic downturn. The actual role the IMF is being directed to is to protect that human right, to turn those economies around so that they go back into higher levels of growth and can deliver for their people protection against unemployment and food, shelter, clothing and a reasonable expectation of human life.

That is the economic right here. Of course, there are a thousand and one different views as to whether this is the right way to go about it or the wrong way to go about it, or whether it should be done slightly differently or massively differently. But the call to a large extent has to be, I think, as to which way it goes with, firstly, the decision of the sovereign country to invite the IMF to come in; secondly, the amount of funds that are to be pressed into service to help resurrect the economy; thirdly, the conditions that the donor nations, one of which is Australia, make; and, fourthly, the changes that will be effected by virtue of the commitment and that will overcome the problems that gave rise to the economic problems in the first place.

I will move to the second point—and I am sorry if this is a bit tedious, but I think I need to explain myself fully, because I am not supporting a motion which on the face of it has high principle but which, in reality, I think is misdirected. It is to the misdirection part that I am explaining myself. There are and there will always be arguments about whether the strictures of the IMF are too severe. Let us remember this: it was not the IMF that caused the economic catastrophe in these countries in the first place and, to a considerable extent, while one might accuse international investors for withdrawing their funds, it was the economic circumstances in those countries, the lack of transparency and the lack of prudential control that gave rise to these circumstances.

If there is not a change, then people will be faced with continuing economic catastrophe. There is a transitional cost in changing from the circumstances that now apply to circumstances in which we would feel confident those economies could grow naturally and strongly in their own right. There is a transitional cost. I suspect a lot of the argument here is directed to who bears the burden of that cost.

I want it to be on the record, upfront and heavily, that it is the ordinary people of these countries who inevitably bear the cost and not necessarily the wealthy elites and that, while that is a gross distortion of the rights of the individual in those countries, I do not think there is anything we in this parliament can do to reach across the sea into all those other countries to insist on standards they themselves do not insist on in their countries.

There is a fundamental question here, and the analogy I gave in my speech in the second reading debate is appropriate. If you come upon an accident scene, you call the ambulance and save what vestiges of human life you can, instantly, without pause. You do not say, 'I am not satisfied with the way this accident occurred and, therefore, I will wait for you to fix up those problems before I call an ambulance.' The first thing you should do is call an ambulance and save what human opportunities there are. That is the appropriate analogy for this situation. We are the ambulance, and we should get in there as quickly as possible to restructure the economies and to help to bail them out. I do not think we should put preconditions on that. It gives us a big moral leverage, enabling us to say what we think should happen and how, in the aftermath of getting these economies saved as quickly as we can. We should exercise that leverage.

The fourth point I make—and I acknowledge the role of the Australian government in this—is that there has been an exercise of concern on behalf of Australia about the manner in which the IMF package might be introduced. In the case of Indonesia, the Minister for Foreign Affairs (Mr Downer) went, with the support of the Labor opposition, to Washington to talk to the IMF, and to other countries. He called internationally for a consideration of the social and human needs in Indonesia. Given the controversies in the United States congress about Indonesia and the human rights question there, and about bankrolling of the last Democratic presidential campaign and so forth, there is a considerable antipathy on the floor of the US congress towards Indonesia. To some extent Australia's intervention ameliorated the IMF conditions in handling the transition from an economy in bad shape to an economy in better shape and ameliorated the weight of transitional cost imposed on ordinary people in Indonesia. I acknowledge that. It is something we endorsed and supported.

If this amendment is directed towards the transitional cost concerns, I sympathise with it, but I do not know whether, by softening the need for reform, we deliver a net benefit to human rights. By softening that, we delay the resurrection of those economies and consign the populations of those countries to a continuing economic catastrophe for a much longer period. We have to get onto the job as quickly as possible.

The second part of this is about the Rio declaration on environment and development and the Convention on Biological Diversity. My understanding is that none of the countries concerned in this case were signatories to that convention, so we are seeking to impose on them conditions to which they did not

freely agree. That is not much different from saying, 'These are economic changes you have to make and our economic support is dependent on you making them', but I do think this is a bridge too far in these circumstances. I ask the movers of this motion to imagine what real change they will produce.

The issue here is always: do you effect real change by imposing a tokenistic acknowledgment of international conventions and does that materially change the circumstances in a country or do you actually effect real change by winning commitment to the goals of those international conventions so they are willingly adopted and progressed? This is a debate which verges on the philosophical. One can have a view either way and justifiably argue it. In these circumstances though, it is an inappropriate addition to the strictures that are already imposed. At the bottom of the list, it would be a meaningless symbol rather than anything positive about real change.

I have been caught on the hop here. I have put my arguments as cogently as possible but, in reviewing them in my mind, they are not as explicit or as precise as I would like. The fundamental point here is that we are at an ambulance scene in which there is a major economic catastrophe. Let us get the ambulance in there and try to save whatever we possibly can as quickly as we can. That is the most human rights oriented thing we can do. The other matters are matters of continuing concern. They predated this event, and they will postdate it to some extent, but the fundamental changes in the conditions already being imposed on these economies by the IMF will provide a better economic base. I believe strongly that the better, more open and more transparent the economic base is, the less chance there is for cronyism and the misdirection of funds and the greater chance there is for the strength of democratic feeling to emerge in changes in government.

Having said that, I want to also put clearly on the record that we have just seen that South Korea is a democracy. They have just had an election which changed the president, and the country has moved in a reasonably short time from being, effectively, a military dictatorship to being an open democracy. The most outstanding example of a democracy in South-East Asia has for many years been Thailand. It defied colonisation by all the superpowers in the 19th century and it is a kingdom but also a democratic structure, although it is probably not as pure as I would like. There will be arguments about the quality of the democracy in Indonesia. I am not going to develop my arguments on that subject at the moment, because I want to see that ambulance go in and save as many Indonesians as possible from the economic catastrophe that has occurred.

Senator MARGETTS (Western Australia) (10.14 a.m.)—Obviously I do need to respond both to the comments by Senator Kemp and to the comments by Senator Cook. In relation to Senator Kemp's statements, the credibility of the government on the environment has long since passed. People do not actually believe what the government said leading up to the last election. They do not believe them because it is quite clear that the government basically used any issue in relation to the sale of Telstra as an excuse to dismantle any commitment they may have had to the environment. They are currently moving to try to get rid of any legislative commitment to the environment. They gutted the programs surrounding the natural heritage fund, leaving the natural heritage fund standing out there, stranded. This government has no credibility in relation to the environment movement; Senator Kemp knows that and a large and growing number of the community know that as well.

In this instance we are not talking about the Australian environment, we are talking about economic measures which may have long-term and tragic impacts on environments in other countries; that is, the push and force of countries to accept investment which may strip their rivers of the ability to continue living, take the topsoil off areas, remove the land rights from individuals if they are forced to export more minerals than they have the infrastructure to handle and so on. We are dealing with issues of forest depletion and inappropriate mining. We are dealing with the kinds of issues that tend to be part of the export push of the normal IMF package.

It is not unreasonable to suggest that any packages that involve Australia's funding take note of those kinds of considerations. As Australia is a major participant and a major contributor to this fund—the government made this decision all by their little lonesome selves—it is not unreasonable that Australia should have some say in how it is spent. The International Monetary Fund, not a particularly democratic organisation, bases its control and voting on the amount of money each member contributes. In effect it gives the United States, with 18 per cent of the total vote, a veto over the running of the IMF. Therefore whatever particular ideology is being pushed by American organisations seems to be the way the IMF operates.

But this particular IMF fund is not one where the United States is playing the dominant role it usually would. Therefore, it is not unreasonable for the Australian taxpayer to suggest that if Australia is playing a substantial role—and I have just been looking at the figures: around 10 per cent of the Indonesian package and a slightly higher percentage, if I am not incorrect, in relation to the Thai rescue package or, should we say, the rescue of the western profligate banks package—we should have some say in how that money is being spent.

It seems that the concern of the countries that are being forced to take this action is that they do not get a say in the way the package is structured. And it is not just about economic restructuring. It may be that the IMF is looking for a good set of numbers. However, what is the impact of this? It is about reducing social spending. It is about reducing spending on education and health. It is about reducing the subsidies for basic food commodities. So it is not just about so-called economic reform; it is actually impacting, on the ground, the people who can least afford it. It is all very well for Senator Cook to talk about ambulances but you do not expect, in this day and age, that an ambulance will abuse the person they are supposed to be treating. Yet this seems to be the case.

The issues of unemployment and sound structures within the economy are not, in my opinion, only about a good set of numbers and they are not, in my opinion, only about making a country internationally competitive. The Greens (WA) question where the IMF takes this mandate and where the IMF gets off dictating the social, economic, employment and other policies of countries when it is called in to give some fiscal relief. I can understand the issues of cronyism but I am not entirely sure that what Senator Kemp is suggesting is actually going to necessarily deal with those, considering his response of hands off on the whole issue of how this money is being spent. We do believe people have the right to food, shelter, clothing, et cetera but giving great big handouts to these profligate banks is not necessarily going to provide food, shelter, clothing and so on.

The issues are complex. It is difficult to deal with them in a nice, neat fashion in a debate like this but I do say that it is not unreasonable that, if Australia is making a major contribution, we at least say, 'Do not spend this money in a way which contravenes not specific tight conditions but basic international agreements on things like human rights, social and cultural rights, anti-discrimination and the environment.' That is not unreasonable to suggest.

You have to wonder who is controlling the issue if the host countries are, to a certain extent, being abused. There is some abuse obviously within the host countries themselves. If sovereignty is being affected by the IMF policies themselves and if the donor countries, according to the minister and perhaps Senator Cook, should not participate in the policy development and the strategies for these rescue packages, who is driving them? How much can we afford to stand here with our hands behind our backs and not take responsibility for the manner in which the IMF is operating? I think, in the end, we have to know and people will expect us to know.

We have to look, to the nth degree, at how we spend money on social security. We have to look, to the nth degree, at how we spend money on education. We have to look, to the last dollar, at how we spend money on programs in the budget in Australia—except for defence because that has a different method of accounting. Why can we not have some

oversight in the way money is being spent in these programs overseas if they are about basic human rights and rights to food, shelter and clothing? Should we not say that we have the right to suggest that this should happen?

Senator BROWN (Tasmania) (10.22 a.m.)—I totally support Senator Margetts and I am amazed that the Labor Party is going to join with the coalition in opposing this amendment. Senator Margetts has brought forward a very clear, simple amendment to back up international covenants on civil rights and the environment in the spending of Australian money through the IMF programs being mooted for Indonesia and elsewhere in Asia. Why is that not a reasonable caveat for the expenditure of Australian money for Australia's participation in these rescue programs? It is a much wider issue than just the spending of that money. Once again we are bedevilled by the government and the potential alternative government parties putting trade interests in front of the interests of ordinary people in those countries.

Let me point to the situation in Indonesia which is currently heading the news here in Australia and which Australians are rapidly becoming very concerned about. Many people have disappeared off the streets of Jakarta and other cities of Indonesia in the last week alone. These are people who are providing a reasonable opposition to the dictates of the Suharto government, which has got the country into a real mess. For example, three former members of the Indonesian People's Democratic Party, which itself has been banned by the Suharto dictatorship, have been arrested in recent days; they have been carted out of their homes and have disappeared. Reports from human rights activist groups indicate that these three people, Mugianto, Nesar Patria and Aan Rusdianto, from Jakarta are very likely being tortured as we sit here because of their opposition to the Suharto government. In nearby South Sumatra, Andi Arief, who has been a leader of students for democracy in Indonesia, has also been taken from a house, reportedly at gunpoint by two people, and has disappeared. There are grave fears for his safety. His family have gone to Jakarta to try to find out what has happened to him.

Isn't it reasonable that we, as an open democracy, levy pressure against people taking part in the democratic process in Indonesia disappearing with guns at their heads to potential torture and foster the whole basis of proper free political discourse at a time of a country in turmoil? Instead of that we have the major parties here in Australia saying, 'We are going to sit on our hands; we dare not look President Suharto in the eyes. We are going to turn down Senator Margetts's amendment that money going to the assistance of the Suharto regime—because that is what it is; it is certainly aimed at getting that regime off the hook for the financial problems that have hit Indonesia—'should be on the basis that international rules for civil rights and the environment be upheld.' Here we have the government saying, 'No, we do not want civil rights and environmental caveats placed on the money going from Australia to the IMF's activities,' and remarkably the Labor Party says, 'We don't either.'

I do not believe that the Australian people, if they knew that to be the case, would endorse it. I do not believe that the Australian people do not want to see reform in Indonesia and a democratic process brought in and guaranteed in that country. I do not believe that the Australian people want us to have a future next to a military dictatorship which carts citizens who are involved in the democratic process off the streets late at night with guns at their heads. Maybe we cannot stop that. Maybe we cannot do much about the firing of the forests of Kalimantan, where an international disaster is proceeding at the moment—and behind that logging there are interests very close to President Suharto himself. People are making millions of dollars out of the logging industry, which is rapidly leading to the destruction of some of the world's great biotic resources. Maybe we cannot stop it but we should not practise complicity in it.

That is what the coalition and the Labor Party are doing by saying that they will not support a very moderate amendment by Senator Margetts which says, 'Let's be part of

a rescue package which has already internationally agreed caveats attached to it.' That is all. She is not saying, 'Let's invent some new strictures.' She is saying, 'Let's apply internationally agreed covenants as far as civil rights and the environment are concerned.' The government says 'No' and the Labor Party says 'No.' It is incomprehensible and shows again the need for the Greens, the Democrats and Independents to be in this place to give an alternative voice to those Australians who will feel disenfranchised by the line-up of the two big parties in this matter.

When Senator Kemp says that the government is second to nobody, including the minor parties, on civil rights, he is hoodwinking only himself. On a range of issues, not least the problems of Indonesia, Tibet and Burma, the Greens, for one, have taken a very strong stand for civil rights, which time and time again the government has blocked through its power of numbers in this place. The record stands for itself. Senator Kemp might hoodwink himself but the government's civil rights record as far as countries with dictatorships to our north are concerned is very vulnerable indeed. In fact, it has let us down by denying the need for us to stand by democratic principles and democratic norms. Here again today we are seeing the government failing the commonly accepted principles held by Australians on our need to levy pressure on Indonesia to do the right thing by democratic and environmental international covenants.

Senator HARRADINE (Tasmania) (10.31 a.m.)—This is a very important matter. It is in the form of an amendment, and the amendment has been circulated only within, maybe, the last day. I can understand the difficulty that the Labor Party has. I do not know that it is entirely fair to criticise Senator Cook, because he did make a number of points, and I know all parties are involved in the human rights subcommittee's examination of the human rights dialogue that is being conducted around our area—the Asia-Pacific area. There has been a considerable amount of evidence that we have taken on that committee and it has consumed an enormous amount of time because we think it is very important.

I am very pleased that Senator Margetts has moved this amendment to the International Monetary Agreements Amendment Bill 1998. There are some difficulties, including the question of whether the actual nominated conventions have been ratified by particular countries in receipt of contributions, whether they be Australian contributions or contributions from other countries. Rather than delaying the vote on this particular piece of legislation which would enable us to check out all of the conventions that are listed here, I suggest to Senator Margetts that we delete subparagraphs (i) and (ii) and insert an alternative provision. Accordingly, I move:

Omit subparagraphs (i) and (ii) and insert: the human rights norms and environmental standards contained in the Universal Declaration of Human Rights and relevant international covenants;

Everybody, as I understand it, has signed on to the Universal Declaration of Human Rights, so there can be no quibble about that. Therefore, Senator Margetts's amendment would read:

> and (c) the Treasurer is satisfied that the activities of the Fund, including the terms and conditions of the loans it makes, are consistent with the human rights norms and environmental standards contained in the Universal Declaration of Human Rights and relevant international covenants.

I just wonder whether that might be an acceptable way for the committee to proceed.

Senator MARGETTS (Western Australia) (10.34 a.m.)—I thank Senator Harradine for his contribution and for the recognition of the importance of Australia looking carefully at this particular piece of legislation. As I say, it was mooted as being a step forward in transparency, and I think it is very important that the basis upon which Australia participates in this agreement is also transparent.

Senator Harradine's suggestions are very helpful. They are obviously not as strong and as specific as the ones mentioned in my amendment, but they do move us somewhere along the way of putting an aide-memoire, I guess, to the Treasurer and, if you like, to the International Monetary Fund, in relation to these issues.

I think it is also very important to put some perspective on the whole issue of what it is—and there is a whole range of theories, of course—that has caused the current crisis in Indonesia, Thailand, South Korea and so on. One must suggest that there was a very concerted push over the last decade or so to open out the markets of those countries which became, by the way, economic tigers, as they were called, largely because of the determination within those countries to benefit from whatever investment was available to them.

So instead of having a totally free market or open borders, what they did have, to my understanding, was a very carefully contrived investment policy which said, 'We, in our country, believe that we would like to get some benefits out of the investment that takes place. In that particular case, it means we want levels of co-control, we want high levels of employment and we want to make sure that this investment comes with conditions that benefit us as the country you are investing in.' I have always thought that was a very valid issue.

We might argue about what is and what is not a fair condition, but I have never thought—as it is totally voluntary when countries invest in a country—it strange or unusual that a country should have conditions under which investment is accepted. What I do think is strange is that in countries like Australia, we have got rid of most of our conditions. We are now in a situation where we are vulnerable to the international World Trade Organisation because we have got rid of a lot of our restrictions and they are pushing us to get rid of the small amount we have got left. That makes us more vulnerable than ever before.

But I have never thought it odd that a country should say to investor countries—those people who want to make money—'Yes, fine, you invest in this country, but we have certain conditions and we actually like to benefit from the money you put in.' I do not think that is strange. I believe it has a lot to do with the means by which those countries have become the so-called tiger economies, but, in recent, times there has been more and more push to open themselves out to other sorts of investment. The pushers were manyfold. It was part of the World Trade Organisation, part of an international New Right agenda and part of the kinds of pushes that were coming through the international speculative economy.

Many people are concerned that the international speculative economy makes a few people very rich, with the average person within a country totally left out of the bargain. That is certainly the case in Australia, as well, where we see that our banks are gearing towards providing services for those very rich speculators while the average bank customers are left out in the cold, especially if they are in rural and regional Australia. They are almost irrelevant to the banks, the big corporate entities, these days because it is the international speculative economy which is bringing in all the money to those kinds of corporations.

The same kinds of issues have occurred in countries in our region but they perhaps were not as well prepared for the impacts of that level of speculation. There were unsecured loans that were taken out by Western banks in the hope of making lots of money so, in fact, we are rewarding the level of speculation by banking institutions and financial institutions by saying, 'Don't worry, the Western world will bail you out if you get your fingers burnt by your greed.'

There are lots of issues and it is not simple for anyone to be straightforward in this kind of argument, but we are assuming—and the whole basis of this argument by both the Labor Party and the government is assuming—that, if the opening-out of countries in our region to the free market, especially the international money market, the speculative market, is getting those countries into trouble, there will be an antidote. But what is going to be the antidote to that?

The antidote seems to be that you put in the International Monetary Fund, who say, 'Okay, you are in trouble; we can see that so let us open out your market even further.' There seems to be a little lack of logic there. In Australia there are the same sorts of things. When we have a blow-out in our import figures, we think we just have to open out our

markets just a bit more to the free market. We are now pushing to move on to the multilateral agreement on investment. Have we ever sat back to assess what we have done so far with the Uruguay Round of GATT and the World Trade Organisation? Have we ever looked to see whether any of the promises of four years ago that the then Labor government was promoting to us ever came true and whether or not the concerns of groups like the Greens (WA), the social justice movements, the aid movements and others in Australia ever came to fruition? I would say they did and more.

Have we ever assessed how far we go along with the move to the international free market, especially the international money market and the speculative market? Have we ever stood back to assess whether or not we have actually benefited in the way that we were meant to? So I would say that there is a suggestion here within the two major parties that, somehow or other, the IMF can do no wrong.

If part of the problem—and I would suggest a very large part of the problem—in relation to the tiger economies getting their fingers burnt was the level to which they were exposed to the international speculative market and the level to which Western banking institutions got their fingers burnt by their own lack of sound policies, that needs to be addressed. Where is the call here for those banking institutions throughout the world to take a more responsible position? Where is the call for them to be more careful in the way they use their funding? Where is the call for us not to participate in making countries like these as vulnerable as they are?

But, no, we are talking about cutting education in Indonesia. We are talking about cutting food subsidies. We are talking about punishing the poor, who had absolutely nothing to do with the crisis that those particular countries are finding themselves in. It may well be that the very people whom Senator Cook suggested may have suffered during the crisis are going to suffer most as a result of any so-called 'cure'. We have got to take those things into consideration. There must be basic fairness, and in the end we are going to have to come back to this parliament and talk about whether, for instance, Australian banks or financial institutions may have participated in this mess. We have got to talk about the role of the international financial market. We have got to talk about whether or not we are leaving any country, as a donor or a recipient, with any real choices in their decision making as to the way they operate not just their economy but also their social system, their whole basis of ethical operation.

These are very important issues. At some stage we are going to have to deal with them; we cannot just keep putting them off. The very least that I have been asking here today is that, if Australia is participating in this particular bail-out—to which the Greens (WA) objected over the way it was put through in the first place—there be some very basic standards in the way we operate.

I notice that in the meantime Senator Harradine has had his amendment to my amendment drafted, handwritten and circulated, and I now have an indication that the Labor Party, despite the efforts of Senator Harradine, have decided that they have not got any ethics in relation to this and so have backed out. I know that this amendment was circulated a very short time ago. I would also like to add that yesterday this bill was not yet in the Senate; basically, it was still subject to the cut-off motion and had been put off until the next session. The government argued for urgency, so we have had only from yesterday to today to know that we would actually be dealing with the bill today. As was indicated in the vote yesterday, the Greens (WA) and Senator Bob Brown, from the Australian Greens, did not agree to the bill being put on as urgent.

There are in this bill provisions to provide retrospectively for the payments that have already been made to Indonesia and Thailand, so there is no urgency in the bill. We would argue that these kinds of issues should be dealt with carefully and should be considered properly. Because there are large amounts of money involved, they deserve proper scrutiny and consideration. We believe it was inappropriate for them to have been rushed on in the way they were. There was no urgency and we voted against the bill coming on yesterday, so

we can hardly be blamed for not being ready earlier with our amendments. We did not believe it was proper for such an important bill, for which there is a lot of interest in the community, to be pushed through in this manner.

I apologise to the Senate for the fact that our amendment was not available until yesterday, but it was the same type of amendment that we moved when the IMF bill came through last time. It is a simpler version of the same amendment and probably could have been expected to have come up in this debate as this bill was pushed through, in my opinion, with such undue haste. I do not think that gives an excuse for either major party not to support the very reasonable compromise that Senator Harradine has put to the Senate about basic human rights norms and environmental standards contained in the Universal Declaration of Human Rights and relevant international covenants. That is not unreasonable; it is the least the Australian public can expect.

Senator HARRADINE (Tasmania) (10.45 a.m.)—I can see that, for one reason or another, the committee is not prepared to vote for either Senator Margetts's amendment or her amendment as amended by my amendment, so there is not much point in pursuing it further on this occasion. But I do commend Senator Margetts for raising the issue, as she has done previously. I suppose it should not have been unexpected but, as everyone knows, there are other things happening outside the chamber.

Senator Margetts—There was dancing in the streets.

Senator HARRADINE—I will take the interjection from Senator Margetts about dancing, but I believe the general view of the chamber is that, as a dancer, I make a damn good politician. Be that as it may, this matter will come up again and I just wanted to indicate my general support for something like this to be appended to this type of measure.

Senator KEMP (Victoria—Assistant Treasurer) (10.47 a.m.)—I listened carefully to the debate. I do not want to cause Senator Cook any problems with his internal party preselection or anything else, but I thought it was not a bad speech that he made. I am sorry to have made such a damaging comment about you.

Senator Conroy—He is higher on the ticket than you are.

Senator KEMP—We shall see. I am delighted that he is higher on the ticket because, if I remember rightly, there was a time when there was a bit of doubt about whether he would be on the ticket. Senator Conroy, sometimes I do not think the tone of debate is raised when you come in and make a comment.

Senator Margetts, I will repeat what I said because I want to make it very clear that issues of human rights and the environment are very important to the government. The question is: what is the most appropriate vehicle to advance these issues? A proper review of the work of the IMF and its practices occurs in the annual meetings of the IMF, which are attended by the Treasurer, and he reports to the parliament annually. It is entirely up to members and senators whether they wish to take issue with particular matters in the report and raise points.

In not accepting the amendment or the compromise amendment, the government's view is that, although we take these issues seriously, this is not the bill to focus on in respect of those matters. This bill deals with emergency intervention—being faced with an exchange rate crisis, huge problems in financial sectors and an economic crisis which is leading to a social crisis. The metaphor of the ambulance that Senator Cook raised was appropriate. We are dealing with an emergency crisis, and the governments of the region are assisting the IMF to take particular action. There is plenty of scope for the matters and concerns that Senator Margetts has raised. I will not go in detail through the comments you made, but it is a substantial debate which I would very much like to have with you one day. I noticed that, on the one hand, you are constantly worried about what you see as the intrusion, for example, of the MAI into national issues and, almost in the same breath, you are insisting on a greater intrusion by the IMF into national matters. There is an inconsistency there.

Senator Margetts—Would you like to rethink what you just said?

Senator KEMP—That is what you are saying.

Senator Margetts—No, I didn't.

Senator KEMP—Yes, you are. That is the essence of what you are saying and the amendment you moved. I do not think you have been at all consistent on the issue of the impact of international treaties. It is going to be an interesting debate on these matters and I look forward to it.

The way this parliament deals with the issue of international treaties has fundamentally changed in a way which I think is very positive. I give some credit to Senator Bourne on that as well—not all credit, Senator Bourne, but some credit—because Senator Bourne, Senator Harradine, I and others were very concerned about the way treaties were being signed and ratified without any parliamentary involvement. There was a group of us in this Senate who led a major campaign on that issue. Senator Brown, you were not here but, to be quite frank, I do not recall receiving much help from your colleagues who were here. There will be continuing debate on these matters, as there should be, and one of the vehicles for that debate is when the Treasurer reports to the parliament on the activities of the IMF.

Senator BOURNE (New South Wales) (10.52 a.m.)—Let me put on the record, first of all, that the Democrats support this amendment, as we did the last time it was brought up by Senator Margetts. Of course, that means we also support Senator Harradine's amendment to the amendment.

Let me just make this point—and I do not want to take up much of the Senate's time, so I will make it very quickly: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, along with the Universal Declaration of Human Rights, are the absolute, complete and utter basics—the basics—of human rights, in the United Nations, in this in this world; they are the absolute basics.

When people do not want to have to worry about them in relation to anything at all, it makes me wonder what they do not want to have to worry about. What do they object to: the family being the basic unit of society, or freedom of speech, or freedom of the press, or fair and reasonable elections? What is the basic thing in any of these covenants that worries people to the extent that they feel they should not be considered in absolutely anything at all that goes on between countries in this world? I think they should always constantly be considered. They always have to be the absolute basis upon which we work with other countries, and also upon which we work within our own country.

I think in Australia we do try to do that. I think governments of all persuasions at least try to abide by the universal declaration, and also by those two really basic covenants that have been in so long, so many years now, much of which were written by Australians all those years ago—nearly 50 years ago. So, of course, we will support this. I would support this amendment if it were put to any bill to go through this parliament—any bill at all, but this one in particular.

Senator MARGETTS (Western Australia) (10.54 a.m.)—I just wonder from where within the opposition the push came to not support this bill. I really believe that it came from the leadership of the ALP. I believe that former Senator Gareth Evans may have had a particular viewpoint in relation to this. It is of concern that it does not seem to be abiding by the Labor Party's own principles of fairness, justice and equity; they seemed to be what the Labor Party used to stand for. So I just wonder where it actually comes from.

We have had the debate, and people have had the time to consider what the issues are. In the end, the compromise that Senator Harradine came up with seemed to be very reasonable.

I would make the point to Senator Kemp that I am not, never have been and never will be, probably, a fan of the International Monetary Fund. I have never ever suggested that the International Monetary Fund be more intrusive than it is; the IMF is very intrusive. What we are suggesting, potentially, is that

the IMF be less intrusive in the way it operates in insisting that people cut education programs, cut subsidies to food programs. The IMF is insisting that people change not only their economic policies but their social and other policies. How intrusive can you get?

I am suggesting that there should be some kind of principle attached to that level of intrusion so that maybe it becomes less damaging and less harmful. If you do not want intrusion, do not vote to give money to the IMF, because that is exactly what it does on occasion, after occasion, after occasion. What I am suggesting is that, if we are going to give great gobs of money, they should potentially go in a way that is beneficial, that is not harmful, to those people who are most vulnerable in those societies.

The suggestion of intrusion did not come from me. I have never suggested that the IMF should have more power to be intrusive. I am suggesting that the package should be appropriate; that development packages, rescue packages, should be aimed at getting some kind of outcome—not just a good set of numbers. A good set of numbers only potentially benefits some people—and, in this case, not necessarily the people in those countries that we are trying to assist. That is what I am trying to say—not more intrusion from the IMF, but some principles upon which the IMF can operate which potentially can mean less harm being done to the people less able to fight back in those particular countries.

Amendment (**Senator Harradine's**) not agreed to.

Amendment (**Senator Margetts's**) not agreed to.

Senator MARGETTS (Western Australia) (10.57 a.m.)—I seek leave to have the votes of the Greens (WA) and my colleague Senator Brown from the Australian Greens noted as yes votes to avoid a division.

Leave granted.

Senator BOURNE (New South Wales) (10.57 a.m.)—I seek leave to have the names of the Democrats noted as yes votes also.

Leave granted.

Bill agreed to.

Bill reported without amendments; report adopted.

Third Reading

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

TRADE PRACTICES AMENDMENT (FAIR TRADING) BILL 1997 (No. 2)

Second Reading

Debate resumed from 4 December, on motion by **Senator Ellison**:

That this bill be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (10.59 a.m.)—On 26 May 1996 the report of the House of Representatives Standing Committee on Industry, Science and Technology into fair trading was tabled in the House of Representatives. The report, known as the Reid report, was entitled *Finding a balance: towards fair trading in Australia* and is one of the better parliamentary committee reports that has been produced for some time.

In seeking to alleviate the burdens on small business, it is permeated by the despair of small business people and their experiences in the areas of retail tenancy, franchising and abuse of market power. It is no surprise that the recommendations in that committee report embrace those issues of concern to small business. It was more than warmly received as a report. It is a landmark piece of committee work and a true bipartisan achievement.

The report got it right about small business and the legislation was eagerly awaited to deliver key reforms to that sector in the unconscionable conduct provisions, a uniform retail tenancy code, and lease renewal—to name just three of the areas of concern. However, somewhere between the reporting of the committee and the drafting of the bill these key recommendations have been omitted. They have vanished into the policy vacuum that has characterised the current government. It is the opposition's view that we should not do a 180-degree turn and say—as the government appears to have done—that the report got it wrong after all.

I foreshadow that it is the intention of the opposition to move substantial amendments to the government's bill which is now before this chamber. Those amendments, which will be examined in some detail during the committee stage, will go to issues of great concern to small businesses in this country; small business people who believe, having examined the government's response to the report, that it amply demonstrates Labor's commitment to small business.

A key part of Labor's agenda for industry must also be to harness the energy, drive and flexibility of small business to provide opportunities for as many Australians as possible. Labor recognises the enormous job creating potential of Australian small business. We believe in strategic intervention for small business to guarantee a fair and competitive economic environment and to address the obstacles the small business community faces, including their market power disadvantage, compliance costs and access to finance and justice.

I also point out that in the document itself, in the section relevant to small business—that is, 'Small business creating jobs and wealth'—there is a section dealing with fair trading which states:

> Market economies sometimes produce market failures. Ample evidence in Australia suggests that the small business sector has unduly suffered in some unfair trading environments. This is particularly the case in the areas of franchising, retail tenancies and the misuse of market power. Small business must be appropriately protected from unfair business conduct. Labor will utilise mechanisms available to it, including legislation, to ensure that a fair trading environment exists in Australia.

This passage demonstrates clearly the concerns felt by senators on this side of chamber in respect of the fair trading environment, which is not as fair as it should be for many small business operators.

In debating this bill, we can expect to hear the usual shrill chorus of protest by the government that, in spite of its less than elegant U-turn, this bill does actually deliver the reforms that small business wants and that the opposition is being needlessly obstructionist as usual.

Let me deal with that. The Victorian Minister for Small Business, Louise Asher, does not think so. In a direct snub to the coalition government, Minister Asher—herself from a Liberal-National Party coalition government in Victoria—has introduced her own bill into the Victorian parliament concerning retail tenancy issues in an apparent repudiation of efforts by the federal Minister for Workplace Relations and Small Business, Mr Reith, to deliver uniform retail tenancy legislation to the small business community. If Mr Reith's state colleague has found the bill wanting, how can he expect that others will not do so? We, like Minister Asher, do not think this bill will be able to protect the interests of small businessmen and women in Australia without significant amendment.

In providing the backbone to real reform to the bill, it should at all times be remembered that, in seeking its amendment, the opposition is simply implementing the Reid report's recommendation—the wishes of the government's own committee members. These recommendations talk about establishing a body of precedent under which new provisions of amendments to the Trade Practices Act can be measured. It contains recommendations in respect of retail tenancy matters.

There is a range of these that touch on things like underpinning a uniform retail tenancy code by changes to the Trade Practices Act. It talks about dispute resolution, security of tenure and the uniform retail tenancy code having disclosure statements in there. It talks about the disclosure of rents paid. It makes recommendations about rents and rent reviews. It makes recommendations about outgoings and promotions. It makes recommendations about leases and disclosure statements, tenancy mix, redevelopment and relocation and economic and social impact statements. That is just in the area of retail tenancy matters. I have to say that there are substantial elements in this committee report that deal with retail tenancy matters.

Rather than put in place changes to the Trade Practices Act which reflect unfair conduct in a business environment as the Reid committee recommend, the government chose in this bill to use the more difficult test of

unconscionable conduct. We believe as the Reid committee did, that the simpler test of unfairness should be in the legislation. The unconscionable conduct test is harsher and costs a lot more money to challenge. My speaking notes are not in the correct order. I will put them aside and go to the other matters of concern.

I have dealt with the first matter of concern to the opposition. Labor will seek to amend this bill to utilise the term 'unfair conduct', rather than the term 'unconscionable conduct'. A recommendation of the Reid report was that the word 'unfair' be used and that is a recommendation of the Reid report that this government has chosen not to follow.

Our reason for moving that, which will be explained more fully when I come to it, is that at law it is easier to prove 'unfair' than it is to prove 'unconscionable'. As a consequence, the use of the word 'unconscionable' is an advantage to big business in standing over small business and insisting on conditions which are unfair. You can meet the test 'unfair', but you might not meet the test 'unconscionable' and, as a consequence, the advantage not only in the negotiation of contracts but also in the prosecution of the law lies with the big end of town.

The second part of the Reid report that we will challenge by way of amendment concerns a national uniform retail tenancy code. I understand that the Reid report recommended that we institute a national uniform retail tenancy code. If you do not have such a national uniform code, each state will have its own separate code. That means that small businesses around Australia will not have clarity, consistency or security in the legislation. If the government view of the legislation is passed, there will be varying standards of a tenancy code applied in the particular states. That will be to the disadvantage of small business. Labor will move to amend that in the legislation and will be proposing a uniform retail tenancy code.

Thirdly, the government has made the bill useless, in our contention, for a vast majority of small businesses by limiting the application of the bill to transactions which are less than $1 million over five years. In the bill it is unclear—that is, it is ambiguous—whether the $1 million transaction applies to profit or to turnover. That in itself is a fault in the legislation which, in any case, would need to be corrected. But if the figure of $1 million over five years is to be applied, that will affect many small businesses which in that time will, either as a profit or as turnover, find themselves disqualified from the application of this legislation.

Let me offer an example. If this provision were to be enacted into law, it would mean that no service station that has that sort of level of turnover—and, very likely, if it is doing volume trading, that type of level of profit—could ever access this legislation. There are very few people—certainly very thin on the ground in the government ranks, as well as anywhere else—who would contend that service station operators in Australia are not genuinely small business people. So in view of that defect, Labor will move to amend the eligibility criteria when applying the unconscionable conduct provisions for monetary transactions to the Australian Bureau of Statistics' definition of small business.

We do not seek to delay the passage of this bill. The changes that I have foreshadowed will seek to improve it and make it conform more with the Reid committee's report, which was unanimously supported by both coalition and Labor members after a detailed inquiry in the House of Representatives. But we do think this legislation should come into force as soon as possible. We think that because this is important legislation. Labor sought in government to introduce legislation through my colleague at that time, the Minister for Small Business, Senator Chris Schacht. He found great obstacles in this chamber from the then opposition, now government, in being able to succeed in doing so.

Upon the election of the Liberal-National Party government, consistent with our view that small business needed protection on these matters, the opposition, through its leader, Kim Beazley, in the House of Representatives, introduced a private member's bill on this matter as well. It languished for a time on the *Notice Paper* until it became embarrassing

to the government. As a consequence of that embarrassment, the Reid committee was established and it moved to examine this area in some detail. Resulting from that examination, there is of course this legislation.

It is instructive to put the principal dates affecting this legislation on the record. On 26 June 1996 the then Minister for Small Business, Geoff Prosser, issued terms of reference to the House of Representatives Standing Committee on Industry, Science and Technology to conduct its investigation into fair trading issues—that is, the Reid committee. That was in the middle of 1996. In May of last year, the report entitled *Finding a balance: towards fair trading in Australia* was completed and tabled in the House of Representatives.

On 22 June last year the Labor opposition's shadow ministry formally endorsed the recommendations in that report. Thus we flagged to the government our support for those findings and, in essence, told the government, 'Enact these findings and they will have swift passage through the parliament.' I emphasise that date—June of last year.

On 8 July last year, the Council of Small Business Organisations, COSBOA, and the Australian Small Business Association, ASBA, the Pharmacy Guild of Australia and the Motor Traders Association of Australia, the MTAA, called for full implementation of the report. Less than a month after the shadow ministry endorsed it, the small business organisations that speak for the small business community endorsed it in full as well.

On 11 July that year, the Minister for Small Business and Consumer Affairs, Geoff Prosser, resigned from his ministerial post for reasons of conflict of interest. On 30 September, the government brought down its response to the report in the federal parliament and named that response a 'New deal: fair deal'. We think there was an unreasonable delay in responding. However, we note that the resignation of the minister may have had something to do with that. It is now April 1998 and it has been some seven months since the government brought down its response to the report. The Senate now has an opportunity to deal with the report.

This report deals with substantial issues of concern to small business. The sooner the law is rectified in this area, the sooner small businesses will have a more secure and more predictable legal framework in which to exercise their entrepreneurial skills, build their companies and build their own prosperity. What has hampered that in the past has been the archaic law. This has meant that major companies—the big end of town—have been able to use unfair legal muscle in order to coerce or prevent small business people from getting fair treatment in a whole range of areas—the most outstanding one of which relates to lease holdings in shopping centres—and the law has been biased against the real interests of small business.

One would have thought that a government that has trumpeted from the rooftops its support for small business would have moved quickly to overcome that problem. The fact that it has moved slowly and the fact that, when it has moved, it has only partially dealt with the unanimous recommendations of a bipartisan committee, endorsed by the small business organisations themselves, is the most eloquent tribute to the fact that this government is not dinkum when it comes to performance on issues of concern to small business. It is certainly sincere when it talks about its rhetoric, but its rhetoric is to persuade and garner support. When it comes to delivering on its rhetoric with substantial legislative measures, it is not dinkum. Of course, 'hypocrisy' describes the words of one which are contradicted by a person's actions. In this case, that word is an appropriate description of the government in its treatment of small business.

This legislation needs to be improved and properly implemented. One of the undertakings that the government gave to the electorate—which still rings in my ears—on the eve of the last election was to cut down on red tape and the other qualifications and regulations that are the bane of the life of most small businesses in this country. We have witnessed a parade of legislation in this chamber which impacts on small business and affects the amount of time they have to take away from their business activities in order to

comply with form filling. We have witnessed a growth of that, irrespective of the bold and heroic boasts of the government to cut down the amount of red tape—to, in fact, cut it in half in the life of this government.

An impartial audit of the amount of red tape that bedevils small business at the end of this government's term, if it runs for a full three years, will show that not only has it failed to cut the amount of red tape in half but that red tape has grown and waxed during that time and that the burden on small business is greater at the conclusion of this term than it was at the beginning. This is another failed promise by this government. It is about time that this government put its actions where its mouth is. It has a lot to say about small business; it does not do very much to help it.

Senator COONAN (New South Wales) (11.19 a.m.)—Small business has, of course, long been acknowledged as a vital sector in the Australian economy, a driving force behind our future growth, prosperity and jobs. The importance of the sector can be seen from an Industry Commission report last year which indicates that the small business sector now accounts for 47 per cent of Australian employment—that is, in the vicinity of 3.5 million people rely on small business for their income. Labor did nothing during its time in government to constructively address the problems facing small business. In 13 years it held 17 separate inquiries and produced 17 reports, all of which merely gathered dust. So it is heartening indeed to hear from Senator Cook that Labor does not oppose the legislation.

The coalition recognised that the sector was bleeding, and a major part of its election platform was the commitment to do something concrete for small business. The coalition promised real assistance to help in promoting small businesses to employ more people. To achieve this, the government has brought interest rates down to historically low levels, provided tax relief and reduced that bane of small business—paperwork and compliance. But this government recognises that more needs to be done through fixing the economic fundamentals. There was also the focus of its 'New deal: fair deal' package released last year, which aims to level out the playing field for small business.

For many years an area of concern has been that of unfair practices of big business towards small business operators. After years of ineffectual posturing by Labor, small business actually found a voice in the form of the coalition government. The House of Representatives Standing Committee on Industry, Science and Technology investigated the area of unfair trading and addressed it in its report *Finding a balance: towards fair trading in Australia*. This report was commissioned by the government as soon as it came to office and was the fulfilment of the government's election promise to examine the concerns of small business. The report concluded that the concerns about unfair business conduct towards small business was well and truly justified. Just as importantly, it also found that such behaviour could have a heavy impact on the health of the small business sector, the Australian economy and society generally.

The government is acting on the report, and some of the measures contained in the Trade Practices Amendment (Fair Trading) Bill 1997 presently before us are designed to do just that. It is important to point out that the proposals for reform in the bill are only part of a much broader package of reforms. That package of reforms in itself is only part of the coalition's small business assistance platform.

This bill deals with unfair conduct in business transactions between companies both big and small. This is a critical factor in contributing to the growth and prosperity of commerce in Australia. At present, many small businesses are disadvantaged in their dealings with big business, and that can only be described as a pretty clear-cut example of market failure.

Small businesses, as was made evident in *Finding a balance: towards fair trading*, often have trouble in their dealings with big business, particularly in areas such as having little or no ability to negotiate the terms of a contract; inadequate disclosure of relevant and important commercial information, which the financially weaker party should be aware of

before entering into the transaction; and inadequate and unclear disclosure of important terms of the contract, particularly those which are weighted against the financially weaker party.

These can occur through the technical wording of the contract; the theatre of negotiations whereby the small business person is under-represented, lacks the legal artillery of the other party and is discouraged, or not given the opportunity, to consider the detail; the terms which act against the interests of the weaker party are not disclosed; when the dominant party seeks to change the nature of a long-term relationship so it is more favourable to them, frequently after the event of entering into the contract; and when disputes arise there is no cheap or quick way of resolving them. These difficulties have very real implications both economically and socially. They cause business failures, lost employment, wasted resources, stress, marriage breakdowns and poor health.

Unconscionable conduct has been addressed by statute over time through a number of measures. The first was the inclusion in the Trade Practices Act 1986 of significantly broader unconscionable conduct provisions to protect consumers. The second step in trying to codify and extend the common law doctrine of unconscionability into Commonwealth law came in 1992 with an attempt to build into the act a general catch-all unconscionability provision. This provision, section 51AA, while well intentioned, failed to provide businesses, particularly small businesses, with the protection they sought. In fact, the reality is that the section is very rarely used despite recent judicial interpretations in such cases as Olex Focas Pty Ltd v. Skoda Export and Pritchard v. Racecage Pty Ltd.

This government believes that the plight of small business operators caught in an unconscionable bargain was not adequately addressed, and the amendments give the legislation some very sharp teeth to use in the form of section 51AC. The difficulty for small business in applying section 51AA is noted by the Australian Competition and Consumer Commission in its publication *Small Business and the Trade Practices Act*. The ACCC comments:

> In practice this is often very difficult to prove . . . because the law has accepted that commercial transactions can sometimes be unfair or hard on one party. If you enter into a contract or arrangement with your eyes open and it later proves to be a hard bargain, the courts are unlikely to interfere with such a transaction.
>
> To prove 'unconscionability' which amounts to a breach of trade practices law the weaker party must establish that it was in a position of special disability which the stronger party knew about (or should have known about) and that the stronger party took unfair advantage of the position. If one of these elements is missing then unconscionable conduct cannot be proved even if one business is going to suffer a big loss.

The conventional criteria for establishing unconscionable conduct are well defined and have been developed in such cases as Blomley v. Ryan, and Commercial Bank of Australia v. Amadio, and have found legislative expression in the New South Wales Contracts Review Act. These include ignorance of material facts that are known to the other party; illiteracy or lack of education; poverty or manifest disadvantage; age; infirmity of body or mind; drunkenness; lack of assistance or explanation where these are necessary in the circumstances; and, in some cases, emotional dependence—for example, when a spouse is pressured to sign a guarantee for a partner's business loan.

However, a mere disparity in bargaining power between the parties is not considered as constituting a special disability. Courts have generally refused to intervene in commercial transactions or to relieve parties from the consequences of a hard bargain. The notion of unconscionability is undoubtedly the overarching principle of equitable intervention. Section 51AC uses the expression 'unconscionable conduct' in order to build on the existing body of case law, which has worked well in relation to the consumer protection provisions of the act and which will provide greater certainty to small business in assessing legal rights and remedies.

The bill as presented is at variance with recommendations of the House of Representatives committee on fair trading, which cautioned against using the term 'unconscionable conduct'. The committee favoured the use of the term 'unfair conduct'. But there was the

distinct possibility that, although everyone thinks he or she understands what 'unfair' means, it will mean different things to different people and was likely to generate further uncertainty and a spate of judicial interpretations.

There was also the possibility that, when applied by the courts, it might have failed to achieve the outcomes desired by small business. The government also includes in the bill the proposal of industry codes of conduct and practice to assist in resolving the potential for disputes and thus avoiding resorting to expensive litigation wherever possible.

So, in looking to provide a legislative basis for intervention in cases of commercial unconscionability, the government was called upon to strike a balance between a small party and a much better resourced party and where the bargain struck was a hard but not misleading one. The resulting section 51AC in the bill gets that balance right, and it will be up to the courts to construe it as such. It sends a clear message to the business community that unconscionable behaviour is not to be tolerated in commercial conduct, just as it is not to be tolerated in consumer conduct. It provides guidance to the courts and the community as to the categories of practices in commercial dealings that parliament regards as objectionable.

Despite concern from legal commentators, these amendments are not likely to spell the end of contractual certainty. This is because the starting point in any commercial dispute is to look at the contractual terms of the bargain. The notions of equity and good conscience already provide a basis for intervention in contracts, including remedies for duress and undue influence.

It is only if the contract is unconscionable that there can be any question of its terms being set aside or varied. The amendment defines and clarifies common law principles and allows parties who have been treated unfairly in commercial transactions a basis for relief under the broad notion of unconscionability, where presently the remedial framework is nothing less than fragmented and unsatisfactory. I commend the bill.

Senator GEORGE CAMPBELL (New South Wales) (11.30 a.m.)—As stated earlier by my colleague Senator Cook, Labor is committed to implementing the recommendations of the Reid report on fair trading entitled *Finding a balance: towards fair trading*. The Reid report was unanimously supported by both coalition and Labor members of parliament. The recommendations in the unfair trading report were also supported by the Council of Small Business Organisations in Australia, the Australian Small Business Association, the Queensland Retail Traders, the Pharmacy Guild of Australia, the Motor Traders Association of Australia and many more small business organisations.

However, what is clear is that the Howard government has undermined the intentions of the report in three key areas. The first is that the government has walked away from the Reid recommendations, refusing to adopt the concept of unfair conduct, instead relying on 'unconscionable conduct'. The Reid report suggests the use of the word 'unfair' instead of 'unconscionable', because the definition is widely understood, particularly by people who are running small businesses. Labor believes that fairness is the social value central to the maintenance of social cohesion and the legitimacy of the social system. As indicated by Senator Cook, we will be moving to amend the bill to utilise the term 'unfair'.

The second area in which the Howard government is not prepared to follow the Reid report is in respect of recommendations to institute a national uniform retail tenancy code. The Minister for Workplace Relations and Small Business (Mr Reith) has been making a great deal of noise about providing leadership in this area. However, during Senate estimates in November last year, when questioned about what action was being taken in respect of the establishment of a national uniform retail tenancy code for state and territory governments, Mr Grant stated:

> Retail tenancies have been traditionally a state and territory responsibility and the Commonwealth does not have any direct responsibility in that area. We recognised that in deciding not to actually introduce a Commonwealth or a federal retail tenancy act. We recognise also that if we had done that it would have created a complexity because we would have

had at least two tiers of legislation, hence more cost.

The reality is that the minister's rhetoric quite often does not match the minister's deeds. The reality is that, in respect of this area of retail tenancy codes, it is a burning issue for people in small business.

My in-laws, for example, until recently have been involved in the small business area and there is no subject that has occupied more time at the dinner table than this issue. They have consistently raised it and consistently have been concerned about the impact the retail tenancy code has upon small businesses and their capacity to operate.

This was a golden opportunity for the Howard government to in fact have provided real leadership in dealing with an issue of major concern amongst small businesses and to have provided substantial solutions in this area. The reality is the opposite: the government have walked away from the opportunity to do something of substance in this area and have not sought to implement a national uniform retail tenancy code. As indicated by my colleague Senator Cook, Labor will be moving to amend the bill in order to legislate for just such a code.

The third area in which the government has made the bill useless for the vast majority of small businesses is by limiting its application to transactions which are less than $1 million over five years. In our view, that is totally inadequate and restrictive, and will exclude an area of remedy for a very substantial number of small businesses. My experience as the National Secretary of the Australian Manufacturing Workers Union was that we consistently got complaints from small businesses which were dealing with or supplying to large businesses. In many instances they were put in a position where large business arbitrarily instituted cuts to contracts and to pricing arrangements with small businesses which those small businesses had to absorb and for which they had no capacity to seek redress through any area—and certainly would not, under these provisions, have the ability to seek redress under this act.

Senator Boswell—Yes, they would.

Senator GEORGE CAMPBELL—No, they would not because it says it has got to be less than a million dollars. A million dollar contract is nothing.

Senator Boswell—Come on!

Senator GEORGE CAMPBELL—Over five years? I could point to a range of companies, particularly in the auto component industry, which supply to the major producers in this country and which would not be able to seek redress under those provisions of this act. They have been forced, because of cost cutting within the industry, to cut back their prices. In one instance, they were forced to cut their prices by 20 per cent. The impact of that upon companies and their ability to maintain their profit levels, generate income for re-investment in the company, maintain the wage levels of their employees and, in fact, survive in business was very severely hampered by the decision of those companies to impose an arbitrary cut on prices.

Senator Boswell—They are not small businesses if they are doing contracts for five years.

Senator GEORGE CAMPBELL—Many of them are small businesses. Many of them are businesses that employ fewer than 10 employees. We think it is much more consistent to use the ABS definition of small business than to impose a transaction figure of a million dollars to define whether or not you get access to the provisions of the act. In our view, the way in which this provision is drafted will certainly exclude a very substantial part of the small business community from being able to seek redress in areas in which they should be entitled to it.

The reality is that this government has made a big play of its support for small business. We heard Senator Coonan outline some of them in her contribution earlier. She talked about this government's commitment to reducing paperwork and compliance provisions for small business. I have a number of friends in small business. For instance, I have a number of friends who run dental practices and, as I indicated earlier, my parents-in-law have run small businesses. None of them have seen any discernible reduction in paperwork

or compliance provisions, despite the rhetoric of the government in this area.

I recall asking Mr Grant at the Senate estimates whether or not this was capable of being measured. I think he rightly said it was not possible to measure whether or not or to what degree the impact of paperwork and compliance had been reduced for small business. I would suggest it is incapable of being measured because out in the business community the reality is that the impact has been negligible. It certainly has not been noticeable to the people out there running those small businesses.

The government has made a big play of its commitment to small business. I suggest that, when you examine the reality of what the government is doing, including what it is doing in this bill—in particular the way in which it has treated these three key issues on which Labor will be seeking to move amendments—you have to say that the reality is that its commitment to improving the situation overall for small business is not matched by what it is implementing in practice. There is a lot of rhetoric, but the reality is something else.

However, as I said at the start of my comments, Labor has not and will not delay the passage of this bill, but we will move our amendments, as is a normal and democratic procedure in the parliament, to try to strengthen support for small business in the legislation. However, what we want is real legislative protection for small business, not the mickey mouse alternative the minister is proposing, which walks away from the coalition's own report on fair trading and from the opportunity to do something of real substance to help small businesses in our community.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate) (11.40 a.m.)—This bill does help small business, Senator Campbell, and I can tell you that genuinely, as a former proprietor of a small business employing around 10 people. I think you have been a little ungracious in your remarks, although I acknowledge the sincerity of your commitment to small business.

The Labor Party which you represent was in office for 13 years. In that time there were 17 reports on small business, and there was absolutely no action taken. The Labor Party put down 17 reports over 13 years and no action was taken! I recall that in the last week before the parliament rose, Senator Schacht, who was then the minister responsible for small business, did bring into this place a small business bill. I acknowledge his sincerity too, but his government, before his term at the helm of the small business ministry, had 13 years to do something.

I have often wished to stand up in this chamber and say, 'This bill will help small business.' I have often wished that I could do that, and I can do it today with this Trade Practices Amendment (Fair Trading) Bill 1997. I can say genuinely, 'This bill helps small business.' It does not help small business in a small or indirect way; it helps small business in a big way and in a most direct fashion.

One of the greatest problems affecting many of our smaller firms is their relationship with big business, as either competitors, buyers or suppliers. This bill is needed now as it has never been needed before. As the market shrinks, as there are fewer and fewer buyers, whether in the grocery sector, the meatworks sector or in any other manufacturing sector, we are seeing fewer and fewer companies out there, demanding more and more of the market share and leaving small businesses, including small manufacturers and small suppliers, in a more vulnerable situation.

We have to go a bit further than this on section 46 of the Trade Practices Act. I hoped to incorporate that contribution in this speech but, because this bill was brought on very quickly, I have not been able to go down that path. It is my intention in the next couple of weeks to address that issue. This bill specifically addresses that relationship between big business and small business by giving small business the weapon, under the Trade Practices Act, to remedy their lack of bargaining power in the marketplace.

This bill does not reward inefficient small businesses, It is not a panacea for poor man-

agement, inadequate capitalisation or the external economic situations which affect a market. I would also like to warn small business that it is no good signing leases and then coming running to politicians and saying, 'The leases are wrong.' Before you sign a lease, go and seek some sort of assistance from a legal officer. I know that quite often people have made representations to members of parliament and senators about leases. There are unconscionable leases out there, and I warn people to not sign just anything.

This bill goes a long way to ensuring that small firms are not exploited by virtue of being the economic captives of large firms. In Australia today this situation applies to thousands of small businesses operating in markets efficiently controlled by two or three corporate giants. Many of these small businesses are farmers who supply fresh produce to supermarkets. As individuals they have no bargaining power against the might of Coles, Woolworths and Franklins. They are forced into price cuts and into meeting all sorts of demands regarding packaging, presentation and so on. There is a certain amount of fear out there that if any of them are prepared to go and bell the cat they will have their small businesses removed from the buying books of the large chains. I want to elaborate on that further.

Before entering the Senate I was a manufacturers' agent and I saw first hand the way in which big business abused their market power to extract huge discounts from small business suppliers or huge profits from small business customers. I came to the Senate with the aim of fighting for recognition of these kinds of problems facing small business. There has been some success, particularly in the early changes to the Trade Practices Act which prevented mergers from going ahead if significant lessening of competition in a market resulted. The Senate has heard many times from me about the powerless state of competition, particularly in Australian retailing which allows 75 per cent of market power to be in the hands of three major chains. This is in direct contrast to overseas countries like the United Kingdom and the United States, where antitrust provisions ensure that market power is spread more evenly, resulting in far greater levels of competition.

The horse has gone. We have let this market concentration build up all over Australia to the extent to which, I believe, it has become worse in Australia than in any OECD country. It is now going to be harder to get the horse back in the stable, but I think we do have to address this issue. Today is a particularly happy day for small business because there has finally been a huge jump in recognising the nature of the problems faced by small business in Australia in so many of their markets.

I congratulate the Minister for Workplace Relations and Small Business, Peter Reith, and I also congratulate Prime Minister John Howard because I never believed that we would not, and I thought it would always be very difficult not to, bend the knee to the big end of town. Both Peter Reith and John Howard have shown courage through this bill. There is no doubt that the Labor Party's constituency is the unions and the workers, the National Party's constituency is the farmers and the Liberal Party's constituency is big business and business. To go in and do something that would not receive a tick from some of their major constituents shows a lot of courage and shows that John Howard has got the interests of small business at heart. Maybe I am a doubting Thomas but I did not think the Liberals would be prepared to put this bill up. In doing so they have shown that they are genuinely concerned for small business. The government has also been soundly congratulated by the small business sector for biting the bullet on these much needed reforms.

The Reid report on fair trading led to the government's response in a report entitled *New deal: fair deal—giving small business a fair go*. The government is acting on each of the seven areas identified by the Reid report as needing attention. These areas are unfair conduct, retail tenancy, franchising, misuse of market power, small business finance, access to justice, and education. Some of these issues require consultation with the states and territories prior to further legislation.

This bill before us strengthens the substantive legal rights available to small business against unfair conduct. It does this by amending the Trade Practices Act in two important areas: a new provision that gives small business genuine protection against unconscionable conduct and a new provision that will allow industry designed codes of practice to be prescribed as mandatory or voluntary codes to be enforced under the act. Unconscionable business conduct will be prohibited, giving rise to a broad range of remedies.

This bill gives effect to the view often expressed to previous governments that small business should be entitled to similar protection from unconscionable conduct to what consumers are. As well as having the legal rights afforded to consumers under section 51AB, this bill allows the Federal Court to have regard to a wide range of additional matters to establish whether conduct is unconscionable. Together, this means that the court can now consider the following: the relative strengths of bargaining positions; whether the business consumer had to comply with conditions that were not reasonably necessary for the protection of the legitimate interests of the supplier; whether any undue influence or pressure was exerted on, or any unfair tactics were used against, the business consumer; whether the business consumer was able to understand any document; the consistency of the conduct with other small business transactions; the requirements of any code of practice; the extent of disclosure and unforeseen risks; the willingness of big business to negotiate; and the good faith of both parties.

Importantly, small retail tenants will now be able to pursue remedies against unconscionable conduct by landlords. The Reid committee heard example after example of the plight of small tenants forced to move or to pay exorbitant rents because of their small market power in leasing situations. As a result of this bill the courts can have regard to the relative strengths of their bargaining positions. The minister is hopeful that this section will induce behavioural change by big business rather than increased litigation. This bill really does send a warning shot across the bows of big business. It is hoped that they will heed this legislation and not be forced into litigation.

The legislative underpinning of codes of practice is an important new development because it adds teeth to the enforcement of such codes. A new section 51AD will provide that a person bound by the act must not contravene an industry code prescribed in the regulations. A breach of a prescribed code may result in a range of sanctions under the act, including injunctions, damages, requirements to give undertakings and orders to disclose information or publish corrective advertising.

This trade practices amendment bill, while small in itself, says volumes about the kind of society and community we want to nurture in Australia. The bill says that this coalition wants a thriving small business sector able to independently sustain hundreds of thousands of families and in turn their local communities. How many times have we heard that small business creates jobs? How many times have we heard governments playing lip-service to small business? But this bill today is a tangible manifestation of this government's seriousness in their consideration of small business.

This bill gives small business the confidence to stand up for themselves against unconscionable conduct. As I said earlier in my contribution, there is still out in the community, even with this legislation, a reluctance to take the big people on because of perceived retaliation or retaliation. I have heard a number of farmers and small business people say, 'Yes, we may have some sort of legislative program that we can act on but we still have a business to run. If we offend any of the major chains, who else do we sell our product to? Eighty per cent of our business comes from four or five customers. We need them, so we are not prepared to take them on.' That is why I said that it is still going to need someone to go out there and bell the cat.

I hope that small business gains confidence with this bill; I hope that they can say that they have some legislative protection there. I hope that that in turn will give them confidence to go out there and boost investment in job-creating enterprise to the overall benefit

of Australia and small business in its government-recognised role of job creation.

Senator MURRAY (Western Australia) (11.56 a.m.)—This Trade Practices Amendment (Fair Trading) Bill 1997 is a most important bill despite its being suddenly shovelled into the Senate program. The Australian Democrats welcome its appearance for the first time on the floor. It is a most important bill and probably the most important bill affecting Australia's small business community to be dealt with since the coalition came to power. Small business is crying out for fairer competition laws. Right across Australian industry big business has been steadily engaged in what big business is good at, and that is making themselves bigger. But in the process they have been making life harder and harder for small businesses. And the worst excess of big business results in standover tactics and degrading and unnecessary bankruptcies and stress for countless small businesses.

We also have a problem of concentration. In the retail area Australia now enjoys—although 'enjoys' is an inappropriate word—the most concentrated market in the world. The big three retailers continue to dramatically increase their market share at the expense of independent small and medium businesses. That has not just meant fewer small businesses; it has also meant less employment as small businesses tend to be far more labour intensive than big business.

In the period from November 1996 to August 1997, for instance, small business employment growth was 78,000 whilst big business employment lost 1½ per cent of its employers. The triumph of big business over small is also death to competition. The destruction of competitors is ultimately the destruction of competition. Our business sector is increasingly concentrated and oligopolised.

This bill is particularly important to those small businesses whose very livelihood is dependent on the actions of larger businesses. Four areas in particular come to mind. The first and most obvious is retail tenancies. In my travels around Australia and indeed in my international travels in my former life, fair trading and retail tenancy issues always loomed large. Over the last two years, and in the decade previous, dozens and dozens of tenants in large shopping centres have suffered the consequences of the bias in our tenancy law towards secrecy and the interests of property owners and landlords.

Dozens and dozens of tenants of large shopping centres have come to me to outline the serious problems in retail tenancy arrangements in Australia. I have been so concerned about it that I have written a booklet on leases, landlords and tenants, with which I am sure the Acting Deputy President and everyone else has kept themselves awake at night reading. However, it is a serious issue and it is an issue about which we all have to be concerned, regardless of our political parties.

The second area is the franchising industry. This was the industry where the government—initially the Labor government and then this coalition government when Geoff Prosser was minister—rejected calls from small business for national franchising legislation and instead opted for a voluntary industry code. Not surprisingly, at least to us, it did not work and the Franchising Code Council collapsed in January last year.

Again, it was Democrat action in the Senate, calling for all the documents relating to the collapse of the code, which exposed the then minister's real agenda—which was to allow the franchisors to take over the management of the code meant to regulate their affairs. Our public exposure of that grubby little arrangement, combined with the evidence to the Reid committee on fair trading, has seen that proposal shelved—and thank goodness for that—and the call by small business and the Democrats for a mandatory code underpinned by legislation and the ACCC now put into place. This bill attempts to go some of the way to doing that and is essential to that process.

The third area of concern is small business finance. A survey by the Society of Certified Practising Accountants last year showed that small business relies overwhelmingly on the big four banks for their finance; and that finance comes at a cost that is three to four per cent higher than home mortgages. Fortu-

nately, public pressure is now shrinking these margins and banks are much more sensitive and much more responsive to this issue than they were. But there is a way to go yet. The Wallis inquiry also noted that competition in the banking market has not extended to the small business finance market. Not surprisingly, Australian businesses consequently face the highest real interest rates in the industrialised world. The *Economist* magazine monthly publishes such statistics, and there is no change in that situation.

Not surprisingly, over 20 per cent of small businesses with growth potential reported in a recent Yellow Pages survey that they are constrained by finance or a lack of cashflow which is often exacerbated by high loan costs. Yet little has been done to improve the captive position of small business vis a vis the four banks. The banking code of conduct is a pathetic document, drafted by the bankers themselves; while small business is still denied access to the banking ombudsman. I think this bill could and should be utilised to improve the standing of small business in their dealings with the banks.

The fourth area is the prime focus of this bill. The history of fair trading legislation is a long and tortuous one, extending back over nearly 20 years and at least six major inquiries. The Australian Democrats, going right back to our formation in 1997—21 years ago—have had an active role in seeking to ensure that small business has a fairer deal from big business. Along with small business, we have campaigned for many years for modifications to the Trade Practices Act to prevent greater encroachment on small business by the power of ever-expanding big corporations.

In 1991, Democrat Senator Sid Spindler successfully launched the campaign to have the mergers and acquisitions power in the Trade Practices Act amended to give the Trade Practices Commission power to prevent takeovers that lessened competition. Since that provision took effect in 1993 under the Labor government it has been of great assistance to small business, preventing Coles-Myer taking over a major independent wholesaler, guaranteeing the rights of independent distributors in the Ampol-Caltex merger and imposing conditions on bank takeovers.

Senator Spindler, on behalf of the Democrats, was the first to move to improve the protection of vulnerable small business from unfair business conduct. In 1995, he unsuccessfully moved to protect small businesses against economic duress. Later that year, the Labor government brought forward its better business conduct bill. While this bill fell short of the level of protection for small business that the Democrats regarded as adequate, we were prepared to support it.

Unfortunately, that bill lapsed with the 1996 election—and that is the story of small businesses' life—and the new coalition government was less than urgent in its determination to take on its big business mates on behalf of its small business mates. Nevertheless, it did honour its promise to small business organisations and set up a House of Representatives committee of inquiry into fair trading, headed by Bruce Reid MP. Then Minister Geoff Prosser made it quite clear that he did not want legislative solutions, but voluntary industry-based solutions, and voluntary solutions do not work.

In a welcome display of fair-minded unanimity between Liberal and Labor members, and in response to overwhelming evidence from small business about the extent of fair trading problems, the committee ignored the minister and brought down a very brave and groundbreaking report which recommended major changes to the Trade Practices Act. The Labor Party, the Democrats and other parliamentarians immediately welcomed the committee's report and called for its immediate implementation.

I introduced a private member's bill into the Senate in June of last year which mirrored the committee's recommendations. In the meantime of course, Minister Prosser fell, over a conflict of interest over what he described as 'property of various lots in Bunbury' which turned out to be very large shopping centre developments—thereby explaining to us, at least, his attraction to non-binding fair trading codes of practice.

Minister Peter Reith, to his credit, recognised the scope of the problems in small busi-

ness and has brought forward this bill. It should be noted that the Reith bill falls well short of the Reid committee recommendations and, as presently drafted, is unlikely to provide the level of protection sought by small business. Indeed, many, including us, are concerned that its wording may be such that it ends up not providing much new protection to small business at all. That does not mean to say it is not a bill that we do not support: in trying to advance the cause of small business, every bill of this kind is worth supporting.

I can understand Mr Reith's dilemma. On the one hand, he serves a Prime Minister who is under a public promise to look after the interests of small business as the backbone of the Australian economy but, on the other hand, the Prime Minister is also under a private commitment to the banks and big corporations who provide the vast bulk of the Liberal Party's $14 million electoral war chest, and they expect him to look after their interests as well. So Minister Reith has a difficult balancing task.

I want to briefly outline the key differences between the Reid committee recommendations—which, I think, represented the minimum necessary level of protection for small business—and what we would describe as the Reith bill before us. Proposed new section 51AC sets into the Trade Practices Act a provision outlawing unconscionable conduct by corporations against persons. Whether conduct is unconscionable is to be determined by examining all the circumstances of a case, including a number of facts outlined in the bill. The term, unconscionable, is problematic. It is the term used in the current section 51AA that has proven useless to small business. It is problematic because there is a considerable body of law in equity defining the very narrow legal understanding of what unconscionability actually means. The judiciary has not shown any willingness or desire to push the envelope in this area of law.

The Reid committee extensively examined the doctrine of unconscionability and concluded that it was not capable of dealing with the types of conduct complained of to the inquiry—remember that this was a unanimous committee who had unanimous findings, with the benefit of six, I think, inquiries before them and the benefit of some very detailed submissions; they did not arrive at a unanimous position lightly and the fact that the government has discarded it is worrying, to say the least. The Reid committee called instead for the use of the term, unfair trading—a much broader test and a much more understood test that avoids the problems of unconscionable conduct. Unconscionability is not a word in wide use; unfairness is. The Reid committee concluded that the term, unfair trading, would provide a much broader test. This term has been in New South Wales contracts law over 50 years.

The second major difference is in the definition of small business. The Reid report used the ABS's definition of small business. In some ways, that is logical.

The ACTING DEPUTY PRESIDENT (Senator Patterson)—Senator Schacht, resume your seat.

Senator Schacht—Madam Acting Deputy President, on a point of order: under what standing order do I have to resume my seat? I went to get some material from Senator Conroy.

The ACTING DEPUTY PRESIDENT—You have been standing there, and I asked you to resume your seat. There is no point of order.

Senator MURRAY—The Australian Bureau of Statistics' definition is that a small business is any business below 20 employees or, in manufacturing, below 100 employees. The Reith bill does not use that definition. It sets a ceiling of $1 million on the provision of services or goods under the contract. This will undoubtedly exclude many small businesses. If you take the example of service stations, you will see $1 million is easily overcome. It is not unusual for retail tenancies on a standard five-plus-five option to exceed rentals of $1 million over 10 years, and they would be denied any assistance under the bill. The third key difference is in relation to codes of conduct. The committee recognised the importance that codes of conduct will play in defining unfair trading. It has recommended

that they should be mandatory and approved by the ACCC; that is also our view. The Reith bill rejected these recommendations. The approvals will be by the minister, and the minister will decide whether they will be mandatory or not. Indeed, the minister makes it pretty clear in his *Giving small business a fair go* document that mandatory codes would be the exception rather than the rule and would be approved only if voluntary codes did not work.

Voluntary codes do not work. Self-regulation is always affected by the interaction of self-interest and, if you have big business interests opposed to small business interests, those voluntary codes will simply not work. We think the minister has copped out in this area. It seems the government has learnt nothing from the franchising code debacle, nothing from the banking code of conduct failures and nothing from the crisis in retail tenancies around Australia at the moment. We think the voluntary code solution is an inadequate response in those respects and that it detracts from the likely level of protection that this bill could and should afford small business.

Having identified the weaknesses of the government's preferred approach, I commend the government on bringing this bill forward. The issues of fair trading are urgent issues. They should have been dealt with years ago—at least last year—and every month of delay sees more and more small businesses sent into financial difficulty as a result of the contractual relationships they have with franchisors, with suppliers, with banks and with landlords.

The Democrats support the general thrust of the bill but we will be moving amendments in the committee stage. I note that the Labor Party have amendments and I understand that the Greens (WA) will have amendments. We will reserve our detailed discussions of those amendments until then.

My concluding remark is not a strange one. To small business, matters of unfair conduct towards them are part of the whole human rights debate in this country. These are issues whereby the weak, the vulnerable and the disadvantaged are stood over by the strong and by those who are privileged to have the support of the law and the chief institutions in our society as presently set. This bill would go some way to restoring some balance, but it is by no means anything other than a beginning. We need to do far, far more to arrive at a situation where there will be far fewer of the heart-rending stories in our society that you read in the *Finding a balance: towards fair trading in Australia* report by the Reid committee. People in those situations often lose their wealth, their marriages and their futures. We look forward to a useful and productive debate to advance the cause of small business.

Senator SCHACHT (South Australia) (12.17 p.m.)—I rise to speak to the Trade Practices Amendment (Fair Trading) Bill 1997. As Senator Cook and other Labor Party speakers have said, we will not delay the bill but we will seek to put a number of amendments to improve it. I suspect they will be very similar to amendments moved by the Democrats and the Greens. We believe the amendments will substantially strengthen the bill in the way it can protect and enhance small business in this country.

There is only one reason we have this bill before us which details, in a number of significant ways, changes to the Trade Practices Act to offer better protection to small business. Above all else, the previous minister for small business in this government, Mr Prosser, made such an unholy hash of his responsibilities when he was the minister that he had to be dismissed by the Prime Minister. We had the extraordinary example of a then minister for small business being a major commercial landlord owning buildings and renting them to small business yet being in charge of reviewing retail tenancies for the small business community in Australia—an absolute conflict of interest if ever there was one. Yet it took nearly two months for the Prime Minister to realise that the conflict of interest was untenable and that Mr Prosser would have to go. When Mr Prosser defended himself—in the parliament and elsewhere—by saying that he saw no conflict of interest, it was the height of the theatre of the absurd.

He had made such a mess of protecting and promoting small business interests in Australia and, when he was finally sacked, the damage done to the government was so extensive that the new minister, Mr Reith, realised that no amount of comforting statements would be accepted by the small business community and that action was needed. In particular, the Reid report and the unanimous recommendations from that bipartisan committee of Labor and Liberal members from the lower house would have to be substantially implemented.

Until the demise of Mr Prosser it was clear that, if Mr Prosser had had his way, the Reid recommendations would disappear into some dusty pigeonhole, never to emerge again. I again congratulate my parliamentary colleague the shadow minister for small business, Mr Martin, for the role he played in exposing Mr Prosser's conflict of interest as small business minister, which led to the government having to take this report seriously.

Senator Boswell has spoken in this debate, as leader of the National Party in this place. As a former minister for small business, I place on record that I think he is, without doubt, the most genuine spokesperson for small business from either of the two coalition parties. When I was small business minister, he was genuine in raising with me a number of issues about how to improve the situation for small business. He raised them with considerable passion at times—in this place, at committee level and in private with me. I have always been amazed because I would have thought that the most relevant person for the coalition to appoint as minister for small business would have been Senator Boswell. But, because Senator Boswell holds true to himself and always speak openly and honestly—even if it is against the dictates of the government's line—he finds it difficult to get a guernsey on the front bench as a minister, and I respect him for that.

Senator Vanstone—So what do you think of yourself when you didn't speak out when your government did things you disapproved of?

Senator SCHACHT—After your performance in higher education and schools, I think you have paid the biggest penalty of all. The Prime Minister has decided what he thinks of your ministerial performance by comprehensively sacking you.

Honourable senators interjecting—

The ACTING DEPUTY PRESIDENT (Senator Patterson)—Order!

Senator SCHACHT—Madam Acting Deputy President, Senator Vanstone got dumped by the Prime Minister for failing—

Senator Carr—After doing his dirty work.

Senator SCHACHT—to do all the dirty work. After all but destroying the tertiary education system in this country, and many other things, she got comprehensively dumped. But, despite being humiliated, she apparently copped it sweet. She did not whinge or make any complaint. She did not come in here and say, 'Mr Howard has been unfair to me.' She copped it sweet as apparently she still could be the Minister for Justice, running around with the Federal Police trying to find Mr Skase somewhere in the world.

Even when I was the minister for small business I put on the record that I thought Senator Boswell was the most creditable figure in the then opposition to speak on small business, because he genuinely spoke about it. When I introduced my Trade Practices Amendment (Better Business Conduct) Bill—a bill containing many provision similar to those in the bill now before us—Senator Boswell made it quite clear that he supported it. He thought it was a major step forward for the advantage of small business.

That did not make him too popular with the Libs from the top end of town, the Liberal Party from Melbourne—including the now Treasurer, Mr Costello—and other big business interests who were trying at that time to do everything to ignore having to declare a position on whether or not they would support my bill. During the election campaign, right up until election day, Mr Howard would not commit himself on support of my bill.

Senator Vanstone—But this was three years ago.

Senator SCHACHT—But, Senator, Senator Boswell did. As I say, I acknowledge the fact

that he is the only creditable figure to speak on small business, irrespective of whether he is in government or opposition.

The Liberal Party in the end would always give in to the interests of big business. It was only the fact that Mr Prosser made such a mess of defending big business and that his conflict of interest was so palpable that, after two months of slowly rotting on the scaffold, the Prime Minister had to sack him. The only way to recover the standing of the government on this issue was to accept some of the major recommendations of the Reid committee—and that is why we have the bill before us.

Mr Reith has made himself a hero within some sections of the Liberal Party in that he is now prepared to produce this bill. As I say, we support the thrust of the bill, but we will be moving amendments to strengthen the bill even further to the advantage of small business.

As both the Reid report and other people in here have commented, including Senator Boswell—and as Senator Murray, who spoke just before me, eloquently explained: there is no doubt that the economic power of big business, when in dispute with small business, is usually the deciding factor in the determination of that dispute. When I was small business minister I had plenty of evidence that, if there was a contractual dispute, big business was able to use its financial power to drag the dispute out for a lengthy period of time in the courts so that, in the end, it literally starved the small business person into submission.

A provision that I produced in the better business conduct bill was that the Trade Practices Commission, now the ACCC, would have the ability to take the case, if they thought it substantial and significant, on behalf of a small business complainant to the court, and it would fund it so that there would be an equality in the dispute before the court. In that way, the economic power of big business would not be able to always crush the small business operator.

Though we had tried voluntary codes of practice, particularly in the franchising area, it was clear that they were not going to work, unless they were backed by a strengthened Trade Practices Act; that the code of practice would be enforced by appropriate legal remedy that could be quickly taken. This, again, is where the late unlamented Mr Prosser said, 'Well, we'll have a voluntary code of practice in franchising'—and, as Senator Murray pointed out, he was quite willing to have that code of practice administered by the franchisors in taking over the franchisees' interests. We would have had what in other cases people would have thought pretty odd: an employer organisation representing the trade unions. This would have been the proposal; he was quite happy if there were a voluntary code of practice for franchising, but basically it would run and administered by the franchisors in Australia.

An inquiry we did in my time as minister showed that something like 20 per cent of franchisors were in dispute with their franchisees. That was an unacceptably high level of dispute, where franchisors were being sued by their franchisees, because the franchisees had been misled because the disclosure levels were not being properly adhered to by the franchisors. It is clear that you will have to have a franchising code that has teeth in it, that is a uniform code and that is actually backed by legislation—and that is administered independently, and not just by the franchisors.

We believe that, rather than relying on the phrase 'unconscionable conduct', the bill should be amended to use the phrase 'unfair conduct'. This will strengthen the bill. Properly used, 'unconscionable conduct' with other provisions would be a strengthened provision. But we believe that 'unfair conduct', as recommended by the Reid committee, is the way to go, and we will support those amendments.

But the biggest weakness in this Reid bill is the fact that the minister and the government have not accepted the Reid report's recommendations to legislate for uniform retail tenancies in this country. There is no doubt that this is the major area of continuous dispute between small retailers and their landlords: the contractual arrangements small retailers have to enter into to get access to

reasonable outlets in big shopping centres, other shopping centres; this is a continuous matter of dispute. We have all heard the horror stories, as tabled and written up in the report of the Reid committee, of the way in which there is a take it or leave it attitude given to the small retailer who wants access to a shop in a big shopping centre.

We believe that to leave it to the states and territories so that we end up with eight different codes of practice reliant on different state and territory legislation will only create confusion. In that confusion, the big end of town will always have the advantage because they will be able to use their economic power to impose their will on small business. Having a uniform retail tenancy code that is legislated and backed nationally is the way to provide the best and most simplified protection; protection that will be easily understood by all and not be confused by having different codes in different states.

I know that the Liberal Party has an ideological objection and says that this is centralising more power in Canberra. The irony is that, if you really want to help the ultimate small people in this country—small business—there must be a decent code at the national level. If you want to put them in a weaker position in the community, you will have six state and two territory codes operating. That will weaken small business. At times you do need strong, clear, firm, national legislation to protect the weakest in the country. That is the irony. I suspect the Liberal Party says for ideological reasons that this is a state issue, but in doing so they are inhibiting and weakening the position of the people they profess to support.

We will also be moving an amendment to the provisions in the bill which limit the application of transactions to those of less than $1 million over five years. This could mean that a large number of small businesses would not get the protection that this bill claims it will provide to them. We will certainly be moving amendments that clarify that particular provision.

This is a very important bill. The opposition does not deny that. We are disappointed that the minister did not take the last full step on the Reid recommendations in a number of areas to achieve a bill that all small businesses in Australia would welcome. There is no doubt that, whatever the success of this bill, it will be regularly revisited because the issues that small business are concerned about in the balance of economic power between them and big business will always be a matter of debate.

When I introduced legislation in my time as minister, I did not say that this was the end of the line or that the ultimate peak had been reached for the protection of small business. We have a dynamic economy; one that is always economically changing. Therefore, one should always keep these sorts of legislative requirements under review.

When I was small business minister the support I received from the Small Business Forum was very useful. We had input or advice to government about what issues were of particular concern to small business. The issues that this bill deals with in part, but not completely, were consistently the main issues raised with me as minister for small business. I am sure that in another 10 years when we attend small business forums of one form or another, these issues about the balance of economic power between big and small businesses will still be the major issues discussed among small business people.

Most of the people at the Small Business Forum would not be regarded as natural supporters of the Labor Party, but they were willing to support what we tried to do at the end of 1996. It is with regret that when the election was called we were unable to debate the bill at that time. Nevertheless, the Labor Party at that time put on record in its bill our commitment to help small business.

The present government, which was then in opposition, refused to declare its position on better business conduct in the bill, as it had refused to declare its position all through the 13 years we were in government about the way to improve the Trade Practices Act to help small business.

Senator Murray mentioned Senator Spindler, who was a former Democrat senator on the Legal and Constitutional Committee. He and I made recommendations to change the

provision of the Trade Practices Act from 'dominance of the market' test to 'a substantial lessening of competition'. I was on the committee at the same time as Senator Spindler. I strongly supported that change. I think Senator Spindler and I were the only two members of that committee, and a minority, who even went a step further and said that the Trade Practices Act and the then Trade Practices Commission—now the ACCC—should have a permanent power of divestiture, such as the power invested by the American Congress into the appropriate regulatory bodies in America. That is a standing power of divestiture that I think has been used only two or three times in almost 80 years of history of American trade practices law. But the fact that it is there has meant that on many occasions a big business has decided to step back from some of its more robust activities.

I supported that with Senator Spindler. It was not taken up by my government or this government but that is an issue. As there is more and more concentration by big business in the running of the economy and its influence on the economy, the divestiture issue will be raised again. It is certainly raised by the small business community. There is no doubt that, if the test that we now have of substantial lessening of competition had been available in the eighties, the creation of Coles Myer would probably not have been allowed. Most people—maybe even the shareholders of Coles Myer—might think now that that was not a bad idea in view of all the turmoil that company has been through. In future further mergers of that kind will not be allowed to take place.

We commend the thrust of this bill to the Senate, but we do commend very strongly our amendments. In particular, the amendment I would certainly like to see carried by the Senate is the establishment of the uniform retail tenancy code in Australia. I believe that will help more small businesses than any another matter before us today. I commend my shadow ministry colleague Steve Martin for putting these amendments forward and hope we can win the Senate on them. *(Time expired)*

Senator MARGETTS (Western Australia) (12.37 p.m.)—I am a bit taken aback. We tried to fit in with the speakers list today but I did not know Senator Schacht was speaking. I had lunchtime commitments, and then Senator Schacht spoke for his full 20 minutes. However, that is fine if we had known what was going on. We are trying to fit in with the practice of the Senate in trying to get the program through, but sometimes bills come on more quickly than it is possible to prepare for.

The Trade Practices Amendment (Fair Trading) Bill 1997 is an effort by the government to demonstrate its commitment and effort to the traditional coalition allies—that is, the small businesses of Australia. I think they have slipped down in the estimation of that particular sector. The opposition is also trying to rack up its small business points by heavily criticising the government's approach and proposing a wide range of amendments.

The report, *Finding a balance*, is the catalyst for this bill. The opposition claims that the government has not gone far enough to truly implement the recommendations of the report. The criticism does hold some weight. The Greens (WA) will be supporting some of the ALP's amendments which attempt to implement the report more fully.

Section 51AC, dealing with unconscionable conduct, has been mentioned. The bill seeks to introduce a substantive action available for unconscionable conduct. The problem is that in order to maintain some form of equity, the government is using a definition which accords with a very narrow dealing with that word. In practical terms, the words are limited to three narrow sets of circumstances which have been clearly inadequate in the situation of a commercial relationship where there are differences in bargaining power. It has been mentioned that the word 'unfair' might be a better compromise because then you do not have to match it up with a particular piece of legislation, and it would appear to be a better approach. It is also the approach that was taken in the report.

Under small business definitions I would like to comment on the $1 million transaction cap placed on the access of section 51AC.

The biggest problem with this provision relates to the question: what amounts to a transaction? Depending on the scope of a transaction, does it apply, for instance, if a retail shop lease is for five years? Is this each year? Does there have to be that $1 million cap each year or can it be the whole transaction? This might be a limiting factor for very small businesses. Is it the small-purchase expensive items over a period of time that might be all on one invoice—for example, the purchase of cars or machinery for a car dealership?

The Greens (WA) appreciate that a monetary cap of $40,000 is also placed on remedies available to consumers, so potentially there is some guidance from those provisions. It would also be wise to clear up such potential anomalies before the legislation passes.

The Greens (WA) see more potential problems with the insertion of an arbitrary number of employees as the limit to access to this remedy. It appears that the ALP would not allow a business with more than 20 employees, or 100 in manufacturing, to be deemed a small business. This could be problematic in industries where there is a high level of casual employment and hence a larger number of employees—for instance, in the hospitality industry. It may exclude many businesses it is aimed at from obtaining relief. I would think that large organisations such as Westfield may well have supported this definition—in fact, I think they did. So in this particular instance we are more likely to support the government's proposal than the ALP's amendment, though there are problems in the government's proposal as well.

As to the uniform retail tenancy code, the government obviously believes that there are some problems in terms of constitutional limits. We do not think these are major problems. It is interesting that the government finds constitutional limits as an excuse where it is convenient for itself but do not listen to it in such important issues as the debate on native title. They also make claims about uncertainty and possibilities of court action, saying that two layers of legislation may create uncertainty and potential litigation over more procedural issues such as jurisdiction and standing. They also have concerns about competition—whether or not competition in tenancy legislation lifts standards. I find that a bit bizarre.

The committee report and the ALP in this regard support a uniform retail tenancy code in order to implement best practice regimes throughout Australia, including measures to take account of the disparity in bargaining power, independent market rent reviews, precontractual disclosure statements and alternative dispute resolution procedures. Maybe the constitutional problems that the coalition identifies are justified. However, the code will lift the standards of South Australia, Western Australia and Victoria to rival the best practices in Queensland and New South Wales. It would also provide affordable dispute resolution procedures. Therefore, we think the constitutional problems and the holes created may not be sufficient for us not to support the ALP's amendments.

We have looked at something in terms of the alternative dispute resolution. The Greens (WA) propose an amendment in line with the committee recommendations, in light of the fact that this remedy of unconscionable conduct is aimed at providing relief to small businesses. The implementation of alternative dispute resolution procedures is crucial because small businesses presumably have less time and resources to spend battling out a long court battle. Thus, the alternative dispute resolutions provide true access to justice in a cost- effective and timely manner.

Often in commercial transactions there is a need to maintain a relationship, more likely to be facilitated by alternative dispute resolutions that offer a wide range of solutions than litigation, which is confrontational, adversarial and produces only one winner. We wish there was equal access to justice but it seems that the more money you have, the more access to justice you have. So the more you can remove that from the courts, the better. We look forward to participating in the votes during the committee stage of the debate.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Treasurer) (12.44 p.m.)—I thank honourable

senators for their contribution and commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

Debate interrupted.

MATTERS OF PUBLIC INTEREST

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

Senator Colston

Senator COLSTON (Queensland)(12.45 p.m.)—Madam Acting Deputy President, this afternoon I raise the issue of a series of questions I intended to ask on notice. After I submitted the questions, I was informed by Madam President that the questions would not appear on the Senate *Notice Paper*. While the questions are unusual, I do not consider that they break standing orders—

The ACTING DEPUTY PRESIDENT—Order! The matter to which Senator Colston is now seeking to refer in debate appears to be similar to matter contained in a document which he has sought to have laid before the Senate and in questions on notice which he has lodged but which the President has declined at this stage to include in the *Notice Paper*.

The President has indicated to Senator Colston that she wishes to take advice and to determine whether she should not allow this material to be published through the privileged forum of the Senate because it may violate the Senate's sub judice convention in that it could be prejudicial to the legal proceedings pending in respect of Senator Colston.

The Senate, by its vote on a proposed reference to the Privileges Committee, indicated that it wished to avoid any debate or inquiry on matters relating to the charges laid against Senator Colston until the legal proceedings are concluded.

Having regard to that resolution by the Senate and to past precedents of the application of the sub judice convention, the President wishes to make a considered determination on whether Senator Colston should be allowed to publish this material through the Senate. She has sought independent legal advice on whether the matter in question is likely to be prejudicial to the legal proceedings involving Senator Colston. Until she has made that determination, Senator Colston may not proceed, and I so rule. I call Senator Cook.

Senator COLSTON—Madam Acting Deputy President, I wish to disagree with your ruling. I am not quite sure what the terminology is because I have never done so before.

The ACTING DEPUTY PRESIDENT—Senator Colston, I am advised that, if you move dissent from a ruling, it would need to be in writing.

Senator COLSTON—Can I move that I dissent from your ruling?

Senator O'Chee—Madam Acting Deputy President, on a point of order: before Senator Colston does that, it may be appropriate if he were heard on a point of order, because I think it is proper for him to raise a point of order. I do not know what his point of order would be but, rather than getting into a debate at this point on dissension from your ruling, it might be appropriate, if it were possible, for a point of order to be heard first before this happened. I know there are senators on both sides who have an interest in speaking today, and it might save the Senate a lot of time if we were to do that.

Senator Schacht—Madam Acting Deputy President, on the point of order: I respect that the President has ruled that there is material that may be sub judice and that Senator Colston may want to table that material or introduce it in his speech and she wants to take a further considered view. I want to ask: does that mean that Senator Colston cannot speak at all in anticipation? Shouldn't it be that if, when he is speaking, he gets to material that may be sub judice, you would rule then that he cannot speak? I find it difficult to accept that he cannot speak at all because he may want to talk about something else that has nothing to do with the court case.

I completely support the sub judice ruling—there can be no argument about introducing that material—but he may want to talk about something else that we have not even thought of, and I think he may have the right to speak on this matter of public importance on other matters. If he does stray into something that is sub judice, you would then rule him out of order accordingly until the President gives a considered reply.

The ACTING DEPUTY PRESIDENT—Senator Colston commenced with a statement with respect to questions on notice, which was clearly the matter referred to in the President's ruling. On Senator O'Chee's point of order, I am not sure that it is a point of order to suggest that someone might seek to make a point of order. I would suggest, at this stage, that we continue with the next speaker in the debate.

Senator Faulkner—Madam Acting Deputy President, on a point of order. I am afraid that I did not hear your original ruling but, having checked with senators and clerks at the table, as I understand it, Senator Colston began to make a contribution to matters of public interest. He was given the call at 12.45 p.m. by you, but you were handed, by the Deputy Clerk, a ruling of the President that may be related to these matters. I did not have the opportunity of hearing the ruling and I have not actually heard any of Senator Colston's contribution. but I make this point: I think that Senator O'Chee's contribution ought to be listened to here.

I received, by the way, a different order of speakers for matters of public interest—I am actually on the list of speakers myself. If the President cares to make a ruling, then I think that is a matter for the President. I think you have properly called the next speaker and surely the matter can be dealt with when Senator Colston next has the call and the President is in the chair.

I do not know how germane the ruling is that the President has asked the presiding senator to make. It is very difficult for a senator who actually was not present in the chamber at the time that ruling was made to judge that, but I think the point of order I am taking is a sensible one in this circumstance. I think it is pretty similar, frankly, to the point that Senator O'Chee took a little time ago. It is competent, I suppose, in accordance with the standing orders for senators to move dissent if they so desire. But frankly I suspect, on a matter such as this, that the President ought to be in the chair to defend the ruling.

Senator Vanstone—Madam Acting Deputy President, on the point of order: as I have understood what Senator Faulkner has said, I think the proposition he is putting is the correct one. The President may have notice of some details of whatever it is that Senator Colston wants to raise. I certainly do not. Madam Acting Deputy President, I do not know whether you are familiar with the contents of those things, and I see by a quick nod of the head that you might not be. Therefore, it is not appropriate for Senator Colston to continue on the understanding that you will call him to order if he breaches the sub judice rule, because you are not familiar with the matters he may raise, and you may not have that capacity—not by dint of a lack of intellectual skills but by not being familiar with the material at hand.

If everybody is in agreement, it would seem that the sensible thing to do is to allow another speaker to go first, ahead of Senator Colston, so that the President can be in the chair if she wants to make an appropriate ruling. She is apparently familiar with this material in a way that I am not. Then, if Senator Colston wanted to proceed and move a motion of dissent from what is the President's ruling, the President would be here to handle that. That seems to me to be the appropriate way to go. Rather than continue with points of order, let people continue with their matters of public interest until such time as the President can be here. Then Senator Colston, if he is agreeable, can proceed with his contribution and he and the President can have such interchange as they choose. In the end, if there is a vote it will be up to us to decide.

Senator Faulkner—Madam Acting Deputy President, I add further to the point of order. It ought to be put on record that you have acted absolutely properly in this regard. It is a point that has not been made by me, Sena-

tor Vanstone or anyone else who has taken a point of order. It ought to be said that, as the Acting Deputy President, you have properly received advice from the clerks at the table. That is a correct course of action for you to take and for any presiding Acting Deputy President to take. You have made a ruling on advice accordingly, which again is a proper course of action for you to take. That point needs to be made about the good sense and dignity of the approach that you have taken in the chair to a procedural question, which perhaps for you and a number of other senators may well have come from left field.

The ACTING DEPUTY PRESIDENT—With the agreement of the Senate, I propose that we take that course of action. I now call Senator Cook to continue the debate on matters of public interest.

Senator Vanstone—Madam Acting Deputy President, I raise a point of order. Do we know when the President will be here so that Senator Colston can make his contribution?

Senator Alston—Madam Acting Deputy President, I speak to the point of order. The only point that is being made is that, if for some reason the President is out of the building and therefore there is not the capacity for her to come back in and deal with the issue, time should be provided at another date.

Senator Faulkner—The same issue will arise whenever Senator Colston makes the contribution, as you are aware.

Senator Alston—That is the point: you should not preclude him from speaking in a matter of public interest which occurs only once a week, on my understanding. If you are going to deny him the opportunity to speak this Wednesday lunchtime—

Senator Schacht—We are not denying that.

Senator Alston—No, I am saying that, if the President is not able to be here before 2 o'clock, some other time ought to be made available at a later date which accommodates the President's presence. Then we can have the matter properly resolved.

The ACTING DEPUTY PRESIDENT—Order! On that matter, I propose that we make inquiries to see when the President will be available and in the meantime Senator Cook will proceed.

Minister for Resources and Energy

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (12.57 p.m.)—Yesterday the *Sydney Morning Herald* reported a Nielsen poll on public attitudes to the handling by the Prime Minister of the ministerial conflict of interest issue concerning the Minister for Resources and Energy, Senator Parer. A very damaging poll it was for the Prime Minister, with 60 per cent of the respondents stating that the Prime Minister had not maintained high standards through the ministerial code of conduct; 58 per cent saying that Minister Parer should resign; 28 per cent saying that he should stay; and 56 per cent of respondents disapproving of the Prime Minister's handling of the Parer controversy and only 25 per cent approving of it.

For weeks now the Prime Minister has sought to defend his indefensible position regarding Senator Parer's flagrant breach of interest—a conflict between his public and private interests—with the lame excuse that Senator Parer is an honest bloke, that these are only technical breaches, and that he has not done anything wrong. What I would like to do now is to look at a number of actions taken by Senator Parer when he was chairman of the board of Queensland Coal Mines Management Pty Ltd prior to his appointment as minister for coal.

Last week I brought the Senate's attention to the workings of QCMM Group (ESP) Pty Ltd, which masqueraded as an employee share plan but which strangely was not designed to benefit the real working employees of QCMM's coalmines but only the directors of the company. I outlined how Senator Parer and his small group of mates were able to turn 44c into a magic $56,300 in a little over a year. As we know, the QCMM group of companies was able to claim tax deductions totalling $2.7 million through the purchase of employer class shares in QCMM (ESP) Pty Ltd for the direct benefit and enrichment of Senator Parer and his wealthy mates, who purchased employee class shares costing just 1c each.

The ESP arrangement operated from 1994 to late 1995, when the Labor government acted to close down the blatant tax minimisation schemes in the face of trenchant criticisms from the then coalition opposition. What is more, the worst thing is that battling Australian families picked up the bill for Senator Parer's tax abuse and self-enrichment through the manipulation of tax deductions that were not available to ordinary Australian families on average incomes. These are the same families—

Senator O'Chee—Madam Acting Deputy President, I raise a point of order. I do not think it is either appropriate to this debate or parliamentary for Senator Cook to say that Senator Parer was indulging in tax abuse. That is an imputation of improper motive to an honourable senator. I ask that that comment be withdrawn. I suggest that you remind Senator Cook that this is matters of public interest, which generally means that one tries to be non-controversial.

The ACTING DEPUTY PRESIDENT (Senator Jacinta Collins)—Senator O'Chee, on the second matter you raise, I do not understand it to be the case that matters of public interest be non-controversial. But, on your first point of order, I ask Senator Cook to withdraw that remark.

Senator COOK—I withdraw that remark. Whatever it was he was doing, he was manipulating his income so that he would pay less tax. That is the inescapable point. He was doing it in a way in which ordinary Australian battlers cannot do it. They are the same battlers that Senator Parer and his colleagues want to foist a GST upon. And why wouldn't they? They know that through their trusts and tax avoidance schemes, such as Senator Parer's, they will not pay the GST that ordinary, honest PAYE families will pay. They will avoid it. Point 1: let us call the ESP arrangement the first tax dodge. But it does not stop there.

Since last week it has come to light that this is but one complex scheme which raised serious questions regarding the propriety of the company's executive remuneration and taxation practices used by the QCMM company while Senator Parer was chairman of the board of directors. In or around December 1990, the ordinary shareholders of QCMMPL resolved that key employees of the company should become special class shareholders in QCMM so that they saw themselves as more than their employees. However, while this barely disguised executive remuneration top-up scheme was agreed to by the company, the actual shares were not issued for over two years. But did this stop the then chairman of QCMM, Senator Parer, from declaring dividends on non-existent shares? Apparently not.

On information available to the opposition, dividend payments were made to the proposed shareholders notionally on account of the shares they would eventually receive. Furthermore, the dividend payments were calculated according to the approved value of the shareholding and were processed in the books of QCMM as loans. Presumably they were shareholder loans and quite possibly they were dividends disguised as loans and therefore a tax dodging scheme. 'How does this scheme work?', one may well ask. That is a good question. You do need sly lawyers and creative accountants to answer it.

Going to the mechanisms of how it works, simply you fictitiously declare dividends on shares that do not exist at the time and then call that distribution of profits to the shareholders a loan. As we know, dividends are taxable but loans are not. These loans may have been repaid when the shares were finally issued in early 1993. We do not know that. But, at the very least, this arrangement results in a deferral of tax liability and the deferred dividend payment may have assisted the company to build its profit and therefore its stock of franking credits. There are also some very interesting questions on the withholding tax and FBT effect of this arrangement. Perhaps Senator Parer would let us know how that works.

While I stress this mechanism was not illegal at the time, it is very clearly devised to take advantage of the avoidance of tax liability for the individuals concerned. The shady nature of this scam is best demonstrated by the fact that this government itself has moved to counter the tax benefits of this arrangement through the Taxation Laws

Amendment Bill (No. 7) 1997 currently before the house. I can do no better than quote the Treasurer (Mr Costello). When he announced this budget measure, he said that the distribution of profits disguised as loans from private companies is 'a tax minimisation practice used by some high-wealth individuals'. 'High-wealth individuals' is technical talk for 'rich people'. Perhaps he had Senator Parer's company in mind. Point 2: now we have dividends disguised as loans to shareholders as the second tax dodge put in place while Senator Parer was chairman of the board of QCMM.

But now we know of a third example of an executive remuneration mechanism which neatly avoids paying proper amounts of tax. The opposition has first-hand information on the creation in early 1996 of a mechanism called the AQRM trust, established ostensibly for the payment of bonuses to key directors and employees of QCMM through the creation of a pool of fully franked dividends from which distributions would be paid. In essence, this trust was created to stream fully franked dividends into the trust by virtue of its one H class share in QCMM Pty Ltd. Such a mechanism can be used to distribute imputation credits on a different proportion to the size of the dividend involved and specifically can direct more franking credits to the highest wealth beneficiaries of the trust.

The question therefore is, 'Did Senator Parer fully approve of this tax dodging scheme for the benefit of directors, such as himself, and for key employees?' If we assume that Senator Parer, as a key director of the QCMM group, was a member of this trust, then he would be able to benefit from the ability of the AQRM trust to artificially income split the fully franked dividends received from QCMM Pty Ltd and then pay that dividend as a bogus bonus to directors and key employees in accordance with the plan.

Why not do this? Because to pay the bonus as ordinary income, as opposed to passing it through the trust as a fully franked dividend, would have meant that the recipients would have had to face the full rate of marginal income tax on the bonus received. This may have been the whole reason the AQRM trust was established, so that its beneficiaries can avoid paying the full rate of income tax that ordinary battlers have to pay week in week out. Ironically it is this government, of which Senator Parer is still a minister, that has moved to close down this individual streaming tax dodge, again in the Taxation Laws Amendment Bill (No. 7). The 1997-98 budget papers clearly describe this mechanism as a tax avoidance measure.

There is no doubt that Senator Parer was intimately involved with this plan. He was a shareholder. He was a beneficiary. He was a director. Most importantly, he was the chairman of this company when these arrangements were devised and implemented. It would appear that these three artificial executive remuneration tax minimisation arrangements had at their core the exclusive objective of asset stripping in the case of QCMM (ESP) Pty Ltd and dividend stripping in the case of the AQRM trust for the sole, personal benefit and enrichment of Senator Parer and his select group of mates. How else did Senator Parer turn a 44c investment in QCMM (ESP) Pty Ltd into $56,300?

On the basis of further information available to the opposition, we have been able to establish that for the financial year ended 30 June 1993 the W. R. Parer family trust received $210,372 in dividends from QCMMPL; in 1994, $192,000; in 1995, $243,000; in 1996, it received somewhere between $200,000 and $250,000; and in 1997 the minor shareholders, of which Senator Parer was one, are alleged to have received in or about August 1996, January 1997 and July 1997 dividends of between $100,000 and $150,000. In total, the W. R. Parer family trust has received just over $1 million in dividends since 1993 that allowed Senator Parer, and Senator Parer alone, to artificially split the dividend income between the Parer family members through Senator Parer's discretionary trust.

In summary, what do we have? We have Senator Parer's close involvement in the establishment of three bogus executive remuneration plans which take advantage of the cutting edge of tax minimisation, tax avoid-

ance and tax scams. He was the chairman of the board at the time the decisions were made to establish these scams and he was or still is a significant beneficiary of these arrangements. Senator Parer was defended by the Prime Minister as an honourable man. He is in fact the artful tax dodger of the government's frontbench. It seems that tax dodging is second nature when it comes to Senator Parer and goes in hand—

Senator Vanstone—Madam Acting Deputy President, I raise a point of order. That is just completely unsatisfactory. With respect, it perhaps ought not need to be drawn to one's attention. But, since nothing has happened, I draw it to your attention that to refer to another senator as 'the artful tax dodger' would seem to be without question unparliamentary.

The ACTING DEPUTY PRESIDENT—Senator Cook, I ask you to withdraw that remark.

Senator COOK—I withdraw it. I submit 'artful tax manipulator', if that be proper parliamentary usage.

Senator Patterson—Madam Acting Deputy President, I raise a point of order. That is making an imputation against a member of this house that is also unparliamentary. I ask that it be withdrawn.

The ACTING DEPUTY PRESIDENT—The advice I have received seems to be unclear, but I ask Senator Cook whether he will consider withdrawing that remark.

Senator COOK—I will withdraw it. I submit in place 'tax avoider'.

Senator Patterson—Madam Acting Deputy President, I raise a point of order. He is wilfully going against your order. He ought to withdraw it unconditionally and not impute motives to a member of this house.

Senator Vanstone—Madam Acting Deputy President, I rise on the point of order. I do not want to put you in a difficult position. I think that is what one of your colleagues is doing by simply choosing a series of words in full knowledge that anyone who reads the *Hansard* will simply go from point to point. One word colours the next by virtue of the fact that he says, 'All right, I withdraw,' and then nonchalantly says, 'I substitute something else,' which has a meaning very closely attached to the first. He then agrees to withdraw the second and says, 'I substitute a third,' which is very closely associated with the second.

There is no dispute that anyone is obligate to pay that tax which they are obligated to pay. But no-one is obligated to sit down and say, 'How can I maximise my tax contribution?' I would be very interested to see whether anybody on the other side does that. If all that Senator Cook wants to imply is that Senator Parer, like millions of other Australians, pays that tax which he is obligated to do and no more, that is fine. But, if he wants to use words that imply that Senator Parer is seeking in some way to illegally and improperly reduce the tax that he pays, that is unparliamentary.

The ACTING DEPUTY PRESIDENT—On the point of order, I think we can get caught in a debate which imputes all sorts of meanings to Senator Cook's words. My advice is that there is no problem with the word 'avoider'. I ask Senator Cook to continue.

Senator Patterson—Madam Acting Deputy President, I raise a point of order. I will actually refer that to the President, because I believe Senator Cook was flouting your ruling and that Senator Cook was continuing, as Senator Amanda Vanstone said, to try to get a series of words that would at least be tolerated. I think he was flouting your ruling. He should have withdrawn unconditionally.

Senator COOK—Madam Acting Deputy President, I rise on the point of order. Can I defend myself for a minute. I have carefully and clinically set out the details of what has happened in these circumstances. I am now at the stage of my speech where I am drawing conclusions from them. 'Tax avoider' is proper usage in this context. I maintain that the other words I have withdrawn are proper usage, too. But, in deference to the chair and the sensitivities in this chamber, I have withdrawn them.

However, 'tax avoider' is proper usage in this context. Those who are lawyers on the other side—and one of those who have raised

points of order is—would know the difference between a tax avoider and a tax evader. I have chosen to use the word 'avoider'. It does not suggest, as I have said in my remarks, that he has behaved illegally. The point that my remarks go to is the difference between behaving improperly and behaving illegally. The contention in this speech is strongly that he has behaved improperly and the level of tax that he has managed to avoid is paid by people who have no ability to avoid it at all. In drawing conclusions, it is proper for me in that context to use the word 'avoider'.

The ACTING DEPUTY PRESIDENT—Thank you, Senator Cook. Most of that comment was not actually on the point of order. Again, I ask you to continue your remarks. Senator Patterson can make what reference she desires.

Senator COOK—I was at the point of saying that we know Senator Parer's contrived tax avoiding schemes have enabled him to enrich himself—and that of his associates—and in the process further his own personal wealth at the expense of the public purse. Because with such schemes, though, there is a cost to be borne, who bears the cost of the artful tax avoider Senator Parer? No-one other than the suffering Australian families who do not have the opportunity to make paying tax optional, unlike Senator Parer and his mates do. As the Treasurer has said:

> . . . in some instances paying tax by high wealth individuals has become optional.

We now know whom to look for for that example: Senator Parer, firstly, and the rest the government's trust owning, tax dodging frontbench secondly.

It is for this reason and for others that the ALP opposes a GST. Every time the government speaks in favour of a GST being good for Australian families, the opposition, and for that matter the Australian public, need to look no further than the $2 million minister for coal and the artful tax avoider Senator Parer to work out who will benefit—and, as we know, it will not be Australian families who are required to pay PAYE tax.

In order to engage in this type of activity, you need an income level that enables you to employ lawyers—slippery lawyers—and creative accountants to find a way through the tax system. Most Australians do not receive that level of income, cannot have access to the use of technicality for avoidance purposes and thus pay their full measure of tax. The hypocrisy of this government is to allow that practice to continue while not cracking down on it sufficiently strongly and to talk about a GST, which all ordinary Australians will have to pay. *(Time expired)*

Aged Care

Senator WOODLEY (Queensland) (1.17 p.m.)—It is with great regret that I rise in the matter of public interest debate today because I would have thought that there would be no need for someone like me to come in and defend the churches against a most extraordinary attack by the government. I thought when this was raised with me that there had been perhaps just an exchange that sometimes happens in Senate committee hearings and therefore I really did not need to answer that attack. But upon reading the *Hansard* of last Friday's hearing of the Community Affairs Legislation Committee I discovered there seems to have been a premeditated attack on particularly the Uniting and Catholic churches, but by implication all churches in Australia, for their involvement in aged care in this country.

I am quite ashamed of the fact that not only the chair but another senator whom I respect very deeply should have engaged in this attack. So I have come in here today at lunchtime in order to at least put on the record the real situation in terms of the work the churches have done in this country in the areas of welfare and particularly aged care—a contribution which I believe nobody would deny has been of the highest order.

I will read some of the *Hansard* to illustrate why I say that this was a premeditated, and I think quite disgraceful, attack. The committee's chair directed this question to the Uniting Church representative at that hearing:

> Can I stop you there. I have read your submission. I am a bit confused, I suppose—put it that way. I understand that the Uniting Church property trust in New South Wales alone has assets of $1.65 billion, including liquid assets of $114 million. Therefore, I get a bit confused when I read your

submission and also hear what you were saying this morning, that capital upgrades should not be jeopardised under the legislation and so forth. I think there are a lot of organisations who would love to have somewhere in the vicinity of $114 million in liquid assets, to say nothing of $1.6 billion in assets. What is the story? That is just in one state.

A little later the chair further says:

I understand all of that, but what I fail to understand and what other people fail to understand is how one organisation can have $1.65 billion in assets in one state and $114 million in liquid assets in one state and then say, 'Oh, dear; we really need more taxpayers' money'.

I guess in one sense it is a fair question for the chair to ask, but the implication is that somehow or other the churches are salting away taxpayers' money and then asking for more.

Why this is such a disgraceful attack is that, as the Senate and the people of Australia need to understand, the Uniting Church organises its life so that all of its assets are covered by the Uniting Church property trust in each state. That includes assets such as youth camps, church properties, aged care facilities—all of the buildings the Uniting Church in New South Wales and the other states has as part of its assets, buildings which are used to minister to young people in Australia, buildings which are used for worship services, et cetera.

The implication of what the chair said was, 'Why don't you sell your churches in order to upgrade aged care facilities? Why don't you sell your churches and your youth camps so that you can build more aged care institutions?' The Uniting Church has put millions of dollars of its own money into such facilities, but it is not going to sell its churches so that the government somehow or other can avoid its obligations.

The mention of $114 million in liquid assets is even more offensive, because that represents the accommodation bonds which are held in trust for residents in aged care facilities, offerings that people make on a Sunday and deposit with the Uniting Church foundation in each state and moneys invested by people because they want to make that kind of investment within the Uniting Church. The government is saying that that money given week by week by congregations should also be used in order to save the government fulfilling its obligations to people in aged care institutions.

I guess we could say that perhaps the chair was just ignorant of this—and I hope that that is the truth—but the same accusation was repeated by Senator Eggleston later in the hearing. This is what he said:

What you are claiming is that all of the variable fees went into services—

well, Senator Eggleston, they did—

One must wonder and question whether, in fact, none of the money went into other projects or funds. Given your huge reserves, which Senator Knowles has referred to—noting that the Uniting Church property trust for New South Wales, for example, has assets of $1.65 billion and $114 million in liquid assets . . .

The implication of Senator Eggleston's question is even worse than the implication by the chair, for he is saying directly perhaps some of the money went into their register of assets, that some of taxpayers' money and some of the fees which people pay to be in their aged care institutions is represented by those assets of $1.65 billion and $114 million in liquid assets. I have to say to Senator Eggleston that I am sorry but he is wrong and the implications that he makes are highly offensive.

Senator Patterson—Did you tell him you were going to say this today? Did you have the courtesy to ring him?

Senator WOODLEY—Did he tell the Uniting Church he was going to ask these questions?

Senator Patterson—Did you ring him and tell him you were going to say this? This is disgraceful!

Senator WOODLEY—The attack by the government on the churches last Friday was the most disgraceful attack that I have seen for a long time. It is about time this government realised that the questions raised by people in this community about its behaviour are questions it ought to be answering instead of attacking the people who bring to them messages that they ought to be hearing. That is the point, Senator Patterson.

Senator Patterson—You should have had the good grace to contact Senator Eggleston when you were going to do him over in the chamber.

The ACTING DEPUTY PRESIDENT (Senator Jacinta Collins)—Order! Senator Patterson, your opportunity to speak will come next.

Senator WOODLEY—This government is acting in a most disgraceful way in the way it attacks people who are bringing to it—

Senator Patterson—You hypocrite.

The ACTING DEPUTY PRESIDENT—Order! Senator Patterson, I ask you to withdraw that remark.

Senator Patterson—I withdraw it.

Senator WOODLEY—I did not hear it, but that is all right. I cannot understand why all this government can do when people who are on its side—who are trying to cooperate with government in carrying out the services that it, on behalf of the whole community, provides to that community—bring problems to government and suggest that the government ought to do something about these problems, is attack the messenger and make the kinds of implications that were made by the chair and other members at the hearing last Friday.

The Uniting Church does not salt away taxpayers' money. It does not take the assets of people who contribute to it week by week and use them in order to make up for the government's failure in this area. I am absolutely scandalised that the government should have used a hearing of a Senate inquiry to attack those people who are trying to work with it to provide services to the aged of this country.

Telstra

Senator PATTERSON (Victoria) (1.27 p.m.)—I would have thought that, prior to making his speech, the previous speaker would have had the courtesy of alerting the two senators to whom he referred. It is normal courtesy in this chamber to do that. I find it scandalous that he did not. I will be drawing the attention of Senator Knowles and Senator Eggleston to that rather unpleasant speech. It was really not becoming of the senator who made it. Anyway, I will now speak about the topic I got up to speak about: the sale of Telstra.

Before the last election the coalition, the Liberal and National parties, told the public that they would sell one-third of Telstra and what they would do with the proceeds from the sale of that one-third of Telstra. A proportion of it, $1 billion, would go into a natural heritage trust which would be used to fund projects to reduce the adverse environmental effects that had occurred as a result of increased salinity, degradation of our water resources and other aspects of our environment, including things like the feral cats on Macquarie Island destroying albatross eggs and albatross chicks and decimating the albatross populations of the Great Southern Ocean. So broad ranging projects have been undertaken under that Natural Heritage Trust.

Also, the money allocated from that has been used to improve regional telecommunications, Networking the Nation—money that has been allocated over a number of years. Today the Minister for Communications, the Information Economy and the Arts (Senator Alston) announced the April funding arrangements, and I wish to talk about those, but the bulk of the money was used to retire foreign debt—debt that had been racked up by the Labor Party when in government, when they continued budget after budget to spend beyond their means. If anybody believes that Mr Beazley, who presided over the black hole, the budget deficit, of about $10 billion, could put the budget into surplus if he ever got his hands on the levers, they must be living in cuckoo land.

Mr Beazley had the opportunity while he was Treasurer and in cabinet to bring the budget into the black, but he never did and Labor racked up a debt. When they did have the opportunity of retiring debt after they, without advising the Australian public, sold off part of the Commonwealth Bank, they did not use it to retire debt.

Then they told people, in no uncertain terms—and I think I can quote Mr Beazley—that they would never sell the rest of the Commonwealth Bank. What they did was put

in the prospectus to the purchasers of shares in the Commonwealth Bank that the rest of the Commonwealth Bank would not be sold. What did they do? They turned around, without a mandate, and sold the balance of the Commonwealth Bank. But they did not use that money to retire debt, they spent it. So the silver was sold, the money was spent and we have nothing to show for it.

Still they racked up debt. They sold Qantas. They sold CSL. They sold airports. They sold almost anything that moved. But suddenly they have had some brilliant flash of I do not know what. I suppose it is their only policy—that they are not going to sell anything more. That is about the only policy they have espoused—except a policy that Mr Evans had for about 24 hours that they were going to get rid of negative gearing, and 24 hours after he announced that policy it was off the record.

So the only policy they have is that they are not going to sell anything. But would you believe them? No. You could not believe them because they sold the Commonwealth Bank, they sold Qantas, they sold airports and they sold CSL without a mandate, without telling the Australian public. In fact, they lied to the Australian public about the fact that they would not sell a second tranche of the Commonwealth Bank and then went ahead and did it. They frittered the money away; they frittered the money down the drain. It was not used to retire debt.

So the first one-third sale of Telstra we told the public about before the election. We told them also that we would have a Natural Heritage Trust Fund, that we would have improved regional telecommunications and that we would retire debt. We have done all of those things. Senator Alston announced today $21 million had been allocated to boost telecommunications services in regional Australia. As he said in his press release:

> This is good news for the many regional communities who will enjoy improved access to phones, the Internet, video conferencing, education, health, legal and other services, through the 49 new projects that have been approved for funding.
>
> The funding is the latest under the Government's $250 billion five-year Regional Telecommunications Infrastructure Fund, Networking the Nation—which was set up last year with funds from the partial sale of Telstra.

To date, there has been funding approved for a total of 93 projects to the tune of $49 million. He went on to say:

> The Government recognises the importance of ensuring that Australians living outside our capital cities have the opportunity to share the benefits of the information revolution.
>
> New telecommunications technologies can reduce isolation, provide better access to information and services, increase job and export opportunities, and reinvigorate rural communities, encouraging people to stay in the bush. This program is going a long way to improving the social and economic development of regional, rural and remote Australia.

He then outlined some of the successful projects. I will just mention a couple here: $5.5 million for Telehealth Tasmania network, which will introduce a state-wide network of more than 50 telehealth facilities over three years, to improve access to health services for regional and rural Australians; $345,000 for mobile telephones in the Kimberley region project, to provide the Halls Creek and Fitzroy Crossing areas with access to digital mobile services, benefiting the local community and many travellers through the region. The next is in my own state and is of interest to me—$610,000 for avNET. This Victorian Alpine Valleys network involves upgrading the north-east telecentre communications hub in Wangaratta and installing more points of presence to allow training and support programs for economic, cultural and community projects.

Those are just a few in the press release. Fortunately, more and more rural people will have access to this on the Internet and be able to read press releases on the Internet themselves because of this very project. He goes on to say:

> As well as funding such projects, Networking the Nation provides up to $10,000 for development assistance to help communities identify their communications needs if they do not have the resources within the community.

People can actually apply for further grants. Here we can seen the way in which the one-third partial sale of Telstra has been used not only to benefit every Australian by reducing foreign debt but also to benefit rural and

regional Australia through the improved regional telecommunications program of Networking the Nation and through the Natural Heritage Trust.

The Prime Minister (Mr Howard) announced that that was giving Australians a further chance to take a direct stake in the remaining two-thirds of Telstra. Unlike with Labor, that legislation is being brought into the chamber. It will not have a start-up date until after the next election. So, in keeping faith with the Australian people that Telstra would not be sold unless a mandate was given, the government is being completely up front. It backs up our commitment made at the last election that no further sale of Telstra will take place without a mandate from the Australian people.

Labor says that they will repeal this legislation. That is a statement which is very hypocritical when they are the same party who flogged off everything they could get their hands on when they were in power, and did not give the people a say about what they were doing, did not advise them beforehand and then squandered the money.

Unlike Labor, the coalition will use this opportunity to significantly reduce government debt. The proceeds will be overwhelmingly used for this purpose and will provide the government with the opportunity to wipe out about 40 per cent of government debt in one swoop—debt that was racked up year after year during 13 years of Labor. These proceeds will help us get rid of the legacy given to us by Labor, and will pay back debt and the interest on that debt. We ought to be reminded that we pay $8 billion per year in interest on that debt. Before we even pay back one penny of that debt, we pay $8 billion of taxpayers' money day in, day out over the year.

We had the opportunity of reducing that, of having money that we could have saved from the interest paid on that debt. If the sale of the Commonwealth Bank had been used to retire debt, if the sale of CSL had been used to retire debt, if the sale of airports had been used to retire debt, if the sale of Qantas had been used to retire debt, we would have more money to spend on programs in Australia—programs associated with the degradation of our environment, programs for the care of older people and programs for the care of people at home.

But the Labor Party, over 13 years, chalked up debt after debt and produced budget after budget in deficit. It actually sold the silver and spent it and left us paying $8 billion a year in foreign debt. I do not think you can say it often enough to remind people that $8 billion of taxpayers' money a year is just paying the interest. What family would run their home like that? What family would have a bankcard and keep getting into debt just trying to pay the interest on their bankcard? Nobody running their family affairs would do that. But the Labor Party running Australia's affairs did exactly that. If they got their hands back on the levers again they would continue to do it. So one of the benefits of the sale of the rest of Telstra—and it would be phased in over time so the markets could accommodate it and absorb it—would be to reduce the debt we have by about 40 per cent, a significant percentage.

One of the other things that happened with the partial sale of Telstra was that 14 per cent of adults purchased shares, many of them for the first time. We have had a community of people who are poor savers. One of the disadvantages we have in Australia, one of the things that puts us behind the eight ball, is that we have a very poor record of saving. One of the things this did was to give people an opportunity to take a stake in Australia's future but also to save. Anything that can encourage people to save is a positive thing.

Fourteen per cent of Australian adults purchased shares in the first sale. Telstra employees believed so much in the sale that 92 per cent of them jumped at the opportunity and bought shares. Some of them have seen increases in those shares. In relation to the sale, the government has made a commitment that it will ensure by law that Telstra will remain an Australian company; that there will be no more than 35 per cent foreign ownership; that no single foreign interest will be allowed to own more than five per cent of Telstra; that the chairman and the majority of the board by law will have to be Australian;

and that Telstra's headquarters by law will have to remain in Australia.

As I have said, this is in complete contrast to the hypocrisy we have seen on the other side. What has happened on their road to Damascus I do not know in this policy vacuum. The only thing they can do is to reject things, to reject the sale of everything, when they sold everything when they were in government. Kim Beazley in the budget luncheon address to the Department of Finance on 13 May 1994 said:

> The broad microeconomic reform objectives pursued by the Government through asset sales include improved accountability and efficiency; increased competition through reform of market structures; and reduced government involvement in sectors where it is no longer justified. And despite some critics suggesting asset sales amount to 'selling off the family jewels', they do not result in a loss of infrastructure, but rather a transfer of ownership. Asset sales allow the Government to maintain public services and benefits to the Australian people, while maintaining the deficit reduction strategy without increased taxes.

I do not know what he did about deficit reduction strategies, because they did not do anything about that. He was in favour of privatisation and in favour of selling assets. We have quote after quote from Mr Beazley, from former Senator Graham Richardson and from Paul Keating himself. An interviewer said to him, 'So it doesn't matter whether it—' meaning Telecom '- is publicly owned or privately owned?' Keating says, 'Not of essence, no.' The writing was on the wall that they were going to sell it had they the chance to keep their hands on the levers. They did not, but mark my words: if they were ever to get back into government, that is what they would do.

Minister for Resources and Energy

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.42 p.m.)—Senator Parer has boldly announced that he has answered all the questions that have been directed to him to do with the issue of conflict of interest and, therefore, he has nothing to add. If you are a journalist asking the questions, you have to go through Senator Parer's solicitors. So let us look at some of Senator Parer's answers. On Wednesday, 11 March 1998 Senator Parer said the following:

> As required in the disclosure rules of the Senate I have disclosed all interests that I have from a pecuniary point of view.

Perhaps. But why did he not declare his shareholdings in these public companies: Argo Investments Ltd, Australian Provincial Newspapers Holding Ltd, Australia Foundation Investment Co. Ltd, Bank of Queensland Ltd, Buderim Ginger, Campbell Bros, Greenchip Engineering Growth Ltd, Simsmetal Ltd, Telstra and Woolworths Ltd? Or the following private companies: Queensland Coal Mine Management Pty Ltd, or the investment trusts Kiskin Unit Trust No. 1 and Kiskin Unit Trust No. 2? On Wednesday, 11 March 1998 Senator Parer said:

> I have indicated two or three times I do not own any shares in mining companies.

What about Queensland Coal Mine Management Pty Ltd, which owns 100 per cent of the shares in Advance Queensland Resources and Mining Pty Ltd, which operates the Jellinbah mine in the Bowen Basin? The total value is a minimum $2.3 million. The total dividend stream from 1993 to 1998 is a minimum $1.3 million. In addition, what about his holding in Bowen Basin Coal Pty Ltd, holder of coal reserves at Lake Vermont? On Wednesday, 11 March 1998 Senator Parer stated:

> I've got to think carefully about ESP . . . it was an employee scheme of some sort that occurred in the days when I was fully involved.

Note that Senator Parer was fully involved when he was a full-time senator and shadow minister. Note also that ESP was for the directors, not the employees of the company.

Senator Robert Ray—These were the workers.

Senator FAULKNER—That is right. On Wednesday, 11 March 1998 Senator Parer stated:

> With regard to ESP, my recollection is that ESP itself was abandoned some years ago but I will check that. I have no recollection of the thing continuing.

Note that his recollection returned; that it was a return of $56,300 for a 44c investment. Had Senator Parer been paying attention to the Senate legislation, he would have realised that

it was debated in the Senate on 1 December 1995 and outlawed. On Wednesday, 11 March 1998 Senator Parer stated:

> I do not recall in the past ten years ever getting a dividend or distribution from that particular Family Trust.

Note that this statement was modified later on the same day when Senator Parer said:

> That neither me nor my wife received income from the Trust holding in the company, in QCMM, in either 1995 or 1996.

On Monday, 23 March 1998 Senator Parer stated:

> The dividend on those shares is determined by the ordinary shareholders of the company and they can decide whether you get nil, $5.00 or whatever figure you like.

Note that Senator Parer failed to mention that he was present at a board of directors meeting held on 14 July 1995 which considered whether dividends be paid or deferred. Note that he pointed out to that meeting that such a decision was not one for the board but for the shareholders. Note also that the board meeting then briefly adjourned to allow a shareholders meeting to be held, a meeting in which Senator Parer as a shareholder also participated. The shareholders meeting voted to proceed with the payment of the dividend in accordance with the established procedures for the calculation of same. On Monday, 23 March 1998 Senator Parer said:

> I asked the stockbroker the other day—'These are the conditions under which the shares are available to the Family Trust; what are they worth?' He said 'I'll give you $2.00.'

Surely such a ridiculous valuation does not reflect the significant dividend payment history of these shares.

Note that Senator Parer did not reveal the litigation between the company and another shareholder whom the company was trying to dupe over the payout for F class shares. On Tuesday, 24 March 1998 Senator Parer stated:

> I had resigned from the boards of both Kiskin and QCMM by that time.

Note that Senator Parer's 1994 declaration to the Senate does not list his directorship of Kiskin but does list his directorship of QCMM. Note that Senator Parer's 1994 alteration of interests to the Senate does list his relinquishment of QCMM directorship. Senator Parer's continuing failure to fully and adequately disclose his shareholdings prior to his appointment as a minister is demonstrated by his passing off a number of holdings in his recently amended declaration as 'QCMM and associated entities'.

We ask the question, what exactly are the details of holdings Senator Parer had which he has not disclosed in his statement of interests, in breach of the Senate's requirements? For the record, can Senator Parer detail for the parliament his holdings in and his directorships of a number of private companies? Let me list them: Advance Dawson Pty Ltd; Advance Queensland Resources and Mining Pty Ltd, which, of course, operates the Jellinbah Mine; Kiskin Pty Ltd; Lavershill Pty Ltd; QCMM Finance Pty Ltd; Tremell Pty Ltd; QCMM Group (ESP) Pty Ltd; and Bowen Basin Coal Pty Ltd. In addition, it might be a comparatively minor point but, in the interests of complete accuracy, ASC records state that Senator Parer still retains a holding in Duffcombe Pty Ltd. I understand the company is inoperative and, while it appears it is inoperative, it has not been struck off and the holding is still in place.

There are many more examples. Why did Senator Parer's office state that the itinerary for his visit to Japan was the sole responsibility of the Australian embassy, when the embassy has clearly indicated that there had been input from both Senator Parer's office and his department? Why does Senator Parer claim that his recent divestment merely legalises an existing position, and that there was no conflict of interest, either perceived, apparent, actual or for enrichment?

Compare this with Senator Parer's attitude to the former Department of Administrative Services, which he attacked in February 1991 over what he claimed was 'an obvious conflict of interest'—his words, 'an obvious conflict of interest'—with regard to a tender process for IT business. At that time, Senator Parer accused the department of erecting Chinese walls to remove the conflict of interest, and he dismissed that as being totally unsatisfactory. But, when it comes to his own

conflict of interest, Senator Parer not only fails to see the irony of the Chinese walls that he has constructed around his own financial arrangements via a family trust, but he also defends these arrangements vigorously.

Throughout this very tawdry episode, Senator Parer has affected a vagueness, a convenient memory loss—we have seen that in the chamber regularly in question time—with the intention of avoiding direct answers or revealing the full extent of his involvement in QCMM and associated enterprises. Yet these events occurred a mere four to seven years ago.

The first time Senator Parer ran into difficulties over his business enterprises and parliamentary duties, he suffered a similar memory loss, saying that he did not have an involvement in the company. True; but he had only resigned from it a few months earlier. A family spokesperson said that he had resigned in order to concentrate on his parliamentary duties. A cynic might have said that he had resigned in order to concentrate on his coal-mining interests. The minister declared that he had divested himself of his BHP and Santos shares because of his new portfolio responsibilities. His coal shares, held in a private company, were apparently too valuable to discard.

Both Senator Short and Senator Gibson became embroiled in conflict of interest claims because they declared their interests in the Senate register. Senator Parer failed to do so. We now know, of course, that Mr Howard also failed to declare all his interests in the House of Representatives pecuniary interests register. It is claimed that Mr Howard has hung on to Senator Parer, saying that Senator Parer is a good bloke—but so were Senators Short and Gibson. They were good blokes. The Prime Minister has said that Senator Parer has not personally profited—but personal profit is not a requisite for conflict of interest under the Prime Minister's code of ministerial conduct. It has been claimed that Mr Howard has hung on to Senator Parer because he is a mate. Now we know that is not true. We know that Mr Howard has hung on to Senator Parer to save himself.

Sitting suspended from 1.56 p.m. to 2.00 .m.

MINISTERIAL ARRANGEMENTS

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts)—by leave—I inform the Senate that Senator Robert Hill, Minister for the Environment, will be absent from the Senate chamber for question time today, Wednesday 1 April, and tomorrow, Thursday 2 April. Senator Hill is in Paris attending meetings of OECD environment ministers. In his absence I will take questions relating to the portfolios of the Prime Minister and foreign affairs and trade, and Senator Parer will take questions relating to the environment.

QUESTIONS WITHOUT NOTICE

Prime Minister: Code of Conduct

Senator ROBERT RAY—I direct my question to the Minister representing the Prime Minister. Minister, if the Prime Minister's breach of his own code of conduct is, as he claims, 'a completely trivial attempt to embarrass me', how then do you explain the surreptitious manner in which he chose to cover up the breach? What prompted his furtive flight from the board of the Menzies Research Centre on 15 October 1996 at the very height of the public debate on his own code of conduct? Why did he do this in such a clandestine way? Surely, if it is such a trivial matter, couldn't he have been man enough to have admitted his breach of his own guidelines in an open and transparent manner, rather than the underhand manner in which he chose to do it?

Senator ALSTON—I know it is April Fool's Day but this is the ultimate game of Trivial Pursuit. Let me just tell you some of the facts. Mr Howard was appointed a director of the Menzies Research Centre on 25 October 1995 and he resigned on 15 October 1996. He was appointed as a member on 29 September 1995 and resigned on 15 July 1997. During that whole period, one year almost in respect of the directorship and almost two years as a member, he did not attend meetings of the Menzies Research Centre. On that basis, it was determined that his other duties clearly would be likely to prevent his participating in the future, and he resigned. He made that clear and he indicated

that Dr Wooldridge would be able to attend most board meetings subject to adequate notice being given. There is absolutely nothing about any of that that should be of concern to the Australian public because, quite clearly, as Senator Ray would well know, the whole purpose and intent of disclosure requirements is to ensure that people's private interests do not conflict with their public duties. Can I just tell you what Freehill, Hollingdale and Page had to say by way of advice in setting out the legal basis of the Menzies Research Centre. They said:

> Given its nature, the MRC may be distinguished from that of a popularly understood conception of a public company run for profit motives. This is because there are no shares to be traded, it is not involved in activities for profit and its members and directors do not gain any financial benefit from their role with the company.

If there is any doubt about what is meant by 'public company' in this context, one has only to look at the Australian *Concise Oxford Dictionary* which defines a public company as a company that sells shares to all buyers on the open market. If you really want to talk about full and adequate disclosure, tell me: do you have to be a member of the trade union movement to belong to the ALP in this place? My understanding is that you do but, in any event—

Opposition senators interjecting—

Senator ALSTON—I am interested to hear that you do not but, in any event, the place is crawling with trade union members. When we had the debate on the Workplace Relations Amendment Bill 1997 [No. 2], we had Senators Conroy, Evans, McKiernan and O'Brien getting up and declaring, during the course of the second reading debate, that they were members of trade unions. In other words, they acknowledged that there may well be a conflict of interest, given that they happen to belong to an outfit that gave something like $92 million over 12 years to the trade union movement in order for it to provide those funds back later.

Tell me: why did Senator Faulkner not similarly declare, during the second reading or the divisions that we had on that bill, that he was a member? Why didn't Senator Forshaw, Senator Lundy, Senator Murphy, Senator Schacht or Senator Jacinta Collins? You cannot have it both ways: either you declare it or you don't. What you are doing is demonstrating that this is Trivial Pursuit taken to the ultimate extreme. You ought to focus on the real issues but you are rapidly running out of time. The electorate is going to be very unforgiving when they find that you have wasted coming up to 2½ years and you have done nothing except try to dredge up a sleaze a week. That is your policy—not interested in issues, just a sleaze a week. Do you think that will get you through to the next election? It won't.

Senator ROBERT RAY—I ask a supplementary question. I thank Senator Alston for his answer but he has not actually addressed why the Prime Minister did not acknowledge his membership of this board on the day that he resigned? Does he recall that the Prime Minister called a press conference on 16 October to take questions on the ministerial guide and the resignations of Senator Short and Senator Gibson? Why didn't he take the opportunity then to tell people that he had accidentally forgotten to declare this directorship and that he had resigned from it? Why didn't he come clean? Why did he do it in such a furtive manner in the anticipation that he would never be discovered?

Senator ALSTON—For the simple reason that he was not required to declare it in the first place.

Senator Forshaw—Of course he was.

Senator ALSTON—He was not. You know that. You confect all this outrage and take simulated offence at absolutely unexceptionable circumstances, but does anyone seriously suggest that if you are a Liberal Prime Minister you should not have interests in the Liberal Party organisation? Do you seriously think anyone would regard that as a potential conflict of interest?

Opposition senators interjecting—

Senator ALSTON—I see. They might actually say, 'Shock, horror! God, I have just discovered, Howard's actually a member of the Liberal Party organisational structures. It's appalling.' If he had been a member of the Labor Party, I would have thought there was

a conflict of interest. Thank God, he was not. The fact is, not one single person, apart from 29 hopeless performers in this chamber, suggested that. *(Time expired)*.

Government Policies

Senator EGGLESTON—I have a question for Senator Alston, Acting Leader of the Government, representing the Prime Minister. The Howard government has had the courage to address such critical issues facing Australia as efficiencies on the Australian waterfront and tax reform. Will the minister outline how the government is addressing these and other major policy areas and tell us what evidence there is of broad support for the government's policy priorities?

Senator ALSTON—Senator Eggleston addresses the nub of what debating in this place ought to be all about and why you are elected and sent here by the people you purport to represent. The ones you people opposite actually represent are the trade union movement, but the people you purport to represent are the wider citizenry. They are interested in the major issues and they expect governments to tackle them.

They expected us to solve your financial black hole. We did. You have never apologised for it, you have never explained how it came about. You simply went through that election campaign hoping that no one would notice. They did afterwards, and they will never forget it, and they will never be allowed to forget it.

We are the ones tackling the industrial relations problems in this country. We are the ones addressing those in terms of productivity rather than union muscle. We are the ones trying to reform Australia's uncompetitive 1950s taxation system. We are committed to tackling the rorts on the waterfront, where there is an absolutely deafening silence from the very people who threw a pink fit when it came to the airline pilots. Do you remember all the things they threw at them? They threw the kitchen sink, plus more, at them. They would not have a bar of their work practices. They brought down the full raft of not only the law but everything else that moved. When it comes to the waterfront, why don't they? Because Lindsay Tanner quietly goes around saying, 'We can't be seen to defend the indefensible, so we simply keep quiet and hope no one notices.' That will not be good enough and nor will character assassination on a weekly basis be good enough.

Senator Robert Ray—You are the master of it.

Senator ALSTON—I presume you are trying to entertain the Senate with a light diversion. It will not work. You never come into this place wanting to address policy issues.

But there is hope. There is one person on the Labor side who has a glimmer of understanding of the challenges ahead. Let us see what he has to say:

> History tells us that whenever federal Labor has lost heavily at the polls it has had to fundamentally reinvent itself to regain office. The cause of Labor is never weaker than when the party has nothing more progressive to offer the electorate than a revival of ideas long past.

What we are doing is tackling these big issues. We are giving people an opportunity to have a further direct stake in Australia's largest company, Telstra, we are instituting the principle of mutual obligation, which your colleagues in the UK think makes a great deal of sense and we are trying to reform the social welfare system.

We are tackling the big issues, but what are our opponents doing? They are, essentially, basking in what they think is an Indian summer. They look at a few polls and think, 'By God, we could get away with this. We can just skate through, without any serious policy alternatives, and we will wake up in government.' I tell you what: your Indian summer is going to turn into a very bitter winter of discontent. You will find that you have left your run far too late. If you want to get serious about policy, time is running out. We are the ones tackling those issues. It is a tragedy for Australia, that only one side, less Mark Latham, is prepared to do the same.

I am very much looking forward to 8 April. We will all be there in spades at the launch. Do you remember Ros Kelly saying, 'I am only endorsing the cover and not the contents.' That is basically what Kim Beazley is

going to be doing on 8 April, when he launches Mark Latham's book. Why bother turning up? If you will not have a bar of it and you think it is a lot of nonsense, why would you associate yourself with it? But he is going to be there—an absolutely hypocritical act. But we will make sure that he is not able to dissociate himself from it, and I am sure that the Australian public will understand that too.

Senator EGGLESTON—Madam President, I ask a supplementary question. Will the minister further outline what action the government is taking to address Labor's dismal legacy of irresponsible economic management?

Senator ALSTON—I suppose if they were in one of the places they would feel most at home—one of those great totalitarian regimes—they would probably have a compulsory reeducation program. But we are not prepared to waste that sort of money, because we know they are irretrievably lost. They are not interested in policy.

Opposition senators interjecting—

The PRESIDENT—Order! There are far too many interjections.

Senator ALSTON—As Mr Latham rightly pointed out, there is nothing worse than trying to revive ideas long past. We are tackling budget deficits, tax reform, waterfront reform, industrial relations reform, public ownership of government business enterprises and all these agenda items you know have to be tackled. And yet they somehow think that it is going to be good enough in the run-up to the election to get away with saying nothing. *(Time expired)*

Prime Minister: Code of Conduct

Senator FAULKNER—My question is directed to Senator Alston, Acting Leader of the Government. We know that the Prime Minister did not disclose his directorship of the Menzies Research Centre in his statement of pecuniary interests to the House of Representatives. Did he, however, disclose it on the statement required under his own code of conduct? Can you confirm that the Prime Minister's private statement was seen by the Deputy Prime Minister, as claimed in evidence given to a Senate estimates committee? Which is it to be? Did the Prime Minister breach his own code of conduct regarding full disclosure or did the Deputy Prime Minister sign off on a prime ministerial breach of the code?

Senator ALSTON—As I understand it the Prime Minister's return is made available to the Deputy Prime Minister. I have no idea whether Mr Keating did that. One would be overwhelmed by the prospect of Mr Keating confiding to himself or to anyone else about the true nature of his dealings, commercial and otherwise. My understanding is that the Prime Minister did comply with that requirement. I cannot take it further than that other than to say that the Prime Minister has made it very clear that there was no conflict of interest. That is clearly the case, therefore it follows that there was no need to disclose.

Whether or not you want to get up there and come clean about the issue, I do not think even your strongest advocates of this sort of approach—this policy alternative—would suggest for a moment that this is a serious conflict of interest. Indeed, time and again we have had examples, as we have had today. I would be interested to hear Senator Faulkner explain why he did not declare his interest in the Workplace Relations Bill. He is a member of at least one trade union. I presume he pays his dues.

Senator Schacht—Oh, the lights have gone!

Senator ALSTON—I know what you would do; you would socialise it again tomorrow wouldn't you. That would be your solution. Rather than turn on the lights you would go out and buy up the shares in the company. That would be your solution. You would throw hundreds of millions of dollars of taxpayers' funds at it and try to solve the problem by the wrong means.

Senator FAULKNER—Madam President, I ask a supplementary question. The Prime Minister, we know, ceased his directorship of the Menzies Research Centre on 15 October 1996. Can you indicate whether he disclosed this divestment on his private statement, as is required by the code of conduct, and whether that was one of the matters that was looked

into by the Secretary to the Department of the Prime Minister and Cabinet, Mr Max Moore-Wilton? When the Prime Minister speaks of his code of conduct as not being a death sentence is it because, in fact, he sees himself in front of the firing squad on this?

Senator ALSTON—I tell you what, there is plenty of friendly fire around here. I wish you would explain why you did not vote. Are you running dead on the union movement? Are you not really paying your dues? Is that the answer to why you did not disclose?

Senator Faulkner—My union membership's there and Howard's directorship's not.

Senator ALSTON—Exactly. So yours is here. Why did you not disclose it during the debate? If you want to talk about—

Senator Faulkner—Have a look at the register.

Senator ALSTON—Senator Faulkner seems to be blithely unaware that you are required to make these disclosures during the debates and indeed on the division.

Senator Faulkner—Why didn't Howard make it?

The PRESIDENT—Senator Faulkner, cease interjecting.

Senator ALSTON—Once again you do not answer the question. I understand your reluctance. If you want to talk about disclosure, let me tell you that the Prime Minister actually contacted Mr Beazley and asked him whether he had any objection to $100,000 going to both the Evatt Foundation and the Menzies Research Centre and, of course, Mr Beazley said, 'Not a problem. Very good idea.' Is that the same bloke that is out there working himself into a lather? Of course it is not.

The PRESIDENT—The level of interjections is too persistent and too loud. Order! I can still hear senators interjecting at the end of the chamber.

Mr Robert 'Dolly' Dunn

Senator HEFFERNAN—My question is directed to the Minister for Justice, Senator Vanstone. Following his successful extradition from the United States, Mr Robert 'Dolly' Dunn last night returned to Australia to face 91 charges of alleged child sexual abuse. During the time of Mr Dunn's location, arrest and extradition hearings, a number of false and misleading claims were made by Senator Bolkus and the Australian Labor Party regarding the search for Mr Dunn and the Australian Federal Police. Now that Mr Dunn is back in Australia, will the minister correct these misleading statements?

Senator Robert Ray—I hope this isn't sub judice.

Senator VANSTONE—I thank Senator Heffernan for his particularly astute question. I did notice that, when Senator Heffernan was making the point that Senator Bolkus and the Labor Party had made a number of false and misleading claims with regard to the extradition proceedings for Mr Dunn, one of my colleagues to my right asked, 'What's new?' It is the constant practice of Senator Bolkus and of the opposition to go out into the media and make a false and misleading claim without any regard to the truth of it. Why do they do this? Because they want to get publicity for themselves.

This is Senator Bolkus's form here. He knew he could do it with Mr Skase—and we have all seen what he did there to get himself some publicity. He saw the name Dolly Dunn and thought, 'My name could be attached to that and I could get myself a bit of publicity.' So he did the same. He knew at the time it would be regarded by the government as an operational matter and not one that the government would be free to respond on. He also knew the risk he was running, a risk raised by Senator Ray by interjection, sotto voce, saying, 'I hope this isn't sub judice.' It will not be but, Senator Ray, I wish you had made the same remarks to Senator Bolkus and others when they were interfering in these proceedings as they were going forward.

The bottom line is that the Australian people and the Australian media saw day after day people on the other side going and saying, 'This is a bungle. Dolly Dunn is not coming back. They've bungled it.' Well, the proof is in the pudding.

Senator Bolkus interjecting—

Senator VANSTONE—I acknowledge that interjection. It is quite clear that Senator

Bolkus and other members of the Labor Party will do anything to get themselves a bit of publicity. They first of all alleged that the Federal Police had not made sufficient efforts to locate Mr Dunn, somehow suggesting that the AFP would be a roving international police force—tripping around from country to country, just dropping in there without any legislatively given powers, acting as a police force to the world. Senator Bolkus is in a position to know that the AFP would have to work through Interpol. That is what they did.

It was the NSW Police that wanted Mr Dunn. They made the appropriate request to the AFP to use the resources of Interpol and the extradition proceedings to get Mr Dunn back. The fact that Mr Dunn came back at 9.30 last night and is now in custody awaiting trial is a clear indication that these proceedings did in fact work. Despite the fact that Senator Bolkus would rather they had not so that he could get himself a bit more publicity, they nonetheless worked. He suggested that some AFP budget cuts had somehow impeded the chase for Mr Dunn. As if the AFP, as I said, would be a roving international police force, travelling from country to country.

One of the best was an allegation that a dossier was sent to Honduras by surface mail. When I heard that I thought, 'Hell, I thought clipper ships went out years ago.' We had the tall ships here for the bicentenary. But the suggestion was that we were doing things so slowly that we were packaging them up and sending them by ship. In fact, the documents that Senator Bolkus was referring to were sent airmail.

Senator Bolkus interjecting—

Senator VANSTONE—Just for your edification, Senator Bolkus, they were a duplicate set. The original documents had been sent long before and this was the federal police and the department doing their job and making sure that if the documents were lost at the other end there would be another set there. They were airmailed over. But the truth never worries Senator Bolkus. It does not worry him.

And there is this allegation that Mr Dunn was in Honduras on social security payments. My colleague Senator Newman may have something to say about that. Mr Dunn was not in Honduras on—

Senator Bolkus—Madam President, on a point of order: can I ask you to rule as to the completeness of the minister's answer? She is denying the fact that two pensions were paid that could have been traced and the passport was used three times. Her officers did not send enough resources over there to track him down. For completeness she should put that in the answer.

The PRESIDENT—Senator Bolkus, you are debating the issue. It is not a point of order.

Senator VANSTONE—Senator Bolkus can try to scramble out of the grave all he wants but he dug himself in it. Mr Dunn was not receiving social security payments in the Honduras. *(Time expired)*

Senator HEFFERNAN—Madam President, I ask the minister a supplementary question. How does the successful extradition of Mr Dunn compare with other high profile extraditions attempted by the former Labor government?

Senator VANSTONE—I thank Senator Heffernan, again, for that astute question. Not very well at all. The accusers in this case say that we bungled an extradition and the alleged criminal is now back in Australia in custody. These are the people that let Mr Skase go. They gave him his passport and said, 'Off you go; set up in Majorca. You'll be fine.' They also failed to bring Robert Trimbole back to Australia.

I do not allege any corruption on Senator Bolkus's part or anybody else's in that respect. Legal proceedings are like that—sometimes you win; sometimes you lose. But they have a track record of losing and this government has a track record of winning. And they ought to learn something from that.

Prime Minister: Code of Conduct

Senator COOK—My question is to Senator Alston. It is a very specific question which should beget a very specific answer. At the 1 October 1996 cabinet meeting in Perth at which the cabinet decided to pay the Menzies Research Centre $400,000, did the Prime

Minister absent himself from the cabinet room for that decision or did he not?

Senator ALSTON—Madam President, I am not here to canvass what might have occurred in cabinet meetings. But I am in a position to indicate that over the 12 years of Labor they managed to give the Evatt Foundation $295,000 a year on a tax-free basis. What subsequently happened, as I was in the process of indicating, was that the Prime Minister rang Mr Beazley and asked him whether he had any difficulty if there was an equality of treatment between the parties? In other words, we recognised that there is merit in doing research; we might have a fundamentally different attitude now, given the extent to which you seem to be totally unwilling to apply or even call upon any research that might have been conducted.

But the fact is that the money was given to both the Evatt Foundation and the Menzies Research Centre for genuine research purposes. That is the whole purpose of having the Menzies Research Centre. It was established to undertake research into economic, social, cultural and political policies in order to enhance the principles of individual liberty, free speech, competitive enterprise and democracy and to publish and disseminate this research to the public. The Menzies Research Centre is a legal entity often chosen by associations which intend to engage in non-trading activities.

Let us be perfectly clear on that. The fact is that the Prime Minister and Mr Beazley were in agreement that funds ought to be made available—despite the fact that you have completely failed to use them properly.

Senator Cook—Madam President, on a point of order: I asked a specific question which really has a yes or no answer. Madam President, can you ask the minister to actually answer the question that was put to him and not to continue to evade and draw red herrings across the path. Just answer the question.

The PRESIDENT—I cannot direct the minister to answer the question in the fashion that you want. I can only ask him to apply himself to the question and the topic that was asked, and he is dealing with that.

Senator ALSTON—The fact is that I did indicate at the very outset that I was—

Senator Cook—Well, sit down.

Senator ALSTON—Oh, he has changed his attitude. One minute he is saying, 'You have got to answer this yes or no—come on; which is it?' I say, 'I have already answered it,' and he says, 'Well, sit down.' In other words, he now acknowledges that I did answer it. But I happened to answer it in a way that he did not like. Sorry about that; he got his answer and he will have to live with it.

Senator Faulkner—What a slimy answer.

The PRESIDENT—Order! Senator Faulkner, cease interjecting.

Senator COOK—Madam President, I ask a supplementary question. I note for the record that we never got a straight answer, Minister. Minister, are you aware that Mr Howard asked on 30 April 1992:

> Is it not, therefore, the case that unless the Parliament is satisfactorily assured that Senator Richardson either disclosed his interest as a director of the radio station whenever he participated in Cabinet discussions or decisions on broadcasting matters . . . or, alternatively, absented himself from those discussions, he must, in accordance with accepted Cabinet practice, resign from the Ministry and in default you ought to remove him?

The question is: on his own criteria, Minister, hasn't the Prime Minister breached his own standard of ethics?

Senator ALSTON—The short answer to that is no. I am delighted that Senator Cook should have kicked an own goal. I noted that you did not disclose the fact the Senator Richardson happened to be the Minister for Transport and Communications at the very time.

Senator Robert Ray—No, he wasn't.

Senator ALSTON—He wasn't? Are you sure of that? I defer to your superior knowledge, Senator Ray, if that is in fact the case. Our inquiries did not indicate that; they indicated that he was. But we will check it. The fact is that I do not know what Mr Howard may have said back in 1992, but I do know that, in respect of the Menzies Research Centre, it is not—

Senator Robert Ray—You were still supporting Peacock.

Senator ALSTON—Put it this way: the guide of key elements on ministerial responsibility does not define the meaning of a public company by reference to any particular commercial law regime.

Senator Carr interjecting—

Senator ALSTON—We have spelt out what the commonsense definition of 'public company' is. This company in no way would ever be regarded by anyone in the community—other than 29 non-policy interested people—as having anything to do with a conflict of interest. *(Time expired)*

The PRESIDENT—Senator Carr, stop shouting during question time. You are in breach of the standing orders. I call Senator Stott Despoja.

Higher Education: Funding

Senator STOTT DESPOJA—Thank you Madam President. My question is addressed—

Senator Robert Ray interjecting—

The PRESIDENT—Order! Senator Ray, I have been hearing your voice too frequently.

Senator STOTT DESPOJA—My question is addressed to the Assistant Treasurer. Minister, on this national day of action on education, are you aware that a decade ago 90 per cent of the public university budget came from government compared with 60 per cent under your government? Do you believe that your government has its priorities wrong when it can find $2 billion a year for a savings rebate, half of which—about $1 billion of that savings rebate—will flow to high income earners without them having to save a single extra cent, when universities are being forced to retrench 3,000 university staff? Wouldn't it be a better contribution to Australia's economic future and our future national savings to invest more in higher education and the jobs and skills of the future than providing an unnecessary and fiscally irresponsible billion dollar tax break for the rich?

Senator KEMP—There were an awful lot of claims in that statement which, I have to say, Senator Stott Despoja, were dead wrong—absolutely dead wrong—and I am amazed that you would get up and say those things.

For a start, Senator Stott Despoja, you did mention that Australia had a savings problem, and that is correct. Under the Labor government, as you will recall, the savings ratios in this country fell to very low levels, largely because of the very high deficits which were racked up by the public sector, in particular the federal government under Labor. The savings rebate is one of a number of measures that this government has taken to encourage savings—in this context, private savings. The vast proportion of the savings rebate, Senator Stott Despoja, if you had been listening to the debates on this, flow to lower and middle income earners.

Senator Stott Despoja interjecting—

Senator KEMP—No, you were not listening to the debate; so you should have been. In relation to a number of other matters you raised which deal with the area of responsibility of my colleague, Senator Ellison, I do have some advice on some of those issues.

Regarding the national action day, the government's view is that this protest is simply not justified. Just look at the facts. Let's get the facts on the table. The coalition is funding more undergraduate places than Labor—10,000 more this year than in 1996. The second point I would bring to your attention, Senator Stott Despoja, is that Commonwealth spending for each of these student places is higher than it was under Labor. That is very important. The third point I would bring to your attention is that total revenue—public and private—for the higher education sector is rising. I will repeat that: total revenue—public and private—for the higher education sector is rising. In 1998, it will be some $550 million more than in 1995.

The application patterns vary from course to course and from state to state. Undoubtedly, students are becoming more discriminating in their choices. Options other than universities—new apprenticeships and TAFE, for example—are expanding rapidly. The government's policy of allowing full fee paying places creates extra opportunity not just for those now doing the course of their first

choice, but also for those who can now enter university via the HECS places given up by many of those paying fees. The government has an excellent record on higher education.

Senator Lundy—We can tell that by the billion dollar cuts you have made.

Senator KEMP—Senator Lundy, don't you ever listen to an answer which is given to you? I will repeat it, Senator Lundy. If you criticise this government, you must criticise your government because the coalition, Senator Lundy, is funding more undergraduate places than Labor—10,000 more this year. Do you understand that?

The PRESIDENT—Order, Senator! Direct your remarks to the chair, thank you.

Senator KEMP—I am sorry, Madam President, but there was a high degree of abuse coming from the Labor benches, and I was diverted because Senator Lundy, like Senator Stott Despoja, was dead wrong.

To conclude, the government has an excellent record on higher education. The number of students attending universities has never been higher, Senator Lundy. You can jump up and down all you like, but that is the truth. The universities are working to improve their course offerings. As I said, the innumerable assertions that were made in the question by Senator Stott Despoja are simply not justified.

Senator STOTT DESPOJA—Where do I start my supplementary question, Madam President! Minister, you said that there were a number of things wrong. I am wondering: was my assertion that 3,000 staff have been retrenched wrong? And isn't it the case that it does not matter how many times you repeat something, it does not make it true?

Government senators interjecting—

Senator STOTT DESPOJA—You are the one who's into repetition. Thirdly, Minister, isn't it the case that the government did not have to make the cuts to universities, and could find the funds to restore university funding tomorrow if you stuck to your election policy commitment and means tested your savings rebate? I noticed you avoided that in the question. Isn't it the case that our long-term interests would be better served by putting more funding into universities and the jobs and skills of the future than into the pockets of the wealthy in a new tax break for the rich? Minister, please feel free to tell us what year you were referring to when you said that your funding per student—per FSU—was actually higher than Labor's.

Senator KEMP—Senator Stott Despoja, you asked, 'Where do I start?' Senator Stott Despoja, where you start is always with the facts—start with the facts. But the one accurate comment she made—I suggest she is probably referring to herself—is the more you repeat an error does not make it true. Let me just make the point to you, Senator Stott Despoja, that I know you are running a line—and you are entitled to run that—but just make sure that the line is accurate and the facts are there.

Senator Stott Despoja interjecting—

Senator KEMP—Don't shout, Senator Stott Despoja, I am trying to answer your question. The coalition is funding more undergraduate places than Labor.

Senator Lundy interjecting—

Senator KEMP—Senator Lundy, you have got a comment? Thank you. There are 10,000 more this year than in 1996. So what is this national day of action all about, Senator? Let us put the facts on the table, and that is precisely what I have done. *(Time expired)*

DISTINGUISHED VISITORS

The PRESIDENT—Order! I draw the attention of honourable senators to the presence in the gallery of a delegation from the Japanese Diet who are visiting Australia under the Australian Political Exchange Council. On behalf of honourable senators, I welcome you to the Senate and trust that your visit to this country will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Prime Minister: Code of Conduct

Senator FAULKNER—My question is directed to Senator Alston, the Acting Leader of the Government in the Senate. Minister, did the Prime Minister state on *A Current Affair* last night, in relation to his directorship

of the Menzies Research Centre, 'I wasn't paid anything, I had no private interest'? Minister, I ask you why this statement is so inconsistent with Senator Hill's statement of 4 May 1992 when he said in relation to former Senator Richardson:

> It may not be a question of some financial or pecuniary conflict. This is related to registrable interests, not just pecuniary interests.

Senator Hill went on to say:

> The statement and the standards that the Prime Minister said he stands by require that Ministers disclose other registrable interests so that the public can see that they are not, in dealing with legislation and Cabinet matters, putting themselves in any potential position of conflict.

Why are those two statements—Mr Howard's and Senator Hill's—so inconsistent?

Senator ALSTON—Whatever Senator Hill may or may not have said back in 1992—and I suppose I was here listening at the time—the fact is that Senator Faulkner only really got it right at the very end of his question when he talked about conflict of interest. That is what this is all about: is there any basis for anyone believing, on reasonable grounds, that there is a conflict of interest between being involved with a party organisation and having some sort of conflict that needs to be declared if decisions are taken in respect of it? Of course, the answer is no, and Mr Howard has made it abundantly clear that he did not have any pecuniary interests.

I have already identified the fact that the Menzies Research Centre was established to undertake research into economic, social, cultural and political policies. It is not in any shape or form a commercial enterprise. It is not a profit making venture, unlike radio station 2HD, which, presumably, does very much require to make a profit or else go under and is very much subject to the licensing and other regimes that governments preside over.

There is sensitivity attached to commercial operations that simply does not attach to dog clubs or political party organisational structures and it is breathtaking hypocrisy for Senator Faulkner to try to beat up an issue such as this, to pretend that somehow the Liberal Prime Minister of Australia should disclose the fact that he is a member of the party organisational structures. He is a member on an ex-officio basis.

Senator Schacht—He is a director of a company.

Senator ALSTON—He belongs to that because of his position and no-one in Australia, apart from those opposite, would express any surprise at that at all. You would expect people administering the affairs of a research centre associated with the Liberal Party to have impeccable Liberal credentials. They do not come any more impeccable than the Prime Minister's.

All that the Prime Minister is doing is exactly what everyone else would do in the same circumstances: he is ensuring that the affairs of the Menzies Research Centre are run by people who are familiar with their activities. But it is not a commercial enterprise; it does not come within the definition or even the spirit of guidelines which are designed to ensure that, if you have a private interest in a commercial operation where it might conflict with your public responsibilities, you declare it. It is not in any shape or form analogous to shares in a public company in the normal sense of the term. This is a company that not only does not fit within the *Concise Oxford Dictionary* definition of 'company' but is one that anyone—any fair-minded citizen or individual—would immediately understand is there for the benefit of the Liberal Party and, hopefully, the wider community to the extent that the research it conducts is of use in the public arena.

The fact is that you are not interested in getting down to the basics. I do not know what the Evatt foundation has done, but we ought to be asking for our money back because we do not seem to have seen much generated over the last four years from that particular outfit. At the end of the day, if you are not interested in policies and if you do not have any long-term solutions, you will pay the price in the not too distant future.

Senator FAULKNER—Madam President, I ask a supplementary question. Minister, we note that you have cut Senator Hill loose as soon as he is on a plane on his way to Paris,

but I wonder if you are aware, Minister, that in the same speech Senator Hill also said:

> The Prime Minister totally disregards the standards that he set down publicly for his Minister when it is politically expedient to do so. If there is a better word than hypocrisy for that, I can't think of it immediately.

Minister, isn't it the case that, while Senator Hill's words were aimed at Prime Minister Keating, they actually and precisely apply today to Prime Minister John Howard's own failure to declare his directorship of a public company?

Senator ALSTON—You can work yourself into a lather as much as you like. The answer is no. You asked whether the Prime Minister disregarded his own standards. The answer is no. Those standards are put in place to ensure that people do not have a conflict between their private holdings and their public responsibilities. If you want to get up here and say that the public of Australia would be amazed to discover that all the people on our side of politics actually belong to either the Liberal or the National parties, you are even bigger fools than I thought.

They probably would be very interested to know how many of you are actually trade union members because they think in their naivete that you are actually there to represent the wider community. But, of course, if they studied the goings-on in this place, they would understand that, time and again, whatever the holding company says, the wholly owned subsidiary sings the tune. You are here to represent to very narrow sectional interests. If anyone was surprised to discover that you are all members of the Labor Party, I would be amazed. *(Time expired)*

Hindmarsh Island Bridge

Great Western Tiers Rock Shelters

Senator BROWN—My question is to the Minister for Aboriginal and Torres Strait Islander Affairs. Minister, do you accept that the High Court's awful and awesome judgment on Hindmarsh Island is another grievous setback for Australia's indigenous people and for reconciliation? As minister, what reassurances can you give the indigenous people whom you represent in cabinet? On a specific matter, Minister, why have you not responded to the request by the Deloraine Aboriginal Cultural Association for an emergency declaration to protect rock shelters in the Kooparoona Niara Great Western Tiers of Tasmania, beneath logging operations which threaten landslips and other damage? When will you respond, and what investigations have you made in the 12 days since that urgent request was made to you?

Senator HERRON—I thank Senator Brown for his question. I was very pleased with the High Court decision today in relation to Hindmarsh Island, because it was a decision on behalf of all Australians—indigenous and non-indigenous—and they would welcome it.

I can confirm that the High Court has handed down its judgment in the Hindmarsh Island case today. I welcome the decision, which supports the government's position on this important question. The decision is, as we expected, that the challenge was—as I have said many times—a complete waste of public money. I would remind the Senate that Labor actually supported and promoted this challenge, which has cost around $200,000 of taxpayers' money.

I would also remind senators of what Senator Bolkus had to say when the Hindmarsh Island bill was finally passed in the Senate. He sledged us every day about this. He told the Senate that he only supported the bill because it would end up in the High Court. Well, it has and Senator Bolkus's arguments have been thrown out. He was wrong and it is time he admitted it.

There have now been four inquiries or royal commissions and one High Court challenge over the Hindmarsh Island Bridge. Four of those five very expensive processes found that the bridge should proceed and the fifth, which found against the bridge, was overturned on appeal. In government, Labor wasted over $4 million of taxpayers' money on Hindmarsh Island inquiries and associated legal costs and another $200,000 with this one. Even after the Australian public relegated them to the opposition benches, they still found ways of wasting even more public money by deliberately promoting this failed challenge.

Two years in opposition have taught them nothing. Senator Bolkus and Labor should now acknowledge that they have been completely wrong on this issue.

Senator Brown—Madam President, I raise a point of order. My specific questions were: what reassurances could the minister representing the indigenous people in cabinet give to them in the wake of this judgment; and, secondly, why has he not responded to an urgent request for intervention in Kooperoona Niara? He has not answered either of those questions, and I ask you to direct him to the question.

The PRESIDENT—There is no point of order. There were two major issues within the question, and Senator Herron is dealing with one of them.

Senator HERRON—I have two more minutes and I will tend to the second part of the question as we proceed. As I mentioned, Senator Bolkus has once again proven just how inappropriate he is as shadow Attorney-General. If that is the quality of advice that he gives, as he gave previously, and if that is the best the Labor Party can put up, it is a sad commentary on the Labor Party.

As the alternative first law officer of the Commonwealth, he has been caught red-handed, yet again, leaking confidential Federal Court documents and, in doing so, he has nobbled the chase for Skase. This is another example of his inability. Now his judgment on this issue has been proven totally wrong in that he actively supported and promoted legal action, compounding the gross waste of public money Labor was guilty of in government. Senator Bolkus should resign. He has shown he does not have the judgment or the trust to ever be this nation's Attorney-General.

In relation to the second question: yes, I have studied that, Senator Brown, you will be pleased to know. As you know, an 80-metre zone is to be given around the rock shelters, by agreement, and an approach is being made through the normal processes. We have to go through normal processes. I understand the significance, and it has been accepted by both sides involved that they are areas of significance. I am going through the normal processes and, over the last week, we have been doing that. You will be pleased to know, Senator Brown, that I expect that there may well be agreement on it but, if agreement does not occur, further action will be taken.

Senator BROWN—Madam President, I ask a supplementary question. Again, I ask the minister why he has not responded to the Deloraine Aboriginal Cultural Association. I ask him when he is going to consult them about this matter; I ask him what studies he has directed specifically to get independent information; I ask him, does he not accept that, with logging occurring above these rock shelters every day, the threat of damage, including extension of land slips, continues to increase, and I ask him why he has not taken urgent and direct action, as he is enabled to under the legislation, consequent upon the application to him 12 days ago.

Senator HERRON—The answer to the question is that you have to have complete knowledge of the processes that have to occur. We do not go, as Senator Brown goes, into an emotional reaction to some approach that has been made to him by one side of the equation. As the responsible minister, I have to get advice from both sides, but only when the correct processes have been followed. At the moment, the correct processes are being followed. Senator Brown is probably not aware of those, and I am happy to get one of my staff to give him a briefing on this so that he understands the correct processes.

It is not my place to circumvent those correct processes which must be followed in every instance. Otherwise, we might end up with another Hindmarsh Island Bridge fiasco, which my predecessor did. Look where it got him! I am not going to go through that. I am going to follow the correct processes. We will not be following the processes that were followed by the Labor Party, which resulted in yet another fiasco in relation to the Hindmarsh Island Bridge. I am not going to end up with the traps, as you say in Tasmania. *(Time expired)*

Minister for Resources and Energy

Senator COOK—My question is directed to the Minister for Resources and Energy. Is it not a fact that you presided over not one,

but three, tax avoidance schemes as a shareholder, director and chairman of various QCMM Group companies? Is it not also a fact that your QCMM(ESP) tax dodge was shut down by former Treasurer Ralph Willis because:

> . . . they were no more than executive remuneration packages designed to convert salary into shares in order to take advantage of the open ended tax deferral opportunities . . .

Will you also confirm that your company's practice of declaring dividends on shares that did not exist, and then disguising those dividends as loans to shareholders, has been described by the Treasurer Mr Costello as 'tax minimisation practices used by some high wealth individuals', and that it too is about to be closed down? Will you also confirm that the establishment of the AQRM trust was nothing more than another tax rort scheme to stream fully franked dividends from QCMM Pty Ltd to the trust in order to provide contrived tax benefits to the directors and key employers of the QCMM, and that this scheme is also about to be closed down by this government? *(Time expired)*

Senator PARER—All that Senator Cook is doing is regurgitating everything that has occurred over the past three or four weeks. I have nothing to add to what I have said in the past. Let me say that the questions raised by Senator Cook have nothing whatsoever to do with my portfolio.

Senator Faulkner—What a yellow-bellied, gutless answer!

The PRESIDENT—Order, Senator Faulkner!

Senator Alston—Madam President, I raise a point of order. I thought for a moment that you would rule that 'yellow-bellied' and 'gutless' were not appropriate epithets. I assume that you heard those words, or are you simply referring to Senator Faulkner's manner of sitting?

The PRESIDENT—I was referring to the noise he was making. I did not hear the words that were used. But if unparliamentary words were used, they should be withdrawn.

Senator Alston—You said 'yellow-bellied' and 'gutless'. Do you deny that?

Senator Faulkner—Madam President, if the words I used were unparliamentary, of course I would withdraw them.

Honourable senators interjecting—

The PRESIDENT—Senators at the table will stop exchanging remarks.

Senator Faulkner—I would never—

The PRESIDENT—Senator Faulkner, I want to hear Senator Cook's supplementary question.

Senator Cook—Madam President, first of all I have a point of order. Senator Parer said that it has nothing to do with his ministerial duty. Is it not a fact that the conduct of his ministerial duty and the confusion of his public obligation with his private interests is a matter of portfolio responsibility?

The PRESIDENT—But not in relation to the question that was asked that time.

Senator COOK—Madam President, I ask a supplementary question. I notice that the minister runs away from dealing with the matters that are directed to the conduct of his own ministerial responsibilities. But I ask him: is it not the case that these tax avoidance arrangements have allowed you to profit at the expense of battling Australian families who do not have family trusts, who do not have employee share plans and who do not have disguised company loans? Minister, is a requirement of being a 'successful businessman'—in the way you define that term—an ability to sign up to artificial tax avoidance schemes at the expense of honest battling PAYE taxpayers?

Senator PARER—Every one of these issues has been canvassed over the past two or three weeks. There is nothing new in what Senator Cook is asking. He is simply trying to rake up old coals. There is nothing more that I can add to what I have said over the past three weeks.

Natural Heritage Trust

Senator BARTLETT—My question is addressed to the Minister representing the Minister for the Environment. I refer to the Cape York Peninsula Natural Heritage Trust package that was recently released by the environment minister which purports to fulfil

the Prime Minister's election promise of February 1996 to make sure that high conservation areas are fully protected and that Aboriginal communities are fully involved in that process.

Is the minister aware that the package has been described by representatives of conservation and Aboriginal groups who were signatories to the historic land use agreement as failing to follow CYPLUS recommendations, ignoring the heads of agreement, not delivering the coalition's election commitment but rather a slap in the face for all sections of the Cape York community? Can the minister please explain how the government has gone anywhere near fulfilling the Prime Minister's pre-election promise? Is it not true that you have let down badly the groups involved in the signing of the historic land use agreement by undermining this heads of agreement which has been described by the coalition themselves as a good model to adopt?

Senator PARER—I understand that it did comply with our pre-election promise. But let me say, Senator, I have no additional brief on this from the minister, and I will come back to you as soon as possible.

Senator BARTLETT—Madam President, I ask a supplementary question. Minister, the package did not comply with the Prime Minister's pre-election promise, as I am sure you will find when you look into it. Why did you not follow the recommendations of CYPLUS and the land use agreement and commence a proper assessment of the conservation values before they are lost forever? Why has the government instead ignored the local community and the recommendations that they put forward and set up a Cape York advisory panel which is stacked with groups who represent the small minority opposed to CYPLUS and included only two indigenous organisations to represent the indigenous people who constitute 50 per cent of the population of Cape York?

Senator PARER—I think I advised the Senate that I would come back with more detail. It seems that, having said that, he still feels obliged to recite the supplementary question prepared for him.

Natural Heritage Trust

Senator CHRIS EVANS—My question is directed to the Minister representing the Minister for Primary Industries and Energy and the Minister for the Environment. Minister, can you take advantage of this unique opportunity of wearing the two relevant hats to clarify discrepancies in the administration of the Natural Heritage Trust by the two members of the NHT ministerial board, Ministers Anderson and Hill? Can you explain why the Minister for the Environment saw fit to overturn 39 per cent of the recommendations of the regional state assessment panels in relation to his programs, while Minister Anderson accepted the overwhelming majority of their recommendations in relation to his programs? Minister, why is it that information released by Senator Hill showed that the electorate of Gwydir, Minister Anderson's electorate, received a total of $782,000 from the NHT while Mr Anderson proudly proclaimed in the Moree *Champion* on 25 November last year that it had received $1,402,000?

Senator PARER—The senator has asked me a double-barrelled question regarding the method of handling the National Heritage Trust by Senator Hill and Mr Anderson. I believe that Senator Hill fully answered that question yesterday in regard to his handling of his side of the National Heritage Trust.

As regards the position taken by Minister Anderson, his advice to me is that variations are made to the National Heritage Trust projects by the Commonwealth to ensure that the national heritage objectives were addressed and that funding would have on-the-ground impact. I think that is the comment actually made by Senator Hill. From that point of the view it is to do with on-the-ground impact.

There was a lower level of variation in DPIE. These differences can be explained by the fact that the landcare and Murray-Darling elements of the National Heritage Trust managed by the Department of Primary Industries and Energy are well established. The conservation and biodiversity elements managed by Environment Australia are relatively new. This has resulted in a higher level

of scrutiny and variation in bids coming through from state assessment panels for bush care funding.

The government made it clear that the National Heritage Trust would build on the already established community based project assessment process. The associated regional and state assessment panels have been operating for a number of years for the national landcare and associated programs. Consequently, panels are familiar with the requirements of those programs.

Under the agreements with the states, regional and state assessment panels provide advice on project priorities. The natural heritage programs are Commonwealth programs and Natural Heritage Trust ministers have the final say in what is funded. In recently finalised Natural Heritage Trust partnership agreements with the states, the Commonwealth will in future agree panel membership.

Minister Hill and Minister Anderson are currently ensuring that the representatives on the panels cover the full range of Natural Heritage Trust activities, including biodiversity and nature conservation.

Senator CHRIS EVANS—Madam President, I ask a supplementary question. The minister failed to answer the second part of the question which he acknowledged, which was: why is there the discrepancy between the information supplied by Senator Hill when he said Mr Anderson's electorate had received $782,000, when in fact Mr Anderson proudly proclaims he received $1,400,000? Senator Hill says 37 projects were funded in that electorate; Mr Anderson says there were 55. Will you find out for the Senate who is telling the truth?

Senator PARER—It is not a matter of who is telling the truth. I will get the figures clarified and let the senator know.

Medicare Levy

Senator CRANE—My question is to the Minister representing the Minister for Health and Family Services, Senator Herron. The minister will be aware of media reports recommending an increase in the Medicare levy. I ask: how does this compare with the government's existing policy and what impact would this increase have?

Senator HERRON—I thank Senator Crane for the question, because it is a good question, unlike the questions that we have received this afternoon from the other side. The Howard government is committed to action to restore a sense of balance between public hospital care and the private health care sector—something that the Labor Party tried to destroy when it was in office.

I see Senator Crowley is looking at me. I have to admit that I have been going through the Crowley files. On 1 June 1994 I asked a question of Senator Crowley when we were in opposition. I asked her about private health insurance, just as Senator Crane has asked me today, and Senator Crowley said:

> I think this is important to say at this stage there is no evidence of a crisis at all—none. . . For a start, a number of the people dropping out of the private health insurance system are people who are young and healthy. . . Secondly, in any event Medicare grants have been increased substantially since 1 July 1993. They are indexed for population growth and there is a commitment to review if there is a significant shift in demand from the private to the public health sector.

We have slowed the dramatic drop in private health insurance produced by the Labor Party. It was Labor that allowed private health insurance membership to collapse. When they came into office in 1983, about 70 per cent of Australians carried private health insurance and when they left office it had halved; it was around 34 per cent. That is why there is so much pressure on the public health system.

When Senator Crowley said that it was young people who were dropping out of the private health insurance system, the only categories are those under 65 and those over 65, and that has not changed. I gave Senator Crowley that evidence three years ago and she still believes it is young people getting out. I can tell Senator Crowley that nothing has changed. They are still 65 and under and 65 and over.

At least 1.2 million people are now benefiting from the incentives that we put in. We have slowed the decline by offering a $450 incentive to families to take out or maintain

private health insurance. What the people of Australia need to contemplate is what would happen if Labor were to get back into government. Labor wants to abolish the $450 rebate. They have a policy; they are going to dismantle ours, just as they abolished the rebates when they first came into office in 1983. Madam President, you will recall me talking about the abolition of private hospital rebates. They did that in 1983 and look what happened.

In fact, Kim Beazley actually wants to jack up Medicare fees to fix the problem if he is elected. This is what Labor's health spokesman, Michael Lee, told the Nine Network last week:

> I think that right now ordinary people will be prepared to pay a slightly higher level of taxation if someone could guarantee that their extra federal tax or their extra state tax could be directed into the public hospital system.

At least this is not blatant, but it is a little sly admission that under Mr Beazley Labor will increase the Medicare levy for every taxpaying Australian—the high tax, high expenditure, old Labor party policies again. You would think they would take notice of the new guru, Mr Mark Latham, or Lindsay Tanner, who said in May last year:

> . . . we must avoid becoming economically irrational, lapsing into mindless populism, recycling the policies of the 1950s and defining ourselves by what we don't like.

I hope Senator Schacht reads Mark Latham's book because I have no doubt that he is reflecting those views, too. It is about time something like that occurred and that, instead of recycling the old policies and negatives that have been going on in the Labor Party, they get a few new ideas and come up with some policy that will benefit the Australian public, rather than trying to pull down the Australian public by raising taxes and cutting rebates. *(Time expired)*

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Prisons

Senator VANSTONE (South Australia - Minister for Justice) (3.07 p.m.)—On 30 March Senator Stott Despoja asked me a question, which I took on notice, about the imprisonment of Commonwealth prisoners. I seek leave to incorporate the answer into *Hansard*.

Leave granted.

The answer read as follows—

Senator Stott-Despoja's question had a number of elements to it, as follows:

- Are any prisoners convicted of federal crimes incarcerated in private prisons, or are there likely to be any?
- Is the Minister concerned about the delay in ambulances getting in to the Port Phillip private prison?
- What is the Government doing to resolve these particular problems?
- How far will the Government go in allowing the punishments administered by the State to be handed out by the private sector?
- Do you acknowledge that there is a federal implication given that some federal prisoners are incarcerated in State prisons? and
- Does the Government condone the 'paying of prisoners to go to bed'?

The answers to Senator Stott-Despoja's questions are as follows:

I am advised that there is one federal prisoner, and one prisoner sentenced for State and federal convictions, in Port Phillip private prison.

I have no specific information about any delay in the arrival of ambulances at the Port Phillip private prison. However, I would be concerned at a delay in the arrival of an ambulance at any emergency scene, whether it involved a Commonwealth prisoner a State prisoner, or any other person.

Prisons are administered by the States and the Northern Territory. The health and well-being of federal and State/Territory prisoners is the responsibility of the State or Territory in which the prisoner is incarcerated.

The Commonwealth does not operate or control any prisons. Section 120 of the Constitution requires that the States must make provision for the detention in their prisons of persons convicted of federal offences.

The effect of section l9A of the Crimes Act 1914 (Cth) is that State and Territory authorities may

move federal prisoners between prisons within a jurisdiction as if they were State or Territory offenders. Those authorities do not notify the Commonwealth each time a federal prisoner is moved within a jurisdiction. To require this to be done would impose an unreasonable burden on both State/Territory and Commonwealth authorities.

The role of the Commonwealth is to administer the sentences imposed on all federal offenders. This involves considering whether to release a federal prisoner on parole (where appropriate), setting parole conditions and determining various applications made by the prisoner (such as applications for early release on licence or exercise of the Royal Prerogative of Mercy). The Commonwealth has no role in the administration of State and Territory prisons, whether they be private or Government - run.

However, while the Commonwealth has no role to play in the administration or operation of State prisons, I am naturally concerned that appropriate standards are maintained within the prison environment.

I assume that the Honourable Senator's question regarding the 'paying of prisoners to go to bed' is a reference to an alleged incident at Port Phillip prison on New Year's Eve, 1997.

I am advised that this allegation, among others, will be investigated by a Special Task Force to be led by the Victorian Corrective Services Commissioner, John Van Groningen.

The conduct of this inquiry is properly a matter for the Victorian Government. It would be inappropriate for me to comment further at this stage.

Child Care

Senator HERRON (Queensland - Minister for Aboriginal and Torres Strait Islander Affairs) (3.07 p.m.)—Senator Neal asked me a question yesterday in relation to the Queensland Child-Care Coalition. I seek leave to incorporate the answer into *Hansard*.

Leave granted.

The answer read as follows—

QUESTION WITHOUT NOTICE

SURVEY—QUEENSLAND CHILD CARE COALITION

SENATOR NEAL 31 MARCH 1998

SENATOR NEAL: I ask a supplementary question. Minister, l must say that I am a bit astonished that you are unaware of a survey that was done in your own state by the Queensland Child Care Coalition. But one of those surveyed—and it is a privately run centre said:

> The cost to parents on maximum Childcare Assistance increased as follows. One child from $25.40 per week to $44.50 per week, two children from $30.40 to $72.00 per week. As we had a large number of single parent families the increase could not be borne with children being removed from care. Some parents ceased employment.
>
> Do you still say, Minister, despite all the evidence, there is no problem?

ANSWER

Senator Herron

First of all the Labor Party created an unsustainable child care system whilst in Government, irresponsibly allowing centres to set up where they liked with no regard to need (creating problems of oversupply/undersupply). This was particularly the case in Queensland. The Government has therefore introduced a National Planning System that will ensure that services are located in areas of high need.

The Government has no control over child care fees. Fees are set by service providers, not Government. Government assistance for child care has been maintained in real terms.

However, the Government is concerned about the continual increases in fees and has asked the new Commonwealth Child Care Advisory Council to look into service charging practices over the next year, recognising that this is a complex issue which will take time to deal with properly. This work will be undertaken in consultation with service providers.

On a national basis the increase in fees in private centres over the last twelve months is below the annual trend in overall fee increases. Indeed private sector fees increased on average by $1 per week. This private centre in Queensland would therefore seem to be an aberration.

Turning to the Queensland Child Care Coalition Survey, the methodology is flawed and results should be treated carefully. The major flaws in the survey are:

- relatively low response rates (13%) of child care services in Queensland;
- no evidence to show that respondents are a representative sample of child care services rather than a vocal minority;
- parents views have not been sought directly;
- demographic factors (eg labour force patterns) influencing the results are not analysed;
- use of anonymous anecdotes and assertions to support conclusions, and;

- analysis is across a range of service types, catering to differing needs of families, such as centres, family day care and outside school hours care

Assertions that parents are changing work habits and the patterns of child care usage due to fee increases are not supported by trends in labour force participation rates of women with dependent children, including single parents, which show that their participation rate has remained stable over the last four to five years (at around 59%).

Prime Minister: Code of Conduct

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.08 p.m.)—I move:

That the Senate take note of the answers given by the Minister representing the Prime Minister (Senator Alston) in response to questions without notice asked by various honourable senators today, relating to the Prime Minister's code of conduct.

What we have found today in Senate question time is that Mr Howard has been responsible for a most sneaky and underhanded breach of his own code of ministerial conduct. Mr Howard had a golden opportunity to set an example to his own ministers and to set an example of conduct to his colleagues and the nation. But instead of that he has been exposed as sneaky, underhanded, furtive and duplicitous in the way he has dealt with this issue. This is a huge embarrassment for Mr Howard and the Liberal government.

The facts of the matter are that in his first six months as Prime Minister of Australia, Mr Howard was a director of the Menzies Research Centre. It does not matter what Senator Alston or Mr Howard or anyone else says about this—the Menzies Research Centre is a public company. Mr Howard's own code of conduct explicitly directs ministers to resign such directorships once they are in office. Mr Howard did not resign his directorship.

This matter begs the question: did Mr Howard write his own code of conduct? Did he actually read his own code of ministerial conduct? It is patently obvious that he did not believe in his own code of conduct and he was prepared to retain his directorship of the Menzies Research Centre until the wheels fell off in his ministry in relation to fulfilling the obligations of that code of conduct.

A few weeks before Mr Howard resigned his directorship, he, along with the rest of the Liberal cabinet, decided to grant $100,000 a year over four years to the Menzies Research Centre. That is a clear open and shut case of a conflict of interest. It is a clear conflict between Mr Howard's private interest as a director of the Menzies Research Centre and his public duty as Prime Minister of Australia.

In October 1996 two of Mr Howard's frontbench colleagues were caught out owning shares in companies that had a direct bearing on their portfolio responsibilities. Senator Short was forced to resign on 13 October for a technical breach of John Howard's code of ministerial conduct. Senator Gibson was forced to resign on 15 October for a technical breach of John Howard's code of ministerial conduct.

What did Mr Howard do? Mr Howard wrote a sneaky letter and ceased to be a director of the Menzies Research Centre. He engaged in this underhanded activity to cover up his own technical breach of his own code. That is the truth of the matter. At his legendary press conference on 16 October, he said, 'I've had a lot of talks with my colleagues over the past few days and I have forcibly reminded them of their obligations. I have asked my colleagues to be very careful about their affairs.' He tended very carefully, very sneakily, very surreptitiously and very duplicitously to his affairs. He covered up what under his own code of conduct is a sacking offence.

Mr Howard had an opportunity to set a standard for public behaviour and to set an example to his colleagues by declaring this. What did he do? He ducked it again. *(Time expired)*

Senator O'CHEE (Queensland) (3.13 p.m.)—The address we have just heard from Senator Faulkner is a bit like Judge Dread in the Senate. He did not care who he was going to shoot; he was going to come in and shoot somebody. What was the allegation we heard from Senator Faulkner? We heard two allegations from Senator Faulkner. Firstly, he accused the Prime Minister (Mr Howard) of sneaky and underhanded conduct. I will tell you how sneaky and underhanded this was.

Remember that Senator Faulkner is accusing the Prime Minister of being sneaky and underhanded because $100,000 was given to the Menzies Research Centre and $100,000 was given to the Herbert Vere Evatt Memorial Foundation. I will tell you how sneaky and underhanded this was. The Prime Minister rang up the Leader of the Opposition (Mr Beazley). That is how sneaky and underhanded it was. It was totally and utterly transparent and, in fact, it was done with the consent of the people on the other side.

Senator Abetz—And Mr Beazley said, 'Yes please.'

Senator O'CHEE—He said, 'Yes please' indeed. But I suppose the reason why Senator Carr is so upset about this is that Kim Beazley, in his good wisdom, did not bother consulting Senator Faulkner. If Kim Beazley had any common sense, he would not consult Senator Faulkner on anything, given his conduct here.

The other allegation we had from Senator Faulkner was that maybe the Prime Minister did not believe in his own code of conduct. I will tell you one thing: nobody believes in Senator Faulkner. I will tell you why. I want to lay before the Senate the real conflict of interest that exists in this chamber. The real conflict of interest sits on the other side.

Senator Chapman—Of course it does.

Senator O'CHEE—Of course it does. Senator Faulkner, Senator Cook or one of the others on the other side even had the audacity to ask whether the Prime Minister had absented himself from the cabinet discussions in relation to the donations to both the Menzies Foundation and the Evatt Foundation. Let us talk about cabinet discussions. I will tell you how much the people who sit opposite gave to the trade union movement in the years they occupied the government benches. They gave them $92 million

Senator Chapman—How much?

Senator O'CHEE—They gave them $92 million. Senator Chapman, I bet you one thing: none of the trade union members who sat in the cabinet absented themselves from those discussions. They were the discussions they made sure they attended because they had to look after their own. Of course, none of them could have absented themselves from those discussions because if they had there would have been nobody left in cabinet, because it is a prerequisite for membership of the cabinet that you have got to be a member of the union movement. Of course, it is a prerequisite of the union movement that put you into parliament that you have got to make sure that the money goes back to the unions. It is like some little rotten borough system that they operate over there: the trade unions put these people up, these people get into parliament, these people give the money to the trade unions. What happens to the money?

Senator Ferguson—It's given back to the ALP.

Senator O'CHEE—As Senator Ferguson quite rightly pointed out, the money then gets given back to the ALP. In 1992-93, the ALP gave $5,655,406 in total donations to the union movement; that is 5,655,406 conflicts of interest. But, of course, it came back with interest because the union movement then donated $2,211,084 to the ALP in the same year. But this was not a conflict of interest. Why? Because there is a wonderful convergence of interest between the Labor Party and the union movement: we give it to you, you give it back to us. It is like money laundering because that is really what it is.

Of course, there are senators who sit on the opposite side of this chamber who have direct interests in these things. Let me just deal, for example, with Senator Lundy and Senator Murphy, who both claim to be associated with the CFMEU. I do not know how long it has been since Senator Murphy wielded an axe in anger; I doubt whether Senator Lundy has. But I will tell you why they are members of the CFMEU: because their real interest is in log rolling. How much did the CFMEU get from the Labor Party? They got $1.86 million. That is the conflict of interest on the other side and these people have the audacity to get up and attack the Prime Minister.

Senator Faulkner has the audacity to get up and attack the Prime Minister when he remained a member of the trade union when he was in the cabinet that gave the money to those unions knowing that it would get it

back. So the ALP funded itself by dipping into the taxpayer's pocket. These people have no shame; these people have no sense of decency. You see the conduct we have had in the chamber this afternoon—it shows why these people opposite will never be trusted with government again.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (3.18 p.m.)—I might say that as an industrial relations minister, I gave money to the trade union movement, but I gave a damn sight more money to the employers organisations of Australia, and that is on the record.

Government senators interjecting—

Senator COOK—It is true; you cannot lie your way out of that. Today, a question hangs over the personal integrity of the Prime Minister. I asked Senator Alston a direct question in question time today. He prevaricated, he avoided, he evaded and he never answered that question. Until that question is answered, we will not be able to have full public open disclosure of what the real integrity of the Prime Minister of Australia is. That question was: did the Prime Minister sit in the cabinet when the Menzies Research Centre, of which he is a director, received $400,000 from the public purse or did he not? The universal question of integrity on this point is: if you are a company director, you stand up and absent yourself from a proceeding in a board of directors or in a cabinet where you have a conflicting responsibility. That is what you do; that is what happened during our period of government by ministers.

What answer do we get on this issue? We get evasion, we get avoidance and we get non answers. Let me raise the prospect that if you have got nothing to hide, you hide nothing. Because Senator Alston, on behalf of the Prime Minister, refuses to answer the direct question and because when the question was put directly by my colleague Simon Crean in the other place, it was declined to be answered by the Prime Minister himself, the conclusion is that he did sit through and he did have a conflict of interest but he ain't just guts enough to stand up and admit it. You say: how do I know? Senator Alston, take the next call to speak and say he absented himself. Say that; do that and put that question beyond doubt.

The argument that has been adduced by the other side is that the Evatt Foundation got money too. That is a red herring argument; it is beside the point. All that means is that not only was there a conflict of interest but there was a cunning conflict of interest. In order to prepare an alibi for themselves, they did two things: serve their own organisation and the Evatt foundation, and say 'Now you cannot get us.' That does not go to the issue of conflict of interest at all—that just goes to the issue of deceit; that just goes to the issue of how you avoid blame.

The central question is: was he there when the decision was made and did he vote on it, or was he not and did he declare his position to the cabinet? Not only is it the fact of sitting through a cabinet proceeding on a matter like this in clear and absolute, unmitigated breach of the minister's own direct code but also, as every director in Australia of every public corporation knows, he should have got up and left. The fact that he sat there means that he should now do the only honourable thing that is open to him. The only honourable thing that is now open to him which would restore his standing in the public mind and would restore his credibility as an ethical person would be for him to forthrightly and straightforwardly say 'I was wrong. I misconducted myself. I now resign.' That is the standard to which he seeks to hold everyone accountable. Remember this: on 30 April the Prime Minister himself asked:

> Is it not, therefore, the case that unless the Parliament is satisfactorily assured that Senator Richardson either disclosed his interest as a director of the radio station whenever he participated in Cabinet discussions or decisions on broadcasting matters . . . or, alternatively, absented himself from those discussions, he must, in accordance with accepted Cabinet practice, resign from the Ministry and in default you ought to remove him?

That is the Prime Minister setting his own standard. That is the standard against which he has now transgressed. That is the standard for which he has set the penalty. That is the penalty with which he must now comply. To do anything else but this is to be cowardly, to obscure the truth of the matter and to hide

from his own standards that he publicly declared. *(Time expired)*

Senator FERGUSON (South Australia) (3.23 p.m.)—It is pretty easy to tell when an issue such as this is running out of steam. We had the Leader of the Opposition in the Senate, Senator Faulkner, come in here prior to question time; we then had Senator Faulkner asking questions during question time; and then we had him taking note of answers after question time. You can see just how much support he gets from his colleagues. You have embarrassed them, Senator Faulkner. They have all gone. The only people who have ever taken note in the last week or so have been Senator Faulkner, Senator Ray and Senator Cook. Sorry, there is also Senator George Campbell; I am glad you have stayed behind to have a listen. Senator Forshaw is on duty; that is why he is here.

The DEPUTY PRESIDENT—Order! Senator Ferguson, address the chair please.

Senator FERGUSON—I thought I had been addressing the chair more than many previous speakers. It is wonderful to see the Labor Party come in here and raise issues of policy. In the last two weeks and in this whole session, I understand the opposition has asked close to 75 or 76 questions, about 50 of which have been a muckraking exercise. It is no wonder you do not want to question this government on policy or ask what this government is doing—you cannot find a chink in the armour anywhere. The only way that you can deflect attention from your own inadequacies is to come in here and do some muckraking, which you have done day after day.

Senator Ian Campbell—No questions on interest rates—funny thing, that.

Senator FERGUSON—Interest rates is an issue they would not want to ask any questions about, Senator Campbell, because interest rates are the lowest since I can remember. Let me tell you that, as far as interest rates in the community are concerned, the Australian population is very happy with the way this government is performing. The more that you muckrake and come in here asking questions, it reflects in the polls that you are going backwards as you go through this grubby little exercise.

When it comes to conflict of interest, it would not hurt you to look in your own backyards. You all know the standing orders and through your trade union backgrounds—I think that practically everybody sitting opposite has a trade union background—you all know section 5 of the 'Registration and Declaration of Senators' Interests'. Just to remind you, Senator George Campbell, because I would hate you to make a mistake, section 5 says that a senator shall declare their interest:

> (b) as soon as practicable after a division is called for in the Senate, committee of the whole Senate, or a committee of the Senate or of the Senate and the House of Representatives, if the senator proposes to vote in that division . . .

How often have you done that?

Senator Faulkner—What about Parer?

Senator FERGUSON—Senator Faulkner, you have never done it before a division.

Senator Faulkner—My union membership is on the Register of Senators' Interests. Where is Howard's directorship?

Senator FERGUSON—Read section 5(b). It says that before a division is taken you should declare any relevant interest. So we have a situation where all the senators opposite will stand up. Senator Conroy, for instance, would say, 'I am a member of the Transport Workers Union and I declare my union membership.' However, when it comes to a division he does not declare it. He has not declared it at all. It is completely in breach of standing orders and completely in breach of the Register of Senators' Interests. I could go through the whole list of practically everybody on that side and find that not one has declared an interest prior to a division taking place or after the division bells have rung.

Senator Murphy is a very interesting case. He has been an interesting case ever since he got here. He is a very interesting case when it comes to his 50 per cent interest in Club Oz Fishing Tours, which conducts guided recreational activities and fishing. Not once did Senator Murphy declare his interest in Club

Oz when he was asking questions about the funding of Recfish Australia. He did not declare an interest at all, nor did he do so when speaking in the native title debate. At no stage during the debate on the Native Title Amendment Bill did he raise the issue of recreational fishing access to Australia's waterways, to its beaches and to its seas.

So you have two sets of standards: one that you choose to apply to us and one that you have for yourselves. You ought to make sure before you start accusing other people of a conflict of interest that you look in your own backward and see where you have ignored a conflict of interest on every occasion that you have voted on those particular issues.

Senator Alston—Has Senator Murphy given the car back yet?

Senator FERGUSON—I understand he has given the car back. *(Time expired)*

Senator ROBERT RAY (Victoria) (3.28 p.m.)—We had the spectacle today of the Minister for Communications, the Information Economy and the Arts, Senator Alston, having to go to the *Oxford Dictionary* to define what a public company is. Really, if it is to be believed that the Menzies Research Centre is not a public company, the logical question is why is it registered as such? What is the advantage? Is it done as a lurk? The fact is that the prime ministerial guidelines say that each minister, including the Prime Minister, must resign directorships of public companies. There is not a little footnote at the bottom or a little asterisk saying, 'Refer to the *Oxford Dictionary* if you want to weasel your way out of this particular provision.'

The fact is that the Prime Minister (Mr Howard) was a director of this company for 227 days following the 2 March election. It is not contested. But, if there is no bother about this, if there is no conflict of interest and if there is no potential conflict of interest—even though cabinet, at a meeting which he presided over, allocated $100,000 over four outyears—why did the Prime Minister when he resigned not inform the public that he was doing so? After all, he called a panic press conference at 1 o'clock on that Wednesday, 16 October 1996 to explain his code, what he was going to do about it and why he had the problems with Senator Short and Senator Gibson.

This was a perfect opportunity, the day after he resigned from it, to tell the public why he in fact resigned from it. The reason he did not was that, 14 days before, he sat in a cabinet meeting as a director of this public company, and he improved the enrichment of that company by $100,000 a year over the next four outyears. It was too close to be connected. All the press releases came out, both by Mr Jull and Mr Costello, on 10 October, announcing not only the grant, but tax deductibility. The one excuse the Prime Minister puts forward, Senator Alston put forward here today, 'There is no personal enrichment; it was just a position. It does not actually attract any income or anything else.'

Let's go back and judge this coalition by its own words. Let's go back to 4 May 1992 when the then opposition was attacking the then Senator Richardson. They accepted that he had no personal pecuniary interest in this. Senator Hill said at the time, 'It may not be a question of some financial or pecuniary conflict.' This is related to registrable interest, not just pecuniary interest. The statement and the standards that the Prime Minister says he stands by require that ministers disclose other registrable interests so that the public can see that they are not, in dealing with legislation and cabinet matters, putting themselves in a potential position of conflict.

The opportunism of 1992 comes back to haunt the coalition. They were willing to judge Senator Richardson by this set of standards six years ago; they were willing to invent any reason to attack him at that time. When they discovered he did not have a direct, personal, pecuniary interest, they had to say it was registrable interest—the critical point. And, directorship of a public company is a registrable interest, even if there is no income or no personal gain by the Prime Minister.

Senator Alston—You hypocrite; you defended—

Senator ROBERT RAY—But if you want any evidence that he was embarrassed by this particular matter, if you want any evidence

whatsoever, it was the fact that he sneaked it off—

Senator Alston—Should Richardson have resigned or not?

Senator ROBERT RAY—the Australian Securities Commission record, but he made no public announcement whatsoever. There was a reason he did not do that. How could he ever look at Senator Short again? How could he ever look at Senator Gibson again? They had done the honourable thing; they had in fact resigned because they were in breach of the guidelines. But this sneaky, underhand Prime Minister resigns without telling anyone.

Senator Alston—You hypocrite!

The DEPUTY PRESIDENT—Order! Senator Alston, for some time you have been using language which is unparliamentary. I have tried to ignore it, but would you please withdraw the unparliamentary language, unconditionally.

Senator Alston—Just to be clear on what you have in mind, Madam Deputy President, I was referring to Senator Ray—

The DEPUTY PRESIDENT—Withdraw unconditionally.

Senator Alston—If you were saying it was unparliamentary of me to ask Senator Ray whether Senator Richardson should have resigned because he was involved as a director of a very commercial operation, I do not see what is unparliamentary about that.

The DEPUTY PRESIDENT—I interpreted the comments you were making to be directed at Senator Ray. Would you please withdraw them?

Senator Alston—I will withdraw, in deference to you, Madam Deputy President, but I cannot see what the problem is.

Senator ROBERT RAY—As I was saying, if you ever want evidence of the guilt of the Prime Minister, it is that he resigned this directorship 227 days after the election and did not tell anyone about it. He is guilty as charged; guilty with his own words against Senator Richardson in 1992. Go back and read the *Hansard*. He actually set out the preconditions for his own downfall. It was good for Senator Richardson then, according to the Prime Minister, so he should abide by his own words and go.

Senator ABETZ (Tasmania) (3.33 p.m.)—I never realised how noisy a vacuum could be but we have just heard it from Senators Faulkner, Cook and Ray. It is very sad when you reflect that these three senior members of the opposition never make a contribution in question time in relation to the burning policy issues facing this country. All they do is trawl and smear, be it dead people like the Baillieu family, people who have been dead for 50 years. You seek to smear them and, when you are exposed for so doing, do you have the good grace to come back here and apologise? No, you do not. You just move on to the next target and then on to the next target without ever apologising.

The most outrageous smear in all this is the suggestion that the Prime Minister somehow, unbeknown to the Australian people, might have an interest in the Liberal Party of Australia and might be associated with the Menzies Research Centre. What an outrageous revelation to make! You people must have been doing big research to find that one out, that the Prime Minister is associated with the Liberal Party.

Do you know how scheming and how conniving the Prime Minister was in relation to the $100,000 given to the Menzies Research Centre? Do you know what he did? He rang the Leader of the Opposition, Mr Beazley, and said, 'Is it appropriate that $100,000 go to the Liberal Party and $100,000 to the Australian Labor Party?' That is in great contradistinction to what happened under the previous Labor government when they gave money only to the Labor Party and not a red cent to the Liberal Party. We split it and made it fair: fifty-fifty.

That is how conniving the Prime Minister (Mr Howard) was. He actually rang up his political foe, Mr Beazley, and said, 'Do you think that is a good, appropriate deal?' What is more, Mr Beazley agreed. That is how conniving it was. Mr Beazley agreed with the arrangement. So, if Mr Howard ought to resign, it follows quite logically that Mr Beazley, who was involved in it as well, ought to resign as well. Think of the logic of

your argument. It lacks it completely. It really must be April Fools' Day today for Senator Ray, Senator Faulkner and Senator Cook to try running this trumped up charge against the Prime Minister.

I remind the Labor Party of what Senator Kay Denman has done. Senator Denman has declared that she owns shares in CSR, a sugar milling and mining company. The Customs Tariff Amendment Act (No. 2) 1997 (No. 3) removed the tariff on imported sugar. Senator Denman did not declare her CSR shareholding during the division on the bill. That was a possible oversight, fine. But guess who Senator Denman is? She is the chairman of the senators' register of interest. If anybody ought to know the rules, Senator Denman ought to. If you do not apply those rules to your own Senator Denman, do not try to come in here and apply them to the Prime Minister. Senator Denman did not disclose any conflict of interest in relation to potential financial gains which, owning shares in CSR, she clearly could have had.

It is disingenuous of the opposition to come in here and make these sorts of claims against the Prime Minister, who has a reputation in this country for being honest and for being a man of integrity.

Senator Faulkner—Sneaky.

Senator Robert Ray—Underhand.

Senator ABETZ—Do you know how sneaky and underhand he was? He rang up Mr Beazley to get his okay. Now that the people of Australia know that, they will say that Mr Beazley must therefore, by logic, be just as sneaky and underhanded as you accuse Mr Howard of being. The performance of the opposition is once again an embarrassment to them. I suggest they get back to policy, although the reality is that if they did get back to policy they would be even more embarrassed than they have been by their pathetic performance today.

The DEPUTY PRESIDENT—Order! The time for the debate has expired.

Question resolved in the affirmative.

PETITIONS

The Clerk—A petitions have been lodged for presentation as follows:

Food Labelling

To the Honourable the President and Members of the Senate in the Parliament assembled.

The petition of the undersigned strongly opposes any attempts by the Australian Government to allow genetically altered plant foods into supermarket and food system here.

Your petitioners ask that the Senate oppose any intentions by the Australian Government to support this importation.

My right to know what I am eating is being denied.

I don't want to be forced to participate in an uncontrolled experiment on the effects of genetic engineering on human health and the eco-system.

Please introduce mandatory long-term testing of genetically-engineered foods before more genetically altered foods are sold in food stores in which I shop.

by **Senator Bartlett** (from 15 citizens).

Petition received.

NOTICES OF MOTION

Ministerial Guidelines

Senator ROBERT RAY (Victoria)—I give notice that, on the next day of sitting, I shall move:

That the Senate notes that:

(a) the Prime Minister's 'Guide on the Key Elements of Ministerial Responsibility' states that 'ministers are required to divest themselves of all shares and similar interests in any company or business involved in the area of their portfolio responsibilities. The transfer of interests to a family member or to a nominee or trust is not an acceptable form of divestment'; and

(b) it is now 22 days since the Prime Minister (Mr Howard) defied his own guidelines.

Prime Minister: Declaration of Interest

Senator QUIRKE (South Australia)—I give notice that, on the next day of sitting, I shall move:

That the Senate notes:

(a) that the Prime Minister's 'Guide on the Key Elements of Ministerial Responsibility' states that 'ministers are required to resign directorships in public companies',

(b) that the Prime Minister (Mr Howard):

(i) was a director of the Menzies Research Centre for a period of 227 days from the date of his election to 15 October 1996, and

(ii) failed to declare:

(A) the directorship to the Registrar of Members' Interests, and

(B) his relinquishment of the directorship to the Register of Members' Interests; and

(c) in conclusion that the Prime Minister stood in blatant and secret breach of his own code of conduct for a period of 227 days, and failed to require of himself those standards which he claims to require of his ministers.

Higher Education Funding

Senator BARTLETT (Queensland)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that on 4 March 1998, the President of the Australian Vice-Chancellors Committee, Professor John Niland, said 'Public funding of Australia's universities has fallen to unsafe levels and this needs to be rectified as a matter of national priority';

(b) condemns the Government's funding cuts to university operating grants of 6 per cent over 5 years; and

(c) supports the National Tertiary Education Union and the National Union of Students April Fools' Day national day of action calling on the Federal Government to restore lost public funding to universities as matter of national priority.

Pork Industry

Senator O'BRIEN (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) the Pork Council of Australia held its annual general meeting in Canberra on 30 and 31 March 1998,

(ii) the Australian pork industry is a key sector in the Australian economy with a gross value of production in the order of $720 million and a value of production at the point of retail sale of around of $1.5 billion,

(iii) the industry is also an important provider of jobs, with 12 000 Australians directly employed in the industry and many more indirectly employed throughout regional Australia,

(iv) the industry is currently suffering very low prices for its product which is causing severe hardship for many producers and their families,

(v) pig meat imports from Canada increased significantly in 1997,

(vi) the overall level of support to pig industries in Canada and the European Union (EU), as measured by the Organisation for Economic Co-operation and Development producer subsidy equivalents (PSE), are 16 per cent and 9 per cent respectively, compared with an Australian PSE for pig meat of 5 per cent,

(vii) both Canada and the EU restrict access of imports of pig meat through either tariffs or tariffs quotas, and

(viii) it is concerning that the industry has lost in excess of $20 million since the Government announced a $10 million assistance package; and

(b) calls on the Government immediately to:

(i) review the level of financial assistance and the nature of the adjustment package being provided to the industry in the light of these very difficult market conditions,

(ii) provide for effective labelling arrangements to assist the industry in the effective marketing of its product, and

(iii) investigate whether the level of imports is the primary cause of the industry's current difficulties and, if so, take action under the World Trade Organization provisions for emergency protection of an industry.

Hellyer Training Services

Senator DENMAN (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) the community organisation, Hellyer Training Services (HTS), has provided training and employment placement services in the Burnie district for several years,

(ii) HTS has a record of being an outstanding Tasmanian employment placement provider with a 55 per cent to 60 per cent success rate and was the first quality-assured provider within Tasmania,

(iii) notwithstanding its experience, expertise and financial viability, HTS was unsuccessful in its tender for FLEX 3 contracts recently awarded by the Department of Employment, Education, Training and Youth Affairs, and

(iv) 11 dedicated trained staff at HTS have received redundancy notices to take effect from 1 April 1998, with a remaining 7 employees facing uncertain futures as a direct result of the failure of HTS to be awarded a FLEX 3 contract; and

(b) expresses its concern that the unemployed of Burnie and outlying districts face the risk of a significantly changed service which will fail to provide the necessary support they deserve from a Federal Government.

Rural and Regional Affairs and Transport References Committee

Senator BARTLETT (Queensland)—At the request of Senator Woodley, I give notice that, on the next day of sitting, he will move:

That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate on 3 April 1998, from 9 am to 4 pm, to take evidence for the committee's inquiry into the incidence and management of Ovine Johnes disease in the Australian sheep flock.

Community Affairs Legislation Committee

Senator CALVERT (Tasmania)—At the request of Senator Knowles, I give notice that, on the next day of sitting, she will move:

That the time for the presentation of the report of the Community Affairs Legislation Committee on the provisions of the Aged Care Amendment Bill 1998 be extended to 6 April 1998.

Senate Chamber: Photographs

Senator BROWN (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate permits press photographers access to the Senate during the debate on the Native Title Amendment Bill 1997 [No. 2], to photograph proceedings under the same conditions as normally apply when access is granted.

Indonesia

Senator BROWN (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) is concerned for the welfare of four prominent former members of the Indonesia People's Democratic Party, being Mugianto, Nesar Patria and Aan Rusdianto from Jakarta, and Andi Arief from southern Sumatra, all of whom were arrested in March 1998;

(b) notes that:

(i) Mugianto, Nesar Patria and Aan Rusdianto are reported to have been charged under the 1962 subversion law carrying the potential death penalty, and

(ii) Andi Arief, who is also chairperson of the organisation, Students in Solidarity for Democracy in Indonesia, is reported to have been taken away at gunpoint and his whereabouts are unknown; and

(c) calls on President Suharto to ensure the safety and release of all four persons unless they are quickly brought to an early, fair and open trial in which their full legal rights are met.

FORMER SENATOR BOB COLLINS

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.49 p.m.)—by leave—Senators would be aware that Senator Bob Collins resigned from the Senate on Monday of this week after a long and distinguished career. I wanted to indicate to senators that Senator Bob Collins had indicated to his friends and colleagues in the Labor Party that he had a strong view that he did not want a valedictory debate on the occasion of his retirement. Naturally, his friends in the Labor Party will be respecting that request, as we respect the contribution that he made. I can assure the Senate that we will be, of course, celebrating that contribution in other appropriate ways.

I am sure senators would know that Senator Bob Collins has made an extraordinary contribution to the Senate, to the Northern Territory and to the Labor Party. He is much appreciated on our side of the chamber for that contribution and we intend to thank him in other ways for that service. I did want to indicate to senators that it was Senator Bob Collins's request—a request that we are respecting—that we not have a formal valedictory debate in the Senate. His friends and colleagues, as a result, are acting in accordance with his wishes.

COMMITTEES

Selection of Bills Committee

Report

Senator CALVERT (Tasmania) (3.51 p.m.)—I present the fourth report of 1998 of the Senate Standing Committee on the Selection of Bills.

Ordered that the report be adopted.

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

Leave granted.

The report read as follows—

REPORT NO. 4 OF 1998

1. The Committee met on 31 March 1998.
2. The committee resolved:

That the provisions of the following bills be ***referred*** to committees:

Bill title	Stage at which referred	Legislation committee	Reporting date
Health Legislation Amendment (Health Care Agreements) Bill 1998 (see appendix 1 for a statement of reasons for referral)	immediately	Community Affairs	18 May 1998
Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Bill 1998 (see appendix 2 for a statement of reasons for referral)	immediately	Community Affairs	13 May 1998

3. The Committee resolved to recommend—That the following bills ***not*** be referred to committees:

. Child Support Legislation Amendment Bill 1998

International Monetary Agreements Amendment Bill 1998

. Food Labelling Bill 1998

. Student and Youth Assistance Amendment Bill 1998

The Committee recommends accordingly.

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

(deferred from meeting of 31 March 1998)

. Australian Hearing Services Reform Bill 1998

. Australian Prudential Regulation Authority Bill 1998

. Authorised Deposit-taking Institutions Supervisory Levy Imposition Bill 1998

. Authorised Non-operating Holding Companies Supervisory Levy Imposition Bill 1998

. Financial Sector Reform (Amendments and Transitional Provisions) Bill 1998

. Financial Sector (Shareholdings) Bill 1998

. General Insurance Supervisory Levy Imposition Bill 1998

. Life Insurance Supervisory Levy Imposition Bill 1998

. Payment Systems (Regulation) Bill 1998

. Retirement Savings Account Providers Supervisory Levy Imposition Bill 1998

. Superannuation Supervisory Levy Imposition Bill 1998

5. The committee considered a proposal to refer the provisions of the Telstra (Transition to Full Private Ownership) Bill 1998 *(see appendix 3)*, agreed that the provisions of the bill should be referred, but did not reach a decision on the committee to which the bill should be referred or the reporting date.

Appendix 1

Name of bill:

Health Legislation Amendment (Health Care Agreements) Bill 1998

Reasons for referral/principal issues for consideration:

The bill would authorise the Commonwealth to make new hospital funding agreements with the States beyond 30 June 1998.

The bill also makes a number of changes in relation to alleged cost-shifting by the States.

Recent amendments to the bill attempt to put in place protections if the Commonwealth and the States are unable to reach new agreements for tile period 1 July 98 to 30 June 2003.

This bill and the agreements based upon it are the most important single element of Australia's health system and a number of important issues need to be considered by the committee.

Any satisfactory future arrangements for the funding of vital public hospital services depends upon cooperation of the States but the States were not consulted about this bill and have grave reservations about the new definition of 'designated health services' and the legality of delivering certain existing services under this definition. The States are also concerned about the way in which the 'Health Information Commissioner would operate to police cost-shifting.

The committee mill also be able to help the Senate understand whether or not agreements are likely to be signed, precisely what is covered by those agreements, and whether or not the protections in the bill covering the possibility of no agreements being in place are sufficiently strong.

Possible submissions or evidence from:

Parties including State and Territory Governments, Commonwealth Department of Health and Family Services, Minister for Health and Family Services, Australian Healthcare Association, Consumers Health Forum.

Committee to which bill is to be referred:

Senate Community Affairs Legislation Committee

Possible hearing dates:

27 and 28 April are possible dates subject to negotiation

Possible reporting date:

Sufficient to allow passage through the Senate by Thursday 28 May 1998, Possible dates 5 May 1998 or 18 May 1998.

(signed)

S. Conroy

Whip/Selection of Bills Committee member

Appendix 2

Name of bill:

Social Security and Veterans' Affairs Legislation Amendment (Pension Bonus Scheme) Bill 1998

Reasons for referral/principal issues for consideration:

1. The number of people likely to be affected by the scheme and the financial implications are very unclear.
2. Some people who should, perhaps not benefit from the scheme may do so.
3. It is unclear when the scheme would achieve its aims to a significant extent.
4. We need clarification regarding the question of how many younger people will be displaced from employment by the scheme.

Possible submissions or evidence from:

Australian Council of Social Service, Australian Pensioners and Superannuants Federation, Welfare Rights

Committee to which bill is to be referred:

Senate Community Affairs Legislation Committee

Possible hearing date: April 1998

Possible reporting date: May 1998

(signed)

S. Conroy

Whip/Selection of Bills Committee member

Appendix 3

Name of bill:

Telstra (Transition to Full Private Ownership) Bill 1998

Reasons for referral/principal issues for consideration:

This bill raises important policy issues as to whether the transition of Telstra into full private ownership will benefit all Australians, through giving them a further chance to take a stake in this great company through offering an historic opportunity to better balance Australia's national books and through improving Telstra's performance with sharpened private sector focus, to the benefit of Telstra customers, shareholders and staff.

Possible submissions or evidence from:

National Farmers Federation, Australian Consumers Association, ABN, Amro

Committee to which bill is to be referred:

Environment, Recreation, Communications and the Arts Legislation Committee

Possible hearing date:

April 14 1998, April 21 1998, April 28 1998

Possible reporting date:

May 13 1998

(signed)

Paul Calvert

Whip/Selection of Bills Committee member

FORMER SENATOR BOB COLLINS

Senator HARRADINE (Tasmania) (3.52 p.m.)—by leave—The comments made by Senator Faulkner in respect of the wishes of former Senator Bob Collins apply to his other friends and colleagues, as far as I am concerned, in the same way. I will respect his wishes, although I would have liked to have joined a valedictory debate.

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (3.52 p.m.)—by leave—On behalf of the Australian Democrats, I would also like to respect the request of former Senator Bob Collins not to have valedictories, but it is important for us to acknowledge his contribution in this place to which Senator Faulkner referred. He will be missed. On behalf of my party, I hope that you will pass on our best wishes to him and his family in his retirement from the Senate.

ORDER OF BUSINESS

Endangered Species Legislation

Motion (by **Senator Allison**) agreed to:

That business of the Senate notice of motion No. 1057 standing in the name of Senator Allison for today, relating to the production of a document by the Minister for the Environment, be postponed till the next day of sitting.

LEAVE OF ABSENCE

Motion (by **Senator Chris Evans**)—by leave—agreed to:

That leave of absence be granted to Senator Cooney for the period from 1 April to 8 April 1998 on account of absence due to parliamentary business overseas.

ORDER OF BUSINESS

Legal and Constitutional References Committee

Motion (by **Senator Stott Despoja**, at the request of **Senator Woodley**) agreed to:

That business of the Senate notice of motion No. 1 standing in the name of Senator Woodley for today, relating to the reference of a matter to the Legal and Constitutional References Committee, be postponed till the next day of sitting.

Natural Heritage Trust

Motion (by **Senator Calvert**) agreed to:

That business of the Senate notice of motion No. 1051 standing in the name of Senator Calvert for today, relating to a Natural Heritage Trust grant, be postponed till 6 April 1998.

Higher Education Funding

Motion (by **Senator Stott Despoja**) agreed to:

That business of the Senate notice of motion No. 1052 standing in the name of Senator Stott Despoja for today, relating to National Day of Action for public funding of higher education, be postponed till the next day of sitting.

COMMITTEES

Economics Legislation Committee

Meeting

Motion (by **Senator Ferguson**) agreed to:

That the Economics Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 3 April 1998, from 9 am to 3 pm, to take evidence for the committee's inquiry into the provisions of the Taxation Laws Amendment Bill (No. 7) 1997.

ORDER OF BUSINESS

Superannuation Committee

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

That business of the Senate, orders of the day Nos 1 to 3 standing in the name of Senator Watson for today, relating to the presentation of a report of the Select Committee on Superannuation, be postponed till a later hour of the day.

GRAFTON MEATWORKS

Motion (by **Senator Forshaw**) agreed to:

That the Senate—

(a) notes that:

(i) on 10 December 1997 the Grafton Meatworks, owned and operated by companies in the Gilbertson Group, closed down, resulting in 300 workers losing their jobs just prior to Christmas 1997,

(ii) the workers employed at the meatworks were owed approximately $3 million in annual leave, long service leave, redundancy payments and other entitlements,

(iii) since the closure, the New South Wales State Member for Clarence and the New South Wales Minister for Regional Devel-

opment and Rural Affairs, Mr Woods, has worked tirelessly to have the meatworks re-opened with a new buyer,

(iv) in the week beginning 22 March 1998, the meatworks was purchased by Ramsey Meats, and

(v) Mr Stuart Ramsey of Ramsey Meats has publicly acknowledged the support and assistance given by Mr Woods and the New South Wales Government in enabling him to purchase and re-open the meatworks, thus providing employment to many of the workers who had lost their jobs; and

(b) congratulates:

(i) Mr Ramsey for his decision to purchase the meatworks, thus demonstrating his faith in, and commitment to, the people of the Grafton district, and

(ii) Mr Woods and the New South Wales Government for their efforts and assistance in ensuring the sale and continued operation of the meatworks which is of vital importance to the people of the region and to Australia's meat export industry.

ARGENTINA

Senator BROWN (Tasmania) (3.56 p.m.)—by leave—I move:

That the Senate—

(a) welcomes President Menem of Argentina to Australia;

(b) expresses deep concern, however, that there has been no proper accounting for the disappearance of some 10 000 Argentinian and foreign citizens during the 1970s and 1980s in Argentina; and

(c) calls on President Menem to act to bring those responsible to justice.

Senator Schacht—You are not blaming him, are you?

Senator BROWN—In response to that interjection: no, I am calling on him to have a proper inquiry to bring those who are responsible to justice.

Question resolved in the negative.

HIGHER EDUCATION: FUNDING

Motion (by **Senator Brown**) not agreed to:

That the Senate supports the 1 April 1998 national day of action by students and staff of universities and technical and further education campuses across Australia protesting against the impacts of continuing Government funding cuts to education.

COMMITTEES

Scrutiny of Bills Committee

Report

Senator CALVERT (Tasmania) (3.59 p.m.)—In the absence of Senator Cooney and on behalf of the deputy chairman, Senator Crane, I present the fourth report of 1998 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table the Scrutiny of Bills *Alert Digest No. 4* of 1998 dated 1 April.

Ordered that the report be printed.

MINISTERIAL STATEMENTS

Overseas Agriculture, Resources and Energy Mission to Europe and Korea

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts) (3.59 p.m.)—I table a statement on the overseas agriculture, resources and energy mission to Europe and Korea by the Minister for Primary Industries and Energy (Mr Anderson) and seek leave to incorporate the statement in *Hansard*.

Leave granted.

The statement read as follows—

The purpose of my address is to provide the house with an up-to-date assessment of relevant agricultural reform and trade policy developments gathered during my recent mission to Europe and Korea between 3-14 March 1998. My visits in Europe included attendance at the OECD Agriculture Ministers' Meeting and a Quint meeting of Agriculture Ministers from Australia, United States, Canada, the European Commission and Japan. Bilateral discussions were also held with US Secretary Glickman, EU Commissioner Fischler, UK Agriculture Minister Cunningham and Japanese Minister for Agriculture, Forestry and Fisheries Shimamura. I also met with industry representatives including the President of the National Farmers Union in the United Kingdom.

In Korea, I met with a range of senior Ministers and industry representatives including Dr Kim-Sung Hoon, Minister for Agriculture and Forestry, Mr Park Tae-Young, Minister for Industry and Energy and Dr Joo Yang-Ja, Minister for Health and Welfare. I also held discussions with a wide range of Korean agricultural resources and energy industry leaders including meat industry representatives

and Korean worsted spinners and weavers industry representatives.

The timing of the OECD meeting which was attended by 29 Ministers for Agriculture in the developed world was also particularly relevant because of preparations now under way for the 1999 agricultural negotiations mandated in the Uruguay Round; a prospective new comprehensive WTO round at the turn of the century; and the domestic agricultural policy reform agendas being considered in a number of countries, including the Agenda 2000 reform package being developed by the European Commission.

The OECD meeting focused on a stocktake of agricultural and trade reforms in member countries since the 1987 OECD Ministerial Principles for Agricultural Policy Reform were agreed, and consideration of the need and scope for further reforms. These deliberations were drawn together in a Joint Ministerial Communique at the end of the session.

Australia's main goals at this meeting were to secure recognition of the need for further agricultural policy reform; acknowledgment of the 1999 WTO Agricultural Negotiations as the key vehicle for further reform; endorsement for further analytical work by the OECD to assist forthcoming WTO negotiations and to negotiate a reform oriented communique to progress the removal of support and protection for agriculture through greater market orientation.

Bearing in mind that the OECD is a multilateral organisation of member countries with a strong European Union membership of 15 countries as well as other agricultural protectionist countries such as Japan, Korea, Switzerland and Norway, the above objectives though realistic, were never going to be easy as such countries jockey for position in the context of the forthcoming WTO agricultural negotiations.

In these circumstances Australia with general support from New Zealand and USA (and limited support from some EU delegates such as UK and Sweden) did in my view manage to effectively hold the line and maintain the essential reform principles. This work was reflected in a Communique together with Secretariat background papers which recognised that, while progress has been made in agricultural policy reforms since 1987, more needs to be done particularly since progress in policy reform has been uneven across countries and commodities and that the agricultural sector in many countries is still substantially supported and not sufficiently responsive to market signals.

The Communique reaffirmed the commitment to the long term goal of domestic and international policy reform to allow for a greater influence of market signals as contained in Article 20 of the Uruguay Round Agreement on Agriculture and the commitment to undertake further negotiations as foreseen in that Article. Importantly, the Communique also outlined a future role for the OECD to contribute to the achievement of future goals through analysis and evaluation of domestic policies, agricultural markets and trade developments and the scope for new policy approaches which, as for the Uruguay Round, should provide useful material in negotiations. It will now be necessary for Australia and others to ensure a suitable work program is fully implemented on a timely basis.

Despite these achievements we have a lot more to do. In Paris it was a matter of considerable concern to fair trading country representatives including myself that most European Union and other European countries, as well as Japan and Korea mounted a coordinated and multifaceted campaign to delete and detract reformist goals from the Communique wording at every opportunity, with some success given their numbers.

The extent of the obstructionism which I observed and encountered illustrates the challenge for Australia and other low cost exporters in the next round of WTO agricultural negotiations. Some delegations clearly sought to wind the clock back on reform with diversionary tactics related to matters such as food security and the so-called "multifunctionality" of agriculture (rural development, environmental safeguards, regional employment etc), a new approach to "non-trade concerns" by the protectionists which, if not tackled appropriately, risks becoming entrenched as justification for prolonging or enhancing production related agricultural income and price supports, rather than the use of targeted and transparent policy measures decoupled from production to achieve these objectives.

It is clear to me that both food security and multifunctionality will need to be confronted in the WTO negotiations context.

The Quint meeting of Agriculture Ministers from Australia, USA, Japan, Canada and the European Union was instigated and hosted by Commissioner Fischler following the OECD meeting. This meeting was explicitly not a negotiating forum but rather an opportunity to exchange views on domestic agricultural and agricultural trade policy reform in a smaller group and to improve understanding of the scope and need for agricultural reform.

The meeting provided a further opportunity for me to explain in some detail both the facts and the underlying policy features of our domestic policy reforms including the integration of deregulated agricultural policy with our wider economic and social policy agendas.

I was also able to argue that such an approach has delivered results in rural Australia despite adverse

market and seasonal conditions in many industries and that such a policy approach could have applications in other countries particularly those represented at the meeting. I believe this was a major lubricant for Quint discussion on both domestic reform and the closely associated trade policy action issues.

I was able to directly address the separate issues of multifunctionality and food security which arose at both the OECD and Quint meetings. While no conclusions were reached, the participants were left in no doubt that rural and regional development, environmental improvement and maintenance of the social fabric of rural areas were not only issues in Europe and Japan but were very real political, social and economic challenges in Australia and other efficient exporting countries. This point appears not to be adequately understood in the international arena where the so-called 'old' countries seem to feel they have a monopoly on such challenges.

With food security we addressed the scope for more open trading arrangements as a basis for enhancing security rather than protectionist stances which inhibit economic development. We have much further to go in this debate including, I suspect, consideration of the scope for the new round of agricultural negotiations to address how Governments might facilitate supply commitments to importing countries recognising however that commercial operations (not Governments) undertake the actual trade in commodities. Greater recourse to improved long term contracts, joint ventures and more open foreign investment flows are well-known examples of how private commercial mechanisms can improve food supply security.

An important point from my extensive discussions in Paris and London is that while reform of the CAP remains a major challenge for Australia and other fair-trading countries, it is also clear that the pace and extent of CAP reform is a matter of debate within the European Union.

It is my observation that despite the massive sums of tax-payers and consumer funds transferred to European farmers over the years there is still extensive discontent amongst European farmers and wide-ranging demonstrations in which European farmers express their grievances, often in destructive ways. This provides visual evidence that the CAP is not and cannot be the long-term solution to Europe's farming problems and massive transfers which distort market signals will always create inefficiency and distribution problems, creating yet further regulation and distortions, while failing to adequately address the social issues of agriculture directly.

Even within Europe the CAP is increasingly being regarded as a heavy-handed mechanism, restricting farmer enterprise and flexibility and limiting the capacity of the more efficient European farmers to move forward in grasping market opportunities as they develop. It is of some encouragement that forward looking governments and farmers in some parts of Europe are starting to realise the problems of the CAP, but we have much further to go to achieve reasonable and equitable outcomes.

This matter was amply addressed in a recent UK House of Commons Agriculture Committee Report which questions the compatibility of CAP reform proposals with both current and future WTO agreements. It raises the dangerous prospect of new domestic surpluses and intervention stocks and describes EU agriculture policy as likely to be in the moral foothills of the next WTO round.

Korea is Australia's third-largest trading partner and second largest export market. My visit to Korea is at a time of unprecedented change in the Korean economy and I was the first Australian Minister since the new President and Government had been appointed. I believe the Korean government much appreciated an early visit by an Australian Minister to fully demonstrate our goodwill to Korea at this time of difficulty when the new Government is actively pursuing economic restructuring.

Against this background my visit provided an important opportunity to convey to the new Korean Administration and senior industry representatives that we in Australia highly value the strong bilateral economic relationship and the Australian Government and industry are fully committed to working closely with Korea to ensure its successful recovery and long-term future. The visit also allowed me to undertake a first-hand assessment of the changes in the Korean economy and to gain a better understanding of areas of potential concern together with new opportunities for Australian industries and how best the Government in Australia can facilitate these opportunities.

The Australian Government's commitment to assisting Korea has been demonstrated through the IMF contribution and the establishment of a $300 million National Interest export credit guarantee facility which is additional to other credit insurance facilities in Australia. I advised the Korean Government that these combined credit facilities in Australia cover exports worth some $1 billion which is much greater than is generally realised.

Agricultural and resources and energy are major users of these credit facilities, and I emphasised strongly to Korean Ministers that the use of these facilities by Australian exporters should not be constrained by Korean authorities offering preferential treatment to other export countries under the Foreign Exchange Regulations, as is currently the case on some agricultural products.

I urged the Korean Government to provide a waiver from such regulations for a range of agricultural products to enable them to utilise National Interest and other credit facilities, and to compete on the same terms in the Korean market with other exporters who have already received a waiver on a number of key commodities, including beef.

Such a waiver should be forthcoming given the goodwill demonstrated by the Australian Government and industries at this time of difficulty, and I am encouraged by the assurances provided to me by the Korean authorities that Australia's request will be given full consideration on the basis of equitable treatment with others.

On industry specific matters, my recent visit to Korea provided the opportunity to discuss the importance to the Korean economy of reliable supplies of agricultural, resources and energy products and to confirm that Australian industries can deliver in all these areas. I stressed the point that ongoing trade with primary, resources and energy industries will clearly help Korea to improve its manufacturing and other export capacities which are essential to the recovery of the domestic economy and to overcoming the present currency difficulties.

I also confirmed with the Korean Government the enhanced need for joint commercial ventures and investments in both countries on a more deregulated basis covering the major primary, resources and energy industries as well as joint research and technology exchanges in these areas.

I am pleased to announce that the Korean Government has agreed that Korea will move to a Manufacturer Determined Shelf Life for UHT milk. This amendment to the food code is very good news for our dairy manufacturers as it substantially extends shelf-life and opens the way for useful market growth in UHT milk which was previously made impractical by the short shelf life.

I also received an assurance from the President of the Korean Livestock Promotion and Marketing Organisation (LPMO) that beef tenders will reopen when present high stocks are reduced to more normal levels. This underlines the importance of the Australian beef export industry having a waiver on credit related regulations equal to that given to other suppliers, and I underlined the importance of competitively priced Australian beef to Korean consumers at a time when their disposable income is declining, and the availability of good quality, reasonable-priced beef is essential.

In Korea, I also addressed a range of quarantine matters of bilateral concern in which we engendered an improved understanding of Australia's position.

In conclusion, let me say that our trade with Korea is dominated by agricultural, resources and energy commodities, including coal, iron ore, aluminium, gold, beef and sugar, and Australia is well-placed to continue to provide Korea with these products which will continue to be crucial to Korea turning its economy around through improving its export performance. Korea is undergoing a period of difficulties and this is a time when Australia will stand by such an important trading partner which is a matter of importance to the Koreans as well as to Australia.

It is encouraging to see the determination and readiness of the Korean Government and industry to face up to the essential disciplines and adjustments in their economy at this stage, which I am sure will pay dividends in the future, despite short term costs. I am confident Korea can overcome its present problems.

COMMITTEES

Legal and Constitutional Legislation Committee

Report: Government Response

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts) (3.59 p.m.)—I present the government's response to the report of the Legal and Constitutional Legislation Committee on the role and function of the Administrative Review Council, and I seek leave to incorporate the response in *Hansard* and to move a motion in relation to the document.

Leave granted.

The document read as follows—

Government response to, and implementation strategy for, recommendations by the Senate Legal and Constitutional Legislation Committee in *Report on the Role and Function of the Administrative Review Council* (June 1997)

Recommendation	Government response	Implementation strategy
No. 1—The Committee recommends that the Administrative Review Council should remain as a separate and permanent body, provided that it is making a significant contribution towards an affordable and cost-effective system of administrative decision-making and review.	Accepted	Nil required.
No. 2—The Committee recommends that, in its annual reports, the Administrative Review Council consider providing performance measures of a quantitative and qualitative kind for the activities that it performs, and discussing past-year performance in terms of these measures.	Accepted	The Attorney-General will request the Council to implement this recommendation in future annual reports by the Council. This will be done immediately following the Government's decision on these recommendations.
No. 3—The Committee recommends that the qualifications required for membership of the Administrative Review Council be amended to enable the appointment of persons with direct knowledge and experience of the needs of groups or individuals significantly affected by government decisions.	Accepted	An appropriate amendment will be made to section 50 of the AAT Act ('Qualifications for appointment') in a Law and Justice Legislation Amendment Bill (LAJLAB).
No. 4—The Committee recommends that in selecting persons for appointment, the Government should continue to have regard to the need for the Administrative Review Council's membership to contain a broad spectrum of qualifications and to represent a variety of interests.	Accepted	This recommendation is consistent with the Government's practice when selecting persons for appointment generally, and to the Council in particular. No particular implementation strategy is required.
No. 5—[However,] the Committee recommends that the Act (ie, the AAT Act) should not be amended to require the appointment of a person having any specific qualification or representing any specific interest.	Accepted	Nil required.
No. 6—The Committee considers that the Administrative Review Council may benefit in carrying out a particular project from expertise not available within its existing membership.		
Accordingly the Committee recommends that the *Administrative Appeals Tribunal Act 1975* be amended to enable persons to be appointed as Administrative Review Council members for the purpose of a particular project.	Accepted	An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB to enable persons to be appointed as Administrative Review Council members for the purpose of a particular project.
The Committee considers that such an amendment would remove the need for the President of the Australian Law Reform Commission to remain a permanent *ex officio* member of the Administrative Review Council.	The Committee's view is noted. It is not proposed to change any of the *ex officio* members of the Administrative Review Council at this time.	
No. 7—The Committee considers that it is undesirable to place extensive reliance on the incidental power conferred by s.51(2) of the *Administrative Appeals Tribunal Act 1975.*		
Accordingly, the Committee recommends that s.51(1) of the *Administrative Appeals Tribunal Act 1975,* which sets out the Administrative Council's functions, should be amended to reflect more clearly all the major activities that it currently performs, in particular to underpin its current focus on improving primary decision-making.	Accepted	An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB.

Recommendation	Government response	Implementation strategy
No. 8—The Committee recommends that, if the proposed merger of the five main merits review tribunals goes ahead, the amendments to the Administrative Review Council's functions take into account the impact of the merger on them.	Accepted	Amendments to the AAT Act, to give effect to the Government's decisions on the Committee's recommendations, will be initiated once the proposed merger of tribunals has been settled.
No. 9—The Committee recommends that the *Administrative Appeals Tribunal Act 1975* be amended to explicitly empower the Minister to issue directions to the Administrative Review Council and to refer matters to it for inquiry and report.	Accepted	An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB.
No. 10—The Committee further recommends that the *Administrative Appeals Tribunal Act 1975* be amended to provide that Administrative Review Council project reports are to be delivered to the Minister and tabled by the Minister in the Parliament.	Accepted	An appropriate amendment will be made to Part V of the AAT Act ('Administrative Review Council') in LAJLAB.
No. 11—The Committee recommends that the Government give an undertaking to respond to all Administrative Review Council project reports within twelve months of their delivery.	Not accepted. The Government recognises the importance of responding to Administrative Review Council project reports and other advice in a timely manner. However, the Government does not accept that it is necessary to bind itself to a response within twelve months.	Nil required.

Senator ALSTON—I move:

That the Senate take note of the report.

Senator CHRIS EVANS (Western Australia) (4.00 p.m.)—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

SOCIAL SECURITY LEGISLATION AMENDMENT (YOUTH ALLOWANCE CONSEQUENTIAL AND RELATED MEASURES) BILL 1998

First Reading

Bill received from the House of Representatives.

Motion (by **Senator Alston**) agreed to:

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

Bill read a first time.

Second Reading

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts) (4.02 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

This bill completes the legislation package commenced with the Social Security Legislation Amendment (Youth Allowance) Bill 1997. That bill gives legislative effect to the new social security payment, youth allowance. Youth allowance will be an integrated income support payment for young people that will be available regardless of whether a person is in education, in training, unemployed or sick.

The primary purpose of this new bill is to provide the consequential amendments for youth allowance.

The bill also incorporates some significant related measures flowing from the establishment of youth allowance. These related measures largely comprise the transfer of program elements for older students from the Employment, Education, Training and Youth Affairs portfolio to the Social Security portfolio. This will be done primarily by setting up a new payment, Austudy payment, in the Social Security Act 1991 for students aged 25 and over. There will also be new provisions in that Act for the pensioner education supplement, the Student

Financial Supplement Scheme and for fares allowance.

Madam President, Austudy payment will replace the Austudy living allowance currently available under the Student Assistance Act 1973. The Austudy payment will be available to students who commence a course of study when they are aged 25 or over or who were not receiving youth allowance when they turned 25.

Generally speaking, the new Austudy payment,will incorporate many of the rules that currently apply for the Austudy living allowance. However, in many instances the rules will be simplified and modified to bring the new payment into line with other payment types in the Social Security Act. Examples of some of the changes that result from the restructuring include the application of the same income test that applies to social security beneficiaries under the Social Security Act; all Austudy payment recipients being subject to an activity test which can only be satisfied by undertaking either full-time or concessional study; and certain entitlements that are not currently available to Austudy living allowance recipients (for example, bereavement payments and advances of payment) but which apply to social security recipients being extended to Austudy payment recipients.

Students who receive social security or veterans' affairs income support payments because they are disabled, sole parents or carers cannot get Austudy living allowance. They can, however, receive the Austudy pensioner education supplement while studying. The supplement can be paid for study at either the secondary or tertiary level, and for study at either a full-time or a concessional load.

The pensioner education supplement under the Social Security Act will replace the same named entitlement available under the existing scheme. It will incorporate most of the rules that currently apply to the supplement under the Austudy living allowance. However, as with the new Austudy payment, the rules will be simplified and modified to the bring the new payment into line with other payment types in the Social Security Act.

The Student Financial Supplement Scheme currently in operation under the Student and Youth Assistance Act is essentially a loan scheme that gives tertiary students the option of borrowing money to help cover their living expenses while studying. Since the student population using the Scheme is essentially moving to the Social Security portfolio, the scheme will also move except in relation to Abstudy customers, who will continue to be dealt with under the Student Assistance Act.

Many of the details relating to the new Student Financial Supplement Scheme operating in the Social Security portfolio will be provided in a disallowable instrument rather than in the Social Security Act itself. However, the new Scheme, while differing from the current scheme structurally and in drafting style, will mirror the current scheme. The rights and obligations of students will be preserved in the transition between portfolios, although a student's new financial supplement entitlement may change because his or her rate of youth allowance or Austudy payment may potentially change under the new payment structure.

Madam President, the Austudy regulations currently provide for the payment of fares allowance for tertiary students. The allowance is essentially a payment to assist with the travel costs incurred by certain tertiary students in undertaking their study. It is a payment made, not on a regular basis, but on occasion, up to a certain number of times during an academic year.

Again, since the majority of the student population for whom the allowance is intended is essentially moving to the social security portfolio, the allowance will also move such that the Social Security Act will enable the making of a disallowable instrument in relation to fares allowance. Although the structural details will be different to accommodate the new payment arrangements, the entitlement will be basically the same as it has been under the Austudy Regulations.

A fares allowance will continue to be paid under current arrangements for Abstudy customers.

This bill provides the consequential amendments for the transfer of these elements as well as for youth allowance itself. It also provides the transitional arrangements for the package, the flow through to youth allowance of certain 1997 Budget and other measures contained in the Social Security Legislation Amendment (Parenting and Other Measures) Act 1997 and the Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Bill 1997 and some minor refinements to youth allowance.

I commend the bill to the Senate.

Ordered that further consideration of the second reading speech of this bill be adjourned until the first day of the winter sittings, in accordance with standing order 111.

COMPANY LAW REVIEW BILL 1997

MANAGED INVESTMENTS BILL 1997

Reports of the Corporations and Securities Committee

Senator CHAPMAN (South Australia) (4.02 p.m.)—I present the reports of the Joint Statutory Committee on Corporations and

Securities on the provisions of the Company Law Review Bill 1997 and the Managed Investments Bill 1997, together with submissions received by the committee, transcript of evidence, tabled documents and answers to questions on notice.

Ordered that the reports be printed.

Senator CHAPMAN—I seek leave to move a motion in relation to the reports.

Leave granted.

Senator CHAPMAN—I move:

That the Senate take note of the reports.

On 3 March this year, the Managed Investments Bill 1997 and the Company Law Review Bill 1997 were referred to the parliamentary Joint Committee on Corporations and Securities. These two bills represent important steps in the government's drive to modernise the legal structures under which Australian businesses operate. The objective of this process is to create an environment in which businesses can get on with the job of creating wealth and jobs for all Australians.

Managed investment schemes are schemes where an investor purchases an interest in a fund which is managed by a professional manager to produce a return for the investor. They encompass a wide range of investment products and services, including property, equities and cash management trusts as well as smaller schemes such as ostrich farms and pine plantations. These schemes allow investors to diversify their investments over a wider range of investment types than might otherwise be available and to have their funds professionally managed.

At present these schemes are required to have both a manager and a trustee. The manager is responsible for the day to day operations and investment strategy of the scheme, while the trustee is responsible for distributing scheme income and ensuring that investments conform with the trust deed. Unfortunately, the dividing line between the responsibilities of the two parties is imprecise and this has led to confusion. These arrangements have been found to be wanting in a number of cases, especially in the case of Aust-Wide and Estate Mortgage funds.

As a result of concerns about the regulation of managed investments, the Law Reform Commission and the Companies and Securities Advisory Committee were asked to prepare a report on the regulation of managed investment schemes in 1991. In 1993 those organisations tabled a report entitled *Collective investments: other people's money*. The report was critical of the existing structure and recommended reform. The review's fundamental recommendation was that, for each scheme, there be a single responsible entity in which the current responsibilities of both the trustees and management company are combined and vested. Public discussion about the most appropriate structure for the regulation of managed investment schemes has been going on continuously since that time.

More recently, the need for reform has been supported by the final report of the financial system inquiry, the so-called Wallis report, released on 9 April 1997. That report emphasised the desirability of bringing the structure of collective investments into line with that for superannuation funds by introducing a requirement for a single responsible entity. When the committee called for submissions, it immediately became the focus for vigorous lobbying by interested parties.

Most of the submissions and witnesses before the committee fell into two groups. Those from the trustee industry were fundamentally opposed to the scheme outlined in the bill, while those from the fund management industry generally supported the scheme. These two groups frequently presented the committee with diametrically opposed evidence. The more impartial witnesses were generally supportive of the bill. Unfortunately, little was heard directly from the people most affected by the bill, the small investors who put their savings in managed funds, although organisations representing them gave evidence supporting the bill.

After carefully considering all of the evidence presented to it, the committee was not persuaded by those opposed to the bill that the findings of the collective investments report were flawed. The committee's main conclusions were that: the current arrange-

ments which divide responsibility between trustees and managers are flawed; the range of measures in the bill for the protection of investors will provide an adequate replacement for the removal of the requirement for a separate trustee; investors will benefit from the clear identification of a single party responsible for all of the activities and functions of a scheme; the bill will allow for a wider range of options in the management structures of funds than do the current arrangements and so facilitate the involvement of managed funds in a wider range and variety of investment options; the new arrangements will generally result in a reduction of management costs and competition between fund managers should result in those savings being passed on to investors; and, finally, the bill will harmonise the regulatory framework for public offer collective investments and superannuation by bringing the structure of collective investments into line with that of superannuation funds. The committee's recommendation is that the bill be passed in its current form.

The Company Law Review Bill 1997 rewrites the core rules affecting the way a company is run and is largely based on the earlier Second Corporate Law Simplification Bill. The bill redrafts and improves provisions of the law dealing with the registration of companies, company meetings, share capital, financial reporting and annual reports, deregistration and reinstatement of defunct companies and, finally, company names. The bill also introduces rules for managed investment schemes which are similar to those that apply to companies in relation to members' meetings, financial reporting and annual returns.

As with the Managed Investments Bill 1997, this bill has been the subject of a very long period of public consultation and discussion. It forms part of the corporate law economic reform program, which was established by the government with the aim of improving the efficiency of corporate regulation. This bill begins that process by simplifying and redrafting provisions of the Corporations Law in plain English. The next stage of CLERP—as its acronym has become know—as foreshadowed by the Parliamentary Secretary to the Treasurer, Senator Ian Campbell, will involve simplifying and redrafting the law's provisions on fundraising, takeovers, directors' duties and corporate governance.

Most of the submissions received by the committee and the discussion during public hearings dealt with issues relating to corporate governance. Many opposing views were put to the committee concerning corporate governance reform and the adequacy of shareholder protection in the bill. Because of the current debate over corporate governance standards and the degree to which all previous drafts of the bill were subject to scrutiny and comment, the bill has understandably aroused keen and intense interest from users of the law, regulators and shareholders.

The committee previously examined the proposals in this bill when it considered the Second Corporate Law Simplification Bill in draft form in 1996. I am pleased to say that some of the recommendations contained in the committee's earlier report were adopted by the government and incorporated into the provisions of this bill. The committee was urged to recommend that additional measures be included in this bill. However, on balance, the committee accepted the approach taken in the bill and considered that more prescriptive law was not appropriate at this time.

The simplification of the present law and the reforms to corporate governance practices contained in the bill are important developments in promoting greater shareholder participation in corporate governance. The committee also welcomes the approach of the bill in regard to the use of electronic technology for communication between companies, their shareholders and regulatory bodies. The bill does not impose—nor should it—an obligation to use electronic forms of communication but rather the bill facilitates its greater use to improve the flow of information in the market. The committee has recommended that, subject to any minor drafting or technical amendments, the bill be passed in its current form.

Senator CONROY (Victoria) (4.10 p.m.)—Like Senator Chapman, I congratulate the secretariat of the Joint Statutory Committee on Corporations and Securities on preparing

the report on the Company Law Review Bill 1997. Certainly, it was a long hearings and lobbying process that many people contributed to, some many times, and the volume of paperwork that was waded through by the committee secretariat and the committee members was substantial.

This legislation chose not to include a couple of issues from the previous recommendations of the committee. I want to refer to two in particular in the limited time that I have today. The first, and most important one, could never have been more highlighted than in today's newspapers. It relates to the capacity of a director to call a members' meeting. We have seen extraordinary developments in Victoria in the last few days around Hudson Conway and the Crown Casino because one independent director has not been able to get any satisfaction from the other directors of the corporation to deal with issues of corporate governance. He took the only option that was left available to him which was to resign. Mr Cousins resigned off the board of Hudson Conway, citing corporate governance.

This committee had a chance to take a stand on corporate governance, as it had once before, but when the bill has finally come before the parliament this committee has reexamined its position and decided to squib the opportunity to introduce a situation where Mr Cousins would not have had to resign; he could have said, 'I would like a meeting of shareholders to deal with these corporate governance issues.' But, no, this government decided not to include that in this bill.

Senator Chapman—You are supporting it?

Senator CONROY—It was the original recommendation of Senator Chapman and the members.

Senator Chapman—You are supporting this committee's report?

Senator CONROY—I am supporting this committee's report. I am simply pointing out that this committee indicated to Labor senators that it would potentially have amendments to this bill.

Senator Abetz—What page?

Senator CONROY—In the very last sentence. The other issue which I want to speak on is the inclusion in annual reports of remuneration. This government is all about world's best practice. It claims it wants a world's best practice tax system and world's best practice company law reform. We have all these claims coming from this committee and this government and yet, while in America it is mandatory to include remuneration packages in the annual reports, what does this government do? It walks away. How can shareholders make a judgment about the performance of their executives and whether they are worth the salaries that they are paid?

Senator Chapman interjecting—

Senator CONROY—The whole package. Maybe they have got some family trusts in there as well and maybe it is all paid in by a family trust service arrangement. I do not know, Senator Chapman; maybe you know more about that than I do.

I am not here to criticise corporate salaries. The people who should be in a position to criticise salary packages, if they want to, are the shareholders. The shareholders have the right to know these things. It should not be a matter of once a year turning up to a meeting and trying to ask a question; it should be there in the annual reports. It is a disappointment to me that the committee decided not to press its view that this bill should include that requirement. It is a disappointment to me that they did not stick to their guns.

As I said earlier, the Crown Casino is a case in point about why this legislation requires amendments from the Senate. Three or four of the core issues in the problems surrounding Crown Casino and its relationships with Hudson Conway, its regulator and the Victorian state government could have been addressed in this legislation. This parliament will be worse off if this bill goes through unamended. I commend the report, and I commend the work put in by the chair and everybody else. The meetings were long and we went late into the night on a couple of occasions. It was hurried to accommodate the government's legislative program, and everyone involved deserves commendation on that process.

But I indicate that the Labor Party is reserving its position to potentially move amend-

ments to address a number of these corporate governance issues when the bill comes before the chamber. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COPYRIGHT AMENDMENT BILL (No. 2) 1997

Report of the Legal and Constitutional Legislation Committee

Senator ABETZ (Tasmania) (4.15 p.m.)—I present the report of the Legal and Constitutional Legislation Committee on the Copyright Amendment Bill (No. 2) 1997, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

ASSENT TO LAWS

Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:

NRS Levy Imposition Bill 1997

Telecommunications Legislation Amendment Bill 1997

Appropriation Bill (No. 3) 1997-98

Appropriation Bill (No. 4) 1997-98

Appropriation (Parliamentary Departments) Bill (No. 2) 1997-98

TELSTRA (TRANSITION TO FULL PRIVATE OWNERSHIP) BILL 1998

Referral to Committee

Senator SCHACHT (South Australia) (4.16 p.m.)—I move:

(1) That the provisions of the Telstra (Transition to Full Private Ownership) Bill 1998 be referred to the Environment, Recreation, Communications and the Arts References Committee for inquiry and report by 30 June 1998, with particular reference to the following matters:

(a) whether the proposed accountability regime in the Telstra (Transition to Full Private Ownership) Bill 1998 is adequate to protect the public interest;

(b) the impact on public sector finance of the full privatisation of Telstra;

(c) the effect on delivery and quality of services for rural, regional and remote areas and for smaller States and Territories;

(d) whether the provisions of the *Telecommunications Act 1997* and the Telstra (Transition to Full Private Ownership) Bill 1998 provide effective and adequate consumer protection safeguards, including:

(i) access to untimed local calls,

(ii) free directory assistance,

(iii) public telephone facilities,

(iv) customer service guarantees, and

(v) price caps;

(e) the effectiveness of the standard telephone service, as guaranteed under the Universal Service Obligation, in ensuring that rural and regional customers have access to modern telecommunications services and whether the standard telephone service definition needs to be expanded to take account of rapidly changing communications technology;

(f) the impact of privatisation on employment and economic activity, particularly in regional Australia;

(g) the impact of the privatisation of Telstra on industry development issues, including research, development and manufacture in the Australian telecommunications equipment and services industry; and

(h) whether the privatisation of Telstra confers an unfair competitive advantage to it, in detriment to open competition and the involvement of other telecommunications companies and the implications of foreign ownership on these matters.

(2) That the committee advertise for submissions in the media and conduct public hearings as and where it deems appropriate.

We believe that this is one of the most significant bills to come before the parliament in this term. It is true that it is a follow-on from the one-third privatisation bill in 1996, but now the government has decided to go the whole hog and sell all of Telstra.

In one sense, this bill is unnecessary because it is a stunt. Even if the bill is carried before the coming federal election, it will not be proclaimed—if the government wins the election—until after the election, unless of course the government wants to use the bill to set up another double dissolution trigger,

which means it has some immovable time objectives. I think it would have to have the bill defeated twice, with a three-month gap, by no later than about the middle of October to have that trigger available.

The Prime Minister did not announce this as a double dissolution strategy; he announced it as a strategy to say, 'The bill will go through; we want it carried. Then we will have an election. If we win the election, we will then proclaim it so that the people at the election can decide whether they want the bill proclaimed.'

If the bill does not get through by the time of the next election but this is the announced policy of the government, and the government unfortunately wins the election, it will then still be able to proceed and meet its commitment to the legislation in the following term. Of course, that is all subject to whether the government wants it as a double dissolution trigger. I suspect, because of the events of the last week when a number of published opinion polls have shown that, on average, a two to one majority of Australians are opposed to the full privatisation of Telstra—that the Prime Minister will not make it a double dissolution trigger. Some members in the coalition, particularly National Party members, are already on the public record as having grave doubts about this particular bill.

Why does the opposition want this bill to go to the references committee? We believe it is a very significant piece of legislation, with profound implications for Australia's communications system well into the next century. There are issues here which ought to have a chance to be fully debated in the community. I note that the government has given notice of a motion to refer the bill to the legislation committee of ERCA, with a report by 13 May. That is really setting it up to be rushed through. There would probably be a couple of Friday hearings of the committee to avoid public debate and to foreshorten the ability of people to put submissions in, and it would make it very difficult for the committee to hold any public hearings other than in Canberra. That is why they have put the date of 13 May on it, which is only six weeks away.

We believe this bill deserves much wider consideration. We believe there will be lots of people and community groups at all levels—whether they are for or against the privatisation—who would want the opportunity to put their views, now that the full privatisation of Telstra is in the public domain.

When the one-third privatisation of Telstra was before us in 1996, the government swore black and blue that there would be no further legislation in this session. They got around that by saying, 'There will be legislation but we will not proclaim it until after we win the next election.' We know that the reason the Prime Minister brought this forward to the Liberal Party council meeting in Queensland two weeks ago is that he was in a fair bit of strife, with difficulties with Senator Parer, Medicare, the state premiers and a whole range of other issues. The Prime Minister thought the best way to get on the front foot was to pull something out of left field: the full privatisation of Telstra.

Senator Ian Macdonald—Hardly left field.

Senator SCHACHT—Right field, then. It all depends on which perspective you have. I don't often stand corrected, Senator Macdonald. It is out of right field in this case; you are absolutely correct. It is a right-wing ideological policy for the full privatisation of Telstra.

In the terms of reference moved by me on behalf of the opposition, we have tried to list some of the major issues that we think the Australian community would want debated with this bill. I will mention a number of them, and I am not going to automatically prioritise them.

One is foreign ownership. The government has announced that the bill will allow 35 per cent combined foreign ownership, with each foreign owner being limited to five per cent. But that would still allow for seven foreign corporations to have five per cent each. Seven foreign corporations having five per cent each would mean that, combined, there would be 35 per cent foreign ownership of Telstra. Within Australia, much more diversely spread, that 35 per cent, if voted as a block, would have a much bigger influence on the running of the company.

That is an issue of foreign ownership that ought to be more properly and publicly debated—that is, the impact of having no more than seven foreign owners each with five per cent. This is an issue I think the Australian public would like to have a lot more debate about: what are the advantages of having foreign ownership in a fully privatised Telstra? As I have said, that is an issue which we think ought to be publicly available for debate.

There is the general issue of job losses. After the Telstra bill had gone through, Telstra blithely announced that they were going to sack 26,000 people. By the end of this year, as explained to an estimates committee by the management of Telstra—and they do it in a very proud way, I must say—they say that they will have completed the downsizing of the company by 26,000 jobs. There is no doubt that the push for getting the number of jobs down came overwhelmingly from the favouring of the one-third privatisation in order to boost the price.

If you are going to full privatisation, there is no doubt that we would like to know how many more jobs will go, particularly in rural and regional Australia. On any visit to a regional or rural town in Australia, you will find consistently that there are complaints at the Telstra depot, at the Telstra telephone exchange, that jobs are going, and you will be informed of the impact that has on the local town.

We also have in this bill the issue of the universal service obligation. The Prime Minister (Mr Howard) in a confused way, the Deputy Prime Minister (Mr Tim Fischer) in an even more confused way, and the Minister for Finance (Mr Fahey) in an even more confused way than Mr Fischer, believe it or not, trying to explain universal service obligation got confused with the customer guarantee. They confused both—I think, sometimes deliberately—to say that they are providing a whole range of new provisions.

This bill does not put one new universal service obligation requirement on Telstra or the telecommunications carrier. The bill says openly that it reaffirms the existing USOs. There are no additional USOs put into this bill, despite the full privatisation of Telstra.

Senator Alston—Should there be?

Senator SCHACHT—In March last year, when we were debating the full deregulatory bill, we moved and raised issues such as why shouldn't we look at expanding the USOs to ensure that regional and rural Australia would be guaranteed to get equivalent services in the new broadband on-line services—because they will not get them under the USOs that are in this bill. This bill will allow for the development of a two-tiered system of telecommunications in the country. The rich suburbs of Sydney and Melbourne will get the best because they are able to afford it—that will be where the market is—and the bush will get the second level.

However, I hear Mr Fahey say, 'But we are guaranteeing the standard telephone.' Communications have moved on from the provision of a local telephone only. They have moved on now to the demand for the new sophisticated on-line broadband services. New technologies, some of them not even thought of yet—not even invented, let alone available—in another decade will certainly be being demanded by people in regional and rural Australia.

The minister has made no provision in any way for those USOs to be expanded—and why not? Because, if you expand the USOs, the cross-subsidy gets bigger and the profit for a privatised company goes down. We believe that services to the Australian people should come before profit, including the profit for the 35 per cent of foreign ownership.

The customer service guarantee—and this is the big change in the bill—apparently is that now you can be fined $10 million. The $10 million fine was already in the previous legislation; but it now is being made clear that, if you do not meet certain service standards, you can be hit with a fine. What we would like to know from the minister—and we would like to get this in the inquiry—is: what are the determinants? What is the range of where a carrier could get hit with a $10 million fine?

After yesterday's report from the ACA on the quarterly standard of service, Telstra was found to be 'guilty'—if I can use that term—all over the place, particularly in regional Australia, of a decline in service. We want to know: is that decline the sort of thing that would guarantee a $10 million fine being imposed? We do not know; it is not clear in the bill. It is not clear at all. It is very indistinct. But the government is trying to use that as a propaganda weapon—that is, explaining that there will be the imposition of a $10 million fine on the carrier if your phone is not fixed within a week.

That is just hogwash. At the moment the best you as a consumer will get is a month's rebate on your telephone rental. The local consumer is not going to get the $10 million fine being paid to him. We will wait years and years, perhaps forever, for a $10 million fine to be imposed on a carrier if they carry out—

Senator Alston—Yes, because they will do the right thing.

Senator SCHACHT—No, they are not doing the right thing in the ACA report. Minister, I ask you to explain to us: is the level of breakdown of service in the ACA report yesterday the equivalent of a $10 million fine? Of course it will not be. If as a weak minister you were still in government, you would never put the heat on the carriers. Despite there having been plenty of opportunities in the last 15 months, you have ducked every time—even over those dreadful CoT cases. You did not even have the gumption to direct Telstra to pay the money to Mrs Garms, with the support of the National Party. Telstra management told you to go jump, that they were not going to pay the $300,000. They told you to go jump; they told the committee to go jump; they told Mrs Garms to go jump. The arrogance of Telstra over this shows why this company should not be removed from the scrutiny of parliament.

There is nothing in this bill about industry development—nothing at all. This, the biggest company in Australia, with $3 million to $4 million worth of public works: what guarantees do we have that a fully privatised company will still continue to make an effort to buy in Australia, to spend R&D in Australia? There are industry development arrangements in the Telecommunications Act that we insisted on in March of last year; how strong will they be in the years to come? This privatised company will think of every way to get out of it and to find ways to buy cheaper off the shelf from overseas.

Today the minister announced with a fanfare of publicity another $21 million to networking the nation, to regional Australia, to help overcome the deficiencies in the infrastructure for telecommunications in the bush—$21 million, part of $250 million over five years, part of the deal to get Senator Harradine's and Senator Colston's vote for the last time round.

Senator Alston—Are you still opposing it?

Senator SCHACHT—No. What I want to point out is that at the very same time he is making a big noise about himself for $21 million, under the privatisation process in this bill the stockbrokers of Australia and the world will take fees of $800 million. The bill says two per cent of the total proceeds of the sale, which is estimated in the bill at $40 million. Two per cent will be the service fee paid to stockbrokers; that is $800 million.

Senator Alston—Why don't you go out and get a job as a broker?

Senator SCHACHT—Here is the typical Liberal comment: go and get a job with a stockbroker. You are not worried about the service in the bush. In five years you will give $250 million to the bush and in one year or even less the stockbrokers of the world will walk off with $800 million. That is where your priority is; helping the big end of town, not helping the people in the bush. That is another issue we would want dealt with under these terms of reference.

We want to deal with the issue of debt reduction. Yesterday in the House of Representatives Mr Beazley put to rest one of the great myths that this would result in a substantial improvement in our debt reduction. He pointed out that Telstra's earnings are estimated by independent people to probably reach around $2.3 billion per annum by the year 2000, of which a substantial amount will

be paid as dividend, if not all. 'If John Howard's scheme succeeds,' said Mr Beazley, 'the $2.3 billion will be there every year, not for all Australians but for fewer Australians, some big companies and 35 per cent foreign interest.'

Mr Beazley quite rightly pointed out that, at the Commonwealth bond rate of 5.7 per cent, retiring $40 billion of Commonwealth debt reduces not $4 billion of savings but $2.3 billion. If you take off the few billion you will give out under what is called the social programs, it will be even less. As it turns out, there is a case to say that the dividend we would be getting in the year 2000 will be greater than the saving on interest in your own bill.

Senator Alston—You haven't read Bob McMullan's press release today.

Senator SCHACHT—Why don't we put that? That is one of the issues we want to put to the public. We want to get experts on all sides. You will produce yours, we will produce ours and include other independent people to have a proper debate on it. That is your major justification for privatising Telstra: to reduce public debt. Yet the information you have given so far has been scanty, to say the least, if not disappearing altogether.

What we want is a proper debate. That is why we believe it is appropriate that this bill go to the references committee, not the legislative committee—and to go there with enough time to deal with the issues, report back by the end of June and have the debate on the bill in August when the parliament resumes. This should be no problem for the government unless it wants this bill as a double dissolution bill. All you are saying is, 'We want to get it through. If we get the bill through, we will proclaim if we win the election.' If you do not get the bill through, you will still have your election campaign saying, 'Re-elect us. Our policy is for the full privatisation of Telstra.' It in no way stops this being a major, significant issue at the next election.

I know why the government does not want to go to the references committee. It will tell us: 'Well, the opposition parties have a majority. They will hang it out to dry. They will use every excuse. They will produce a majority report against the government.' That may well be true. What we are after, though, is a proper process. Irrespective of majority or minority reports from Senate committees, the debate will be in here reflecting the numbers in the Senate at the particular time.

I do not know whether I have the support of the Senate for my motion. I will have to test that and see the numbers. I hope the Senate will—as it did back in autumn of 1996 when it carried a resolution to refer the bill for one-third of privatisation of Telstra to the references committee for the arguments that were then sustained—do the same now. Certainly we will be arguing that way. We believe this is a fundamental issue for the Australian people. We do not want to see this railroaded through the Australian parliament as an election gimmick to divert attention from a number of the Prime Minister's political difficulties.

To conclude, the opposition is more than happy to fight this issue everywhere in Australia leading up to the next election—right up to polling day. We are not afraid to fight the election on the issue of the privatisation of Telstra. Wherever we will be, this will be a major campaign issue for us. We will make it very clear that we are committed to maintaining Telstra in majority public ownership in the national interest. We will not sell Australia out; we will not sell the most profitable and successful company that provides over 85 per cent of Australia's telecommunications services to a limited number of shareholders and to foreign interest. We believe the 18½ million people in Australia in public ownership have control of Telstra through the parliamentary process. Therefore, we are willing to fight this issue, and we assure the Australian people we will never privatise Telstra.

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts) (4.36 p.m.)—What Senator Schacht was doing was confirming that the whole thing is an absolute charade. His last remarks made it crystal clear that they will campaign up hill and down dale against this

legislation. Why do you want to send it off to a references committee, which is quite contrary to the standing orders? Legislation committees deal with legislation; references committees deal with references. Why? He says because it contains significant issues. I would have thought that applies to a lot of legislation around this place. Why do you want to string it out for 12 weeks? Again, because they want to create as much mayhem and distraction—

Senator Schacht—We want to give people an opportunity to hear the arguments.

Senator ALSTON—We will be hearing the arguments between now and the election. You know that. It is a highly public exercise that we are engaged in right now and it has been ever since we made our announcement some weeks ago. You can spend every day between now the next election rabbiting on as much as you like about Telstra. No-one will believe you, given the Labor Party's track record on privatising everything that moves.

The fact is that you will have ample opportunity to canvass these issues with a closed mind. You are not out there to explore them or to test the boundaries or to see why Cuba, Albania, Hungary and Yugoslavia have all gone down the privatisation path. The poor old ALP in Australia! The militant tendency in some remote part of the world might agree with you but I cannot imagine anyone else agreeing with you.

I am not really here to do much more than simply say that this is an entirely spurious exercise designed to waste a lot of unnecessary time. We went through all of these issues in exhaustive detail a couple of years ago. At that time the references committee examined 136 witnesses at 11 public hearings in all mainland state capitals and Canberra over a one-month period and produced a report entitled *Telstra—to sell or not to sell*. It is a complete and utter waste of public funds to have yet another wander around Australia.

Senator Schacht—What?

Senator ALSTON—Senator Schacht seemed to be under the delusion that all you could have if you refer it to the legislation committee is a couple of Friday hearings in Canberra. That is not my understanding at all. The committee can make its own decisions about where and when it needs to hear evidence and to what extent—

Senator Schacht—So you would support holding hearings outside of Canberra?

Senator ALSTON—Normally you wait and see what submissions you get and then you make a judgment about where you can best accommodate them. Once again, if you have a closed mind on the subject, that is your problem, not ours. You can run your scare campaigns about foreign ownership but, again, I think everyone knows that you were very liberally inclined when it came to foreign ownership restrictions in government. Why should you ever be believed in opposition? You will do exactly the same thing if you ever get back.

All I can say is that we are not going to have any of this. All of Senator Schacht's issues are able to be dealt with by the legislation committee. What he has basically done in his usual sloppy and lazy manner is lift large chunks from the terms of reference of last time around. I have done an analysis, which we will not bore the Senate with. It makes it very clear that the overwhelming bulk of these issues were done to death a couple of years ago. We are not going to change the Labor Party's mind. We know that.

Let us just get on with it. It is a very significant piece of legislation. It deserves to be canvassed at the committee stage. We fully accept that. That is why we are referring it off, essentially during the recess, to allow as many hearings as might be necessary and to allow everyone to put their views on the record—all those vested interests that you represent lock, stock and barrel. Those union movements who are terrified of losing their power base will no doubt be along in droves trotting out the same old arguments they put up last time around. No-one is going to change their minds. We know that. They can do it in a six-week period, not a 12-week period. That is what we say. It ought to go through the proper processes. It is legislation and it ought to be referred to the legislation

committee. I move the following amendment to Senator Schacht's motion:

(a) omit "References Committee" in paragraph 1 and substitute "Legislation Committee"; and

(b) omit "30 June 1998" in paragraph 1 and substitute "13 May 1998".

I do that on the understanding that normally you do not have specific terms of reference for a legislation committee. The bill itself is able to be canvassed. I am simply making it clear that we have no objection to all of those terms of reference being explored through the normal legislation committee process.

I conclude by saying that as recently as a couple of days ago, the expert in forked tongue speaking, Gareth Evans, was talking about this very bill and said, 'Bring on the legislation; let's have the debate.' I could not agree more. Even he knows that there is absolutely no point in referring it to a committee for 12 weeks when you can accomplish precisely the same result in six weeks.

Senator SCHACHT (South Australia) (4.42 p.m.)—I want to get the minister's amendment clear, because I have not seen it. I think I have it right. He is effectively moving the motion on the *Notice Paper* that Senator Troeth gave notice of yesterday, which was to refer this legislation to the Environment, Recreation, Communications and the Arts Legislation Committee for inquiry and report by 13 May. You have taken what is effectively my (1)(a) down to (2) and added that as the terms of reference. Is that right?

Senator Alston—We are adopting your terms of reference.

Senator SCHACHT—Now that I have seen the amendment and the minister has confirmed it again, it is my motion, with reference to 'committee' deleted, 'legislation committee' substituted and my date of '30 June' substituted with '13 May'. They are both in Senator Troeth's motion from yesterday on behalf of the government. That means that all my terms of reference stand as far as the legislation is concerned.

I think Senator Alston probably got some information during the last hour or so that I similarly got. In reading the tea leaves of what the numbers may be up here, he knew that my motion was not going to get up and his was not going to get up without my terms of reference being added. Both of us have been around this place long enough to understand that whatever else we may think about these things, that is the best we were both going to get.

I have to concede that I think, on balance, the minister got the better end of the deal than I did on this occasion in negotiations with certain other senators in this place. Be that as it may, to save the time of the Senate, we will not call a division. When you put the question, Madam Acting Deputy President, I want it recorded that we support our own motion and not the amendment.

The ACTING DEPUTY PRESIDENT (Senator Crowley)—The question is that the amendment to the motion moved by Senator Alston be agreed to.

Question resolved in the affirmative.

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

Question resolved in the affirmative.

Senator ALSTON (Victoria—Minister for Communications, the Information Economy and the Arts) (4.45 p.m.)—by leave—I withdraw the motion standing in the name of Senator Troeth.

NATIVE TITLE AMENDMENT BILL 1997 [No. 2]

Second Reading

Debate resumed from 11 March, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

(Quorum formed)

Senator BOLKUS (South Australia) (4.49 p.m.)—In rising to speak in this debate on the Native Title Amendment Bill 1997 [No. 2], I start by acknowledging the Ngunnawal people, the traditional owners of the land upon which we stand. In doing so, I would like to reflect for a few moments on what this means and how critical the concept of respect is not only in this debate but also in our ongoing challenge, both as individuals and as a nation,

to achieve reconciliation with indigenous Australians.

I grew up in inner Adelaide. Within the cultural mix of our community at the time were many indigenous Australians. Not only did some live in my parents' cottage, they shopped at our shop and I went to school with many of them. We are all products of our childhood environment and I learnt much from those times. I was reminded recently by some Aboriginal Australians that, at the time, my parents forsook rent and provided food free to some Aboriginal neighbours. My parents actually had trouble making ends meet but, when asked how and why they were prepared not to charge sometimes, there was a stock reply: 'It's not their fault. They're human beings. They shouldn't have to suffer.'

Isn't that the issue before us today? Should not this Senate show the leadership and the generosity of spirit that the Prime Minister is not capable of exercising? Shouldn't we be saying to Australians that we at least are prepared not only to sit with indigenous Australians, as the government has done, but also to show them sufficient respect, to listen to their views and to accommodate them in a balanced and fair outcome, which the government refuses to do?

In my 17 years in this place, I have worked with indigenous Australians on many issues. They have been subjected to constant attempts at legislative thuggery. They have resisted, they have fought and they still stand ready to fight the next fight. Their strength and their courage is to be admired. But they do have their limits. Common decency demands that we treat them with respect and dignity and not as political footballs to be used and abused whenever necessary for base and offensive political purposes.

On Monday, I listened to Ngigli, one of the people locked out of Christmas Creek in the Kimberleys, at a presentation at the Australian National University. She said, in part:

> Whatever they say, whatever they do to Native Title, our country, laws, history and land will always stay. Native title is our life.

Native title is more than access to land. It is more than land management. Native title also embodies custom, law and culture. It dictates how indigenous Australians run their lives. It demands respect for law, for custom, for culture and for history. It demands respect for the importance of the land.

At the core of native title is respect for each other and each other's rights. It demands that we deal with Aborigines in the way that we would deal with each other. This entails a right to be consulted and to be listened to. The right to negotiate as an equal goes to the heart of native title. As we come to the last stage of this debate, let us not forget that history will judge us on how we handle this aspect of the debate. We will be judged not on how many vested and powerful interests we bow down to but on how many powerless and dispossessed we defend.

Just over three months ago the Senate engaged in the longest debate on a single bill in its history—the Native Title Amendment Bill 1996. In over 56 hours of debate some 700 amendments were moved, but few of those moved either by Labor or the minor parties succeeded. Indeed, at the conclusion of the Senate debate last year, the government got some 90 per cent of what it wanted. Of the 36 key issues discussed by the Senate, the government failed to get its way only in respect of four. Those amendments dealt with the threshold test, the right to negotiate, the application on the Racial Discrimination Act and the sunset clause.

Despite the fact that the bill that was returned from the Senate was far from Labor's preferred position, we accepted the Senate compromise as a gesture of our goodwill in this debate. But that goodwill that we and other non-government senators showed the government at the time was spurned by them when they set this bill aside. The Prime Minister could have pocketed the considerable concessions at the time, yet he failed to do so then and he fails to do so now.

As everyone knows, the government entered into discussions with the Labor Party, and the National Indigenous Working Group has done so for a number of weeks, to clarify some of the outstanding issues. The talks have produced some productive developments, but only with respect to the procedural aspects of the threshold test, and then only in part. More

was not achieved because more simply was not on the table for discussion. The central issues in this debate were resisted by the government.

So, despite the Prime Minister's promise to Gatjil Djerrkura, despite the calls from the Aboriginal and Torres Strait Islander communities, from the Council for Aboriginal Reconciliation, from the churches, from Kim Beazley and from the Australian people, and despite the growing community movements in support of reconciliation, we have seen no real movement from the government on all the other issues, including the two issues that have always been central to this debate: the right to negotiate and the application of the Racial Discrimination Act.

Let me go to the Racial Discrimination Act. The government's position on the RDA has always been misleading and immoral. Despite consistent advice from all experts that this legislation is racially discriminatory, we have seen no genuine attempt by the government to address this legal and social failure. Despite saying that they want a non-discriminatory bill, the government has continued its support for provisions of this bill which their own Chief General Counsel, Mr Burmester, has told them are racially discriminatory.

Instead, the government rely on the current subsection 7(1) of the act, a clause which they know full well was proposed by the Western Australian Greens in 1993 with the serious intention of addressing this issue but which, as a result of the High Court's decision in Western Australia and the Commonwealth, has no effect at all. Why? Because this government and this Prime Minister know that the only way that they and the states can take away from Aboriginal and Torres Strait Islander people the rights given to them by our legal system is if they pass racially discriminatory legislation.

They do not care how they do it. They do not care that this legislation will breach the clear covenant that the Australian people made with their government in 1967, when they said they wanted to give the Commonwealth power to make laws for the benefit of Australia's indigenous peoples. They do not care that, as leaders of the world's most successful multicultural society, they have an obligation to act in a non-discriminatory way. They do not care if the rest of the world sees us as a nation prepared to discriminate on the basis of one's race. Instead, what we have seen is the Solicitor-General submitting to the High Court in the Hindmarsh Island case, on the instructions of the Attorney-General, that the races power allows the Commonwealth to pass Nuremberg or apartheid style laws. Such submissions are simply disgraceful. All we continue to see from this government is the pursuit of a grubby political agenda that they obviously believe will help them retain seats in the bush.

Let us go to the right to negotiate. That is where the right to negotiate comes into this equation. For the last few weeks now, we have seen the trial of the grubby political campaign that this government wants to run in rural and regional Australia. We have had from both the Special Minister of State and Minister Assisting the Prime Minister, Senator Minchin, and the Deputy Prime Minister, Mr Fischer, the insulting proposition that the right to negotiate is a form of racial discrimination against Australia's farming community. They make these claims despite knowing that in Western Australia v. the Commonwealth, for instance, the High Court indicated that the 1993 act, including the right to negotiate, was consistent with the Racial Discrimination Act and was not discriminatory.

They seek to insult the intelligence of the Australian people by stating that indigenous Australians should have the same rights as the pastoralists when they know full well that they are dealing with two very different types of rights created by our legal system—rights which are analogous to landlord and tenant. They do so knowing that indigenous Australians have in a sense traded in the right under common law—a right which has no time lines nor limits, a right which is a right of veto—for a controlled and contained right to negotiate.

But the right to negotiate is not just a statutory right. It is also an incidence of common law native title. It is a recognition of the traditional custom and practice which demands that indigenous Australians be con-

sulted about their country. To take away that right to negotiate is to deny part of the culture and identity of indigenous Australians. In its own way, it is as destructive a practice as the forceful removal of their children. It is the difference between being shuffled around on the land like cattle and being treated with respect and dignity that any human being would expect.

In respect of the threshold test, talks have been going on and there have been some productive developments. There is considerable agreement on the procedures which should surround the test. In this regard, the government has accepted the mere fact that, if one out of a number of elements of a native title claim does satisfy the test, this should not be the basis for knocking out the entire claim. This agreement on procedural matters hides the fact that, rather than compromising the substantive test, the government's new test would be much harder to satisfy than the one they originally proposed. That is something we will address later on in debate. Rather than accept the spirit of compromise that was so desperately needed in this debate, the government has deliberately made that compromise even harder to achieve on this fundamental sticking point.

In respect of the threshold test, it is important to explain why the scope of the test is important. As people will remember in the previous debate on this matter, we talked about three connections in the alternative. What the government is now seeking to do is to tie together at least two of those connections—the physical one and traditional one—to make it much harder for people to lodge and pursue claims. The government's amendments, as I say, are not only a sign that they are not genuinely interested in seeking a compromise; they are also destructive of all stakeholders involved in the process.

In terms of the ultimate symbol of the government's bad faith in this debate, let us turn to the sunset clause. One thing that we are all agreed upon in this debate is, regardless of what this act says, that native title holders will still have the right that they will be able to seek to enforce through the common law courts. The Native Title Act had never given indigenous Australians native title rights; all it ever sought to do was to help identify them and delineate the scope of those rights that already exist.

It is agreed on both sides that no matter how difficult the processes under the Native Title Act may be, they are infinitely superior to resolving these issues through the courts. The government privately admit that the sunset clause will undermine the rest of their legislation. The stupidity of this sunset clause is that after its six years are up those common law native title rights will continue to exist. They will continue to be determined, yet the mechanism designed to resolve those issues far away from the expense and delay of the common law courts will not survive.

The sunset clause, as I say, is a symbol of bad faith. It is nothing more than a cruel decision for the people in rural Australia, telling them that this threat of native title may well be over in six years. It will not be; it is an ongoing right, and this six-year sunset clause is something that the government ought to ditch in the interests of a fair compromise.

This bill continues to be a recipe for ongoing uncertainty and division. If taken to a double dissolution it will divide Australia, black against white, city against bush, for generations to come. But assuming the government wins and ultimately passes this bill through a joint sitting of the parliament, you can guarantee that it will be in the High Court within days and locked up in the High Court and Federal Court for at least a decade.

There are at least five grounds on which this bill will be constitutionally challenged and could fail constitutional challenge. There were five grounds available to indigenous Australians before today's Hindmarsh Island decision; there are still five grounds available to them now. The first one is under section 57 of the constitution. Before we even get to the substantial legal issues surrounding the substance of the bill, the government, through its cavalier approach to section 57, has guaranteed that this bill will be challenged on the basis that it has not met the requirements for a double dissolution trigger. The government could have and should have—you may shake your head, Senator Minchin—gone down the

constitutionally certain route. They chose not to do so and as a result they will have to live with at least a challenge to the bill.

Let us turn to the second ground, the racist power. There are substantive arguments, which were addressed by the High Court in the Hindmarsh Island case, that this bill was unconstitutional on the basis that it is neither an appropriate nor a beneficial use of the racist power, pursuant to 51(26) of the constitution.

We note with respect to that case that two judges said that, for a law to be within the power, it needs to be beneficial; two judges did not address the issue and two judges determined that it could be either beneficial or detrimental, but only under strict supervision of the High Court and not just with respect to the criterion of manifest abuse.

The High Court at best took a middle road in the Hindmarsh Island case today. But in taking that middle road, they have signalled a big yellow flashing light of caution to the government. Four of the judges say that there are restraints on the power. At best, the government legislation's constitutionality is uncertain, for the uncontested and uncontestable view amongst the legal experts is that this bill is discriminatory, that it is inconsistent with the RDA and it is inconsistent with Australia's international legal obligations under the Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.

But, even assuming the bill is otherwise constitutional, the rejection of these international obligations is not without consequence. In the lead-up to the Sydney Olympics, Australia's record on issues such as human rights will be an increasingly important focus of international scrutiny. If this is a government that persists with racially discriminatory action, then all of Australia will suffer in a whole range of different ways.

The third ground is a just terms compensation ground. Even assuming the government's legislation survives the hurdles I mention, we still have grave doubts that the legislation provides just terms for the acquisition of native title, as is required by section 51(31) of the constitution. This is because the bill fails to recognise that the constitutional requirement for just terms compensation is not merely restricted to the amount of compensation ultimately paid. There needs to be timing, there needs to be procedural rights, and there needs to be an important part of notice with respect to validation regimes. The government fails this and the government has enormous problems also in terms of taking away property rights retrospectively. This would be a fourth ground of appeal.

Fifthly, the Commonwealth has the power to acquire land only for Commonwealth purposes and not for the benefit of third parties. Once again, to the extent that the Commonwealth's confirmation of extinguishment provisions go beyond the common law and pass land on to third parties, there is a chance that it will be found to be invalid.

At the start of this process the Prime Minister promised all Australians certainty. Unfortunately, all that he has delivered them in this legislation is an unholy, unbalanced, racially discriminatory, unworkable legal nightmare. We will be left fighting out these matters in the courts for decades to come. If you think that is an exaggeration, just reflect on the fact that we have been fighting these matters in the courts for the last two or three decades in any event.

All Australians will suffer as a consequence and Australia will be diminished. Not only will the relationship between black and white Australians and between the city and the bush have been destroyed but farmers will have lost their hopes of certainty, miners will have lost any chance of reasonable negotiations with native titleholders and, at the end of the day, the Australian taxpayer will be lumped with literally billions of dollars of compensation.

Through all that, because of the pigheadedness and stubbornness of our leadership, Australians and Australia as a nation will have been diminished. We will have become an international pariah, trade will suffer and Australian jobs and national wealth will suffer as well. More importantly, we will have diminished ourselves in our own eyes. In this last year thousands of Australians from all

walks of life have begun to come to terms with the past injustices we have wrought on indigenous Australians in the last 200 years. In particular, we have come to appreciate and atone for the atrocities that have occurred in our lifetimes to the members of the stolen generation.

This debate is not about past history; it is about the history we are making today. I do not want my children to have to say sorry for my actions. We should not let ourselves or our children down. In respect of this, the obligation is on all of us. In respect of the Prime Minister, when it comes to the issue of race we know that he has form over a number of years.

But the problem facing him is a problem facing each one of us individually. If an election is called on this bill, history will record that it was John Winston Howard and no other who made the decision. But history will also record all those who were accomplices in this act, which would probably be the most mindlessly destructive act to the nation in the last 50 years. History will sit in judgment on each one of the senators opposite and on this side for their actions over the next few days.

As the Labor Party has already indicated publicly, we will not be moving all the amendments we did when this bill was considered last time. Our commitment to them remains, and they do represent our preferred approach to the bill. However, to facilitate debate on the bill, we will not be moving those amendments which the Senate rejected last time and which we believe, following consultation with other senators, have no reasonable prospect of success. If others move them, we will, of course, support them.

Instead, we will move in their place the second reading amendment circulated in my name. During the committee stage we will be moving all those amendments which were successful last time as well as some clarifying technical amendments and amendments to our amendments consequent upon the 95 or so amendments the government is moving.

I move:

At the end of the motion, add:

"but the Senate notes that:

(a) The High Court of Australia in its 1992 *Mabo* decision, found that a system of native title to land emerging from the traditions, laws and customs of indigenous Australians pre-existed the legal system that has been implemented in the time since European settlement, and further found that native title has survived despite later grants of interests in some places, and is merged within our common law;

(b) the *Native Title Act 1993* was the first attempt to manage native title claims emerging from the High Court finding, and was inevitably destined to be amended in the light of practical experience and further Court decisions;

(c) in taking office in 1996, the Government accepted the responsibility of integrating the concept, expression and exercise of native title into the social and legal framework of this nation, a responsibility that was initially taken up in 1993 by the Keating Labor government;

(d) the *Wik* decision of the High Court in 1996 was an inevitable and desirable part of a process whereby an emerging body of case law gave better definition to a legal concept, and deserved a prudent and measured legislative response from the Government;

(e) the response of the Coalition in government mirrored its response when in opposition in 1993, in that it chose a divisive, negative and politically opportunistic approach to an issue of historic importance;

(f) the Government, in seeking to amend the 1993 Act, has been driven by a desire to appease sectional interests opposed to the concept of native title, rather than any aim of finding a workable model acceptable to all stakeholders;

(g) the Prime Minister's self-styled "Compact with the miners and pastoralists" is a betrayal of the compact with the Australian people that is intrinsic to his office;

(h) in rejecting the compromise offered by the amended bill passed by the Senate in December 1997, the Government added further dimensions of uncertainty and social division to a process that, to be successful, has always demanded government with insight, leadership and a sense of justice and equity;

(i) the Government promoted needless uncertainty and potential economic loss in rejecting the validation provisions passed by the Senate in December 1997;

(j) an ever increasing number of unsustainable multiple, overlapping and ambit native title claims continue to mount up on the Register of the National Native Title Tribunal as a result of the Government's failure to accept the workable threshold test contained in the 1997 Bill.

(k) Australia's standing in the international community continues to be compromised by the Government's approach to native title that will see the erosion of the few rights our indigenous peoples have had recognised since European settlement, in a relationship otherwise blighted by their dispossession, the destruction of their cultures and social dislocation;

(l) genuine reconciliation with our indigenous peoples will be impossible without fair and decent dealing with native title;

(m) the bill before the Senate is fundamentally unsound unless substantial amendments are made, including:

(i) amendments to ensure fair and constitutional validation, including provisions in respect of notice provisions and compensation on just terms;

(ii) the enhancement of provisions which, whilst giving validation where necessary and certainty of tenure to all parties, preserve the character of the amended Native Title Act as a special measure for the benefit of indigenous Australians;

(iii) the amendment of a multitude of provisions which detract from a fair and just balance of the rights and interests of all stakeholders and which compromise the amended Act's capacity to withstand constitutional and legal challenge;

(iv) the reinstatement of an effective right to negotiate where there is dealing in land with exclusive or coexisting native title;

(v) a clear and unambiguous provision to subject processes under, or authorised by, this Bill to the provisions of the *Racial Discrimination Act 1975*;

(vi) the removal of those provisions that seek to impair or restrict indigenous peoples' rights beyond, or in spite of, the common law;

(vii) the removal of gratuitous real or de facto extinguishment of native title;

(viii) the removal of legalistic constraints on the operation of tribunals or courts which have the effect of denying indigenous people a fair chance to pursue native title claims;

(ix) the removal of restraints on indigenous people registering native title claims that could be successfully pursued in common law;

(x) the removal of provisions that would remove processes under the Act from Commonwealth oversight and place them for management and determination in a multitude of State-controlled bodies; and

(xi) the removal of unreasonable impediments to indigenous people having access to their traditional lands; and

(n) in the event of the failure of this Government to proceed with such amendments, a future government will be confronted with an even more complex and demanding task in forming and enacting legislation to address the resulting legal chaos, social division, and economic loss.

In moving this amendment, I indicate that it is put on the table as a draft amendment. We will be discussing it with other parties in this place to see whether we can garner further support for this. I close by saying that during the committee stages of the debate we will be moving those amendments that I indicated earlier. We do not need to go through the whole exhaustive debate again, but we will stick to our principles this time. *(Time expired)*

Senator WOODLEY (Queensland) (5.09 p.m.)—I want to begin my speech by recognising the Ngunnawal people, who are the traditional owners of this area we call Canberra. I also want to acknowledge the Wik people and Aboriginal people from around Australia who are down in Canberra and around Parliament House. Some of them are in the public gallery today.

The Wik people are here as beacons of conscience, to remind the federal parliament that the issue we are about to vote on is about moral choice. So that the government and all of us know that they are real people I will mention their names: Arthur Pambegan, Maxwell Wikmunea, Dorothy Pootchemunka, MacNaught Ngallametta, Gladys Tibingoompa, Stanley Kalkeeyorta, Ron Yunkaporta, Lesley Walmbeng, Nelson Wolmby, Steve Lexton, Joe Ngallametta, Peter Tibingoompa, Anthony Kerindun, Angus Kerindun, Norma Chevathun, Clive Yunkaporta, Francis Yunkaporta, Annie Kaikeeyorta, Martha Koo-

warta, Denny Bowenda and Jacob Wolmby. These are the Wik people of Aurukun. They are the heart of the legislation we are about to debate. I call on every senator in this chamber to recognise and consider the people I have just named, whose lives will be directly affected by the decisions we make today and in the coming days. I want also to acknowledge the other murris who are down from Queensland to watch this debate. I acknowledge their lifelong struggle, which for some decades I also have been involved in.

One of the most outlandish claims we have heard from the minister responsible for native title, the Special Minister of State, Senator Minchin, is that the government wants all Australians to be treated equally. This is a preposterous and meaningless proposition. Aboriginal people would welcome the opportunity to enjoy true equality, but what on earth does this mean? Is the minister suggesting that indigenous people should now try to obtain some equality, to balance out the last 210 years of history in this country? Is the minister suggesting that Aboriginal people would want to murder and rape non-Aboriginal people, steal their children and destroy and devastate their lives for the next 210 years to even things up? I can assure the minister and this chamber that Aboriginal people would never contemplate such behaviour. They are not savages.

Of course the minister is not suggesting that Aboriginal people even things up in this way. I would not even suggest he would think that. But I do know he protests that today's generation should not be held responsible for what happened 200 years ago or even 100 years ago. However, we are responsible for what our generation has done and for what we are contemplating doing in this place over the next few days.

I want to place on the record some of the things our generation is responsible for. In particular, I want to detail the record of the pastoral industry in Queensland regarding its treatment of indigenous workers over many decades. Before I do, I want to point out another myth that goes with the minister's proposition that giving indigenous people the right to negotiate is unfair to pastoralists because farmers do not have the same right to negotiate with mining companies.

But for now I will deal with the myth that white Australians taxpayers are having to contribute vast sums of money to Aboriginal communities. That is just plain wrong. Apart from the fact that Aboriginal people owned and cared for the entire Australian continent prior to European settlement, and we have never paid for it, Aboriginal workers have paid for the maintenance of their own communities for 100 years. Their wages have been stolen and used to prop up consolidated revenue for the white community as well. I particularly refer to my own state of Queensland.

Dr Rosalind Kidd has recently published the results of two years of research on the files of the Queensland Aboriginal and Islander Affairs Department and of various church missions going back to the 1890s. This research formed the basis of her PhD and has been published in a book titled *The Way We Civilise*. Dr Kidd uses departmental files to show how generations of Aboriginal workers were paid subsistence wages, both for work done on Aboriginal communities and also outside the communities on pastoral properties and at other workplaces.

Aboriginal people's wages, in the first place, were taxed in the normal way. But often those wages were then not paid to the workers; they were given to the so-called Aboriginal protectors who were often the local police. Sometimes wages were not paid at all and police sometimes deducted amounts from the Aboriginal workers' accounts for their own use. Eventually what was left found its way into a fund held by the Queensland government. This fund, incongruously called the welfare fund, was then raided by the Queensland government for generations to pay for expenditure within the Aboriginal communities. I must say all of this is recorded in departmental files in great detail. Much of the fund was also absorbed into consolidated revenue.

Despite the stealing of millions of dollars of the wages of Aboriginal workers in this way, the missions and Aboriginal communities were starved of money for even the basic

necessities of life for most of this century in Queensland. The result was the most appalling living conditions, disease and starvation right up until quite recently. You only have to read the reports of the directors of the health departments prior to and during the Second World War and afterwards to be appalled at the lack of humanity of those supposed to be responsible for the health of Aboriginal people in those communities. Just one quote from Dr Kidd's book paints a graphic picture:

> The most strident critic and agitator of this period was Raphael Cilento, whose specialties in Aboriginal health and tropical disease led him to concentrate much of his energy in Queensland.
>
> When Cilento took over Queensland's health department in 1934 and shortly after acquired authority over all Aboriginal health matters, he traced a similar path to that of the nineteenth century medical experts who had also battled recalcitrant bureaucracies before finally asserting the centrality of clinical expertise in public health administration.

Within the Aboriginal communities, leprosy was one of Cilento's major concerns. Dr Kidd writes:

> Only after further "emphatic representations" did Cilento manage to wheedle 500 pounds out of Hanlon in 1937 for a study of leprosy in the Monamona mission population. The study confirmed his suspicions. Out of just two hundred people, thirteen tested positively to Hansen's disease and a further twenty-five showed latent symptoms. Cilento now ordered Bleakley to close the mission to outside access, and to retain and segregate leper suspects within the mission, regardless of the costs of extra facilities. Bleakley passed on the instruction, but not the enabling finances. When a doctor visited two months later, he reported all crops had died in the drought, cattle were too thin to be killed and the people had been sent bush to survive. The superintendent pleaded that without farming land or funding for food, he could do nothing else.
>
> Cilento wrote a furious letter to Hanlon and I quote: "If an investigation was made with the same care at other Aboriginal settlements, doubtless other leper centres would be discovered." Queensland's Aboriginal population was dying out because of defective medical care in diseases such as leprosy, malaria and tuberculosis, he remonstrated. Wretched diet was the root cause of Aboriginal debility. "Diseases that flourish during conditions of food deficiency continue to threaten the survival of the race and to fill the Lazaret . . . No measure of improvement is of any value if he is to die of malnutrition." Ultimately, wrote Cilento, as he had argued since 1924, "the medical problem of the Aboriginal is at present his only problem."

I would like to say that that is the 1930s and 1940s and that it is different today, but we of course know it is not. Aboriginal health in 1998 is still a dreadful scandal.

I now want to turn to the question of equality between Aborigines and pastoralists. It gives me no pleasure at all to put on the record the actions of some sections of the pastoral industry over decades of driving down the conditions and wages of Aboriginal pastoral workers. Again I quote from Dr Kidd's work, and she quotes from letters and files within the department:

> The pastoral industry soaked up rural labour, collaborated in departmental controls, taught skills on the job and provided the main private revenue source for the department—

Senator Boswell—You're in the 1930s. You've got to get into the 1990s.

Senator WOODLEY—It continues:

> It worked both ways. Since 1919 pastoralists had profited from a wage advantage of 33 per cent for Aboriginal stockworkers, who formed the backbone of their industry. Even this level was not secure, being subject to negotiation with the United Graziers' Association. Records show that as late as 1950, when the write rate was 7 pounds and six shillings per week plus allowances, Aboriginal station hands received only 66 per cent of the 1938 rate of 2 pounds and 15 shillings and pay rises to 4 pounds and 17 shillings in 1950 and 7 pounds in 1952 were still well under the 66 per cent parity.
>
> When the department lifted the rate of 10 pounds in 1957 the UGA baulked at the 'arbitrary' wage increase, trotting out the myths of the irresponsible Aboriginal workers and the brood of costly dependants: arguing, and I quote: that they do not "compare with experienced white stockmen". UGA representatives argued that pastoralists were forced to carry quote "half the tribe" of Aboriginal stockworkers. After a tour of the Gulf country in 1956, deputy director PJ Richards dismissed such allegations out of hand. Noting "the marked and growing reluctance of white stockmen to accept employment in the remote areas of the State", Mr Richards declared "it is becoming increasingly apparent that the continuance of pastoral pursuits depends on Aboriginal stockmen.
>
> Unfortunately, it was equally apparent to Richards that graziers were "more concerned with obtaining Aboriginal labour as cheaply as possible"

than with paying wages in terms of the real worth of native stockmen.

Thank God most in the pastoral industry today take a more enlightened attitude—and I recognise your interjection because I was getting to that, Senator Boswell. Minister, do you really mean that indigenous people should be treated equally with white pastoralists given this history of injustice?

Now we turn to the Australian mining industry's record of dealing with Aboriginal people. During the debate in December I placed on the record the struggle of the Wik people to obtain justice over many decades and the injustice perpetrated against them in the 1950s, 1960s, 1970s and 1980s. It is a record which shows the excision of thousands of hectares of Aboriginal land for mining interests. In the 1970s, when the promised economic boom through resources development did not occur, right-wing state governments and mining companies, particularly in Western Australia and Queensland, looked around for someone or something to blame. Aboriginal people were an easy target because of the much publicised disputes over mining on Aboriginal land at Aurukun and Nookanbah. During these disputes there was strong official church support for the Aboriginal people.

The tide of official church support turned when two influential church bodies, the Catholic Commission for Justice and Peace and the Uniting Church Commission for World Mission decided to publish the results of a detailed, professional, joint study into the corporate structure of mining companies involved in the disputes mentioned previously. The study was meant to provide Aborigines with information about the nature of the companies which had oppressed them. The results were published in the form of a comic book, a wall chart and audio-cassettes—in Aboriginal languages as well as English.

Aborigines praised the report as helping them understand what they were up against but the Australian Mining Industries Council objected to the material and lodged formal complaints with all Australian bishops of the Catholic Church and with the national president and state moderators of the Uniting Church. In January 1983, the Episcopal Conference instructed its commission to withdraw the comic-style booklet and the Uniting Church concurred. Church officials and the Mining Council agreed that they would not criticise one another publicly. This left the mining industry free to attack Aboriginal people without fear of being criticised by the church. However, the report done for the church commissions was published as a book in 1983 with the title *Aborigines and mining companies in northern Australia*. Recently I was given a copy of the comic-style booklet which survived the purge. All the copies of the booklet, posters and tapes were supposed to have been destroyed—apparently some were not. I seek leave to table that booklet.

Leave granted.

Senator WOODLEY—I tell this story to illustrate the lengths to which the Australian mining industry has gone to frustrate the legitimate native title aspirations of indigenous people. The mining industry now seeks to achieve that aim through the Native Title Amendment Bill we are debating in this chamber.

While we are talking about injustice and hypocrisy, I want to point out one of the most blatant examples I have come across in my political career. Throughout the Wik debate conservative politicians have campaigned hard against native title, rubbishing the spiritual and cultural connections that indigenous people have with their traditional lands. That connection is the foundation of native title but conservative forces do not believe in it and do not want Australians to believe in it.

But listen to this little gem from the Queensland Minister for Natural Resources, Mr Lawrence Springborg. He was quoted in the *Courier-Mail* in an article on the 27th of this month defending his government's decision to pay as much as 20 per cent above market value compensation to farmers whose lands will be flooded by the proposed Nathan dam in North Queensland—I have to say that I would support him. But why, you ask, is he proposing that?

Mr Springborg says that the higher compensation is to recognise the farmers' emotional and physical attachments to their land. Un-

believable! But the government will not give Aboriginal people more than the market price for their native title land under the Wik ten-point plan we are to vote on. I wonder if Mr Springborg would recognise that indigenous people have those same emotional and physical connections to their land. After all, it is his Premier, Rob Borbidge who has led the anti-Wik campaign in my own state of Queensland.

I want also to make some reference to the Labor Party. I do thank the Labor Party for the daily personal assurances that I have been given that the Labor Party will not cave in to political expediency. But I keep reading reports in the daily press that worry me and confuse me on this whole issue. Certainly I was worried when I got hold of a press release from the Leader of the Queensland Opposition, Peter Beattie, in which Mr Beattie practically performs victory laps around Queensland parliament for his success in getting the ALP to cave in, he believes, on the Wik legislation.

Mr Beattie's release indicates that he has a commitment from the Federal ALP to allow mining leases to be automatically renewed without going through the processes of the right to negotiate. This has been widely reported so you can understand my confusion and concern. However, I accept the assurances given and I do believe that the Labor Party will support the amendments which it moved in this place last time. My only regret is that even with the bill that was passed in the early part of December last year it is still only half a piece of legislation. In terms of what it does for Aboriginal people it is a certainly a compromise on top of a compromise. *(Time expired)*

Senator HARRADINE (Tasmania) (5.29 p.m.)—In the next four sitting days, the national parliament of Australia has the historic opportunity—and I believe the last realistic opportunity—to respond to a challenge which is the result of acts and omissions of the past. I believe that there are signs of hope that we will be able to achieve such an outcome on this occasion. We were faced with the opportunity in December and we attempted to address that in this chamber. I believe that we went as far as was possible on that occasion, but of course we know the result in the House of Representatives. On this occasion, however, the signs are that we might end up with a piece of legislation from this chamber with which all of the stakeholders can live and with which the government majority in the House of Representatives should live.

Unless we rise to this occasion, the result will be unconscionable. The alternative is mistrust, division, hatred, endless litigations and, of course, it will be costly for leaseholders and miners because, unless we come up with a solution in the next four sitting days, we will not have the measures in the Native Title Amendment Bill 1997 [No. 2] which will confer validation on the hundreds of leases that require that validation for certainty. Unless we rise to the occasion, I believe our national pride will be at stake. I know that there are large numbers of people who are looking to some resolution of this matter in the next four days and that they are not confined to the shores of Australia. There is interest right throughout the world in what we, as a national parliament, are going to do over the next four days.

What outcome should be achieved in the next four days? I believe the desired outcome is a fair, just, reasonable, honourable and certain outcome. This is what we seek to achieve. I believe this is what the minister and the Prime Minister (Mr Howard) seek to achieve. I do not impute bad faith, as some do, to the minister and to the Prime Minister. I know that the minister has been working long and hard on this particular issue over a long period. Things have certainly not been easy for anyone who has been involved in this matter for so long.

I say that the outcome should be such that the principal stakeholders should be able to live with it—and I am referring to all of the stakeholders: the indigenous, the pastoralists, the miners, the local communities, state governments, the Commonwealth government and the people of Australia generally—because we have all got a stake in a just, reasonable and honourable outcome.

Yes, I do have an empathy with the indigenous people of Australia. This goes back a long way to my schooling, to a person who shared the Harradine name. There are many indigenous persons in Australia who do share that name, one of whom is in this Parliament House today. Whilst some of the people phoning my office were saying that I was undignified yesterday in taking off my shoes and socks and dancing on the lawns of Parliament House with the Wik and Thaayorre people, so be it. I thoroughly enjoyed it. I know the view of honourable senators around the chamber, as to my dancing capabilities, is that I would make a fine politician!

Senator Boswell—Don't give up your day job.

Senator HARRADINE—I won't give up my day job. I was honoured to receive the invitation—if I can put it that way; some of the people in the public gallery might think that I was rather pushed into it—to join a dance of welcome. It was a dance of welcome to other indigenous groups and it was one that had been developed over hundreds of years. I felt very much involved and welcomed on that particular occasion.

Let me remind the Senate that it was in fact the Wik people who accepted and stated to the High Court that if there was coexistence of native title with pastoral leaseholdings, then the interests of the pastoral lessees would prevail. Let us not forget that it was they who said that. That is an indication of the attitude that they exhibited to ensure that there would be peaceful coexistence and to recognise the rights and the interests of pastoralists.

On the other hand, I have a large number of Aboriginal people who share the Harradine family name—and I am proud to have an indigenous person as a son-in-law. I also have relatives who are pastoralists and they have not been tardy in coming forward and contacting me as to what is going on over here. I have been able to allay their fears. Unfortunately, truth has been a casualty throughout the bush and that is not the fault of the government; it is something that has occurred and, I believe, is most unfortunate. I am personally well aware of a situation where the mother was in an isolated farm household with numbers of children and the father was required to find a job in the city. This is the case in many districts throughout Australia today because of the drought. I am very conscious of the interests of pastoralists.

As for miners, obviously, we have had a great deal to do with miners in the state which I have the honour to represent in this parliament. I had much to do with them in my trade union days so I am conscious of their views. I have listened to what they have been saying and I have listened to what local communities and the various states have been saying since the Senate debate last December. Since then, of course, there has been a huge, public response to my office: letters, faxes and telephone calls, a huge volume of communications. Most of them have supported the stand which the Senate took in December last year.

Others have pointed out a number of things which have led me to further consider the matters. I have spoken to many persons and, of course, I have listened to what the Commonwealth government has said about these issues. It seemed to me that the key thing that appeared to be coming from the Commonwealth, the states, the president of the NNTT and a number of others was that the threshold test was a crucial area of concern.

I want to say in a general sense that the content and purpose of Australian laws about indigenous people are close to the core of our nation's definition of justice and equality. It is with that view of the law that I will be approaching this situation in the next four days, as I have been doing for some considerable time. Enhancing and maintaining justice and equality for all our people, both indigenous and non-indigenous, is at the heart of reconciliation. I have promoted and supported the reconciliation process and have approached all legislation on these issues bearing in mind these purposes and standards.

I do so in regard to the Native Title Amendment Bill 1997 [No.2]. I want a genuine outcome that will be certain, fair and decent. As I indicated, the Prime Minister is on record as wanting that too. For this reason, not only we here but all Australians should

have an open and positive outlook about the debate that is going to take place in the next few days.

I believe the principles and framework for a fair, decent and honourable outcome can be stated shortly as follows. Common law native title rights, as recognised in the historic Mabo decision, should not be further eroded, reduced or rendered valueless. They should not be so rendered valueless because the end result might mean huge litigation—because it will—but let us do things in this chamber out of a recognition of principle.

The second point is that governments, corporations and individuals must take into consideration, in a genuine and open manner, these native title rights and interests when their activities may affect or reduce them. Thirdly, the system for the recognition and determination of native title rights and interests must be workable and fair to all involved. Fourthly, the recognised weaknesses and shortcomings in Australian native title law must be reduced or eliminated. I am working for such an outcome, which I hope all Australians, including the Prime Minister, may recognise in the bill as finally determined by the Senate and, I hope, accepted by the House of Representatives.

It is not a matter of anybody caving in since December. The debate has moved on since December. The government's Native Title Amendment Bill is essential, but so is the government's foreshadowed list of amendments—over 90 in all, and not all the key issues have been addressed. There have been considerable discussions with key players, particularly over the last month or six weeks, and I want to acknowledge the hard work that has been done by the advisers and others who have been very much involved in the hard work of discussions and negotiations.

Of the government's 90 amendments, I have ticked off on probably 90 per cent to 95 per cent of them, and I believe others around the chamber are looking at them and have probably done a similar task. Further amendments, however, are still necessary for fairness and decency, and I will be moving a number of amendments—certainly not the number that I moved on the last occasion—to improve this bill.

All Australians should know that the processes since December have resulted in a substantial convergence about the essential issue in any workable and just system for native title, and that is a genuine, workable and fair threshold or registration test. The elements for this test have emerged with, I believe, widespread support. It is not a matter of me or anybody else backing down; I believe it has got widespread support. There is now a proposed system in which both indigenous and non-indigenous Australians can have full confidence that genuine, valid and provable claims will be presented which are appropriate and will attract the right to negotiate.

Everyone has recognised the problem of bogus claims and claims which do not reflect the title of real indigenous communities. Credibility is at stake here. Everyone involved in native title—from state governments to the president of the NNTT to leading indigenous spokespersons and representatives of miners and pastoralists—has cried out for this weakness in our system to be eliminated. I believe the foreshadowed government proposal on the threshold test substantially meets the substance of complaints and restores integrity to the system. There are elements which must be strengthened in respect of claimants who belong to the stolen generation or who have suffered from the locked gates experiences of previous decades. I do not believe that the proposals for these claimants are completely fair and just as yet, and I will say more about that in the committee stage of the debate. Otherwise, there are now the elements widely agreed for a clear, clean and responsible system for native title claims, which will give fairness to indigenous Australians and a genuine and certain basis of determination and settlement to other stakeholders.

With regard to the right to negotiate on pastoral leases, the Prime Minister has said that there should be equality between native title holders and non-indigenous land-holders. There is no true equality unless the essential interests of native title holders are specifically addressed. It is not sufficient that only those

matters that affect the economic interests of non-indigenous land-holders are taken into account. *(Extension of time granted)*

Equality of treatment must be measured against people's essential needs. Pastoralists' needs relate to their grazing business and native title holders' needs relate to their native title rights and interests. There is no equality of treatment if the legislation does not reflect the essential difference between the pastoralists' interests and the native title holders' interests.

There is much to do in the next four days. We must apply our minds to achieving an outcome which is fair, reasonable, honourable and with which the principle stakeholders can work amicably. I believe this is an occasion which will not come again. If we do not get it right this time, I cannot foresee the occasion arising again where we will get it right. I acknowledge the great deal of work that has been done by all parties concerned, but I believe that we have a little more to go in the next four days before we achieve that result. I ask honourable senators who follow me to consider this and hopefully not take a predetermined stand, particularly when it comes to the committee stages of the debate. I thank the Senate.

Senator BOSWELL (Queensland—Leader of the National Party of Australia in the Senate) (5.52 p.m.)—The 10-point plan is important for jobs, investment security and native title. It provides for a regime where the rights of all land stakeholders are recognised and respected in the national interest. The Native Title Amendment Bill before the Senate gives effect to the 10-point plan.

Throughout the long and intense debate on native title, I have tried to act in the national interest as I see it. I have been greatly concerned about how our nation would move forward to provide both black and white Australians with hope for a sound economic future.

I see in the gallery today representatives from Aboriginal and grazier groups. When we talk about native title and its complexity, let us keep in mind that it is those two groups who have to make it work. They are the inhabitants of the bush. We city folk must remember that, for all our talking and politicking, what we do here today will determine how those two groups get on together in the future. It is our duty as parliamentarians to provide them with a clear and workable system in which they can both pursue their rights to live harmoniously under the law.

I would like to remind not only the Senate but all Australians that black and white Australians on pastoral lands have a unique combined heritage. For generations they have coexisted. The Senate committee heard this said by both Aboriginal and farming leaders: they have worked and lived side by side. They have shared love of the land, knowledge of sacred sites. They have attended each other's weddings and funerals. They have gone to the same schools and played on the same football teams. They have worked as one in the emergencies which rise up regularly in the bush, whether flood or fire or personal injury.

So today we must be careful that we do not tear apart this living legacy of a genuine coexistence—far deeper, enduring and personal than could be imagined by city people. It is a fact that the High Court's decision has been made at the expense of coexistence in the bush. It has set one group against the other, causing confusion, suspicion and bewilderment on both sides.

I support the view that the High Court has exceeded its calling. It is said that 'by your fruits, you shall be judged'—and the fruits of both Labor's Native Title Act and the High Court's ruling on Wik are despair and division in rural Australia. Black and white families have been put in a competitive position. Ambit claims have intimidated. Hasty words and name-calling have been cruel. Church leaders have thrown stones from glass houses.

We must remember that leaseholders have wanted a great deal more than the government was prepared to give. They know that life will never be the same again. On top of all the other hurdles to rural life, they must now become familiar with formal mediation, lawyers and courts, and all the associated costs. They are reluctantly resigned to their part, as set out in the bill before us and as

guaranteed by the Prime Minister (Mr Howard) at Longreach.

But I urge the Senate to consider what will happen if this bill is not passed. The simple desires of both those groups in the gallery for a peaceful coexistence will be dashed against the rocks of an election fought on native title. This debate has already provoked so much hurt in the bush between black and white. An election fought on Wik could degenerate into a polarisation of extremes. The middle ground would be left floundering amidst sensational reporting of extremist sentiment.

A united way forward would fall foul of the divisive elements in our society—those who hope to capitalise on, and exploit, the differences rather than the commonalities. Australia could become a battleground for the politics of prejudice; the winners would be the generals, and the casualties would be those two groups in the gallery—ordinary black and white Australian families.

Whatever the perceived flaws in the bill before us, we must consider the consequences if it were to fail to pass this chamber. Where lies the greatest danger for us as a nation? We must also ask: where lies the greatest hope? That hope at this time is an economic one. How do we address the dire need in our society for jobs and their prerequisite—investment? If we do not have a manageable regime to work through native title, we will be putting up insurmountable barriers to investment and jobs and family financial security. And then we will be confronted with far greater social problems than we have today.

What moves our country forward? What is the source of growth and jobs? It comes down to the 'belt and braces'. It comes down to being able to lay a pipeline, commit millions to mining ventures, get permits for irrigation pipes and use stock routes for livestock in drought times. It comes down to being able to cut up blocks of land to sow cotton, cane or grapes. It comes down to building dams to expand land under intensive production.

From these initial steps come the downstream processing jobs in their hundreds and thousands—jobs for mill workers and abattoir workers. These underpin the self-sufficiency of regional towns, security for local council work forces, rural schools and regional police officers. The snowball continues, rolling up city services like insurance and banking and transport. It rolls on and on, taking our produce to overseas countries in return for export dollars and self-sufficiency as a country.

What we cannot afford, therefore, is to melt the snowball at the very beginning. We have to be able to make those initial steps—to build the dams and the mines and the infrastructure—without interminable delays, deadlocks, court hearings and appeals. This is to the benefit of all Australians, black and white. This recognises the rights of all those Aboriginals who work in abattoirs and mills in country towns, on properties—grazing properties—farms, and so on, to an economic future.

Economic empowerment for Aboriginal families is through development. It is through setting up Aboriginal companies like the Koutha Aboriginal Development Corporation to tender and to win road haulage contracts. There is a company run by Aboriginals in Queensland, and we now have Aboriginal women driving massive dump trucks taking ore from the mine in Ernest Henry to Mount Isa. Economic empowerment does not come through the ability to make open-ended, overlapping ambit claims; engage in the right to negotiate at every stage of a development process, including for associated private infrastructure; and, in general, hold up planning and decision making for these job creation projects for years.

All this does is transfer potential wealth of black and white families in the bush to courts and city lawyers. Jobs are needed now. Diversification is needed now, not just by rural Australians but by many thousands of blue-collar workers around the country—not just by white Australians but by black Australians who suffer high rates of unemployment. Barriers to jobs are not some fantasy plucked out of the air by farmers or by the National Party; they are very real. The ATSIC *State of the nation* report on native title outcomes supports us. This report stated:

Key problems were identified which were detracting from improving outcomes including the large number of overlapping claims in the goldfields and the poor performance of some representative bodies.

It further stated:

As at January 1998, there were 703 applications of native title lodged with the tribunal and 22 claims before the Federal Court.

But, as ATSIC noted in its report, in reality, however, after four years of operations, the Federal Court has made only two determinations on native title. In Queensland ATSIC notes that there is currently one claim a day being made, increasing the total number by 20 per cent in the last two months.

The ATSIC report talks in terms of some serious problems emerging with the use of the right to negotiate. With reference to WA, ATSIC states:

The fact is that mining leases are being held up in the right to negotiate process—some 1,913 out of the 2,094 tenements submitted to the process remain subject to negotiation.

It further states:

Furthermore, the rate of objections by native title parties to the grant of exploration licences is starting to increase significantly, which will mean further delay delays.

It goes on to state:

The bottom line is that before the WA government started using the right to negotiate process about 2,800 tenements were in the system at any one time waiting for approval. After using the process the number has increased to 7,400. This must be a potent message for the electorate of WA which perceives its wellbeing to be based on the mining industry.

I could not have said it better myself. The taxpayers have sunk over $210 million so far into the native title process to arrive at the situation today with massive delays and lack of proper outcomes. The total amount of taxpayer funds committed to the Indigenous Land Fund is $1.3 billion. Then there is the annual funding of $45 million set aside each year in perpetuity for indigenous people to buy and manage land. We should realise also that the area of Australia's mainland owned or controlled by or on behalf of indigenous people is 15.3 per cent.

Earlier this month Senator Parer told the Senate that there is a major impediment to the continued growth in the resource sector, citing the existing Native Title Act. He referred to a survey of exploration companies which rated Australia the worst in the world in terms of land claims. He said:

Simply because of the Native Title Act, it is riskier to explore in Australia than in countries like Peru, Ghana or India.

The minister added:

One estimate is that the Native Title Act is costing Australia about $30 billion in mining revenue, delays and lost investment opportunities.

The number of people directly and indirectly employed by mining in Australia is currently around 300,000. How many jobs has that lost $30 billion cost us? How many thousands of families could have been looking at a brighter future? How many Aboriginal families could have shared in that brighter future had the $30 billion not been forfeited because of an unworkable native title regime?

The total value of our agrifood industry is some $64 billion and accounts for around 540,000 jobs for Australians, including 20 per cent of our manufacturing work force. Exports are $11 billion a year and annual investment is $3 billion. That investment depends fundamentally on what comes out of the farmgate. That investment depends on international competitiveness, efficiency and flexibility to market demands and new technology. Without the dams, without the irrigation pipelines, without sector confidence, that investment cannot be guaranteed. It is all right for the big mining and processing companies; they can take their money elsewhere, and they do. We owe it to Australians to keep investment and jobs here. Most Australians realise the importance of that priority.

Research conducted by AMR Quantum Harris for several state governments reveals majority support for key elements of the 10-point plan. Sixty-four per cent of people surveyed believe that there ought to be a six-year limit on native title claims. Sixty-one per cent feel that a spiritual connection alone should not be considered as sufficient basis for making a claim and that a physical connection should be required. Seventy-one per

cent believe that pastoralists and native title claimants should have equal rights in deciding whether mining should occur on leasehold land. It was clear that most of the people surveyed believed that neither parties should have more rights than the other; that there should be equal treatment. Seventy-one per cent agreed that a stricter test than is now used should be applied to native title claims. Sixty-eight per cent feel that the nature of the rights claimed under native title should be specified up front.

The unidentifiable nature of native title has been one of the most difficult parts of this debate, particularly for farming families as they begin the mediation process. A month or so ago some 150 people gathered in the Mitchell Town Hall for mediation. There were representatives from nearly a dozen local governments, the state government, several Aboriginal groups and farming families. By the end of the day family graziers still did not know what native title interests and rights were being claimed. They thought they would see evidence for the native title claim itself. They felt intimidated by the process and by the legal counsel engaged by Aboriginal interests. They were suspicious that the legal counsel would only get paid if there was a financial settlement at their expense. They are worried because they can barely support themselves.

Farming families felt that they were put on trial for all the injuries and hardships faced by Aboriginal people in the history of this nation. They felt the mediation was not on native title or coexistence but compensation for the past wrongs. It is not right that we sit here in Canberra and ask remote farming families to bear that on behalf of all Australians. That is really not what native title is about. These rural families took land from no-one. All they own, they have paid for—and in most cases are still paying for at freehold prices—through rolling up their sleeves and working hard. They established their own water supplies, roads, fences, power and telephone connections, sewerage facilities and so on. Now they are faced with claims from people who have never been near their properties, claiming the undefinable.

Country people heard a tribunal member on the radio recently say that a continuous connection may mean that a claimant remembers a song about a claimed country—perhaps 100 kilometres from where the claimant now lives. It is little consolation to leaseholders, black or white, to hear the mantra that pastoralists' rights prevail. There is firstly uncertainty about how the test of inconsistency will be applied. Native Title Tribunal documents themselves have suggested that it may be appropriate for the grazier to stop grazing in parts of his lease. Aboriginal spokesmen have claimed a variety of economic rights on top of traditional hunting, camping and ceremonial rights.

The subjection of everything in this bill to the Racial Discrimination Act would create havoc if everything done under the Native Title Act were able to be challenged. We have engaged in countless hours of debate over hundreds of amendments. Now is the time to look at the big picture and how we best serve the needs of all Australians.

At the moment in Australia we have a situation which encourages deep divisions between black and white, between black and black, between city and country and between church and flock. We have a bad unemployment problem in our regional centres. They are dying, particularly when they cannot diversify. We must be decisive, act in the national interest and pass this bill. It may not solve all the problems but it is a lot better than we have now. The alternative is no way to finish off a century, let alone begin a new millennium.

Senator MARGETTS (Western Australia) (6.11 p.m.)—I would like to start by seeking leave of the Senate to table the advice given by the Clerk of the Senate on section 57 of the constitution with regard to the nature of the double dissolution trigger. I also wish to table the response from the Attorney-General and the Clerk's notes in relation to that response.

Leave granted.

Senator MARGETTS—I thank the Senate. Towards the end of last year's debate on native title a very wise Nyungar elder called Robert Bropho left this building saddened by

what the government was doing to the last vestiges of Aboriginal land rights. As he left, his final words to me were, 'Walk tall and tell the truth.' Now that we are being forced to reconsider this despicable piece of legislation, I remember Robert's words and will remember to attempt to live up to his rightful expectations.

The recent public and parliamentary debate around native title has highlighted many flaws in contemporary Australian society, not the least of which is the way our information revolution often serves to confuse rather than inform. Despite all the modern communication methods available to politicians and the media, last year's marathon Senate deliberations on native title left the community more bewildered and insecure after the parliamentary proceedings than before the entire debate began. To be fair, the media had a tough job. Even the most experienced journalists in the Canberra press gallery were struggling to grasp the 300 pages of native title legislation, 800 overlapping amendments and complex implications of the Mabo and Wik High Court judgments. However, what does deserve criticism is the way in which the debate so quickly degenerated to the lowest common denominator.

In the information haze of legal claim and counterclaim, what has come to characterise native title perception quickly becomes far more important than reality. Those who convey the simplest messages are those most likely to be heard. No matter that these messages play on racist sentiment, no matter that so-called compromises remain manifestly unjust, no matter that the facts are just plain wrong, something has to be broadcast and the easier it is to digest, the better.

Those of us who thought claims over backyard scaremongering had disappeared to the back rooms of One Nation meetings were horrified to see it trotted out by federal government ministers. They made these claims despite knowing full well that native title was only claimed over government or crown land which had been transferred into freehold by devious state governments. Western Australia is a tragic example of that. They made these claims despite the fact that the High Court has twice ruled unanimously that private and commercial freehold extinguishes native title. The old parlance that people fear what they do not understand was used as a political tool rather than something that should be constructively avoided. As Phillip Adams identified during the debate in 1997, there is something far worst than racism—that is, exploitation of the racism of others for short-term advantage.

In addition, when members of the government present such a view, it deliberately ignores the fact that the right to negotiate was a trade-off for widespread validation in the Native Title Act. And if this government has adopted the Hansonite view that Aboriginal people have been afforded special privileges which must now somehow be stemmed in order to preserve some warped view of equality, it stands condemned for ignoring both the history and the current reality of Aboriginal oppression and fourth world standing in our society.

Unfortunately, very few of those who followed the mainstream coverage of this bill last year would be aware that many more of the government's own amendments to the bill passed than those of the 'meddling' Greens and Democrats put together. Still fewer in the community would know that not a single non-government amendment was passed which actually increased indigenous rights beyond those contained in the original 1993 legislation. Sadly, public understanding of the most important debate in our nation's history disappeared in the yawning gap between the reality of the legislative proceedings and the sideshow that is the haggling over the margins of dispossession. This is why the government could confidently bluster at the conclusion of the debate that the bill was rendered unacceptable by an interfering Senate, despite the fact that Senator Harradine provided between 80 per cent to 90 per cent of the government's desired outcome.

Indeed, what still shocks me is the widespread fallacy that Senate amendments to the government Native Title Amendment Bill achieved something for Aboriginal and Islander people. In fact, all the Senate amendments do is slightly lessen a tremendous loss in

indigenous rights. These losses included: validation of tens of thousands of mining tenements which potentially breach the Native Title Act 1993; extinguishment of native title on thousands of non-freehold leases and tenures where it may have still existed; upgrade of pastoral leases to full primary production, quarrying or forestry status—and therefore bringing about de facto extinguishment of native title without the right to negotiate; establishment of indigenous land use agreements which can occur without proper scrutiny and safeguards; allowing acts which involve the management or regulation of water to displace native title rights, such as fishing, without the right to negotiate; allowing acts on reservations—for example, national parks—to remove native title rights without the right to negotiate; allowing acts in offshore places to displace native title rights, such as fishing, without the right to negotiate; approving gold, tin, opal and gem mining without the right to negotiate; excluding the right to negotiate on native title land which lies in Australia's enormous intertidal zone; ensuring strict rules of evidence in Federal Court proceedings; significantly increasing the threshold test for making and registering native title claims, including the exclusion of overlapping claims; striking out claims which do not adhere to onerous and expensive evidentiary requirements; automatically reassessing all native title claims made since June 1996 and allowing state governments to have any claim ever made reassessed using the increased threshold test; forcing every Aboriginal representative body to go through a process of reregistration and to adhere to accountability procedures stricter than those for any government department; restricting access rights for Aboriginal traditional owners; diminishing the independence of the President of the National Native Title Tribunal against the express wishes of the Aboriginal people; and allowing a variety of government activities to override traditional hunting and fishing rights.

I have to repeat that the Native Title Amendment Bill as amended last December already represents a tremendous loss. Any further compromise will amount to complicity in dispossession. I urge other senators to say, 'Enough is enough.' Not only must politically expedient compromise amendments be rejected; this entire piece of legislation should be voted down and meaningful negotiation should begin at once with the many indigenous nations of this continent.

Most of the amendments passed in the Senate last year and which the government found unacceptable were related to the right to negotiate. This is hardly surprising, given that the right to negotiate is about the only effective land right indigenous people have been left with after 210 years of European occupation. In particular, the retention of the right to negotiate about mining on native title land covered by a pastoral lease and the retention of the right to negotiate at the exploration and commencement stages of mining prevented the government from completely removing the last vestiges of native title rights.

It seems that this whole debate has come down to the government's determination to see the short-term self-interested aspirations of the mining industry extinguish the millennia-old rights of indigenous people. Over the last 12 months, the mining industry has spent millions trying to convince the public as to the unworkability of the Native Title Act. Their agenda has very little to do with the High Court judgment in Wik. It has been a deliberate and opportunistic attack at the very heart of native title rights. Their calls have confused the community, shaken the resolve of the Labor Party and have been taken up with glee by the government.

Over the last few weeks, we have seen the mining industry once more take out full-page advertisements in support of the government's legislation. What the advertisements do not reveal is that, while Aboriginal people have continuously demonstrated a willingness to negotiate and reach compromise, many mining companies, in conjunction with hostile state governments, have deliberately sought to sabotage the native title process. So used to getting their way behind closed doors and being able to ride roughshod over indigenous rights, they have only come into the native title process kicking and screaming. In Western Australia the Court government has joined

in, spending millions of dollars on ludicrously unsuccessful High Court actions rather than accepting the reality of native title.

Conservative governments have made much of the burden of the right to negotiate provisions, especially when negotiation is required with multiple claimants. However, it is difficult to establish on what basis these complaints can be considered genuine, because the act's regime has barely been implemented according to the law of native title as established by legislation and the courts. The thousands of potentially illegal future acts granted on pastoral leases since 1994, which this government now wishes to validate, provide a graphic example of the way in which state governments have gone about flagrantly breaching the Native Title Act. And guess what? These acts get rewarded. The indigenous people are punished for their concerns and difficulties.

Until two years ago, when the state of Western Australia was ordered by the judiciary to negotiate in good faith, the Court government's strategy simply was to wait until the negotiating period under the Native Title Act had lapsed and then apply for a tribunal determination. Since then, the resources which have been allocated to processing right-to- negotiate applications have been farcical. I am told that there are just four people processing all such applications in the state government bureaucracy.

In spite of this, the mining industry in Western Australia is highly prospective. Areas subject to mining tenement applications to the Department of Minerals and Energy in 1996-97 have increased by more than 10 million hectares since 1991-92. With this kind of prolific development, it is difficult to sustain the position that the existing Native Title Act has resulted in an unworkable system. We will get to the point where we have run out of Australia to claim, and that will affect the figures. Would the whole of Western Australia need to be subject to mining tenements before the advocates of amendment considered there was a workable system?

Apart from the right to negotiate, the other major sticking points for the government were the replacement of the strict physical connection test with the so-called Mabo test and the rejection of the sunset clause on claims and what has now become known as the Racial Discrimination Act amendment.

I would like to spend a few moments considering the RDA amendment because in many ways it epitomises the entire debate surrounding this bill. In the face of a manifestly unjust bill, the RDA amendment has been viewed as the safety net, the clause which would see this legislation raised at least to a level of non-discrimination. Typically, the government took its usual two-faced approach, refusing to allow this basic protection in the act, despite also claiming, with hand on heart, that the bill was not racially discriminatory. Typically, in the face of the government's openly discriminating agenda, the Senate compromised and compromised again until we passed an RDA amendment which now seems to do very little. Typically, on this fundamental issue, we were effectively given one hurried lunch break to consider the issue of such enormous legal complexity. The process was appalling, and in the end we agreed to an amendment which acts more as a sign post to dispossession than a safety net for land rights.

Also typically, this meagre achievement was characterised as a major imposition on the government and a major victory for indigenous rights. It now seems that nothing could be further from the truth. I for one am ashamed of compromising away indigenous land rights. It is time for the non-government parties in the Senate to draw a line in the sand and say, 'No more.' It is time to walk tall and tell the truth.

History will record that the Aboriginal and Islander people of this continent have a sovereignty they have never relinquished and native title which existed long before European invasion. History will record that in the High Court's Mabo judgment, these rights were partially recognised. Likewise, history will record that in the Native Title Act 1993 these rights were largely taken away. It is now up to this Senate to decide whether history will record the near completion of Aboriginal dispossession in 1998.

As I did last year, I would like to quote from the Ngarinyin Kamali Council, who hail from the Kimberley. In just a few words they have captured the true meaning of the extinguishment contained in this bill. They said:

> We are realising that people in Canberra and Perth and Brisbane don't want us to continue our culture in our country, so are making paper laws to outlaw recognition of who we are, and our relationship in our birthright country.
>
> You see, we didn't come from anywhere else. We don't belong anywhere else. We can't go anywhere else.
>
> Our tribe of Ngarinyin--maybe 600 people--belong in that country where those 12 small newcomer families are trying to grow their cattle. These families keep changing because cattle don't grow enough money for them to stay there.
>
> Now the families are growing their money from tourism. Tourists who want to learn about Ngarinyin culture visit our sacred waterholes, photograph our living images in the rocks . . .
>
> They are taking tourists to our cultural sites where we are not allowed to go with our visitors, where we are not allowed to create employment for our young people, where we are not allowed to grow money for our communities, our people who are dying from boredom, despair and alcohol in reserves.
>
> This is what 'extinguishment' really means. It means killing off our chance to survive as a living culture, as a people, as participants in the future of Australia. It means extinguishing our birthright and meaning.
>
> We Ngarinyin are developing up a bush university to take people into our country, to teach them the meaning of relationship in land. We are doing this because we are sorry for people who are looking for meaning in their lives and are lost to their identity. We want to share our knowledge with them. We are doing this because we want their lives to be enriched with meaning they can get from learning how to receive identity from the land. When they are grounded in the real world which is Earth, they become happy. They stop wandering around lost to themselves. This is our gift.
>
> If our identity is extinguished, instead of receiving this gift, Australia will live with the shame of our extinguishment.

This whole debate has been characterised by an inability on the part of government to recognise the distinct and unique relationship between Aboriginal people and the land. It has been characterised by a government that views native title purely as an inconvenient property right to be read down in line with the narrowest possible interpretation of common law. There is one word for a policy approach which seeks to absorb Aboriginal cultural imperatives: assimilation. It is really only a euphemism for cultural genocide.

This entire traumatising episode in Australia's history could have been avoided. With no representation in federal politics, indigenous Australians should have been offered a comprehensive process of consultation from the grassroots community to the representative bodies in which to resolve native title issues with the European dominated parliament.

It is highly ironic that, while there was wide support for negotiated agreements forming the basis of resolving native title issues on the ground, there was no support from the government or the ALP to use this same method to resolve the disagreements with the bill itself. It is a sad indictment on the nature of Australian parliamentary politics that the most sensible option for dealing with the native title issue was dismissed out of hand in favour of adversarial conflict, which effectively excluded Aboriginal people from the moment the legislation was drafted.

The solution is as ancient and as certain as Aboriginal culture itself. It is only when non-indigenous communities take time, in an organised way, to listen to indigenous people and their requests to be acknowledged and consulted as custodians of this continent that the healing and conciliation will begin. The process should not have been seen as utopian or intimidating. Time and again Aboriginal people have proven themselves to be amongst the most generous, forgiving and compromising people on the planet. Only when we enter such a process will it become clear that native title is not some sort of affirmative action property right manufactured by the High Court to provide Aboriginal people with special privileges. Only then will native title be seen for what it is: an acknowledgment that this land was inhabited long before European settlement and that up to six years ago our nation was built on denying this fact. It is an acknowledgment that for indigenous people this land is not merely property which

can be bought and sold, but goes to the very heart of their culture and existence. It is an acknowledgment that this connection with the land is not something to be feared, resented or derided, but rather it is to be respected, nurtured and protected. It is this acknowledgment that is necessary for the healing to begin.

Senator LUNDY (Australian Capital Territory) (6.31 p.m.)—The first time the Native Title Amendment Bill 1996 was before this chamber I spoke about how this legislation, more than any other, will be seen as defining the Howard government. In the same way that the Australian community sees this issue as a defining moment in our history, so too does the international community. Australia is under the international spotlight and the focus of international attention is directed towards us, particularly on this issue. For the past two years this government has turned back the clock with respect to Australia's international and national obligations, first in Kyoto with greenhouse emissions and now with respect to the Native Title Amendment Bill. Australia is slowly returning to a 1950s mentality; consequently, a 1950s style role in world affairs. This is the legacy of the Prime Minister, John Howard.

If the volume of correspondence I have received about native title is any measure of public opinion, then it is obvious that the majority of Australians are demanding fair and just legislation for indigenous Australians. This bill is of momentous importance because we have so few opportunities to reconcile the needs of indigenous people with the needs of the wider Australian community. Labor recognises that the Native Title Amendment Bill [No. 2] is a unique opportunity for the parliament to make a decision of profound historical significance. It is deeply regrettable that the Liberal and National parties are more concerned with short-term political point scoring than with the future of race relations in this country.

If the government is interested in Australia's long-term future, then they should make reconciliation a priority. It is not surprising that some people get the impression the Prime Minister keeps wishing that Wik would go away—but it will not. It will not disappear because people want this issue resolved. For two years the voting public have waited for a vision from the Prime Minister, a vision for this generation and for future generations. It has not been forthcoming. Younger Australians in particular are hoping that the parliament will grasp the native title bill as the unique opportunity it represents to pursue genuine reconciliation. They are hoping the parliament will do that because they know the government does not have the will or the political intent to do that.

It must be heartbreaking for many young Australians to discover that the only vision of the Howard government is to recycle a 1950s style Liberal Party and a 1950s image of Australian society. I find it deeply regrettable that the Minister for Aboriginal and Torres Strait Islander Affairs chooses to completely ignore the damage being done to the reconciliation process. I believe the minister has a duty to represent the interests of the people who come under his portfolio. This has not occurred. These people, indigenous Australians, have no voice in cabinet because the minister has chosen to completely abrogate that responsibility. It must indeed be marked down as the low point in race relations when the minister for Aboriginal affairs proclaims it as a badge of honour to be censured by ATSIC.

Rather than producing real policies that will propel Australia into the next century, the Prime Minister and his band of short-sighted bandaid waving ministers are prepared to sacrifice Australia's future in terms of racial harmony and reconciliation in the interests of a few offshore pastoralists and overseas mining companies. Their interests are being placed before the interests of Australian people. Talk about a conflict of interest.

In relation to the provisions contained in this bill, the right to negotiate is seen by the government as some kind of obstacle to development. I have heard Senator Minchin rant on about how mining operations are being jeopardised by native title claims. However, the same mining countries alleging that the right to negotiate is a burden on their Australian operations have a history of suc-

cessful negotiations with indigenous peoples, both here and overseas. There have been a number of highly successful agreements made under the Northern Territory land rights act between mining companies and tribal communities. What is more, some of the multinational countries currently operating here in Australia have negotiated far better royalty rates with overseas indigenous groups. The Ranger uranium operation, for example, pays approximately five per cent in royalties to Aboriginal people. Yet the same companies that are involved in that operation pay Canadian aboriginal people between 15 and 50 per cent for similar activities.

The right to negotiate will not hinder mining activities, because almost every multinational mining organisation is well versed in negotiating fair and just agreements with Aboriginal groups. The only obstacle in this process, as we have seen in Queensland and the Northern Territory, is conservative politicians, who would like to legislate away the rights of the indigenous population in Australia.

Speaking of rights, the amendments to the registration test and sunset clause are plainly a case of discrimination towards indigenous people. Two hundred and ten years of dispossession, stolen children, land grabs, racially discriminatory laws, disenfranchisement and genocide has destroyed a great deal of Aboriginal culture. To then turn around and severely restrict which claimants have a right to negotiate clearly demonstrates a rejection by this government of Aboriginal society and history.

The tragedy of forced removals and dispossession means that some Aboriginal groups have not been allowed to enjoy unrestricted access to traditional lands. Along with the sunset clause, this forms part of the amendments that were proposed in the interest of equity and fairness. If this bill is passed without amendment, Australia will no longer be in a position to judge other countries. If we are incapable of providing justice within our own society, how can we possibly question with any credibility at all the actions of other governments? If we cannot extend the same common law rights to all Australians, what right do we have to comment on the human rights practices of other nations? The government's legislation will prevent people who have had continuous occupation of this land for centuries from carrying out their traditional customs and rights.

Native title rights will not stop pastoralists from using the land for pastoral purposes. Native title will not prevent mining nor will it stop a pastoralist constructing gates, fences or dams. Labor's proposals will not prevent a pastoral leaseholder from using the trees or the soil for land improvement. Our amendments seek to do something Mr Howard is incapable of doing; that is, looking after the interests of indigenous Australians.

The Labor Party's approach to native title stands in complete contrast to the racially discriminatory proposals contained in the government's bill. In the future, when our children and grandchildren study Australian history, the actions of this Senate at this point in time will be recorded, and we will stand to be judged by them. I remind those senators opposite that the very people you are refusing to listen to are the same people who will write and tell the history of how the Howard government set Australia back 40 years, particularly with respect to race relations. Church leaders, historians, academics, unionists, actors, lawyers, musicians, artists, teachers and, of course, our indigenous people have written to their members and senators. They will hold this government in complete contempt.

When this bill was first presented, I commented that you do not have to be a redneck to be a racist. Racism is now found in the guise of this Liberal government. This is strong language, but how else can you describe legislation that is about taking away the rights of one group in our society simply because of their Aboriginality?

I mistakenly believed that even Liberal philosophy represented an acceptance of some degree of equality and fairness. I thought that protecting the common law rights of Australia's indigenous people was a fundamental belief. We often hear the Liberal rhetoric about fundamental common law rights and individual rights. In this case, there

is clearly a double standard. I was mistaken when I believed that former Liberal ministers like Fred Chaney and Ian Viner were typical of Liberal party politicians. Then again, when you hear a former Liberal minister expressing dismay at the misleading and divisive campaign being waged by the current Liberal and National parties, you know that this government is far from liberal in the true, small 'l' sense of the word. It is not liberal, it is discriminatory.

Even the Minister for Aboriginal Affairs has sold out his constituency simply for some perceived electoral advantage. Instead of defending a High Court decision that offered some sort of future for indigenous people, Senator Herron is supporting foreign pastoral lease holders and mining interests. As I said before, he is not even taking the fight to cabinet. There is no voice for indigenous Australians in the cabinet room.

As we approach a new millennium, Australia is at the crossroads. Do we go forward and progress and face our future, even if that means acknowledging that the past contains many horrific acts of prejudice, racism and even genocide? Or do we go back in time to the 1950s and continue the myth that Australia was uninhabited before white settlement? We have moved beyond that in this country, and I stand proudly with my Labor colleagues in refuting the proposed changes contained in the Native Title Amendment Bill 1997 [No. 2]. I will let history judge the actions of my party in regard to native title, because our commitment to providing true equity to indigenous Australians is unquestionable.

Today is one of those occasions where our behaviour will be remembered long after we are gone from this place. How ashamed must the government senators be if they should vote to support this bill unamended. How ashamed must they be if they are to go down in history as being part of the government to wind back the clock, returning to a view of Aboriginal administration and the rights and lives of our indigenous population held in the 19th century.

I, like so many other Australians, want my children and my grandchildren to grow up in a society capable of bestowing justice and recognition towards Aboriginal and Torres Strait Islander people. Accepting our amendments to this bill is the first step in rebuilding Australia's future. It is the first step in rebuilding what has been a declining international reputation. Cutting the heart out of what it is to be a proud Australian is what this bill does. This country is crying out for leadership. It is crying out for someone of some strength and compassion to take hold of this issue and to move forward. The Prime Minister is not providing this service; he is not worthy of the job.

The ACTING DEPUTY PRESIDENT (Senator Crowley)—Order! We have no time to call any more speakers than there are by leave.

Debate (on motion by **Senator Parer**) adjourned.

ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION AMENDMENT BILL 1997

First Reading

Bill received from the House of Representatives.

Motion (by **Senator Parer**) agreed to:

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

Bill read a first time.

Second Reading

Senator PARER (Queensland—Minister for Resources and Energy) (6.47 p.m.)—I table a revised explanatory memorandum and move:

That the 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—

ATSIC is unable to impose conditions on its consent to the disposal of an interest in property.

It is necessary for ATSIC to be able to impose conditions on its consent to the disposal of ATSIC funded property in order to ensure that replacement Aboriginal housing stock remains subject to restrictions on transfer and that the proceeds from the sale of ATSIC funded property are applied in the

interests of Aboriginal and Torres Strait Islander people.

Accordingly the bill will amend the ATSIC act to allow consents identifying the person or class of person to whom the property may be transferred. A consent may require a property to be disposed of in a specific way. The bill also allows for conditions to be imposed on consents.

It is not intended that the breach of a condition would lead to the invalidity of the disposal of the property. However, the amendments contain a provision enabling the recovery of a grant by which the property concerned was acquired. This does not preclude ATSIC from exercising other remedies that may be available to it.

The amendments only apply to consents to the disposal of property made after the commencement of the amendment.

There is some doubt that ATSIC's power of delegation to Regional Councils includes the delegation of ancillary powers.

The bill amends the power of delegation to Regional Councils so that such a delegation can enable a Regional council to make the same range of decisions concerning grants, loans and guarantees as other delegates of the Commission can make. The bill also incorporates a Government Amendment which will further clarify the ability of Regional Councils to exercise delegations when making funding decisions under the ATSIC act.

The bill includes an amendment to allow the Commission to delegate its power to approve the disposal of residential property. The amendment is required because of practical administrative necessity. Residential properties are frequently disposed of.

The bill includes an amendment to the effect that in enforcing grant and loan conditions the Commission is not restricted to the statutory remedy provided for in section 20.

The bill also contains amendments of a technical nature to correct drafting errors in the existing act.

I commend the bill.

Ordered that further consideration of the second reading speech of this bill be adjourned until the first day of the winter sittings, in accordance with standing order 111.

COMMONWEALTH SUPERANNUATION BOARD BILL 1997

SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT) REPEAL AND AMENDMENT BILL 1997

SUPERANNUATION LEGISLATION (COMMONWEALTH EMPLOYMENT—SAVING AND TRANSITIONAL PROVISIONS) BILL 1997

Report of Superannuation Committee

Senator HEFFERNAN (New South Wales)—I present the report of the Senate Select Committee on Superannuation on the provision of the Commonwealth Superannuation Board Bill 1997, the Superannuation Legislation (Commonwealth Employment) Repeal and Amendment Bill 1997 and the Superannuation Legislation (Commonwealth Employment—Saving and Transitional Provisions) Bill 1997, together with submissions received by the committee and transcripts of proceedings.

Ordered that the report be printed.

PERSONAL EXPLANATIONS

Senator DENMAN (Tasmania) (6.48 p.m.)—I wish to make a personal explanation as I believe that I have been misrepresented in this place earlier today.

The ACTING DEPUTY PRESIDENT (Senator Crowley)—The honourable senator may proceed.

Senator DENMAN—I would not be concerned to rise to speak on the following matter except that the inaccuracy of the statement made by Senator Abetz this afternoon has the implication of also putting into question the integrity of the Committee of Senators' Interests. I chair the Committee of Senators' Interests and I believe very strongly that an appropriate balance has been achieved with this system of the declaration of interests.

It is difficult to ascertain whether the attack on me as chair was innocent or intentional but, whatever the reason, statements like those of Senator Abetz discredit the whole process of declaration and registration of senators' pecuniary interests, which have been in this place since 1994 but were under consideration since 1983. The implication from the state-

ment of Senator Abetz was that if the chair of the Committee of Senator's Interests flouts the formal requirements then what is the worth of keeping the system in the first place. I would have thought that Senator Abetz would be trying to improve the image of senators and politicians generally and more particularly would be supportive of a code of conduct, especially since he has made comment after comment in this place about the conduct of individual senators. Alas, that does not appear to be the case.

I wish to place on record the inaccurate and baseless claims made by Senator Abetz this afternoon about an alleged failure by me to declare a relevant interest in CSR shares when the Customs Tariff Amendment Bill (No. 2) 1997 was debated last November. For the record, I declared my shareholding in CSR in my statement of registrable interests dated 12 May 1994. I declared that I had sold my shareholding in a statement of registrable interests approximately two years later, dated 28 May 1996, and filed the relevant document with the Registrar of Senators' Interests. Prior to selling those shares, there was an occasion when there was a requirement for me to orally declare my interest in this chamber relating to the debate over the Customs and Excise Legislation Amendment Bill. While the bill was in committee I declared my shareholding in CSR and that is obviously recorded in *Hansard*.

The next occasion, on my understanding, on which there would have been a requirement for me to declare an interest in CSR would have been the debate on the Customs Tariff Amendment Bill, which contained a number of proposals in respect of amending tariff levels. A fundamental issue debated under this bill concerned the abolition of the $55 per tonne tariff on sugar and, hence, there was a potential conflict with CSR. I understand this was the bill that Senator Abetz was referring to this afternoon when he claimed I had failed to declare in the chamber my interest. That claim is false because, as I said earlier, I had sold my shares and notified the registrar 18 months earlier and, as such, had no relevant interest to declare.

In closing, I quote the words of Senator Abetz on an earlier occasion in this place when he made some further crass comments about me. Senator Abetz said, on 1 October 1997:

> If you hypocritically attack someone, your own details will be disclosed by feelings of justifiable righteous indignation.

That was on the day prior to Senator Sherry's attempted suicide.

DOCUMENTS

Human Rights and Equal Opportunity Commission

Senator McKIERNAN (Western Australia) (6.53 p.m.)—I move:

> That the Senate take note of the document.

I must apologise from the very beginning because I have not had the opportunity to examine in the detail required this very important report from the Human Rights and Equal Opportunity Commission, *Preliminary report of the detention of boat people*. I was about to say in commencing my remarks that it is a timely report; however, I have some doubts about that now. I noticed that the covering letter which presented the report to the Attorney-General, the Hon. Daryl Williams AM, QC, from Mr Sidoti is dated 7 November 1997—quite some considerable time ago. I also note on the Senate red today:

> As recommended by the Senate Standing Committee on Finance and Public Administration, the dates listed at the end of certain annual reports indicate the date on which the report was submitted to the minister and the date the report was received by the minister, respectively.

Those dates according to today's Senate red are 7 January 1998 and 7 January 1998. It appears that it has taken two months for this report to get from the Human Rights and Equal Opportunity Commission through to the Attorney-General's Department or office here in Parliament House in Canberra.

I must commend the Attorney-General's Department: it has only taken them three months to get this report from the office of the Attorney-General, which is down the corridor, to this chamber. People might say that I am being too kind, but if one had anything to do with the estimates committees

that deal with the Attorney-General's Department, one would know that it is quite a considerable achievement for the Attorney-General's Department to get matters into the chamber in three months. In drawing attention to that I hope perhaps that the department or the Attorney-General himself might notice the fact that there are still some outstanding questions on notice from the last round of estimates committee hearings. Perhaps even the Minister for Justice, who represents the Attorney-General in this place, Senator Vanstone, will also take note of it.

I want to move on to the report itself. I repeat the apology I made at the beginning of my remarks. I have not had the time to study the report in the depth and detail required. I note from the document that the commission hoped to present a draft full report on the detention of boat people early this year. We are already in April and we are only now receiving a copy of the preliminary report, which was sent to the Minister for Immigration and Multicultural Affairs way back in March of last year. If reports of this nature are going to be of any use either to the departments, the parliament or the community as a whole, they are going to have to be delivered in a more timely fashion than has happened with this particular report.

The report is very timely because of what is happening in our region. There have already been a number of warnings through our media that there is a danger that we might be inundated with people from our near neighbours seeking refuge on our shores. They might arrive by way of boat—it is more difficult to arrive by aircraft. There are, as this report proves, a considerable number of people—many thousands in fact since the last wave of boat people began—who are willing to risk their lives to come to these shores seeking refuge and protection or, in many cases, a better economic future for themselves. Those warnings have been out there and I hope that they are being heeded by those in power and that certain steps are in place to protect our borders and our migration program from the threat of another much larger wave of unauthorised boat arrivals to this country.

I look forward to reading this report in depth and detail. If no other senators want to speak on this matter I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Crowley)—Order! The consideration of documents having concluded, I propose the question:

That the Senate do now adjourn.

Digital Television

Senator TIERNEY (New South Wales) (6.59 p.m.)—I propose tonight to make the second speech in a series of three relating to world trends in information technology and Australia's place in this development.

One of the fastest changing areas is digital broadcasting. This government has geared up for the introduction of this new technology and, from my observations, we are well in line with developments in advanced countries overseas. Last week, the Minister for Communications, the Information Economy and the Arts, Senator Alston, released our policy on digital broadcasting. This is a hot topic at the moment because all over the world this technology is about to come in, particularly in countries like the United States and the United Kingdom.

Digital television uses computer technology to deliver crystal clear vision and sound that is cinema quality. This week in the parliament, a group of us had the opportunity to see the first demonstration of digital television in Australia. It was incredibly impressive. What people will have in their living rooms is something that is of much higher quality, much larger size and with much greater effect. For example, one of the scenes that we saw in digital television was of someone with a brush and a powder jar. The powder flew out of the jar and the very clarity of these fine points of dust showed how impressive this new vision is. We also saw very spectacular sports and travel scenes. This type of quality, as I mentioned before, brings the cinema into your living room.

In addition to cinema quality, digital television basically gives much more effective use of the spectrum on which we broadcast. It requires much less transmitter power than analogue. It is highly resistant to ghosting and allows the same channel to be reused at closer distances than analogue. Digital TV can actually be delivered by satellite, by cable, by multipoint microwave distribution and by even the copper twisted pair cables that normally form the basis of your telephone line in your home. With digital television comes the potential for what we saw in the parliament this week—high definition television.

This government sees the introduction of digital television as the chance not only to improve picture quality but also to enhance and increase the number and variety of broadcasting services. Because you can actually squeeze the television signal into half the bandwidth, it opens up the possibility of more channels or a new type of service called datacasting. Datacasting helps deliver into the home things such as home banking, home shopping and a whole range of computing activities. Services that are normally delivered on a computer through the Internet can actually now come through your television screen with this new technology.

This government has set up a framework which will see the introduction of digital television in metropolitan areas by 1 January 2001. So this is less than two years away. In regional areas, digital television will become available in the major centres at that time and all regional areas will have access by 2004. That further delay is created by the fact that, in the regional areas, you need to build more transmitters to cover the area.

The government is committed to ensuring that regional Australians with an analogue service will have access to a digital service of at least the equivalent quality and coverage. We have set an eight-year simulcast period where we can actually transmit both the current signal and the new digital signal. So people will not have to throw out their TV sets in two years time. There will be a transition period of eight years and, during that time, the actual costs of the sets will come down very quickly with mass production. Commercial broadcasters, the ABC and SBS will actually be loaned the spectrum they need during the simulcast period. After the eight years, that extra spectrum has to be handed back to the government. The government can then auction that for use by other providers on a whole range of technologies that are coming to us in this new information age.

The United Kingdom and the United States are following a similar system of providing the spectrum on a loan basis without any upfront charge. The reason for that is that the conversion to digital television is enormously costly. It is calculated to be between $500 million and $750 million, and this will be covered entirely by the TV stations. So this is a quid pro quo for putting up that extra cost. We are creating the possibility of simulcast and high definition television and, with this, getting this cinema quality picture and sound.

Other spectrum will be available for digital transmission of data services, and there will be new opportunities in entertainment, education and information services. These data services will commence at the same time as digital television, on 1 January 2001, and we will have a level playing field fee regime that does not advantage the commercial stations over new players. This means there will be maximum competition in the new system. Commercial broadcasters will be able to offer data services as well.

As this process goes on, this government plans to conduct a review to determine whether further television datacasting services will be allowed. The reason for this is that we are moving into a totally new technology, and we are not too sure how it will actually pan out over five to 10 years in terms of the sorts of services that people want to offer. We feel there should be a review period in order to have the opportunity to modify the policy in accordance with technological developments at that time. Also at that time, the government will consider any necessary legislative changes that might be needed because of the convergence of broadcasting and non-broadcasting services.

With the spectrum that is being offered, free to air broadcasters will be able to provide information links to television programs. This means that, while you are watching your favourite footy game, you can actually bring up—like you do on a computer—information about the players and information about the history of a particular club. You can do this with a whole range of programs. If you are watching, for example, a travel scene dealing with Argentina, you can pull up—like you would on a CD-ROM—information on that particular country. What we have here is computer technologies merging with broadcasting technologies, merging with telephone technologies and, in this new era of convergence, a whole range of exciting possibilities are available.

One of the most important changes will be that, compared with television of the past where we have been passive viewers, the new world that we are coming into will offer a whole range of interactive opportunities. Not only can you bank and shop via this medium; you can also take part in game shows, seek information and do a whole range of things that are interactive in nature. It is in the interactive area where this sort of technology holds its greatest potential. The consensus now, for example, with things like home shopping is that probably people will not shop for a full range of products. What seems to work best in test marketing overseas are niche products like books, clothes and real estate.

From my study of the situation in London, I found that comparatively Australia is in a very strong international position when it comes to these sorts of datacasting services and digital broadcasting. We are keeping up with the developments overseas and in some respects we are ahead. It is obvious that this government is determined to make decisions about digital broadcasting now to make sure that Australia does not fall behind the rest of the world. In London I was told that, on regulatory issues, the Australian Competition and Consumer Commission places Australia in a much better position than Britain, which has an oversupply of regulatory authorities and no single convergent act. Also, Britain has decided not to give broadcasters access to enough spectrum to allow high bit rate transmission, such as high definition television. So Australia is looking very good by comparison. As I am near the end of my time, I seek leave to have the rest of my speech incorporated in *Hansard*.

The ACTING DEPUTY PRESIDENT (Senator Watson)—Is leave granted?

Senator Carr—We would need to have a look at it before granting leave.

The ACTING DEPUTY PRESIDENT—Is leave granted?

Senator Carr—No, I cannot grant leave until I have seen the document.

The ACTING DEPUTY PRESIDENT—Senator Tierney, would you mind speaking to Senator Carr and perhaps that may be sorted out later.

Indonesia: Human Rights

Senator REYNOLDS (Queensland) (7.10 p.m.)—Tonight I want to raise the concerns of many in the international community about the situation of pro-democracy activists and their treatment in Indonesia. Senators will be aware that the Peoples Democratic Party and its affiliated organisations, the Indonesian Students in Solidarity with Indonesia and the Indonesian Centre for Labour Struggles, are the only pro-democracy organisations which the Indonesian government fears so much that they were formally banned in September 1997.

Recently, as the Suharto government increases repression to defend itself against the discontent caused by the failure of its economic strategy and its refusal to democratise, the Peoples Democratic Party has once again been targeted, and it is this that I want to detail this evening. On Friday, March 13, three leaders of the Peoples Democratic Party were captured in a flat in Jakarta. The three leaders are Mugianto, Nesar Patria and Aan Rusdianto. According to military and police spokespersons, they are charged under the 1962 subversion law, which provides for a maximum penalty of death, as well as under another law pertaining to conspiracy to commit banned activities.

Police and military spokespersons were quoted in the daily newspaper on 19 March as stating that the three were guilty of 'putting forward demands and carrying out mass actions opposed to the government'—that is, they were merely advocating that democracy be considered in Indonesia—and, furthermore, of 'political actions such as meetings, political discussions and organising the masses'. I put it to honourable senators that this is 1998; we do not, I would have thought, put people to death for organising political meetings. They were accused of having 'communistic' literature in their possession and were also accused of being members of a banned organisation.

There has been no news of the three for about one week. On Saturday, 28 March, Andi Arief was taken from a house in the city of Lampung, South Sumatra, at 10.30 a.m. Indonesian time. Andi Arief is the chairperson of the Students in Solidarity for Democracy in Indonesia and is its most prominent spokesperson. He has previously escaped capture despite an intense hunt by military intelligence since September 1996. According to a statement issued by the Lampung Legal Aid Institute, he was taken at gunpoint by two men who did not give any identity. Inquiries made by the legal aid institute and his family of local military officials elicited only denials of any knowledge of an arrest. Later, the attorney-general's department said it had issued a warrant for his arrest. His whereabouts are still unknown.

There have been other confirmed arrests in recent times, including that of Indonesian dramatist Ratna Sarumpaet and her daughter as well as lawyers and journalists. At the very least, these persons have been allowed access to lawyers and have already been able to appear in court to lay complaints against the police for wrongful arrest, although they all remain in jail. But the four PRD detainees have not yet been provided with any such access. There are grave fears for them. In fact, I was talking to my colleague Senator Bob Brown and he confirmed that it was a case of more than grave fears as of today because these pro-democracy workers have been tortured.

Clearly, it behoves honourable senators to act both together and individually to urge the government of Australia to follow the recommendations of the Amnesty report that was developed after the arrests, torture and intimidation of 1996. In that report, it was noted that governments have been holding back from criticising Indonesia's human rights record.

The Indonesian government has clearly demonstrated both its willingness to target non-violent activists for arrest and its reluctance to prevent the use of torture and ill-treatment. It is about time the international community reminded the Indonesian government of its commitments to human rights protections. Of course, we realise that we have been waiting a very long time for the Indonesian government to protect human rights in East Timor.

Tonight, I join with Amnesty in calling on the Indonesian government to: provide full public information about all those who are believed to have died as a result of raids and riots, including the circumstances of their deaths; put an end to any intimidation by the security forces of eyewitnesses to the raid of the PDI headquarters; prevent the use of torture and ill-treatment of all those taken into custody merely for working for and advocating democracy in Indonesia; and repeal the anti-subversion law.

Governments such as the government of Australia should be urging the Indonesian government to stop the current crackdown on non-violent political, human rights and other activists and to fully implement the recommendations made by Amnesty after the 1996 crackdown. We should be urging the Indonesian government to ensure that Indonesian citizens have the right to freedom of expression and association without fear of harassment, arrest, arbitrary detention, imprisonment, torture or ill-treatment.

We should remind the Indonesian government: firstly, of its commitments made to the United Nations High Commissioner for Human Rights during his visit to Indonesia in December 1995, in particular the commitment to cooperate with the mechanism of the Commission on Human Rights, which is

currently meeting in Geneva, and to continue to implement their recommendations; secondly, to extend invitations to United Nations human rights rapporteurs and working groups; and, thirdly, to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Clearly, the situation in Indonesia is very disturbing. We are neighbours—good neighbours, I hope, but we cannot be good neighbours that ignore human rights abuses. It is time for this government and, indeed, for senators in this place and representatives in the other place to stand up to the Indonesian government and say, 'We want to know what is happening to pro-democracy advocates. We want to know what the Indonesian government's intentions are in relation to implementing human rights reforms, particularly in relation to pro-democracy and to the situation of the East Timorese.'

For too long, both my own government—the former government—and the present government have been reluctant to raise human rights issues with the Indonesian government. We have been too determined to have a smooth working relationship. Of course, we all want to see a comradely working relationship with our neighbours in our region, but not at the expense of human rights. I hope that honourable senators will give this due consideration and take whatever individual and collective action they feel is appropriate to protect human rights and to advocate democracy in Indonesia.

Digital Television

Senator TIERNEY (New South Wales) (7.19 p.m.)—I seek leave to have the rest of my remarks incorporated in *Hansard*.

Leave granted.

The speech read as follows—

British broadcasters are very excited about interactive services. The BBC is focusing on offering high quality interactive services.

Cable or Pay TV offers the best interactive services as signal comes in through cable and consumer response goes out through cable. This is a good example of a convergence of television and Internet technologies.

In the UK Cable or Pay-TV will result in anywhere from 60 to 1,000 plus channels. The BBC said the second tranche of digital would offer even greater interactive services and more intelligent set top boxes. Broadcasters in the UK plan to have an Electronic Program Guide (EPG) which is a menu which brings up a whole range of digital services.

I had an opportunity to make a comparison of what this Government is doing to facilitate a change to digital technology and what other developed nations like Britain plan. The feedback I got was that Australia is well advanced in the digital revolution.

This Government's digital broadcasting package is well balanced. It gives a positive outcome for all parties—- including consumers in rural and regional Australia.

It ensures consumers will have maximum opportunity to access new and enhanced services at a reasonable cost, it ensures a realistic simulcasting period and the community obligation—of Australian content will be maintained.

From my study of overseas developments we can see that this Government's policy makes Australia a world leader. This country is now ready to take an active role in the digital revolution.

Genetically Modified Food

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (7.20 p.m.)—Tonight I wish to discuss the issue of labelling of transgenic foods. The Australian New Zealand Food Authority, or ANZFA, is proposing to introduce a food standard as part of the food standards code which will prescribe mandatory labelling for foods that contain new and altered genetic material and which are not 'substantially equivalent' to their conventional counterparts.

The Democrats have always maintained that all food derived from gene technology should be labelled as containing genetically modified material, with an identification of the food or the component of the food that has been genetically modified.

ANZFA claims that a mandatory requirement to label foods that are 'substantially equivalent' to their conventional counterparts is not prescribed because, first, it cannot be justified on sound scientific principles; second, such foods are not unsafe for human consumption; and third, it is more restrictive than necessary to achieve a legitimate outcome. The term 'substantial equivalence' is said to mean the food is essentially the same as the traditional counterpart with respect to

its composition, nutritive value, functional characteristics and organoleptic qualities.

The Australian Democrats believe that the genetic manipulation of foods, and labelling particularly, is an important consumer issue. It is based on the right to choose and also the right to make an informed choice. The outcome of this decision—that is, the deliberations by ANZFA—will be to further alienate the community's concerns about the use of genetic technology. Because of the reliance on the term 'substantial equivalence' it actually removes this debate to the realm of the so-called experts. I think it is individual consumers who are interested in knowing what products they are eating and buying and what the impact of those particular products might be.

I think this is particularly concerning because we are at a stage where we have food, textiles and medicines from genetically modified organisms. Transgenic cotton and soybeans are available to consumers, and there are few regulatory measures addressed at these new products. Perhaps more concerning is that the term 'substantial equivalence' really means, 'It is the same as far as we have examined, but we have not examined very much and we do not know about some of the other matters.'

Vast amounts of money have been expended on the research and development of transgenic foods, and there are considerable profits to be made from their sale. These are huge interests—we do not doubt that for a minute—and we must make sure that the debate is not overrun at the expense of the concerned consumer voice, and I believe it is in danger of being overrun in this way.

In this process, I think there is a role for the parliament in overseeing the development of some kind of regulatory scheme in which the community can have confidence that their views and concerns are being heard and dealt with. This is not actually happening. It is certainly not happening for labelling because we are being duped by half-truths and the so-called 'experts'.

We need an inclusive discussion that takes into account the concerns of the community which will mean that this technology is not forced on to us—at least not without a recognition of the good, and some of the bad, aspects. To ensure that we do get the best, we have to consider the options available to us and choose a future that recognises the invoidability of species, the dignity of individuals and the need to preserve naturally evolved life forms in their natural environments.

This genetic technology is very new; it is complex and it is technical. It requires patience and education, and tireless explanation of the benefits, and also the dangers, to the community—and it requires that that be done in an understandable way. My concern is that the present debate has actually focused on a few clear examples of genetic modifications of food that have few, if any, harmful side effects, while ignoring perhaps some of the more complex alternatives which a regulatory scheme, you would expect, must take into account.

I believe that the regulatory bodies need to take into account and consider the potential for difficulties at the margins of the technology, and ensure that the codes are precise enough to satisfy the not so straightforward examples. I think it is for the long-term benefit of the developers of these food products that a regulatory framework adequately addresses these possible problems. Introduction of this new technology by stealth is likely to lead only to bad press and reinforce perceptions against the exciting potentials of this technology.

Some of the consumer concerns that I have been advised about include, first of all, the chance event of an inserted gene activating or increasing the production of a toxic or allergenic component in a food organism or cell. Another is the potential for insertion mutants to inactivate an existing gene at the site of insertion, or to form a fusion protein with toxic or allergenic properties. The third is an increase in the toxic or allergenic properties of a particular food product to a level that was not previously or otherwise allergenic. Fourthly, there is the loss of nutritional value in foods—something that I am sure most people do have concerns about. Fifthly, there is the introduction of toxic or allergenic

substances as a result of the insertion. And, finally, there may be pleotropic effects on the cellular process in deleterious ways.

So there are a range of issues that consumers have to confront when looking at genetically modified foods or textiles, or other products. These are some of the potentially adverse effects; but these need to be debated in an inclusive way in the community to ensure that people are aware of these possible bad aspects as well as weighing up some of the exciting future opportunities.

Many of the cells and organisms that actually form our food have near relatives in the environment that are able, under ideal conditions, to incorporate the modified genetic material. We know that, once a gene has been incorporated into a population of cells or organisms, that gene will form part of the gene pool for that cell or organism.

For example, some of Australia's major seed crops have closely related weeds that infest those crops with similar life cycles, so that genetic material is at a high risk of entering the weed population through pollen transfer. If the crop has a herbicide resistant gene and the related weed infests that crop, there is a good chance that the resistant gene will enter the weed gene pool because of the selective pressure applied by the herbicide which selects for herbicide resistant weeds.

This is a major concern—it is one that is being debated in a number of circles—for Australian agriculture, and it means that we must be concerned about the genes we are incorporating into the population of cells and organisms, and their relations. Further, the possibility that there could be hundreds of thousands of genetically modified organisms in the environment will threaten the naturally evolved life forms in their natural environments—something the Democrats are particularly concerned about.

I think we have a responsibility to ensure that the cohort of presently existing organisms are maintained into the future, expressing their diversity and unique solutions to biology's challenges. There are a range of issues that I do not believe have been addressed—through the ANZFA consultation process for a start, but also in the community, and in the parliament specifically. However, some of the matters that I have raised here tonight show that there are valid concerns for consumers that must be addressed.

The scientific method of dissecting large problems into small sections has been a powerful approach to problem-solving. Without this approach, the present genetic technology may not have been developed or even discovered. However, this method does not incorporate limits to discovery or provide insight into the long-term consequences of those discoveries.

It is for the community to decide and to determine which aspects of development or discovery to incorporate into our everyday lives and which aspects they should be excluding. They must not be alienated by the so-called experts when clearly there are still questions to be answered. These are important choices—and they are choices that our community must make.

Conservation

Senator IAN MACDONALD (Queensland—Parliamentary Secretary to the Minister for the Environment) (7.28 p.m.)—Last Wednesday on the adjournment debate, Senator Allison from the Australian Democrats made some remarks about the government's grants to voluntary conservation organisations. Senator Allison took the opportunity in her speech to criticise the amount of funding that the government has allocated to voluntary conservation groups for the 1997-98 financial year.

But it is important to point out that funding was again this year maintained at almost $1.7 million and was distributed to 66 environment groups, under the grants to voluntary conservation organisations program, to provide those groups with funding for administrative costs, as distinct from program, project or campaign costs. The guidelines for these grants are quite clear. They are for such things as salaries and salary oncosts, staff, office accommodation and equipment, communications, photocopying, travel, and so on. It is not intended that these grant funds be used for specific environment projects or for the repayment of bank

loans for accommodation purchased by those organisations.

Senator Allison specifically mentioned the reduced funding to some groups like the Australian Conservation Foundation, the North Queensland Conservation Council and the Cairns and Far North Queensland Environment Centre. But she notes, quite rightly, that more voluntary conservation organisations have been funded this year than in previous years. And I want to emphasise that the 66 environment groups who received funding were chosen on their ability to contribute to the national, state and regional environment effort—and that is what it is all about.

It is worth adding that, while the ACF claim to be a peak organisation in the conservation area, many conservation groups in Australia make it quite clear that the ACF does not speak for them. Many very active groups received funding, including a group of people who are amongst the first in Australia to take actual environment action, and that is the Keep Australia Beautiful organisation, which received funding in the range of $70,000. This government, the Howard government, funded for the first time the Clean Up Australia organisation.

Birds Australia, another conservation group, received funding for help with their administration. I want to point out that that organisation got a little bit from the government for administration, but they raised millions of dollars themselves for the works which they believe in and which are fantastic for the environment. One I want to mention is where they bought a grazing property in some very marginal grazing land area and converted that grazing property to a wildlife reserve, particularly from their point of view for native birds.

In her adjournment speech, Senator Allison compared the funding of conservation groups to that of the mining industry, but again she was misleadingly mischievous in her selective use of data. Compare the $90 million quoted by Senator Allison as funding to the mining industry with that of the billion dollars that this government has contributed for the environment through the Natural Heritage Trust—$360 million to restore native bushland and preserve remnants, $150 million for the Murray-Darling Basin, over $160 million to protect biodiversity, $440 million to assist farmers and communities to redress land and water degradation, and $120 million to tackle coastal pollution. Those grants were made without any help whatsoever from the Democrats, who fought vehemently to stop this money being available for those very worthwhile and needed environmental projects.

Senator Allison mentioned the tourism industry, but she forgot to applaud that industry for the major contribution that it is making to conservation in so many ways, not the least of which is its negotiated financial contribution to the work of the Great Barrier Reef Marine Park Authority. Also, curiously, she mentioned the Environment Defenders Office. I say 'curiously' because she was supposedly talking about grants to voluntary conservation organisations funded through the environment department, whereas the EDO is a legal program funded through the Attorney-General's Department.

As Senator Allison raised it, I point out that funding for the Environment Defenders Office in the last year of Labor was $464,000, whereas in our last budget it was $586,381—a substantial increase. The money for the EDO is to be used under the community legal centre program for community legal education, the provision of information about legal rights and responsibilities relating to the environment, and legal advisory services for people dealing with environmental matters.

In addition, many voluntary conservation organisations will be involved on a local, state and national level in the Natural Heritage Trust projects that begin the long-term aim of sustainable management of Australia's land and water and biodiversity. As well, many conservation organisations receive money from a wide range of other government sources. I mention, for example, the Australian Trust Conservation Volunteers who, through an independent tender system, became the project managers for the government's Green Corps project. They administer some $43 million as the managers for that project. Greening Australia Ltd is another of Australia's leading 'do it' environmental

groups. It receives substantial funding from various government sources.

Finally, I want to comment briefly on two points raised by Senator Allison, and they were her silly remarks that without voluntary conservation organisations there would have been oil drills on the Great Barrier Reef—so she said—or there would have been mining on Fraser Island. I think it must have slipped Senator Allison's mind that it was the Fraser government in 1979 that worked with the then Liberal coalition government in Queensland to ensure that the first section of the Great Barrier Reef Marine Park was declared. From this point onwards, the Great Barrier Reef Marine Park has gone from strength to strength.

Once again, it was a coalition government that halted sand mining on Fraser Island in 1977 and ensured that Fraser Island became the first site placed on the Register of the National Estate. Senator Allison mentioned the Wet Tropics rainforest but ignored the enormous amounts of money this government has poured into that particular area. I mention just a couple. As well as funding the Wet Topics Management Authority we have put over $1 million in the last year into the North Queensland Joint Board, a cooperative group of North Queensland local councils that are enhancing the northern rainforests.

Senator Allison also did not mention—and I want to—an initiative of some $200,000 which this government has provided for the establishment of a foundation to work towards saving the endangered cassowary species. I have heard nothing from Senator Allison on Senator Hill's courageous campaign to save the dugong, the first ever such campaign conducted by any government. It has been done in conjunction with the fishing industry and the tourist industry, and has involved a fair compensation package for fishers dispossessed by the new rules that apply in the southern Great Barrier Reef waters.

The federal government is committed to protecting our rich and unique natural heritage to ensure biodiversity and to provide for a better environment now and for our children. The government is committed to providing funding for voluntary conservation organisations and appreciates that these groups are an important component in the effort to raise public awareness of the environmental challenges we face.

These conservation organisations and many others will be involved on a local, state and national level in Natural Heritage Trust programs and will provide direction and technical expertise to work for a better environment. The Howard government wants to assist all those Australians who voluntarily give of their time to do on the ground work for the environment. Past governments, to a limited extent, funded the talkers. This government is funding the environmental doers.

Senate adjourned at 7.38 p.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Human Rights and Equal Opportunity Commission Act—Reports—

Human Rights and Equal Opportunity Commission—Preliminary report on the detention of boat people (Report no. 5).

Race Discrimination Commissioner—The CDEP scheme and racial discrimination, December 1997.

Treaties—*Multilateral*—Text, together with national interest analysis—

Convention for Establishing Facilities for Finding Employment for Seaman, done at Genoa on 10 July 1920 [International Labour Organization (ILO) Convention No. 9, Placing of Seamen, 1920].

Convention on Protection of Children and Cooperation in respect of Intercountry adoption, done at The Hague on 29 May 1993.

Tabling

The following documents were tabled by the Clerk:

Australian Bureau of Statistics Act—Proposal No. 4 of 1998.

Corporations Act—Accounting Standard AASB 1019—Inventories.

National Health Act—Declaration No. PB 5 of 1998.

Pasture Seed Levy Act—Pasture Seed Levy Declaration No. 1 of 1998.

Veterans' Entitlements Act—Instruments under section 196B—Instruments Nos 13-24 of 1998.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Telstra

(Question No. 1069)

Senator Cook asked the Minister for Communications, the Information Economy and the Arts, upon notice, on 3 March 1998:

With reference to the answers to questions on notice nos. 992 and 1039:

(1) With reference to paragraphs (a) and (b) of question on notice no. 992, in which Telstra has answered yes to the fact that a buffer zone is needed around the Perth International Telecommunications Facility (PITC) and that this is mandatory: How does Telstra reconcile this with its answer to question on notice no. 1039, in which Telstra has advised that it needs a buffer zone, but is not bound by Western Australia law which requires commercial establishments which cannot supply a buffer from within their boundaries to provide an off-site buffer.

(2) With reference to the answer given to paragraph 3 of question on notice no. 992, in which Telstra states that the need for a buffer zone was first identified in 1978 yet moves to protect this buffer zone were not made until 1987: Why did it take 9 years to formalise the procedures to have the buffer zone protected.

(3) Why has Telstra never initiated talks with the landowners within what is commonly referred to as Telstra's buffer zone to seek their co-operation in maintaining a buffer zone.

(4) Which authority maintains as part of its contract with Telstra that a 1 kilometre buffer zone is mandatory.

(5) Does Telstra believe in the user-pays principle.

(6) Should Government Business Enterprises pay the full costs of their operations.

Senator Alston—The answer to the honourable senator's question, based on advice from Telstra, is as follows:

(1) In answer to Question on Notice No. 992, Telstra did not indicate that the requirement for a buffer zone is "mandatory", rather it indicated that a buffer zone was "essential to the ongoing viability of the facility".

Telstra has advised that the Western Australian law referred to by the Senator is the State Industrial Buffer Policy. The policy relates to the protection of land uses from the harmful emissions of industry. It does not apply to Telstra's facility, which is not industrial and does not have harmful emissions. In fact the situation is quite the reverse as it is Telstra's facility that needs protection from any change to its surrounding land use.

(2) Telstra also advised that whilst the requirement for protection from radio frequency interference was identified by the then OTC, procedures were not taken by Telstra to "protect" its site from changes to the surrounding land uses, as Telstra believed, and still believes, that the protection provided by the existing rural zone was and is adequate.

(3) Telstra also advised that it has held talks with surrounding landowners over a number of years. The surrounding landowners' cooperation in protecting Telstra's site is not needed, as the site was, and still is, protected by the rural zone controlling development in the area.

(4) Telstra advised that it has contracts with a number of authorities, both domestic and international, to conduct operations on the Gnangara site on their behalf. It has been a requirement of those authorities to protect radio receiving facilities used for the agreed activities from radio frequency interference. Telstra has calculated that in order to comply with the requirements of these contracts and continue its own operations on the site, urban development must not come within one kilometre of Telstra's facility.

(5) Telstra believes that for sound planning and environmental reasons, the land surrounding its operations should not be rezoned to allow urban development. Telstra's facility was in existence on this land when the land surrounding it was purchased and the price paid for that land by the landowners would have reflected its rural zoning and proximity to Telstra's site. Telstra considers that the user pays principle is irrelevant to this issue.

(6) Telstra's status as a Government Business Enterprise is irrelevant to this issue. Telstra is subject to all relevant Federal and State legislation in the same way as any other telecommunications carrier. The zoning of the land around the Gnangara site is a matter for the relevant State Government authority. Telstra has the same rights as other affected parties to make submissions on re-zoning proposals.