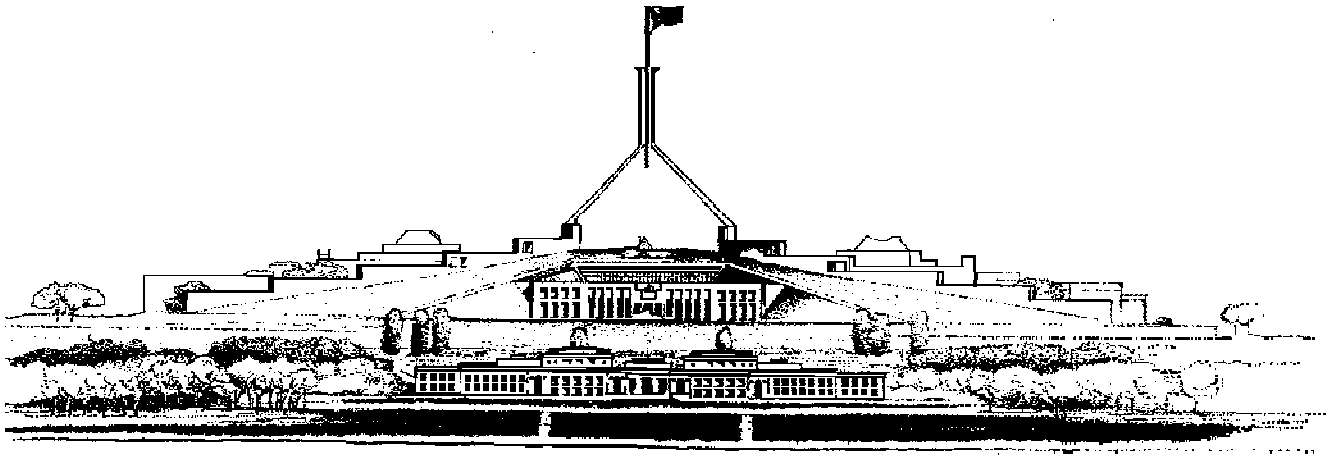
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

THURSDAY, 3 DECEMBER 1998

THIRTY-NINTH PARLIAMENT
FIRST SESSION—FIRST PERIOD

BY AUTHORITY OF THE SENATE
CANBERRA

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Thursday, 3 December 1998

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

PETITIONS

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

Uranium: World Heritage Areas

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 mine uranium at the Jabiluka and Koongara sites in the World Heritage Listed Area of the Kakadu National Park or any other proposed or currently operating site.

Your petitioners ask that the Senate oppose any intentions by the Australian Government to support the nuclear industry via any mining, enrichment and sale of uranium.

by **Senator Lees** (from 581 citizens).

Petition received.

BUSINESS

Government Business

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

That the following government business orders of the day be considered from 12.45 p.m. till not later than 2.00 p.m. today:

No. 5— Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998

No. 6— Telecommunications Amendment Bill (No. 2) 1998

No. 7— 1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998

No. — Superannuation Legislation Amendment (Resolution of Complaints) Bill 1998

No. 8— Anti-Personnel Mines Convention Bill 1998.

General Business and Documents

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

That the order of general business for consideration today be as follows:

(1) general business order of the day No. 33—Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill 1998 No 2; and

(2) consideration of government documents.

Ranger Uranium Mine

Motion (by **Senator Allison**) agreed to:

That general business notice of motion no. 57 standing in her name for today, relating to the Ranger uranium mine, be postponed till the next day of sitting.

East Timor: Asylum Seekers

Motion (by **Senator Margetts**) agreed to:

That general business notice of motion no. 56 standing in her name for today, relating to East Timorese asylum seekers, be postponed till the next day of sitting.

Drugs: Use and Abuse

Alcohol: Consumption by Young People

Drugs: Use by Young People

Drugs: Abuse

Tobacco: Smoking Prevention Progams

Drugs: Use by Young People

Motions (by **Senator Bourne**, **Senator Woodley, Senator Murray, Senator Lees, Senator Stott Despoja, Senator Bartlett** and **Senator Allison**) agreed to:

That general business notices of motion nos 58, 60, 61, 62, 63, 64 and 66 standing in the names of Australian Democrats senators for today, relating to drug use and abuse, be postponed till the next day of sitting.

Rural and Regional Affairs and Transport Legislation Committee

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

That business of the Senate notice of motion no. 1 standing in the name of Senator Crane for today, relating to the reference of a matter to the Rural and Regional Affairs and Transport Legislation Committee, be postponed till 8 December 1998.

COMMITTEES

Environment, Communications, Information Technology and the Arts References Committee

Meeting

Motion by (by **Senator Allison**) agreed to:

That the Environment, Communications, Information Technology and the Arts References Committee be authorised to hold a public meeting during the sitting of the Senate on Tuesday, 8 December 1998, from 3.30 pm, to take evidence for committee's inquiry into the development of Hinchinbrook Channel.

BUSINESS

Acquired Immune Deficiency Syndrome

Motion (by **Senator Bourne**, at the request of **Senator Bartlett**) agreed to:

That general business notice of motion no. 53 standing in the name of Senator Bartlett for today, relating to World AIDS Day, be postponed till the next day of sitting.

COMMITTEES

References Committees

Membership

Motion (by **Senator Ian Campbell** at the request of **Senator Tambling**) agreed to:

That standing order 25 be amended as follows:

Omit paragraph (5)(a), and substitute the following paragraph:

(5)(a) The references committees shall consist of 6 senators, 2 nominated by the Leader of the Government in the Senate, 3 nominated by the Leader of the Opposition in the Senate and one nominated by minority groups and independent senators.

INTERNATIONAL DAY OF PEOPLE WITH A DISABILITY

Motion (by **Senator Chris Evans**) agreed to:

That the Senate—

(a) notes that Thursday, 3 December 1998, is International Day of People With a Disability;

(b) reasserts its commitment to achieving an Australian society where people with a disability can live, work and participate as valued and equal citizens;

(c) expresses its deep regret at the recent death of Australia's first Federal Disability Discrimination Commissioner, Ms Elizabeth Hastings; and

(d) congratulates all state and national winners of the Prime Minister's Employer of the Year Awards.

GOODWILL SPORTING AMBASSADORS

Motion (by **Senator Lundy**) agreed to:

That the Senate notes:

(a) the wonderful work that has been carried out by many of Australia's Olympic athletes, such as Kate Slatter, Hamish MacDonald and Daniel Kowalski, as part of the Goodwill Sporting Ambassadors program of the United Nations High Commission for Refugees; and

(b) that this initiative highlights the potential sport has as a coalescing force in society as well as focusing national and international attention on important world issues.

PORK INDUSTRY: IMPORTS

Motion (by **Senator O'Brien**) put:

That the Senate—

(a) notes that:

(i) following persistent demands for action by the Opposition, the Government finally, and reluctantly, launched an inquiry into the impact of pig meat imports on the Australian pork industry, including an investigation of action under the safeguard provisions of the World Trade Organization (WTO),

(ii) the Productivity Commission has now completed that inquiry,

(iii) the commission found that the Australian pork industry has suffered and is suffering serious injury as a result of prices to producers being consistently, and appreciably, below average production costs during 1998,

(iv) the commission found that serious injury during 1998 has been caused primarily by imports,

(v) the commission report states that safeguard measures can be justified under the WTO rules,

(vi) the commission's findings contradict claims by both the former Minister for Primary Industries and Energy (Mr Anderson) and the Minister for Trade (Mr Fischer) that pig meat imports were not the primary cause of the industry's problems, and

(vii) the Productivity Commission's report took 140 days to prepare, was based upon wide-ranging evidence from all interested parties and included a number of public hearings; and

(b) urges the Government to consider the timely implementation of measures that provide an effective short-term remedy for the serious injury that the Australian pork industry has suffered as a result of imports and enhance the measures already in place to facilitate industry adjustment.

The Senate divided. [9.40 a.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes	33
Noes	33
Majority	0

AYES

Allison, L.	Bartlett, A. J. J.
Bolkus, N.	Bourne, V.
Brown, B.	Campbell, G.
Carr, K.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crossin, P. M.	Crowley, R. A.
Denman, K. J.	Evans, C. V.
Faulkner, J. P.	Forshaw, M. G.
Harradine, B.	Hogg, J.
Hutchins, S.	Lees, M. H.
Lundy, K.	Margetts, D.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.*	Quirke, J. A.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.*	Campbell, I. G.
Colston, M. A.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Heffernan, W.	Herron, J.
Kemp, R.	Knowles, S. C.
Lightfoot, P. R.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.
Synon, K. M.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Bishop, T. M.	Chapman, H. G. P.
Collins, J. M. A.	Minchin, N. H.
Gibbs, B.	Tambling, G. E. J.
Mackay, S.	Hill, R. M.
McKiernan, J. P.	Newman, J. M.

*** denotes teller**

Question so resolved in the negative.

Senator Vanstone—The last motion related to pork matters. Had I realised that when I came into the chamber, I would have declared an interest. I have some investments in the pork industry.

MIGRATION LEGISLATION AMENDMENT BILL (No. 2) 1998

First Reading

Motion (by **Senator Ian Campbell** at the request of **Senator Ian Macdonald**) agreed to:

That the following bill be introduced: a bill for an act to amend the Migration Act 1958, 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 Minister for Communications, Information Technology and the Arts) (9.45 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—

The purpose of this bill is to amend the Migration Act to clarify the rights of certain people who are in immigration detention.

People who are in Australia unlawfully or are not the holders of valid visas are not entitled to be at liberty in the community. Section 189 of the Migration act requires the detention of a non-citizen who does not hold a valid visa and section 198 requires that such a person be removed from Australia as soon as is reasonably practicable.

The onus is on unlawful non-citizens who arrive without a visa to advise officials as to why they have come to Australia and if they wish to seek legal advice.

Section 256 of the Migration act makes provision for access to legal advice by persons in immigration detention but only where the persons in detention request legal advice. This approach is clearly intended by the Migration act, and has been upheld by the courts in a number of cases.

Against this background, in March 1996 the then Refugee Advice and Casework Service in Victoria (now known as the Refugee and Immigration Legal Centre) sought access to people who had arrived on a boat named the "Teal" to provide legal advice. However, the people on "Teal" had not sought legal assistance and this request was refused. RACS complained to the Human Rights and Equal Opportunity Commission, who then sought to have delivered to the captain, crew and passengers of the "Teal" a confidential letter, in reliance on the Commission's powers under paragraph 20(6)(b) of the Human Rights and Equal Opportunity Commission Act 1986. The effect of that action would have been to ensure access to legal advice, despite the fact that none had been requested.

Following consultation with the Attorney-General's Department, the Department of Immigration and Multicultural Affairs refused to deliver the letter and the Human Rights and Equal Opportunity Commission took action in the Federal Court. On 7 June 1996 the Federal Court ruled that the letter should be delivered.

Encouraged by the Federal Court's ruling, RACS then sought access to all the boat people who had arrived around that period. In so doing RACS mounted a direct attack on the fundamental capacity of the government to manage effectively the boat people issue. This requires that boat people have their claims processed as expeditiously as possible. The approach adopted by RACS would have encouraged boat people to engage in unwarranted, lengthy and expensive processing.

The area of government administration dealing with unauthorised arrivals and detention has been the subject of protracted litigation over recent years. It is therefore important that we have clearly understood processes supported by clear and unambiguous legislation in place to avoid confusion of the government's intent in this area.

Certain interest groups have always argued that all unlawful non-citizens should, on arrival in Australia, immediately be offered access to legal advice, even where they do not request it. Such an approach would, however, have the effect of ensuring that all unlawful non-citizens, regardless of their reason for coming to Australia, could invoke lengthy and expensive processing. This is especially of concern given the large numbers of unauthorised arrivals in recent years.

This bill ensures that Parliament's intention in relation to the management of unauthorised arrivals in immigration detention, as reflected by section 256 of the Migration act, cannot be subverted through the use of the Human Rights and Equal Opportunity Commission Act 1986 or the Ombudsman Act 1976.

The bill is largely the same as one that was before the Senate in the last Parliament.

The Government has, however, made two minor changes to that bill. Following discussions between officials of the Department of Immigration and Multicultural Affairs, the Ombudsman, and officials from the Attorney-General's Department, the Government has removed the requirement that complaints to the Ombudsman must be "in writing".

The other change is to provide that this bill should commence on the day of introduction into the Senate. The previous bill provided that it was to commence on 20 June 1996.

I commend the bill to the Chamber.

Ordered that further consideration of the second reading of this bill be adjourned until the first sitting day in 1999, in accordance with standing order 111.

INDEXED LISTS OF FILES

Motion (by **Senator O'Brien**, at the request of **Senator George Campbell**) agreed to:

That the Senate adopts the recommendation of the Finance and Public Administration References Committee contained in its second report on the review of the order for the production of indexed lists of departmental and agency files, as follows:

(1) That each department and agency provide, on its internet home page, access to an indexed list of all relevant files created from 1 January 1998, with the present exclusions to continue (departments and agencies may choose to maintain online an indexed list of all new files created from that date or to maintain online an indexed list of, as a minimum, the most recent year's file creations).

(2) That the order of the Senate of 30 May 1996 be varied to provide for the tabling in the Senate on the present six-monthly basis of letters of advice that such indexed lists of files have been placed on the internet.

COMMITTEES

Procedure Committee

Report

Senator WEST—I present the first report of 1998 of the Procedure Committee relating to presentation of documents by the President, the adjournment debate on Monday nights and membership of references committees.

Ordered that the report be printed.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business

in the Senate)—by leave—I give notice of two motions to amend the standing orders which will give effect to the recommendations of the report of the Procedure Committee relating to the presentation of documents by the President, and the length of the adjournment debate on Monday nights.

The notices read as follows—

That standing order 166(2) be amended to read as follows:

(2) If:

(a) the President certifies that a document is to be presented to the Senate; or

(b) a minister or the Auditor-General provides to the President, or, if the President is unable to act, to the Deputy President, or, if the Deputy President is unavailable, to any one of the temporary chairmen of committees, a document which is to be laid before the Senate,

on the certification or the provision of the document, as the case may be:

(c) the document shall be deemed to have been presented to the Senate;

(d) the publication of the document is authorised by this standing order;

(e) the President, the Deputy President, or the Temporary Chairman of Committees, as the case may be, may give directions for the printing and circulation of the document; and

(f) the President shall lay the document on the table at the next sitting of the Senate.

That, with effect from the first sitting day in 1999:

(1) Standing order 54(5) be amended to read as follows:

Except on Monday debate on the question for the adjournment shall not exceed 40 minutes, and a senator shall not speak to that question for more than 10 minutes on any day. On Monday at the conclusion of debate, and on other days at the expiration of 40 minutes, at the conclusion of debate, or at the time specified for adjournment, whichever is the earlier, or if there is no debate, the President shall adjourn the Senate without putting the question.

(2) Standing order 57 be amended by leaving out "At 10.30 pm, adjournment" in paragraph (1)(a)(xi) and substituting "Adjournment".

Employment, Workplace Relations, Small Business and Education References Committee

Report

Senator O'BRIEN (Tasmania)—On behalf of Senator Collins, I present the report of the Employment, Workplace Relations, Small Business and Education References Committee on matters referred to the committee during the previous Parliament.

Ordered that the report be adopted.

Senator O'BRIEN—I seek leave to have the report incorporated in *Hansard*.

Leave granted.

The report read as follows—

REPORT ON MATTERS NOT DISPOSED OF AT THE END OF THE 38TH PARLIAMENT

The Committee met and considered references not disposed of at the end of the 38th parliament and resolved to **recommend** to the Senate that—

The following inquiries of the 38th Parliament be re-adopted:

An assessment of the factors that contribute to the disparity in employment levels between different regions and also between regions and capital cities, as well as the continuing high levels of regional unemployment, with a reporting date of 31 March 1999.

The effectiveness of education and training programs for indigenous Australians, with a reporting date of 30 September 1999.

Senator Jacinta Collins

Chair

2 December 1998

Regulations and Ordinances Committee

Statement

Senator CALVERT (Tasmania)—by leave—On behalf of Senator O'Chee, I present a statement on behalf of the Regulations and Ordinances Committee on the first meeting of the committee. I seek leave to have the statement incorporated in *Hansard*.

Leave granted.

The statement read as follows—

On behalf of the Standing Committee on Regulations and Ordinances I would like to report on the first meeting of the Committee for the present Parliament, held on 26 November 1998. The

Committee scrutinises all disallowable legislative instruments for compliance with its principles, set out in the Standing Orders, which protect parliamentary propriety and personal rights. The Committee operates in a non-partisan fashion and does not deal with policy issues.

Between its last meeting of the previous Parliament and the first meeting of this one, the Committee received 48 letters from Ministers in reply to concerns which it raised. This indicates the active nature of the Committee and the variety of issues which it raises. The Ministers undertook to amend nine separate instruments to meet our concerns, with some multiple amendments. Ministers also undertook to take other action in relation to seven other instruments, such as to provide numbering or to improve Explanatory Statements. The Committee was not satisfied with a further six letters and agreed to write back to the Ministers for further advice.

Set out below are summaries of some of the replies from Ministers, which are intended to illustrate the more significant matters of concern to the Committee. The Committee trusts that it will also demonstrate to the Senate that the Committee is ensuring that the quality of legislative instruments in relation to parliamentary propriety and personal rights is not less than that of Acts.

Parliamentary propriety

One significant action in this regard was the discovery by the Committee that three proclamations signed personally by the Governor-General commencing three separate Acts and numbers of sets of regulations made under those Acts, were totally void for prejudicial retrospectivity. This was a fact apparently not known to the Minister or the Department prior to inquiries by the Committee. After these inquiries, however, the Parliamentary Secretary obtained legal advice from the Attorney-General's Department that the Governor-General's personal instruments were a nullity. The Committee also obtained advice that this was the view of the Executive Council secretariat. The Committee sought and obtained advice from the Parliamentary Secretary that all of the provisions of statutory rules made on the basis that the proclamations were valid would be made again, that no person was adversely affected and that all administrative action taken in reliance on the putative proclamations was legally authorised. At its meeting the Committee decided that the reply from the Parliamentary Secretary was not entirely satisfactory and decided to seek further assurances. It is a serious matter that the Governor-General was advised to sign proclamations which were of no effect and the Committee wished to ensure that everything was now in order.

The Committee is also concerned that legislative instruments respect the rights of Parliament. On 30 June 1998 the Committee made a special statement to the Senate on its continuing scrutiny of three Great Barrier Reef Marine Park Zoning Plans, which gave the GBRMP Authority the power to close and open large areas of the reef to fishing and other activities for periods of up to five years. The Committee asked about invalid subdelegation of legislative power. In reply the Minister attached advice from one unit of the Attorney-General's Department that if legislative then the powers certainly and properly should be provided in the Plans themselves and thus be subject to parliamentary scrutiny and possible disallowance, but in fact they were merely administrative. The Committee was surprised at this conclusion and asked the Minister for advice from another unit of the Attorney-General's Department, which was that they were clearly legislative. Further advice from that source, however, was that although legislative they were likely to survive a challenge. The Committee does not accept this view, but whether or not the delegations are void it is a clear breach of parliamentary propriety that these important instruments, which are now accepted by everyone as legislative, are not subject to parliamentary scrutiny. The Committee considered further advice from the Attorney-General at its meeting and resolved to continue to pursue this matter and to report in due course.

Similar although less serious questions of parliamentary propriety arose in relation to an instrument which provided for significant administrative notices relating to the ethnic press to be published in the *Gazette*. The Committee asked the Minister if notices could be tabled as well, because they appeared to address maters which would be of interest to Senators. The Minister in this case advised that copies of notices would be sent to the Committee. In another case of notices extending exemptions for tertiary institutions from certain requirements the Minister advised that these would be tabled.

Many legislative instruments provide for the composition, powers and operations of boards and authorities. The Committee is careful to ensure that these include all the usual safeguards. In one case the Minister undertook to make multiple amendments relating to the Compliance Committee established under the *Sydney Airport Demand Management Act 1997*, which the Committee believes will enhance the open operation of the Committee. The Minister undertook to amend some provisions and review others relating to the Professional Standards Board for Patent and Trade Mark Attorneys, which will align them with contemporary standards of propriety.

Parliamentary propriety also dictates that legislative instruments must be valid under the provisions of its enabling Act or some other Act. One instrument purported to subdelegate a decision-making power

in the Act, with no apparent power to do so. The Minister advised that the subdelegation would be removed. Another instrument provided for fees which appeared to go beyond cost recovery and to be taxes, with consequent invalidity. The Act under which the instrument was stated to be made did not provide any such power and the Explanatory Statement did not refer to this question. The Minister advised that the taxing power was in another Act and that it was unfortunate that the head of power was not advised.

It is also a breach of parliamentary propriety if a legislative instrument provides for matters more appropriate for inclusion in an Act. In this context the Committee considered a reply from the Minister about an insurance operation which was established by a legislative instrument the substantive part of which was six lines long. The Explanatory Statement provided little information about the operation, apart from the information that it appeared to cover all Commonwealth insurable risks, apart from those covered by Comcare, which the Committee noted was established by detailed provision in an Act. The letter from the Minister raised further issues of parliamentary propriety and the Committee decided to write again to the Minister, asking for further advice on a number of aspects of the instrument. The Committee advised the Minister that the enabling Act did not appear to contemplate such a substantial operation and the second reading speech made no mention of it. Indeed, the second reading speech advised that this type of legislative instrument would be used for the day-to-day application of the Act, not to establish major financial bodies. In particular, the Committee asked for full advice on the transparency and accountability to Parliament to which the instrument expressly refers. The Chairman has been in contact with the Minister with a view to expediting a reply so that the Committee may deal with this matter as soon as possible. Once again this is a matter upon which the Committee will report again to the Senate.

Personal rights

The other main function of the Committee is to protect personal rights. Here also the meeting considered a number of replies which illustrate the nature and scope of its concerns. In this context one instrument made under the *Telecommunications Act 1997* provided that a service provider must not allow a person to use a number for an anonymous pre-paid digital mobile service if, among other things, a senior officer of a criminal law-enforcement agency has asked that the service not be provided because the officer suspects on reasonable grounds that the person is likely to use the service to engage in serious criminal conduct. The Regulation Impact Statement advised that the reason for the provision was that the product was available in considerable quantities in criminal circles within one month of its introduction, law enforcement and national security agencies found that previously productive avenues of investigation were closed and there was a sharp decrease in the number of lawful telecommunications interceptions because of the untraceable nature of the telecommunications. The instrument included among other safeguards the requirement that the service provider must tell all applicants and users of its pre-paid carriage services of the effect of the provision, but given the sensitivity of the matter the Committee asked the Minister for further advice. In particular the Committee asked for confirmation that the different safeguards were cumulative and for information on how the provision would actually operate. In this instance the Minister's reply and the RIS satisfied the Committee that the instrument was reasonable, advising that without it millions of dollars spent or committed by government agencies would be wasted and ASIO and other national security organisations would be less able to perform their functions, with especial reference to the Sydney 2000 Olympics.

Other replies from Ministers to matters raised by the Committee in relation to personal rights illustrate the breadth and diversity of its activities. For instance, the Committee was concerned that refunds of hearing fees in the Family Court required 20 days notice although earlier provisions for the High Court and the Federal Court prescribed only 10 days notice. In this context the Committee noted that clients of the Family Court would usually need the refund more than litigants in the other courts. The Minister advised, however, that 20 days was needed because of the way that resources are allocated in the Family Court. Another instrument required a public official to consider an application which could have important commercial consequences, but did not provide a time limit for the official to come to a decision or at least be deemed to have done so. Also, the official could have regard to matters which were wholly subjective. In this case the Minister agreed to amend the instrument to correct these deficiencies. In a case which involved delays in paying benefits the Minister advised that departmental procedures were being reviewed. In another case related to benefits the Minister assured the Committee that no person was disadvantaged because of defective drafting of an instrument. Another instrument increased from two to 13 the number of types of investigations for which a statutory authority could recover its costs from the body being investigated. Here the Minister assured the Committee that no new investigations had been commenced before the instrument was gazetted.

Many legislative instruments provide for aspects of civil aviation operations and safety and the Committee looks carefully at these. Two almost identi-

cal detailed instruments provided authorisation for activities by the Australian Parachute Federation and by the Australian Sky Diving Association, but although parachuting incidents had to be reported there was no such requirement for sky divers. In reply to the Committee's inquiry about safety supervision the Minister advised that this reflected differences in the scale of operations of the two bodies and the difference in operational surveillance.

Another instrument provided for what the Committee suggested were intrusive provisions which may not have been justified. Applicants for a licence were required to divulge whether they or any person in management or control of the relevant business had been charged or convicted of any offence at all. The Committee suggested to the Minister that this should be limited to more serious offences. Another provision required a licence holder to provide the date of birth of the licensee's nominee, even though the licence holder did not have to provide this information. The Minister has now advised that the offence provisions would be amended in accordance with the Committee's suggestion. The omission of the date of birth for the applicant was a mistake which would be corrected, because the information is necessary for integrity checks. Another instrument provided for strict liability for all persons on a fishing boat, even though the offence may have occurred before a deck hand had come on board. Here the Minister advised that an amendment would limit liability to the master of a boat.

It is also a breach of personal rights and of the Committee's principles if decisions made by Ministers or officials are not guided and controlled by suitable criteria and are not subject to appropriate external review of their merits, usually by the Administrative Appeals Tribunal or a similar specialist review body. In this context the Committee noted that one instrument had provided for exemption from prohibition on navigation through a closed fishery, with no criteria for the decision maker and no right of review. In reply the Minister advised that guidelines for the exercise of the discretion would be developed. In relation to review, the Minister advised that an exemption is usually required at short notice and there would not be time for a full AAT review. However, expeditious internal review by a senior officer not involved in the original decision would be provided. The Committee agreed that this was reasonable and would provide an adequate paper trail.

Future activities

This report has addressed the 48 replies which the Committee has received from Ministers for its first meeting of this Parliament. The Committee will also shortly make its usual end of sittings statement setting out a summary of the dozens of letters which the Committee has sent to Ministers and to which it is waiting replies. As indicated above there are a number of matters upon which the Committee will make further special statements to the Senate and there will certainly be other matters which will also justify a special statement. The Committee reports in detail on its scrutiny of individual instruments in its Annual Report and the report for 1997-98 is now being finalised. There are also indications that another Legislative Instruments Bill may be introduced and the Committee will give the same exacting attention to this as it did to the previous Bills.

SUPERANNUATION LEGISLATION AMENDMENT (RESOLUTION OF COMPLAINTS) BILL 1998

First Reading

Bill received from the House of Representatives.

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 Minister for Communications, Information Technology and the Arts) (9.48 a.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 delivers on the Government's ongoing commitment to ensure that superannuation fund members have access to an effective dispute resolution mechanism for superannuation complaints.

Superannuation is a vital component of the retirement savings plans of most Australians. A key element of our existing superannuation system is the availability of a simple and efficient dispute resolution mechanism for superannuation fund members. The Superannuation Complaints Tribunal was set up to provide superannuation fund members with access to such a dispute resolution mechanism, as a low cost alternative to the courts.

However, in February this year, the Federal Court decisions of *Wilkinson v Clerical Administrative*

and Related Employees Superannuation Pty Ltd and *Brekler v Leshem* held that the exercise by the Tribunal of some of its powers is an invalid exercise of the judicial power of the Commonwealth. As a result, the ability of the Tribunal to operate as an effective dispute resolution mechanism has been significantly impaired.

This has resulted in a growing backlog of complaints awaiting resolution. As Members would understand, each unresolved complaint represents at least one person, if not a whole family, who are living with uncertainty and anxiety. As at the 23rd of November, nearly 300 disputes were unresolved by the Tribunal.

Of this backlog of disputes, the largest proportion (over 60 per cent) are disputes in relation to total and permanent disability claims. The superannuation fund members involved in these claims are invariably people who are no longer able to work, have few resources and whose main concern is finding enough money to live on. Typically, pursuing a claim through the court system is not an option for these people because of the expense involved.

The backlog of disputes also contains a large proportion—over 25 per cent—of claims concerning the payment of death benefits to the dependants of superannuation fund members.

It is essential that an effective dispute resolution mechanism is provided for these superannuation fund members and their dependants.

To overcome the inoperability of the Tribunal, the Government is currently appealing the Federal Court decisions to the High Court. However, a final decision is not expected for several months at least. The Government is also examining long term options for addressing the complaints review gap left by the Federal Court decisions.

In the meantime, and as an interim measure, the Government intends to implement the July 1998 recommendation of the Senate Select Committee on Superannuation by allowing the Tribunal to arbitrate disputes.This bill will allow the Tribunal to arbitrate complaints with the consent of the parties. Where a complaint is made to the Tribunal, and conciliation has been unsuccessful in resolving the complaint, the Tribunal will be required to notify the parties of their ability to resolve the complaint by arbitration. The parties will also be given a form of an arbitration agreement approved by the Tribunal. If the parties to a complaint enter into an arbitration agreement, the Tribunal will be able to arbitrate the complaint.

This bill will require an arbitration to be conducted as the Tribunal thinks fit and in accordance with the law relating to commercial arbitration of the State or Territory as nominated in the arbitration agreement. That law will, in most cases, probably be the law of the jurisdiction in which the fund member resides. The Tribunal will be required to prepare a memorandum explaining how it proposes to arbitrate complaints and make the memorandum available to superannuation fund members.

The Tribunal will be able to arbitrate complaints made before or after the commencement of the bill. This will allow the Tribunal to use the option of arbitration to address the current backlog of complaints which has developed since the Federal Court decisions.

The Government will continue to work, in consultation with industry bodies, and taking account of the outcome of the appeal to the High Court, on developing a longer term process for ensuring that there is a low cost alternative to the court system for superannuation fund members and their families.

I want to stress that the Government has responded quickly to the implications of the decisions of the Full Federal Court, and has done so in a consultative manner. The full Federal Court decisions were handed down in February this year. Subsequently, on 7 April 1998, the Senate referred the issue of options for dispute resolution taking account of those decisions for inquiry and report by the Senate Select Committee on Superannuation. That Committee's inquiry included a consultative roundtable with industry representatives and other interested groups to discuss possible responses to the decisions. The Committee's report was tabled on 12 July 1998, recommending in part that the Government investigate the feasibility of putting an interim solution in place. The Government speedily responded on 16 July 1998 with the announcement by the Assistant Treasurer that the Tribunal would be given arbitration powers. Draft legislation was subsequently prepared for introduction in the Spring sittings. The introduction of the bill has, of course, been delayed by the intervening election.

Let me conclude by recording the Government's appreciation of the co-operation of all parties in agreeing to facilitate consideration and early passage of this bill.

I commend the bill to the Senate.

Debate (on motion by **Senator O'Brien**) adjourned.

Ordered that further consideration of the second reading of this bill be adjourned until a later hour this day.

WORKPLACE RELATIONS AMENDMENT (UNFAIR DISMISSALS) BILL 1998

First Reading

Bill received from the House of Representatives.

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 Minister for Communications, Information Technology and the Arts) (9.49 a.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—

Madam President, the Coalition is determined to continue to generate strong and sustained jobs growth through sound economic policies and fiscal management, workplace relations reforms and initiatives to support small business, and further improvements to the national training system to strengthen the competitiveness of Australian businesses. There are no short term or easy solutions to the problem of unemployment. But this bill is an important step in creating more jobs.

This bill will amend the Workplace Relations Act 1996 to exclude new employees of small businesses (other than apprentices and trainees) from the federal unfair dismissal regime and to require a six month qualifying period of employment before new employees (other than apprentices and trainees) can access the federal unfair dismissal remedy.

Madam President, these initiatives were specifically outlined by the Coalition parties during the recent federal election campaign in our workplace relations policy, *More Jobs, Better Pay*. We have a specific electoral mandate to proceed with their implementation as a matter of priority. In regard to the small business exemption we have a fresh mandate, given the rejection by the Senate of similar proposals during the first term of the Howard/Fisher Government.

In our first term we made substantial progress in labour market reform, of particular benefit to small business. We introduced a new unfair dismissal system, which is more balanced and fair to both employers and employees. But we have not gone far enough in removing the burden of unfair dismissal laws off the backs of Australian employers, or the unemployed. For small business, we must continue to give priority to the reduction of paper work and the compliance burden.

It is an unavoidable fact that the defence of an unfair dismissal claim, however groundless, is especially burdensome for small businesses. In many larger businesses, expertise and resources can be put into recruitment and termination procedures. Small businesses have no such resources. Even attendance of witnesses at a hearing can bring a small business to a standstill.

The Government has been listening to the concerns of small businesses, their experiences of the impact of unfair dismissal claims, and their fears that the simple fact of employing someone makes them vulnerable to unfair dismissal claims. There is extensive evidence of the difficulties that unfair dismissal laws cause for those small businesses who experience a claim: not just the cost of settlement, where that occurs, but the time and location of hearings, stress, costs to business in lost time, disruption to working relationships and the costs of defending the application. And the fear of these burdens affects employing intentions, even amongst businesses which may not have themselves experienced a claim. This is the most important reason that this bill should be brought into law, as soon as possible—it will promote jobs growth.

Senators who spoke against the previous bill to introduce the small business exclusion said there was insufficient evidence of the need for the bill, and its benefits. There was plenty of evidence, but they would not allow themselves to be convinced.

That evidence included the Morgan and Banks' 1996 survey, the April 1997 Recruitment Solutions survey, released in April 1997, and the May 1997 New South Wales Chamber of Commerce and St George Bank survey. The Council of Small Business Organisations of Australia said that small business would create 50,000 jobs if the bill was passed. 'Trends in Staff Selection and Recruitment', a report by the National Institute of Labour Studies in May 1997, commissioned by the then Department of Employment, Education, Training and Youth Affairs, found that unfair dismissal laws strongly influenced hiring decisions.

Then there was the Yellow Pages Small Business Index Survey conducted in October and November 1997, and further surveys conducted in March 1998 and July 1998 by the New South Wales, South Australian, and Queensland Chambers.

These surveys, and others like them, make completely plain the importance which business attaches to this issue.

The introduction of a six month qualifying period provides a fairer balance between the rights of employers and employees in this statutory cause of action. It will provide some relief for medium and larger businesses which may not benefit from the small business exemption. It will also provide employees with an opportunity to achieve longer

service before determining whether they genuinely seek the relief sought by such claims. It will deter frivolous claims. This standardisation of a six month period will remove the uncertainties that can affect businesses relying on probation periods introduced for specific employees. The six month period is reasonable for Australian employees and employers, and may be compared with qualifying periods in place in other countries, such as the United Kingdom, Canada and Germany.

I turn now to the terms of the bill itself.

The exemption is to commence on Royal Assent. However, it will not affect existing employees. As it is intended to encourage new employment, the exclusion will only apply to employees who are first engaged by the relevant employer after the commencement of the amendment.

The exemption is from the federal unfair dismissal provisions, only. Employees will still be protected by other provisions of the Workplace Relations Act in respect of unlawful termination.

The exemption does not in itself affect the rights of apprentices or trainees.

The exemption applies only to businesses employing 15 or fewer employees. This size of small business was chosen because of the precedent provided by the Employment Protection Act 1982 (NSW), introduced by the Wran Government, and followed by the then Australian Conciliation and Arbitration Commission in the 1984 Termination, Change and Redundancy Test Case.

The bill provides that, in counting the number of employees in a business, casual employees are only to be counted if they have been engaged on a regular and systematic basis for at least 12 months. The intention of this exclusion is to reflect the fact that a business which occasionally engages additional casual employees is not necessarily a large business.

The qualifying period of six months will need to be continuous employment. The regulations will be able to prescribe circumstances to be disregarded in determining whether employment is continuous or not, much as is presently done in calculating length of service for the purposes of the entitlement to pay in lieu of notice (except in cases of serious misconduct).

This bill will have no significant impact on Commonwealth expenditure.

I commend the bill to the Senate.

Debate (on motion by **Senator O'Brien**) adjourned.

RURAL ADJUSTMENT AMENDMENT BILL 1998

First Reading

Bill received from the House of Representatives.

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 Minister for Communications, Information Technology and the Arts) (9.50 a.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The purpose of this bill is to make a number of amendments to the Rural Adjustment Act 1992 to allow the introduction of the Farm Business Improvement Program, known as FarmBis.

In the context of the 1997-98 Budget, the Government announced its intention to wind up the Rural Adjustment Scheme, following the findings of the McColl report. The Government decided to replace the Rural Adjustment Scheme with a new program that would provide a positive framework for helping farmers improve the productivity, profitability and sustainability of their businesses by improving their management skills.

This new program, the Farm Business Improvement Program (FarmBis), was announced in September 1997 as part of the Agriculture-Advancing Australia (AAA) package. It will assist all those involved in the management of the farm business to build on they're skills and improve the performance of the farm business.

Assistance under FarmBis will be provided by way of direct financial contribution towards the cost of training activities. Activities supported will include, but not be limited to—skill development, farm business and financial planning/advice, farm performance benchmarking, quality assurance, risk management, marketing and natural resource management.

Consultations undertaken with farmer and training organisations in the development of the program highlighted training delivery barriers unique to farm

businesses. FarmBis will promote continuous learning by making training more accessible to those managing farm businesses. By making the funds available largely for farmers' participation in activities of their choosing there will be a strong incentive for training providers, whether they are from State agencies or private industry, to meet the needs of those farmers.

The focus of the program is on partnerships. State agencies, industry, local farmer and community groups will contribute to meeting the training needs of farmers. In addition, local coordinators will take primary responsibility for the further skill development of farmers in their area wanting to undertake activities under the FarmBis framework.

Program funds will be allocated between a State Component and a National Component. The State Component will provide for training priorities within a State as determined by State Planning Groups. The Commonwealth and the State will provide funding for the State Component on a 50:50 basis.

The National Component will cover cross border projects and national industry initiatives. The recently announced national pig industry initiative and the chicken meat benchmarking study are examples. This component will also operate through partnership arrangements between the Commonwealth and others, for instance industry or community groups.

State and Territories have agreed to participate as partners in FarmBis. Agreement was reached on the program framework at the February 1998 meeting of the Agriculture and Resource Management Council of Australia & New Zealand (ARMCANZ). The Commonwealth has negotiated agreements with Victoria, South Australia, West Australia, and the Northern Territory for the funding, administration and operation of the State Component of FarmBis in each jurisdiction. It is anticipated Tasmania and New South Wales will sign agreements late in 1998, with Queensland signing their agreement early in 1999.

FarmBis will operate for three years from the 1998/99 financial year.

Ordered that further consideration of the second reading of this bill be adjourned until the next day of sitting which is more than 14 days after today.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages received from the House of Representatives returning the following bills without amendment:

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Amendment Bill 1998 (No. 2)

Migration Legislation Amendment (Strengthening of Provisions relating to Character and Conduct) Bill 1998

BUDGET 1998-99

Additional Estimates

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.51 a.m.)—I table the following documents:

Particulars of proposed additional expenditure in relation to the parliamentary departments in respect of the year ending on 30 June 1999.

Particulars of proposed additional expenditure for the service of the year ending on 30 June 1999.

Particulars of certain proposed additional expenditure in respect of the year ending on 30 June 1999.

Statement of savings expected in annual appropriations made by the Appropriation (Parliamentary Departments) Act 1998-99, Appropriation Act (No. 1) 1998-99 and Appropriation Act (No. 2) 1998-99.

The PRESIDENT—I table the portfolio additional estimates statements for 1998-99 for the following departments: Department of the Senate, Joint House Department, Department of the Parliamentary Reporting Staff.

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (9.52 a.m.)—I table additional estimates statements for 1998-99 for portfolios and executive departments in accordance with the list circulated in the chamber. Copies of these documents will shortly be distributed to interested senators. Additional copies are available from the Senate Table Office.

NATIONAL ENVIRONMENT PROTECTION MEASURES (IMPLEMENTATION) BILL 1998

In Committee

Consideration resumed from 2 December.

The bill.

Senator BOLKUS (South Australia) (9.53 a.m.)—The opposition does not accept Democrat amendment No. 2. We think the attempt

by the Democrats to broaden the range of activities that would be covered by the legislation is well meaning but it does not fit within the structure of the scheme of which this legislation is certainly the most integral part.

Senator ALLISON (Victoria) (9.54 a.m.)—I move Democrat amendment No. 2:

(2) Clause 5, page 3 (lines 15 to 20), omit "does not include:" and paragraphs (a) and (b) of the definition of ***activity***, substitute "does include the formulation of policy".

The purpose of this amendment is to include the formulation of policy in the definitions. This bill relates to pollution on Commonwealth land and Commonwealth activities. Our amendment adds the notion that Commonwealth decisions and policies are also relevant and should be included. The Commonwealth makes decisions all the time that deal with pollution and we felt that it was important to include this in the definitions rather than exclude it.

Senator Bolkus—In light of the fact that Senator Hill is not here, I wonder whether Senator Allison could give the committee some further explanation in respect of that amendment.

Senator ALLISON—The definitions currently state that an 'activity means a physical activity that has a direct effect on, or represents a substantial risk of damage to'. But the first part of clause 5 states:

. . . to avoid doubt, does not include:

(a) the formulation of a policy; or

(b) the making of a decision by a Minister or by a person to whom a Minister has, under an Act or an instrument. . .

The amendment removes paragraph (b) and indicates that formulation of policy should be part of that activity.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.56 a.m.)—We oppose the amendment.

Amendment, as amended, not agreed to.

Senator BOLKUS (South Australia) (9.57 a.m.)—by leave—I move opposition amendments Nos 1 and 4:

(1) Clause 5, page 7 (line 8), before "matter", insert "prescribed".

(4) Clause 11, page 13 (lines 18 to 22), omit paragraph (b), substitute:

(b) that the application of that alternative Commonwealth regime is more appropriate than taking any action under this Part because the activity involves a specified matter of national interest.

The amendments go to the definition of national interest. Under this regime, matters of national interest can be exempted from the operation of the environmental laws. The opposition has a concern that matters of national interest as defined by the government are too extensive.

We have two concerns. One is that the government is seeking to exempt matters relating to telecommunications activity and aviation. We understand that there would be circumstances in which telecommunications and aviation would relate to the national interest. But we think that the blanket exemption that could be given as a consequence of the definition of matters of national interest in the government's legislation is too broad. So amendment No. 1 is designed to allow for the prescription of matters relating to telecommunications and aviation and, as a matter of construct, matters can be prescribed in these two areas if it is assessed that they are in the national interest. We are not embracing the concept that all telecommunications and aviation matters are in the national interest but we move an amendment to allow for the exemption of certain telecommunications and aviation matters that may be in the national interest.

Amendment No. 4 goes to the exemption capacity proposed by the government in clause 11, page 13. The government is seeking to allow exclusion from the effect of environmental protection measures for reasons of administrative efficiency. It is our view that the government is seeking to give itself a pretty broad blank cheque.

Amendment No. 4 is designed to delete the capacity the government seeks to give itself to exclude matters for reasons of administrative efficiency. On looking at these two amendments, it seems to me that maybe they should not have been handled together. But,

since we have given leave for them to be handled together and as I expect the vote will be the same on both, it is probably appropriate that we do handle them conjointly.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.00 a.m.)—We conceded at the second reading stage that the issue of national interest, as it is defined, and therefore the exclusions that follow from it under the scheme of this bill, is clearly an issue of contention.

What the opposition is seeking to do, as I understand it, in relation to the first amendment is to provide that it would need to be a prescribed national interest. We would argue that that would be unduly restrictive. We do set out here limitations of national interest in the scheme of this bill and that is adequate. The second proposal, again, is to further restrict the provisions that we have put in the bill which take into account administrative efficiency. Again, we would argue that that is a restriction that is not warranted.

The scheme is that, one way or another, the measure will be adopted, because that is what the ministerial council and the vote of the Commonwealth minister on it is determining. So the measure will be implemented at a Commonwealth level. The issue then is whether we do it through our own processes or whether we adopt a state law. We believe that the former more appropriately applies. It is a matter of national interest and there is, therefore, no risk in providing some flexibility within that definition. It is a safer course of action to provide that rather than be unduly restrictive at this stage.

Senator BOLKUS (South Australia) (10.02 a.m.)—The regime will be implemented anyway. It is just a matter of whether you do it or whether it is done under state law. Can you tell us how that applies, through which subsection or clause that will have effect?

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.03 a.m.)—The scheme of any PC process is that a measure is determined by a ministerial council of Commonwealth and state ministers to provide a consistent level of environmental protection across a range of different areas. Part of the scheme under the previous act is that it will then be implemented by both state and Commonwealth authorities. The issue for the Commonwealth, to which this bill relates, is whether it needs to be implemented through the internal processes of the Commonwealth or by adoption of a state law that purports to cover the field. In relation to national interest, we argue that the scheme of this bill has been so constructed as to provide that it go through the Commonwealth procedures rather than through the adoption of state law.

Senator BOLKUS (South Australia) (10.04 a.m.)—Essentially, you are saying that there is no real requirement in legislation that we ensure that that happens, Minister. We will get back to national interest in a minute. I refer to the exemption for reasons of administrative efficiency. You have to concede that that is a pretty broad exemption. When you look at environmental decisions taken consistently across this country, there is always an argument to do the opposite—to allow development, fast-tracking or whatever—which are factors of administrative efficiency or economic efficiency and so on. Can you have another look at that exemption for reasons of administration efficiency? It is such a nebulous, or catch-all, clause that basically it will allow a gutting of the full impact of the legislation that we are talking about.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.05 a.m.)—I would concede that an exclusion for administrative efficiency does not perhaps have the same import as some others. On that basis, perhaps we could vote on the first amendment. I will give the second amendment a little more thought as this debate proceeds this morning and then we can come back to it a little later. I would be prepared to do that.

Senator BOLKUS (South Australia) (10.06 a.m.)—In that case I seek leave to withdraw the earlier request that both amendments, Nos 1 and 4, be handled together.

The TEMPORARY CHAIRMAN (Senator Watson)—You can divide the question.

Senator BOLKUS—Thank you, Mr Temporary Chairman. Minister, going back to the national interest definition, I am sure you would concede that not every Telecom activi-

ty is in the national interest—for example, the digging up of roads for the purposes of cables, dishes or whatever in obscure places of Australia. It is a pretty broad sweep to argue that that could be in the national interest when, for instance, you compare it to more sensitive Telecom activities or more sensitive aviation activities. Do you not concede that there should be a distinction between those activities in the national interest and the broader sweep of telecommunications and aviation activities?

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.07 a.m.)—I do concede it in a way, if I can put it in context. The trend over some years, and I think it will continue—and that is because it should—is that the Commonwealth is accepting that more of these state environmental laws should bind the Commonwealth now. It has taken us a while to reach that stage, but that is the trend and we actually believe that it is the correct way to go.

At this stage, however, we are in something of an interim status in that whilst the Commonwealth is approaching the issue of state environmental laws in a more constructive way in some areas, such as telecommunications and control of air services, there are clearly issues that are still, beyond doubt in our view, of national interest—issues such as our acceptance of a national responsibility to provide a framework within which a national system of air transport can operate. But within that framework there are obviously some subsets of responsibilities that may not be a state responsibility but are more appropriately a local government responsibility.

I am suggesting to the opposition that, whilst we are in the stage in which this concept of the Commonwealth accepting a greater proportion of state environmental laws is evolving, it would be better not to be unduly prescriptive, but to recognise that state ministers, pursuant to these changing attitudes, would interpret national interest in a way that reflects that change of attitude.

Senator Bolkus is seeking to limit the Commonwealth by having to regulate up front which aspects of national interest should apply under this part, whereas we are saying that for the next few years anyway, that should rather be done through the administrative processes of a minister having that discretion.

I have no doubt that a little further down the track Commonwealth governments will be more willing to go to the next step, which might be to be more definitive about what parts of a particular area of responsibility are clearly national and what parts are clearly state or, ultimately, in some of these areas, it may pass the responsibility across to the states altogether.

I put it to Senator Bolkus that we are seeking the Senate's acceptance that we are in a state where we have an evolving regime in this area. We have sought, in this bill, to reflect that process of evolution and, therefore, not to be unduly restrictive at this stage.

Senator BOLKUS (South Australia) (10.10 a.m.)—I fear, Mr Temporary Chairman, that this might be one of those areas where, if the government had put up the proposal first they would probably be rusted onto it whereas, if the opposition puts it up, there may be some reluctance to accept it institutionally. I recognise that you are talking about an evolving area. It has evolved enormously over the last 10 years. But isn't it better to have a situation where that evolutionary process can be recognised in a way that allows you to wind down the areas of exemption by the mechanism that we are proposing?

Your proposal, basically, allows for a full sweep. Our proposal allows you to prescribe matters relating to telecom and aviation activities that may be deemed to be in the national interest. As you say, this changes. It is becoming more and more limited as time goes by. A regulatory mechanism is probably most appropriate to handle that diminishing area that would need to be exempted. I do not think you have persuaded us, Minister, but hopefully you can reflect on this during our continuing discussion of it.

In essence, if you look at the proposal we are putting up to you, it allows prescription of matters relating to telecom and aviation. Okay, it is by regulation; but the regulatory process is a pretty open one for government to access, as you know.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.11 a.m.)—It is a matter of preference, and the opposition is putting a slightly more radical proposal than what we have. Ours is slightly more conservative in terms of the Commonwealth coming to this acceptance of state laws cautiously.

Whilst I hear what Senator Bolkus says in relation to regulations, I do not think it is necessary at this stage. In 1999, there is going to be a review of the whole process and how it is working in practice. If this bill is passed today and we can start to implement national environment protection measures as they are made by the council, then within a couple of years we will be able to determine whether in fact the law as we seek to set it out today is working well or whether we can take the next step forward in further limiting the right of the Commonwealth to intervene. Ours is a more cautious approach, but we would still wish to see it adopted in those terms.

The TEMPORARY CHAIRMAN (Senator Watson)—The question is that opposition amendment No. 1 be agreed to in relation to clause 5 and clause 11.

The committee divided. [10.17 a.m.]

(The Chairman—Senator S. M. West)

Ayes	32
Noes	33
Majority	1

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crossin, P. M.	Crowley, R. A.
Denman, K. J.	Forshaw, M. G.
Gibbs, B.	Harradine, B.
Hogg, J.	Hutchins, S.
Lees, M. H.	Lundy, K.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Quirke, J. A.*	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Coonan, H.	Crane, W.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J.
Gibson, B. F.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Lightfoot, P. R.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	O'Chee, W. G.*
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.
Synon, K. M.	Tambling, G. E. J.
Tierney, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Evans, C. V.	Chapman, H. G. P.
Faulkner, J. P.	Minchin, N. H.
Mackay, S.	Troeth, J.
Ray, R. F.	Newman, J. M.

*** denotes teller**

Question so resolved in the negative.

Senator BOLKUS (South Australia) (10.22 a.m.)—I ask that opposition amendment No. 4 on revised sheet 1185 be postponed until a later time.

Amendment postponed.

Senator ALLISON (Victoria) (10.22 a.m.)—I move Democrat amendment No. 3:

(3) Clause 5, page 7 (lines 16 to 18), omit:

; or (c) any other matter agreed between the Commonwealth, the States and the Territories".

This amendment takes out a clause under the definition of national interest that we would regard as being hugely discretionary. It allows the government to introduce any matter as a matter of national interest, provided it is agreed to between the Commonwealth, states and territories. I ask the minister: what kinds of matters might typically fall into this category? Since we have foreign affairs, national security and defence, national emergency, and telecommunications and aviation, it is hard to imagine another matter that might be regarded as being in the national interest beyond those already listed. So the Democrats do not regard this as being necessary and in fact believe that it provides an out that is not reasonable.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.23 a.m.)—I think the Democrats are a little

overly concerned. We are simply dealing with the definition of matters of national interest. We are saying that it is a matter of national interest if the Commonwealth and the states agree that it is.

Bear in mind that, as we said a little earlier, we are talking about a scheme for implementation at the Commonwealth level of national environment protection measures—a standard for measures across Australia—and when it is more appropriate for it to be implemented by the Commonwealth under its administrative or legal procedures and when it is more appropriate for the states. If the Commonwealth and the states agree that it is more appropriate that it be dealt with under the Commonwealth, on the basis that it is a matter of national interest, I cannot see how that could be of concern. It just strikes me as sensible to include this provision so as to cover circumstances that are not easily identifiable—and that is the whole point—but where the Commonwealth and the states at some time in the future believe that the Commonwealth processes are more appropriate. We do specifically refer to issues such as telecommunications and air transport. We know aspects of national interest that are involved within those, but there may be others where the Commonwealth and the states jointly agree that it is more appropriate to deal with them at a national level. It is simply to provide that flexibility that we have included the provision in the bill.

Senator ALLISON (Victoria) (10.25 a.m.)—Does this then mean that any other matter which is agreed between the Commonwealth and the states would not have to come back to the parliament? Wouldn't it be better to leave the definitions as they are currently stated and, if something arises that means there is another matter that needs to be added to those prescribed matters, to alter the legislation at that point? Again, I wonder what kinds of things you had in mind. I do not know that it is good enough to say, 'Well, we can't think of any at this point in time, but it's just there in case we do.' There must be some examples that come to mind.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.26 a.m.)—The point is that the safeguard is in the fact that the states have to agree, and the states do not readily agree with the Commonwealth that matters are of national significance and should be dealt with by the Commonwealth unless it is obvious in the extreme. I am saying that it is specifically designed to provide that extra flexibility in the future if the Commonwealth and the states agree.

What Senator Allison says is correct: you could leave it out and if such an event occurred in the future you could then seek to legislate to provide for it as a matter of national interest, but that is obviously a complex, time-consuming process. Bear in mind that this bill has been in the Senate for practically 18 months before being debated. We do not apologise for the fact that it is designed to provide that extra bit of flexibility, but the safeguard is in the fact that the states have to agree. I respectfully suggest that the safeguard aspect is something that Senator Allison is not taking into account.

Senator ALLISON (Victoria) (10.27 a.m.)—I would ask, then, about the process of the states agreeing. Does that mean that all states and territories would need to agree? It seems to me that that process would be just as lengthy as a process of bringing it back to the parliament.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.27 a.m.)—That is a question of interpretation. I would suspect it would be interpreted on the basis that a resolution of the National Environment Protection Council—which is the state and Commonwealth body in this matters—that a particular matter be dealt with at the Commonwealth level as a matter of national interest would be accepted to satisfy that provision. On the run, that is my best interpretation—that that would be in the spirit of what is there. It would be within the spirit of the whole of the scheme of implementing the national environment protection measures and would be an appropriate and timely vehicle to reach the conclusion that a specific matter should be dealt with as a matter national interest.

Senator BOLKUS (South Australia) (10.28 a.m.)—Senator Hill sounds reasonable, but let us just analyse what the government is trying to do here and get a real fix on the mechanism that is being proposed. I suspect that people who may be listening to this debate outside may in fact be wondering what we are on about. We are talking about an exemption for matters of national interest. We are talking about an exemption from a scheme to ensure application of state environmental regimes to the Commonwealth—the environment protection measures. We are basically saying we need to recognise that there need to be exclusions for matters of national interest. We define them as Australia's relations with another country, international obligations, national security, national defence, national emergency—all those things are pretty well okay; they come within the normal definition of national interest.

The government then says, 'We want two more huge catch-all clauses to allow exclusion'—and I note that Senator Hill is still considering this—'and we want to be able to exclude matters for administrative efficiency.' He has gone from national interest down to administrative efficiency. He then says, 'But we also want to exclude matters on the grounds of national interest if it is any other matter'—not just a prescribed set of matters—'agreed between the Commonwealth, the states and territories.' I would have thought exclusion on the conventional grounds of matters of national interest would be sufficient. It is pretty broad as it is. It has all the consequences of the common law definitions that apply to it.

If we were to embrace what the state premiers may agree to as being a matter of national interest, without any parameters to it, we would be building a house with back doors and no walls, so people could get out of it. If you were to top it up with exclusions for reasons of administrative efficiency, you might as well write off the legislation altogether. Why do we need this legislation? Why don't we just sit down with the state premiers and try to find other ways of overturning Henderson's case in the High Court? If you want to give this legislation authority and respectability, you do not do it by defining national interest as including any deal that is done overnight at the Hyatt Hotel at a get-together of premiers and the Prime Minister, and you definitely do not include reasons of administrative efficiency.

Question put:

That the amendment (**Senator Allison's**) be agreed to.

The committee divided. [10.36 a.m.]

(The Chairman—Senator S. M. West)

Ayes	34
Noes	34
Majority	0

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Crossin, P. M.	Crowley, R. A.
Denman, K. J.	Forshaw, M. G.
Gibbs, B.	Harradine, B.
Hogg, J.	Hutchins, S.
Lees, M. H.	Lundy, K.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Quirke, J. A.*
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Colston, M. A.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Heffernan, W.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Lightfoot, P. R.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
Newman, J. M.	O'Chee, W. G.*
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.
Synon, K. M.	Tierney, J.
Vanstone, A. E.	Watson, J. O. W.

PAIRS

Evans, C. V.	Chapman, H. G. P.
Faulkner, J. P.	Minchin, N. H.

PAIRS

Mackay, S.	Troeth, J.
Ray, R. F.	Tambling, G. E. J.

*** denotes teller**

Question so resolved in the negative.

Senator MARGETTS (Western Australia) (10.39 a.m.)—by leave—I must take a bite of humble pie. I have to throw myself on the mercy of the Senate and claim misadventure for the division on the opposition's amendment No. 1. I was deeply engrossed in work in my office and by the time I realised that the bells were ringing the doors were locked. I do apologise profoundly to the Senate.

Senator WOODLEY (Queensland) (10.39 a.m.)—by leave—I would like to eat the crumbs from the humble pie that Senator Margetts has just eaten. However, I have to say to you that the bells did not ring in my office. I just checked during that division, and they did not ring again, and then they started ringing, so there is some fault there.

The CHAIRMAN—Is someone going to seek leave to have the question put again?

Senator Margetts—I am happy to seek leave to have the question reput, if the Senate so chooses.

Senator HARRADINE (Tasmania) (10.40 a.m.)—by leave—Rather than not grant leave, I would like to make a short statement on this matter. I would be interested to hear from Senator Woodley why he would vote for this proposition. Does he know what the proposition is?

Honourable senators interjecting—

Senator HARRADINE—This is not funny.

Senator Bolkus—Probably for the same reasons you voted for it, Brian.

Senator HARRADINE—Why did I vote for it? What if I missed a division? What if I wasn't here for a division and I came down here and sought for it to be recommitted? Would the government do it?

Government senators—Yes.

Senator HARRADINE—Would the opposition do it?

Opposition senators—Yes.

Senator HARRADINE—When I am in my office studying, very frequently I am engrossed in what is there, or indeed I am engaged in important discussions about very serious questions on which the Senate is going to vote, for example, on the health measure that is coming up or a number of other measures, like the National Transmission Authority. It frequently happens that I am in the middle of those things. I have had to get across all the detail of the matters before us, particularly if it is legislation.

I do not think opposition or government frontbenchers or backbenchers have a clue what is involved, not only for me but for Senator Colston. I have got to the stage now where the list is regularly put up of notices of motion on very important matters and you expect it to go through by a nod, or be declared formal. It is all right for you people on both sides of the chamber. You are told what to do by your ministers and by your shadow ministers. You would not have a clue very often what you are voting for. But, so far as I am concerned, I need to go into detail, and some of those notices of motion require study of about two or three hours and getting material about them. I think that we ought to have a good look at that particular procedure whereby people come in and give notices of motion about all sorts of things. I am not suggesting that they are not important; of course they are important. But, if they are important, if I am going to vote I need to be on top of the subject.

That is why I am not inclined now to even come down to a vote when the matter is not debated. Unless one spends hours and hours on particular matters, how can one cast a vote? You don't have to spend those hours and hours on those particular matters, but I do—if I am going to vote. I again ask the government and the opposition: if I missed a vote in the same circumstances as Senator Margetts missed the vote, would I be given leave to have the matter recommitted and would the matter be recommitted? It is a different matter with Senator Woodley; the bells did not ring. So I am asking you whether that would be the case.

Senator WOODLEY (Queensland) (10.45 a.m.)—by leave—In answer to Senator Harradine's question, the bill is the National

Environment Protection Measures (Implementation) Bill. We meet every morning in our party room and all of the amendments are discussed there fully. I will admit to Senator Harradine that I am not necessarily on top of every detail of every amendment. But I am certainly aware that the amendment was to do with the definition, and I was in agreement with the opposition's amendment at that point. I owed Senator Harradine that explanation at least.

Senator HILL (South Australia—Minister for the Environment and Heritage) (10.46 a.m.)—by leave—Our attitude is that there has to be some discipline within this process, otherwise there would be no need to come down to vote in the first instance. We do expect an explanation that is credible. We expect the defaulting senator to humbly come before us, look contrite and all those things and ask for forgiveness. That is part of the disincentive to misbehave in this way.

Senator Bolkus—Are you defending Richard Alston?

Senator HILL—My deputy leader has had to do it several times.

Honourable senators interjecting—

Senator HILL—We have noted that it has been effective and that he's been doing a lot better lately. We would hope that it would have the same influence upon Senator Margetts. If the excuse is that the bells were not ringing or you got locked in the loo or something or other, there is not much doubt about it. If the excuse is 'I was engrossed in my work', it becomes a judgment. If you were not a repeat offender, I would accept the excuse. I think it is possible to be so engrossed in work within this place, particularly if bells have been ringing regularly and you have to watch whether they are green bells or red bells, that—I am pleased to say this has not occurred to me in 17 years—you inadvertently miss a division even though you were taking reasonable care. That is the way that I would interpret it, so to Senator Harradine: yes, our practice would be so if there were a reasonable explanation. I would regard that as a reasonable explanation if you were not a repeat offender. In those circumstances I would accept the explanation that Senator Margetts has made on this occasion.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (10.48 a.m.)—by leave—As I understand the issue before the chamber, Senator Harradine has raised the issue of whether it is appropriate to recommit a vote. He has asked the hypothetical question, in relation to a division that he might miss, whether in the ordinary course of events the government, the opposition or other senators would give leave for a vote to be recommitted. I outlined yesterday in the chamber the general approach that the opposition has taken. I think that even harsh critics of the opposition would have to acknowledge we have taken it consistently; that is, that the will of the Senate ought to be reflected in voting on the floor.

Senator Ian Macdonald—So you are saying the same thing about Senator Margetts as you would say about Senator Alston?

Senator FAULKNER—I don't know why you are bringing Senator Alston up.

Senator Carr—Because he's a habitual offender.

Senator FAULKNER—I see. I wish Senator Macdonald wouldn't draw attention to the fact that Senator Alston is a habitual offender. We know that he misses a lot of divisions, Senator Macdonald. I am sure he appreciates the fact that you are continually drawing attention to the fact. One of the reasons the opposition has had to adopt this consistent approach of allowing the will of the Senate to be reflected in divisions is that Senator Alston has missed so many divisions over such a long period of time.

Yesterday there was another reason; there was an explanation made. I think that, as a general rule—and certainly one that I and the opposition have adopted—our approach is that if there is to be a recommittal, the senators involved do owe the Senate an explanation before a vote is recommitted. Again, that is a point I made yesterday to the chamber, and also made to the government whip in the Senate, who obviously acknowledged it to some extent because he expanded on the original explanation. He developed that

explanation a little later during the decision to recommit.

Yesterday the recommittal that we dealt with was about the very important issue, as Senator Harradine would know, of the production of documents on the goods and services tax. The vote was originally to support my motion. It was agreed to by the Senate and a recommittal was going to mean, of course, that vote would be lost on equal numbers. So these things can have quite a serious impact if a recommittal is taken.

But the principle is—and all you can do is try and consistently apply a principle—that the will of the Senate be reflected in these votes. If a senator has a reasonable explanation—which goes to Senator Harradine's point—or a whip has a reasonable explanation for why a division result may have been different, I believe it is appropriate for recommittal to be agreed to and for the will of the Senate to be reflected in the final count of any division.

I have the disadvantage of having been involved in another meeting while this particular debate has been carried on. I was paired for the last couple of divisions, I might say, but let me make that contribution in relation to the general principle that the opposition will apply to this situation.

The CHAIRMAN—Leave has been granted to recommit. I will therefore put—

Senator HARRADINE (Tasmania)—by leave—There were 11 senators absent during the last division. Where were they? If they can be paired, why can't I?

The CHAIRMAN—That is not a matter that is within the knowledge of the chair, nor is it my responsibility. The question is that opposition amendment No. 1 on running sheet 1185 be agreed to.

The committee divided. [10.57 a.m.]

(The Chairman—Senator S. M. West)

Ayes	34
Noes	33
Majority	1

AYES

Allison, L.	Bartlett, A. J. J.
Bolkus, N.	Bourne, V.
Brown, B.	Campbell, G.
Carr, K.	Collins, J. M. A.
Conroy, S.	Cook, P. F. S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Denman, K. J.
Faulkner, J. P.	Forshaw, M. G.
Gibbs, B.	Harradine, B.
Hogg, J.	Hutchins, S.
Lees, M. H.	Lundy, K.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Quirke, J. A. *
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Boswell, R. L. D.
Brownhill, D. G. C.	Calvert, P. H.
Campbell, I. G.	Colston, M. A.
Coonan, H.	Crane, W.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J.
Gibson, B. F.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Lightfoot, P. R.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	Newman, J. M.
O'Chee, W. G. *	Parer, W. R.
Patterson, K. C. L.	Payne, M. A.
Reid, M. E.	Synon, K. M.
Tierney, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Bishop, T. M.	Tambling, G. E. J.
Evans, C. V.	Alston, R. K. R.
Mackay, S.	Chapman, H. G. P.
Ray, R. F.	Minchin, N. H.

*** denotes teller**

Question so resolved in the affirmative.

The PRESIDENT—Senator Hill, are you seeking the call or not?

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.02 a.m.)—I am just forewarning you that we may seek leave in due course to reconsider that.

The PRESIDENT—We are warned. Thank you, Minister.

Senator BOLKUS (South Australia) (11.02 a.m.)—I forewarn Senator Hill that, when he does raise it, obviously we will ask him why his deputy leader is on strike or what he is doing this morning.

The PRESIDENT—He is not here.

Senator BOLKUS—We will place that on notice as well.

Senator Faulkner—You can forget it.

Senator ALLISON (Victoria) (11.03 a.m.)—I note on the running sheet that Democrat amendments Nos 4, 19 and 25 have been grouped together.

The PRESIDENT—Do you wish to proceed that way or do you wish to proceed differently?

Senator ALLISON—Could we proceed just with amendment number No. 4 at this stage?

The PRESIDENT—It is up to you whatever you move.

Senator ALLISON—I move Democrat amendment No. 4:

(4) Clause 10, page 10 (lines 14 to 16), omit subclause (2).

This is a way of making the Commonwealth liable. Pollution consequences are the same no matter who is responsible for them. The Democrats would argue that the laws that apply to corporations should also apply to the Commonwealth. I think it is fair to say that the community has expectations now that there ought to be punishment for offences against the environment.

There may be longstanding legal issues about the criminal liability of the Crown but, one way or another, these are being slowly whittled away by the High Court, and they are in other states as well. We think this is an important amendment, and we urge the Senate's support.

Senator BOLKUS (South Australia) (11.04 a.m.)—I say at the start that I am pleased Senator Allison has chosen not to proceed with all the amendments together and has singled out No. 4.

The issue before the parliament now is to what extent Commonwealth officials should be subject to the state laws as they apply to state officials and any other person living in the community. The government is seeking to exempt Commonwealth officials from the operation of state criminal law, and does so by the substantive clause that we are discussing now.

The opposition does not support that sort of exemption. We believe an integral part of this legislation should be to allow the operation to its full effect of state law that is deemed to apply in the circumstances. We have had no real argument from the government as to why Commonwealth officials should be in a different position to state officials or should be in a different position to other members of the community.

One can go at length into a discussion about this sort of exemption from criminal law; the Commonwealth may, in fact, be anticipating technical breaches of criminal law. But, with the way that this exemption is drafted in the legislation, there are all sorts of unintended consequences in terms of the protection that would be given to Commonwealth officials. I think the government needs to have a sober reflection as to what it is trying to do here.

The reason I am pleased that the Democrats have not proceeded with Nos 19 and 25 together with No. 4, is that I think the Democrats try and go a bit further than what was originally planned in this legislative scheme. Not only do they, through amendment No. 4, rekindle the application of state criminal laws, but Nos 19 and 25 would bring in new criminal offences to the regime. The opposition is not prepared to go to that extent.

We recognise the merit of these sorts of offences, we recognise the merit of trying to tackle some of the conduct that the Democrats are trying to tackle. For us, instructional legislation is such that it would basically demand the continued application of state criminal law. But it does not mean the implementation of a new and broader regime on environmental protection. Desirable as that might be, and there are other ways of approaching it, this legislation, this mechanism, this state and Commonwealth arrangement, does not embody a new raft of criminal offences. To that extent we will not be supporting Nos 19 and 25, but we do say very strongly that No. 4 needs to be supported because all it really does is allow the continued application of state criminal law.

Basically, what the Commonwealth is doing with its proposal to exempt officials from state criminal laws is to put them in an even more superior position to diplomats, who have some minimal exemption from state legislation. But this particular provision in the government's bill goes much wider than that and, as I said earlier, has some unintended consequences. We think the measured way to go is to knock out the provision that amendment No. 4 seeks to knock out but not to go further and incorporate new offences.

Senator MARGETTS (Western Australia) (11.07 a.m.)—The Greens will be supporting Democrat amendment No. 4.

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.08 a.m.)—The government is opposed to the amendment. We believe that the provision we have inserted within the National Environment Protection Measures (Implementation) Bill 1998 reflects longstanding Commonwealth policy. I am a little surprised, because if my advice is correct it would have been the policy also of the preceding Labor government. During the long walk across the chamber, they may well have changed their mind on such a fundamental principle. We are not seeking to be as revolutionary as some others in the chamber but rather to reconfirm the situation which has been the case for a long time.

Senator BOLKUS (South Australia) (11.08 a.m.)—The view of the previous Labor government was to allow the application of criminal laws to at least federal government authorities and, I suppose, GBEs and those categories of federal institutions. On reflection, we have recognised that, for instance, to allow exemption from criminal liability to officers of the Department of Administrative Services, as it was in one of its many manifestations, but to not allow it to other arms of the federal bureaucracy because they might have been corporatised is a distinction which is pretty hard to sustain.

Once again, if you look at the example of the old Department of Administrative Services, some of the arms of that department were traditional Public Service structures and some of the other arms of the department have been corporatised. You would have got to a situation where the luck of the draw was such that, had you been corporatised, you may have been exempt from criminal liability but, had you not been corporatised, then you would not have been. So that sort of consideration has been one that we have reflected on, as you say, in the long march to this side of the chamber. As a consequence, we think, for the sake of consistency and fairness, the position we take now is more defensible. We do not embrace the concept of incorporating new offences and a wider range of offences that has been proposed in latter amendments.

Question put:

That the amendment (**Senator Allison's**) be agreed to.

The committee divided. [11.15 a.m.]

(The Chairman—Senator S. M. West)

Ayes	35
Noes	33
Majority	2

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Colston, M. A.
Conroy, S.	Cooney, B.
Crossin, P. M.	Crowley, R. A.
Denman, K. J.*	Evans, C. V.
Forshaw, M. G.	Gibbs, B.
Harradine, B.	Hogg, J.
Hutchins, S.	Lees, M. H.
Lundy, K.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Quirke, J. A.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Boswell, R. L. D.
Brownhill, D. G. C.	Calvert, P. H.
Campbell, I. G.	Coonan, H.*
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Heffernan, W.	Herron, J.

NOES

Hill, R. M.	Kemp, R.
Knowles, S. C.	Lightfoot, P. R.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.
Synon, K. M.	Tambling, G. E. J.
Tierney, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Cook, P. F. S.	Chapman, H. G. P.
Faulkner, J. P.	Minchin, N. H.
Ray, R. F.	Alston, R. K. R.
Mackay, S.	Troeth, J.

*** denotes teller**

Question so resolved in the affirmative.

Senator CALVERT (Tasmania) (11.18 a.m.)—by leave—Madam Deputy President, you may recall that there was a recommittal of opposition amendment No. 1 due to the fact that Senator Margetts missed the call and consequently that amendment was resubmitted. I am afraid that, due to an error on our side, the absence of one of our senators, who was paired, was not notified through to the acting whip at the time. It was a genuine mistake on our part.

I am pleased to see that Senator Faulkner is here. I beg his indulgence to resubmit that amendment. My clerk admitted that she read the whip's letter incorrectly. The letter said '11.45' and she read it as '10.45'. Hence Senator Troeth was out of the building and paired. She did not come to the division and so was not counted. I ask the indulgence of the Senate to recommit opposition amendment No. 1. I believe it is a very important amendment. I do not believe that currently the true reflection of numbers has been given.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.20 a.m.)—by leave—No doubt we all await the humiliating backdown from Senator Hill after the contribution he made after the last vote was recommitted. This is why I think it is so important that we try to stick with the principle on these sorts of issues as opposed to making short-term partisan political advantage when—

Senator Robert Ray—It is a long road that does not turn.

Senator FAULKNER—That is exactly right, Senator Ray. The problem for the government at the moment is that the road is going round and round in circles. The proposition from Senator Calvert that the vote be recommitted is very embarrassing. The government has been humiliated here, having criticised non-government—not Labor Party—senators for missing the very same division which they have now fouled up. It is as simple as that. The opposition consistently applies the principle that the—

Senator Calvert interjecting—

Senator FAULKNER—You cannot count, that is true. That is becoming more and more clear. We have consistently applied the principle that the will of the Senate should be assured in divisions and that the vote should reflect the will of the Senate. For that reason, as far as the opposition is concerned, leave will be granted. Whether or not Senator Margetts and the Australian Democrats will be as generous as the opposition, I do not know—having received that lecture from Senator Hill about their responsibilities in the chamber.

I think we can put that down to hubris on the part of Senator Hill—a bit of sanctimonious hypocrisy at 22 minutes past 11 on a Thursday morning of the second-last sitting week. I suppose you can be forgiven, Senator Hill. We do not expect any more foul-ups from Senator Hill. We suggest that you sit down with your team, give them a lecture, tell them to come along to the divisions, and you would not have to put up with senators making the sorts of contributions that I have just made.

Senator HARRADINE (Tasmania) (11.23 a.m.)—by leave—Of course, this is an understandable error. It goes to the point that I have made before. One of the senators has been paired. In fact, there were 11 senators missing on the last occasion. One of the senators, Senator Troeth, is on very important business. She is able to get a pair, just as others are able to get a pair. It is all right for them; they do not have to come down to the

chamber. I do not know how much time we have spent in this chamber unproductively. I would have thought that each vote has taken at least seven minutes.

Senator Crowley—Eight.

Senator HARRADINE—Eight, is it? This is interfering with the very important work that a number of us have and which involves other people.

Senator Faulkner—It is what you are getting paid for.

Senator HARRADINE—I am talking about getting on top of legislation that is forthcoming and discussing matters with people outside this chamber.

Senator Faulkner—That is your job.

Senator HARRADINE—Of course it is my job. But you do not do it. You say that you give your people pairs when they have meetings with people outside this parliament. You say, 'Oh well, we'll get you a pair. We won't have you in here.' I do not have the ability to do that. Or are you going to be able to give me a pair?

Senator Faulkner—As I understand it, your consistent position is that you do not want that.

The CHAIRMAN—Order, Senator Faulkner!

Senator HARRADINE—I ask you, through the chair: would you give me a pair if I asked for it?

Senator Faulkner—I will tell you what we ought to do: if you want to ask me that question, if you make some sort of formal—

The CHAIRMAN—Senator Faulkner!

Senator HARRADINE—I am asking it publicly and I am asking the government publicly about that matter. I take this opportunity of asking that question publicly.

Senator Faulkner—How do we know how you are going to vote?

Senator HARRADINE—Because I will tell you beforehand. How do you know how your people are going to vote, because very often they don't know anything about the legislation?

Senator Faulkner—We have a caucus decision, you see.

The CHAIRMAN—Order! Senator Faulkner and Senator Harradine, please address the chair.

Senator HARRADINE—I come to a caucus decision, too.

The CHAIRMAN—Is leave granted to recommit opposition amendment No. 1? There being no objection, leave is granted. The question is that opposition amendment No. 1 on revised sheet 1185 be agreed to.

The committee divided. [11.31 a.m.]

(The Chairman—Senator S. M. West)

Ayes	34
Noes	33
Majority	1

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Evans, C. V.
Faulkner, J. P.	Forshaw, M. G.
Harradine, B.	Hogg, J.
Hutchins, S.	Lees, M. H.
Lundy, K.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.
Quirke, J. A.*	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Boswell, R. L. D.
Brownhill, D. G. C.	Calvert, P. H.
Campbell, I. G.	Coonan, H.*
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Heffernan, W.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Lightfoot, P. R.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
Newman, J. M.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Payne, M. A.	Reid, M. E.
Synon, K. M.	Tambling, G. E. J.
Tierney, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Cook, P. F. S.	Chapman, H. G. P.
Denman, K. J.	Minchin, N. H.
Gibbs, B.	Troeth, J.
Mackay, S.	Alston, R. K. R.

*** denotes teller**

Question so resolved in the affirmative.

Senator BOLKUS (South Australia) (11.35 a.m.)—Opposition amendment No. 2 is essentially on the same topic. We have probably created history in this chamber this morning. We have not spent 1½ hours deliberating on an issue; we have actually spent 1½ hours voting on it. I hate to say this, Senator Hill, but this has been a bad week for you. You could not get the numbers in Kyoto and you could not get them here. In light of the fact that the previous Democrat amendment was passed, opposition amendment No. 2 becomes somewhat redundant, so we will not pursue it.

Senator ALLISON (Victoria) (11.35 a.m)—by leave—I move Democrat amendments Nos 5, 6, 7 and 8:

(5) Clause 10, page 11 (line 23), after "must", insert ", within 28 days".

(6) Clause 10, page 12 (line 12), omit "may", substitute "must, within 28 days".

(7) Clause 10, page 12 (line 26), after "Environment Minister", insert "within 28 days of receiving the recommendation".

(8) Clause 10, page 12 (line 28), omit "(if any)".

These amendments put a time frame on the reporting process and give, in each case, 28 days for each stage and ensure that those reports do not just sit on somebody's desk for a longer period. We would expect the government to be sympathetic to these amendments. The Environment Protection and Biodiversity Conservation Bill certainly has time constraints in it. The minister is required, within a short time frame, to see that decisions get through the bureaucracy. I think this is consistent with that bill.

Division required.

The bells having been rung—

Senator Hill—There may be no need for a division; we have reached agreement.

The CHAIRMAN—Is leave granted to call the division off? There being no objection, leave is granted.

Senator ALLISON (Victoria) (11.38 a.m.)—by leave—I amend my amendments by omitting '28 days' (wherever occurring) and substituting '60 days'.

Amendments, as amended, agreed to.

Senator BOLKUS (South Australia) (11.38 a.m.)—I move:

(3) Clause 10, page 12 (after line 32), at the end of the clause, add:

(8) Within 15 sitting days after receiving a report under subsection (6) or (7), the relevant Minister must cause a copy of the recommendations, comments and the report to be tabled in each House of the Parliament.

In the spirit of the agreement that was just reached, could I move this in a slightly amended form? What we seek to do here is to ensure some degree of accountability to the parliament by having the documents that are part of the process tabled in the parliament—not just the recommendations, but also the preceding report and the departmental secretary's comments in respect of that report.

The motion as proposed argues that, within 15 sitting days after receiving the report, the minister must cause a copy of the recommendations, comments and report to be tabled in each house of parliament. I seek leave to change that to 60 days as well to be consistent with the previous amendment that was accepted by the government.

As I say, there is a process that is embodied in clause 10 of the bill—that is, that a territory may report contraventions. Those contraventions, by way of a report from the state or territory, go to the environment secretary. He then gives written notice to the secretary of the department or the CEO of the authority setting out draft recommendations and asking for comments, asking for a response to those recommendations, and action is then taken or not taken as a consequence of that report and comments and recommendations. I probably do not need to explain it any further.

The TEMPORARY CHAIRMAN (Senator Watson)—Is it 60 days or 60 sitting days?

Senator BOLKUS—I did say 60 days, but 15 sitting days, or maybe even 30 sitting days if the government is prepared to accept that

sort of proposal. They may argue that 15 sitting days is too short—though, as the assistant clerk says, 'sitting days' basically gives us an extended regime. Can I reconsider on the run and suggest that we proceed with the proposal as circulated, 15 sitting days, but may I indicate to the government that, if they think we may need extra time, we are prepared to consider that.

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.41 a.m.)—I do not think it is a question of the number of days; it is rather a question of the principle. This has been structured so that it is a ministerial responsibility to consider the reports rather than a parliamentary responsibility. I do not really see why the recommendations and comments and report should be tabled.

I would ask Senator Bolkus to take into account the fact that there is an annual reporting requirement in the principal act. The business that is pursued thereunder will become part of the annual report and subject to the scrutiny of the parliament, but the need to do it at each stage in relation to a recommendation that is made would seem to me to be somewhat excessive.

Senator BOLKUS (South Australia) (11.42 a.m.)—It could very well develop into a situation where, between the actual offence or the activity taking place and the department reporting to parliament, you could have some 13, 14 or 15 months during which the activity could continue. We all know that heads of departments are busy people and quite often prioritise things. We do not want to be in a situation where, because of a report, because of a recommendation not being acted upon or not being sufficiently acted upon, or not being given sufficient priority, an activity which may be of concern to a state or a territory continues to drag on.

The offence or the pollution could be of a continuing nature and, as a consequence, we think it important that there be some sort of monitoring mechanism, some sort of public scrutiny capacity available to ensure not just that the parliament knows that this is happening, and that the parliament consequently has a capacity to address the issue, but also—as I found when I was a minister—that public officials comply with their obligations. The best way is to ensure that they are aware of the fact that, at the end of the day, their compliance or non-compliance is made public. If they know, for instance, that this has to be tabled within 15 sitting days, then you can be sure they will be much keener to resolve the issue than if they knew that they could wait for some 15 months for the annual report to be tabled in parliament. So they are the reasons for urgency that we think are important in having a much more immediate tabling process than waiting for an annual report.

Senator ALLISON (Victoria) (11.44 a.m.)—I indicate that the Democrats will support opposition amendment No. 3 and I foreshadow that we will withdraw Democrats amendment No. 9. I think this is an important amendment. It does promote transparency of government processes.

Question put:

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

The committee divided. [11.49 a.m.]

(The Chairman—Senator S. M. West)

Ayes	35
Noes	35
Majority	0

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Denman, K. J.*
Evans, C. V.	Forshaw, M. G.
Gibbs, B.	Harradine, B.
Hogg, J.	Hutchins, S.
Lees, M. H.	Lundy, K.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Murray, A.
O'Brien, K. W. K.	Quirke, J. A.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Stott Despoja, N.	West, S. M.
Woodley, J.	

NOES

Abetz, E.	Boswell, R. L. D.
Brownhill, D. G. C.	Calvert, P. H.

NOES

Campbell, I. G.	Colston, M. A.
Coonan, H.*	Crane, W.
Eggleston, A.	Ellison, C.
Ferguson, A. B.	Ferris, J.
Gibson, B. F.	Heffernan, W.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Lightfoot, P. R.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	Newman, J. M.
O'Chee, W. G.	Parer, W. R.
Patterson, K. C. L.	Payne, M. A.
Reid, M. E.	Synon, K. M.
Tambling, G. E. J.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Cook, P. F. S.	Chapman, H. G. P.
Faulkner, J. P.	Minchin, N. H.
Mackay, S.	Alston, R. K. R.

*** denotes teller**

Question so resolved in the negative.

Senator ALLISON (Victoria) (11.53 a.m.)—I move Democrat amendment No. 10:

(10) Clause 11, page 13 (line 17), omit "appropriate", substitute "improved".

This amendment aims to insert the word 'improved' processes rather than talking about 'appropriate' processes. We should not just have a decision based on a loose definition of what is 'appropriate', but we should agree that the Commonwealth action is 'improved'. We should be working towards a better regime rather than one which maintains the status quo—or goes backwards, presumably.

I would be surprised if the government could not support us on this. I imagine it, too, would like to see that, given that the object of the bill is to improve the situation in relation to pollution and the environment. So this amendment seeks to substitute the word 'improved' for 'appropriate' environment outcomes.

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.54 a.m.)—I will try to persuade Senator Allison that what she is proposing is not really 'appropriate'—to use the expression in the bill. Although the whole scheme is to provide for improved environmental protection, what this part is doing is, in effect, providing the circumstances when the measure—that is, the standard that has been determined by the Commonwealth and the states—will be implemented through Commonwealth rather than state processes. One of the tests is whether there is an alternative Commonwealth regime which will achieve the appropriate environmental outcome. The appropriate environmental outcome is the standard that has been agreed by the National Environment Protection Council.

So, in relation to a particular standard, it may not be an improvement in that it might be a standard that has already been adopted by the Commonwealth. It might be that the Commonwealth standard is a higher standard, for example—which happens in some instances. But the word 'appropriate' is designed to tie it to the measure that has been determined; whereas, if you talk about an 'improved' environmental outcome, as opposed to an 'appropriate' one, 'improved' is not a word that links it to the standard at all. So the scheme will achieve what Senator Allison is wanting, but to change this word can actually defeat the purpose of the scheme.

Senator ALLISON (Victoria) (11.56 a.m.)—Can I ask the minister, then, if we could have 'appropriate' as well as 'improved'? Would that solve the problem of losing the word 'appropriate'?

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.56 a.m.)—I do not think it will. As I just said, in some instances the Commonwealth might already be adhering to that standard. You will find within the scheme of the bill—if you read it in conjunction with the primary act—that what we are seeking to do is provide national environmental protection standards which will therefore lead to an improvement in environmental protection within the country as a whole.

Senator ALLISON (Victoria) (11.57 a.m.)—I accept what you are saying about the word 'appropriate'; but what is the harm in introducing the word 'improved'—just to reinforce the intention of the bill? I can see the argument for having the word 'appropriate' in there; but why not add 'improved' as well?

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.57 a.m.)—Because, as I just said, it may not be 'improved', because the Commonwealth may already be implementing such a standard. You might have said to me that 'appropriate' is not necessarily the most elegant expression of what we are seeking to achieve. You may have said that wording such as 'achieved the environmental outcome specified in the NEPM'—the national environment protection measure—might have been a better way of expressing it. But that is what 'appropriate' is intended to mean, and that is what this provision seeks to do.

Senator BOLKUS (South Australia) (11.58 a.m.)—Mr Temporary Chairman, we also have problems with the Democrat amendment because of—amongst other reasons—the one mentioned by the minister.

I wonder whether Senator Allison would like to consider the invitation of Senator Hill to put to him another set of words—being the words that he just put to you. In other words, would Senator Allison consider Senator Hill's suggestion and, if she would, then maybe we can come to an agreement on that?

Senator ALLISON (Victoria) (11.58 a.m.)—Yes, I would be happy to do that, Mr Temporary Chair. I did not keep a record of that form of words. Perhaps the minister could suggest them again?

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.59 a.m.)—Senator Allison might like to amend her amendment by deleting the words 'appropriate environmental outcomes' and substituting the words 'the environmental outcomes specified in the NEPM.'

Senator ALLISON (Victoria) (11.59 p.m.)—by leave—I amend my amendment to read as follows:

Clause 11, page 13 (line 17), omit "appropriate environmental outcome", substitute "the environmental outcome specified in the NEPM".

Amendment agreed to.

Senator ALLISON (Victoria) (Midday)—I move Democrats amendment No. 11:

(11) Clause 11, page 13 (line 22), at the end of subparagraph (ii), add ", having regard to the objects of this Act, the *National Environment Protection Council Act 1994* and the principles of ecologically sustainable development, as outlined in section 3."

This amendment seeks to link the legislation to its objects. I think that is always necessary. The government aspires to do this. Adding 'having regard to the objects' et cetera in this amendment to the reasons for administrative efficiency ties that section more closely to the objects.

Senator BOLKUS (South Australia) (Midday)—This amendment relates to opposition amendment No. 4 which was deferred earlier. We sought to delete altogether subclause (ii) of 11(1)(b) because we argued that this concept of administrative efficiency allowed the government an enormous loophole through which to exempt application of NEPMs. In a sense, we should also be deferring Democrats amendment No. 11 until Senator Hill has had an opportunity to reconsider the government's position in respect of opposition amendment No. 4, which was deferred earlier at his request.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.01 p.m.)—We might save time by the government ganging up with the Democrats in this instance and putting through the Democrats amendment instead of the opposition's. I have thought about it further, and I think Senator Bolkus's concern is misplaced. It can only occur when there is an alternative Commonwealth regime for implementation of the NEPM. Firstly, you have to have an alternative Commonwealth regime so you are not going to have a slippage, you are not going to lose as a result of it. Secondly, subparagraph (b) simply seeks to clarify the circumstances in which you would bring it in, and you would bring it in if there was an activity involving a specific matter of national interest or for administrative efficiency.

When you think about that, if it is administratively efficient to do it through the Commonwealth regime and the Commonwealth regime exists, then why not do it that way? Surely it amounts to sensible practice. I think that is the case, with respect, against the opposition's proposal. Whilst I regard the

words in the Democrats amendment as somewhat superfluous, I do not think they are fatal. If it would save time, I would be prepared to settle it on that basis.

Amendment agreed to.

The TEMPORARY CHAIRMAN (Senator Watson)—The question now is that opposition amendment No. 4 be agreed to.

Amendment not agreed to.

Senator BOLKUS (South Australia) (12.03 p.m.)—by leave—I move opposition amendments Nos 5, 6 and 7 together:

(5) Clause 11, page 13 (after line 26), at the end of the clause, add:

Declarations to be tabled

(3) Within 15 sitting days after making a declaration for the purposes of subsection (1), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

(6) Clause 12, page 14 (after line 20), after subclause (2), insert:

Declarations to be tabled

(2A) Within 15 sitting days after making a declaration for the purposes of paragraphs (1)(a) or (1)(b), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

(7) Clause 16, page 19 (after line 26), at the end of the clause, add:

Declarations to be tabled

(3) Within 15 sitting days after making a declaration for the purposes of subsection (1), the Minister must cause a copy of the declaration to be tabled in each House of the Parliament.

These are pretty simple amendments. In many ways, they do not increase the obligation on governments, because the documents which we want tabled are documents which would appear in the *Gazette*. We think it is important for the process of parliament, and also for recognising the importance of environmental concerns in the administration of government, that the declarations not only be gazetted but also be tabled within 15 sitting days. Amendments Nos 5, 6 and 7 basically ensure the tabling of declarations in each house of parliament.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.04 p.m.)—We would argue that if they are to be gazetted there is hardly any value in tabling them as well. They are gazetted, they are on the public record, and parliament is informed through that process. Parliamentarians are just as likely to read the *Gazette* as to read every document that is tabled in this place. I cannot see that any additional benefit would be gained from Senator Bolkus's amendments. We might get an indication of the position of the Democrats on this.

Senator ALLISON (Victoria) (12.05 p.m.)—We support these amendments.

Senator MARGETTS (Western Australia) (12.05 p.m.)—I am happy to support the extra accountability involved in these amendments.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.05 p.m.)—Now that we know that the numbers are pretty fine, we will accept it.

Amendments agreed to.

Senator ALLISON (Victoria) (12.06 p.m.)—by leave—I move Democrats amendments Nos 12 and 13 together. They read as follows:

(12) Clause 13, page 15 (lines 18 to 29), omit paragraphs (c), (d) and (e).

(13) Clause 13, page 16 (lines 3 to 26), omit subclauses (3), (4) and (5).

These amendments seek to make the point that pollution events are dealt with differently when it comes to the Commonwealth, and we do not believe that that should be the case. We acknowledge that this is a difficult area of law, but nonetheless we put these amendments forward because we basically believe that pollution is pollution, and it should make no difference whether it is caused by the Commonwealth or another body.

Senator BOLKUS (South Australia) (12.07 p.m.)—I ask Senator Allison to reconsider moving amendments Nos 12 and 13 together. The opposition cannot support Democrats amendment No. 13. We recognise that amendment No. 13 seeks to remove an exemption provision which basically only allows for regulations to be made when there are considerations relating to matters of national interest. We do not have as many problems with that as the Democrats do.

With respect to Democrat amendment No. 12, which goes to clause 13 on page 15, the Democrats essentially want to ensure continuation of state regimes with respect to the use of land, environmental impact and administrative review. Given the debate we had in this place on Wik native title and the government's long preaching to the parliament and the country about the use of land being in the domain of the states, it is quite ironic that we come here today and we see the government wanting to remove the application of state provisions as to the use of land in respect of the Commonwealth and its authorities. So I say to Senator Allison that we are prepared to support your amendment No. 12 but we are not prepared to support your amendment No. 13.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.09 p.m.)—We oppose this extra restriction that is being placed on the Commonwealth's use of its own land. There is within paragraph (c) an exception to the extent that the provision requires a licence, permit or other authorisation for the construction, alteration or demolition of a building or structure or for the installation, alteration or removal of any plant or equipment for the purposes of implementing a NEPM. We would have thought that that exception was adequate for Senator Allison's purposes. I am not really sure why she is seeking to impose this extra restraint on the Commonwealth.

The TEMPORARY CHAIRMAN (Senator Watson)—The question now is that Democrats amendment No. 12 be agreed to.

Amendment not agreed to.

(13) Clause 13, page 16 (lines 3 to 26), omit subclauses (3), (4) and (5).

The TEMPORARY CHAIRMAN (Senator Watson)—The question now is that Democrats amendment No. 13 be agreed to.

Amendment not agreed to.

Senator BOLKUS (South Australia) (12.11 p.m.)—by leave—I move opposition amendments Nos 8 and 9:

(8) Clause 17, page 20 (lines 5 to 12), omit paragraphs (a) and (b), substitute:

(a) a provision of a law of a State (other than an excluded State) or of a law of a Territory (other than an excluded Territory) is necessary for the implementation of an NEPM; and

(b) apart from this subsection, the provision would not apply to the carrying on of an activity by the Commonwealth or a particular Commonwealth authority;

(9) Clause 17, page 20 (lines 23 to 26), omit subclause (2).

What we seek to do here with opposition amendments Nos 8 and 9 is to delete the clauses that the government proposes in respect of the general application of state provisions and to replace them with the clauses that were present in the 1996 draft of the bill, the bill of the previous government.

Basically, what we are addressing here is the concern of both the New South Wales and Victorian governments, the EPAs of those two states, and of some members of the Senate committee on the legislation. For instance, the New South Wales government, in its submission to the Senate Environment, Recreation, Communications and the Arts Legislation Committee earlier this year, said:

> The bill appears to reflect a Commonwealth decision not to allow state laws to apply of their own force in accordance with Henderson's case but rather to set up an inconsistency between those laws and the Commonwealth law that will ensure, subject to Commonwealth law, that the Commonwealth law prevails.

There is concern in the states that the developments in the common law, particularly in Henderson's case, are being overridden by the government's provisions in respect of this particular clause. The concern is essentially, as the New South Wales government said, that the bill's various exclusions, often qualifications on the application of state laws to Commonwealth activities, give the Commonwealth great scope to pick and choose which, if any, state laws it will apply to Commonwealth activities. There is a risk that this will result in a piecemeal Commonwealth approach to implementation of NEPMs.

The concern there from New South Wales is that we are setting up a pick and choose regime contrary to and in fact curtailing the operation of the Commonwealth law. It is a

recipe for ad hoc decision making. It is not immediately clear from the legislation which parts of state legislation are implementing NEPMs. As I said, it was not only New South Wales but also Victoria and its EPA representatives who were concerned about this particular provision. What we would argue is that you allow a general application rather than by declaration of the state legislation, of course recognising that the Commonwealth has a myriad of measures through which to curtail such operation. The concerns raised by the two major states are important in this matter, and our amendment seeks to address those concerns.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.13 p.m.)—Senator Bolkus does put an alternative process, which was the previous Labor government's preference, and that is that the provisions would automatically apply. Our preference is that we do have this process of a declaration by the environment minister, so it would be on that basis that it would apply and the environment minister has got that responsibility to consider and make such a declaration. So there is quite a fundamental difference between the parties on this particular matter. I guess in some ways it also reflects a previous discussion we had, that we are in an evolutionary process with this bill in the extent to which the Commonwealth is now accepting that it be subject to state law. We think that the position of evolution that has been achieved to date is more appropriately covered by the declaration process that we have included within this bill. Again, I would say that, when the whole of the NEPC regime is reconsidered in 1999, it might be that we would be able to move on another step. But at the moment we think this is the right level.

Question put:

That the amendments be agreed to.

The committee divided. [12.18 p.m.]

(The Chairman—Senator S. M. West)

Ayes	34
Noes	35
Majority	1

AYES

Allison, L.	Bartlett, A. J. J.
Bishop, T. M.	Bolkus, N.
Bourne, V.	Brown, B.
Campbell, G.	Carr, K.
Collins, J. M. A.	Conroy, S.
Cooney, B.	Crossin, P. M.
Crowley, R. A.	Denman, K. J.
Evans, C. V.	Forshaw, M. G.
Gibbs, B.	Hogg, J.
Hutchins, S.	Lees, M. H.
Lundy, K.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Murray, A.	O'Brien, K. W. K.*
Quirke, J. A.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Stott Despoja, N.
West, S. M.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.*	Campbell, I. G.
Colston, M. A.	Coonan, H.
Crane, W.	Eggleston, A.
Ellison, C.	Ferguson, A. B.
Ferris, J.	Gibson, B. F.
Heffernan, W.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Lightfoot, P. R.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
O'Chee, W. G.	Parer, W. R.
Patterson, K. C. L.	Payne, M. A.
Reid, M. E.	Synon, K. M.
Tambling, G. E. J.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	

PAIRS

Cook, P. F. S.	Chapman, H. G. P.
Faulkner, J. P.	Minchin, N. H.
Mackay, S.	Newman, J. M.

*** denotes teller**

Question so resolved in the negative.

Senator BOLKUS (South Australia) (12.22 p.m.)—I move opposition amendment No. 10:

(10) Clause 18, page 23 (lines 1 to 5), omit subclause (5), substitute:

Matters to be taken into account in making regulations

(1) Regulations may only be made for the purposes of subsection (3) or (4) if the Governor-General in Council is satisfied that it is necessary to make the regulations because of considerations relating to:

(a) in respect of regulations for the purposes of subsection (3)—a matter of

national interest or an emergency situation; or

(b) in respect of regulations for the purposes of subsection (4)—a matter of national interest.

This amendment by the opposition is a simple one. In essence, it provides for regulations to be made by the Governor-General in Council, as opposed to the government's approach, which is essentially to have them made by the environment minister. The other difference between our amendment and the government's proposal is that in picking up the 1996 provision we also allow for regulations to be made under subclause 3 in emergency situations. So it does allow the government an extra capacity to make regulations in emergency situations but the price of that is it to demand that the regulations be made by the Governor-General in Council as opposed to the environment minister.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.23 p.m.)—I do not think it is a matter of great consequence but we would prefer the provision that we put in the bill, which is that regulations may be made only if the environment minister is first satisfied that it is desirable et cetera. That is within the scheme of the bill we are debating in which the environment minister has these various responsibilities. Why we would seek to pass that to the Governor-General in Council, when it got to this stage of the scheme, I do not quite understand. In other words, I do not think Senator Bolkus's alternative really adds a lot. I think what we have in the bill is rather consistent with the whole scheme, which is a scheme which does require certain responsibilities of the environment minister; and I think it is a better way to go. I would oppose Senator Bolkus's amendment on that basis.

Amendment not agreed to.

Senator ALLISON (Victoria) (12.24 p.m.)—by leave—I move Democrat amendments Nos 14 and 15:

(14) Clause 23, page 31 (line 4), omit "indefinitely or".

(15) Clause 23, page 31 (line 5), omit "either wherever the activity is carried on or".

Both these amendments seek to tighten the act and remove some of the discretionary power of the minister. For that reason, I commend them.

Senator BOLKUS (South Australia) (12.25 p.m.)—The opposition supports the amendments. The government's capacity that it calls for to indefinitely exempt itself from regulations in the state regime is something about which we have concerns, as is clause 23, page 31 which allows the government to exempt itself, in the words of the clause, 'wherever the activity is carried on'. We think this is a bit too broad and too much of an ask by the government. Senator Hill may consider accepting the amendments in the interests of progress of the debate.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.26 p.m.)—You could argue that (a) is probably not necessary and therefore in some way we are being constructive and helpful by including it and forcing those who are making regulations to address the issue of the time frame for those regulations. So I do not know that much would be gained by the Australian Democrats amendment in relation to (2)(a). In relation to (b), which is to delete the words 'either wherever the activity is carried on or', again I am not sure that the added restriction that is the effect of the Democrats amendment serves any useful purpose. So either I am missing the point or there is not a lot of merit within this amendment.

Amendments not agreed to.

Senator ALLISON (Victoria) (12.28 p.m.)—by leave—I move Democrat amendments Nos 16 to 18 and No. 20:

(16) Page 32 (after line 12), after clause 24, insert:

24A Environmental auditors

(1) Subject to sections 25 and 25A, the relevant Minister may appoint any person (the ***environmental auditor***) to carry out an environmental audit for the purposes of this Act.

(2) The regulations may make provision for the accreditation of environmental auditors.

(17) Page 32 (after line 20), after clause 25, insert:

25A Environmental auditor to be a fit and proper person

(1) A person must not be appointed as an environmental auditor unless the relevant Minister is satisfied that the person is a fit and proper person.

(2) In deciding whether a person is a fit and proper person, the relevant Minister must have regard to:

(a) any conviction of the person, or any body corporate of which the person is a director, for contravention of any Australian environment protection or related law; and

(b) any suspension or revocation of any licence or other authority held by the person, or any body corporate of which the person is a director, under any Australian environment protection or related law.

(3) A person's appointment as an environmental auditor must be revoked if:

(a) the person, or a body corporate of which the person is a director, is convicted for a contravention of any Australian environment protection or related law; or

(b) any licence or authority held by the person, or a body corporate of which the person is a director, under any Australian environment protection or related law is suspended or revoked.

(18) Clause 26, page 32 (line 22) to page 33 (line 6), omit subclause (1), substitute:

(1) The environmental audit for the purposes of the implementation of the NEPM is to consist of a periodic, documented evaluation of an activity or activities (including an evaluation of management practices, systems and plant) for either or both of the following purposes:

(a) to provide information to the person managing the activity or activities about compliance with legal requirements, codes of practice and relevant policies relating to the protection of the environment;

(b) to enable the person to determine whether the way the activity is carried on can be improved in order to protect the environment and to minimise waste.

(20) Clause 27, page 34 (line 6), at the end of subclause (1), add:

; and (c) a declaration signed by the Secretary of the relevant Department or the Chief Executive Officer of the relevant Commonwealth authority, as the case requires, certifying that officers of the Department or authority, as the case may be:

(i) have not knowingly provided any false or misleading information; and

(ii) have provided all relevant information;

to the environmental auditor.

These amendments allow for environmental auditors. Even these do not go as far as some state legislation does. They allow for independent people to become accredited to the auditors so there is some kind of tightened independent reporting mechanism. I think it is important that there are environment auditors who are accredited who seek and collect documentation and provide that in a reasonably short time frame. This is a way to ensure that the objects of the act are met and that it is not just an act that is a feel good and public relations tool, but one that is practical and actually works.

These amendments will also ensure that only the most appropriate people are appointed as auditors, and that would, I think, reflect community expectations as to the highest standard for environment protection. The Democrats believe that the community expectation is that environment offences are so serious that heavy action and strong disincentives are justified to try and prevent it occurring.

We note that the self-incrimination provision is strong and provides an indemnity. As is the usual sort of practice, it is modelled on other Commonwealth legislation, such as the Aboriginal Councils and Associations Act.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.31 p.m.)—We will agree to Nos 16 and 17 to shorten the debate.

Amendments Nos 16 and 17 agreed to.

The TEMPORARY CHAIRMAN—I put the question now in relation to Democrat amendments Nos 18 and 20.

Senator BOLKUS (South Australia) (12.31 p.m.)—The opposition does not support amendments Nos 18 and 20 either.

Amendments Nos 18 and 20 not agreed to.

Senator BOLKUS (South Australia) (12.31 p.m.)—I move opposition amendment No. 11:

(11) Clause 27, page 34 (after line 21), at the end of the clause, add:

(3) Within 15 sitting days after receiving a report under subsection (1), the Environment Minister must cause a copy of the conclusions of the report to be tabled in each House of the Parliament.

Opposition amendment No. 11 ensures that there is a degree of extra public scrutiny of the findings of the report of the environmental auditor. We need to maintain a necessary balance to ensure there is no breach of privilege against self-incrimination, for instance, but we do think a summary of the report should be tabled and would be tabled under our provision. I urge the government to consider accepting it.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.33 p.m.)—I think the administration has greater faith in the government than in the parliamentary process. I will defer to my advisers, because I am sure there is an added reason.

Following on from the environmental report there is an obligation for government. If government fails to meet that, it will become apparent from the annual report and the parliament will ultimately have the capacity to take whatever revenge that it considers appropriate. I do not think that this extra level of scrutiny that Senator Bolkus is seeking to apply is necessary when there is an obligation for the publishing of an annual report.

Senator BOLKUS (South Australia) (12.34 p.m.)—I remind the minister of a lot of the speeches he used to make in opposition on this particular point. I urge him to consider the obligation that we are looking at here in light of the reality of public life; that is, if you do not make them public yourself, then someone is going to leak them on you, with greater embarrassment to the politician as opposed to the bureaucrat. Maybe it would be appropriate for you to reconsider your position.

I think the distinction you made earlier was probably the right one: the bureaucracy has a great faith in itself to do things right in accordance with the way they would like to do them, but that is not always the way the public or the parliament would like to do it. So the extra level of scrutiny may, in fact, be appropriate.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.35 p.m.)—I think we have been very generous to the opposition during this debate. I think that we have considerably extended the role of the parliament in requiring the tabling of declarations and the like. I think the parliament will be very well informed on these matters, and therefore this is unnecessary.

Senator BOLKUS (South Australia) (12.35 p.m.)—I cannot let that go by without a response. The only way in which the government has been generous to the opposition this morning has been to allow us to vote four times on one particular provision. They have given us very little else than that.

Senator Hill—We lost.

Senator BOLKUS—And you lost at the end of the day, that is right. I think for the record we should acknowledge that we have actually gained little out of this process.

Amendment not agreed to.

Senator ALLISON (Victoria) (12.37 p.m.)—by leave—I move Democrats amendment No. 22:

(22) Clause 30, page 35 (line 17), at the end of subclause (1), add "and must have regard to the objects of this Act and the *National Environment Protection Council Act 1994*".

Amendment No. 22 ties the act back to its objects and the related legislation to make it very clear that management plans are part of and must be locked into the objects of the act.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.37 p.m.)—We will agree to No. 22.

Amendment agreed to.

The CHAIRMAN—We now move to Democrat amendment No. 23.

Amendment (by **Senator Allison**) proposed:

(23) Clause 30, page 36 (lines 1 and 2), omit "the implementation of", substitute "compliance with".

Senator BOLKUS (South Australia) (12.38 p.m.)—I don't think this amendment adds all

that much in terms of legal responsibility. 'Implementation' as opposed to 'compliance' has probably, in essence, about the same level of requirements. But I think 'compliance' sends a message from the Senate that that is the sort of level of response we are looking for.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.38 p.m.)—These are matters that are to be dealt with in the environment management plan. They are matters that must be included. We are debating subclause (g) which is the provision for monitoring and reporting on the implementation of the plan. The Democrats are seeking to omit 'implementation' and substitute 'compliance with'.

I respectfully suggest that what we are talking about is not a compliance regime. We are talking about what should be in the plan. What we accept should be in the plan are provisions for monitoring and reporting on the implementation. If you take out 'implementation' and put in 'compliance with', I do not think you are really achieving what we want; that is, that there must be provisions in the plan that do provide for monitoring and reporting on implementation in order that it can be assessed, and compliance really becomes a separate issue.

Senator ALLISON (Victoria) (12.40 p.m.)—I accept the minister's arguments on this. I wonder whether we can say 'reporting on the implementation and compliance with the plan'. I do not see a problem if 'implementation' remains and 'compliance with' is added, rather than being a substitute for 'implementation'.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.41 p.m.)—The problem is that it is not a compliance provision. We are talking about what must be included within the plan. It must be a provision that deals with monitoring and reporting, and then compliance really becomes a question of whether ultimately it is complied with.

Senator BOLKUS (South Australia) (12.41 p.m.)—I have been persuaded by the minister's argument on this as well. I think a more appropriate word would be 'implementation'.

Amendment not agreed to.

Senator BOLKUS (South Australia) (12.42 p.m.)—I move opposition amendment No. 12:

(12) Clause 31, page 37 (lines 4 to 9), omit all words after "last revised;", substitute:

the plan is to be revised for the purpose of giving effect as far as practicable to the NEPMs that apply to matters to which the plan relates.

In a sense this picks up the solution the minister provided to an earlier problem we had. We are revisiting here the 1996 bill, clause 27(2), and reinstating that approach by providing statutory guidance to the Office of the Environmental Manager so that his or her actions can fall within the objectives of the NEPM scheme. There is nothing extraneous to this other than basically providing guidance for the officer.

Senator Hill—I'd be interested in the Democrats' perspective on this one.

Senator ALLISON (Victoria) (12.42 p.m.)—We agree with this amendment. But I wonder if Senator Bolkus could comment on the possibility of taking out the phrase 'as far as practicable'.

Senator BOLKUS (South Australia) (12.42 p.m.)—I think that if you leave that phrase in or take it out, the end result will be the same in that people can only really approach this matter and achieve objectives as far as they actually do. So I don't know that deleting that phrase would be all that useful in trying to achieve the outcomes that Senator Allison would like to achieve. Basically, it is a recognition of the process and 'as far as practicable' is also encouragement to achieve, and to strive to achieve, the NEPM objectives.

Senator HILL (South Australia—Minister for the Environment and Heritage) (12.43 p.m.)—With the variation suggested by Senator Allison we would agree to the amendment.

Amendment, as amended, agreed to.

Senator ALLISON (Victoria) (12.44 p.m.)—I move Democrat amendment No. 24:

(24) Clause 32, page 39 (after line 4), at the end of the clause, add:

(6) For the purposes of this section, the Environment Minister may, after consultation with the Secretary of the relevant Department or the Chief Executive Officer of the relevant Commonwealth authority, direct any Department or Commonwealth authority:

(a) to do anything within the powers of the Department or Commonwealth authority which will, in the opinion of the Environment Minister, contribute to environment protection; or

(b) to cease doing anything which, in the opinion of the Environment Minister, is adversely affecting environment protection.

This amendment adds a power to the minister to direct any department to improve its performance and to be proactive. Fines go to industry, small business and individuals and we would argue that the Commonwealth should not only be a leader but also should be seen as a leader on this issue. We have put in 'may' instead of 'must', just for a change, and we think this will only add to the government's credibility and options on the environment. I would be interested in hearing from the minister, if he does not support this amendment, why that is the case.

Progress reported.

AGRICULTURE, FISHERIES AND FORESTRY LEGISLATION AMENDMENT BILL (No. 1) 1998

Second Reading

Debate resumed from 26 November, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator FORSHAW (New South Wales) (12.46 p.m.)—The opposition supports passage of the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998. The bill has two functions. Firstly, it repeals the Dried Vine Fruits Equalisation Act 1978 to end the equalisation of export returns received for dried vine fruits. With the repeal of that legislation, it continues the initiatives that were commenced by the previous Labor government back in 1991 which saw the equalisation for the domestic market abolished.

The second purpose of the legislation is to amend the Pig Industry Act 1986 and, in doing so, takes account of the fact that the Australian Food Council's Processed Meat Forum has replaced the National Meat Processor's Association as the representative body for meat processors. The act provides some changes to the selection process for the committee which makes recommendations to the minister with regard to membership of the Australian Pork Corporation. The current term of members of the board of the Australian Pork Corporation expires on 30 June 1999. The amendments contained in this legislation will allow for a new board to be formed by that date. The opposition supports passage of the bill.

Senator WOODLEY (Queensland) (12.48 p.m.)—The Democrats will be supporting the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998 because it is beneficial. However, it raises a lot of issues about the pork industry which the Democrats want to put on the record. I notice in the other place that also people were provoked to do that. The pork industry is haemorrhaging and still there has been no action from the government. In supporting this bill, the Democrats want to say that, while it does a couple of helpful things, there is an awful long way to go. The government must move much further than simply arranging a few changes to a few directors, et cetera.

Last week, the government released the report of the Productivity Commission which found that safeguard actions and industry assistance are warranted. The government released this report two weeks after receiving it. Now it is a week later and still we have heard nothing. I understand that the minister responsible is yet to meet with the pork industry to discuss the report. The Democrats certainly would urge him to do that as the highest priority. Although there are other commodities which all of us are concerned about at this time, this commodity is in crisis.

The pork industry has lost about $100 million this year and cannot hang on much longer. The industry and the Democrats are

anxious for meaningful discussions with the government. The pork producers are begging for prompt action. We are also aware that, according to some reports, the Canadian government is considering a package of assistance to its grain and pork industries of around $700 million. While it is not clear how much of that will be allocated to Canadian pork producers, clearly this sort of assistance puts to shame the $20 million allocated by this government to the Australian pork industry—very small bickies indeed. What I want to underline is the very point which this chamber has been aware of, that imports have been damaging this industry. People in the Labor Party and I have been saying this for many months; I am not sure whether the Labor Party have said it as strongly as I have. The Productivity Commission was in no doubt about that. In that report it said:

> The industry as a whole has lost market share to imports.

That is pretty clear. It continues:

> Pig prices have fallen significantly since October 1997 and in the June quarter of 1998 were well below production costs of many, probably most, pig farmers. Many pig producers reported losses for 1997-98. The Pork Council of Australia survey showed that for a sample of pig farmers profitability fell from 7.6 per cent return on capital in 1996-97 to a negative return of $3.5 per cent in 1997-98. These results are in contrast to variable but high profits relative to all agriculture in previous years.

The Productivity Commission went on to say:

> The Commission has examined a wide range of factors which may have contributed to the injury described above and has concluded that increased imports were the dominant cause of low pig prices and reduced profitability.

So it is quite clear. In fact, the commission said it was unable to find any other factor capable of explaining the large fall in demand for local pig meat and the consequent fall in pig meat prices since October 1997. I will not delay the Senate, but the Democrats were very concerned to note that, in supporting this bill, the government has an awfully long way to go in terms of this industry.

In conclusion, I put on the record the four-point rescue plan that both the pork industry and the Australian Democrats hope that the government might adopt: to immediately implement a quota on pork imports from Canada and Denmark until the Australian industry has recovered; to introduce a 10 per cent tariff on manufactured Canadian pork imports, which is legal and allowable under WTO provisions; to increase the pork industry assistance package to boost funds for researching export development opportunities and to implement a $4 million marketing program for Australian branded pork; and, finally, to use all upcoming trade forums to push for reciprocal access for Australian pork to overseas markets. If the government does these things, it will do a great service to a very great Australian primary industry.

Senator O'BRIEN (Tasmania) (12.54 p.m.)—There are many aspects of what Senator Woodley said with which the Labor Party agrees. Of course, we differ as to the emphasis that he would give to his actions in this area as against those of the Labor Party because, as I recall, it was the Labor Party which repeatedly drew to the attention of the Senate the plight of the pork industry, sometimes even to the annoyance of not only members of the government but also others who thought that there were other issues that ought to be given some precedence.

The fact is that we were able to draw to the attention of the Senate the plight of this industry, to the point that the Senate, including government senators, supported resolutions calling on the government to take action to investigate the harm that was being caused to this industry, which subsequently led to the Productivity Commission inquiry, late though it was, to which Senator Woodley referred. I acknowledge that we did that with the support of the Democrats and give all credit where credit is due in that regard.

The Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998, which deals with an administrative matter relating to the pork industry but not with the substance of their problems, is obviously a piece of legislation which will be passed by the parliament and therefore it means that some action is being taken by the government in relation to the pork industry.

This morning a motion was moved in the Senate which dealt with aspects of the Productivity Commission report referred to by Senator Woodley, and also urged the government to consider the timely implementation of measures that provide an effective short-term remedy for the serious injury that the Australian pork industry has suffered as a result of the matters mentioned in the Productivity Commission report. The Senate defeated that motion. The record of the division will show that the government and Senator Colston voted against the motion and it was lost on a tied vote.

So in terms of action, we have not progressed beyond the point at which we started—that is, this industry is in serious trouble. We do now know—it is an incontrovertible fact—that the trouble is caused by imports. That is what has been found by the Productivity Commission. I suspect that many people were doubtful as to whether the Productivity Commission would make that finding. Certainly, it was suggested by the government earlier this year that the damage being caused to the industry was caused by its own levels of production rather than by a problem with imports. We have now given that notion the attention it is due. We have come to the point where action is necessary and where we are still seeing a frustration of that action by the government.

The opposition, as Senator Forshaw said, will support this legislation. It is a great pity that we are not receiving support for matters which have a much more dramatic effect on the future of this industry. In that regard, I agree with the comments by Senator Woodley about the plight of the industry and the need for urgent action.

Senator TROETH (Victoria—Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry) (12.58 p.m.)—There are two aspects to the Agriculture, Fisheries and Forestry Legislation Amendment Bill (No. 1) 1998, as honourable senators have detailed. The repeal of the Dried Vine Fruits Equalisation Act 1978 removes the equalisation of export returns for dried vine fruits. That has the total support of industry and the government is pleased to recognise industry views on that. That will result in less industry regulation and will allow individual companies to realise benefits from innovation and marketing. The second act that is being dealt with in this legislation involves changes to the Pig Industry Act 1986. That will facilitate the operations of the pork industry through the activities of its marketing and promotion arm.

I point out to both Senator O'Brien and Senator Woodley that the government has acted on the perceived woes of the pork industry. So far, we have already given $19 million to the pork industry. The minister, as you know, is presently considering the action that he may take under the report of the Productivity Commission. I point out to Senator O'Brien that the $19 million goes some way towards facilitating export activities and, of course, the government is continually pressing, in every trade forum, for access to overseas markets for not only the pork industry but also the horticultural industry, the meat industry, the wheat industry and the wool industry. We will continue to do that at a multilateral level and at a bilateral level, as well as at the many forums which are held on that subject. So I say to Senator O'Brien: yes, we are doing that.

The government will be responding to the Productivity Commission report shortly. It deserves our direct consideration, and I assure you, Senator Woodley, it will be given due consideration. In spite of your remarks, the minister has considered the matter and realises that the Productivity Commission did not only speak about the remedies that you indicated; it also indicated that the woes of the pig industry were due to other factors. So you should not talk about the fact that tariffs or quotas are the only answer here. There are other answers, and we will be considering that in due course.

Senator Woodley is also right when he says that the minister does have many weighty matters to consider at the moment. I am sure honourable senators would agree that at the moment the wool industry needs due consideration and the wheat industry needs due consideration, as well as the pork industry. The minister will consider those in due

course. So I thank honourable senators for their consideration in passing this legislation and commend it to the Senate.

Question resolved in the affirmative.

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

TELECOMMUNICATIONS AMENDMENT BILL (No. 2) 1998

Second Reading

Debate resumed from 26 November, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator MARK BISHOP (Western Australia) (1.03 p.m.)—The Telecommunications Amendment Bill (No. 2) 1998 is very straightforward. The Telecommunications Act 1997 currently has a requirement for telecommunication carriers to notify the Commonwealth when a proposed activity affects a matter of Commonwealth environmental significance. At the time of its drafting, a sunset clause was inserted into the Telecommunications Act, because it was anticipated that this provision would be superseded by an identical provision in the Environment Protection and Biodiversity Conservation Bill 1998. The time plan has not come to pass. Hence it is necessary to extend the time periods in the Telecommunications Act. Accordingly, this bill extends the sunset provision from 1 January 1999 until 1 January 2001. It is hoped that the relevant environmental bill will have passed by that date. In terms of merit, the amending bill is a sensible extension of the sunset clause and will ensure that telecommunications carriers fulfil their environmental obligations to the Commonwealth. The bill is non-contentious and the opposition supports passage of the bill.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.04 p.m.)—I thank Senator Bishop for his contribution. It is not always that we agree, but on this occasion the government agrees with you. In order to facilitate the passage of the bill, I will have nothing further to say.

Question resolved in the affirmative.

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

1998 BUDGET MEASURES LEGISLATION AMENDMENT (SOCIAL SECURITY AND VETERANS' ENTITLEMENTS) BILL 1998

Second Reading

Debate resumed from 26 November, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator CHRIS EVANS (Western Australia) (1.06 p.m.)—The 1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998 contains a number of benefits for social security recipients and veterans. For that reason, the opposition will be supporting its passage. The bill makes it easier for self-funded retirees to qualify for the seniors health card. It removes the iniquitous two-thirds cap on rent assistance for people living in boarding or lodging houses, and it enhances foster families' entitlements for parenting payment and health care cards.

I turn first to the health care card and self-funded retirees. The bill makes it easier for self-funded retirees to qualify for and obtain a seniors health care card. At present, assessment of entitlements for self-funded retirees is based on a definition of ordinary income. Not many retirees are in receipt of maintenance income but the scope of the ordinary income definition is broad, and proving it has been found to be a somewhat complex and time consuming task. The bill would make application easier by basing entitlement on a new term 'adjusted taxable income'.

I am particularly pleased that the government's definition of adjusted taxable income includes not only income from foreign income and from net rental property loss but also the person's fringe benefit value for that year. It is an issue that I took up with Senator Newman in the debate on the Child Support Legislation Amendment Bill 1998 last week. I think it is very important that we have a broader definition of income and that we support this move to have income received in

the form of fringe benefits brought into the scope of the definition of income in the measures we are dealing with. As senators would be aware, there has been growth in this fringe benefits area, and I think it has resulted in some very serious problems and unfairness impacting on a range of measures in terms of government assistance. So I am very pleased to support that broadening of the definition.

Also, the government is seeking to ease the income test. Currently, the entitlement to the card is capped at $21,300 per annum for a single person; the bill raises that to $40,000 per annum. For couples, the bar is raised from $35,620 to $67,000. Federal and state Labor governments have played an important role in the past in initiating and developing senior cards programs, and we welcome the government's move here to extend the benefit to self-funded retirees.

In terms of rent assistance for people living in shared accommodation, the opposition was strongly opposed to the measure contained in the Howard government's first budget, which reduced by one-third the maximum rent assistance entitlement of single childless people sharing accommodation. We opposed it very strongly then as being an unfair measure and we are very pleased to see that the government has relented on that. We accept that shared accommodation may allow people to economise somewhat by pooling their expenses but for obvious reasons those economies of scale are only available to people in shared house types of arrangements and not to residents of boarding houses and hostels.

Labor welcomes this belated decision to exempt residents of boarding house type accommodation from the cap on rent assistance. We hope that they might choose to revisit some of the other areas where in the early Howard budgets such draconian measures were introduced. Maybe they should look to have a change of heart on some of those as well. Perhaps that may be a vain hope on my behalf.

In terms of the measures regarding foster families, we welcome the measures to enhance their entitlements for parenting payment and health care cards. Currently, a single foster carer will not qualify for parenting payment until the child has been in his or her care for 12 months. The bill would remove this waiting period which does not apply to couples who are foster carers. The opposition recognises the need to assist families who take on the expense of caring for foster children and sees no reason to discriminate against single carers, so we support this measure as being one based on equity.

The government also argues that currently families caring for a foster child do not qualify for health care and pensioner cards for that child unless they are entitled to the maximum rate of family allowance for that child. The government claims this bill will assist foster families whose incomes are too high to qualify for the maximum rate of family allowance by allowing them to qualify, nonetheless, for concession and health care cards, provided that the foster child was entitled to these cards when he or she was in the care of the original family.

While we support the measure, the opposition is concerned as to whether or not the bill achieves what the government claims for it. As I say, we support the intent of the measure but we are not clear as to how the child rather than his or her parents becomes entitled to the card. We are not sure about the legal basis of this assertion that the child carries the right to the health care card and that this transfers over to the new family. So we would be keen on hearing from the government in responding to the debate an explanation as to how this works legally; how this entitlement to a health care card—which, as I understand it, is with the family—is somehow carried by the child to the foster family. As I say, while we do not have any difficulty with the concept, we do not understand how that is achieved by this bill and we would like some reassurance on that.

In conclusion, we support the modest increases and income support for foster families, the extension of the seniors health care card entitlements to self-funded retirees, and the government's backdown on its 1996 budget decision to cap the rent assistance payable to residents of boarding and lodging houses. We will be supporting the bill.

Senator BARTLETT (Queensland) (1.13 p.m.)—Today the Senate is debating a number of social security measures that were announced in the 1998-99 budget. I am pleased to say that, unlike some social security legislation, all the measures before us today are positive ones that the government has put forward, and the Democrats will be supporting the Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998.

Nonetheless, I would like to make a few comments about each of these measures and the context surrounding them, because it is a very important area of social policy, and I think it is important to raise the surrounding issues whenever the opportunity arises.

The first schedule of this bill, as Senator Evans has outlined, will relax the eligibility requirements for the Commonwealth's seniors health card and will also simplify the application procedure for the card, which is actually quite important. At the moment, the seniors health card is provided to people over pension age whose income is below the pension cut-out points but whose assets, or lack of residency, preclude them from an age pension. It is a very valuable card. It provides holders with concessional pharmaceuticals under the Pharmaceutical Benefit Scheme, which means that cardholders pay $3.20 per script for the first 52 prescriptions in a year and any PBS scripts after that are provided free of charge. It is clear that is something of great significance to many people.

The two changes to the current arrangements that the bill makes raise the income limits on the card to $40,000 for singles and $67,000 for couples, and the income test will be based on an assessment of a person's taxable income. That is a change from the assessment of a person's current income which has been criticised as being both overly complex and overly intrusive. So, in the future, rather than having to provide detailed evidence of all their investments and income, most people will now simply need to show a copy of their latest tax assessment notice.

The Democrats very much welcome moves to simplify the application process for the seniors health care card. We have received numerous letters in our offices from people who have been concerned about the detailed and complicated nature of the forms and the sort of information that is required. An issue that I and the Democrats have raised many times is the need for the forms used by Centrelink to be as simple and as clear as possible. We would like to see this principle applied more widely wherever possible. We urge the government to give further attention to this measure in relation to other application forms.

On the issue of concession cards in general, it is worth noting that the House of Representatives Standing Committee on Family and Community Affairs presented a report to the parliament in October last year which looked at the availability and benefits of the various concession cards. That committee looked specifically at the seniors health care card and canvassed a number of options for extending eligibility. In the end, the committee's recommendation was for the income test to be increased to $29,000 for singles and $49,000 for couples, and that was costed at $13½ million per year. Clearly, the government's proposal goes well beyond that recommendation, costing close to three times that amount—about an additional $40 million per year.

Whilst the Democrats are not opposing this measure and welcome it, we would nonetheless make the comment that there are a number of areas in the social security portfolio more broadly that are crying out for additional support, such as the level of payments to single pensioners, to sole parents and to the unemployed. In terms of concessions, we believe the government should also give further attention to looking to extend some, if not all, of the pensioner concessions to unemployed people and to widows. There is a wide range of concessions that are available only to people on pensions and not to people on other forms of payments, allowances and the like.

Having said that, however, I do want to acknowledge very clearly the valuable contribution that Australia's self-funded retirees make in terms of relieving pressure on the public purse by providing for their own

retirement. The government—not surprisingly and quite rightly when people such as myself get up here and talk about the need to extend concessions and various other levels of payments—points to the impact on the public purse. That is obviously something that has to be taken into consideration. That again reinforces the value of all activity by people in the community that reduces the pressure on the public purse and enables more funds to be made available to meet needs out in the community.

For this reason, independent retirees must be encouraged to continue providing for themselves, and not, as has happened in the past, be penalised by our social security and taxation systems. Certainly, that is one issue that I will be looking at closely in the course of the valuable, extensive and much needed Senate committee's inquiry into the proposed new tax system. If people see no benefit in putting aside funds during their working lives to provide for their retirement, then, in the end, the burden on taxpayers to fund our pension system will simply be unsustainable. Of course, this is ever more critical in light of our ageing population. It is essential that there be incentives for people to plan for their retirement. This measure will play a valuable role by providing such an incentive.

The Democrats are happy to see that additional support being provided to our independent retirees, and we congratulate some of those groups out in the community on their efforts in securing this measure; groups such as the National Seniors, the Association of Independent Retirees and the Australian Pensioners and Superannuants Federation, who have been fairly tireless in campaigning for the need for measures such as this. It is important to recognise the value of the work that they do when positive outcomes are achieved through the parliament.

Turning to schedule 2 of the bill, this schedule will partly reverse the decision made by the government back in its 1996 budget. That was a budget that took $1.4 billion out of the social security portfolio. The decision taken by the government in that budget was that the maximum rate of rent assistance payable to single people who share accommodation would be reduced by 33⅓ per cent—a reduction of around $25 a fortnight. Again, it is not hard to imagine what impact that measure had on the budgets of many thousands of people who were already living on an extremely tight budget.

The government argued that this was justified on the basis that single people reap economies of scale by sharing their accommodation. The Democrats opposed this measure quite strongly, and still do, on a number of grounds—the most important being, firstly, that people, particularly young people, are often forced to share accommodation because their social security payments are already below the poverty line. Secondly, the rent assistance scheme already takes account of economies of scale by making lower payments to those who pay less rent. Finally, while people sharing accommodation may achieve economies of scale other than rental costs, reducing rent assistance to account for those savings is not appropriate as rent assistance is not intended to meet non-housing costs.

Unfortunately, despite these concerns and the Democrats' opposition, the legislation was passed and has been in operation for over 12 months. The bill before us today seeks to soften the impact of that legislation in one small area by rectifying a defect in the exemption for boarders and lodgers.

Shortly after the original legislation was passed, a copy of a letter to the Prime Minister was reproduced in ACOSS's newsletter. It was from a person who lived in a rooming house. Hopefully, their position will be corrected by this bill before us. I think it is worthwhile to quote briefly from that letter simply as a way of illustrating the real impact on people of some of the measures that we consider in the parliament. It is easy to look at these things in terms of overall budgetary savings or costs, and it is appropriate that we do so, but it is equally appropriate that we do not forget the real impact on real people.

In this letter to Mr Howard in which this person outlined his circumstances, he stated:

> I am one (presumably of thousands), on Newstart Allowance, who can only afford to rent accommodation in a rooming house.

Prior to the initial reduction in payment, the maximum fortnightly benefit he received was $396.30 a fortnight.

The massive reduction (in poverty-level terms) has lowered this to $371.30 . . .

The explanation given was that the person was now sharing accommodation. That was certainly not so.

As with people generally who are forced to rent cheap rooming house accommodation, this person did not have the convenience of a private bathroom. He was forced to use shower cubicles and toilets situated at the other side of a large rooming house. Because his individual accommodation lacked the convenience of any bathroom facilities, he was apparently to be penalised by over 30 per cent in rent assistance. And, he said:

I defy anyone either to justify that morally or to offer a rational explanation.

To quote him again:

. . . my rent now absorbs about 65 per cent of my income and I'm now left only about $65 per week in disposable income.

He also makes the point that this is a fraction of a politician's typical daily travel allowance claim, which I believe it is, and he has to live for a week on it.

It is important, I think, to emphasise the reality that many thousands of people have to live with. The man who wrote that letter has now had to endure a $25 per fortnight reduction in his social security payment for the privilege of having to go around to the other side of his building every time he wants to have a shower or go to the toilet. For all this time, he has been $25 a fortnight worse off under a policy which the government now concedes was unjust.

Now the government quite rightly would claim, and has claimed, that it has heard the concerns of such people and is moving to rectify the situation. Certainly, positive moves should be acknowledged and congratulated, but—

Senator Chris Evans—We did tell them at the time.

Senator BARTLETT—As I was about to say, it does remain the case that the situation should never have happened in the first place. It cannot be claimed that the inclusion of such people in this way was inadvertent. Concerns were raised, not only by eloquent people such as myself and someone else in the ALP—I do not know if it was Senator Evans—but also by people in the community, about the community affairs committee that considered the legislation. National Shelter provided an extensive submission and pointed out this very problem.

There has been a lot of debate in this place in recent times about the value or otherwise of the Senate committee process, legislative review, et cetera. Whilst I do not deny the role of political manoeuvring in those things, that should not disguise the fact that the committees do do proper scrutiny of legislation and do provide an opportunity for people in the community to highlight their concerns based on their experience, their knowledge and their expertise—which are far in excess of what most of us have in many cases—so as to make these decisions about legislation.

It is very important that the process of legislative scrutiny through committees be taken account of by all of us, including the government, so that some of these issues which the government now says are inadvertent are addressed at the time, rather than having someone whose letter I quoted from enduring a $25 per fortnight cut for 12 to 18 months before the situation is reversed. Nonetheless, it is always good to have a reversal of a bad decision, and that should always be acknowledged and congratulated because it is not always easy to say, 'We got it wrong.' All of us should be more willing to do that.

The whole issue of rent assistance and housing affordability is of major concern in the community. Last year the community affairs committee presented the Senate with its report on housing affordability in Australia. Evidence given to that committee by the Department of Social Security showed that 39 per cent of all rent assistance recipients are spending more than 30 per cent of their total income on rent. In Sydney, the proportion of such people is over 50 per cent, here in the ACT it is about 45 per cent, and in my home town of Brisbane it is just on 40 per cent.

These are very large numbers of people who are spending quite huge amounts of their total income just on paying rent. The Democrats believe, in the context of those figures, the government should be looking to provide far greater support through the rent assistance program than is currently the case. The figures should also be taken into account in terms of the federal responsibility that the government has in housing areas, and the current continual consideration of the Commonwealth-State Housing Agreement.

In conclusion on this measure, it is important once again not to forget that, even after this legislation is passed and this improvement is included, there will still be a very large number of people who are being unfairly disadvantaged because of the shared renters measure. The Democrats still very much believe the whole measure needs to be overturned, and we believe the government needs to consider again the very negative impact this has on many people in the community, particularly young people.

Finally, on a more positive note, I want to congratulate the government, without qualification for once, for the measures contained in schedule 3 of this bill. The schedule will remove the 12-month waiting period which applies to single foster carers when they apply for parenting payment and will make the health care card available to more people caring for a foster child. Foster carers are another group in our community who play a very valuable role but seldom receive the recognition they deserve, and it is important to take opportunities such as this to voice that recognition. The Democrats fully support these two measures which will assist those who play such a vital role in the raising of some of our young people.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.28 p.m.)—I would like to thank all honourable senators for their contribution to the debate on the 1998 Budget Measures Legislation Amendment (Social Security and Veterans' Entitlements) Bill 1998 which will implement a number of the government's 1998 budget initiatives for the now family and community services portfolio, previously the social security portfolio. I would like to compliment Senator Newman on the bill because it addresses a number of issues that have been of concern.

One of the issues that I have been most interested in is the extending of the Commonwealth seniors health card to an additional 220,000 self-funded retirees of age pension age who are not receiving a pension because their assets are above the cut-off and whose taxable income is less than $40,000 for a single person and $67,000 for a couple.

I want to remind honourable senators that we inherited from the Labor Party the difficulty with eligibility for the Commonwealth seniors health card. I think a number of times when I was on the other side of the house I raised the difficulty facing people applying for the seniors health card, and that concern has been vindicated because the current take-up rate for the seniors health card is only 15 per cent of the estimated 240,000 people potentially eligible.

Cardholders and retiree groups have claimed that the reason the take-up was so low is that the application process for a seniors health card was far too complex and intrusive compared with the benefits received. Removal of the complexity and intrusiveness of the claim process is expected to increase the take-up of the card by 70 per cent of eligible customers.

That is a good news story. It is good news for older people, many of whom often try to reorganise their finances in order to get a health care card. This will enable many of them to do that. As Senator Bartlett said, many of them are people who have saved and been frugal in order to try to provide for themselves.

Senator Bartlett mentioned that he was concerned about the sustainability of our social security system, and he praised self-funded retirees for taking measures to look after themselves as best they could in their older years. If he is as concerned about the sustainability of our social security system as he claims today, then I would urge him to look very closely at the tax package that was introduced yesterday, because that is about

sustainability of our health care services, our social security services and other issues that we need to address in the long term and into the future so that young Australians now will inherit a social security system and a health care system which is affordable.

Another part of the bill contains the sharers rule. This measure will exempt single people who live in boarding houses, hostels, rooming houses and similar accommodation from the sharers rule in recognition that people living in these types of accommodation do not receive the advantages normally received by people living in shared accommodation. The government has listened to those concerns and has acted.

There has also been an extension of the access for fostered children to the health care card. This measure is aimed at encouraging people to foster children by extending the access of fostered children to the health care card. A health care card will be available to foster carers who receive family allowance and who do not normally qualify for the health care card provided that the child being fostered was eligible for a health care card or a pensioner concession card when they were with their original family. It is expected that this measure will benefit about 4,400 foster children.

With regard to the concern that Senator Evans expressed about the issuing of the card, the issuing of the card is an administrative rather than legislative process. Therefore, it can be directed to the child. The concern that he raised is answered by that—it is an administrative process of deciding that the child is eligible for the card.

The other beneficial measurement in this bill is aligning the parenting payment for all foster carers. This is a further measure aimed at encouraging people to foster children, by removing an inequity in access to parenting payment currently existing in the legislation between single and partnered people. It is expected that around 900 single foster carers will benefit from the abolition of the 12-month waiting period.

This is a good news bill and I have much pleasure in commending it to the Senate. I thank honourable senators for their contribution to the debate.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator CHRIS EVANS (Western Australia) (1.34 p.m.)—I do not wish to delay the committee, but I would like to clarify a point with the parliamentary secretary. As I understand it, you are saying that it is an administrative decision to grant the child a health card. The department can decide that a foster child living with a family that does not qualify for the card can have a card, based on the child's previous entitlement. But as the previous entitlement was not based on the child but on the family, how do you determine which children have that entitlement now? It seems that you are saying that there will be two categories. There will be families with foster children who are not entitled by virtue of their income position to have a card. You are now going to have two categories of people determined by the child's previous circumstances. So it is not a question of the child's current circumstances but the previous circumstances of the child. I want to know how that will work and what the rationale for that is.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.35 p.m.)—Senator Evans, I have been advised—I suppose it would be a less likely circumstance, but probable—that when a child coming from a family which is not eligible for a card moves into a foster family which would be more likely to take the child if the child had a card—a low income foster family—an administrative arrangement can be put in place so that that child can have a card. If the child comes from a low income family it will come with the card. If the child comes from a higher income family and is moving into a low income family the department can make an administrative arrangement for the child to be given a health care card.

I have been further advised that there is no legislation in place to say who should be the

holder of a card. Therefore, it can be done administratively.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

SUPERANNUATION LEGISLATION AMENDMENT (RESOLUTION OF COMPLAINTS) BILL 1998

Second Reading

Debate resumed.

Senator CONROY (Victoria) (1.37 p.m.)—I rise to speak briefly on the Superannuation Legislation Amendment (Resolution of Complaints) Bill 1998 and to indicate the Labor Party's support for it. It is also appropriate to give a brief history for those here. In February 1997 the Federal Court gutted the SCT's dispute resolution power—that is, its power to make binding decisions. The court defined those decisions as quasi-judicial and therefore unconstitutional, as the SCT is only an administrative body. This caused severe disruption in the superannuation industry. Its immediate consequence was that 250 to 300 cases could not be resolved. The government appealed this decision and it is due for debate in the High Court reasonably soon, but no decision is expected until mid-1999. This bill is a stopgap measure to maintain an effective, fast and affordable dispute resolution mechanism. It is something that we support wholeheartedly.

On 31 July last year Justice Northrop further gutted the remaining powers of the SCT. The government indicated an appeal and that process took place. On 13 February of this year a full Federal Court upheld Justice Northrop's decision. On that day, 13 February 1998, the opposition gave a commitment to fast-track the legislative changes needed to reinstate the powers. Ten months later this bill is before us. It is still only an interim measure.

The government and Minister Hockey tried to make a big thing in the other place of the fact the Senate select committee had met with a round table of industry on 7 April and reported in July. Mr Hockey either was not told or was unaware that the government at no stage asked the Senate Select Committee on Superannuation to examine this issue. In fact, it steadfastly refused. This was an initiative of the committee itself, and in particular of the chair of that committee, Senator Watson. The government's seeking to cover its own slothfulness and inaction on this issue by pretending it had anything to do with the Senate select committee's decision needs to be corrected immediately. Those who prepared the information for Minister Hockey should send him a note to explain that that is what has happened.

What did the government do between 13 February and 7 April? It did nothing. As is typical of this government, it allowed the situation to drag on and on and it was only after the Senate select committee took a decision itself to try to resolve the issue so that we could get those 250 to 300 cases which are still hanging in limbo sorted out that it finally then decided to move ahead with this legislation. As we see, it is now 3 December. We want to see this bill passed speedily, but we want to make it absolutely clear so that the Senate is aware that the government had every opportunity prior to this to bring a bill before us. It chose not too. It stands condemned for being so lazy and intolerant in getting this issue resolved for a range of ordinary Australians.

Having said that, I repeat that the opposition is supporting the bill. We would like to see it implemented immediately. We are hopeful that the High Court challenge is successful.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.41 p.m.)—As has been pointed out, the Superannuation Legislation Amendment (Resolution of Complaints) Bill 1998 delivers on the government's ongoing commitment to ensure that superannuation fund members have access to an effective dispute resolution mechanism for superannuation complaints. I do not want to hold up the chamber on this

bill, but I would like to respond to the criticisms of Senator Conroy about the government's delay.

Kelvin Thomson said, 'This bill has been the victim of a history of government indecision and delay.' These are the facts. The Federal Court decisions were only handed down in February of this year. On 7 April 1998, the Senate referred the matter to the Senate Select Committee on Superannuation for inquiry and report. On 12 July 1998, the committee's report was tabled, recommending that the government investigate the feasibility of putting an interim solution in place. The parliament did not sit between then and the election. It resumed on 10 November and within three weeks of parliament sitting the legislation is now here in the chamber. When you look at it in that context the criticism that Senator Conroy has made is a little over the top.

Given that, let us move on with the bill. I thank Senator Conroy for his contribution—with tongue in cheek slightly—and thank the Senate for consideration of this bill.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator CONROY (Victoria) (1.43 p.m.)—I would very briefly like to respond to Senator Patterson. The key here is not how quickly or how many days were available after the Senate select committee produced its report. This is the key issue: what was the government doing with the offer from the opposition from 13 February this year through until July? It did nothing. It continues to try to perpetuate the myth that it had something to do with the Senate select committee. It did not ask this Senate. The committee initiated that process. The government did nothing. That is the key point—not how many days between when the Senate select committee brought its report down to today, but what the government was doing between 13 February and July when the parliament rose and did not sit again. That is the key issue, Senator Patterson. The answer is that the government did nothing.

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (1.44 p.m.)—To avoid delaying this bill any more and being subject to any more criticism, I suggest that the bill now be passed.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

ANTI-PERSONNEL MINES CONVENTION BILL 1998

Second Reading

Debate resumed from 30 November, on motion by **Senator Minchin**:

That this bill be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (1.45 p.m.)—This is the bill dealing with the convention on antipersonnel mines. The scourge of landmines has a horrific effect on some of the poorest people in the world. It is difficult to overstate the devastation that they have caused and continue to cause in regions as diverse as Asia, Africa and the Middle East. The Red Cross estimates that 120 million landmines are still lying in wait for their unwary victims. It is estimated that they will kill or maim around 2,000 people each month.

The opposition welcomes this bill. It is a long overdue measure which will finally ensure that Australia washes its hands of the dirty business of landmines. It follows Australia's signing of the Convention on the Prohibition of the Use, Stockpiling, Protection and Transfer of Anti-Personnel Mines and on their Destruction—that is, the Ottawa Convention—on 3 December 1997. Credit for the Ottawa Convention must go to tireless campaigners such as Sister Patricia Pak Poy and the various non-governmental organisations that maintained pressure on governments for the decade leading up to the signing. Australian agencies such as Austcare and Community

Aid Abroad can take pride in being part of this process.

One of the disappointments of Ottawa, however, is the failure of some of the key states to sign the convention. The United States, Russia, China, Israel, Egypt, India, Pakistan, North Korea, South Korea, Laos, Burma, Vietnam, Papua New Guinea and Singapore are among those not to have signed. Perhaps the most disappointing is the US, whose refusal to sign was due to a desire to maintain landmine use on the Korean Peninsula. I hope the government will maintain pressure on those nations that have not signed to encourage them to do so. One interim measure would be for these countries to at least agree not to transfer mines to other countries. It would be valuable if the government could exert some pressure on non-signatories to give such an assurance.

What effect will this bill have? To begin with, it will ensure that Australia destroys its stockpile of antipersonnel mines. This could have happened earlier. Labor first called for the unilateral destruction of the Australian stockpile in October 1996. In February this year, a bipartisan majority report of the parliament's Joint Standing Committee on Treaties recommended that we do so. If there ever was any justification for Australia maintaining antipersonnel mines, it no longer exists.

The bill will also make it an offence to, amongst other things, place, possess, develop, stockpile or transfer landmines—that is clause 7—and subsection (3) states:

> This does not apply to anything done by way of the mere participation in operations, exercises or other military activities conducted in combination with an armed force . . . not a party to the Convention.

That could be interpreted as a loophole. However, the Minister for Foreign Affairs has given a public clarification to the effect that the words 'mere participation' mean that this exemption will not protect Australian soldiers who actually engage in mine laying or other activities specifically prohibited by the convention. It would simply prevent them being convicted of an offence if they were part of a joint exercise where members of another armed force laid mines.

So do we now rest on our laurels? There is a clear temptation to do so, but it must be remembered that this legislation merely ensures that Australia does not participate in continued mine laying. It says nothing about the mines that are already out there. It is that problem to which I intend to devote the remainder of my remarks.

There are four main issues relating to Australia's involvement in mine removal. The first is that removing mines takes money. Quite how painstaking a process it is was brought home to me only when, in the course of preparing for these remarks, I saw a landmine for the first time. With your indulgence, Mr Acting Deputy President, I will hold up a replica of a small mine just seven centimetres across. It is designed simply to maim. I now hold up a replica of a larger version 11 centimetres across; it is made to kill. Both are light and almost entirely made of plastic. Honourable senators might wish them to be passed around the chamber. I am sure an attendant would do that.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—They are all replicas, aren't they?

Senator COOK—They are replicas. They are not live. They are made, as I said, almost entirely of plastic and senators can, I am sure, imagine how difficult it would be to sweep an area or an entire field for such mines.

The cost for those countries worst affected by mines is prohibitive. They can only continue to clear mines with substantial foreign aid grants. That is the first point. Secondly, over-reliance on foreign experts is undesirable. Whilst Australian aid is needed, the most efficient way to spend it may be simply by paying Australian salaries. As Professor James Trevelyn, head of the Community Liaison and Advisory Committee of the de-mining project of the University of Western Australia said:

> We have . . . learned that nearly every de-mining program is entirely dependent on foreign aid funding, and most rely heavily on expatriate experts who cost between $200,000 to $300,000 a year, and often stay only a few months. Local de-miners know more about the mine problem than foreign experts but have mostly been denied the formal education we all take for granted and have limited

fluency in English. Their views are suppressed, leading to frustration and resentment. The Afghanistan mine action program was set up predominantly by Australians and is now recognised as being the best in the world. Over 4,000 Afghans work in the program, yet only four or five expatriate experts are involved in a monitoring and advisory role, and they are mostly on long-term appointments. All the major de-mining organisations are staffed entirely by Afghans. The only long-term solution is to build local capacity to handle the problems, which means rebuilding the economies and training people.

I have to say this is a fundamental principle that should underlie Australia's overseas aid programs. The best solutions are those that involve the local people as much as possible.

The third point I make is that de-mining is an excellent way of spending money abroad. Mine clearing can make a dramatic difference to the lives of ordinary people. Those who are most at risk of mines are the rural poor forced by poverty into using mine affected land. For those people, mine clearing can transform their lives, giving them a sense of security in their environment that we in Australia take for granted.

My fourth point is that, where possible, we should involve the Australian armed forces in mine clearing. At present any army has some involvement with mine clearing. But this is hampered by the fact that the Department of Defence insists upon full cost recovery from AusAID for all de-mining activities. Such a demand is wrong for two reasons: firstly, it is not appropriate at a time when the Department of Defence continues to be quarantined from the sorts of budgetary cuts that our foreign aid budget has been subjected to and, secondly, involving our soldiers in mine clearing is a valuable step in creating a better army. As Mr Bill van Ree, who oversaw the Afghanistan mine action program, has pointed out:

> Australian Army staff have a well deserved reputation for excellence in mine clearance. They seem to have adapted to the challenge of working in this field gaining the support and respect of many working in the humanitarian aid sector, extremely difficult to achieve when you are a soldier . . .
>
> Most of the members involved see these projects as an extremely valuable training and staff development opportunity. Members have the opportunity to develop contaminated area clearance skills and a broader understanding on the employment and eradication of landmines. They are exposed to opportunities to develop skills in battlefield analysis and exposure to countries in our region of strategic importance. We have the opportunity to make a very valuable contribution to mine action and development of our own army.

In short, Labor applauds the money that has been devoted to mine clearing, but we would make three requests. The first request is that the government establish a consultative committee of non-governmental organisations to advise on how best to spend the money allocated to mine clearing. These organisations are experienced. They have representatives in mine affected areas. The government should draw on their expertise in planning its own de-mining program.

The second request is that the government provide to this chamber some further detail about the way in which it intends to spend the $100 million that has been allocated to mine clearing between now and the year 2005. In the other place, Mr Edwards asked the Minister for Foreign Affairs a series of questions about this expenditure. Mr Downer did not give any satisfactory answer to those questions. I therefore repeat them now:

> In relation to the $100 million, I would be appreciative if the minister in his response could give the House details of the following: (1) the proposed expenditure of the remaining money; (2) a breakdown of the money already spent; (3) in which department or departments will budgeted moneys be held; (4) what amounts will be budgeted on a yearly basis up to the year 2005; (5) who will decide how much, and where, the money will be spent, and against what criteria; and (6) if any, what part of the $100 million will be by way of resource rather than financial support?

My third request is that the government abandon the policy of demanding full cost recovery from AusAID for mine clearing operations carried out by the Australian armed forces and investigate the possibility of expanding such operations in the future.

This bill is a significant move toward a world free of landmines. But we must remember that it is only one phase and plenty of work lies ahead of us. I support the bill.

Debate (on motion by **Senator Patterson**) adjourned.

Sitting suspended from 1.58 p.m. to 2.00 p.m.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Minister for the Environment and Heritage)—by leave—Madam President—

Senator Murphy—Are you going to tell us Kempy is back?

Senator HILL—Yes, I am sure we would all like to welcome Senator Kemp back. Senator Minchin—

Senator Bolkus—He's in Kingston fixing the numbers; that's what he's doing.

Senator HILL—Senator Minchin is actually attending a family funeral and cannot be here today. I have advised other parties who will be taking his questions.

QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Sporting Activities

Senator WEST—My question is directed to the minister representing the Minister for Sport and Tourism. Can the minister confirm that under the GST all Australians will, for the first time, pay tax—an extra 10 per cent—when they register to play sport, when their kids go to little athletics on a Saturday morning, and when they pay the membership subscription of the under-10 netball league? Can the minister confirm that cricket and football fans will, for the first time, have to pay the federal government an extra 10 per cent of the ticket price to go and watch their favourite game, whether it be a test or the local reserves? Will they have to pay the GST when they want to go and watch a soccer match, a basketball game, a race meeting, or simply take the kids to the swimming pool at the weekend?

Senator IAN MACDONALD—What is going to be fairly obvious to all of those families with children who involve themselves in sport is that they are going to have a hell of a lot more money in their pockets with which to do things. The Labor way is to tax people, because they think governments know best when it comes to what we should do with our money. The Liberal way is that we want to have enough money to run essential services but we want to allow people to be masters of their own destiny. We want families to decide what they want to do with their money, which sport they want their children to become involved in and how they want their children to be brought up in this world. That is the major difference between us and the socialist thinkers opposite. They believe governments know best. We believe individual families know what is best for them and their children. That is one of the things that will happen with our tax reform proposals.

Opposition senators interjecting—

Senator IAN MACDONALD—Why don't you get with it? Why don't you come up to date? Why don't you stop your Eastern European style of class warfare, your old Eastern European—

The PRESIDENT—Senator Macdonald—

Senator IAN MACDONALD—Even the Eastern Europeans have gone beyond you.

The PRESIDENT—Senator West, on a supplementary question?

Senator IAN MACDONALD—Madam President—

The PRESIDENT—I was trying to call you to order, but you went on.

Senator IAN MACDONALD—Am I to continue?

The PRESIDENT—No. First I wanted to draw your attention to the fact that you were addressing your remarks directly across the chamber, which is not in order, and secondly I wanted to draw the chamber's attention to the fact that there is far too much noise. Yesterday I received many complaints about the volume of noise in the chamber and the difficulty that people had in hearing on both television and radio. I think senators should have some regard for that fact.

Senator IAN MACDONALD—Madam President, I apologise for being distracted by those opposite. I find it very hard to hear as well because members of the Labor Party continually shout and yell. They do not want to hear the good news for Australians. They want to drown us out. They want to drown out, for those that might be listening or

viewing this, the great news for Australians. When I get distracted it is because members of the Labor Party, who are worse than the old-time Eastern Europeans, simply do not like the good news.

I was saying that the details of the government's historic tax reform plans were released in a very comprehensive policy document prior to the election. The Australian people, in their wisdom, returned the government with a mandate to implement our tax reform package. As I go around Australia people say to me, 'You people won the election. Some of us didn't even vote for you, but you have the mandate. Why don't you implement it?'

Senator Cook—Madam President, I raise a point of order and it goes to relevance. Three questions were asked and none of them have been answered. There are 90 seconds left on the clock, which means 30 seconds per question. I do not think Senator Macdonald is going to do it but, Madam President, I think it would be proper to direct him to try to answer the questions that were put. They are about what real Australians will have to pay under a GST when attending sporting events in this nation.

The PRESIDENT—It is not for me to debate it, but it is my impression that Senator Macdonald is answering the question and what he is saying is relevant.

Senator IAN MACDONALD—Thank you, Madam President. Senator Cook should be aware that, when families and their children buy sporting goods, they will no longer pay Labor's wholesale sales tax. That will go. What is the sales tax on racquets and sporting equipment? Can someone tell me? Is it 22 per cent? Is it 32? I do not know. It is your tax; you should know what it is. You imposed that on families. The Labor Party imposed those taxes on young children and on families—people who wanted their children to participate in sport. The Labor Party continued and increased wholesale sales taxes.

The details of our tax reform package were introduced into the House of Representatives yesterday. There will be every opportunity for all honourable senators to canvass the details during the parliamentary debate. I remind them now that the wholesale sales tax that Labor imposed on all sporting equipment impacted heavily on families, particularly parents with young children. Under our policy, that will go.

Senator WEST—Madam President, I ask a supplementary question. Considering how important sport is to the health and wellbeing of Australians, how does the government justify as 'fair' placing a new 10 per cent tax on every sporting activity from swimming lessons to club membership fees? Isn't it the case that the government's proposed GST will mean that it will cost all Australians 10 per cent more to enjoy sport, whether it be as a participant or as a spectator?

Senator IAN MACDONALD—That is a repeat of the old Labor lies we saw during the election campaign—10 per cent on everything. Just lies! And the people that know that more than anyone are the Labor Party. Why they perpetuate these lies, I do not know. Every family will have so much more money in their pockets with which to send their children to sporting events. Senator West says we are imposing 10 per cent on the purchase of a tennis ball or a football or a cricket bat. Senator West, tell me what the wholesale sales tax was on them under your policy. It was 22 per cent on a tennis ball.

Senator Chris Evans—You know about telling porkies. That's why you had three years on the back bench. You have public form.

Senator Lundy—You tell us what you do about your tax.

The PRESIDENT—Order! There is so much shouting over there that I am having difficulty hearing what is being said. It is absolutely in breach of the standing orders and is totally unacceptable—and totally unacceptable for people who are trying to listen, which they are entitled to do.

Senator IAN MACDONALD—Those people listening will want to hear that under Labor there was a 22 per cent wholesale sales tax on a tennis ball. Under us there will be a 10 per cent GST. That is the saving for those people, Senator West, and I just hope you will

support us to make sure those costs fall. *(Time expired)*

Economy: Growth

Senator SANDY MACDONALD—My question is to Assistant Treasurer, Senator Kemp. Minister, it has been three decades since Australia enjoyed a combination of record low interest rates and a high growth rate. How does this economic performance compare with that of our trading partners and our regional friends? Further, are you aware of any alternative policy proposals which could achieve a similar outcome?

Senator George Campbell—Welcome back, Kotter.

Senator KEMP—Thank you to the colleagues that were kind enough to welcome me back. The voices were thin on the other side, I must admit, but it was good to hear it all the same. It has to be said that yesterday in this parliament we heard a wonderful conjunction of good news on the economy. The coalition has always had strong policies to create a healthier and more viable economy. Yesterday showed just how successful the coalition government has been. I repeat: yesterday, as the Prime Minister said, was a golden day, and it showed just how successful the coalition has been. Yesterday's national accounts showed our economy grew by five per cent in the 12 months to September. This growth, I think it is true to say, is the envy of the region and probably the whole world.

Honourable senators interjecting—

The PRESIDENT—Order! There are two senators shouting at each other across the chamber, and that is unacceptable.

Senator KEMP—Three-year growth in the US was around 3½ per cent. Contrast this with Australia, at five per cent; France and Germany, some 2½ per cent; Canada, 2.3 per cent; New Zealand, minus 1.2 per cent; and Japan, minus 1.8 per cent. In other words, the growth performance in the Australian economy was quite outstanding. Not surprisingly—and Senator George Campbell will welcome this—we have created 170,000 jobs in the 10 months to October, and almost 400,000 since coming to office in March 1996. The unemployment rate in October was 7.7 per cent. This is the lowest it has been for about eight years—again, an excellent performance, and one which I think would be welcomed by all sides of this parliament. We have also brought home mortgage rates and small business rates to their lowest levels in 30 years. Yesterday we saw a further cut in official interest rates.

Senator Conroy—There are new increases in fees and charges coming in. They have to go up again, do they?

Senator KEMP—Senator Conroy is coming out. I don't recall Senator Conroy ever apologising for the interest rates which rose to 17 per cent under Labor, in contrast with this government where mortgage interest rates are now at their record low levels. We have got the budget back in the black—an excellent performance. It is back in surplus, and we are actually repaying government debt. Of course, it was the Beazley government which saw debt blowing out. As journalist Terry McCrann said today, Peter Costello and Ian Macfarlane can justly claim credit for an extraordinarily good performance by the Australian economy over the past year. He went on to say:

> . . . and thinking Australians can breathe a big sigh of relief that Kim Beazley and his assorted policy vandals did not sneak into government at the election.

The strong growth in the economy and the cut in official interest rates yesterday was unquestionably good news. Madam President, there are some alternative proposals and, if there is a supplementary question, I might be able to expand on those.

Senator SANDY MACDONALD—Madam President, I ask a supplementary question. I did actually ask in my initial question what alternative policy proposals would achieve a similar outcome but, Minister, what else can the government do to improve our economic performance?

Senator KEMP—I think the best thing we can do is to keep Labor out of office. Frankly, we have done very successfully in two elections, and that will be concentrating our minds as we go towards a third election. But what are the alternatives? I think one way to do this is to draw the Senate's attention to an

article by the Electrical Trades Union Victorian State Secretary, Dean Mighell. He pointed out that Labor's real problems must be identified and addressed in a meaningful way that delivers long-term benefits. He criticised the absence of policy, the lack of leadership in the Labor Party and the politics of self-serving pollies who have seen the party's 'integrity and democratic processes collapse'. This is probably one that Senator Conroy would be interested in. Senator Conroy, you have had a bad question time so far. He goes on to say this:

Victorian trade unions have led the attack on the lack of democracy and corruption in stackings that have come to dominate the Labor Party in Victoria.

(Time expired)

Goods and Services Tax: Sporting Clubs

Senator CROWLEY—My question is addressed to Senator Ian Macdonald, answering on behalf of the Minister representing the Minister for Sport and Tourism. Why is the government forcing every local sports club in the country to register as a tax collector, and every club administrator to keep complex and detailed information in order to comply with GST requirements? Does the minister understand this will cause severe difficulties for local non-profit sporting organisations, and is more than likely to see a dramatic fall in the number of volunteers assisting those clubs? Is the minister aware that, when the GST was introduced in Canada, the Sporting Federation of Canada had to issue a code for implementing a GST for sporting clubs that was more than 80 pages long? Is this the same scenario facing Australia's local community sporting clubs?

Senator IAN MACDONALD—Most of the premise on which Senator Crowley based that question is just inaccurate. Really, it does not warrant a response from me. Perhaps Senator Crowley does raise one thing of some interest when she refers to the Canadian tax system. That is why we did not adopt that. We adopted our own system—one that works, one that is fair for everyone and one that will reduce the costs for Australian businesses. Senator Crowley is talking about sports and people enjoying sports. As I said in response to the previous question, we are reducing the costs of participating in sports by cutting out Labor's 22 per cent wholesale sales tax.

Senator Lundy—Does that include entering the grounds?

Senator IAN MACDONALD—Obviously, Senator Lundy, you support that. You want young people to pay 22 per cent on all of their sporting goods. We do not want to do that. We want to reduce the cost and we want to give families some $40 to $50 a week extra in their pockets as a result of our tax reform package to enable them to spend it on which sporting event they want to.

Senator Jacinta Collins—That's rubbish.

Senator IAN MACDONALD—Senator Collins, with the $30 to $40 to $50 a week more that you have in your pocket you can go out and buy some more of that bubbly champagne that your lot put on on Melbourne Cup Day. All the way through, our tax reform package is good for Australians. Senator Crowley should be supporting it.

Senator CROWLEY—Madam President, I ask a supplementary question. It is interesting that the minister refers us to families who will be $40 to $50 better off per week, which certainly does not cover the majority of Australians, particularly those on low incomes who might also wish to participate in or visit sport. Will the minister acknowledge that, with the introduction of the GST in New Zealand, many local sporting clubs suffered and that there was a marked decline in volunteers and those affiliated with sporting bodies? What is the government going to do to soften the blow of the GST on our local sporting clubs?

Senator IAN MACDONALD—There is not much I can add to the answer I gave. As Senator Crowley knows, I am the Senate minister representing the Minister representing the Minister for Sport and Tourism, so I am not terribly familiar with what the New Zealand government said about sporting activities. You will forgive me for not knowing that. I can tell you what the New Zealand Local Government Association said about the GST on New Zealand councils. Mr Kerry Marshall, the president—

Senator Faulkner—Madam President, on a point of order—

Senator IAN MACDONALD—This hurts doesn't it.

The PRESIDENT—Senator Macdonald, that is not relevant to the question that was asked.

Senator Ian Campbell—Madam President, I raise a point of order. Local governments both in Australia and New Zealand have integral links with sporting associations; they run the grounds that sport is run on. It is entirely within the realms of a question that relates to the local impact of a goods and services tax on local government. Local governments are absolutely integral to sports on the ground in local communities. I think Senator Macdonald should continue with the answer.

The PRESIDENT—There is no point of order. I draw Senator Macdonald's attention to the question that was asked by Senator Crowley.

Senator IAN MACDONALD—That is a very good point and I thank Senator Ian Campbell for that. It does show how local government in Australia and New Zealand will benefit and have benefited. I was about to quote the New Zealand Local Government Association, which really said that they found no problem with their GST at all. Their system actually had a GST on rates; ours does not. Senator Crowley asks about the New Zealand tax system. I say to her that, in New Zealand, those people are now bemused by what we are going on about. *(Time expired)*

International Day of People with a Disability

Senator SYNON—My question is addressed to Senator Newman, the Minister for Family and Community Services. Today, 3 December, is the International Day of People with a Disability. Will the minister advise how the government is recognising this most significant day?

Senator NEWMAN—I thank Senator Synon for the interest that she has displayed with regard to people with disabilities in Australia. Today is a very important day. It is a day on which this country and the rest of the world celebrate the abilities of people who have disabilities. Earlier today, in the Great Hall of our parliament, we had a celebration. People came from all over Australia: those with disabilities, those from community organisations, those from business organisations and those from the businesses that have been employing people with disabilities. I think anybody who was there would say it was a pretty inspirational kind of occasion. The Prime Minister's awards were presented to the winners today. I am glad to tell the Senate that Benbro Electronics, from New South Wales, was the national winner of the small business category; HM Five Star Engines, in Victoria, was the winner of the big business category; the federal Department of Industry, Science and Resources won the Commonwealth government category; and South East Metropolitan College of TAFE, in Western Australia, won the higher education category.

It was a wonderful thing to hear the employers—who had, if you like, taken the step, who had the courage and were not fearful of taking people with disabilities into their work force—say how much it had benefited them as individuals and how much it had benefited their businesses, not only in terms of recognition in their own community of what they were doing to enhance and enrich the life of the community but also in terms of what good it was doing their business in a PR sense.

A number of people with disabilities were there with their employers to collect the awards. The nice thing to realise is that, since last year's awards, the number of nominations to this function was up by 20 per cent. I urge businesses all around this country to find out more about the Prime Minister's awards for employers in the category of employment of people with disabilities, because I think this thing can be quite catching. The people who are involved in it are very keen to encourage others to take part, too.

Many people are fearful of employing people with disabilities. They fear it will be a major dislocation of their work force—that it will limit productivity and things like that. But, in fact, those who have done it—those

who have found out how to do it, who have helped to train not only the people with disabilities but those co-workers who work with the people with disabilities—all sing the praises of the benefits to their organisation of taking that step.

I ask business people who may be listening to us today as they drive around in their cars or who may watch question time on the television in the middle of the night to take a leaf out of the book of those who are already doing it, and try it. It will give you enormous satisfaction. It will give a chance to people with disabilities to acquire job skills, to get confidence in themselves and to take a greater part in the life of their community. All of us, as Australians, can only wish for those good things to come from this international day and from the Prime Minister's awards. I am delighted that I had the honour to be part of that function. I hope that it goes on for many years to come and that all senators encourage people in their electorates to take part.

Goods and Services Tax: Transport Industry

Senator CROSSIN—My question is directed to the Minister for Regional Services, Territories and Local Government. Is the minister aware that the government's GST legislation directly disadvantages the operators and users of big trucks which carry produce and Australian-made goods into and out of regional and rural Australia? Why is the government applying a 10 per cent GST to the transport, loading or handling of goods within Australia, yet exempting the transport, loading or handling of goods which are imported? And why will someone who transports locally-made goods from Brisbane to Gympie get slugged with a GST, while someone who transports imported goods on the same route will not?

Senator IAN MACDONALD—Madam President, I am trying to tell the Labor Party that dorothy dixers are supposed to come from my side, not from their side. It is very clear: even the Labor Party should be able to understand that the 22 per cent wholesale sales tax on trucks, on small cars, on big cars, goes completely.

Senator Chris Evans—Big trucks?

Senator IAN MACDONALD—On big trucks, on small trucks—

Senator Conroy—Tyres?

Senator IAN MACDONALD—On tyres. You know the answer. Why do you keep asking me the same question?

Senator Hutchins interjecting—

Senator IAN MACDONALD—Truckies? Senator Hutchins, you are an old Transport Workers Union man, they tell me. You would know from the days you drove trucks just how expensive those tyres are.

Senator Ferguson—He probably never drove a truck!

Senator IAN MACDONALD—He never drove a truck? He was a transport union man and he never drove a truck? You are kidding—I do not believe that.

The PRESIDENT—Order! Senator Macdonald, you should direct your remarks to the chair, not across the chamber.

Senator IAN MACDONALD—I will say this about Senator Hutchins, though, Madam President: he did a tremendous job in getting himself elected and bringing Senator Faulkner over the line with him.

The 22 per cent wholesale sales tax goes; a 10 per cent GST comes on—but if it is used in business then the 10 per cent GST is rebated in full. Senator Crossin, you have a supplementary question. I would like you to explain to me what you meant in the question you just asked. You talked about trucks travelling from Brisbane to Gympie. Are you saying that if they are carting Australian goods the wholesale sales tax does not go off? Is that what you are saying? Or are you saying the 10 per cent goes on but that it is not rebated? I am afraid neither I, nor, I think, any of my colleagues can quite understand that.

If the truck is going from Brisbane to Gympie, it does not matter what it is carrying—the 22 per cent wholesale sales tax goes. If it is being used in business, the GST does not apply. Regardless of what the truck is carrying, the fuel goes down from 43c a litre excise to 18c a litre excise. So it comes down

25c a litre whether it is carrying wholesale sales tax free sporting goods or whether it is carrying champagne for the Labor Party Melbourne Cup day. Whatever it is doing, the price of fuel is 25c a litre cheaper. I cannot understand how you can then say that because it is carrying some sort of goods, it is more. You have a minute on the supplementary: can you perhaps elaborate on that?

Senator CROSSIN—Madam President, my question related to the transport of goods, not the cost of the truck or the cost of fuel. As a supplementary question, I ask: will the minister make representations to the Treasurer about the impact on rural and regional Australia, as is outlined in subdivision 38-I clause 355 of A New Tax System (Goods and Services Tax) Bill 1998?

Senator IAN MACDONALD—Madam President, again the Labor Party is beyond belief. Senator Crossin seems to be saying that the cost of taking a truck from Brisbane to Gympie is not the cost of transport. She said, 'It is not the cost of the truck I am talking about, it is the cost of transport.' What is the cost of a truck and what is the cost of fuel if it is not the cost of transport? I just cannot understand—it should be simple enough. It is simple enough for most Australians to understand. It seems to be beyond the understanding of Labor senators.

Great Barrier Reef: Prawn Trawling

Senator ALLISON—My question is to the Minister for the Environment and Heritage. I refer to the report of a five-year study of prawn trawling on the Great Barrier Reef. Can the minister confirm that the report of this study was to have been released a month ago but has been withheld by his office? Is it the case that the withholding of the report has allowed commercial fishing interests to claim that prawn trawling on the Great Barrier Reef does no damage? Is it not the case that the report is critical of trawling and that its principal finding is that repeated trawling removes most of the very biologically diverse marine life from the area? Will the minister release the report now and put a stop to the ill-advised continuation of prawn trawling in the Great Barrier Reef?

Senator HILL—As the honourable senator will know, commercial fishing in the Great Barrier Reef that is compatible with and does not harm the world heritage values is permitted. It is regulated through the Great Barrier Reef Marine Park Authority, in conjunction with state and Commonwealth fishing authorities. It is true that the CSIRO has done a study on trawling. I have been anxious for it to conclude the study for some time, because I think it is an important issue. The study has finally been concluded and the report has been delivered to me. Although I have read a fair bit about it in the press already, I will be releasing the report publicly, together with a preliminary statement of the government's response to it, in the very near future.

Goods and Services Tax: Dependants

Senator REYNOLDS—My question is addressed to Senator Newman, Minister for Family and Community Services. Is the minister aware of recent comments about the government's GST proposals by Professor Peter McDonald of the Australian National University? He said:

> . . . there is no compensation at all for the costs to parents of any child aged roughly 17 years and over despite the fact that nowadays a very high proportion of these young people are dependent or semi-dependent upon their parents.

Is Professor McDonald correct? If not, where is the compensation for such costs?

Senator NEWMAN—I have not seen Professor McDonald's comments. In fact, I think they seem ill-informed, but it may be the amount of what he said that you quoted. I do not know about that. He is certainly wrong in terms of compensation. The majority of parents in Australia with children of any age will get substantial tax cuts. They will not pay tax until their income reaches a higher level than it currently does. Where they have younger children in the family, they will have substantial increases in family payments and taper rates for their income. In addition, the assets test for family payments is being abolished in the tax reform package.

If those parents are on social security payments of any kind, they will also receive the compensation that I spoke about in an

answer in the Senate earlier in the week. They would certainly also like to get a private health insurance rebate of 30 per cent. That would make a big difference, particularly to a family which had older children facing sports injuries. Senator, I worry that, as I did not see this report, it may be that there was more to what he said than you have quoted but, if it is only as you stated, then I am afraid that he has not studied the tax reform package. That is a pity, because he is not accurately representing the situation.

Senator REYNOLDS—Madam President, I ask a supplementary question. Given that you have not read Professor McDonald's report, would you undertake to the Senate to actually read it and perhaps to communicate with him? He is well known in his field and I would be surprised if he has misunderstood, but if he has perhaps you could bring it to his attention after you have read his report?

Senator NEWMAN—I spend my days and my nights reading everything I can get my hands on, which happens to be a pile this high every day. I will certainly look at what the professor has reported. In a more general sense, both my office and my department are very busily engaged in consulting with people and organisations who have a close interest in the issues for which my department is responsible. No doubt Professor McDonald comes into that category. I know him from when he was in the Institute of Family Studies, and I know that he has a close and abiding interest in issues to do with Australia's families.

Family: Marriage Breakdown

Senator HARRADINE—My question is also to Senator Newman, Minister for Family and Community Services. I refer to a recent study by the National Centre for Economic Modelling which concluded that one in eight children are living in poverty, and that Australia's soaring rate of marriage breakdown is to blame in most cases. Is this not an enormous economic and social cost to Australia? Could the minister tell the Senate, in view of that, precisely what is being done by the government to uphold and promote the vital importance of flourishing and committed marriages to couples, to children and, indeed, to the whole society?

Senator NEWMAN—I thank Senator Harradine for his question. Nobody in this country with any concern for children in the present and for the future of our country would be happy with such a report. It is hard, as we all know, to determine exactly what the poverty level is in Australia, but I do not think this is the time for debating that.

Senator Carr—Do your best to answer it.

Senator NEWMAN—If you had any interest in the matter, Senator, you would know that different academics use different poverty lines. Some are accepted by their peers and some are not. The Labor government had a problem determining what was a fair reflection of the poverty line in Australia. Ever since the Henderson poverty line was introduced a couple of decades ago, people have been arguing about it. However, I do not want to spend my time on that.

I think the most important part of the question is, what is going to happen about this? What are we doing? First of all, this government, by the introduction of the tax reform package, is going to make a substantial difference to the wellbeing of Australia's families, because families with children will be in a very much better position in terms of when they start to pay tax and the rate at which they pay tax, and therefore the total amount of tax for which they are liable. In addition, the relationship between the family payments system and the tax system has been reformed so that many of the poverty traps are reduced and minimised and families can continue to earn more money and still get assistance from the Commonwealth taxpayer in terms of family payments. That is all desirable and necessary. This government is committed to it, and I urge the Senate to support that legislation when it comes before the parliament.

In addition to that, the Prime Minister's determination to put a focus on social policy, and in particular the wellbeing of Australia's families and Australian marriages, has meant that the Family and Community Services portfolio has been brought together so that there can be a holistic and an integrated approach to the needs of Australia's families. I find that welfare organisations like

Anglicare, Centacare, Community Mediation in our home state of Tasmania and other organisations that I have been discussing it with in these early days have been delighted that the government has this far-sighted approach to trying to do better at a national level for Australia's families with children.

The focus that I will be taking on this portfolio is to look very strongly, first of all, at the enrichment and encouragement of Australian marriages and, secondly, at the prevention of problems for Australia's marriages, by providing assistance to parents to help raise their children and to learn the skills that are needed to look after children. We certainly give a lot of skills to people who expect to drive a car, but we expect people to be able to raise children without any expertise or training at all. Then we get to crisis assistance, which is also needed to keep people, if possible, from the Family Court door. Having said all that, there still needs to be an ambulance at the bottom of the cliff. But the focus of this government is going to be a great deal more on the fence on the top of the cliff than it has been in the past.

Senator HARRADINE—Madam President, I am tempted to remind the Senate that marriage celebrants' services will be GST taxed.

Senator Boswell—What about the churches?

Senator HARRADINE—That is going back to Henry VIII's day, but more of that later. The minister mentioned the priority to be given by her department to the enrichment and encouragement of marriages. Could the minister, if not now then at some other stage, give us precise details of what is proposed, and particularly what is proposed in respect of schools and other organisations?

Senator NEWMAN—I thank Senator Harradine. That is very much the work I am engaged in at the moment. I am particularly concerned to see that we should be working to prevent a whole lot of social ills like domestic violence and child abuse rather than dealing with them simply when they occur, by working with children in schools to teach conflict resolution, that women are not there to be abused by men and that children too can learn to control their emotions. Those are important elements. That is what I am doing right now. I am not ready to announce the results of it, but you know that in the election we committed ourselves to more assistance to marriages and to more assistance to men and access to help for them. And can I remind you that religious marriage celebrants will not be GST taxed.

DISTINGUISHED VISITORS

The PRESIDENT—I draw the attention of honourable senators to the presence in the chamber of a parliamentary delegation from Japan led by Mr Yasumasa Kakuma. On behalf of honourable senators, I welcome you to the chamber and I trust that your visit to this country will be both informative and enjoyable.

Honourable senators—Hear, hear!

QUESTIONS WITHOUT NOTICE

Child Support Agency: Staff Identification

Senator JACINTA COLLINS—My question is to Senator Newman, the Minister for Family and Community Services. Can the minister confirm that Child Support Agency staff are being forced to give their surname to Child Support Agency clients regardless of what fear staff may have for their personal safety in regard to their dealings with disgruntled clients? Will the minister also confirm that agency staff who have refused to give their surname on the basis of such fears have been threatened with the sack?

Senator NEWMAN—I cannot confirm those at all. They are operational matters which are under the responsibility of Mr Truss, but I will certainly try to find out for you. Having said that, most citizens in this country expect to know the person that is serving them, and a great deal of frustration in dealing with big business or big government these days is because it is a faceless person or a nameless person. Where people might be endangered by having to give their names, that is a matter for management to determine. I can only say that I do not know the answer to your question and I will see what I can find out.

Senator JACINTA COLLINS—Madam President, I ask a supplementary question. I thank the minister for taking this issue on notice. Will the minister also take this opportunity to reassure CSA staff that they will not be forced to disclose their surname to clients when they are in fact in danger, and that alternative means of identification, such as the use of first name, team number or allocated staff number—common practices throughout business—will be used in its place?

Senator NEWMAN—I have already answered that, and I do not think there is anything I can add to it.

Drugs: Law Enforcement

Senator KNOWLES—My question is to the Minister for Justice, Senator Vanstone. The Democrat spokesman on Attorney-General's, justice and youth affairs, Senator Stott Despoja, has claimed that the government places far too much emphasis on law enforcement and its Tough on Drugs strategy. The Democrats urge harm minimisation and education strategies, as we do, but they say that we have got the balance wrong and that we place far too much emphasis on law enforcement. Minister, would you inform the Senate why the government has adopted a Tough on Drugs approach?

Senator VANSTONE—I thank Senator Knowles for her question. I think it should be agreed around this chamber—and I believe it is agreed around the chamber—that the problem of drug use is one of the most important issues confronting our community. I am sure that Labor, the Democrats and the Independents think that—I know the government does. It is one of the most serious problems we have. It is not a problem that the Commonwealth or state governments can tackle alone. We have decided to attack the drug problem on three fronts: stopping the importation of illegal drugs as much as we can; assisting those addicted to drugs with harm minimisation projects; and educating young Australians. That is a three-pronged strategy.

Labor, as I understand it, agrees with this strategy. I read Duncan Kerr's press release in which he pointed out that he agrees with those three things. If they have a disagreement, it is that they want more money spent on law enforcement. We have all heard and read of Senator Bolkus complaining about what he thinks is insufficient funding for the Federal Police, and presumably for other law enforcement agencies. So we have some agreement: we all agree on harm minimisation and we all agree on education. Labor and the Liberal and National parties all agree on the level of law enforcement—if anything, Labor wants more. But the Democrats say that the emphasis is far too much on law enforcement.

Those remarks do suggest that we should reduce the emphasis on law enforcement. Everyone knows that the Commonwealth law enforcement effort is aimed at drug traffickers and importers, not primarily at end-users. Everyone knows that. What are the Australian Democrats saying? It is a fair enough policy question. When you say the emphasis is too much on law enforcement, what are you saying? Are you saying that we should reduce the effort to tackle traffickers and importers and allow drugs to flood into the country? You cannot go around the country saying, 'There's too much emphasis on law enforcement,' and then say, 'Oh, no, I don't mean you're doing too much.' Remember that we all agree that education and harm minimisation is important. Neither Labor nor the government wants to reduce law enforcement. But Senator Stott Despoja says that we concentrate too much on law enforcement rather than on health issues.

This government is happy to be tough on drugs. If the Democrats want to go soft on drugs, that is entirely up to them. Under the Tough on Drugs initiative, this government has committed over $200 million, specifically targeted to a very well-balanced program. I think the Tough on Drugs initiative is the largest single commitment of any Australian government in the fight against drugs. Why is this so? It is because deaths by heroin overdose among Australian adults aged between 15 and 44 increased sixfold between 1979 and 1995. The effects of illicit drug use are enormous—to users and their families and loved ones through the personal cost involved, and to the community as a whole through

social disintegration, user marginalisation, and health, law enforcement and judicial costs.

We are not only tackling supply, but we do not walk away from the need to be tough on drugs in the supply area. We are funding to reduce the demand for drugs, and we are supporting harm minimisation approaches to those who need assistance. So we cannot go on having these people pretend that we have an unbalanced approach. We have a three-pronged approach. We all agree on harm minimisation. We all agree on the need for education. The only thing at issue here is Senator Stott Despoja's comment that there is far too much emphasis on law enforcement. We do not believe there is. *(Time expired)*

Senator KNOWLES—Madam President, I ask a supplementary question. Minister, you mentioned the three-pronged approach to tackling the illicit drug problem. Can you give more detail on the education and harm minimisation strategies adopted by the government?

Senator VANSTONE—If answers to supplementary questions could go for more than a minute, I could give more. I have just a few to refer to: the Schools Drug Education strategy, $7.4 million over three years for the provision of drug education in schools; the Community Partnership initiative, $4.8 million for funding community development of local drug prevention and education projects; the Community Education and Information campaign, $17.5 million to educate the community about the dangers of illicit drug use; and there is nearly $30 million available to reintegrate drug users into the community and to support front-line people such as GPs and hospital staff. So it is pretty clear that this government will always be tough on drugs, unlike the Democrats, who apparently only want education and only want harm minimisation and who say that we are putting too much money into law enforcement. We are not. We have the balance right; we will stay tough on drugs and they can stay soft on drugs.

Private Health Insurance: Industry Profits

Senator COONEY—I direct my question to Senator Herron, representing the Minister for Health and Aged Care. In forming its approach to private health insurance, has the government accepted the statement made in the Private Health Insurance Administration Council's annual report that health insurance funds took $300 million more from consumers in 1997-98 than in the previous year, and paid benefits to members which rose by $26 million over the same period?

Does the government accept that Mr Russell Schneider, the head of the Private Health Insurance Association, said on ABC radio last week that many millions of dollars raised through higher premiums in the last financial year went into reserves? Does the government accept that the annual report I have referred to shows that the total reserves were unchanged between 1997-98 and the previous year? Does the government agree that Mr Schneider's statement is different from that set out in the Private Health Insurance Administration Council's annual report? If so, has it sought to reconcile this difference and with what result? *(Time expired)*

Senator HERRON—I thank Senator Cooney for the question because it brings up a very important point in relation to the government's position on the health insurance rebate that we are putting forward, and which we took to the last election. I inform Senator Cooney that the government certainly accepts many statements that are made, particularly those of former senator Graham Richardson when he was before the Harkness health conference on 8 December 1993, which is relevant to the question he has just asked me. He said:

> But as every one of them pulls out—
>
> of private health insurance—
>
> the profile worsens for those left in, the sick obviously are going to stay in and so the premiums go up. More and more people get pushed out, as they get pushed out the premiums go up more. It just feeds on itself the whole time.
>
> And it is going to come to a crunch point for those low income people who are in private health insurance very soon. It just isn't far away. We can all sit back and let it happen and say it doesn't matter. The argument I've heard proffered is, it doesn't really matter if private medicine is not there we've still got a public system. But when you add millions of people into a public system which

is already showing some strain in some places, you'll get problems. To pretend that you won't is to ignore the obvious and whatever we're about we are not about ignoring the obvious.

Senator Cooney, it is very easy, as I said in an answer to a question from Senator Woodley the other day, to pluck a figure out of time anywhere in this debate and say that there is more money going out into reserves, or less money going out in reserves. As I also said in answer to a question the other day, if you take the 15 years of the program, there is no question that the private health insurance industry is running down—because more people are dropping out and there is a differential in terms of the older people who are in.

What about the low income people who have two jobs in struggle street—not like the people in bourgeois boulevard over there, the champagne drinkers, the two-income families which do not take out private health insurance but, if they get ill and have a conscience, may pay their way in private hospitals so they do not push out the low income earners—the two-income families which are just keeping their heads above water, the husband a taxi driver and the wife a shift worker, but who are trying to maintain their private health insurance? We are offering up to $750 rebate on private health insurance. The bourgeois boulevardiers over there will go and get into the public system, use their influence as politicians, if they have any, and push out the poor old pensioners who are on the waiting list in the public hospitals. There are 700,000 Australians on incomes of $20,000 or less a year who maintain private health insurance. I ask Senator Cooney and the Labor Party: as they represent a states house, what are they going to do about the 2.7 million people in New South Wales who have private health insurance who will vote at the next election?

Senator Chris Evans—Will you give your 800 bucks back, or will you pocket it?

The CHAIRMAN—Senator Evans, stop shouting.

Senator HERRON—The Labor Party is committing itself to permanent opposition. I should include the Democrats in this, too. I see they are down to four per cent.

The CHAIRMAN—Senator Herron, I draw your attention to the question that was asked by Senator Cooney.

Senator HERRON—Madam President, it is all related to private health insurance. Senator Cooney's question was about the Private Health Insurance Association and the insurance council's report—and I am replying to it.

Senator Chris Evans—That's to stop you justifying taking 800 bucks.

The CHAIRMAN—Senator Evans, stop shouting!

Senator HERRON—It is all related to the number of people in private health insurance. Senator Cooney took a snapshot of one year out of the 25 years that private health insurance has been opposed by the Labor Party. *(Time expired)*

Senator COONEY—Madam President, I ask a supplementary question. I thank Senator Herron for his answer, but it was not quite an answer to the question that I asked. On page 13 of the *Sydney Morning Herald* of 28 November there is an article by Lauren Martin, headed 'Health funds' income up $300m'. If you read that article, you would see the issue that I was putting to you. The issue was the contradiction between what the report says and what Russell Schneider says. There seems to be a discrepancy there of over a quarter of a billion dollars. All I wanted to know from you is whether you, as a government, are concerned about the discrepancy between what is reported in the Private Health Insurance Administration Council's annual report and what Mr Schneider says.

Senator HERRON—I have a great deal of respect for Mr Schneider. He has been involved in the health insurance industry for many years. If a discrepancy occurs, Senator Cooney, I would be more inclined to put my money on Mr Schneider than on a newspaper or a correspondent in that newspaper. But I do not want to comment on a discrepancy between those two people. What I am more concerned about is the 1.6 million people in Victoria, in Senator Cooney's own state, who have private health insurance and who will be very interested when it comes to the next

election in how the Labor Party and possibly the Democrats may oppose our health insurance rebate. The 1.2 million people in Queensland, the million people in Western Australia, the 650,000 people in South Australia, the 200,000 in Tasmania and the 52,000 people in the Northern Territory who are currently covered by private health insurance will be taking vengeance at the next election if the Labor Party and the Democrats do not support our proposal. *(Time expired)*

Airports: Privatisation

Senator WOODLEY—My question is addressed to the Minister representing the Minister for Transport and Regional Services. Minister, do you agree that competition should bring financial benefits to both consumers and industry? Do you agree that, during the debate in the Senate, one reason given by the government for the privatisation of our airports was that it would bring increased competition? Have you read the November issue of *Airline Views*, which reports:

> For the airlines, the outcome to date of airport privatisation relative to expectations, has been very disappointing—overall increases rather than reductions in costs. Given the thinness of margins in the industry, this is a situation that the airlines cannot accept.

Minister, is this report true and, if it is, how did the government get it so wrong?

Senator IAN MACDONALD—In answer to Senator Woodley's question as to whether I have read *Airline Views*: no, I have not.

Senator Boswell—Why not?

Senator IAN MACDONALD—I stand guilty. I am sorry; I have not read it, Senator Woodley, therefore I really cannot comment further on what you say. Yes, I do believe that competition should benefit both the consumers and the industry. Generally across the board in Australia, under the former government—surprisingly—and under our government, competition has been good for consumers and the industry.

I thought that when Senator Woodley rose to his feet I was going to get a question on regional affairs or regional services. I am almost beginning to think Senator Woodley must have accepted the admonition of his previous leader, Ms Kernot, who told him to keep out of the bush. It seems to me that you are keeping out of the bush, Senator Woodley. You should not take any notice now of the current Labor Party spokesman on regional affairs. Because I have not read that particular magazine, I cannot really comment further. It seems to be an important question, and I will certainly refer it to Mr Anderson to see if we can get you a serious answer.

Senator WOODLEY—Madam President, I ask a supplementary question. I thank the minister. I understand the problem that Senator Newman and you and I all have in reading all the material we get, but it is an important issue. One of the other issues that was in that report was the problem of air safety. Do you believe that increased costs to the airlines also have an ability to affect the maintenance of Australia's good air safety record?

Senator IAN MACDONALD—Airline safety is of paramount importance to all Australians—I think perhaps even more so to those of us in this particular chamber because we tend to be very big users. I know Mr Anderson has views on this. He is determined to make sure that our airways are as safe as possible and, really, cost should not come into account when people's lives are risk. Mr Anderson is, of course, advised by some very professional bodies within the department. I know that he adopts the view that the professionals in airline safety are the ones that really should determine these issues. He is, in all cases, guided by the professionals to ensure that our skies remain safe.

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Centrelink: Interview Review Forms

Senator NEWMAN—Yesterday, Senator Stott Despoja asked me a question about youth allowance. I have some additional information for her. In addition, Centrelink have just advised me that they are in the process of contacting all school principals and asking them to encourage young people to

return their review forms, even if the students have been advised that their youth allowance payment has stopped. As well, those students unable to complete the forms are able to ask Centrelink for an extension of time to return the form. I seek leave to incorporate a copy of the additional information.

Leave granted.

The information read as follows—

YOUTH ALLOWANCE END OF YEAR REVIEW PROCESS

Background

The purpose of the end of year review is to obtain from student customers details of their study intentions for 1999 and, for all dependent young people, their parental income details for the 1997/98 financial year. This information is required to ensure continuing eligibility and that the correct rate of payment is made. The parental income details set the rate of payment from 1 January 1999. Without this information customers may not be eligible for continued payment of Youth Allowance or Austudy.

Additionally, the review is critical to ensure young people under 18 maintain their eligibility by returning to education, undertaking training or some other activity as outlined in their Activity Agreement. Under legislation these agreements must be in place by 1 January 1999.

Reviews

Review forms were sent progressively from 5 October to 16 November. Like groups of customers were sent forms at set times during this period. Groups were given between 2 to 4 weeks to return the forms. Suspension of payment for non return occurred up to 2 weeks after the due date. Customers were asked to contact Centrelink should they have difficulty in completing the form and Centrelink has been giving extensions where warranted.

This end of year review process is new to students and some unemployed. Therefore, considerable effort was undertaken by Centrelink to ensure that customers were aware of the review and the consequences of not returning forms. This included:

. fliers and outreach to schools and tertiary institutions;

. local media releases;

. personal reminder letters and phone contacts in some areas; and

. delaying suspension of payment to allow for late return of forms.

Senator Stott Despoja referred to aspects of the review from an internal Centrelink memo. The figures contained in the memo were not quite accurate. In fact, of the 119,700 forms due to date 86,559 had been returned and 33,141 customers have had their payments suspended. Once payments are suspended, all customers are sent a letter explaining the reason. In most circumstances, payments can be restored promptly once the requested information is supplied by the customer, provided the customer still meets the eligibility criteria.

The Centrelink memo was to alert of officers to the poor response to the end of year reviews, the consequent cancellations and to encourage staff to help customers complete the form were possible.

Up to 2 December, a further 199,122 forms were due for return of which over 56% have been returned to date. With over 16,000 forms returned yesterday, and similar numbers expected today, suspension of payment for those who have not returned their forms will not occur until 4 December at the earliest.

For all groups Centrelink has delayed the suspension of payment beyond the due date to allow for the late return of forms.

Senator Stott Despoja also raised concerns over the content of the DETYA website regarding the end of year reviews. A check of the DETYA website has found no detailed reference to the review process but there is a link to the Centrelink site. Here customers are advised that their payments may be cancelled if they do not return their form by the due date. This terminology is used to allow customers with exceptional circumstances, who cannot complete their form and who have approached Centrelink, to not be cancelled on the due date. It also allows administrative flexibility in actioning the cancellation date. This flexibility has been utilised for this review to allow for late return of forms.

Senator Stott Despoja also raised the issue of the complexity of the forms. While the review forms seek detailed information from these customers and, in required instances from their parents, this is to ensure that Government assistance is directed to those in most need. Most customers have managed to complete and return their form by the due date.

PERSONAL EXPLANATIONS

Senator VANSTONE (South Australia—Minister for Justice and Customs)—I seek leave to make a brief personal explanation.

Leave granted.

Senator VANSTONE—I thank the Senate. Yesterday, Senator Stott Despoja made a number of assertions that in my view completely misrepresented me and my remarks in

question time. As a consequence of a number of things, including a press release issued today, I am confident that I have been misrepresented in the public arena, and I seek to correct the record. The senator was asked by me the day before yesterday two simple questions. As I understand it, as a consequence of that it is claimed that she is under personal attack. Perhaps she likes to play the victim—I do not know—but the facts are that she was simply asked two policy questions and that is all.

Senator Schacht—You were trying to smear her, Amanda, and you have no-one to blame but yourself.

The PRESIDENT—Order! Senator Schacht.

Senator VANSTONE—It is often the case that people under scrutiny claim to have been unfairly attacked, and perhaps that is why I was then attacked—because it is a neat diversion from the two questions. Nonetheless, let me deal with them as quickly as I can because we have all got other things to do. To ask two questions in this place is quite serious—to ask two questions in this place, not to make assertions.

Senator Schacht—It was your dorothy dixer.

The PRESIDENT—Senator Schacht, there is an appropriate time for you to make your contribution, and this is not it.

Opposition senators interjecting—

Senator VANSTONE—Not if you make an assertion or statement. If you simply ask two questions you can be accused of some sort of pointscoring—and even slander, in fact. They were two simple policy questions, and this is what they were—anyone can check the record for them. The first question was: if you think the government is giving too much emphasis to law enforcement, what law enforcement programs would you cut? The second question was: do you endorse the recreational use of illegal drugs? They are not political pointscoring; they are two simple policy questions that anybody seeking to influence public opinion and the government agenda on drugs should be prepared to answer. The most offensive misrepresentation made by Senator Stott Despoja is that, by asking these questions, I have somehow sought to limit rational debate.

Senator Chris Evans—You tried a low smear.

Opposition senators interjecting—

Senator VANSTONE—I know there are senators laughing on the other side because anything is of amusement to them. But if you take your job as a senator seriously—whether you are a backbencher, a parliamentary secretary, a minister or a shadow minister does not matter—you should be able to come into this place—

Senator Cook—Madam President, I raise a point of order. There are very clear rules in the standing orders about personal explanations. One of the things that is clear about them is that you should make the explanation and not engage in argument about it. We have had an attempt now for the last five minutes by the minister to engage in argument and not make the explanation. If we had known that, we would not have consented to the personal explanation. Madam President, she should be directed to stick to the standing orders, not engage in debate, make her explanation and then sit down.

Senator Schacht—That is dead right.

The PRESIDENT—I am happy to ask the minister to abide by the standing orders, but I would want senators on my left to do so also. Senator Vanstone, I draw your attention to the requirements of a personal explanation.

Senator VANSTONE—Yes. Madam President, I do appreciate that.

Senator Faulkner—Explain why you misled the Senate.

The PRESIDENT—Senator Faulkner!

Senator VANSTONE—What I have indicated is that the first misrepresentation is that Senator Stott Despoja was in some way slandered when she was not. The second misrepresentation is that by asking two simple, rational questions I was attempting to stifle rational debate.

Senator Schacht interjecting—

The PRESIDENT—Senator Schacht, I have spoken to you three times now.

Senator VANSTONE—To go back to what the senator said, if what is being claimed over there is that I need to show you what the senator said, I will. In her response she said:

> I thought that we had reached a point in the debate about the dangers of drug use and the impact of drug related harm and drug related deaths in our community where we encouraged people to speak openly and honestly about their views on this issue . . .

As it turns out, I actually agree with that—I thought we had got to that point—and that is why it was perfectly reasonable to ask Senator Stott Despoja two policy questions.

Senator Schacht—This is not a personal explanation. She is abusing the processes of the Senate.

Senator VANSTONE—She is trying to misrepresent to the public at large—and clearly to people here—that I have tried to in some way stifle debate, because she implies in her speech that she is not entitled to have an opinion. Of course she is entitled to have an opinion.

The PRESIDENT—Senator, that is getting away from a personal explanation. You are debating the issue.

Senator VANSTONE—I give the personal explanation that she has not been stifled in debate. She is entitled to her opinion. What she is not entitled to do is come in here and say that I do not believe that. She is not entitled to misrepresent my views. She is not entitled to come in here and say that somehow she has been misrepresented, when a question has simply been asked.

Senator Despoja in her explanation—or her attack as I would properly describe it—endorses the mainstream media for reporting without sensation the particular speech that was in question. She came in and said she thought the media did a good job. But she went on to accuse me of sensationalising and misrepresenting her speech. It is a very serious misrepresentation to say that a senator has come into this place and deliberately misrepresented the case to the community at large. That is what Senator Stott Despoja does, because she wants to come in and say that she is a victim, that she has been misrepresented. She should have done that, if that is what she wanted to say, not say that I had deliberately set out to misrepresent her position.

Furthermore, she misrepresents my position when she says that what I have tried to do is portray her as endorsing the recreational use of illegal drugs or, for that matter, as personally using drugs. That is the nub of Senator Stott Despoja's accusations. That is the nub of her misrepresentation against me because, by asking a policy question—whether she endorses the recreational use of drugs—I am not making an inference that she endorses them at all. I am simply asking a question. She makes that accusation, that misrepresentation, at least four times in her speech, Madam President. I invite you to go back to it. It is drawing one of the longest bows in history to say that, when a senator comes in and asks a question, the senator is in fact delivering an answer. There is a long way between a question and an answer.

My question was simply that: a question. I want to clear the record, because I know that Senator Stott Despoja's remarks have led people to believe that she was personally attacked and that there was an inference that someone was trying to say that she endorses the recreational use of illegal drugs or, for that matter, that she uses them. It was a simple question—both of them were. It was not loaded and there was no inference. The amazing thing is that we need not be wasting this time if Senator Stott Despoja had answered both questions, and in relation to the question whether she endorses the recreational use of illegal drugs she could have simply said no.

One of the final misrepresentations—because I am coming to the end of this—is that I have used young people as a political football. To say that to come in here and ask two simple questions, which can be answered calmly, plainly and rationally, is somehow using young people as a political football is an overstatement of the case, to say the least, and my response to that is: physician, heal thyself. Anyone who is in the chamber can read my remarks. They can judge for themselves what was said. The only parts of the answer that I gave on Tuesday which related

to the good senator were the two questions that I referred to then. I will not repeat them.

In conclusion, the senator was very happy, as I pointed out, to praise the media for their reporting of the speech that she gave. She has not been shy in the past to candidly discuss drug use with journalists, but all of a sudden to ask two questions in this place is portrayed as libel, slander and misrepresentation as if it is the end of the world. It is all very well for Senator Stott Despoja to come in here and claim that the media have asked her intrusive questions about what drugs she takes. I just want to clear the record. I have not asked her about her personal drug use and I certainly do not infer that she does use drugs. I have not even asked her about that. I have made no mention of her personally.

Senator Schacht—On a point of order, Madam President: how can she make a personal explanation saying that she was not asking Senator Stott Despoja a question? In question time she was answering her own dorothy dixer and then using that to ask a question rhetorically across the chamber of Senator Stott Despoja which was clearly out of order. You can't do that in question time.

The PRESIDENT—It is certainly my recollection that it was asked at question time but I am not certain of that; I will check the *Hansard* to be sure. But certainly questions were asked at a time when Senator Stott Despoja should not have been answering them and could not.

Senator Robert Ray—On a point of order, Madam President: it seems to me that Senator Vanstone should have asked leave to make a statement, not a personal explanation. I think we would have granted that. Then she could have explored these matters in slightly more detail, like she is doing. With a personal explanation, generally you have to keep very tightly to the subject and be brief. But with a personal statement or permission to make a statement, you can range over large areas. I think that is where some confusion exists in the chamber. You might like to take on board, Madam President, that that would have been a more appropriate procedure at this stage.

The PRESIDENT—It is a very long personal explanation, Senator Vanstone. Proceed if there is anything you need to add.

Senator VANSTONE—Just briefly, Madam President—and I am sorry for the interruptions from the other side that have occasioned me to sometimes come back and repeat things—in relation to the point of order, I can say to Senator Ray: I take your remarks on board in that respect, but I ask you to consider that some people actually do—

Senator Cook—You are now debating the point of order. Make the explanation and sit down.

The PRESIDENT—Order! Senator Cook!

Senator VANSTONE—I will do it by simply continuing to say that Senator Ray might like to focus on these remarks. Some people—I do—take particular offence at the suggestion being made that I have in some way deliberately slandered or libelled people. I have never done that in my life, and I take offence at that. It is a misrepresentation of my intent in this place.

Opposition senators interjecting—

Senator VANSTONE—I will try to ignore what they are saying over there, Madam President, and just finish. I note that Senator Despoja was offended at some questions apparently asked by the media. She does not blame me for that—she might blame me for asking her a question, but she did not mind, in the Democrat youth poll, asking other Australians whether they used ecstasy or speed. I notice that her answer was that she did not want to upset her mother.

The PRESIDENT—Senator, this is beyond a personal explanation.

Senator VANSTONE—Sorry, Madam President. The bottom line is that it is all very well for Senator Despoja to come in here and attack people, but, when she is asked a rational policy question, she throws up her hands and says, 'I'm a senator. You can't ask me a policy question.' That was an outrageous personal attack on me. It misrepresented the intent of those questions and I think, finally, I now have the answer to both of them. I wish she had given them straight away in the beginning.

Senator LEES (South Australia—Leader of the Australian Democrats) (3.16 p.m.)—I seek leave to take note of the statement that the minister has just given.

Leave granted.

Senator LEES—I find it quite extraordinary listening to the minister trying to dig herself out of the hole that she has managed to get herself into over the last couple of days. If I could ask for a matter to be dealt with up front, that is, Senator Stott Despoja would prefer to be referred to as 'Senator Stott Despoja' by Senator Vanstone in the future.

Senator Vanstone—What did I call her?

Senator LEES—You continued to use just 'Senator Despoja' and Senator Stott Despoja would prefer her full name to be used.

Senator Vanstone—I am sorry; I did not mean to do that.

Senator LEES—I want to say from the outset that I have found this entire episode quite disturbing. As a member of the Australian Parliamentary Group for Drug Law Reform, this has been an interest of mine since I came into this place and it certainly is a major interest as the Democrats health spokesperson. I found the media release the minister has just referred to as utterly unhelpful in the debate on drugs. It is something which, for a minister, I find highly inappropriate. I think it is a cheap shot at what she presumably believed was a publicly popular stance to get stuck into another senator because that senator dared to question the emphasis this government has on law enforcement.

Senator Vanstone—She was asked a question.

Senator LEES—You claim, Minister, that your Tough on Drugs strategy is working. I would argue that the evidence is demonstrably that it is an absolute failure. If we look at what the measurement should be, we see, in your own evidence, Minister, that deaths are increasing. I will begin by looking at some comments that other people have made about the recent seizures of drugs. I draw your attention to a statement in the *Herald Sun* on Wednesday, 25 November, from the Australian Federal Police Commissioner. He said:

Australia's biggest ever heroin haul had not dented local supply—

The PRESIDENT—Senator Lees, you are now straying beyond the statement that Senator Vanstone has made. You should be sticking to the statement that has been made in the Senate, not debating the issue generally.

Senator LEES—Madam President, I wish to highlight that the statement the minister made is completely inaccurate, that no-one agrees with her—no-one who has had experience in this area. Surely I should be entitled to quote the Federal Police Commissioner who says that the seizure that Senator Vanstone mentioned as being so successful, and an example of how the government's strategy is working, has had no impact on the availability of heroin on our streets and no impact on the price of the drug. There is no shortage. Indeed, the only thing that seizure indicates is that the size of what is now coming in is so huge that we are barely scratching the surface.

Senator Vanstone—So you would let it come in, would you?

Senator Faulkner—There you go again.

Senator Schacht—That's typical of you, Amanda.

The PRESIDENT—Order!

Senator LEES—I wish to acknowledge that interjection, Madam President, because I think it is a clear example of the minister's complete lack of understanding on this issue. Of course we are pleased with any seizure of any drug. What we are not pleased about is you trumpeting that as success, saying that your drug policy is a success, when more and more young Australians are dying of heroin overdoses on our streets. How you can come into this place and suggest that your strategy is effective is absolutely beyond me. Madam President, if I am not allowed to continue to quote, I will simply comment on the fact—

Senator Patterson—Madam President, you have already reminded the senator that she has strayed from the comments that Senator Vanstone was making, and it is the same issue that Senator Robert Ray raised earlier. I think Senator Lees ought to be drawn to

attend to the issues that Senator Vanstone raised so that we can get on with the business of the Senate.

Senator Schacht—She sought to make a statement.

Senator Faulkner—We are taking note of her statement.

The PRESIDENT—Order! The motion before the chair, moved by Senator Lees, is that she take note of the statement made by Senator Vanstone. There are debating issues that cannot come into that, but there are other issues that can.

Senator LEES—Madam President, in her statement, Senator Vanstone made mention of the number of deaths from heroin in this country, so I would like to focus on that for a moment. In 1994, there were 349 deaths; in 1995, 574; in 1996, up to 642. I draw the minister's attention to an article in today's *Herald Sun* where it talks specifically about deaths in Victoria. It says:

Police predict deaths from heroin overdoses will soar from 168 in 1996-97 up to 230 this year.

This was evidence given to a parliamentary committee by the Victorian police. So during the time of this government, when their strategy is supposedly working, the number of deaths is continuing to increase.

The PRESIDENT—Senator, that really is something that was outside the personal explanation made by Senator Vanstone.

Senator LEES—Madam President, Senator Vanstone did indeed focus on the issue of the number of deaths, claiming it to be part of the government's argument. We clearly interjected at the time—I am not sure whether the interjections were picked up—that it was indeed our argument. I am simply pointing out to her that she cannot use it as an argument in favour of the success of the government's strategy; it is exactly the opposite.

Also, Senator Vanstone suggested in her statement that the number of people interested in using heroin, thanks to the government's education programs, was actually going down, but, again, the evidence is clearly to the contrary. The number of people with access to that drug is increasing.

If you look at recent reports in Victoria with regard to the possession of heroin in the last 12 months, the number of people detected with it on them has risen by 45 per cent. The use of heroin is up by 58½ per cent. So I draw you back to the minister's statement when she lauded the government's program and had the hide to suggest that Senator Stott Despoja's comments about acknowledging that young people were using drugs were somehow inappropriate. I ask the minister to read more widely about what is really happening in this country.

She also made comments about Senator Stott Despoja's reference to the recreational use of drugs by young people. I do not know whether the minister has seen some of the statistics or whether she has had the opportunity in particular to look at a recent survey from Tasmania. It is not a state that we think of as having anything to do with drugs. When we read this survey, which was done in 1997, and turn to the page on cannabis, we find that 32 per cent of these young people who were surveyed—and this is in north-west Tasmania, not an area of the country you would normally associate with drug use—are using or have tried marijuana. But I note for the minister's benefit—and this is the point Senator Stott Despoja was making that we have to acknowledge—that 73 per cent reported they did not want to stop using the drug. They enjoy it for whatever reason, or they feel pressured by peers, or it is simply so freely available, that they have made a choice—they want to keep using it.

The Democrats' point is that we have to acknowledge that in our education programs, which this government by and large does not do. We have to acknowledge that when we try to work through issues with young people on how to minimise harm. Simply saying to them, 'No, shouldn't do that, mustn't touch the drug,' is not working. They are going to use drugs recreationally and it is up to us to somehow put in place programs that are working far better than this government's misguided attempts to get tough on drugs.

So what does work? I suggest that the minister looks around the world to programs that are actually working. One of them that

has had quite a bit of attention in this place is the ACT heroin trial. I note with interest that the minister does not refer to any of the successful trials, so I had better not talk about Switzerland. What I certainly can remind the minister of is that a series of her own Liberal colleagues in South Australia—and if she wants evidence of this, I draw her attention to the House of Assembly *Hansard* of 13 November 1998—supported a heroin trial in South Australia.

The PRESIDENT—Senator Lees, you are supposed to be commenting on the statement made in the chamber just now by Senator Vanstone. You may well be commenting on statements that she has made at other times, or things that have happened at other times which may be relevant to another debate, but it is the statement made this afternoon which was her personal explanation that you have leave to comment upon at present.

Senator LEES—I will focus for a moment on the part of her statement that related to education and her lauding of that part of the government's program. Of course, everybody in this place supports a full, thorough and open education program that gives people the real information on drugs. Unfortunately, looking at some of the messages Senator Vanstone is sending, particularly the inferences in that statement today—

The PRESIDENT—That was, I think, when she was answering a question earlier in the afternoon. I do not recall that education was part of the statement she made just now when she was making a personal explanation. She certainly did so earlier in answer to a question.

Senator Faulkner—Madam President, I raise a point of order. With due respect, it is a matter for Senator Lees to make her own case on this. You are obviously entitled to a personal view in relation to the accuracy or otherwise of the statements or claims that Senator Lees makes, but I do think that you might give consideration to that particular ruling. You have really transgressed into the substance of the debate. I am not suggesting improper motives on your part in saying that, but I do think that Senator Lees is entitled to mount her case on this issue, and I make that submission to you with respect.

The PRESIDENT—Senator Lees was given leave to take note of the statement that was made in the chamber this afternoon. It was not a matter of taking note of answers to questions earlier.

Senator Robert Ray—On the point of order: I do not want to dispute the ruling you have given, but Senator Vanstone was explaining and relating it back to a question. The two things are so interrelated—that is, her explanation and the answer given—that it is very, very hard not to move back to the answer, because the explanation was all about the answer.

The PRESIDENT—The answer was to a question, I think, at an earlier time, not today.

Senator Lees—On the point of order, Madam President: I draw your attention to what the minister specifically referred to in her statement, and that was a press release that she put out entitled 'Fess up, Senator Stott Despoja'. So I believe that I am entitled to deal with some of the issues raised in this press release.

The PRESIDENT—Proceed, Senator. You do have leave to take note of the statement that was made this afternoon.

Senator LEES—Thank you, Madam President. As part of this statement the minister said:

> Senator Stott Despoja is quoted as saying young people enjoy recreational experiences on illegal drugs.

I draw the minister's attention to the statistics and I draw the minister's attention to the evidence that that is an actual, factual statement that we as educators have to come to terms with, and that is directly related to this government's education program. I say again: a strategy that says, 'Don't touch it, it is illegal', is not going to work. We need in this country an integrated program that minimises harm and gives our young people some real information and a chance to survive. This government's attitude is shown very clearly in this statement by the way in which the minister has highlighted just a few out-of-context comments from Senator Stott Despoja.

It shows her complete lack of understanding of what is needed to seriously tackle this problem. I read again from the press release:

> Senator Stott Despoja is also quoted as saying that the Federal Government's Tough on Drugs strategy is "still too much in favour of law enforcement".

The minister has said that again this afternoon. We are not saying, 'Stop looking for the drugs; stop whatever you can at our borders; check the airports; check every boat coming into the country.' What we say is that the thrust and the efforts of their strategy are wrong. Yes, of course we have to keep stopping what is coming in whenever we can, but because we get bigger and bigger amounts seized, that is not evidence that the strategy is working.

The strategy should be measured against deaths. It should be measured against availability. We should check the health of those that are using drugs. We should be looking at our schools, at the attitudes that young people have towards drugs. I close by saying that I recommend to the minister that she does her homework in future before coming into this place and making such extraordinary statements.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (3.30 p.m.)—In addressing this question I want to focus some attention on what I believe is becoming a consistent pattern with Senator Vanstone in the way that she is treating this chamber. I believe that Senator Vanstone's so-called personal explanation was just another incoherent tirade from her—the sort of tirade that we have become used to.

The pattern is that Senator Vanstone is loose with the truth. Senator Vanstone has the philosophy, when she speaks to this Senate, that near enough is good enough. Senator Vanstone has a pattern of misleading the Senate. I think Senator Vanstone has a pattern of ministerial incompetence. This very important issue in relation to this personal explanation and the question and other matters that have surrounded it give further fuel to the fire of ministerial incompetence of Senator Vanstone.

The situation is this, Madam President: in question time in the Senate on Tuesday of this week, Senator Vanstone clearly implied that Senator Gibbs and Senator Stott Despoja were weak on drugs. That is the truth of it. That is what she implied in question time—that they did not support drug enforcement agencies and that they did not support the drug enforcement agencies' fight against criminals. Let me quote what Senator Vanstone said in question time on Tuesday about my colleague Senator Gibbs:

> Senator Gibbs, however, appears to think we are putting too much effort into the fight against drugs. . .

She then went on to ask questions, which was most inappropriate in question time. She used the forum of question time and a dorothy dix question from her own side, from Senator Payne, to direct questions to Senator Gibbs and to Senator Stott Despoja. Madam President, these are slurs against other senators. I am particularly concerned about the slur against my colleague Senator Gibbs. I think it is particularly grotesque and particularly tasteless from Senator Vanstone. I must admit that it is completely in character with the way that Senator Vanstone operates in this chamber.

A dorothy dix question directed to Minister Vanstone made a mockery of a very serious speech that Senator Gibbs had made previously about drug reform. This is a matter, as I think all senators would know, in which Senator Gibbs has a very deep personal interest. I think even Senator Vanstone would know that. But, no, she used the forum of question time on Tuesday to make what I thought was one of the most disgraceful contributions I have heard in this place.

I think Senator Vanstone is probably aware now of how angry Senator Gibbs and the Labor Party, the opposition, are about the nature of what I think was a snide and spurious attack and the insinuations that were contained in Senator Vanstone's contribution in question time on Tuesday. I recall that Minister Vanstone was in this chamber when Senator Gibbs, my colleague, made her first speech in this place. Senator Gibbs, during that speech, set out some of what were obviously very painful and personal reasons for her very strong interest in this area of pol-

icy—drug law reform. So I do not think that Senator Vanstone has any excuse at all for her outrageous and despicable misrepresentation of what I think were very reasonable and informed comments by my colleague on a very important issue.

The point I make is that this is a pattern from Senator Vanstone. We get it from Senator Vanstone all the time. This is the Senator Vanstone modus operandi in this chamber. What we had after question time today was probably just another bungled attempt to vaguely apologise for going a bridge too far. That was probably what Senator Vanstone was trying to do. I suspect that was what she attempted to do after question time—a sort of half-hearted and pathetic apology after realising that, again, she had gone a bridge too far.

But it is a pattern, and that is the real point I want to make to the Senate during my contribution to this debate today. This minister started the pattern by slashing the higher education sector by $2 billion. The pattern continued with the destruction of real employment programs, aided and abetted by Dr Kemp. It continued when the mickey mouse Job Network was imposed and defended in this place. There was the Austudy means test fiasco, which was all her own work. Again, these are elements of this pattern from Senator Vanstone.

Senator Hill—Madam President, I rise on a point of relevance. It has gone well beyond debating a personal explanation that was made on a particular matter. It does not touch upon it at all.

Senator FAULKNER—Madam President, on the point of order, I am going to mount a case about the pattern in Senator Vanstone's behaviour—Senator Hill will need to listen to this—and how, having gone too far, we then get an attempt from Senator Vanstone to try and claw back the ground. That is the point I am making. If Senator Hill cares to listen to the case as I outline it he too will be convinced that Senator Vanstone does this on a pretty regular basis. I think it is important that attention is drawn to this in this debate.

Senator Hill—I wish to speak again to the same point of order. Whilst I hear what Senator Faulkner says, how the government's determination of the appropriate level of public expenditure on higher education can be relevant, goodness only knows.

The PRESIDENT—It seems to be straying considerably from the statement, which is the document before the chamber at the present time. I shall listen carefully to what Senator Faulkner has said but remind him of the initial statement that is before us at present.

Senator FAULKNER—I will keep that uppermost in my mind as I address this issue. The point I am making is this: this is not an unusual circumstance for Senator Vanstone. Even the nature of the explanation is not unusual for Senator Vanstone. The fact that she has had to come down to the chamber and explain herself and her actions is not unusual for Senator Vanstone. At some stage it becomes reasonable for us in this chamber to draw this not only to the Senate's attention but to the public's attention.

Senator Vanstone has consistently abused question time and abused the forums provided within this particular chamber. The answer she gave to the dorothy dix question and the dorothy dix supplementary she was asked at question time on Tuesday was an abuse of her role and responsibility as a minister, and it was an abuse of this chamber—like the abuse in May 1996 when she refused to answer any questions at all and told us, 'The reason you will not have some information is that we won't give it to you if we don't want to give it to you.' Well, she has moved on from there. Now she has decided that she will provide information if she deems it appropriate and fit. This is the same minister that was so fast and loose with the truth—not just on Tuesday this week but with her invention of the Wright family.

Senator Hill—I rise on a point of order. As I understand it, we are debating the personal explanation that Senator Vanstone gave. That concerned an exchange between her and the Australian Democrats, in which the Australian Democrats claimed that the government put undue emphasis upon law enforcement in drug strategy and insufficient emphasis on public education. Out of that debate, Senator Vanstone claimed to have been misrepre-

sented and gave her explanation today. That is what is being debated—not all of these other matters.

It may be all right from Senator Faulkner's perspective to take the opportunity to slam Senator Vanstone across the range of political activities over the last nearly three years, and there may be an appropriate occasion to have that debate but it is not now. This is a debate on the explanation that she made in the circumstances that I have just related.

Senator FAULKNER—It is a nonsense point of order and you know it!

The PRESIDENT—Senator Faulkner, I remind you of the statement that was made this afternoon, and you seem to me to be straying considerably from the issues within that. I will continue to listen carefully. I ask you to keep it in mind and address it.

Senator FAULKNER—I am keeping it in mind, Madam President, I can assure you. I am in fact referring to today's statement, and I think I have established the pattern that has existed now over a long period of time.

Senator Hill interjecting—

Senator FAULKNER—What about the misleading of the Senate over the Democrats Internet mail, for example? What about hiding the five per cent projection on unemployment? What about the misleading about overseas universities and the like? It is a pattern, Senator Hill, whether you like it or not. I appreciate that Senator Hill has come into the Senate today, his factional colleague from South Australia having made another massive foul-up, and that loyally, quite properly, he is trying to defend her—trying to cover it up. That is fine. But it is reasonable for us to remind the Senate of the record of this minister and how this week's performance is so typical. Since this parliament resumed, we have already seen Senator Vanstone come into the parliament because she verballed a News Ltd journalist—

Senator Carr—I had forgotten about that.

Senator FAULKNER—That happened in this parliament just a couple of weeks ago. The press gallery actually forced a grudging apology from Senator Vanstone—and it was a grudging apology. It is a pretty rare event anyway to get an apology forced out of a senator by the press gallery, but just a week or so ago we had a situation again where Senator Vanstone abused the processes of the parliament and claimed a journalist had declined to attend a meeting with the minister's office to discuss Federal Police internal audits of drugs. That was not true. He had not done that, and Senator Vanstone had to come down and at the end of the day—grudgingly, but nevertheless humiliatingly—apologise. And that is what has happened after question time today.

The point I make to the Senate is that this minister has not cleaned up her act. After all these failures, consistently over the last couple of years, and after being dumped from the cabinet, she still has not cleaned up her act. She is still abusing the processes of this place, she is still misusing question time like she did on Tuesday, and she is still launching these ill-informed, underprepared adventures in the Senate during question time. It is totally inappropriate. The only reason she does it is to score the cheapest of political points, and there was not a cheaper political point scored than the one she tried to score on Tuesday this week.

She is consistently being dragged in for these humiliating and humbling apologies that she has now become expert in. My point is this: Senator Vanstone is a serial offender in this regard. She brings disrepute to her party, she brings disrepute to the parliament and she brings disrepute to the Senate. Her statements of Tuesday stand as an absolute disgrace. What she ought to have been able to do was actually have the guts to come in here and deliver the sort of apology that was appropriate to the two senators. I single out particularly the apology that was properly due to Senator Gibbs, who has been so maligned by such a vicious slander from Senator Vanstone.

Senator ROBERT RAY (Victoria) (3.46 p.m.)—It might be passing strange that I would intervene in a dispute between Jabba the Hutt and Princess Leia, but nevertheless I am concerned about the way Senator Vanstone is handling herself at question time on some issues. It is quite acceptable, in my view, for someone to have a bit of a lash on

an issue in response under pressure. Senator Vanstone could be getting questions from this side that were hard to handle or easy to handle and she would have a real slash at it. And maybe she would just go beyond that, in terms of her verbalisation, and say things that she might not otherwise have said. But what we are dealing with in both the answer to the question and the explanation today is calculated contributions. They are not happening under pressure. They are not happening in reaction; they are actually being planned. Some of us object to being the victims of this.

Senator Vanstone, in trawling through all the press clippings and debates, picks out a phrase from a speech or a newspaper article and then builds an enormous case based on it that really has no credibility. I went through that earlier this year. I made an adjournment speech and people did not like it. She referred it to the Federal Police, but the terms in which she referred it to the Federal Police virtually bore no relationship to my adjournment speech. She managed then to try to politically exploit it by faxing me the information at two minutes to two, before question time, in the belief that I would not have time to read it and respond. Well, I did. So she had to come in and modify her prepared answer here, but still table the original material with those mistakes in it. A similar thing has happened with Senator Stott Despoja and my colleague, Senator Gibbs.

She prepares these things and comes down and does it. I want to know: why does she do it? I am not generally a defender of Senator Stott Despoja, but I think she has been maliciously misrepresented in this chamber. I have read her comments several times now so I would not misunderstand them. I cannot, in any way, find in her speech where she is soft on drugs. If Senator Vanstone is going to come into this chamber on such a sensitive issue and make those accusations, she should be able to back them up with more than three or four words, selectively quoted, out of a half-hour speech.

I do not know why this is occurring. I suspect that Senator Vanstone, who is someone I admire for her irreverence and her personality—I actually admire her for those qualities—is bored. I think she is sitting up in the ministerial office, having been sacked from cabinet and sacked from the second biggest spending department, wanting to get back in the game. My advice is not to make the sorts of answers and explanations that she made here today but to work your way solidly back in with the old body punches. Don't go for the head shots at every question time. Don't try to make a hero out of yourself. Don't give in to gender jealousy and attack the other female senators in the place—because that is what a lot of it has been about. She should do the solid, hard work which I know she is capable of doing.

Senator Vanstone is suffering from limelightitis. She is not getting enough publicity, so she has to go for the head shots and put out these press releases—but end up being so inaccurate—in the hope of getting back up the greasy pole. A much better way to do that is through solid, hard work given that the Prime Minister, either fairly or unfairly, dropped her out of cabinet. I know it is not easy being junior minister to a charismatic black hole like the current Attorney-General. It cannot be easy to have been in cabinet and to go back out. But question time does require accuracy.

All of us who have ever faced questions in this place have given inaccurate answers, there is no question about that. But there is less excuse to do so when it is a question from your own side. We all know you would have had some hints as to the nature of the question and you would have prepared at least some notes in terms of your answer. When you come in and distort another senator's view, when you come in and you are inaccurate on that, and when you come in and try to play the emotive card on drugs—aided and abetted by gender jealousy—you get a terribly horrible mixture. That is why Senator Vanstone has tried to continue the argument here today.

From our point of view, we are not just going to stand by and cop these answers. We are going to contest them. We are going to note them after question time and we are going to take these issues on until this

minister comes in and gives constructive and accurate answers.

I do not want to be too patronising—I did not intend to be—in giving Senator Vanstone the advice to knuckle down and just do the solid basics of her portfolio. Don't come in as a tail ender and try to be a middle-order batsman in this place; it never works. If ever there was anyone suffering from limelightitis it would have to be someone who, when they knew a newspaper article was going to be done on them, got up at midnight to trawl around the streets of Sydney looking for an early copy of the *Australian* simply to read that article, which was going to appear the next day. That sort of person really should go back to the basics.

Senator HILL (South Australia—Minister for the Environment and Heritage) (3.51 p.m.)—I would like to bring the debate back to Senator Vanstone's personal explanation. There has been a lot of theatre here today and a lot of advice to Senator Vanstone as to how she might carry out her ministerial role. But in actual fact, really what it was all about was a policy debate on what is the most effective mix of answers to a major national problem—that is, drug abuse.

I listened to Senator Vanstone's answer today and I did not see anything unexceptional in it. She emphasised the fact that this government—

Senator Robert Ray—It was catch up though, Robert—it was Tuesday that was the problem.

Senator HILL—I must say I was not conscious of the Tuesday one. I have just read that now for the first time; I must have missed that one. But, today she was emphasising the importance that this government puts on the law enforcement aspect of the challenge to defeat drug abuse.

Senator Faulkner—We are talking about Tuesday and she is making a personal explanation about Tuesday.

Senator HILL—Why don't you listen to what I am saying then? What was that all about? That was a debate largely between the government and the Australian Democrats as to the most appropriate mix of policies.

Senator Vanstone's argument was that the Australian Democrats are putting undue emphasis upon education at the expense of enforcement. In fact, she was arguing that Senator Natasha Stott Despoja did not put the emphasis upon law enforcement that this government puts. There is nothing wrong at all, therefore, in Senator Vanstone coming back and saying that law enforcement is a critical part of the answer and, furthermore, that this government has very substantially increased funding and support for law enforcement because of its critical nature. What I heard from Senator Vanstone today was that she should not be misinterpreted as not accepting that public education is also an important part of the correct mix of answers.

How can a debate on what that mix ought to be, and an exchange between the spokesperson for the Australian Democrats and the spokesperson for the government on that issue, turn into this personal attack on Senator Vanstone today?

Senator Faulkner—Because she tried to smear a Labor senator on the way through: that is just one of a number of reasons. And it becomes a matter of her behaviour.

Senator HILL—If that was your case, why didn't you pick that up and take that action at the appropriate time?

Senator Faulkner—We are.

Senator HILL—No you are not. We are talking about a personal explanation out of an exchange between the Australian Democrats and the government.

Madam President, the point is that this government is tough on drugs. The point is that Senator Vanstone is leading that charge. We think, as a government, that law enforcement is critically important. We actually think that law enforcement, in relation to drugs, has not been given the priority in the past that it deserves—a position that we say we are remedying through a substantial increase in funding. Senator Vanstone is the person who has the responsibility for putting that message to the Australian people and conveying the fact that this government does have a tough on drugs strategy and is going to implement it. She is certainly entitled to do so.

Out of that exchange with the Australian Democrats, there have been issues that have been subject to a personal explanation today. It is quite legitimate, I would have thought, for Senator Stott Despoja to come back and respond to that, and there may be a debate that ensues from it. But most of what I have been hearing in here for the last three-quarters of an hour has not related to that at all. I just want to bring this debate back to the reality of what it should be all about.

Senator GIBBS (Queensland) (3.56 p.m.)—Madam President, I believe I have been misrepresented by Senator Vanstone. She has obviously read the speeches on drugs that I have given in this chamber. I would like the Senate to know that I will continue to give speeches on drugs in this chamber for many years to come, until we do something about it as a whole. That is not an accusation against the government. I believe this is a bipartisan issue and I, personally, will work with anybody at any time on this issue.

On Tuesday, in question time, Senator Vanstone accused me of not being concerned about the amount of drugs being brought into Australia. She asked what law enforcement money I would like to see cut. I want to inform Senator Vanstone and the government that I do not want to see any money cut from any law enforcement agency. In fact, I believe they should be given much more than what they are receiving. I know they do not have the resources to do their work.

Senator Lees referred to the newspaper reports of huge drug busts. I agree with her that it is fantastic that this happens but it is only the tip of the iceberg. There is so much heroin coming into this country; it is being brought in all the time. Many people in this country would agree with me when I say that I would love nothing more than to see these vile peddlers of death being brought to justice.

Everybody involved in the drug issue in this country knows exactly where the importation comes from and exactly who brings it in. It is the result of organised crime. It is big money. Drugs come directly from the Golden Triangle into Sydney from where they go to Brisbane, Perth and everywhere else. It is nothing to these people when the police capture amounts of heroin and other drugs. They simply send more. Quite frankly, I think they are nothing but despicable low life. They become rich from preying on human misery.

In one of my speeches I made the point that the law enforcement agencies should be targeting these people. In my local area, in Ipswich, we have a huge drug problem. I am in contact with the local police inspector who shares my great concern about drugs. The people who should be brought to justice are those who peddle death—these vile creatures—not poor, defenceless drug-dependent people. These are the ones who are forced into crime. They are forced into crime to feed their habit. They are people who probably would not be criminals had they not been forced into crime. In my local area children are selling drug starter kits in schools.

I hope Senator Vanstone listens to my speech and does not misrepresent me in the future. I hope she realises exactly where I am coming from. No-one would argue that funding law enforcement is not important. It is important to address the supply side of the problem. However, Senator Vanstone's emphasis on law enforcement demonstrates that she is largely missing the point. Law enforcement strategies should be supporting social policy initiatives designed to help people recover from drug dependency. However, Senator Vanstone would rather lead the way with a cavalier approach to the war on drugs.

Furthermore, Senator Vanstone sought on Tuesday to misrepresent the findings of a recent Swiss referendum that defeated an attempt to introduce widespread legalisation of illicit substances. Widespread legalisation of illicit substances has never been on the Australian drug law reform agenda. All we were discussing was a clinical trial, similar to the one conducted by the Swiss. Another referendum in Switzerland last year overwhelmingly supported continuing that trial. The referendum to which Senator Vanstone referred has no bearing on the current debate in Australia.

Has it not occurred to Senator Vanstone that these criminals she keeps referring to represent a frighteningly large sector of the

community? It is very easy to demonise drug addicts and make them the target of public contempt. It is much harder to admit that they are just people with a problem, because this implies that a solution might be required. Most of these criminals would never have done anything illegal if they were not dependent on drugs. It is the addiction that necessitates acts of property crime by these people, who continue to go largely untreated.

These people are our children, our sisters, our brothers, our friends and family members. In the 1990s, there is barely a family that has not been touched by drug addiction in some way, shape or form, and yet Senator Vanstone would still have us brand these people as criminals and lock them away. She wants us to accept that drug addicts are evil and beyond help. Perhaps we should lock them all up and throw away the key.

Senator Vanstone demonstrated on Tuesday her complete contempt for those affected by drug abuse and their families when she said that we have to understand that we cannot afford to treat people after they have been caught in the cycle. She does not even believe that there is a need to treat these people who desperately need help. If the trends in drug use continue, we may soon have a large proportion of young people locked away. I wonder if Senator Vanstone would be advocating such a hard line if one of her family members had a drug problem. I might add that it is not something I would wish on Senator Vanstone or anybody else.

Apart from being heartless and apathetic, this government's drug strategy is completely devoid of logic. The law enforcement angle has been done to death and it is increasingly accepted that harm minimisation is a more appropriate approach. The government's own Ministerial Council on Drug Strategy has endorsed harm minimisation. In November, the council endorsed the national strategic drugs framework, which the Alcohol and Other Drugs Council of Australia says will mean 'a commitment to the harm minimisation approach'. Perhaps Senator Vanstone should speak to her own ministerial council before she continues to advocate hardline law enforcement measures for the treatment of drug abuse.

The misguided and short-sighted nature of the Tough on Drugs strategy has been further demonstrated by a recent report of the New South Wales Council of Social Service. The report indicated that the state front-line welfare agencies are struggling to cope with growing numbers of clients with drug and alcohol problems. The report highlights a chronic lack of detoxification and rehabilitation services, especially outside metropolitan areas. Services such as legal aid, community housing, family support and youth and employment training services are encountering increased numbers of people with complex addiction problems. Most agencies outside metropolitan areas reported that one in five people had a drug or alcohol problem. However, there are not enough specialist services to refer them to.

These are the things that I was trying to get across in both my speeches the other day. These are the things that I want the government to look at. I do not have a problem with money being spent on law enforcement agencies. That is a good thing, but we must have a balance. The police, who are fighting crime with limited resources and funding, must do the best they can, but we must also treat the people who have these problems.

It is a growing problem and it is happening all the time. Where I live, I have seen children as young as eight and nine using starter kits in the schools. These starter kits start them out on heroin. There are cartels of families whose children are actually selling these kits in the schools. What hope have we got if we do not start treating them, if we do not start looking at the problem? There must be rehabilitation centres and there must be places where these people can go.

It is no use just saying, 'You shouldn't do that. That is naughty.' Look at the number of people who smoke cigarettes, and I am one of them, who cannot get off cigarettes because it is an addictive drug. I won't go on any further, but I had to speak on this because I do believe I was misrepresented by Senator Vanstone on an issue that is very close to my heart. I did not appreciate it. I have always

liked Senator Vanstone, but I don't particularly like her any more. I think it was very uncalled for and very hurtful.

Senator BARTLETT (Queensland) (4.08 p.m.)—I too would like to address the statement made by Minister Vanstone today. Minister Vanstone claims to have been misrepresented. It seems to me that any misrepresentation that has been done today has been by her. In her statement today she completely misrepresented or distorted what she did during question time last Tuesday and what she has done subsequently.

She stated during her explanation today that she could not believe that people would be accusing her of deliberately seeking to slander or libel either Senator Stott Despoja or Senator Gibbs. I guess the only possible out I could see from that is that maybe it was accidental rather than deliberate. But it is hard to believe even that because, as Senator Robert Ray pointed out, this was not just a heat of the moment slip of the tongue from last Tuesday. It was in response to a dorothy dixer. It was clearly premeditated and it was followed up almost straightaway with a press release repeating the attacks on Senator Stott Despoja. To suggest that that was somehow not premeditated is stretching credibility.

Apart from anything else, I find it disappointing because I have a fair bit of time for Senator Vanstone in terms of the attitude she takes on issues and I had thought that she may have been one of the better possibilities on the government side to take some creative approaches and have some fresh views on the issue of drugs. But if it is the case, as Senator Hill said in his contribution, that Senator Vanstone is the person who is personally leading the government's charge on drug policy, her performance over the last couple of days, not just in terms of the personal attacks but in terms of the lack of understanding she has shown in relation to the drugs issue, does leave me very disconcerted about having much hope for positive happenings in that area.

Minister Vanstone stated, and Senator Hill also suggested in his contribution, that somehow or other this was just a policy debate between Senator Vanstone and Senator Stott Despoja or the Democrats more broadly, and why are we making such a big deal about it? There was no policy debate directly between those two senators or involving Senator Gibbs in this chamber. Senator Vanstone was the one who personalised this issue. She is the one who made the personal attacks. It was not just a matter of idly tossing off a couple of questions at the end of her response or in her press release on Senator Stott Despoja, saying, 'Oh, by the way, I would be interested in your views on these interesting questions.' She employed the typical and tried technique of setting up her targets and then using her rhetorical questions to slander them. There is no other possible interpretation that any objective person could make.

It was not, as Senator Vanstone suggested in her statement, the response that Senator Stott Despoja made yesterday that started to get the media attacking Senator Vanstone for her approach. That was already well and truly happening, because everybody could see what she had done, not just in her answer to the question but in her press release that followed up afterwards. Senator Stott Despoja did not respond until lunchtime yesterday; she put her views on the record in the debate at that time. She, as with Senator Lees and all of us in the Democrats, and I am sure most of us in this chamber, think that this is a very important social issue that needs to be addressed in a mature and non-emotional fashion. I think all of us would like to get the debate back onto that level and away from the personal attacks that Minister Vanstone chose to steer it towards.

In that sense, there is no need—unless Senator Vanstone wants to continue digging herself further into the hole she has created—to deal with this matter much further beyond this debate we are having now. The statements that Senator Vanstone made in her response to the dorothy dixer, her premeditated response last Tuesday, quite clearly were slanderous of both Senator Gibbs and Senator Stott Despoja. As I stated, it was not just tossing off a couple of idle policy questions. The minister did not just ask the questions; she made quite specific statements and quite specific allegations during her response. She

mentioned Senator Gibbs by name four times and Senator Stott Despoja five times. She said that she did not know if Senator Gibbs or Senator Stott Despoja agreed with the need to reduce the amount of drugs coming into Australia. Even more blatantly than that, just a paragraph on she said:

> Senator Gibbs seems to think we are putting too much effort into the fight against drugs, as does Senator Stott Despoja.

It is a pretty direct allegation, and clearly in no way able to be supported by any statements that either of those senators have made. Senator Vanstone has made no attempt, either at that time or in her statement today, to provide any statements to back such an outrageous assertion.

She then tried to defend this false statement she made about both Senator Stott Despoja and Senator Gibbs by suggesting that this meant that both of them thought we ought to be cutting law enforcement programs, or cutting money to law enforcement. This is where I have concern that, apart from the disgraceful personal attacks, the minister probably does not really have much of a clue about how to address this issue. She suggests that you cannot have law enforcement and also put more effort into recognising the reality of why young people take drugs. Recognising the need for other approaches on education does not mean that anyone who advocates that is saying that you should cut back on the budget for law enforcement, particularly in terms of stopping drugs coming into this country.

There certainly are issues in terms of whether or not it is terribly helpful to fill up our gaols with hundreds or thousands of drug users—mainly young people but not only young people. Our gaols are full of people who are there for drug related offences, and the vast majority of them are not people who are there because they are dealers; they are people who are there because of their drug use or their drug addiction. Certainly a question can legitimately be raised about whether or not that is the best way to approach it.

To try to link anyone who says what I have just said with some allegation that they therefore think we should cut back law enforcement in general to try to stop drugs coming into the country, to try to stop the pushers, as Senator Gibbs has outlined—the people who are trying to create the users in the first place—which is clearly an essential part of law enforcement; to allege that either of those senators believe that is slanderous and displays no understanding of how we need to address drugs. Just standing up and saying, 'We are tough on drugs and you're not,' might work well for the Alan Jones type radio program, but it certainly does not work in terms of trying to address a social problem.

Further on in her response on Tuesday, Senator Vanstone again specifically made the allegation that 'Senator Stott Despoja and Senator Gibbs say the emphasis is too much on law enforcement'. Senator Vanstone again tries to say that that means law enforcement programs should be cut. Not having felt that was good enough, she then had another go in her answer to the supplementary question—and perhaps this is the most outrageous of the lot—where she again specifically targeted Senator Stott Despoja, using her quote from the conference that some young people actually enjoy the recreational experience of using illegal drugs and that that might be something to do with why some of them use it, which apparently Senator Vanstone found astonishing.

Senator Vanstone then used that answer to follow up with a question about whether or not Senator Stott Despoja endorses the recreational use of illegal drugs. If that is not a clear and very blatant insinuation that Senator Stott Despoja somehow endorses the recreational use of drugs, I do not know what is. For the minister not to be able to see that or to suggest that there was no personal attack involved is, I think, quite extraordinary. Apart from the outrageous personal attack involved, that provides some very worrying signs about the minister's understanding of how we should be addressing education about drugs and how we should be trying to connect with potential drug users, with young people and with others in the community to develop some understanding about some of the reasons why people use drugs as part of educating them and addressing some of the harm

minimisation programs that some of the other speakers have mentioned.

It seems that the minister's technique is about on the level of Mr Mackie, the school counsellor from *South Park*, which is basically just standing up and saying, 'Drugs are bad; drugs are bad, okay' and not much more. That is not meant to ridicule the many fine education programs that are employed and have been developed by government departments. It seems that the minister thinks that in trying to develop education programs and implement them, and in trying to connect with young people and people who are potential drug users, it is totally inappropriate to even acknowledge that one of the reasons some people may use drugs is that they actually enjoy them. I presume that is why many people use legal drugs, apart from some of the addiction issues, and to not acknowledge that is quite extraordinary.

It was not the responses alone that others made on this issue following Senator Vanstone's attacks on Tuesday that sparked this debate, rather it was her own actions on Tuesday that generated this debate. They were clearly pre-meditated actions, and I think it is a great shame that in her statement today the minister not only refused to acknowledge the attacks that she had made but instead tried to make a few more. I would hope that if she cannot see fit to address the issue on a serious level and steer away from personal attacks, then at least those who might be advising her, who are committed to making some real advances on the issue of dealing with the drugs issue in society, can advise her to. I would hope that if she is not able to apologise publicly, she can at least acknowledge to herself privately that she has made an unfortunate and fairly outrageous miscalculation in attacking both my colleague Senator Stott Despoja and also Senator Gibbs on this issue, and can steer her mind back towards addressing some of the very serious and real issues that need urgent attention.

Senator SCHACHT (South Australia) (4.20 p.m.)—I want to speak very briefly, more on the process of what happened today than the actual issue of drugs itself. I have to say, Madam President, that you called me to order on several occasions during what Senator Vanstone said was a personal explanation, but which my colleague Senator Robert Ray said would have been better called 'Seeking leave to make a statement' in view of the range of matters she was responding to in the press in the last couple of days and the matter that took place last Tuesday.

It is true that I was disorderly in the number of interjections I made, but I also want to point out that when a minister gets herself into so much strife, as Senator Vanstone did, over the way she ensured she got a dorothy dix question from her own side so that she could make what I would call a smearing and misleading attack on Senator Stott Despoja and also Senator Gibbs, then I think you, being in the chair, are put in an invidious position, if I may say that. We on this side are going to respond on a number of occasions when we see those sorts of things happening. It will get robust and there will be interjections, and I make no apology that I was interjecting because I thought what was happening on Tuesday and again today did not add to the lustre of the Senate and I think it put you in an invidious position. I think it comes down to how ministers—and I have had some experience of being a minister—use dorothy dix questions, as they are called. If they are used sometimes as a shameless way to promote one's own role as a minister, then you are going to get some flak from this side and, again, Madam President, you will call us to order for making too many interjections. But it is being provoked, and this is clearly not what question time should be about.

If question time is used as Senator Vanstone used it on Tuesday, it is going to provoke a vigorous reaction that puts you, Madam President, in a difficult position in the chair in relation to maintaining order because if we in the opposition, whether it is the Labor Party or the minor parties, feel provoked, we are not going to let this just roll through. It is not for me in any way to make judgments about the difficulty of your role, but I think the fact that you have to try to be fair to all sides about it has made your role more difficult.

Senator Vanstone made some remarks today in her defence; and I have to say I think she sought leave to make what she called a personal explanation because she got roundly criticised in the press in Australia for the way she imputed certain motives to Senator Stott Despoja and Senator Gibbs. You would have seen from the comments in the press, if you had read them, that quite clearly they did not think what she did was fair play. So she wanted to respond and explain today that she was not saying what she did say—and there were no inferences. Clearly, many of us on this side have a different judgment about that.

Madam President, I apologise for my many interjections. They may have been disorderly, but it is provocative, to say the least, for Senator Vanstone to carry on the way she does sometimes. I am always in favour of robust debate—and I do not take many points of order when I am being attacked or someone makes comments in the give and take of this place; that is what we are here for—but I think it really does not behove any of us to try to make a political point on the drugs issue. I was a Customs minister. I know the difficulty Senator Vanstone has in trying, with the resources available, to make sure that drugs are not illegally imported into this country. It is very difficult.

I am also aware that in the community there is a range of opinions across all political parties about how we should handle narcotics: heroin et cetera. In the ACT local assembly, the Liberal Party leader, Mrs Carnell, has argued for a trial operation on supplying heroin. There was a difference of opinion with the Prime Minister when that was announced. I am not going to enter into the merits of the debate, but it just shows there is a wide range of opinion as people try to grapple with this difficulty.

I think, as Senator Gibbs and others have said, there are people in this chamber who personally have been touched by the problem of drugs. We all probably know somebody who has been affected badly by drugs. When we have seen an individual affected, and it is someone who is close to us—a friend or a relative—I do not think too many of us get up and first of all scream and shout about the illegality; our first wish is for the person to be cured from that addiction to these drugs that in the end will kill them. That experience has happened to people in this chamber and in the other chamber—people in public life are no different from anyone else in the community.

Therefore, I think it was, to say the least, very insensitive for Senator Vanstone to take the action she did, to use the process of answering her own dorothy dixer to challenge another senator about their role. Let us have a debate so that, in the to and fro of debate, people can defend themselves and argue their case, rather than doing it in question time.

Madam President, this has put you in a very unfortunate position. I think that all of us from time to time have got to draw back about what is reasonable and what is unreasonable on issues that are very sensitive in the community. If any of us try to make them party political and partisan, in the end we will all go down together and be criticised, quite rightly, for not doing anything to overcome these terrible problems that drugs are creating in our society.

Question resolved in the affirmative.

BUDGET 1998-99

Additional Estimates

Senator ELLISON (Western Australia—Special Minister of State)—I table the portfolio additional estimates statements for 1998-99 for the following departments: Communications, Information Technology and the Arts, Erratum; Family and Community Services; Health and Aged Care; Transport and Regional Services.

COMMITTEES

Legal and Constitutional References Committee

Report

Senator DENMAN (Tasmania)—On behalf of Senator McKiernan, I present the report of the Legal and Constitutional References Committee on matters referred to the committee during the previous parliament.

Ordered that the report be adopted.

Senator DENMAN—I also seek leave to have the report incorporated in *Hansard*.

Leave granted.

The report read as follows—

REPORT ON MATTERS NOT DISPOSED OF AT THE END OF THE 38th PARLIAMENT

The References Committee met on 2 December 1998 and considered references not disposed of at the end of the 38th Parliament.

The Committee resolved to recommend to the Senate that:

1. The following inquiry of the 38th Parliament be re-adopted:

Privacy and the Private Sector

The Committee notes that this inquiry was referred in the context of the Privacy Amendment Bill 1998 which has not yet been restored to the *Notice Paper*. However, the consideration of this Bill is only a part of the inquiry. The Committee believes it is important to report on the issues relating to the protection of privacy in the private sector, particularly in view of recent reports that new legislation is proposed.

Reporting date: 15 February 1999

Senator J. McKiernan

Chair

Community Affairs Legislation Committee

Report

Senator O'CHEE (Queensland)—On behalf of Senator Knowles, I present the report of the Community Affairs Legislation Committee on the Australian Hearing Services Reform Bill 1998, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

Membership

The PRESIDENT—I have received letters from party leaders seeking variations to the membership of committees.

Motion (by **Senator Ellison**)—by leave—agreed to:

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

Community Affairs References Committee—

Discharged: Senators Forshaw, Patterson and Payne.

Appointed: Senator Tierney.

Substitute members:

Senator Payne to replace Senator Tierney for the committee's inquiry into the impact of government child care funding cuts on families, children and child care services.

Senator Eggleston to replace Senator Tierney for the committee's inquiry into the impacts of the Government's taxation reform legislation proposals on the living standards of Australian households and on the provisions of the bills implementing the proposed new tax system.

Participating member: Senator Forshaw.

Economics References Committee—

Discharged: Senators Heffernan and Sherry.

Employment, Workplace Relations, Small Business and Education References Committee—

Discharged: Senators Hutchins and Tierney.

Participating member: Senator Hutchins.

Environment, Communications, Information Technology and the Arts Legislation Committee

Discharged: Senator Lightfoot.

Appointed: Senator Tierney.

Environment, Communications, Information Technology and the Arts References Committee—

Discharged: Senators O'Chee and Reynolds.

Finance and Public Administration References Committee

Discharged: Senators Faulkner and Lightfoot.

Foreign Affairs, Defence and Trade References Committee—

Discharged: Senators Eggleston and Gibbs.

Participating members: Senators Cook, Gibbs and McGauran.

Legal and Constitutional References Committee

Discharged: Senators O'Chee and Quirke.

Rural and Regional Affairs and Transport References Committee—

Discharged: Senators Heffernan and Murphy.

Participating member: Senator Murphy.

CONSTITUTION ALTERATION (RIGHT TO STAND FOR PARLIAMENT—QUALIFICATION OF MEMBERS AND CANDIDATES) BILL 1998

Second Reading

Debate resumed from 24 November, on motion by **Senator Brown**:

That this bill be now read a second time.

The PRESIDENT—Before proceeding with this debate, I suggest to senators that they should not canvas the merits of a particular case now the subject of a petition before the Court of Disputed Returns.

While the Senate's sub judice convention may not be applicable because there is no trial before a jury and therefore little possibility of prejudice to legal proceedings, it would not be desirable for senators to be telling the court what findings it should make.

Senator ELLISON (Western Australia—Special Minister of State) (4.30 p.m.)—Madam President, thank you for drawing that to the Senate's attention. I only received notice of the lodgment of that petition this afternoon.

Senator Brown's private member's bill, the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill, involving the qualification of candidates to stand for parliament, seeks to alter section 44 of the constitution in so far as it relates to the qualifications of persons to be members of the parliament.

The government's position on the proposition that section 44 of the Australian constitution be amended was set out by the Attorney-General on 4 December 1997 in the government's formal response to the report of the House of Representatives Standing Committee on Legal and Constitutional Affairs. That committee delivered its report in July 1997. The Attorney indicated that the government was generally supportive of the proposition that section 44 be amended to overcome those shortcomings identified by the House committee. The government's detailed response to the 10 recommendations of the committee identified a range of issues that the government believed needed to be considered and determined prior to formally moving to amend section 44 of the constitution.

Notwithstanding its general support for reform, the government also indicated that it believed that it was important to ensure that any proposal for reform must have and retain bipartisan support. In this context, the government indicated that it believed that it was appropriate to bring forward a proposal to reform section 44 of the constitution to a referendum only if it could be included with other proposals for constitutional reform. The government would not support a proposal to conduct a stand-alone referendum for reform of section 44.

While the government recognises the need for legislative reform of section 44, it does not believe the public interest in changing this section is so great as to merit the cost to the public of a referendum solely on this issue. This is particularly the case as the Australian Electoral Commission has amended the nomination form for candidates so that it contains a declaration to be signed by the candidate that explicitly states that the candidate is not disqualified by virtue of section 44 of the constitution. The form also includes a copy of the full text of section 44, a check list for candidates and a warning. Whilst these measures do not address the fundamental objection to the operation of section 44, they do remove the possibility of a person acting in ignorance by standing as a candidate when they are not qualified by virtue of section 44.

There is also a number of matters which need to be looked at in relation to section 44 generally, matters such as: would other provisions need to be included in section 44 to supplement changes to subsections 44(i) and 44(iv)? In changing subsection 44(i), should some forms of foreign allegiance, such as membership of the armed forces of another country, preclude even Australian citizens from eligibility to be chosen as a member of parliament? Should parliament have the capacity to establish other grounds of disqualification relating to foreign allegiance?

In changing subsection 44(iv), is it important to preserve the basic principle embodied in that provision, that is, that a person should not hold two offices which may give rise to a conflict of duty or the appearance of such a conflict? If so, careful consideration needs to be given to the form of such amendments. The Constitutional Commission, for one, decided that subsection 44(iv) should be replaced with reasonably complex provisions to preserve this principle. Another aspect is: if there is no longer any general prohibition on holding an 'office of profit under the Crown', would new provisions be required to

ensure that executive government does not come to exercise undue influence over the parliament by establishing a new remunerated executive position? This was a concern expressed by the 1997 House of Representatives committee.

Consideration must be given to the kind of amendment that would be appropriate to deal with criticism of subsections 44(ii), (iii) and (v) on that basis that they are uncertain in operation, inappropriately formulated or both. I can advise the Senate that the government is currently considering these issues and developing amendment proposals. Having in mind that and the other matters that I mentioned in relation to the sentiments expressed in this bill, and whilst the government is generally supportive of those sentiments, in the circumstances I have outlined the government cannot support the passage of this bill.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.36 p.m.)—I want to say at the outset of my speech during this second reading stage of the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill that I actually regret that the government does not feel able to sponsor legislation to deal with the anomalies arising from section 44 of the Australian constitution. In a way I regret, I must say, that it has taken a non-government initiative to get us into this debate.

I do believe that there is a strong view—I am not suggesting it is necessarily a bipartisan view, but it is necessarily a strong view—and acknowledgment that the sorts of anomalies that arise in section 44 of the constitution need to be addressed. From across the political spectrum there have been calls to introduce legislation to amend the Australian constitution in this way. The anomalies that I am referring to are contained within section 44 which provides for the disqualification of a senator or a member of the House of Representatives. In particular, section 44(i) states:

> Any person who is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power;

And also, of course, section 44(iv) states:

> Any person who—
>
> (iv) Holds any office of profit under the Crown, or any pension payable during the pleasure of the Crown out of any of the revenues of the Commonwealth;
>
> . . . shall be incapable of being chosen or sitting as a senator or as a member of the House of Representatives.

The truth is that up to five million Australians hold dual citizenship and may therefore be ineligible to stand for parliament.

The difficulty arises that many people are ignorant of their dual nationality. Some countries extend citizenship to third generation or later descendants, and that causes quite a significant number of people to be unaware of the need to renounce their dual citizenship in order to comply with section 44(i) of the constitution. It may even, for all I know, apply to some sitting members and senators.

Section 44(iv) presents the problem of discouraging public sector employees from standing for parliament. A public servant must resign regardless of whether they contest a winnable seat or whether they have a chance of winning. The difficulty here is that this becomes a little unfair and discriminatory as they have to give up their employment and their source of income before they nominate, and they do not have the certainty of reappointment if they are unsuccessful in running for parliament.

So what does that mean in reality? It means you can have a swag of private sector lawyers nominating without resigning, but it does discriminate against teachers, police officers, Telecom workers and the like. A problem also exists for local government representatives who may have to resign their elected posts, run the risk of not being elected to the federal parliament and perhaps find themselves deelected in one level of government and not elected in another.

These are the sorts of problems that have regularly faced candidates and political parties for a considerable period of time. It is quite obviously a very significant problem for senators-elect who cannot hold an office of profit under the Crown for the period from their nominations until they take their seats,

which again can be many months. If we take the example of senators-elect from the last election, it will be about nine months from their nominations before they take their seats in July 1999.

In recent years there have been a number of references to the Court of Disputed Returns arising from candidates being in conflict with section 44. Some that come to mind include the case of Senator Robert Wood in 1988 who was not an Australian citizen at the time of his election and Phil Cleary in 1992 who was a schoolteacher on leave without pay. I think in that election there were two other candidates who were found to be ineligible: Mr Kardamitsis held Greek citizenship, while Mr Delacretaz, I think, held Swiss citizenship.

There was, of course, the case of Ms Jackie Kelly in 1996 who was an officer of the Royal Australian Air Force at the time of her nomination. She resigned before the election, as I recall, but she was also a New Zealand citizen at the time of her nomination. And there was the case also of Senator Ferris who, in 1996, worked for—

Senator Schacht—A notorious case it was, too.

Senator FAULKNER—Yes, I think it was notorious. Thank you, Senator Schacht. There was the case of Senator Ferris in 1996 who worked for Senator Minchin following her election as a senator, but that was, of course, before her Senate term commenced.

There is currently the issue of Senator-elect Hill. That has come under question for her alleged failure to renounce her British citizenship before contesting the most recent election. I think there are rumours suggesting that she may have since quietly renounced her British citizenship, but those are matters for others to determine.

But, because of the number and the frequency with which members and senators have fallen foul of section 44, this is a matter which has caused considerable debate within the parliament and members and senators have given it consideration at great length.

After every election, the Joint Standing Committee on Electoral Matters considers issues arising from the election. Each time, I think, on so many occasions, the committee has considered the matter of section 44 and its application to the Australian election process. In 1993, the report of the 1993 federal election by the joint standing committee recommended:

> that the Government examine the introduction into the Citizenship Oath of a simple mechanism for the renunciation of a foreign allegiance.

In 1996, the report on the 1996 federal election by the joint committee made the recommendation:

> that at an appropriate time, such as in conjunction with the next Federal election, a referendum be held on a) applying the "office of profit" disqualification in section 44(iv) from the start of an MP's term, rather than from the time of nomination, and b) deleting section 44(i) on "foreign allegiance" and otherwise amending the Constitution to make Australian citizenship a necessary qualification for membership of the Parliament.

Also in 1996, as a result of the challenge to the election of Miss Jackie Kelly in the seat of Lindsay, the Senate took issue with section 44 of the constitution. On 29 October 1996, the Senate unanimously passed a motion which states:

> That the Senate—
>
> (a) notes:
>
> (i) the High Court ruling of 11 September 1996 that the 1996 federal election result in the House of Representatives seat of Lindsay was invalid, and
>
> (ii) that section 44 of the Constitution impedes many Australian citizens from standing for Parliament, including citizens holding dual citizenship, public servants and certain others who may be holding an office of profit under the Crown; and
>
> (b) calls on the Federal Government to respond with a proposal for amendment.

The government did not respond and it has not responded since that time. But the most comprehensive and specific consideration of the issues that arise from section 44 was undertaken by the House of Representatives Standing Committee on Legal and Constitutional Affairs in 1997. Their report in July 1997 entitled *Aspects of Section 44 of the Australian Constitution Subsections 44(i) and (iv)* concluded that the only effective way to address the problems and difficulties arising from section 44 was by constitutional amend-

ment. On tabling the committee report, the deputy chair, Mr Kelvin Thomson, made the point that its recommendations were bipartisan. It is worth reminding the Senate of his words:

> Having heard a great deal of evidence on this issue and having considered all the alternative options, we believe there is no satisfactory alternative to a referendum to change the Constitution. The committee has recommended that the present subsection 44(i) be deleted, to be replaced by a requirement that all candidates and members of Parliament be Australian citizens. The committee has recommended that at the same time Parliament would enact legislation which would disqualify members of Parliament who did not have a primary loyalty to Australia.

The government's response to that particular report was favourable. In regard to all the critical recommendations, the government offered its support, but I do not think that that has been followed through with action. This legislation is not complete and I do not think it is perfect, but we will support it, otherwise we may well be waiting forever and a day before the government takes action on this matter. In regard to dual citizenship, the bill proposes the omission of section 44(i) and substitutes:

> (1) Is not an Australian citizen: or

This picks up the first two parts of the legal and constitutional committee's recommendation No. 2. It does not address the recommendation that parliament should also be empowered to enact legislation determining the grounds for disqualification of members of parliament in relation to foreign allegiance. I have concerns that the proposed amendments stray a little from the intended principle and spirit of the constitution that members of parliament should have a clear and undivided loyalty to Australia. The adoption of the further recommendation would have provided further clarity that members of parliament should not be subject to the influence of foreign governments.

In regard to office of profit under the Crown, the bill proposes the omission of the current section 44(iv), substituting the following:

> (ii) Holds any judicial office or any other office that the Parliament from time to time declares to be an office for the purpose of this paragraph: or—

It also proposes the omission of the following words from section 44—

> , or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army

The fundamental principle behind subsection 44(iv) is that the executive and the legislature should be separated and that the executive should not be in a position to unduly influence the legislature. It is also to prevent someone from simultaneously holding two offices which could give rise to a conflict of duties and interests. These remain fundamental principles, but because of their archaic expression, their interpretation and application in recent times, we have seen undue harshness caused.

The amendments proposed are consistent with the spirit and principle of the intent of the constitution, but will clarify the application so as not to impose an unfair burden on candidates in public sector employment. The final paragraph of section 44 provides exemptions from the application of subsection 44(iv) for a range of public employees. The committee found that, at the end of the 20th century, most of these exemptions are inappropriate. The amendments proposed by this legislation go some way to improving those exemptions.

The legal and constitutional committee also recommended in recommendation No. 7 that, if constitutional amendment to delete subsection (iv) does not proceed or is delayed, then the Attorney-General should write to those states where reinstatement to public sector employment is not guaranteed.

The recommendation was that the Attorney-General request that state parliaments take such action as necessary to ensure that the relevant legislation does not infringe subsection 44(iv). The government's response noted that it cannot require state parliaments to adopt such provisions but it adopted the recommendation subject to qualification. As yet, we are not aware whether the Attorney-General has written to state parliaments urging them to pursue consistent legislation.

Of course, legislative reform is not the only answer. The Labor Party has long argued and maintained that the AEC should play a more active role in advising candidates on their eligibility. I hope also that the debate we are having today in the chamber does help to promote these issues and raise awareness in the community.

The Labor Party's support for this legislation is by no means a weakening of our resolve and our belief in the fundamental principles which are embedded within section 44 of the Australian constitution. It certainly does not reflect any sympathy for or concern about the predicament that faces Senator-elect Hill who has fallen foul of subsection 44(i) by apparently failing to renounce her British citizenship. Laurie Oakes described it pretty well in his *Bulletin* article recently when he said:

> It is tempting to be amused by the pickle in which One Nation senator-elect Heather Hill finds herself. The sole successful federal candidate of a raucously chauvinistic and xenophobic party may face the loss of her Senate seat—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Faulkner, I do not think you were in the chamber when the President made a statement prior to the commencement of this debate. She asked honourable senators not to make reference to Senator-elect Hill's position as it is currently before the Court of Disputed Returns.

Senator FAULKNER—I was quoting something that was in the *Bulletin*. But if you would prefer me not to do so, I will refer people to it and get on with it. As I indicated, I thought the journalist Laurie Oakes dealt with that issue very well and I commend the quote that I made to those who are interested in these matters. Having not heard the President's statement, I accept your advice, Madam Acting Deputy President, and I will not canvass that issue any further. Obviously, we would not want to trample into those areas, which is a matter of concern for all senators.

The issue of principle here is that we believe it is critical that no person seeking to represent the people of Australia be in a situation of possible compromise or conflict by holding an office of profit under the Crown. But we recognise, as I have said, that the current archaic wording of section 44 does present anomalies. That is why we are prepared to support moves to address and overcome these sorts of difficulties. We believe it is essential that someone who seeks to represent the people of Australia should owe allegiance and loyalty to our nation, the parliament and the people of Australia. It is for these reasons that the opposition will be supporting this bill.

Senator MARGETTS (Western Australia) (4.56 p.m.)—Most people who have been associated with elections in any way, shape or form, especially federal elections, will know just how widely the scope of section 44 of the constitution ranges. In my belief, it ranges further than it used to. The reason for that, in my opinion, is that the range of services that are provided by government and non-government entities, private entities, on contract to the government these days means that at times almost everybody in the community in some way has had an association with providing services, goods and so on to the Crown. As we continue with the competition policy in Australia, we are actually catching more and more people who are potentially in the net of office of profit under the Crown.

It is a very unclear concept, in my opinion. But the problem is that it is not about influence. Maybe it was originally designed to restrict people who may otherwise have had influence in paid positions under the Crown. These days it can be almost anyone. Ironically, it is not necessarily those people working for universities who may be in the public sector. If they are part of a statutory authority, I understand that does not come under that. It could be a person who does privately contracted work in English as a second language for the government under the TAFE system. So we are actually getting further and further away from any people who are potentially influential. One can only wonder whether the men who put forward the constitution in the first place would have ever considered that this is what it meant when they put the constitution together.

Honourable senators may well be aware of the fact that I am a maximalist when it comes to constitutional change. I believe that it is more important that we deal with constitutional change than simply deal with the issue of the change of the head of state. It is my opinion that if we simply change the head of state and do not look at constitutional change, then we are missing the point.

We have a situation here which comes up as problematical—I believe unfairly problematical for so many and increasing numbers of people—every time we have a federal election. We ought to address it, and it can be addressed. I am sure that if there are problems with the way in which the bill is put at the moment, there should be a way in which the government can put together a bill which deals with those issues. There should be a way in which it can be amended. There should be a way in which the opposition, if they are in government, can put together something similar that can deal with the issue of constitutional change.

We should not be frightened of constitutional change and we should not, in my opinion, be frightened of getting the community involved in discussing constitutional change. Indeed, in Western Australia, when people have been invited to talk about the issues of constitutional change, they have come in their dozens to be involved and to put their views forward. Unfortunately, in Western Australia, that has not progressed in terms of action in the way that many people would like it to have done, but people are interested, when they are asked, about what kind of governance they think is appropriate. Sometimes people are not asked because maybe governments or particular parties are frightened of what people in the community will say.

I believe that we could progress this matter. I understand that there are some issues on which we could not go to committee stage on this bill. There is the necessity to give 21 days notice for a rollcall in the Senate if we were to go to the committee stage, which is fine. It means that, potentially, we could have an agreement, if there is this interest in the community—

Senator Robert Ray—That would put us here on Christmas Day. Don't do it.

Senator MARGETTS—No, not today. Potentially, there is the opportunity for us to adjourn this debate and have some process at a later date. I have nothing against the idea of having these issues put to a further public committee so that people can talk about them. They would be able to talk about the problems and the ways of working around them.

There is no real excuse for our not progressing this issue. We should not be afraid of constitutional change. We should not be afraid of making elections more inclusive. I am sure there are ways of dealing with the issue of people's loyalties. What we need to do is make sure that in the Australia of the late 1990s, going into the next century, we are not sitting on a situation which is more and more exclusive for no real reason. Many of those who are contractors or work for some government department or who in some way may be caught under the net of 'profit under the Crown' have no public influence at all. It is not an issue of public influence; it is an issue of, I believe, a concept within the constitution which deserves to be revisited and revised.

In terms of citizenship, I am sure we could deal with this adequately. If there are issues that need to be amended, we can do that. We are adult enough to do that and we are adult enough to bring in the community to assist us in getting to the right position. It is a pity that the government has said at this stage that it is unable to do that, but I do not believe any of these issues are beyond redemption.

I would like to see that at some future date we make a move on these issues. Of course, if I had my druthers, I would like to see a proper debate, in the fullness of time—bringing in the community at the earliest possible date—on changes to the constitution to make it more relevant to the needs of current Australia and to the needs of the future.

Senator MURRAY (Western Australia) (5.03 p.m.)—This bill seeks to do three things, and I would like to tackle each in turn. Firstly, it would delete the prohibition enshrined in section 44(i) of the Austral-

ian constitution that a person could not seek election to the parliament if that person was a citizen of another country or owed an allegiance of some kind to another nation. The bill proposes to replace this with a simple requirement that all candidates for political office be Australian citizens.

Senators would be aware that section 44(i) of the constitution has provoked litigation in the past, the leading case being Sykes v. Cleary (No. 2) of 1992 concerning, amongst other things, the validity of the candidacy of Mr Delacretaz and Mr Kardamitis who both held dual citizenships. But, as senators would also be aware, the section is again being invoked in possible litigation over the last election concerning the validity of the candidacy of a senator-elect from Queensland.

The section was drawn up at a time when there was no concept of Australian citizenship; when Australian residents were either British subjects or aliens. It was designed to ensure the parliament was devoid of aliens as so defined at that time. The Democrats accept, however, that the sentiment of the section, that only Australians should be eligible to stand as representatives for the federal parliament, is a valid and continuing one. But this is not to say that section 44(i) of the constitution as it currently stands is the most appropriate and adapted to achieving that end.

Rather, it contains notions such as 'any acknowledgment of allegiance, obedience, or adherence to a foreign power'. These concepts are obviously subject to disparate interpretations by judges. Is it to be the case that some future member would lose their seat because, whilst in office, they have been made an honorary citizen of another country purely as part of the diplomatic process—as in the case of Bob Hawke? Such a result would be an absurdity.

Further, in the context of the current debate over the move to a republic, such reference to a foreign power brings the oath each member and senator takes upon assuming his or her seat into contradiction with the existing constitutional provision. Senators will recall that the oath requires members to 'swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth, her heirs and successors according to law'. Queen Elizabeth is the Queen of England. On a strict reading, that may be an unequivocal declaration of 'allegiance, obedience, or adherence to a foreign power' as prohibited by section 44(i). So this present contradiction in our constitution would also be addressed by the deletion of section 44(i).

As it currently stands, section 44(i) is wholly unsuited to achieving its aim for the reasons outlined above. Like many sections of our constitution it has, understandably, lost its workability a century after its drafting. The proposed replacement for the section under this bill, that the qualification simply be that a person must be an Australian citizen, is sound so far as it goes. However, we should take account of the valuable work that has been done in this area by various parliamentary bodies in assessing whether the present amendment is sufficient.

Most recently, the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 recommended that section 44(i) be replaced by a provision requiring that all candidates be Australian citizens, but it went further to suggest the new provision empower the parliament to enact legislation determining the grounds for disqualification of members in relation to foreign allegiance—that is, the committee acknowledged that there are some situations, such as where a prime minister, for example, held dual citizenship, that may cause concern to the Australian people. A provision leaving the door open to parliament to put some better expressed requirements as to dual citizenship in place would seem a sensible recommendation.

I would further note that the Constitutional Commission, in its final report of 1988, recommended that subsection 44(i) be deleted and that Australian citizenship instead be the requirement for candidacy, with the parliament being empowered to make laws as to residency requirements. Going further back, the Senate Standing Committee on Constitutional and Legal Affairs, in its 1981 report entitled *The constitutional qualifications of Members of Parliament*, recommended that Australian citizenship be the constitutional

qualification for parliamentary membership, with questions of the various grades of foreign allegiance being relegated to the legislative sphere.

It is therefore tolerably clear to us that, especially in view of the multicultural nature of Australian society, contemporary standards demand that Australian citizenship be the sole requirement for being chosen for parliament under a new subsection 44(i), with a residual legislative power being given to the parliament to deal with unique cases that may arise from time to time.

The second element of the bill deals with the office of profit under the Crown issue of subsection 44(iv). Again, this section featured in the Sykes v. Cleary (No.2) litigation. The bill proposes to delete subsection 44(iv) and substitute a requirement that only judicial officers must resign their positions prior to election, as well as empowering the parliament to legislate for other specified offices to be vacated.

Subsection 44(iv) has its origins in the Succession to the Crown Act 1707 in the United Kingdom. Its purpose there was essentially to do with the separation of powers, the idea being to prevent undue control of the House of Commons by members being employed by the Crown. Obviously, times have changed, even though the ancient struggle between the executive and parliament continues to this day. Whilst this provision may have been appropriate 300 years ago, the growth of the machinery of government has meant that its contemporary effect is to prevent the many thousands of citizens employed in the public sector from standing for election without resigning their office and therefore without any real justification.

Taking my own party in my own state at the recent election as an example, we have 14 lower house seats in Western Australia to contest, yet seven potential Democrats candidates would not stand due to their unwillingness to resign from their public sector positions. It should be further mentioned that some of our potential candidates are teachers who feel they have no option, in the context of the 1998 election preceding the all important university entrance examinations, but to remain in their positions out of a sense of duty to their students. Such a situation adds to the argument not just for the removal of the impediment presented by the office of profit provision but also for calls for fixed term elections, held at times of the year that do not discriminate against large sectors of the community in the sense of their capacity to fully participate in elections.

The Australian Democrats have a long history of trying to rectify this part of the constitution. In February 1980, nearly 20 years ago, a former Democrats senator, Colin Mason, moved a motion in this chamber which resulted in the inquiry I have referred to earlier by the Standing Committee on Constitutional and Legal Affairs into the government's order that public servants resign before nomination for election. In 1985 and again in 1989 the Democrats introduced a bill putting the recommendations of that committee into effect. Then in 1992 we introduced a bill, following the Constitutional Commission's report, to implement those recommendations. None of these very practical bills have been allowed to be debated by the government of the day to the stage where they could go to the other house.

I further note that the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 recommended that subsection 44(iv) be deleted and replaced by provisions preventing judicial officers from nominating without resigning their posts and other provisions empowering the parliament to specify other offices which would be declared vacant should the office holder be elected to parliament. Subsection 2(2) of the bill in its current form will not achieve this. Whilst some offices, such as those of a judicial nature, must be resigned prior to candidacy, no provision is made for other offices to be declared vacant upon a candidate being successfully elected. It would be absurd, of course, if public servants could retain their positions after having been elected to parliament. It is essential that a mechanism be put in place declaring vacant certain specified offices upon their holders being elected.

The third element of the bill seeks to modify the last paragraph of section 44 by deleting certain words. I have to confess to being a little mystified as to why the paragraph should not just be deleted in its entirety. Indeed, the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997 noted that, if its recommendations concerning subsections 44(i) and (iv) were accepted, the last paragraph of section 44 should be deleted. I concur with that view.

So, in summary, the changes proposed in this bill incorporate only a selection of the recommendations made in the House of Representatives Standing Committee on Legal and Constitutional Affairs report of July 1997. In our view, ideally the bill should have incorporated all of those recommendations. For the purposes of this debate, however, we find the bill supportable as far as it goes. It is a distinct improvement on our present constitutional position.

In the event of this bill proceeding to the House of Representatives, I would expect the government to amend the bill to meet such concerns as have been indicated by Senator Ellison's and other senators' speeches. I think there is general consensus among all political parties, and possibly amongst the Independents, that this situation needs to be rectified. Therefore, if there is general political consensus as to that rectification, I and my party think it would be appropriate for the government to take a position of leadership in this matter and deal with this issue in time for the next election.

Senator ROBERT RAY (Victoria) (5.14 p.m.)—The language of section 44 of the Australian constitution reflects an age when government was small. The frame has understood the potential threat of a parliament comprising parliamentarians who simultaneously occupied government employment or an office of profit under the Crown. Citizenship laws were equally simple. Widespread dual citizenship was unknown. The framers knew what they meant by the phrase 'allegiance, obedience, or adherence to a foreign power'. Today, these phrases are no longer satisfactory for outlining disqualifications for members and candidates. Judicial interpretation has made their scope wide. They now represent barriers to potentially millions of Australians.

In 1988 the Senate reluctantly referred the Wood case to the High Court, sitting as a court of disputed returns. I say 'reluctantly' because senators were aware of the fact that, although former Senator Wood was not an Australian citizen at the time of his election, he was nevertheless a properly qualified voter. I make this point because former Senator Wood would today still be ineligible to sit in this parliament under the bill introduced by Senator Brown. On that occasion, the Senate was required to act. Once the question of former Senator Wood's status was brought to our attention, not to have done so would have imperilled all legislative and executive instruments enacted by the parliament.

In Sykes v. Cleary—not a case, incidentally, brought by the Australian Labor Party—the High Court held that an office of profit under the Crown could include a public servant who had taken leave without pay. This clearly provides a constitutional bar far broader than the one necessary to meet the original objects of subsection 44(iv). Therefore, the Labor Party supports a change that enables the parliament to prescribe what kinds of offices fall within the contemporary meaning of the original objects of the clause.

A second aspect of Sykes v. Cleary related to dual citizenship. The court acknowledged that citizenship arrangements differed drastically between countries. The court held that the candidates were required to take active steps to renounce citizenship held with other countries. The precise steps that would be necessary in each instance remain unclear, and depend on the particular arrangements in each country. This decision by the High Court came as a surprise to most of us. We were completely aware of the necessity to take out Australian citizenship and we were aware of that before the 1987 election. We put a lot of effort into making sure that no Labor Party candidate presented themselves for election unless they were fully qualified. But at no stage did we understand that the High Court

might, at some future time, rule on dual citizenship.

The parliament has recognised the reality of dual citizenship in its own laws. Personally, I have never been an advocate for dual citizenship. It can create extensive problems for holders of multiple citizenships who find themselves in difficulties overseas. It is often unclear which country bears the responsibility of acting on behalf of its nationals. If this is just done so that someone can get through Heathrow Airport 10 minutes quicker, then I question the real benefits.

Citizenship is not about convenience; citizenship laws exist for good reasons. I wonder, when I reflect on the massive growth of dual citizenship, whether we have not drifted somewhat from those reasons. Nevertheless, it is a fact of life. It is something that the Labor Party and, I am pretty certain, the Liberal Party and others have accepted as a fact of life. There is no doubt that all members of this parliament should be Australian citizens. This has always been the purpose of subsection 44(i), and the ordinary language and meaning of the constitution should reflect that.

In some cases it is not hard to revoke dual citizenship. For example, British citizenship is one of the easiest to revoke—a simple form and a $170 fee. A form is easily available from the British consulate. Many other countries make it almost impossible for that sort of process, saying you can never give up citizenship of their country. So it is understood that, if candidates standing for election presented themselves at the consulate or the embassy, renounced their citizenship and handed them stuff in writing, that would meet the High Court's requirement. At least, that is what we assume; it is yet to be fully tested in another case. We all take that as the meaning of it: if you have taken an active step by presenting yourself and by denying allegiance to another country, that is enough.

I know that political parties—the Liberal Party, the Labor Party, the Nationals and probably the Democrats, although I am not sure about the Greens—have put enormous effort into checking that all candidates meet the full requirements of the constitution on the basis of Sykes v. Cleary & Ors. It does not surprise me that parties specialising in racism and xenophobia fail to be across the requirements of both the constitution and the Electoral Act.

Returning to the bill, as well as supporting a constitutional amendment to make Australian citizenship the test for qualification, the ALP supports leaving it for parliament to determine which offices it will provide a bar for under the office of profit provision. My personal view is that public servants ought to stand aside if they wish to run for parliament. But there should also be a restoration period following the election for unsuccessful candidates. This was very much the case in the 1960s and 1970s, but as each state government has revised its public service laws or its education bills, a lot of these provisions have slipped out.

I am not surprised to hear Senator Murray say today that seven teachers were a bit reluctant to run for the Democrats in the House of Representatives elections—well, I accept that—because they would have had to resign. Having resigned, what guarantee would there have been of their achieving their previous position? Senator McKiernan—I hope I am not stealing your material—did refer to the case of Paul Filing, who ran unsuccessfully against us in 1987. I think he was a police sergeant at the time. He was given a job back with the police force, but at a much lower level. We should try to deal with these matters so that, if we do not want public servants running, we could only do that on the basis that people who resigned their positions were, by an edict of this parliament, restored to their previous position immediately after their unsuccessful bid for parliament.

I note from Senator Brown's bill that judicial officers would automatically remain subject to disqualification, and I think that is a very sensible approach to take. Over the years, many members of this chamber have had considerable financial hits in order to take their positions in this place. After all, it has always been understood that the ban on senators, like a ban on members, takes effect from before the election until they actually

take their seats in parliament. For the House of Representatives that is not a very noteworthy factor—most of them take their seat in the parliament immediately—but, with the provisions of section 13, senators may have to wait many months before they can actually take up their seats. Of course, they still have families to support during this period and so the ban on returning to employment before you come to his chamber can be a very major penalty.

I think it was the 1961 Senate election that elected Doug McClelland, a very distinguished senator, to this chamber. He was a reporter for Hansard and had an eight-month wait. He then had to enter a new career selling ice-creams, as I understand, for eight months. So if the great minister in the Whitlam government, and President of this chamber, was ever asked what his job was before coming into parliament, it was one of selling ice-creams.

Senator Ferris by now is fairly intimately acquainted with these provisions. She was one of the lucky ones. She did not have to face a very long wait—something like three months, I think it was, compared with nine months for any senators-elect at this most recent election. We raised questions when we heard that Senator-elect Ferris was working for Senator Minchin, because we believed it totally contravened the existing provisions of the constitution, and we were conscious that we have to obey the law as it is.

If we had not raised objections in this chamber, down the track two things could have happened: validity of legislation or enactments by this parliament could have been challenged, and also Senator Ferris personally could have been placed in a very invidious position a year or two later because of the financial penalties that may have been attracted to her membership of this parliament. So I think we were right to raise that particular question at the time. It had a side benefit of embarrassing Senator Minchin—the skilled apparatchik from South Australia turned into one of the most incompetent people ever for overlooking this particular provision—so I suppose we could not resist some glee in pointing that out.

On reflection, Senator Brown's suggestion is that this parliament is the one that determines what is exempt and what is not. I say to Senator Brown that, if this is successfully translated, I still think I would want the parliament to exclude the sort of position that Senator Ferris took because it was the direct gift of the executive. It was not through a merit Public Service position—I am not inferring that Senator Ferris did not have the merit—it was through the MOPS Act or through Executive Council. I think those ones still should be exempt, but this parliament itself should determine that and not the High Court in those circumstances.

The Labor Party has had a long history of expanding the pool from which candidates for public office can be drawn. It is in that spirit that we support Senator Brown's bill. Recently the Department of Immigration and Multicultural Affairs estimated that up to five million Australians could hold dual citizenship, and that is an ever expanding area. Coupled with the provisions for restoring the original intent of office-of-profit disqualification, the ALP believes that this bill will ensure that frivolous and avoidable litigation following elections can be prevented and that the pool of eligible parliamentarians from which candidates can be drawn will be expanded.

We do have some problems with this bill. One problem is that it is privately sponsored, and those bills do not have a very good track record. I think, when I last asked at a Senate estimates committee, I was told that in 10 or 15 years only one private member's bill had actually gone through this chamber and been adopted by the House of Representatives. I do not want to go to the detail of that, but it was a very, very narrowly based bill.

The odds of this bill actually progressing through this chamber with all the provisions required for a constitutional change still remain a bit pessimistic. For it then to be given currency in the House of Representatives, picked up and passed, again is not likely. But what Senator Brown has done is to make the first step. He has raised the issue and the consciousness on it.

I certainly would oppose this bill being put to the people on a separate basis. I hope Senator Brown accepts that I do not think $40 million being spent on just this one constitutional area would be acceptable. But if, at some stage, we are going to the people on questions of the republic or other matters, this should be a matter that we put to the people at the same time—hoping that it does not get, if you like, poisoned by some other issues that may be run.

A lot of time and a lot of money can be spent on unsuccessful referendums. I recall the last great referendum, when four questions were put to the people of Australia by the very admirable then Attorney-General, Lionel Bowen. It was very, very hard going trying to get any of those up—they all failed. I must say I favoured only three out of four, but handing out how-to-vote cards on the day before I voted, I very quickly voted for all four, even the one I did not like much, because they were all going down the shute. These types of referendums will have a major chance of success if all parties support them, but that is an absolute requirement. If you do not have the support of the major parties, it is easy to knock off a referendum proposal.

I commend this particular bill and I commend Senator Brown for bringing the issues forward. I do hope that the government at some stage, with all its resources, will take over the sponsorship. I am not taking the credit away from you, Senator Brown, but the government has the ability to progress these things much more easily than a private member's bill has in the Senate. I think you have sparked interest in this area, and at the next opportunity that any government goes to the people on constitutional change, it should in fact have this as one of the propositions.

Senator O'CHEE (Queensland) (5.30 p.m.)—The Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill 1998 which is before the chamber at the moment proposes alterations to section 44 of the constitution in two material aspects. I will address each one separately. They are section 44(i), which relates to foreign citizenship, and section 44(iv), which relates to holding an office of profit under the Crown. Alterations are also made to section 44(v), but it is substantially within the same line of thought.

Turning to the first matter, I disagree with the proposition that dual citizenship, provided one of the nationalities held by the person in question is Australian, should entitle a person to stand for election to the parliament. That is not disparaging in any way people who are dual nationals. I simply take the view that a higher requirement is expected of people who seek election to the federal parliament. In fact, that was the original intention of section 44 of the constitution.

Section 44 of the constitution does not say that any Australian citizen shall be entitled to election to the federal parliament. In fact, section 44 says that you must be an Australian citizen but there are categories of persons who are not eligible for election to the parliament. One such category, for example, is an undischarged bankrupt or insolvent. There are other categories of persons. That is not to say that a person who is a dual national is necessarily in the same league as someone who is attainted of treason, but the original framers of the constitution felt that the parliament should be served by people who met a higher requirement than that which applied to citizens.

In relation to dual nationals, there are very good reasons why this section should be retained. The first is that there is a difference between somebody who enjoys the fruits of Australian citizenship and somebody who decides what the fruits of Australian citizenship should be. More importantly, there is a difference between somebody who lives within the shores of this country and somebody who has responsibility for dealing, for example, with the relationship between this country and another country.

Let me take a simple case in point. This parliament regularly deals with issues of external affairs, either in a legislative fashion or some other fashion—in some other form of debate, or the passage of resolutions, or the asking of questions in estimates committees, in question time or questions on notice. Suppose a person was a dual national of Australia and Japan, and Australia was in-

volved in a bitter and acrimonious trade dispute with Japan in relation to the issue of tariffs, for example. Does it not create at least the perception of a lack of independence if a person who is voting upon issues related to trade between Australia and another country is also a citizen of that other country? The clear intention of the framers of the constitution in section 44(i) was to avoid that conflict of interest—to avoid even the appearance of a conflict of interest—by saying that such a person should be precluded from becoming a member of parliament.

We sometimes forget the very high office that every member of parliament holds in this place—both here and in the House of Representatives. We are not ordinary citizens. The people of Australia do not treat us as ordinary citizens. They expect a higher standard of us. It is not unreasonable on that basis for us to say to people who are dual nationals, 'You are welcome to enjoy the fruits of Australian citizenship; however, if you want to be a legislator in this country, then a higher standard is required.' In saying that, I acknowledge some of the very learned comments made by Senator Ray in relation to dual citizenship. I think he made some very perspicacious comments. This is the difficulty of accepting the proposal contained in this bill.

It is ironic that certain members of parliament work themselves into quite a lather about the possibility of selling government interest in a telephone company for fear of partial foreign ownership, yet have no objection to allowing people to become members of parliament—to actually run the country as opposed to having an interest in a telephone company in the country—who are dual nationals. Is it not absurd to say that the telephone company should be 100 per cent Australian but the people who are running the country need not be?

I understand Senator Brown's desire to encapsulate a broad cross-section of the community and make them eligible for parliament. I understand that, but I say to Senator Brown that if people wish to aspire to the high office of senator or member of the House of Representatives, it is not unreasonable for people to say, 'We expect you to be more than a citizen. We expect you to have a clear and undivided loyalty to Australia.' 'Clear and undivided loyalty to Australia' is the phrase Senator Faulkner used in discussing this matter in the debate today. That is not an unreasonable proposition. It is a proposition that I believe the majority of Australians would support.

Yes, there are five million people who are dual nationals potentially, but in Sykes and Cleary the High Court created a mechanism by which those people could make themselves eligible for parliament. I accept the comments that Senator Ray made about some countries not allowing a person to disavow their citizenship of that country. But the High Court did not say that they had to be a citizen of Australia only. It basically said that they had to take all reasonable steps; they had to actively show their allegiance to Australia solely. We cannot control the operation of the laws of another country within their jurisdiction, but we can certainly set limits within this country of what we expect of potential members of either the Senate or the House of Representatives.

For that reason, I do not believe it is unreasonable for section 44(i) to be in there. Although the wording has been described by others in this chamber as archaic, I think it is not that unreasonable, because it talks about a person who:

> Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power;

Consider those words. It says that, if you want to be a member of parliament in Australia, you should not be under any 'acknowledgment of allegiance, obedience, or adherence to a foreign power'. You are here to serve Australia first and foremost and not have the potential of being accused of serving, or in fact even serving, the interests of another country. If you wish to accept this high office, is it not a reasonable price that you should disclaim the rights and privileges of another country? It is a small price to pay, I believe, for the honour of serving the Australian people in this parliament. I believe there are few honours higher than that of

serving the Australian people in this parliament, and that is not an unreasonable price to pay for that honour.

I know the time is very brief and we have undertaken to Senator Brown to try to get this to a vote today, so I will have to shorten my comments on the other provision of the bill. I know my learned friend Senator Abetz will make comment on it. Suffice to say that there is a reason why subsection 44(iv) was inserted in the constitution, and I believe it is a historical reason. In the first half of the 19th century, the British parliament was dominated by the military because the military was dominated by the aristocratic class of Britain. There were peers with courtesy titles and grandsons of peers who were in the army and who were also in parliament. One only has to look at the history of Britain at the beginning of the 19th century to understand the fear that the framers of our constitution had that the military might dominate the operations of the parliament.

So I can very much see why subsection 44(iv) was inserted there. It was inserted there to ensure that the parliament would not become a captive of the military. When you consider that it was some 40 years only from the ending of transportation to the framing of the constitution and when you consider that transportation and the system which supported transportation in this country were maintained by the military rather than by the civilian powers of the colonies, you can understand why the framers of the constitution, seeking to create a charter for a new nation, should shy away from the potential of a military domination of the parliament. One of the frequent criticisms that is made of Indonesia and some other countries in the region, or Chile even, is that the parliament or the congress is in a position to be dominated by the military. That is, I believe, the intention of subsection 44(iv). I do not want to go into the merits of it too much, but it is worthy of note that it was inserted there for a very good reason, and that reason was to uphold our liberties and our freedoms.

I will conclude by saying that there has been remarkable comment on this provision of late. I do not want to talk about the merits of any particular case, but it is interesting to note that one former member of the House of Representatives now believes that a special case should apply to citizens from the United Kingdom, when on 19 September that same person ended a speech in Longreach with the words 'One people, one flag, one set of rules'. Isn't it dangerous if we, by passage of this bill, import into the Australian constitution perhaps an even more unsatisfactory situation than exists at the moment? I believe that Senator Ray has raised some very good points but I do not believe this bill is the way to address them. With great respect to what Senator Brown seeks to do, I do not believe this bill is the way to address it. In fact, I believe that it creates potentially as many problems as exist at the moment, if not more. For anybody who has any doubts about how we sort out the problem, I simply refer them to the excellent contribution made by Senator Ellison in stating what the Electoral Commission has done to try and make it clear to people what their obligations are. For those reasons I have outlined today, I certainly do not support the passage of this bill.

Senator COONEY (Victoria) (5.44 p.m.)—I rise to speak on the Constitution Alteration (Right to Stand for Parliament—Qualification of Members andCandidates) Bill 1998. When subsection 44(i) of the constitution came in, it referred to British citizens. It is interesting to read the statement of Sir Edward Braddon from Tasmania almost 101 years ago, on 31 January 1898, when he was talking about the issue of whether or not there ought to be a right of appeal to the Privy Council. He talked about that in the context of the Commonwealth. He said:

> I do not think anything more calamitous could occur than that we should deprive the people of the Commonwealth of the right to appeal to the Queen in Council, a right that as Britons they should be allowed to exercise and one which is enjoyed at the present time by every man in every part of the empire.

He talked of Britons and he talked of men. He had this to say a little later:

> We all, I believe, desire to remain members of the great British Empire, and we wish to continue British subjects with all the rights of British

subjects, and of those rights this appeal to the Privy Council is a very considerable one.

There has been a great change since those days, as is indicated by the case of Senator Robert Wood, who departed the Senate in rather tragic circumstances. He was a person who was dedicated to this country and to the Senate.

As has been said before me, people should be Australians if they are going to represent Australians, and they should be Australians alone. I know it has been said that all sorts of legal problems can arise because of the action of other countries which may want to keep on their books, as it were, people who are, and want to be, citizens of Australia. But the High Court has worked that out. It has given us the proper test, which says that, if a person strives to be an Australian citizen and an Australian citizen only, then he or she should be treated as such.

Over almost 100 years—since we became a nation—we have grown away from our roots, from the British cradle, which gave us so many great attributes. It is now time that we stood as Australians and as Australians alone. The statement of Sir Edward Braddon, which may have had all sorts of force on 31 January 1898, has lost its force. In that context, about 111 years ago—on 1 October 1887—there was a poem published in the *Bulletin* by Henry Lawson. This is what he said in his second verse:

Sons of the South, make choice between
(Sons of the South, choose true)
The Land of Morn and the Land of E'en,
The Old Dead Tree and the Young Tree Green,
The Land that belongs to the lord and Queen,
and the Land that belongs to you.

Australia's great poet was saying at that time that there ought to be a distinction drawn between those in Australia who see themselves as Australians and those who are overseas, and that the great aspects of a nation can only be attained by people who see themselves as Australians only.

I have no objection to following on from what has already been said about people having dual citizenship and living in this country. That is more than reasonable, because we are a migrant country. But there are problems where people who represent the nation—as we do, in the parliament—would want to hold on to a second aspect. There should be one aspect and one aspect only, as a symbol that we are an independent country and a country, hopefully, that is soon to be a republic—as Henry Lawson wanted about 111 years ago.

The purpose of section 44, I think, is best described by our present Governor-General, Sir William Deane, when he was on the High Court in 1992. In the Sykes v. Cleary and Others case, he had this to say:

Moreover, in the construction of a constitutional provision such as s.44—

he quotes Sir Garfield Barwick—

". . . the purpose it seeks to attain must always be kept in mind."

Sir William Deane continues:

That purpose is essentially to ensure that the composition of the Parliament is appropriate for the discharge in the national interest of its functions as the legislature of a free and independent nation under a Constitution which adopts the Cabinet or Westminster system of parliamentary democracy but is otherwise structured upon the doctrine of a separation of legislative, executive and judicial powers. As one would expect in the Constitution of a country whose population consisted (by 1900) largely of immigrants or the descendants of immigrants, the disqualification provisions of s.44 look solely to present allegiance, status and interests.

That last concept is one that we should keep in mind: no matter where you come from or whatever your past, you can become an Australian and an Australian citizen, but you must look to your present allegiance. Is it too much to ask that a person who represents Australia in this place should have a present allegiance to Australia and to Australia only?

It is my view that Senator Brown, who is rightly striving to make section 44 work and to make it contemporary, has gone too far in saying that a person can be a member of this parliament simply by being an Australian citizen, without taking away from himself or herself that part of his or her identity which is not Australian. It is that aspect which is symbolic of the country and of what we need.

The other issue I want to raise is the disqualification presently lurking in the constitu-

tion for those who hold an office of profit under the Crown and who have contracts with the government. That is a voice from the 18th century. Macaulay's work on the Earl of Chatham, William Pitt, shows that Pitt was noted for the fact that he did not take bribes, he did not misuse public funds and he did not make use of the secret service, as they called it, as everybody else did. That was a symbol of the day. The idea was that the Crown was part of that to attract parliament to itself, to get the views of parliament on its side so it could do what it wanted. That danger of the Crown corrupting the parliament has long since passed and it is more than time that that provision went. I think it is one of the great shames of this place that Phil Cleary, a former member for Wills, had to go through the trauma he did to finally win his seat. It was a very unfortunate part of our history that he should have had to do that. The last part of the bill introduced by Senator Brown says:

> The Constitution is altered by omitting the following words from section 44:
>
> , or of any of the Queen's Ministers for a State, or to the receipt of pay, half pay, or a pension, by any person as an officer or member of the Queen's navy or army.

I must ask him why he deletes that part but leaves the rest of that section of the constitution:

> But sub-section (iv) does not apply to the office of any of the Queen's Ministers of State for the Commonwealth . . . or to the receipt of pay . . . as an officer or member of the naval or military forces of the Commonwealth by any person whose services are not wholly employed by the Commonwealth.

Why leave that part in but take out the other part? I ask that in light of the fact that it is going to be parliament which determines, in any event, who fits into paragraph (iv) and who does not. It seems to me that that is too much open to the spirit of the day rather than being fixed by the people. There is much to be said for the people of Australia fixing the qualifications that their members should have.

It was a right they were given when the referenda took place in the 1890s and I think it is right that they should be left with the ability to determine who shall be and who shall not be their members of parliament, rather than parliament itself in this context doing that. I would certainly like to hear Senator Brown on that. The main thrust of it, as others have said before me, is that the great need is for Australians to be represented by Australians and those who owe allegiance only to this country, and that members of parliament are in a special category above and beyond the rest of the population in that regard.

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (5.56 p.m.)—I rise to join in this debate on the Constitution Alteration (Right to Stand for Parliament—Qualification of Members and Candidates) Bill 1998. I understand that from our side we would not have minded this matter going to a vote this afternoon but I understand that, if I had not risen in my place, the Labor Party would have substituted one of their speakers to speak out this debate. It is on that basis I join in, noting that I have only about three minutes, so my comments will be brief. I do not object to the concept of dual citizenship, but I believe that this parliament, in particular in recent years, has expended a lot of energy in relation to assertions of conflicts of interest, assertions suggesting that a minister of the Crown or other people might do certain things if they have a conflict of interest.

If you hold two citizenships, both of the same value to that person, one can genuinely ask the question: in the situation of a conflict of interest between your nationalities, which one will prevail? Under the proposal before us, we could well have a situation where somebody has dual citizenship with a nation with whom we have hostilities, be it in relation to war, trade or other areas. That person could also be involved in trade in the other country or, indeed, in the armed forces in the other country, yet still hold a position in this parliament and possibly sit on the defence committee of this nation. When you serve in this parliament, you should have only one loyalty, and that is to Australia. You cannot have a dual loyalty.

It may be, as suggested, that subsection (2) of the bill would deal with that because the parliament would be given the power from

time to time to declare certain offices to be such as to disqualify you from holding office. I have to say that is a recipe for disaster. There have been times in this parliament when a party has had the numbers in both the House of Representatives and the Senate. It has not been unknown for this parliament to use its powers for particular purposes which are not necessarily in the best interests of the nation. You could have a situation where the opposition nominates a particular candidate who—you could pick any profession—happens to be a policeman.

Senator McKiernan—We have had some bad examples of cops.

Senator ABETZ—In relation to Mr Filing, it might be a bad example, I do not know, but it could be any profession or calling in life such that, if you hold that position, it is not allowable to be a member of parliament. The government of the day could, in effect, by passing it through both houses, disqualify that candidate from running for a seat or from taking office if that person were to win the seat. The government, with both houses, could effect such a result. I can understand the reason and rationale for this legislation but, when you look at the detail, there are some very real problems with it. I for one would not be satisfied in supporting this legislation in its current form. But that does not mean to say there is not a need for dealing with the problems of section 44.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—Order! The time allotted for the consideration of general business has expired.

DOCUMENTS

Consideration

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—There are 126 government documents and audit reports listed for consideration on today's *Notice Paper* and there is a limit of one hour for their consideration. To expedite the consideration of the documents, I propose, with the concurrence of honourable senators, to call the documents in groups of 10. Documents called in each group to which no senator rises will be taken to be discharged from the *Notice Paper*. Documents not called on today will remain on the *Notice Paper*. Is there any objection?

Senator HOGG (Queensland) (6.00 p.m.)—Yes, there is. Before you commence, I note that some senators have been involved in other things this afternoon. Could we organise it so that senators who wish to speak to specific documents have the opportunity to do so, and that there be an all-encompassing motion that the others remain on the *Notice Paper*?

The ACTING DEPUTY PRESIDENT—I do not have an objection to that if you are able to work that out between the various potential speakers next week. We will continue as I suggested for this time.

Senator HOGG—So they will not be discharged?

The ACTING DEPUTY PRESIDENT—They will not be taken to be discharged.

Senator MARGETTS (Western Australia) (6.01 p.m.)—One of the problems, if you leave all of the documents on, is that I have given up waiting for, say, document 106 because you never get to document 106. All that ever happens is that you have the same list every week and, if you never discharge documents, you never get further down the list. It is a lovely idea, but I think it has problems as well.

Senator HOGG (Queensland) (6.02 p.m.)—On that point, Mr Acting Deputy President, I have no problem if we go to document 106 and that is discharged, but I do know that there are other documents that other senators are interested in.

The ACTING DEPUTY PRESIDENT—Perhaps we could try your earlier suggestion of trying something for next week rather than figuring it out as we go along. It might be something that could be added to whips meetings or something like that and sorted out in advance.

Senator ABETZ (Tasmania—Parliamentary Secretary to the Minister for Defence) (6.02 p.m.)—I am not sure on what basis these comments have been made—whether it is by leave or whether it is by point of order. I suggest to Senator Hogg that, if he does know of specific documents that specific senators

want to make comment on, it is appropriate for his whip or, indeed, for himself, to ask that consideration of that particular document be postponed. I think that would overcome what Senator Margetts is concerned about: that we have a whole lot of documents there. If Senator Hogg knows that people want to speak on specific documents, let us preserve them, but let us not clog up the *Notice Paper*.

The ACTING DEPUTY PRESIDENT—I would suggest that, on this occasion, we proceed as suggested and as has been tried before. Perhaps next week we could trial having the parties figure out in advance who wants to speak to what documents and then we can bounce around to our hearts content. On this occasion, however, we shall go with documents 1 to 10. Does anyone want to speak to any of these documents?

Australian Institute of Aboriginal and Torres Strait Islander Studies

Annual Report

Debate resumed from 26 November, on motion by **Senator Hogg**:

That the Senate take note of the document.

Senator CROSSIN (Northern Territory) (6.04 p.m.)—In speaking to this report I think it is important to say such a wealth of government documents come before us that it is very easy for some of them to slip through without us taking note of them. In this instance, I would like to draw people's attention to this report mainly because I think it is important to highlight the role of an institute such as this.

One of the main aims of the institute is to promote knowledge and understanding of Australian indigenous cultures, past and present. I want to place on record that it does so in an element of high quality research and knowledge within the area. It is probably one of the very few institutes that is dedicated to and managed by Aboriginal and Torres Islander people. The institute dedicates its work to a number of areas, such as undertaking and promoting Aboriginal and Torres Islander studies and making sure that all of these areas are placed on the public record.

There are a number of activities we should look at. The institute has done a number of important things this year. It has instituted a new collections management system called 'Mura', which is a Ngunnawal word meaning 'pathway'. It has also ensured that a number of publications relating to regional agreements, key issues in Australia and working out agreements have been brought to the attention of the Australian public. I note that the Chair of the institute is Professor Marcia Langton, who is also the Chair of the Cultural and Indigenous Natural Resource Management Centre at the Northern Territory University. The Deputy Chair is Mick Dodson.

There is not a lot I want to say about this report. I think the institute has done some outstanding work through the year. My main aim in talking to the report was to highlight to the general public and this chamber that these reports should be taken note of and the opportunity taken to speak of them. I think the work that these sorts of institutes do during the year should be drawn to the public's attention.

There is often a lot of criticism about the role of Aboriginal and Torres Strait Islander studies. There is a lot of criticism in fact about the role of Aboriginal people sometimes in this society. I think this report highlights that here we have an institute managed by Aboriginal people that conducts some very high quality research and that puts out some very high quality statements about issues affecting this country in terms of reconciliation and interaction with what is happening in our community and Aboriginal issues. I think it is worth our taking note and spending a few minutes to at least speak about its highlights and achievements during the year. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Social Security Appeals Tribunal

Annual Report

Debate resumed from 26 November, on motion by **Senator Bartlett**:

That the Senate take note of the document.

Senator BARTLETT (Queensland) (6.07 p.m.)—I would like to speak briefly to the Social Security Appeals Tribunal annual report. As Senator Crossin mentioned, and is often mentioned at this time of the week, we

do have a lot of reports go through this place, and it is important to try to acknowledge the importance and significance of the roles and the work that goes behind the pages that are contained within various reports.

The Social Security Appeals Tribunal is one such body that it is important to acknowledge as performing an absolutely crucial role in providing accessible, cheap and fair justice for people on issues that very directly affect their lives. The Social Security Appeals Tribunal now has the power to review decisions under a range of acts including, obviously, the Social Security Act, but also the Farm Household Support Act, the Student and Youth Assistance Act, the Employment Services Act, the Child Support (Assessment) Act for a number of years, the Veterans' Entitlements Act for a number of years and currently the Aged or Disabled Persons Care Act. That is a lot of areas that the tribunal has responsibility for and, not surprisingly, they have many applications for review.

In the financial year that this report relates to, the Social Security Appeals Tribunal received 11,628 lodgments of new applications for review, compared with just under 14,000 the previous year. In the course of this year their outputs, in the form of finalised appeals, totalled 12,343. That is over a thousand appeals a month that the tribunal deals with which, as I said, relate very much to the basic crucial components of many people's lives such as what is, in many cases, their only income.

It is clear from even the most basic glance at the role the appeals tribunal plays that it has a crucial role to play in ensuring that people have the ability to uphold their rights to adequate income support, or at least appropriate income support, under existing legislation. It is important in that context to note ongoing proposals from the government to dramatically reconstruct appeals tribunals in this country under the guise of streamlining and efficiency, et cetera. Obviously that is a noble goal, but it is important to emphasise the absolute necessity of tribunals such as these being able to rule on matters from a basis of expertise and experience.

I have said a number of times in this place, and all senators would be aware, that the Social Security Act is an extremely complex ever-changing act. It is very difficult to keep track of what is happening with it, and that is one of the reasons why there are so many appeals to the Social Security Appeals Tribunal. I do not envy the staff at Centrelink who have to try to enforce such a wide-ranging, complex and ever-changing act and to try to apply that act to the endless variety of personal circumstances that people in the community have. For that reason, it is all the more crucial that the tribunal dealing with those sorts of appeals itself has as high a level of expertise and understanding as possible, and that it is not downgraded or rearranged into a tribunal set-up that contains people who do not have regular experience in dealing with the sorts of issues and complexities that arise with the Social Security Act.

Many of the cases that come to the tribunal are just incorrect decisions or misinterpretations, but some are very difficult, with tricky circumstances and cases. In terms of consistency of application and ensuring the highest possible prospect of a fair outcome for appellants, it is important, I believe, that tribunal members are able to have expertise in that area. I commend the report to the Senate and to anyone interested in a detailed outline of the operations of this particular tribunal, but I also highlight again on behalf of the Democrats that it is an important body and express our concerns about any potential reduction in the important role that it plays via any reworking of the tribunal structure in this country. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Immigration Review Tribunal

Annual Report

Debate resumed from 12 November, on motion by **Senator Bartlett**:

That the Senate take note of the document.

Senator McKIERNAN (Western Australia) (6.13 p.m.)—I would like to speak to the annual report of the Immigration Review Tribunal for 1997-98. I am not exactly sure what the procedures will be for the presenta-

tion of the annual report next year, because this Senate last week or earlier this week passed a bill that will amalgamate this particular tribunal to form the Migration Review Tribunal. Possibly next year we will be getting a report from the Migration Review Tribunal. This report makes mention of the fact that the Migration Review Tribunal was proposed to be set up by an announcement by the minister on 20 March 1997 and that it was to start on 1 July 1998. Well, we are at the latter end of 1998 and it has not started yet.

The contents of this report are actually quite useful. Although the tribunal did not reach its productivity objectives, it has nonetheless performed very well. In terms of meeting its targets in getting cases dealt with by full-time tribunal members within a two-day sitting period, it has done exceptionally well. There are some minor problems in meeting the target date outcomes for non-permanent or part-time tribunal members. Nonetheless, there has been an increase in productivity by these people as well. All of the tribunal members are to be commended for their efforts.

Earlier in the week when I spoke on the bill that I have mentioned, I said that I have faith in the system. That is not to say that there are times when I do not think that they get it wrong and that I and my office might refer constituents or family members to take the matter further.

The timeliness of decision making within the Immigration Review Tribunal has also been improved. This is very well accepted by the community. The report states that in 1997-98 the average time taken from the receipt of a case to constitution was 89 days, a 50 per cent decrease on the 177 days taken in 1996-97. That is a tremendous improvement and the tribunal and tribunal members are to be commended for that achievement. One would hope that that timeliness will continue when the new review tribunal comes into operation. I say that both on behalf of the parliament which has to pay for the cost of these cases—it is, after all, taxpayers' money that funds the tribunal—and also on behalf of the people who appear in front of the tribunal, who have to wait now an average of three months, even with the improved timeliness of decision making. That is an improvement, but three months is one heck of a long time to wait when you are awaiting the outcome of a decision about permanent residency in this country, the grant of a visa or staying in this country.

One other brief matter I want to refer to appears on page 12 of the report, that is, quality and satisfaction. The report notes that there were 95 appeals lodged with the Federal Court in 1997-98 against decisions of the tribunal—a decrease of 45 per cent—compared with the 173 appeals made in 1996-97. The reason I raise this matter is that it foreshadows another bill that will be coming before the Senate, I gather, in a short time. I do not want to debate the terms of the bill, but the purpose of the bill is to insert a privative clause in the Immigration Act to prevent many people from going on to taking their cases further, going on to the Federal Court after they have lost a decision in the merit review tribunal. The fact that the number of appeals are decreasing is to be applauded. One would wonder in this scenario whether or not it is worth while to seek to insert a privative clause preventing people from bringing their case into the Federal Court. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Affirmative Action Agency

Debate resumed from 26 November 1998, on motion by **Senator Crossin**:

That the Senate take note of the document.

Senator CROSSIN (Northern Territory) (6.18 p.m.)—I would like to speak about the report of the Affirmative Action Agency. This agency, as you would be aware, is established under the Affirmative Action Act. That act covers all private sector organisations, higher education institutions, group training schemes, unions, community organisations and non-government schools which have more than 100 employees. These organisations are asked to report their compliance against the regulations in the act.

Catherine Harris, the Director of the Affirmative Action Agency, noted in the foreword of the report that there seems to have been a change in the last year which is re-

flected in the high level of acceptance of women's active participation in the work force. One of the ways that the agency measures the effectiveness of the act is through the results achieved by organisations covered by the act. The improved outcomes are a clear measure of the success.

It should be noted that the act does not always achieve the successes that it desires and there are instances where changes have failed to happen. In fact, sometimes these have been quite dramatic—for example, businesses which have failed to recognise women's participation in and contribution to the workplace, or where there has been any significant positive change in gender segregation and pay equity. The director says that there has been inconsistent implementation of family friendly employment conditions, and that is another issue that remains unresolved and continues to affect both men and women.

A further issue of concern is that affirmative action strategies in some workplaces appear to be treading water, and this is a concern to us. The act was introduced 12 years ago and there have since been many changes to business management practices. The act needs to better reflect this new environment.

I am aware that during the last year or so the minister implemented and instigated a review of the regulations and a review of the act. I participated when people from the Affirmative Action Agency came and held consultations about the review of the Affirmative Action Act with businesses and groups in Darwin. A vast majority of the submissions to the review supported the retention of the act. From my own experience in those consultations, that support was across the board—from the universities to the private sector and government agencies. Particularly in favour of retaining the act were people who represented the chamber of commerce in the Darwin consultations. A uniform feature of the written submissions to the review of the legislation, including a submission from the agency, was the need to increase the effectiveness of the act.

Some of the recommendations that I think we will see flow from a review of the act include a need for a more effective reporting regime. There is a requirement for those businesses and organisations affected by the act to simply instigate compliance with the act. At this stage, if they do not comply they are simply named in parliament. I think some people thought that there was probably a need to instigate greater penalties than that. The agency needs to be focused on providing a more educative role, assisting employers on equity and implementing family friendly work practices, and initiating greater links with other bodies such as the Sex Discrimination Commissioner.

It is important to note that under the act there is a five-level assessment scale. Organisations with comprehensive, high quality programs receive either a level 4 or 5 assessment. These are best practice organisations. But we should not forget, when we look at this report, that the majority of organisations are still only receiving a level 3 assessment. So there is a fair way to go in terms of improving the way in which this act is being implemented.

Let me conclude by saying that we look forward to the outcome of the review. There is recognition across all sectors that the act does need reviewing. We look forward to that review but we also look forward to better strategies. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Department of Immigration and Multicultural Affairs

Annual Report

Debate resumed from 12 November, on motion by **Senator Bartlett**:

That the Senate take note of the document.

Senator McKIERNAN (Western Australia) (6.24 p.m.)—I want to highlight a few matters that are contained in the annual report of the Department of Immigration and Multicultural Affairs. Some of them are quite pleasing. We on this side of the chamber might differ on some of the measures that make up our immigration program and how it is structured, but that is not the case when it comes to how we handle our humanitarian program. We on this side of the chamber are proud of the

humanitarian program that Australia delivers. We believe that we are a nation that can help those who are in need and, indeed, that we are doing so quite successfully. I quote from page 3 of the report:

> The Humanitarian Program was successfully fulfilled at 12 055 places, close to its 12 000 target. Of this number, 10 467 people were granted Humanitarian Program visas outside Australia and 1588 received Protection Visas onshore.
>
> . . . . . .
>
> More than 4000 refugees were granted visas, including 543 under the Women at Risk category.

That is something that this nation must be proud of. We are assisting people who are in need of assistance. We are granting them protection and we are granting them a future when they may not otherwise have had a future.

I highlight the ludicrous suggestion that was made prior to the election by some parties that we ought to continue our humanitarian program, our refugee program, but that, at the end of hostilities in the nation where the people came from, those people ought to be repatriated back to that country. What kind of security, what kind of settlement service, would Australia be offering were that suggestion to be taken up and implemented? I am pleased that it is not to be taken up and implemented.

One area of great concern to me particularly, to those on this side of the parliament, and perhaps to the parliament as a whole, is the matter of border management and compliance. I again read from the report:

> Airport staff intercepted 626 passengers of concern outside Australia, compared with 436 the previous year. . .

That is an increase of almost 200. It is quite a dramatic increase. Departmental officers are to be commended for their vigilance in recognising these people who are of concern or who may be of concern. There were 1,555 passengers who were refused entry because they had irregular travel documents. That is an increase on the figure for the previous year, which was 1,350. Again, it represents another increase of 200 persons, which is very significant. The budget brought down in May 1998 allocated additional resources to tackle this problem.

One area in which there has been dramatic improvement—and I am quite happy to go on the record as recognising this—is that last year 365 people arrived here unlawfully by boat. In the year addressed by this report, only 159 boat people arrived. That is a dramatic and very pleasing reduction. The statistics also show that boat people detention days fell to 29,836 compared with 89,057 in 1996-97. That will mean a dramatic saving for the taxpayers of Australia, who pay in the region of $55 per day for the detention of a person in the facility at Port Hedland, which is one of many such facilities.

The number of applications for citizenship declined. I recognise that, of the new citizens who received citizenship during the year, 23,000 were from Britain. I hope that that represents a change in the trend and that the British are now taking out Australian citizenship in greater numbers. It will be to their benefit if they continue to do so. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

Consideration

The following orders of the day relating to government documents were considered and not debated:

> Australian National Training Authority—Australia's vocational education and training system—Report for 1997—Volumes 1, 2 and 3. Motion of Senator Hogg to take note of document called on. On the motion of Senator Crossin debate was adjourned till Thursday at general business.
>
> Leave was granted for general business orders of the day nos 33-74, 87-97 and 116-122 relating to government documents which were called on but on which no motion was moved to remain on the *Notice Paper*.

COMMITTEES

Consideration

The following order of the day relating to committee reports and government responses was considered and not debated:

> Finance and Public Administration References Committee—Report—Contracting out of government services: Second report—Government

response. Motion of Senator Murray to take note of document called on. Debate adjourned till the next day of sitting, Senator Murray in continuation.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Consideration of committee reports and government responses has now concluded. I propose the question:

That the Senate do now adjourn.

Broken Hill Proprietary Co. Ltd: Redeployment of Work Force

Senator TIERNEY (New South Wales) (6.31 p.m.)—I rise this evening to update the Senate on the marvellous progress being made in Newcastle by BHP in terms of the redeployment of its work force. Yesterday in this chamber, in discussions relating to the Hunter Advantage Fund and the tremendous contribution of the Howard government to the redevelopment of the Hunter Valley post-BHP, I made some mention of the fact that BHP was working very hard on the redeployment of its members into other occupations following the downsizing of steel-making operations in the next year.

BHP is to be commended for its work in this field. It has become a model for what businesses should be doing with their work force when they are faced with a significant downscaling. Often what happens is that businesses suddenly announce they are shutting up shop and people are left totally in the lurch sometimes with only a few hours notice.

BHP has been working for two years on personal development plans with all its workers to make sure that, if they are not being redeployed within BHP and are not retiring, they have somewhere else to go. So far they have developed personal plans with 1,800 of their work force, which is almost the remaining work force in its entirety.

BHP has developed proper transition arrangements. The principles that underlie the transition arrangements are that people will be treated fairly and they will be well prepared for the future; the business will run safely and efficiently through the transition; and the restructured business will be world-class in the eyes of all stakeholders. A recent *Business Sunday* report on 1 November this year stated that BHP was setting records in production and safety performance. So BHP is meeting those last two principles that I have just outlined.

Within the last year, 600 workers have left BHP of their own volition to go to other jobs. BHP now has a work force of 2,300. It is working with these remaining employees to make sure that, when the steel-making operation shuts down, they will have the skills needed to move on to the next phase of their life.

Workers will get help with the following: financial and career planning; personal counselling; retirement planning; small business courses; and training and education assistance. The initiatives undertaken by BHP include training and education opportunities relating to future careers and community support arrangements designed to create new jobs.

Personal action plans set up at BHP work as follows: employees are given help to explore and investigate various career options, to determine their career goals, to develop personal action plans and to receive job search assistance. At this stage, 1,800 employees have had at least one PAP, or personal action plan, discussion. That is a very high proportion of the work force. BHP has spent the equivalent of 76 weeks full-time work on such an arrangement. A total of 1,100 employees have now determined their direction—that is, half the remaining work force. A total of 595 have commenced retraining in new jobs. BHP is ensuring that the workers in the Hunter are not left in the lurch when steel-making ceases.

On the *Business Sunday* story examples were given of the sort of training and support that workers are getting. For example, an electrician who had worked at BHP for 38 years—in most corporate closures, having worked there for 38 years, that would probably be the end of your career—now has a whole new career option available to him, thanks to BHP. He is learning massage and reflexology. His training is being funded by the company. He has 12 months left at BHP and then he will start his own business. He

plans to have enough clientele in 12 months time to be able to move full-time into this new occupation. He told the interviewer that this is an alternative, very different lifestyle from the one he has had in his career at BHP. He finds it relaxing and I am sure he will be a great success.

Another worker, who has been a rail supervisor for 37 years, also has big plans for his future. He is taking a security course and will open his own business to take advantage of the many opportunities that have come about because of the staging of the Olympic Games.

Another worker, a bloom mill operator, has been helped by BHP to complete his commercial pilots licence. He said he believes BHP has contributed around $5,500 to his training. When asked, he said he did not think it was likely big corporations would help workers like this, but in his case and in many others BHP has.

A fourth example was a worker who had left the company and started his own courier business. He said that the company he had set up was already paying for itself. BHP had paid for him to attend courses that will help him run the business. He also received financial advice through BHP.

The story said that BHP provided financial support. That is one of the most important things that BHP is doing for its work force. This advice ensures that workers use their redundancy payout wisely, something that does not always happen. If people are retiring, they attend retirement seminars so they are well prepared for their possible options. BHP has picked the financial consultants and it uses these seminars very carefully. It does not want its workers to be given shoddy advice or to be ripped off. It wants them to be very well prepared for their future. The *Business Sunday* story finished by saying that no company that shut down was without trauma but BHP was setting an example that was being watched by other companies throughout Australia. BHP is to be commended for helping to ease the burden of the work force and the local community.

Textor, Mr Mark

Push Polling

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (6.38 p.m.)—We already know that Mark Andrew Textor is the self-styled polling guru for the Liberal Party of Australia and the Prime Minister. We know that he has defrauded taxpayers and has used his position of influence with the Liberal Party to secure lucrative contracts for government departments. We know he will ruthlessly exploit racial prejudice for electoral gain. He has done this by excluding Aboriginals from his research and by seeking out racist responses to add flavour to CLP campaigns in the Northern Territory. We know that he has employed the notorious and despicable push polling technique on at least two separate occasions—in the Northern Territory election of 1994 and, of course, in the 1995 Canberra by-election.

Yesterday I told the Senate that he had been forced, along with Andrew Robb, to pay damages to Ms Sue Robinson and to issue an apology for the lies contained in the Canberra by-election push poll. The professional body for market researchers in this country yesterday issued a statement making it clear that all professional pollsters despise the use of push polling techniques, those very tactics that were admitted to by Andrew Robb, Mark Textor and the Liberal Party of Australia. I also informed the Senate that Mark Textor's current company, Australasian Research Strategies, is the Australian arm of the American company, Wirthlin Worldwide. Mark Textor can indeed be contacted at the email address mtextor@wirthlin.com. What is Wirthlin Worldwide?

Senator Conroy—Yes, what is Wirthlin?

Senator FAULKNER—More importantly, who is Wirthlin Worldwide?

Senator Conroy—Tell us who it is.

Senator FAULKNER—Richard Wirthlin is the company's founder and current chairman. He is also a director of Mark Textor's company. He was President Reagan's pollster from Reagan's time as Governor through to the end of his presidency. Richard Wirthlin is

a figure from the extreme right of Republican Party politics.

Wirthlin Worldwide provide research to a whole spectrum of extremist right-wing organisations in America. Their clients are a who's who of radical right-wing interest groups who promote and support candidates from the Republican Party's extreme right and target moderates from within the party. They also provide research for the Council for the National Interest, which is a Washington based, anti-Israel lobby group which promotes conspiracy theories regarding the level of Jewish influence in the States.

Their research is used as ammunition on almost every hot button issue found at the heart of the Christian fundamentalist right—from school prayer to the constitutional amendment to protect the flag. Their research on abortion is used by Operation Rescue, the notorious organisation responsible for bombing clinics and targeting medical practitioners. Their research for the Concerned Women of America is used to argue against state funded child care and to attack affirmative action programs.

Richard Wirthlin is known to be a member of the Council for National Policy, a right-wing political group which meets in secret three times a year to devise strategies to advance the extreme right-wing causes of its members. Its secretive membership boasts anti-abortion crusaders, gun rights proponents, religious crusaders, anti-tax advocates, financiers, politicians and political organisers. They include such right-wing luminaries as Oliver North, the tele-evangelists Pat Robertson and Jerry Falwell, representatives of the pro-gun lobby, and the former leader of the Ku Klux Klan in Indiana, Richard Shoff.

Senator Conroy—The KKK!

Senator FAULKNER—Yes, the KKK. Among the council's ranks you will find Tom Ellis, past director of the Pioneer Fund, a racist organisation which finances efforts to prove that African-Americans are genetically inferior to whites. Gary North is also a member and he is a Christian fundamentalist who believes that the Y2K millennium bug is a curse from God to punish the human race for our dependence on computers, but he will sell you a survival kit for $500.

The list goes on: cult leaders, anti-semites and racists. There is not a prejudice or a form of hatred which is not represented in the Council for National Policy. Among their membership is Richard Worthlin—Mark Textor's mentor and director of his company, Australasian Research Strategies. This group of hard right-wing operatives represent a range of interests and radical opinions which surely have no place in Australia.

I said yesterday that Mark Textor should be cut loose, and I repeat that now. He has already been allowed to import into this country a form of political behaviour that is unprecedented, unacceptable and certainly unworthy of Australian politics. If we believe that pollsters and researchers should observe some proper standards, then Mark Textor must go. If you actually believe that Australian political parties should observe proper standards, Mark Textor must go. If you believe that racism has no part in Australian politics, then Mark Textor must go. If you believe that Australians deserve a little more than just character assassination, then Mark Textor should go. If the Prime Minister does believe that the things that unite Australians are more enduring than the things that divide Australians, then what we say is: he must act, and Mark Textor must go.

Somali Refugee: Attempted Deportation

Senator BOURNE (New South Wales) (6.47 p.m.)—I wish to speak tonight about the government's attempted deportation of a Somali refugee—I shall refer to him as Mr SE—under circumstances which I am sure would offend the majority of Australians. Mr SE, a Somali national and a member of the Shikal clan, arrived in Australia in October 1997 and claimed refugee status. He wrote in his application that he feared treatment amounting to persecution in Somalia—arrest, imprisonment, torture or execution—on the basis of his race or nationality: that is, his membership of the Shikal clan. After applying for refugee status, he was held in a Victorian detention centre.

In March 1998, the Department of Immigration and Multicultural Affairs refused SE a protection visa. He lost an appeal to the Refugee Review Tribunal, possibly because he had no legal representation at the hearing. In October 1998, the Minister for Immigration and Multicultural Affairs refused to exercise his discretion under the Migration Act to grant SE a protection visa which would have enabled him to remain in Australia as a refugee.

It was at this point that SE contacted Amnesty International, on 28 October, in connection with his forced removal to Somalia the next day. Amnesty International commenced an urgent action, only after writing to the minister on two separate occasions in relation to this case. SE approved Amnesty International's use of his name. That is an important point, and I will return to it a bit later. Amnesty International:

> . . . was of the opinion that SE may face serious human rights violations if forcibly returned to Somalia at this time.

The parliamentary group of Amnesty International joined in this urgent action, and reminded the minister of Australia's obligations under international law. This includes the fundamental principle of non-refoulement, as outlined in two conventions Australia has signed: the 1951 Convention Relating to the Status of Refugees, article 33(1); and the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 3(1). The parliamentary group is still waiting for a reply, and we were disappointed that the minister was unable to attend our meeting yesterday, as we had expected to be briefed on this matter.

It is interesting to note here that the Department of Foreign Affairs provided travel advice regarding Somalia in July this year. That advice read:

> Because of widespread banditry, sporadic outbreaks of fighting, and continued conflicts between rival militia groups there, the Department advises Australians to avoid travel to Somalia . . . there is no central Government in Somalia with which the Australian government can deal . . . calling at any port in Somalia should be avoided unless in an extreme emergency.

Just for the record, the capital of Somalia, Mogadishu, where Mr SE was to be sent, is a port city. I would have thought that, if the country was too dangerous for travellers, it would be too dangerous for refugees, particularly those whose family members have been raped or murdered, and who fear arrest, imprisonment, torture or execution on their own return.

On 29 October, SE was escorted to Melbourne airport, where a private security company had been contracted to escort him to South Africa on a commercial flight. He refused to board the plane and the captain of the plane refused to accept him as a passenger. SE was returned to the detention centre and allegedly held in isolation. Between 30 October and 19 November, the matter was brought before both the Federal Court and the High Court, and an injunction suppressing the use of SE's name was ordered on 31 October.

Lawyers acting for SE asked the United Nations Committee Against Torture, UNCAT, to investigate whether there was a chance that he would face torture if he was returned to Somalia. Amnesty International has also made representations to UNCAT. Following those representations, Amnesty International's London secretariat issued an urgent action against the minister's determination to repatriate SE to Somalia. This was the first such urgent action against an Australian government in nine years.

This action has had a most disturbing outcome. The Australian Government Solicitor, I understand, has twice written to Amnesty International warning that organisation not to use SE's full name, and thereby not to campaign effectively on his behalf. This is despite the fact that SE told Amnesty to use his name and that it is usual practice for Amnesty to use the names of people it is trying to assist in urgent actions. In addition, of course, Amnesty always takes into account any special circumstances.

On 19 November, the government attempted the forced removal of SE from Australia back to Somalia. Despite the government being required to provide adequate notice of the intention to remove a person, he was given no such notice. He was flown from Melbourne to

Perth, where he was to fly to Johannesburg and then on to Somalia. Another disturbing aspect of the attempted deportation of SE is that he was met by private contractors—not Immigration officers, not police. These private contractors considered sedation and/or handcuffing to remove SE from Australia. What would be the government's response if SE were injured or worse while in the care of private contractors?

Also on 19 November the Federal Court prohibited the publishing of SE's name or any other information which might identify him. Departmental officers in Canberra refused to provide any details to Amnesty about SE's case. It is a matter of very real concern to me and, I am sure, to all my fellow members of Amnesty International that, unless Amnesty is able to identify those it deems in need of urgent assistance in order to protect them, Amnesty is effectively gagged.

I most certainly hope this is not an attempt by the Australian government to silence a key international and independent advocate of human rights. That would be just the sort of tactic used by those nations who are not known for allowing their citizens to exercise free speech to complain about mishandling and mistreatment or to speak out about abuses of human rights. I sincerely hope this will never be the case with any Australian government.

In order to demonstrate that this is not the case with this government, I believe that they would be wise to reconsider their position in relation to this suppression order. It is obvious that this order was not sought for the protection of SE. As far as I know, both the Reuters news agency and the BBC have publicised the case using SE's full name and identity.

Of course, there are cases where individuals require protection. Amnesty would be aware of this and would have acted accordingly. Concern regarding the safety of returnees arises in instances where countries have tightly and centrally controlled governments which monitor the activities of expatriates. In the case of Somalia, there is no effective central government and no Western media and, therefore, no apparent legitimate reason for a suppression order. I believe the government has used this suppression order inappropriately. It is important that the media reports on the treatment of asylum seekers should they be forcibly returned, especially in circumstances where their lives are at risk. This is part of the functioning of an open and a democratic society.

SE was transferred to Port Hedland detention centre on 20 November. At this stage it is unclear how long he is expected to remain in that facility, although I understand his legal representatives are trying to have him returned to Melbourne in order for him to be closer to them and to his friends. I hope that appeal is successful. This case demonstrates the limitations of the courts to appropriately intervene to ensure that Australia is meeting its international obligations not only under the Convention Relating to the Status of Refugees but also under other international instruments that the Australian government has acceded to. The courts are unable to act because of their limited jurisdiction and because of the non-reviewability and the non-compellability of the minister's discretion to intervene on humanitarian grounds under the Migration Act.

The Democrats are also concerned by the inaccessibility of judicial review for poor asylum seekers—and most of them of course are very poor. Ultimately this issue raises the need for the government to reassess the way in which the minister deals with refugees who are likely to face serious human rights abuses if forcibly returned to their own states but who fall outside the technical definition of a refugee. I suggest the minister create a special visa category to resolve the status of these refugees. This not only would assist in the resolution of this case and the 19 other Somalis whose cases are likely to be treated in the same manner but also assist the East Timorese asylum seekers who are still awaiting court decisions about their cases.

The minister should immediately intervene in SE's case and issue a protection visa allowing SE to remain in Australia. At the very least, SE should be returned to Melbourne in order to be closer to his legal representatives and to his friends. I do not believe the Australian government under-

stands the implications of its actions against Amnesty International. Amnesty plays a crucially important role in ensuring that nation states act in accordance with their obligations under human rights conventions and treaties. If governments complain about Amnesty's work, it demonstrates that Amnesty is being effective. We live in an open and democratic nation. We should not recoil from such criticisms but act to amend those aspects of government which violate human rights. I believe this one does.

Contempt of Parliament

Senator COONAN (New South Wales) (6.56 p.m.)—Honourable senators would be aware that I have long held an interest in evaluating the role of Australia's upper houses and in particular their role in upholding the principles underpinning our democratic institutions. However, recent events in the New South Wales parliament have thrown into very sharp relief the inherent tension between the executive government and the upper house wishing to review or scrutinise the actions of the executive.

The situation is unparalleled. For the first time ever, a minister—the Treasurer, Mr Michael Egan—has been suspended indefinitely from the New South Wales parliament following his refusal to adhere to a High Court decision. It is not the first time that Mr Egan has disobeyed the will of the New South Wales Legislative Council. Since 1996 the council has formally requested the production of documentation relating to politically controversial but pretty relevant matters as diverse as Sydney's water contamination crisis, the Fox Film Studios in Sydney, the $1.2 billion Lake Cowal goldmine, closure of regional education department offices and closure of veterinary laboratories.

On each count, Mr Egan has refused point-blank to supply the information. His refusal to hand over what he regards as 'confidential and privileged' papers has resulted in him being suspended from parliament not once, not twice but three times. His latest suspension is unprecedented—it has been applied to a minister and applied indefinitely. The people of New South Wales are justified in wanting to know exactly what is going on. What is the Carr Labor government hiding from them? It is not as though we are talking about issues that have not any interest or impact in the electorate. It is not about some obscure amendment to a standing order.

Mr Egan seems to be intent on concealing the detail of government decisions that have a profound effect on nearly every facet of our day-to-day lives in New South Wales—clean water, education, industry, science and business dealings between the government and the private sector. Already it has cost the poor old taxpayers of New South Wales in excess of $100,000—and approaching $250,000 on one estimate—in legal costs in the battle to prevent the disclosure of the material. This defiant stance has been going on since 1996.

In 1996 the Treasurer was forcibly removed from the upper house for refusing to table documents relating to the rejection of plans to develop Lake Cowal goldmine near West Wyalong. He took the matter to the Court of Appeal arguing the quite unsustainable proposition that only the lower house had the power to extract documentary information because a government's legitimacy—so he says—is derived from having a majority in that house.' However, not surprisingly, the court held that the council has an inherent power to demand the production of documents and to impose a penalty on a minister for non-compliance.

Mr Egan did not accept the Court of Appeal's findings and took the matter to the High Court of Australia. On 24 September 1998, the New South Wales upper house voted in favour of the government making public all documents relating to Sydney's water contamination crisis—not an unreasonable stance, you would think. Mr Egan responded by saying that the opposition and most of the crossbenchers had pre-empted his second High Court challenge, which was still to rule on the power of the courts to compel the executive to provide documentation, subject to a claim for public interest immunity.

On 20 October, Mr Egan was suspended from parliament for the second time after refusing to release documents relating to the water crisis. He was suspended for five

parliamentary sitting days until 10 November. On 19 November, the High Court reaffirmed that upper houses are an important check on executive power—something members of this chamber would be pleased to hear—and that these tasks require access to information. Quoting John Stuart Mill, Justice Gaudron, Justice Gummow, and Justice Hayne declared that the task of the legislature was 'to watch and control the government; to throw the light of publicity on its acts'. They said that to fulfil this supervisory function, each house of parliament must have 'the powers reasonably necessary for its proper exercise'.

Despite the High Court judgment, Mr Egan is now seeking a High Court ruling on parliamentary powers in relation to cabinet papers or other commercial-in-confidence material. Not surprisingly, the Legislative Council has had enough of Mr Egan's intransigence. Last Friday, he became the first minister on record to be suspended indefinitely by the Legislative Council. What is becoming increasingly clear is that the Carr Labor government, and its executive in particular, has some sensitive information that relates to the crisis that they are desperate to make sure does not see the light of day.

Papers tabled in mid-October by the government revealed that the Prospect water filtration plant had wanted to upgrade just prior to the contamination crisis. However, no documents are available as yet which indicate what the government's response was to this proposal. We can only wait and see. The Carr government is not particularly keen to have this information see the light of day. So reluctant is Mr Egan to have the information released, he is willing to do whatever it takes to keep it quiet, even to the point of ongoing and costly legal appeals—costly to the New South Wales taxpayer.

Mr Egan's persistent refusal to produce the papers reflects a grim determination to conceal documents that could throw light on what the government is up to in New South Wales. The issue of Mr Egan's parliamentary conduct, however, runs deeper than whether or not he has something to hide from the public and what taxpayers' money has been wasted. What is also at issue is the Carr government's blatant disrespect for parliamentary democracy and democratic processes, and the credibility of Australian parliaments in the eyes of all Australians.

Symbolically, Premier Carr and Mr Egan have sought to put the executive above the parliament in New South Wales, suggesting that cabinet members are no longer accountable to other members of parliament and, implicitly, no longer accountable to the people of New South Wales. This is arrogance of the highest order. Their actions make a mockery of the notion of the social contract between government and the governed. I would have thought that the contract between the people of New South Wales and the Carr government is well and truly terminated for fundamental breach. There is an overwhelming public interest in holding the government to account, especially when it is fighting so hard to conceal what clearly may damage it.

There is a mood of profound public disillusionment with the political system and politicians in particular. At a time when the credibility of parliamentarians is called into question by Australians, every politician has a duty to behave in a manner appropriate to their public office. Mr Egan's behaviour is politically irresponsible in that it adds further fuel to the discontent and disconnection of those who are already disillusioned by the political process.

Mr Egan was elected to the Legislative Council to represent the interests of the New South Wales electorate as a whole. However, his behaviour has suggested that he is more intent on safeguarding the interests of a few specialised groups and concealing the ineptitude of the Labor government in New South Wales at all costs, even if it means being in contempt of parliament and remaining in contempt of parliament. The New South Wales opposition leader, the Hon. Peter Collins, recently stated:

> Michael Egan has eroded the people of NSW's confidence in the Parliament and should be sacked for his arrogance.

The *Australian*'s editorial of 20 November observed:

> Lack of transparency and limiting the capacity of parliament to review government decisions weakens

our democracy. Too often, they characterise executive government's attitudes to parliament—and to the people. This undermines the whole principle of responsible government . . .

Last weekend, Mr Egan gave new meaning to hypocrisy when he claimed that the New South Wales upper house was denying him, as an elected representative, a say in government by suspending him. It would be good if he accepted his responsibilities as a member of the executive government and stopped treating the people of New South Wales with contempt. If he does not want to play by the rules, he should resign. If he will not resign, he should be sacked. As for Mr Carr, who has now threatened to prorogue state parliament rather than release 200 secret cabinet documents, it is up to the people of New South Wales to punish the Carr government and the recalcitrant Treasurer in March 1999 as they are both beyond contempt.

Road Freight Industry: Hours of Work

Senator HUTCHINS (New South Wales) (7.06 p.m.)—Mr Acting Deputy President, I seek leave to incorporate my remarks in Hansard.

Leave granted.

The speech read as follows—

I have seen a statutory declaration signed by a truck driver which detailed what he did in one week driving for one transport company in Sydney. On his first day he started work at 8 a.m. on Monday. He worked through to seven o'clock that evening without a meal or proper rest break doing deliveries and pick-ups across the metropolitan area. At 7 p.m. he was loaded at Flemington Markets with produce that was to be carted to Taree on the New South Wales north coast. He arrived at Taree at 2 a.m. on Tuesday morning. He unloaded and then had to drive back down the coast to the town of Forster at 4.30 a.m. He then continued back towards Sydney, stopping at Hexham near Newcastle at 8 a.m., and loaded more freight before driving back to Sydney to unload at a yard in Blacktown. He finally arrived back at the depot at 3 p.m. on Tuesday afternoon.

In the yard he was instructed to unload and then do some local deliveries until he again headed out to Flemington Markets that evening. Leaving the markets, he started north to Taree again. This time, however, the company contacted him and asked him to backtrack to the markets to pick up an additional load. As he did the previous night, he drove to Taree, then back to Forster, Hexham and then Sydney. When he pulled into his company's yard it was 3 p.m. on Wednesday.

Since Monday morning he had only had two breaks of two hours each, sleeping in the cabin outside the loading dock at Taree in the early hours of the morning. He was then instructed to go out and do the whole run again—Flemington, then Taree, Forster, Hexham and Sydney. It was now Thursday afternoon. He had been at work since 8 a.m. Monday. He approached the company's manager and asked if it would be all right if he went home and got some sleep. He was told that he must be at the markets by midnight to do the run again.

This driver, who has provided the NSW Office of the Transport Workers Union with a copy of that statutory declaration, stated that this is exactly what he had to do back in October of this year for the company, based in the Western Suburbs of Sydney. He finally told the manager what he could do with his job and resigned. To top it all off, the company then refused to pay him for the work he had done.

While occurrences such as this may not be commonplace in the road freight industry, the fact that they are happening at all should be of the greatest concern to all Australians. Not only was this driver's life clearly at risk but after four straight days and nights behind the wheel every other road user that passed his truck was also in grave danger. The long distance road freight industry has long been the sector of road transport that has the worst conditions, the worst wages, the worst quality vehicles and the worst safety record. Unfortunately, evidence suggests that it is now getting worse still.

The Transport Workers Union has launched a campaign against the companies in the long distance industry who are prepared to put their drivers, both employees and subcontractors, as well as the rest of us, at risk for their profits. Some of the evidence the union is collecting, including the case I have just outlined, is frightening. Scotts Refrigerated Freightways is currently being investigated and hopefully will be prosecuted by WorkCover after drivers gave evidence of driving illegal hours. One driver, after working for 40 hours straight, contacted the company to tell them he was pulling into a motel. On his return to Sydney he was informed by RTTR, a company contracted to Scotts, that it had no intention of paying him.

The worst offenders are not restricted to the capital cities. Drivers have approached the TWU from a grain transport company in the Riverina district of south-western New South Wales. They were being told to work eight to ten hour days carting grain from farms to the silos, and then each night they were being told to cart the grain to Sydney or Melbourne. A round trip from Wagga to Geelong is approximately fourteen hours. The next day they would do the same again.

Deregulation of the industry has exposed market forces which are over-riding many other forces such as the law and safety. And nothing is seriously being done to stop the slide. In 1997 a report by Professor Michael Quinlan of the University of New South Wales and Clair Mayhew of Worksafe Australia summarised the problems that deregulation of the road transport industry has created in these words:

> Overall, transport regulations have focused on symptoms (speeding, overloading, drug use, excessive hours at the wheel, defective vehicles etc) rather than confronting factors which cause these practices to flourish (intense competition for contracts amongst a large number of suppliers, and the payment-by-results systems/ETA bonus/penalties imposed by freight companies).

The report concludes:

> Traditional approaches are myopic. To continually ignore an arguable central cause of injury and fatal crashes is to invite subversion.

Until the road transport industry and the regulatory bodies take a comprehensive change in tack and move away from focusing penalties on the driver, things will not change. Enforcement must be expanded to include the transport companies and freight forwarders and even the originating clients, who surely have a duty of care for those they employ under contract.

While the Road Transport Forum has taken some positive steps towards extending the net of prosecution, the industry needs more of a shake-up. It is being held back by the anti-reformist actions and policies of reactionary groups like Natroads. While most in the road transport industry are doing it right and are doing it well, the scum still exists and it continues to rise to the top in a deregulated market that still has safety as a secondary priority.

Firefighting Tragedy: Victoria

Senator PATTERSON (Victoria—Parliamentary Secretary to the Minister for Immigration and Multicultural Affairs) (7.07 p.m.)—The brief time I have to speak will not do justice to the reason for my speaking this evening. I rise to pay tribute to the members of the Geelong West Urban Fire Brigade, five brave men who gave their lives last night fighting a fire at the little township of Linton near Ballarat in Central Victoria. Those five men were Third Lieutenant Stuart Davidson, Firefighter Gary Vredeveldt, Firefighter Jason Thomas, Firefighter Matthew Armstrong, who at 17 was on his first firefighting effort, a third generation firefighter, and Firefighter Chris Evans. These brave young men who have been taken from us in an untimely way gave their lives fighting for Victorians and represented all voluntary firefighters throughout Australia.

I say this on behalf of my staff, and in particular Andrew Joyce, who was a firefighter with the Geelong West Urban Fire Brigade and who knew three of these young men and counted them amongst his friends. With my staff, and I am sure on behalf of all honourable senators, I extend my admiration and thanks, inadequate as that is, to those who have paid the supreme sacrifice. I extend the sympathy of my staff, myself and all honourable senators here to the friends and family of these brave men.

Firefighting Tragedy: Victoria

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (7.09 p.m.)—Can I formally associate myself with Senator Patterson's words of condolence to the families and respect for those who fight fires for our country, especially as volunteers.

Firefighting Tragedy: Victoria

Senator FORSHAW (New South Wales) (7.09 p.m.)—On behalf of the opposition and other members of parliament on this side, I endorse the remarks of Senator Patterson and express our deepest sympathy to the families and friends of the deceased firefighters.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I have not been in the chair long enough to know whether it is in order for me to do the same or not, but I will do it anyway.

Senate adjourned at 7.09 p.m.

DOCUMENTS

Tabling

The following document was tabled by the Clerk:

> Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—Instrument No. CASA 476/98.

Indexed Lists of Files

The following document was tabled pursuant to the order of the Senate of 30 May 1996:

Indexed lists of departmental and agency files for the period 1 January to 30 June 1998—Department of Employment, Education, Training and Youth Affairs.