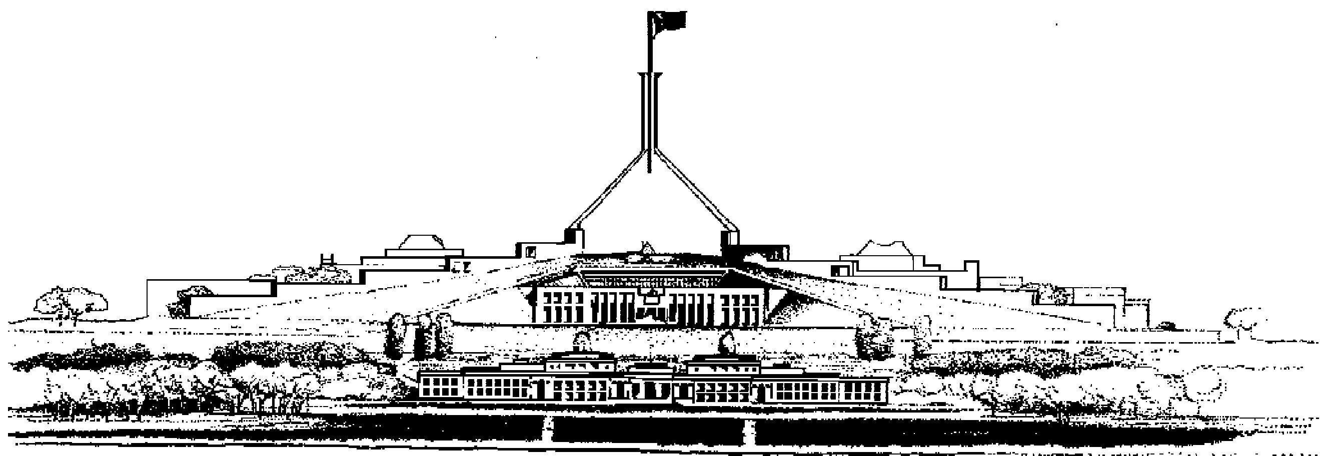
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

MONDAY, 22 NOVEMBER 1999

THIRTY-NINTH PARLIAMENT
FIRST SESSION—FOURTH PERIOD

BY AUTHORITY OF THE SENATE
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Monday, 22 November 1999

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

INDIGENOUS EDUCATION (SUPPLEMENTARY ASSISTANCE) AMENDMENT BILL 1999

Second Reading

Debate resumed from 12 October, on motion by **Senator Ian Campbell**:

That this bill be now read a second time.

Senator CARR (Victoria) (12.31 p.m.)—This bill amends the Indigenous Education (Supplementary Assistance) Act 1989 to provide $126.1 million to extend the higher level of funding which has been provided for the Indigenous Education Strategic Initiatives Program, or IESIP, 1997-99 to 30 June 2001. It also seeks to incorporate the mixed-mode course delivery away-from-base element of the Abstudy scheme into the above act by providing funds in block grants to participating institutions.

I thank the Minister for Education, Training and Youth Affairs for the letter he sent to me last week in which he drew to my attention the need for this bill. He says:

Funding for the Indigenous Education Strategic Initiatives Programme for 1 January 2000 including 'mixed-mode' away-from-base assistance is contingent on the passage of this legislation. Funding for the remainder of the ABSTUDY programme is not contingent on the passage of this legislation as ABSTUDY is not a legislated programme but subject to Ministerial guidelines.

The minister goes on to say:

In relation to continued funding in 2000 for the education providers currently being assisted under the Indigenous Education Strategic Initiative Programme, it should be noted that some Indigenous preschools and schools are marginally viable and cannot operate without funding early in the New Year.

I thank the minister for his advice to that effect, but I draw to his attention that this legislation was introduced on only 12 October this year, that it was reported by the Selection of Bills Committee on 11 August, that it was not referred to a committee and that, in fact, its priority in the legislative program has been entirely at the discretion of the government. Like so many education bills, it is a worthy thing for the minister to seek the assistance of the opposition, but to assert that the passage of the bill is conditional upon the opposition determining the government's own priorities is, I might suggest, stretching the truth just a little bit, which Dr Kemp has a very fine reputation for.

I notice that this bill seeks to change Abstudy, which is part of the broader change to the student assistance scheme announced in December of last year. The announcement followed a review of Abstudy which, in line with the generally defensive approach of this government, was never made public. The changes involve retaining Abstudy as a student supported scheme separate to the Youth Allowance, and aligning many of the payments with those made to non-indigenous students under the Youth Allowance.

The minister claims that the alignment was justified, except in cases where 'special provision needs to be made to cater effectively for the particular disadvantage faced by many indigenous students'. Representations made by the minister on 10 September and 3 November this year paint a very stark picture of the massive educational disadvantage faced by indigenous Australians. For example, the minister told us that on 10 September 1996 only 13.6 per cent of indigenous people had a post-school qualification compared with 30.4 per cent of the general population. On 3 November at an Alice Springs conference, he included in his speech various graphs showing that the proportion of indigenous students meeting the year 3 reading standard is around a quarter of the level of all students.

Figures presented by the ABS to the Senate committee which has been examining these issues show that infant mortality among Aboriginal babies is twice that of the national average; that life expectancy is some 15 to 20 years less; that death rates for the 35- to 54-year-old age group are six to eight times the rates of other members of the population; that while 71 per cent of Australian households are in dwellings that are owned or being

purchased, only 31 per cent of indigenous households are in such housing; that 7 per cent of indigenous people live in dwellings with 10 or more people—50 times the proportion of other Australians; and that imprisonment rates are significantly higher for indigenous persons in all states, with those in some states and territories reaching 10 times or greater the non-indigenous rates.

The committee has heard that a series of problems are emerging—and in fact they have been clearly evident for some time—as a result of family breakdown, alcoholism, domestic violence and poor diet, with subsequent proneness to ear infections and other illnesses. The committee has also heard from a number of people working in Aboriginal school health areas who have noted the barely adequate funding and resources devoted to these services by state governments.

Great emphasis has been placed upon the effects of health on educational outcomes, but comparatively little attention has been accorded to the reverse—that is, the impact of educational attainment on health. The committee has heard evidence from Dr Bob Boughton of the Co-operative Research Centre for Indigenous and Tropical Health at the Menzies School of Health and Research. He said:

> The evidence from around the world is very striking: with the addition of a single extra year of education in a population the infant mortality rate drops between seven and ten per cent . . . It is basically one of the most substantiated findings in the literature of the social determinants of health that one of the major factors influencing child mortality is the level of education amongst their parents.

There is also a great deal of research which shows that education has a positive effect on the health of people themselves, not just on the health of their children. He went on to say:

> A second remarkable characteristic of this finding is this effect that education has on people's health occurs, to some extent, independently of the effect that education has on their, say, income levels or their employment levels . . . you still get a significant improvement in health status. The effect on the health of children is most dramatic in terms of the educational levels of their mothers. In summary, the level of education provided to women is a major determinant of the health of their children.
>
> When we have a situation throughout Australia where indigenous infant mortality remains at a rate three times that of the population as a whole and where in some communities in Central Australia it is significantly higher than that, you have to ask yourself to what extent the inability of the system to deliver effective education to those communities is a contributing factor to that infant mortality.
>
> In the Northern Territory in particular we have a very serious situation. In the first instance, there is virtually no secondary education provision outside the major urban centres. So in Central Australia, where 50 per cent of school-age children are Aboriginal, there is no secondary school outside Alice Springs and Tennant Creek. Given that 75 per cent of the Aboriginal population of Central Australia does not live in those urban centres, there is an immediate problem in delivering secondary education to those people. If an extra year of education might reduce the infant mortality rate by seven to 10 per cent, you could also ask yourself the result of not delivering it.

When the minister talks of these inequalities, he might reflect for a moment on the extent of inequality in this country. Having put before us some of the depressing facts, the minister is now planning to make changes to Abstudy which will cut support to indigenous students aged 21 and over, with some payments dropping by around $65 per fortnight. The minister has not yet explained why these students do not qualify for this 'special provision'. On 3 November, he said:

> Achieving educational equality for indigenous Australians remains one of the principal educational challenges faced by this nation.

I could not agree more. This is an undeniable fact. But the challenge is a daunting and a complex one.

As pointed out in a recent report, *Learning Lessons*, the review by former senator Bob Collins of indigenous education in the Northern Territory, the involvement of indigenous communities in educational partnerships is a key factor in improving outcomes. Indigenous people must decide for themselves that a commitment to education is worth while. Community leadership on this issue is likely to come from indigenous adults who either have completed their education or are seeking to do so. Students aged 21 and over who probably are now receiving Abstudy payments and who are the big losers under the changes

in Abstudy beginning on 1 January, might note the minister's remarks.

The report prepared for ATSIC by Ms Wendy Brabham and Associate Professor John Henry from the Institute of Koorie Education, Deakin University, details the effects of the changes to Abstudy. The report shows that the changes will advantage indigenous TAFE and university students who are under 21 years of age, independent and single. There were some 730 persons in that category, according to the report, in 1998. It will also advantage those aged over 20 who are living at home. There were 165 such students in 1998. The report also found, however, that these changes will significantly disadvantage indigenous TAFE and university students who are aged 21 and over, independent, single or with a partner, with or without children. There were some 9,950 students in this category last year. The report also found that it will disadvantage those who were getting a sole parent or disability support pension. There were 4,810 students in this group last year. So, excluding the school-age students, according to the ATSIC report, around 900 students will be better off and some 15,000 students will be worse off. I note that the minister has rejected these claims in, as is often the case, the most vague and broad terms. I think we are entitled to ask what he is doing to provide additional assistance to those recipients who will not be receiving the higher funding and who will be receiving less under his proposals. I think all of us in this chamber ought be, if we study the facts of this matter, sick and tired of Dr Kemp's extravagant claims, which are so often divergent from the substance of what the government is actually doing.

An important point about the ATSIC report findings is that mature age students make up almost 80 per cent of the indigenous TAFE and university student population. The report notes:

> Research over the last 30 years has indicated that indigenous people of mature age with community and family responsibilities were most likely to return to study, showing a pattern of significant difference to the rest of the population.

Why is it therefore that the government is reducing support for such people? Why is it discouraging mature age students who have family and community support from returning to study? Why doesn't it meet the minister's own definitions of special needs to indigenous education?

One should not confine one's concerns merely to those matters. There is a growing body of evidence that within the states—particularly in the Northern Territory—the state authorities have failed to meet their obligations. A recent report of the Northern Territory Department of Education has accused its own department of systemic lack of interest in Aboriginal education and of using federal funds for its core businesses. In many cases it has been found that, rather than using these funds to supplement action, Commonwealth funds are being used to supplement nothing. The findings emerge from an internal review of the use of supplementary funding from the federal government's program, IESIP. The minister in the Northern Territory, Mr Peter Adams, has yet to respond to these findings. I trust there has been a considerable improvement in attitude by the Northern Territory government to the one we historically have seen in that Territory. The report identifies some $130 million in annual government spending, plus an extra $90 million in supplementary IESIP funding over the last 10 years. The department itself can demonstrate only marginal improvement in some of the outcomes by indigenous students in Northern Territory schools.

The report also goes on to say that there has been a persistent troubled relationship with DETYA and over IESIPs, due to the 'systemic lack of interest in Aboriginal education' by the Northern Territory. Alleged is a widespread attitude in the NTDE that 'if it is Aboriginal it is IESIP' and, therefore, does not require the attention of government as a whole. I note, for instance, that some 48 per cent of IESIP moneys have been drawn off by administrative expenses in the Northern Territory—an appalling situation, a pattern which is worse in the Northern Territory but reflected in other states. The minister has the responsibility to ensure that these accountability measures are in fact enforced. Rather than making statements about the intentions

of the government, action should follow to see that Commonwealth moneys are spent in a way where we do see positive outcomes.

I note that in this measure the minister has undertaken specific purpose payments for grants for educational funding through this program in remote localities. That is an opportunity that perhaps ought be extended to provide for additional support directly to regions to overcome some of the obstruction—that is no doubt occurring—by state educational authorities. The evidence clearly points to the need for the Commonwealth to directly fund institutions in such a way as to overcome these institutional impediments.

But I note also that the minister has failed to act on such obvious matters as those that occurred with regard to the Institute for Aboriginal Development program in Alice Springs. I note, for instance, that the funding of the Institute for Aboriginal Development in Alice Springs has yet to proceed. The front page of the recent issue of the *Campus Review* provided a graphic reminder of the appalling conditions under which the IAD struggles yet still achieves very impressive educational results, particularly for older Aboriginal students.

Of course, we have had not one word of public condemnation from Dr Kemp about the outrageous behaviour of the Northern Territory government and the fact of Mr Peter Adamson's withholding of $2.6 million in ANTA capital funding. It would be difficult for anyone to disagree—we have a situation where the ANTA Ministerial Council some three years ago allocated capital funding specifically for indigenous vocational education institutions and where the IAD was given top priority, yet the money is stopped from being spent because of the intervention of the Northern Territory government—that quite clearly we have a disgraceful situation which raises serious questions about the reasons for the Northern Territory government's action in terms of preventing the operations of this college on what is currently a prime commercial site in Alice Springs.

It has been put to us in the Senate committee that there are serious issues that go to the question of the way in which the Northern Territory government relates to the value and the use of commercial property in the Northern Territory, particularly in Alice Springs. I am not persuaded that the Northern Territory government has acted on educational grounds. It may well have an interest in matters to do with the commercial development of that property, rather than the interest of Aboriginals who are presently enrolled in that institution.

If Dr Kemp was concerned about getting some runs on the board in indigenous education, he would make sure that the actions of the Northern Territory government were stopped. He would make sure that the actions of the Northern Territory government were not allowed to continue in such a way as to prevent people from enjoying the benefits of properly funded Commonwealth programs.

This bill proposes to transfer to the Indigenous Education Strategic Initiative Program the mixed-mode away-from-base course delivery element of Abstudy. When the bill was debated in the House the acting shadow minister raised two particular concerns, one of which has not been satisfactorily answered. This related to the cost of the administration, which will be transferred from Centrelink to individual institutions. The minister's parliamentary secretary advised that student information must currently be supplied to Centrelink and that resources can be redeployed in order to administer the program internally. She also claimed that interest can be earned by institutions on the program funds. The advice to the opposition, however, is that the cost of the administration will be covered by interest earned on the program funds only if they are received in bulk at the beginning of the year. I would ask the minister in the chamber if he would clarify this point.

The other question is about how much money was involved in this element of Abstudy in 1998. That has been finally answered. This follows three requests from the office of the shadow minister, Mr Lee; the raising of the matter during the debate in the House; a letter last week to Dr Kemp; and, finally, further communications last Friday between Mr Lee's office and Dr Kemp's

office. The whole exercise has been rather excruciating. It seems to be more difficult than extracting teeth, especially when the opposition has made it clear from the start that we are supportive of the concept embodied in this change and have no wish to argue about it. We do wish, however, that Dr Kemp would abandon his paranoid secrecy in an attempt to prevent people from understanding the true nature of the government's programs—which seems to be his default mode of operation—at least on issues concerning indigenous education.

We have finally learned that the amount in question for 1998 is about $14 million and that the expenditure is expected to be $15.8 million in the year 2000. This new approach will be demand driven, and the unit cost for each course will be adjusted for CPI increases. I have also noted the opposition's support for the concept of encouraging institutions not just to enrol indigenous students but to work at keeping them there and to improve their educational outcomes. I have indicated that the opposition welcomes the maintenance of the current level of funding, which is the main source of supplementary assistance for education providers catering for indigenous students. I move:

At the end of the motion, add "but the Senate:

(a) notes that indigenous Australians are the most educationally disadvantaged group in the country; and

(b) condemns the Government for:

(i) failing to release the findings of the 1997/98 review of Abstudy;

(ii) cutting Abstudy payments to some categories of indigenous students; and

(iii) failing to recognise the special needs and community leadership potential of mature-age indigenous students".

Senator STOTT DESPOJA (South Australia—Deputy Leader of the Australian Democrats) (12.52 p.m.)—I rise on behalf of the Australian Democrats to speak on the Indigenous Education (Supplementary Assistance) Amendment Bill 1999. Before I get to the content of the bill, I indicate—through you, Mr Acting Deputy President—to Senator Carr that the Australian Democrats will be supporting the opposition's second reading amendment.

This bill seeks to alter and extend funding arrangements for indigenous education assistance through a transfer of funds for the Abstudy program to the Indigenous Education Strategic Initiatives Program, with funding to be extended by $1.26 million to June 2001. Under these proposed new arrangements, the away-from-base allowances that individuals studying mixed mode courses currently receive will be paid to institutions through block grants paid according to the number of Abstudy recipients enrolled per institution.

These changes were announced by the minister for education, Dr David Kemp, last year after the announcement of the findings of the government commissioned review of indigenous education assistance called 'Making a difference: the impact of Australia's indigenous education and training policy'. The government's response to this review, outlined in a statement by the minister on May 11 of this year, included proposals to align Abstudy living allowance payments for indigenous students aged 16 to 20 with Youth Allowance rates and for students over 21 with the Newstart payment, except where an indigenous student would be clearly disadvantaged by the alignment.

In May this year, the Institute of Koorie Education at Deakin University conducted an analysis of the proposed changes to Abstudy on indigenous students for the Aboriginal and Torres Strait Islander Commission—certainly Senator Carr, in some of his speech notes, referred to some reports, including the findings of this report. I believe the findings of the report should give the government, particularly the minister, Dr David Kemp, some very good reason to rethink some of the proposed changes.

The key findings of the analysis included—revisiting some of the statistics and the findings that Senator Carr has referred to—that the changes will advantage, significantly, indigenous TAFE and university students who are under 21, independent and single and those 21 years and older who are living at home. Combined, this group of indigenous students who will theoretically be advantaged

by this change numbers 895 students. Senator Carr said roughly 900 students.

However, the changes will disadvantage significantly those indigenous students who are enrolled at TAFE or university, who are 21 years and older, independent, single or with a partner, with or without children, and those in receipt of a parenting payment, a disability support pension or studying as part-time pensioner students. This group of students numbers 14,760. In other words, the young and the single stand to reap any benefit from these changes but, of course, as Senator Carr has pointed out, there will be a significant number of students who will be disadvantaged.

Mature age indigenous students, who comprise almost 80 per cent of indigenous students enrolled in TAFE, are more likely to suffer under the proposed changes. Obviously that is cause for concern for most of us, I should think, in this chamber. The Democrats believe that these changes will place further barriers to indigenous participation in education. Unlike many non-indigenous students, many indigenous people return to study rather than pursue a continuous education pathway. These changes will make this return to study far less accessible.

While this bill increases funding for an 18-month period—therefore providing some stability in funding arrangements—the alterations in payment arrangements to move payments away from the individual to the determination of the institution do give rise to some concern. Mixed mode courses give students with external commitments the opportunity to undertake study. A key part of the mixed mode study program is the provision of the away-from-home-base allowance, which has enabled many indigenous students to participate in education.

The review of indigenous education assistance, which took place within a somewhat heated and sometimes ill-informed debate within certain sectors of the community, was on the merits of targeted assistance for traditionally disadvantaged groups. A recent Australia Institute discussion paper titled 'Public expenditure on services for indigenous people: education, employment health and housing' debunks some of those myths which have been perpetuated in recent times over the level of funding for the benefit of indigenous people.

I will refer to some of its conclusions relating to funding for indigenous education. Firstly, while public expenditure on education for indigenous persons between the ages of three and 24 is 18 per cent higher per capita than for non-indigenous persons, this is partially due to higher per capita costs of providing education services in rural and remote locations and lower than average incomes leading to greater average needs for assistance to students. So that increase, or that additional amount, was obviously as a result of rather unique circumstances.

Secondly, equity considerations require that there be an additional expenditure on the education of those who are most disadvantaged educationally. Thirdly, against this background of significant disadvantage and pressing need, an additional 18 per cent expenditure per head on the education of indigenous people can be seen as a very modest contribution to reducing that significant disadvantage. That report also concluded that while indigenous people benefit substantially more than other Australians from specific programs—to be expected, as these are generally targeted—they benefit substantially less from many much bigger general programs.

Any advantages gained by indigenous people from public expenditure are small when compared to the disadvantages they suffer in each of these areas. Certainly Senator Carr elaborated on perhaps more general issues of disadvantage than specifically education in relation to indigenous Australians. We know that indigenous people are less likely to attend school and more likely to be early school leavers with a lower rate of post-secondary education.

The study revealed some truly terrible statistics. Certainly, on occasions, the Democrats have brought these to the Senate's attention but I reiterate them because I think they are quite compelling. In 1993, only 33 per cent of indigenous children enrolled in year 7 completed their secondary education

compared with 76 per cent of non-indigenous children—that is according to the national review of education for Aboriginal and Torres Strait Islander people.

The post-secondary education participation rates are even more woeful. Of those indigenous students enrolling in year 7, only 6.6 per cent went on to university compared with 23.6 per cent of non-indigenous students. Even in New South Wales, where it has been noted there is greater exposure of indigenous people to non-indigenous society than in most parts of Australia, retention rates from year 7 to year 10 in 1996 were 77 per cent for indigenous Australians yet 96 per cent for non-indigenous Australians. So there is still quite a gap there. According to the 1996 census, only two per cent of the indigenous population had bachelors degrees or above and only 13.6 per cent had some post-school qualifications.

So it is clear that the significant barriers to indigenous participation in education at all levels have not been overcome and that much more needs to be done to provide greater access to education opportunities for indigenous people. The position of indigenous people relative to other members of Australian society has long been a source of deserved national shame. Yet, despite recent recognition of the need for greater indigenous control of indigenous affairs and for better targeted funding, the situation has not improved, and Australia languishes far behind other developed nations in the living standards of indigenous people and, of course, in its reconciliation process between indigenous and non-indigenous people.

The government's pursuit of equity targets for groups traditionally underrepresented in education—higher education specifically—has had mixed success in recent years. Certainly those equity targets and programs are commendable, but they still have a long way to go. The equity in higher education figures for 1998 reveal that, while progress has been made in increasing the numbers of women and non-English speaking students, similar gains have not been made for those from lower socioeconomic backgrounds or those Australians who are indigenous.

The Democrats consider it disappointing that consideration of indigenous education assistance now has this alignment focus, that the language of government proposals is that indigenous people should receive only the same amounts. On 11 May this year, the minister said that Abstudy benefits payable to indigenous students 'will be at the same level as youth allowance benefits paid to non-indigenous students', with an allowance to be made for cases of particular disadvantage. With study after study showing significant barriers still exist for many indigenous people seeking education opportunities, the onus clearly must be on policy makers to recognise these obstacles and develop assistance which is targeted at overcoming these obstacles.

The Democrats have said many times in this place—and we know for a fact that research demonstrates it—that a key to increasing participation rates of people in education at all levels, but specifically in higher education, is a good program of student financial assistance. We know that that works. Yet this government seems to be at odds with that thinking, treating education, again at all levels but primarily at the higher education level, and the issue of student financial income support as a revenue raiser or an area that can be cut. We know, of course, that it should not be treated that way, that education opportunities are a way of alleviating disadvantage in our communities, especially for those groups who have traditionally had lower rates or who have been underrepresented in higher education statistics.

As Senator Carr pointed out, we are well aware of the conflicting reports that we get from the so-called minister for education but, given some of his statements recently, we could think of him as the minister agin education. His purported commitment to access and equity and that of the government are often at odds with some of the realities, and certainly the recently leaked cabinet-in-confidence document which outlined some proposals for the higher education system that would see it as a market driven, demand driven system.

I acknowledge that the government or the Prime Minister has said that those policies are

not going to be pursued, and certainly you can bet that people on this side of the chamber will be holding the government to that promise. Ideas to charge prohibitive fees and charges for education, as we already do, I suppose, do militate against participation at all levels for people from traditionally disadvantaged groups, not to mention recent comments by Dr David Kemp—his $259 million funding threat to universities in relation to staff wage claims, something that is long overdue and should have been settled not only under this government but under the previous government.

So I hope the government will reconsider some of the deleterious proposals in the Abstudy alignment proposals. As Senator Carr pointed out and the study to which I referred states, around only 900 students will be advantaged by some of these changes whereas a significant number, at least 14,760 students, especially those most disadvantaged students, look to be disadvantaged as a consequence of those changes. I hope this government will actually start to consider education and student financial assistance—Abstudy, Austudy, Youth Allowance, et cetera—in the context of alleviating disadvantage and removing barriers for those people who face those obstacles and disadvantages and actually consider it as a tool for facilitating the participation of those groups, especially traditionally unrepresented or underrepresented groups in higher education but education at all levels.

Senator CROSSIN (Northern Territory) (1.04 p.m.)—I rise this afternoon to speak to the Indigenous Education (Supplementary Assistance) Amendment Bill 1999 in light of the most astounding reports that have been tabled in the Northern Territory since we as a Senate last sat and to make a contribution about the most damning use or misuse of moneys in terms of education nationally that I think this country has ever seen by the Northern Territory government in relation to IESIP funding. This bill, as we know, allows state and territory governments to continue their IESIP program for the additional year and that IESIP funding will be rolled into the four-year cycle, as I understand it, for schools and ordinary education funding. In effect, what we should see and what we have been told will happen, particularly in relation to the Northern Territory, is that their current operational plan, as negotiated between the Commonwealth from 1997 to 1999, will simply be extended for the year 2000.

In relation to the funding of this and in relation to what I think is now at a crisis level in terms of what is happening with Aboriginal education in the Northern Territory, it is time for the Commonwealth to take a long hard look at what the Northern Territory government does with this money and to reassess where this money is going and what the intentions of the Northern Territory government are. I am aware that the Commonwealth have had discussions with our Chief Minister, Denis Burke. Dr David Kemp had those discussions in the preceding week, and I will get to that.

Basically what we have seen in the last month are two documents. The first one, of course, is an extremely comprehensive research project that was conducted by the Hon. Bob Collins, our previous senator from the Northern Territory, called 'Learning lessons'. He was commissioned by the Northern Territory government to conduct an independent review of indigenous education in the Northern Territory. This he did, and this document was released almost a month ago.

This report shows that indigenous education in the Northern Territory is at a critical level; in fact these figures are a damning indictment of the Northern Territory government. Bob Collins has produced figures which are embarrassing and absolutely shameful, given the levels of funding the Northern Territory government have received in the last 10 years, which I will come to. These figures show that about 82 per cent of non-indigenous students in urban schools in year 3 achieved national reading benchmarks in 1998. For indigenous students in urban schools, the figure was 54 per cent—which is bad enough in itself—but for indigenous students in non-urban schools, only six per cent achieved national reading benchmarks in 1998. So we have a huge disparity there between Aboriginal students in urban schools and Aboriginal students in the bush.

Other figures show that 78 per cent of non-indigenous students in urban schools in year 5 achieved national benchmark standards for reading, while only 36 per cent of indigenous students in urban schools achieved the same, which is nowhere near good enough and is well below the 50 per cent mark. For indigenous students at a year 5 level in non-urban schools, the figure was down to four per cent.

There is unequivocal evidence here that the deteriorating outcomes are from an already low base. Bob Collins went on to say in his report that this was due primarily to a number of factors: poor attendance, poor health and poor commitment in some respects to actually achieving any long-term outcomes for these people. But, by and large, it is because of the significant failure of the Northern Territory government to address these outcomes with the money they have been given by the Commonwealth. I know this is a situation that the Commonwealth is aware of, and I know it is a situation the Commonwealth has had a number of frustrations over in the last few years in terms of trying to get the Northern Territory government to be accountable for what they do.

I think the icing on the cake came when, on about 20 October, an internal Department of Education assessment of the IESIP funding, called the '1999 IESIP review recommendations', was leaked to people in the Northern Territory. I am not aware if people from the Commonwealth have actually seen this, and I would be more than pleased to provide them with a copy of it.

This document is a most damning admission by the Northern Territory government that they have deliberately misused the $90 million worth of funds they have been given in the IESIP funding over the last 10 years. That leads us to believe—and there is evidence of it in this document—that they intend to do it again next year with the rollover of the money for the year 2000. So my strong warning to the Commonwealth is that not only is there a need to set in train very tight mechanisms on how this money is used, but they need to be more guarded about what the Northern Territory government are doing with this money.

The internal document proves unequivocally that the Country Liberal Party in the Northern Territory has misused and misadministered the $90 million worth of federal funding it has received in the last 10 years. We are not talking about an insignificant amount of money here; we are talking about a major funding initiative on behalf of the Commonwealth government that was started back when John Dawkins was the minister for education. There was an acceptance then that, to improve the outcomes of indigenous students across this country, there was a need to set up a particular program. Back then, it was called the Aboriginal Education Program and it was based on certain performance and target indicators. State and territory governments were required to produce three-year operational plans and write performance indicators, and the Commonwealth would assess those indicators.

I have not heard any other senator from any other state or territory stand up and produce evidence of the kind of damning misuse of money that happened with the Northern Territory government. Even in estimates, I have noticed the way other state and territory governments have used this funding, and no other state or territory government around this country has categorically and systematically—and now blatantly admitted it in their own internal document—misused this money. The very first line of this internal document says:

> There has been a long-term troubled relationship between DETYA and NTDE about IESIP, due to a systemic lack of interest in Aboriginal Education.

That just about sums up the Northern Territory government's relationship with DETYA but more particularly their attitude to Aboriginal education—that is, if you are not in the mainstream sector in the Territory, if you are not in one of the five or six regional centres, and if you are not a non-indigenous student, then basically they do not care. The document goes on to say:

> This has led to a widespread attitude in NTDE that 'if it is Aboriginal it is IESIP'.

That was never to be the case. IESIP money was always to be additional money on top of core funding, but this document proves categorically that that is not the case. It says:

> Despite significant annual government expenditure on Aboriginal Education (over $130 million in 1998)—and the additional $90 million of IESIP supplementary funding—

'supplementary funding' is their own words—

> provided over the last ten years—NTDE can only demonstrate marginal achievement in some outcomes by Indigenous students . . .

Here we have before us a bill that is going to allow state and territory governments to roll over their indigenous funding under the IESIP program for the next 12 months and an admission by the Northern Territory government that they have intentionally misused the money over the last 10 years.

They go on to admit in this document:

> There has been a history of using IESIP funding as substitute funding for NTDE core business. Many initiatives 'supplement' nothing.

Let me read that again:

> Many initiatives 'supplement' nothing.

The document continues:

> Others do not address any agreed targets or outcomes. Currently, IESIP funding accounts for over two-thirds (69%) of the budget of the newly formed Aboriginal Education Branch.

So that is an admission by the Northern Territory government that the sort of top heavy bureaucratic administration of not only IESIP funding but also funding in the Northern Territory for Aboriginal students under the Aboriginal Education Branch accounts for two-thirds of the budget and that, by and large, many of the initiatives do not supplement the funding; it is used as core funding.

That is a damning indictment of the Northern Territory government. They have simply used the money provided by the Commonwealth government for Aboriginal education as part of their core funding as opposed to top-up funding. It is no wonder that only six per cent of Aboriginal students, particularly those living in rural and remote Northern Territory, achieved the national benchmark for reading in 1998. Now we know why. The document also goes on to say, as we build up this jigsaw of misuse and misadministration of IESIP funding, that the Northern Territory Department of Education 'has a history of annual under-expenditure in IESIP and transferral of unexpended funds to capital works, an area with no agreed targets and outcomes'. We know that, and we saw evidence of that.

When the Senate committee went to Papunya earlier this year I think most of us were extremely shocked at the state of the school in that remote area. We now know why. The Northern Territory government has admitted that unexpended funds have been transferred to capital works, an area which has no agreed targets or outcomes. We saw evidence of that at Papunya: since 1994 the school has applied for funding to replace existing gas heaters in the preschool transition class and the library, and that has not been approved; it has applied for funding to replace shutters and louvres with perspex windows, and that has not been approved; it has applied for funding to build a new school verandah to replace a verandah that is unsafe, and that has not been approved by the Northern Territory government; it has applied for funding to build a new school gymnasium or a basketball court, and that has not been approved. We saw examples at Papunya where it was a choice between using a power point to turn on a fan to cool the room or to boil the jug for morning tea in the staff room.

There are many examples of absolute and thorough neglect by the Northern Territory government in respect of capital works. But worse than that, there are many examples of systemic discrimination on the basis that, if it were a school in Alice Springs, Katherine or Darwin, the community would not tolerate the conditions that we have seen out bush. My colleagues on the committee were baffled by the state of buildings, the grounds and the conditions under which teachers and students respectively were expected to try to teach and learn in this community and in communities in similar situations in Western Australia and Queensland. This is an absolute national disgrace. The Northern Territory government's own internal document some months later now proves that that is the case.

So we have an admission that IESIP money is being used as core funding and that there is no plan in terms of national and capital works but, to top it all off, we have an admission that 'excessive levying by Treasury of oncosts in relation to employment of staff

could have been reduced significantly'. Those people who have been tracking what has been happening in estimates will find that we have been pursuing fairly vigorously over the last couple of months the oncosts in relation to the Northern Territory government's treatment of money that comes from the Commonwealth—46.1 per cent of the total money coming from the Commonwealth is taken off under the guise of oncosts by the Northern Territory government. So of the $90 million they have received over the last five years, just a little bit less than 50 per cent has been creamed off by the Northern Territory government. To go where?

They say here that property management, if applicable—well, of course, it is not applicable because they have already admitted in their internal document that they have no plan for capital works—amounts to 14 per cent of that. Perhaps the property management they are actually talking about is the new parliament house they built for themselves at a cost of $250 million or the extensive property development they incur with builders and developments around the shoreline of inner city Darwin. The amount of 12 per cent is creamed off for administration and the rest is in superannuation, workers compensation insurance, and long service leave contribution.

While some of that is quite legitimate in terms of oncosts for workers, that in itself would amount to just over 20 per cent. The Bob Collins report, through the research he has done, found that somewhere between eight and 22 per cent of money taken off by state and territory governments for oncosts seems fairly reasonable in comparison to what happens around the country. But for 10 years now we have seen the Northern Territory government take 46 per cent of this money as part of the oncosts. In their own internal document, they talk about this being an excessive levy and that the Department of Education should have gone about trying to convince Treasury that this needs to be reviewed. Not only is that the case in terms of the Department of Education but, in respect of the Northern Territory government and its relationship with the Commonwealth in terms of monitoring where this money goes, some of these questions should have been asked many years ago.

What I put before the Senate today in respect of the Northern Territory government is that the IESIP and the AEP contracts have been consistently breached, by their own admission, for the last 10 years. It is a matter that I know my colleague Warren Snowdon has referred to the Auditor-General. It is a matter that I think we should be pursuing quite vigorously at the federal level. They have breached the contract with the Commonwealth and, in respect of the funding that they are going to get for the year 2000, this internal document proves that they intend to continue doing this. They do not intend at all to roll out the operational plan for 1997-99 for a further 12 months—not at all. In relation to the allocation of the department's IESIP funding for the year 2000, the document states:

> we recommend that
>
> all 32 initiatives cease as planned at the end of the 1997-99 triennium

It says they plan to spend another $6.5 million on staffing and operations, only $3 million being allocated to projects and $0.5 million to contingency funds for one-off projects. With the passage of this bill, the Northern Territory government intends to breach the contract quite blatantly for next year. They intend to disregard and discontinue the 32 initiatives they negotiated with the Commonwealth and to reallocate this money in another form and in another way.

In presenting this evidence before the Senate—and I sincerely hope this is not the last time I get a chance to talk about this—I say that what the Northern Territory government have done in the last 10 years in relation to AEP money is a national disgrace and, probably, an international disgrace. On their own admission, they have used Aboriginal money as core funding and not as money additional to their programs. There has been an excessive levering of administration costs, and they have admitted that they have no plan for capital works. In relation to the outcomes of Aboriginal students, this is a damning indictment of the way in which they view and treat Aboriginal education.

In the last week or so, the Chief Minister has put the blame on the parents, has put the blame on the teachers, has put the blame on the Commonwealth and on anyone else but his own government. It is interesting to note that he speaks on this issue now and not the minister for education, who ought to resign over this.

I believe that the Northern Territory government will need to renegotiate the IESIP contract with the Commonwealth government if they intend to get their hands on this funding. But I would strongly urge that this funding go directly to Aboriginal schools in the Northern Territory. *(Time expired)*

Senator ELLISON (Western Australia—Special Minister of State) (1.21 p.m.)—I will say at the outset that this is an important bill. It secures funding for indigenous education—in particular the IESIP program—which has been acknowledged by the opposition. But I feel there are some points that the government needs to address in relation to the points made by senators from the opposition and the Democrats.

In reference to Senator Crossin's address to the Senate on the situation in the Northern Territory, Senator Crossin says that questions should have been asked many years ago. That is exactly what this government has done since coming to power. It has commissioned a report, which was carried out by a Mr Collins, formerly an opposition senator of this chamber who had a particular interest in indigenous education in the Northern Territory. As a result of that report, the Northern Territory government sought a meeting with Dr Kemp, the federal minister for education, and they met last week. It was a very fruitful meeting which looked at a number of issues, some of which were touched on by Senator Crossin. One of the points addressed was the percentage of administration that has been experienced. That is the subject of a discussion between the Northern Territory and the Commonwealth—that was a point that Senator Crossin raised. The Commonwealth also received assurance that IESIP funding was to be used in a supplementary manner, the manner for which it was intended. As well as that, the Northern Territory looked to establishing strategies which would accelerate improved outcomes for indigenous students in the Northern Territory. As a result of this report commissioned by the Commonwealth, there has been a good meeting between Mr Burke from the Northern Territory and the federal government and we are working to improve indigenous education with the Northern Territory for indigenous students in the Territory.

I will touch on other aspects which were raised by Senator Stott Despoja in relation to funding. There have been increased participation rates by indigenous students in tertiary education. In fact, looking at the take-up for Abstudy, we see that demands for Abstudy for tertiary students in the first quarter of 1999 rose to 16,265 compared with 15,441 for the same period in 1998. That was an increase of 824 students over the period of January to March 1999. Applications for 1998 rose to just under 58,000 as compared with 56,692 in the year before. This denotes a marked increase in applications and comes in spite of comments by detractors, who are trying to beat this up as an issue, that we are going nowhere with education in the tertiary sector for indigenous students.

The government has always said that there is much to be done in relation to indigenous education, but we are moving in the right direction and we are taking positive steps to improve outcomes for indigenous students. As far as funding is concerned—and I note that Senator Stott Despoja touched on that—in this year's budget, just over $1 billion was provided over five years across programs to improve educational opportunities for young indigenous students. In fact, funding for indigenous students will remain at record levels for the next five years. That spells good news for indigenous education, and it shows a government that is totally committed to working towards improving outcomes for indigenous students across Australia.

Some other aspects were mentioned by Senator Carr. Senator Carr touched on the Abstudy changes and how they might affect a number of students. Any student who at the moment is better off receiving the current 1999 rates will continue to do so until the

completion of their course. That means that no student who is undertaking studies at the moment will suffer any diminution in that regard. They will continue to enjoy the levels of assistance that they are enjoying at the moment. As well as that, Abstudy will continue to have hardship provisions for all students whose studies might be affected by any circumstances beyond their control. That catch-all provision is a very good one indeed.

Senator Carr has tried to say that the government has not given this priority, and he has criticised the government for its lack of attention to this area of education. I might say that this bill had been listed as a non-controversial bill. For those listening, that means a bill which goes through quickly with the consent and support of the opposition and other parties. But that was not to be the case, and as such it could not go through as quickly as it otherwise might have. It was always the government's intention to give this bill priority. It is a very important bill which ensures funding for indigenous education. This is an area where the government is committed to continued efforts to improve outcomes for indigenous students across Australia.

The government will be opposing the second reading amendment as put forward by Senator Carr. We believe that this is a distortion of the situation. We do agree that indigenous students are in a disadvantaged sector—that goes without saying, and I said that earlier—but, in relation to those other political points that Senator Carr wants to score, the government will have none of that. We are about the business of improving outcomes for indigenous students rather than getting engaged in political point scoring.

Amendment agreed to.

Original question, as amended, agreed to.

Bill read a second time.

In Committee

The bill.

Senator CARR (Victoria) (1.32 p.m.)—The minister raised in his response to some points that we pursued in the second reading debate the question of the government's priority. I was, of course, referring to a letter that the Minister for Education, Training and Youth Affairs had written to me, and I noticed he had also written to Senator Faulkner. He was presumably concerned about the passage of the legislation through this chamber. I drew to the minister's attention the fact that the government determines the legislative program in this chamber, not the opposition, and that we at all times debate legislation in the order in which the government presents it. Minister Kemp is therefore in error to seek to blame the opposition for the failure of the government to determine its own priorities and to establish effective management of its program. The fact is that the minister, Dr Kemp, does not have the muscle in this government to see that his legislation is given the attention it deserves within government.

The government response is to say, 'These are matters that should be dealt with in a non-controversial way.' Clearly, they are not non-controversial. The fact that a second reading amendment has been carried by this chamber demonstrates that they are in fact controversial, and the fact that the procedures for the examination of controversial legislation do not allow for a vote to be put means that these matters cannot be dealt with. Bills cannot be dealt with where there are votes required, as we have just had in this legislation. The government's argument that these issues should be dealt with in a non-controversial period of the sittings is quite clearly fallacious. I would like to get that message through to whoever is advising the minister. If he does not understand such an elementary component of the way in which this chamber works then I suggest that he has a great deal yet to learn about the legislative process in this country. I think the minister ought to spend more time developing—

Senator Ellison—Are you opposing the bill?

Senator CARR—I have made it very clear that you cannot have a non-controversial piece of legislation where there is a vote, and there has been a vote on the second reading amendment, which of course has now been carried by this chamber. I want to note that the Senate has indicated that indigenous Australians are the most educationally disad-

vantaged group in this country and that the Senate has condemned the government for failing to release the findings of the 1997-98 review of Abstudy, for cutting Abstudy payments to some categories of indigenous students and for failing to recognise the special needs and community leadership potential of mature age indigenous students. Quite clearly, this is controversial legislation. The Senate has acknowledged the government's failure in this regard and has appropriately condemned it. Minister, I suggest once again that you talk to Dr Kemp about getting the facts straight because he obviously has great difficulty sorting out fact from fiction.

My question relates, however, to the point that I raised in the second reading debate, which the minister has failed to answer. I ask you: in relation to the cost of administration, will payments be made under this legislation at the beginning of the year so as to allow institutions to secure moneys and to be able to use the interest earned on program funds to supplement the operations of those colleges or institutions?

Senator ELLISON (Western Australia—Special Minister of State) (1.36 p.m.)—Provided there is a signed agreement in place, the answer is yes.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION BILL 1998

Second Reading

Debate resumed from 15 February, on motion by **Senator Minchin**:

That this bill be now read a second time.

Senator BOLKUS (South Australia) (1.38 p.m.)—We are here this afternoon to consider the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. Let us be in no doubt as to the nature and gravity of the task before us. In full knowledge of the consequences, with the eyes of the nation and the world on us, we are gathered here at the end of this millennium with arguably the last chance to thwart the forces that continually threaten the existence of Australia's indigenous peoples. The issue is that stark, that momentous and that simple.

The bill is brought to us by the Minister for the Environment and Heritage and responsibility for it will reside within his portfolio. It is not simply a cheap shot to point to the irony of this. The government have thus taken us back 50 or more years to an era where state government departments with titles such as fisheries, fauna and aborigines dealt with indigenous interests. It reflects the government's view unchanged by experience, history or contemporary thought. Perhaps they continue to see themselves as archaeologists dealing with curiosities and the remains of a dead culture rather than as the protectors of a living tradition and culture still threatened by the imperatives of the wider society.

The protection of the living cultural heritage of Australia's indigenous peoples, together with a willingness to ensure its continued transmission, is central to their survival as a distinct social and cultural entity. The alternative to effective and comprehensive indigenous heritage protection is indeed cultural genocide. I speak not of the destruction that took place in previous generations; I am not focusing on the wrongs of the past. What concerns me, the Labor opposition and other members of the Senate here today—and what should concern every one of us—is the erosion, desecration, degradation and destruction of indigenous cultures that continue to take place today.

Today, yesterday, every day and tomorrow—it is an onslaught as relentless as the organised shooting parties of the past. Just as surely as the diseases Europeans brought to this land swept aside its indigenous people, so does our pursuit of economic development and cultural dominance sweep aside and destroy indigenous cultures, not always with a conscious intent and not always with wilful malice but always with a blind efficiency, certainty and probable permanence. When Australians celebrated the bicentenary of

European settlement, were we united in our sense of triumph? Did we honestly think indigenous Australians greeted the occasion with warmth and gratitude for what it meant for them? Did we not stop to reflect on what the last 200 years had brought to the lives, culture and history of people who had preceded us in this place by tens of thousands of years?

Enough of that: no black armbands are allowed in the official history proclaimed by the prophet statesman Prime Minister that we have today. As he invites us to collectively wash our hands at Pilate's bowl, I wonder what his thoughts are of the significance in all this of our impending Centenary of Federation. How does the Prime Minister rate the performance of past Commonwealth governments in protecting indigenous heritage? How will history judge his government in its discharge of responsibilities for indigenous Australians, their heritage and the protection and preservation of their culture?

Does he believe this 100-year-old system of government carries any ongoing responsibility for these matters into the future? The answer to the last question should lie in the legislation that his minister brings before us today. If that is the case, the answer continues to bring shame on the Prime Minister and his government. Implicit and explicit in this bill, we find ample evidence that there are ongoing, complex issues to be addressed and innately conflicting interests to be mediated and resolved. This bill, in common with the 1984 act it seeks to replace, is positioned at the point of impact between competing and radically different cultures.

On the one hand, we have a technologically sophisticated culture whose values have driven an intensive and invasive exploitation of the land and its resources. This culture, for better or worse, is dominated by the demand for economic growth—for increased incomes and consumption on the one hand and ever increasing production and productivity on the other. It was, is and seems destined to remain a culture that places conspicuous consumption and visible trappings of wealth at the apex of its value system.

The culture that it imposed itself on 200 years ago had developed and grown in the landscapes of this continent. It saw its peoples as emerging from, in and with the land. It saw the role of peoples as custodians of this place and its stories, with a responsibility to care for, nurture and preserve its form and fabric. The people of this culture are at one with the land, its creatures and its woodlands. They are interdependent spirits, not lords or masters of spiritless resources.

It is a source of wonder that we are here today to legislate on a matter of continuing importance. Despite 200 years marked all too often by officially sanctioned and organised attempts to exterminate Australia's indigenous peoples and despite 200 years of hostility, contempt or ignorant disregard for their culture, their culture lives. They continue to live. Despite Third World conditions in remote and not so remote communities, our indigenous peoples grow in number. In fact, it should be a source of rejoicing for all of us—although credit to very few—that our shared heritage includes a living, ancient culture with the potential to survive.

For that potential to be realised, legislators must take responsibility for putting in place effective legislation that identifies and embraces key problems and puts forward just and workable solutions to them. Commonwealth governments in the postwar era have entered into international covenants and treaties that seek to guarantee the rights and to protect the cultures of indigenous peoples. These undertakings have been in place throughout the lives of the majority of Australians living today. Despite this fact, in 1999 we find ourselves with some states with no heritage protection legislation worth speaking of and with only one state—South Australia—and the Northern Territory having heritage protection legislation that goes near to meeting the standards to which we have stood signatory for so long.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984 was drafted and enacted at a point in our history when Australia was still years away from accepting the prior title of indigenous Australians. Almost 200 years of land clearing, intensive settle-

ment, mining and other activities had taken place with no real regard to indigenous rights and interests. The mining boom of the seventies had taken the economic and social imperatives of the dominant culture to the remaining parts of this continent where they had previously not come into destructive contact with indigenous culture. The outcomes reflected no great advance in conscience or consciousness on the part of the invaders.

The 1984 act was motivated in no small part by the national and international shame that this history had brought to us all. The success of the 1967 referendum and the enactment of the Land Rights (Northern Territory) Act in the 1970s marked changing social and political attitudes. They coincided with the emergence of indigenous leaders with the capacity and the will to confront injustice and publicly campaign for change. They worked with and on behalf of people who had been abused and ignored for too long, and they were prepared to struggle for change. From the Pilbara to Wave Hill, Redfern, Fitzroy and, in due course, the front lawns of federal parliament, they carried on a courageous and compelling campaign. A supposedly educated and enlightened population then began to realise that their education system—one that I was also part of—had left them ignorant of their shared heritage. Cultures that we were led to believe were gone or going were very much alive but in the process of being destroyed by the self-styled liberal democracy supposedly pledged to social and racial equality. Educated city dwellers who had sung along with Dylan and marched in spirit with Martin Luther King and for Nelson Mandela were forced to address their sentiments a lot closer to home.

So the 1984 act was indeed a product of its time. It was a product of belatedly emerging consciousness, drafted in the context of the prevailing legal orthodoxy of terra nullius. It sought to offer protection to the sacred sites, material heritage and ancient graves of indigenous Australians in the face of mining and land development activities. In a sense, it was the native title act that you would have if you did not recognise native title but wanted some semblance of decency in a process controlling the prevalence of one cultural interest over another. It made no attempt to deal with the exploitation of indigenous cultural property—exploitation that comes through the expropriation of images, songs, dances or stories, as much as their desecration—and did not attempt to protect or promote indigenous languages, the essential vehicle for a living culture capable of being preserved and transmitted.

In short, it had not moved from the archaeological perspectives of previous eras and it appears to be predicated on the assumption that it deals with a static or dead culture—with the relics and remainders of an ancient departed race. Let us put that in perspective: no other social or ethnic group within Australia's multicultural society would tolerate such an attitude. What we are dealing with here is the reality of society moving on but the legislation not so doing. Having said all that, however, the 1984 act was a worthy start. It was a commitment on the part of the Commonwealth to real moral and political leadership on a matter of national importance. It was enacted in the certain knowledge that it would ultimately have to be changed in the light of experience, court decisions and changing public attitudes.

I think two simple facts need to be recognised. The 1984 act has offered little in the way of effective protection and the states have improved their performance in heritage protection only marginally since that time. The constraints on effective Commonwealth legislation are political, legal and constitutional. They are all issues that have been addressed by the parliament over the years. Constitutional heads of powers for effective legislation were enhanced by the 1967 referendum, adding as it did to the existing external affairs power export control and fiscal levers that were already available to a government willing and able to use them. The Racial Discrimination Act 1975 used the external affairs power to give effect to our international treaty obligations to treat all Australians in a non-discriminatory way, but it was some time before the parliament or the judiciary would use it, in whole or in part, to deliver justice to indigenous Australians.

The most significant change to the reality and the perception of the capacity of governments to protect indigenous heritage came of course with the Mabo decision. In reaching this decision, the High Court of Australia brought this nation, belatedly, into line with other countries continuing to govern and legislate in the common law tradition. We finally joined New Zealand, the US and Canada in recognising that our indigenous people were the owners and custodians of this continent before European settlement. It was a judgment remarkable to the rest of the world only in the number of years that it took to arrive. The court found, in its judgment, that this so-called native title was derived from and resided in the customs, beliefs and traditions of indigenous Australians. Furthermore, this title is now embraced within the common law of the nation.

Of greater significance to the legislation before us, however, is that the court found that, although this title was vulnerable to extinguishment by executive and legislative acts since European settlement, it could survive and had survived in some places. Indigenous rights were therefore no longer just a matter of justice; they were now a matter of law. The Native Title Act 1993 was a clear demonstration of the capacity of the Commonwealth to legislate to protect indigenous rights with real and substantial procedural provision. That law was challenged by the Western Australian government, but the High Court upheld the legislation. The later Wik decision found that, where a later grant of an interest in the land was not inconsistent with incidents of native title, the two titles could coexist. So governments are now better informed by history, better supported by informed public opinion and better armed by the law to do the right and decent thing and to act in ways that will survive the judgment of history, the courts and the world.

Despite this, however, history will note that, on gaining office, the Howard government squandered its early years by indulging in a rabid attempt to gut the Native Title Act. It succeeded in amending the act in 1998, consequent to the Wik decision. The Native Title Act 1998 has twice since attracted the attention of the UN committee overseeing the Convention for the Elimination of Racial Discrimination. So we have had a continuation of a history which I think few Australians can be proud about.

It would be very easy to characterise the heritage protection bill as being steeped in the same malice and drafted with the same blind determination to diminish indigenous rights; it would be easy, but it would not be entirely accurate. Indeed, this bill does display the same indecent desire to abandon the fate of indigenous heritage to the whims of the states—the same desire that was the Howard government's answer to the so-called problem of native title.

The simple, practical fact is that state governments, not the Commonwealth, issue exploration permits and regulate mining, land subdivision, town planning, pastoral and agricultural activities likely to impinge on indigenous heritage sites or physical objects. Any successful legislation must engage the states and their agencies in comprehensive and workable processes. Unfortunately, the bill before us is neither comprehensive in its scope nor workable in the equitable interests of all parties.

I say again there are no reasonable excuses for these inadequacies. This legislation comes into this place after extensive and intensive scrutiny of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984—it is born of 15 years of experience of that legislation—and scrutiny of the widely praised Evatt report as well as of the reports of a joint parliamentary committee and a Senate legislation committee. This legislation has been worked over and over and over. It has emerged despite, and not because of, years of wisdom, volumes of evidence and an impressive range of analyses and insights. Indeed, this minister comes to this task better informed but, unfortunately, none the wiser than any other.

We have immense problems with the legislation that we will seek to address through amendments. We feel that the legislation, as I said a while ago, devolves too much authority to the states, with too little protection and too little appreciation and realisation

of national and international responsibilities by the federal government. We will move amendments, together with the Australian Democrats, which are consistent with the Evatt report and can broadly be grouped into three discrete packages.

The first group will go to the establishment of an independent Commonwealth Heritage Protection Agency, in line with the recommendations of the Evatt report and the minority reports of both the joint parliamentary committee and Senate legislative committee. A depoliticised, independent expert body is essential to any decent and workable outcome. The second raft of amendments will go to the retention of the Commonwealth as a genuine and real option of last resort in heritage protection.

The third group will deal with one of the greatest weaknesses in the government's bill. These amendments will deal with strengthening and increasing the minimum standards for accreditation of state heritage protection regimes. The fact is that the Commonwealth's proposed standards are so low that, if they were to come into law, they would present the opportunity or the incentive to lower existing standards. This is a matter of incontestable fact when we look at, for instance, the present provisions in South Australia and the Northern Territory.

Our proposed enhanced standards will include a requirement for states to effectively integrate heritage and planning laws, regulations and procedures. Heritage will always be at risk without the whole of government approach implicit in this measure. We will require that accredited state regimes must provide for independent heritage protection bodies, just as we will for the Commonwealth. Ministerial discretion must be tempered by access to expert independent advice, and many procedures must be seen to be taken at arm's length from governments if they are to be accepted as impartial. We will insist on effective sanctions for injury to, or desecration of, significant areas. When substantial vested economic interests are involved, the countervailing sanctions for breaches must be substantial, timely and framed to enhance the likelihood of successful prosecutions.

Our amendments will also seek to eliminate procedures and laws that purport to protect indigenous heritage but do so in a manner offensive to indigenous culture. Minimum standards must also contain assurance of access to lands that will enable indigenous people to enter into agreements on an informed basis and to exercise effective custodial responsibilities for all significant sites.

We have a number of reservations about the lack of prescriptions for procedural fairness for all parties and we will move amendments to remedy that weakness in the bill. Our amendments will ensure that the minister is required to take account of the advice of interested and expert bodies such as the Heritage Protection Agency. The government's dangerously politicised proposal places the minister under no such obligation at this stage. We will move other amendments, including amendments reversing the existing bill in respect of ministerial oversight. I will not detail them all now, because we will have an opportunity to do that in the committee stage of the debate.

I will finish by making this final point: we are dealing here with the culture of our first peoples, and we should be dealing with it in a manner which has been informed by recent history—recent political and legal developments. To miss that opportunity would be, at the end of this millennium, another great shame in our history.

Senator WOODLEY (Queensland) (1.58 p.m.)—The purpose of the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 is to introduce procedures that may be used to protect indigenous areas and objects. An earlier version of the bill we are considering today was introduced into the parliament on 2 April 1998, but that bill lapsed due to the parliament being prorogued.

The primary aspects of the bill are: the repeal of the current 1984 act which was introduced only as a temporary measure; the establishment of the director of indigenous heritage protection; a scheme for the accreditation of state and territory heritage protection regimes; and a scheme for access to Com-

monwealth long-term, interim and emergency protection orders. Unfortunately, however, the bill's proposals are vague and, in many respects, are token attempts to implement effective heritage protection measures. This inevitably results in the Commonwealth virtually vacating the field in relation to indigenous heritage protection.

One of the key aspects of this piece of legislation is that it will virtually cease the Commonwealth's role in the protection of indigenous heritage. Again, as we have seen on many occasions, it is an abrogation by the Commonwealth of the direct responsibility given to it by the 1967 referendum. It has been widely argued that this withdrawal will not only represent an abrogation of the Commonwealth's responsibilities to indigenous people given in that referendum but also may well leave the Commonwealth in breach of its obligations under a number of international conventions.

Debate interrupted.

MINISTERIAL ARRANGEMENTS

Senator HILL (South Australia—Minister for the Environment and Heritage) (2.00 p.m.)—by leave—I inform the Senate that Senator Rod Kemp, the Assistant Treasurer, is absent from the Senate today for question time for personal reasons. During Senator Kemp's absence, I will take questions relating to Treasury matters and Senator Ellison will take questions relating to the Financial Services and Regulation portfolio.

Senator Faulkner—Madam President, I take a point of order. The minister at the table has not informed the Senate about the whereabouts of Senator Macdonald.

Senator Coonan—You are precious.

Senator Abetz—Look at your front bench.

Senator Faulkner—You would be aware that when ministers are not paired, it is the normal courtesy to inform the chamber where they are.

The PRESIDENT—There is no point of order.

QUESTIONS WITHOUT NOTICE

Good and Services Tax: Car Industry

Senator QUIRKE (2.00 p.m.)—My question is to Senator Minchin, the Minister for Industry, Science and Resources. Has the minister seen reports today which cast strong doubts on the prospect of savings for new car buyers following the introduction of the GST in July next year? Does the minister agree that, as the price of new cars falls, trade-in values will drop, leaving the difference between new and used car prices little changed? Does the minister accept that many car dealers are presently doing generous deals in a bid to maintain demand for new cars during the pre-GST buyers strike—deals which may disappear once buyers return to the market after July next year?

Senator MINCHIN—The key point in relation to the automobile industry is that our policy is to charge a tax on the average Falcon or Commodore of around $2,800. The Labor Party remains firmly fixed to a policy of charging ordinary Australians a tax of $4,800 on the sale of an ordinary Falcon or Commodore. That is the difference between the Labor Party and the government. The Labor Party policy is to have a tax of nearly $5,000 imposed on ordinary Australians every time they buy the basic Falcon or Commodore. Our policy is to significantly cut that tax by at least $2,000 on the price of an ordinary Falcon or Commodore. This will be the most significant boost that this industry has probably ever received. The industry itself is forecasting sales in the post-GST period of anything up to 950,000 units as the effects of the lower taxes work their way through the system. The industry overwhelmingly supports the significant reforms to indirect tax that this government has made to the car industry.

The car industry's current position is that they are publicly seeking a reduction in the wholesale sales tax to 13 per cent prior to the abolition of the wholesale sales tax on 30 June next year. Matters relating to the wholesale sales tax are of course matters for the Treasurer or the Minister representing the Treasurer. Nevertheless, it is obviously folly to speculate about levels of wholesale sales tax, as the opposition would know because of

its overnight increase in the sales tax on motor vehicles in 1993.

In so far as the current state of the industry is concerned, I make the point that the total vehicle market to the end of October 1999 is down by just 3.3 per cent compared with the record achieved up to October 1998—the comparable year to-date. The market remains about nine per cent above sales during the same period in 1997 and 20 per cent higher than in Labor's last year of 1995. Obviously we are watching the situation very closely. At the end of the day it is a matter for the government to decide whether there should be any change in arrangements, but again I say it is dangerous and a folly to speculate about any changes to the wholesale sales tax. That would just result in a self-fulfilling prophecy. We are keeping a close eye on the market. But, as I said, the market is still remarkably strong.

Senator QUIRKE—I ask a supplementary question, Madam President. Does the minister accept that constant claims by himself and the Treasurer—such as the one we have just heard—that consumers will make big savings on new cars after the introduction of the GST have caused or exacerbated the GST car buyers strike? Or does this important issue to Australian industry still not rate on the minister's royalist radar screen?

Senator MINCHIN—There can be no hiding the fact that we will be taxing ordinary Australians $2,000 less whenever they purchase a new basic Falcon or Commodore. There can be no hiding that; that is the difference between our policies, and that is the effect of our massive reform of indirect taxation—that the tax on an ordinary Australian motor vehicle will decline from $4,800 to $2,800.

Illegal Immigration: People Smuggling

Senator EGGLESTON (2.06 p.m.)—My question is to the Minister for Justice and Customs. The recent influx of illegal immigrants arriving by boat demonstrates the need for a well-balanced approach to people smuggling. Will the minister inform the Senate of the government's approach to people smuggling? Is the minister aware of alternative policy approaches? Is the minister aware of community support for the government strategy?

Senator VANSTONE—I thank Senator Eggleston for his question. Of course, the people of Western Australia show a very strong interest in the prevalence of people smuggling into Australia since the west coast of Australia is one of the predominant targets. Any approach to people smuggling has to be like any other law enforcement issue: a balance between detection and deterrence. Detection, frankly, is not the problem. The reason the issue is a political issue and is in the news a lot is that we keep detecting the boats and we keep intercepting them. It is the number that is coming that is, in fact, causing the problem.

If any boats did land undetected, the cargo of misery—and that is what people smuggling is—is easily spotted and easily detained. When we have the new Coastwatch Dash 8 aircraft and helicopter on line in the next few months our capacity to detect and intercept illegal arrivals will be even better. But I have made the point that detection and interception are not the problem—primarily because these people want to be found, intercepted and brought to the Australian mainland. The Minister for Immigration and Multicultural Affairs is quite properly addressing the issue of deterrence. Unfortunately, our laws are seen as soft and make us a very attractive target. The minister for immigration has put in place regulations to offer a temporary protection visa to genuine refugees who arrive illegally which limits automatic access to family reunion and offers no guarantee of return if they leave Australia. That is quite different from what was offered in the past. It is a less generous offer but a fair offer, because we have to remember there are thousands of refugees in border camps all over the world who are also wanting to come to Australia, and they get left out because of queuejumpers. The government has taken this action to minimise the attractiveness of Australia to people smugglers and to forum shoppers. The new regulations still meet our international obligations. Similar temporary protection visas are offered in a number of

European countries, including Denmark, Finland, France and Norway. The government's approach has received support from a number of well-informed commentators. Former immigration minister Gerry Hand had this to say:

> I can't see how anybody couldn't support what's being proposed. Either let the minister run the program or let the international people smugglers run the program for you.

Senator McKiernan made some very welcome remarks early on in relation to illegal arrivals, pointing out:

> If they know they're not going to get almost automatic permanent residency and that in turn they're not going to be able to sponsor a relative to Australia at a later time after being granted protection here they might not be prepared to spend large sums of money in order to come here and languish in detention.

Simon Crean also saw the light earlier in the day. He says he 'wants the issue of illegal immigration to be taken above politics, to get out of playing wedge politics into bipartisan support'. I am very pleased, and the government is pleased, to be advised that the Labor Party has decided today to support this change in regulation to make Australia a less attractive place.

I want to go on—and I might need some time to amplify this point—to one other suggestion that Labor has made, and that is that we should have a coastguard. Duncan Kerr keeps saying, 'What we need is a coastguard.' It is a typical suggestion—I do not want to be sexist about this—from a boy: 'Buy more boats.' He has got no idea. He wants 12 high-speed catamaran boats because he wants to get some media attention. *(Time expired)*

Senator EGGLESTON—Madam President, I ask a supplementary question. Could the minister comment on other surveillance methods being undertaken to protect our coasts?

Senator VANSTONE—Yes, I will answer that question. After 12 months Duncan Kerr's suggestion is that we implement a very expensive ferry service for illegal immigrants. Mr Beazley has clearly had a change of heart. He considered a coastguard a long time ago. He rejected it and did nothing about it for the 13 years they were in government because it is a bad idea. A coastguard would deliver nothing more than that which we already have by virtue of Coastwatch and its close liaison with the Air Force and with the Navy. A quasi-military coastguard is a very expensive option. It needs to be military trained, have military specifications and be military ready. Intelligence is the best way of detecting vessels, followed by aerial surveillance. The radar footprint and visual surveillance capacity of a boat is tiny compared with that which you can achieve through coastal overflight. A recent costing shows that the proposal considered by Mr Beazley some 10 years ago would now cost $1 billion. *(Time expired)*

Goods and Services Tax: Car Industry

Senator GEORGE CAMPBELL (2.12 p.m.)—My question is to Senator Minchin, the Minister for Industry, Science and Resources. Has the minister seen reports today about the impact of a pre-GST car buyers strike, including sales in New South Wales falling 7.5 per cent in the first four months of this financial year cutting almost $500 million from dealership revenue, with some dealers experiencing a 25 per cent drop in sales and inquiries compared with the same time last year? Has the minister's department analysed and assessed the employment impact of a GST buyers strike on manufacturers, suppliers, retailers and supporting industries, both at present and if the strike is allowed to continue up until July 2000? Has the minister's department analysed and assessed the impact of a GST buyers strike on the ongoing viability of the over 80,000 small businesses in the oil sector, some of which may not last until July 2000, and what do these assessments show?

Senator MINCHIN—The difficulty with this question is of course that it invites speculation about the level of wholesale sales tax between now and July 2000, which I would think even the opposition would understand is impossible and quite stupid for the government to engage in. We will not engage in any speculation about any change in the rate of wholesale tax between now and July 2000. We are in close discussions with the industry, both at the manufacturing level and at the

dealer level. We are trying to monitor this thing as closely as we possibly can. We are concerned to ensure that we minimise the transitional effects of the move to a much lower rate of tax on motor vehicles. This is, as I say, one of the best things any government has ever done for the Australian motor vehicle industry—a very significant reduction in tax which the industry itself is forecasting will result in a huge boost to sales and therefore to employment in this industry when the tax reduction takes effect and when it works its way through in ensuing years.

All I can do is point to the fact that sales for this year are on track to record 1999 as being the second-best year ever, even ahead of the previous record of 1997. Even if you take, as I have just done, the figures for July to October, which some commentators are referring to—the figure post the legislation in relation to the GST having been passed by this chamber—the sales for the last four months so far are equal to the sales in the same period in 1997, which was of course a record year, and way ahead of the sales in 1995 and 1996. The bleating from the opposition is somewhat difficult to accept credibly, given the effects on the industry of your increases on sales tax when you were the government, the government that said it was concerned about manufacturing employment—

The PRESIDENT—Senator Minchin, your remarks should be directed to the chair, not across the chamber.

Senator MINCHIN—Through you, Madam President, this now opposition had no concern for workers when it increased the sales tax on motor vehicles, which took effect in 1995. The tax went from 16 to 22 per cent, and employment in manufacturing of motor vehicles fell by three per cent in 1995. So let us not have any crocodile tears from the opposition on this issue.

Senator GEORGE CAMPBELL—Madam President, I ask a supplementary question. Has the minister received representations from the car industry—and, indeed, from his own backbenchers—about the need for proper transitional arrangements to avoid a GST buyers strike? What has his response been, or has he yet to return to a real job following his royalist holiday?

The PRESIDENT—Ignore the last part of the question, Senator Minchin.

Senator MINCHIN—Yes, of course, I, the Treasurer and others are in constant consultation with representatives of the automobile industry. I have met with the unions concerned, and we are constantly talking to them. As you know, we did put in transitional arrangements relating to the availability of input tax credits once the tax comes into effect. That was endorsed by the Vos committee that was established to independently assess our transitional measures. As I say, what the industry is seeking by way of an additional transitional measure is an immediate reduction in the wholesale sales tax to 13 per cent, which is the equivalent of a 10 per cent GST. I am not going to speculate about any reduction in the wholesale sales tax.

Economy: Performance

Senator FERGUSON (2.16 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Minister, could you inform the Senate of recent indications of the strength of the Australian economy under the responsible management of the Howard government? What further reforms are needed to ensure that this strong performance continues?

Senator HILL—Certainly I am pleased to confirm that the Australian economy continues to perform strongly, despite the Labor Party's attempts to talk it down at every opportunity. Not surprisingly, it is an embarrassment for Labor, because so often our record is compared with theirs. Remember, under Labor, record unemployment topping 11 per cent, record high interest rates—17 per cent under Labor; even higher for small business, Senator Schacht—budget deficit after budget deficit, a very poor economic record. By contrast, we have through the Howard government almost four years of sound economic management. As a result, we are seeing more confidence, more growth and—importantly—more jobs. The Morgan poll in this week's *Bulletin* magazine shows:

More Australians feel positive about the economic outlook for the next 12 months than at any time in the past five years.

The Westpac-Melbourne Institute index of consumer sentiment also showed an increase in consumer confidence, despite the recent small increase in interest rates. That is understandable. Remember, the Reserve Bank in its recent statement on monetary policy stated:

> The improved external environment, together with ongoing strength in domestic demand, means that Australia's growth prospects have also improved.

It went on to say:

> The Bank expects that the economy will experience quite good growth over the next couple of years.

That is also, of course, good news for jobs. Already, we have the latest employment figures showing an increase of more than 47,000 jobs in October, with the unemployment rate dropping from 7.4 to 7.1 per cent. More than 570,000 jobs have been created since the election of the Howard government. The latest ANZ survey shows that the number of job advertisements has increased nine months in a row, to now be 25 per cent higher than at this time last year. Labor, by contrast, does not have a jobs policy. That is not to particularly criticise their employment spokesman, because Mr Beazley announced in July that he was going to put down an employment policy. We are still yet to see it. But, of course, Labor does not have a health policy either. It does not have an education policy. It does not have an environment policy. It has no social welfare policy, no regional development policy, and so it goes on.

While Labor sleeps on the job, this government is getting on with the job. We have further reforms before this parliament in the area of business taxation, to allow our businesses to continue to grow, to continue to compete in export markets and to continue to create more jobs. Of course we need to continue to reform our industrial relations system so that we remain productive and competitive. This government has the policies needed to continue our strong economic performance and the courage required to implement them.

Mobil Refinery: Port Stanvac

Senator SCHACHT (2.20 p.m.)—My question is to Senator Minchin, Minister for Industry, Science and Resources. Can the minister assure the people of South Australia that the Mobil refinery at Port Stanvac in Adelaide will continue its refining operation?

Senator MINCHIN—I wonder if Senator Schacht can assure us of his remaining in the Senate? Was he going to be sent up to Makin, to lose yet again to Trish Draper, the member for Makin? It is not possible for me or any minister in any government to give any assurances about any commercial installations in this country. Those are matters for the companies concerned. As minister, I am very keen to ensure that we do retain a commercially viable refining industry in this country. It is both strategically important to this country and very important to the national economy, in my view, that we do retain a strong and competitive refining capacity. That may, of necessity, involve some rationalisation. The industry in Australia is typified by duplication of small refining operations that do produce small returns. There has, of course, been much speculation that one or two refineries may in the end be forced to close, particularly as a result of the additional investments required to meet new fuel standards.

We are working with the industry to seek to achieve the outcome of an efficient, competitive refining industry. I will be announcing the results of the downstream petroleum products action agenda on 30 November. There has been some speculation about the contents of that document, which I will not pursue, but it will show the government's strong commitment to an efficient, competitive refining industry in this country.

Senator SCHACHT—Minister, as you will not guarantee the continuation of the refinery—

The PRESIDENT—Senator, direct your question to the chair, not across the chamber.

Senator SCHACHT—Through you, Madam President, as the minister will not guarantee the continuation of the refinery at Port Stanvac, can the minister in his ministerial

role take appropriate action to ensure that, if there is a loss of jobs, there will be replacement jobs elsewhere for those who will lose their jobs in Adelaide?

Senator MINCHIN—Madam President, it is a highly speculative question based on false assumptions. It will be a matter for Mobil to decide what operations they maintain in Australia. I think Mobil has done a terrific job with the Port Stanvac refinery, and I applaud them on what they have done. Of course I hope, as a South Australian, they will be able to continue with that refinery but, at the end of the day, it is a commercial decision. We will obviously be talking to the company about their future plans and, if that does involve any rationalisation, what that will mean for employees of those companies.

Australia Post: Lifestyle Survey

Senator ALLISON (2.24 p.m.)—Madam President, my question is directed to the Minister for Communications, Information Technology and the Arts. Is the minister aware that Australia Post through its Geospend division has delivered to all householders in the last couple of weeks the *Australian Family Lifestyle Survey*? Does the minister agree that most people filling in this survey, which is covered by Australia Post logos, have been fooled into thinking that this is an official government sponsored form? Minister, why does the survey say, in bold type, that security and confidentiality are assured when the names, home addresses, email and telephone numbers can be sold on by Australia Post, together with the very personal details asked for in this survey? Minister, how much money will Australia Post make from this misleading practice and does the minister condone this kind of behaviour in his own agency?

Senator ALSTON—Australia Post has advised the government that the family lifestyle survey being conducted by Geospend, which is a division of Australia Post, is funded by industry sponsorship rather than revenue from Australia Post's other operations. The layout of the survey form reflects the outcome of consultations between Australia Post, the Privacy Commissioner and the Australian Direct Marketing Association. One can assume from that that the Privacy Commissioner was satisfied with the arrangements that had been entered into in putting the survey together. The survey's introductory letter states that the information obtained may be given to certain businesses who will then send information on their products and services to those people participating in the survey. The letter emphasises that the survey is optional and that those who elect to participate may complete as many questions as they wish and ignore those they would prefer not to answer. I think it ought to be clear that what you have here is an arrangement that involves informed consent, that provides the opportunity for respondents to decide—

Senator Woodley—It is a con.

Senator ALSTON—I do not know what that means, but it is a con. It is an up-front disclosure of an intention to use material in a particular way which is obtained from those who are willingly prepared to allow it to be used in that form.

Honourable senators interjecting—

Senator ALSTON—Senator Allison seems once again not to be prepared to take account of any of that information because it does not fit in with any of her preconceived prejudices. I regret that because it would seem to me, on the face of it, that Australia Post has gone to considerable efforts to ensure that it does satisfy the relevant privacy concerns and that it is able to obtain information that will be of use to it. It is empowered under the Postal Corporation Act to carry on business or activity that is incidental to the supply of postal services. Presumably, this information is designed to assist in the better performance of its business and it is done in such a way that it is sympathetic to privacy consideration.

Senator ALLISON—I thank the minister for his answer but I ask him to acknowledge that the Privacy Commissioner has said that nothing can be done in this respect because the people who fill out this survey have no privacy protection under the Privacy Act because Australia Post is collecting this data as a commercial activity. Minister, are there any restrictions at all on how this information, which is being sold for commercial gain, can be used? How does the minister propose to

protect the privacy of Australian householders who have been misled by Australia Post into thinking that this survey is confidential? Minister, Australia Post conducted the same kind of survey last year and you said that your government would legislate to protect people against this sort of invasion of privacy. Minister, when will we see some action?

Senator ALSTON—Once again, Senator Allison is simply not interested in the facts. She asks me why Australia Post have misled people into thinking that the information is confidential when, as I have already indicated, the survey's introductory letter states that the information obtained may be given to certain businesses who will then send information on their products and services to those people participating in the survey. If what you are saying to me is that some people choose not to read the material but to blindly fill in the survey—despite the fact that they are not required to, and it ought to be plain to anyone that you have no obligation to fill in these forms—I do not know what words mean and clearly Senator Alison does not either.

Electricity: Renewable Sources

Senator BOLKUS (2.29 p.m.)—Madam President, my question is to the Leader of the Government and Minister for the Environment and Heritage, Senator Hill. Does the minister recall his restated commitment to the international community in Bonn that the Australian government would introduce a mandatory requirement for an additional two per cent of electricity to be sourced from renewable sources by the year 2010? Can the minister confirm that this commitment, which was first made over two years ago, will be honoured this time? Can the minister further confirm that the utilisation of coal seam methane—a fossil fuel—will not be included in the definition of renewables, that the two per cent is defined as two per cent more in 2010 than the renewables share of electricity generation in 1996-97, and that the measure, as committed, will be mandatory?

Senator HILL—I thank Senator Bolkus for his question. I am particularly grateful because it is the first question he has asked me in 150 days. I must say that, if I had been a shadow spokesman and got away with that, I would have been pretty comfortable. I n relation to the promises that the Prime Minister made in November 1997, for Senator Bolkus's information, each and all of the programs that he announced then, which we took to Kyoto as part of our negotiating position, are being implemented and are playing a significant part in meeting the commitment that we accepted at Kyoto. Since then, the government has announced further very substantial funding in the area of greenhouse abatement support, and that will also assist us to meet the commitment we have made. Of course, that commitment is a little more difficult now because of the success of the Howard government in stimulating the Australian economy. The economic growth that has occurred since Kyoto is more than what was then anticipated. Nevertheless, with the Prime Minister's programs as announced in 1997 being implemented and with the additional funding that has been put in over the last 12 months, we expect to be able to meet the commitments we have made. As Senator Bolkus is aware, because I am pleased that he has now read the Prime Minister's statement of November 1997—

Senator Alston—Or had someone read it to him.

Senator HILL—Or somebody has brought it to his attention. It includes an obligation upon electricity retailers to purchase an extra two per cent of renewable energy. That will put Australia's contribution up to between 12½ and 12.7 per cent, which will be one of the highest in the world. It was always intended to be mandatory, and it will be mandatory. Details of the program have been the subject of intensive consultation over the last 18 months or so.

Senator Faulkner—What about the coal seam methane issue. Are you going to tell us about that?

Senator HILL—To flesh it out as a complex issue, as Senator Bolkus might be aware but Senator Faulkner is obviously not, the Prime Minister's statement did not just refer to renewable energy but referred to other waste sources. The full suite of those waste sources that will be included within the final measure, which I hope we will be able to

announce in full within a short period of time, will then be on the public record. So final consultations and negotiations are simply at that stage.

Senator Faulkner—So you're not going to honour your commitment on that?

Senator HILL—We expect the detail to be on the table in the very near future, and yes, Senator Faulkner this is a government that honours its commitments. In this instance, it has to if it is to achieve its Kyoto commitment.

Senator BOLKUS—Madam President, I ask a supplementary question. I must put on the record that one of the real problems in asking this minister a question is that he is overseas half the time. We are lucky when he comes back, but he does not even answer half the questions.

The PRESIDENT—Senator Bolkus, you have been called to ask a supplementary question, not to debate the issue.

Senator BOLKUS—By way of a supplementary question, I ask the minister: is it not true that the minister took a submission to cabinet covering implementation of the two per cent commitment but was in fact rolled by his South Australian colleague Senator Minchin and was unable to announce Australian government action on these matters in Bonn, as he had intended to do? Is this the reason, then, that the minister is holding secret meetings this afternoon with industry figures, figures who have opposed the minister's agenda, together with Ministers Minchin and Downer but excluding environment groups, the sustainable energy industry and even his own departmental officers? Given that the minister has already been rolled by the combination of these industry and factional opponents, can he now inform the Senate what he believes his prospects are for success from this closed door meeting process?

Senator HILL—It must be a new definition of 'secret' if in fact Senator Bolkus is able to reflect upon who is invited and who is attending. As I said, there have been a series of meetings, many meetings in fact, over the last 18 months to ensure that every interest group has full opportunity to contribute to the further development and implementation of this policy decision, and all views will be properly taken into account. Instead of asking these nonsense questions, if Senator Bolkus was particularly interested in a better greenhouse outcome perhaps he could have a talk with his Labor colleagues in Queensland and suggest that licensing a new string of coal fired power stations up the Queensland coast is also not necessarily the most constructive contribution towards achieving a better greenhouse outcome for Australia.

World Trade Organisation: Environmental Assessment of Negotiations

Senator BROWN (2.36 p.m.)—My question is also to the Minister for the Environment and Heritage and is in regard to the World Trade Organisation negotiations in Seattle next week. Is the minister aware that President Clinton has signed an executive order that there will be a social and environmental assessment of such negotiations and that Canada and the European Union are also doing environmental assessments? Is the Australian government not doing an environmental assessment? If so, why not? Will there be no impact of World Trade Organisation outcomes on either the domestic or the world environment? Finally, following in suite with the last answer, why are no community groups from the environmental field involved in the government's group going to Seattle to negotiate with the WTO?

Senator HILL—I do not think community groups have ever been part of our WTO negotiating teams. I have to say that I am pleased that, as I understand it, for the first time in Australia's history the environment department is at least part of the Australian delegation, and I think that is a positive step. It is not unusual for non-government organisations to not be included within a government negotiating team, and I would be surprised if that really does cause Senator Brown alarm. In relation to the issue that he raised, yes, I am aware of President Clinton's executive order. It has the effect that there will be within the United States, as I understand it, a

domestic environmental assessment of the round as it develops and decisions that come out of the round.

We are obviously interested also in ensuring that the positive decisions taken to further open up world trade—which we believe will be good for the economy—will also be good for the environment. There is no reason to believe that that should not be so, and we will be seeking to encourage, out of the round, actions by other parties that are consistent with that objective. In other words, the issue of subsidies paid to global fishing, which will be an important discussion within the round, is something of concern to us and we wish to see it reduced and hopefully ultimately eliminated. The result of that is that we can increase the trade in the product and thus enhance our economic outcomes while at the same time best ensure that we are doing so through encouraging sustainable trade rather than unsustainable trade.

So although it is primarily designed to increase economic opportunities through further liberalising the world of international trade, we see it as an opportunity to bring also to bear the principles of sustainable use of natural resources which can best ensure that economic benefits that are attained through the process are compatible with environmental goals. Just in case I get the question as a supplementary, I might say to Senator Brown that we do see the international agreements, whether they be environmental or trade, as mutually reinforcing, and that is the way we will approach our deliberations in Seattle.

Senator BROWN—Madam President, I ask a supplementary question. I did ask the minister: firstly, why is no non-government organisation from the community sector representing the environment or social justice going when eight representatives of the business community are going; secondly, will there be no negative impact of the WTO round; and, finally, why is Australia not doing an environmental assessment when comparative countries like Canada, the United States and the EU are doing an environmental assessment?

Senator HILL—The OECD's position, and I think it reflects a fair bit of the European Union, is that there should be a contemporary environmental assessment during the course of the round—in other words, through the WTO process itself.

Senator Brown—What is Australia doing?

Senator HILL—I was about to say, Senator Brown, that that is consistent with our philosophical approach to these things. We do recognise that economic goals must be compatible with environmental objectives and social outcomes. That is why you seek economic growth and that is why you seek economic expansion, for the benefit of Senator Brown: so you can bring benefits ultimately to a community. You can only be satisfied of that if you can be assured that the economic benefits are sustainable in an environmental sense and that they also achieve required social goals. So Senator Brown can rest assured that this government is approaching this round responsibly in terms of not only the economy but also the environment. *(Time expired)*

Goods and Services Tax: Casino High Rollers

Senator CONROY (2.41 p.m.)—My question is to Senator Hill, the Leader of the Government in the Senate. I refer to the Prime Minister's payback against SOCOG in regard to his decision to now apply the GST to Olympics premium tickets. Given the Prime Minister has said, 'You are talking about perceptions of fairness about the application of the GST', can the minister explain why this same perception of fairness does not apply to millionaire casino high rollers? Isn't it a fact that the only reason the GST legislation relating to casino high rollers was amended was the secret submission from the federal Liberal Party Treasurer, Ron Walker, and his mate Lloyd Williams, the then owners of Crown Casino? If it is now appropriate to apply the GST to premium Olympic tickets, why isn't it also appropriate to apply the GST to casino high rollers as was originally intended?

Senator HILL—I would like to congratulate the honourable senator for getting a run

on the ABC this morning with this issue. It also makes it easier for governments if opposition spokesmen foreshadow their questions on the morning ABC. The honourable senator is being a touch misleading, if I might say, with respect to this matter. For example, it is suggested that Olympic tickets—as with any sporting tickets—would not be subject to GST, but of course they would. What has happened in this instance is that the government has decided to remit that tax in relation to what might be described as normal ticketing circumstances.

Senator Conroy—Why aren't you taxing high rollers? The taxpayers are subsidising high rollers.

The PRESIDENT—Order! Senator Conroy, you will get the opportunity to ask a supplementary question if you need to.

Senator HILL—What happened in this circumstance is that the honourable senator's friends in Sydney, who set up this ticketing arrangement—

Senator Conroy—Your mates in Melbourne.

Senator HILL—No, I am talking about the honourable senator's mates in Sydney just at the moment who organised the special deal for high rollers for Olympic tickets. There is no reason at all why the Australian people should remit a GST in those circumstances to them, and I presume the opposition would stand up and say, 'We agree with that point. We agree that ordinary Australians needn't pay it but those high rollers'—

Senator Faulkner—Be consistent.

Senator HILL—Is the ALP prepared to be consistent on this matter? Is the ALP prepared to say that high rollers at the Olympics ought to pay a GST? Are you prepared to say that? Of course not. The other error that the honourable senator makes is to suggest that there is not a tax on gambling. Of course there is a GST on gambling as well. It applies to high rollers as well as to low rollers, and it was passed by this Senate. So there is no inconsistency on the part of the government on this matter. If there was any inconsistency, you would have to say it was on the side of the ALP.

Senator CONROY—Madam President, I ask a supplementary question. Is the Prime Minister's definition of 'fairness' in qualifying for a GST tax break now decided on the basis of whether or not you are a millionaire mate and a donor to the Liberal Party? In light of the Prime Minister's new found concern for the perception of fairness in regard to the application of the GST, will the government now be supporting Labor's proposed Crown Casino amendment?

Senator HILL—I said the GST will apply to the value added in gambling whether you are a big gambler or a small gambler. The point I was making in relation to Sydney is that secret deals that were given to enable the wealthy to buy tickets ought to be subject to GST. I would have thought that a Labor Party that was genuinely interested in social justice would have said that they should be and that they would applaud the Howard government for taking that action. Why should the wealthy who are getting these special deals, paying thousands of dollars for tickets, not pay a GST? I ask the ALP: why shouldn't they pay the GST? Why is it necessary for the ALP to hedge on that issue, except to protect Richo and the boys? Because this is part of the Sydney clique, isn't it? This is the secret arrangement that misled Australian people as to the availability of tickets and turned out to be an enormous embarrassment to the ALP, and I understand the embarrassment that this honourable senator recognises. *(Time expired)*

Rural and Regional Australia: Initiatives

Senator BROWNHILL (2.46 p.m.)—My question is to the Minister for Regional Services, Territories and Local Government. Would the minister provide an update on the outcomes of last month's Regional Australia Summit, which brought together hundreds of people from around the nation? In particular, could the minister indicate how the government's initiatives will boost regional employment?

Senator IAN MACDONALD—I thank Senator Brownhill for that question. I congratulate Senator Brownhill on the part he played in putting that summit together. It was a tremendous event and I was very pleased to attend most of the sessions, along with

Minister Anderson and many of my colleagues who were able to get to Canberra to listen to what the people of rural and regional Australia wanted for their communities, to listen to the problems that they foresaw in their own part of rural and regional Australia and, more importantly, to listen to the actual solutions that rural and regional people had for their betterment into the future. I particularly liked the good news stories that came out of the summit. A number of communities were asked to give presentations and the stories that came out really showed the originality, the initiative and drive of country people. I mention, in particular, Hyden in Western Australia, a community that has really got up and made things happen in spite of everything else.

There was a communique issued at the end of the summit, after three days of fairly intensive work, and a follow-up committee has been appointed, under Professor Chudleigh, to make sure that the results of the summit do in fact mean something, that the government responds to them over the next several months. During the course of the summit I was privileged to attend, along with the Prime Minister, the opening of the first rural transaction centre in Eugowra in New South Wales. It was a fantastic event and one that the people of that small community were totally involved in. They were very pleased to see services being returned to their small part of rural and regional Australia—services that had left that area over the term of the previous Labor government.

Senator Brownhill asked for some other of the initiatives from the summit. During the summit the Prime Minister announced the Foundation for Rural and Regional Renewal—a partnership between private industry, private business, private financiers and the government to help rural and regional Australia to advance. I am quite confident that that program, suggested by the Sidney Myer Foundation—Mr Baillieu Myer was there to explain it—will get a lot of investment from Australia's major corporate citizens towards this fund to help rural and regional Australia. During the course of the conference, the Prime Minister also announced that the Alice to Darwin railway would eventually be going ahead. That was great news. I know the people of Australia have been waiting a long time. In 1983, Bob Hawke said:

> I promise you that only the Labor government can be trusted to build the Alice Springs to Darwin line. We, if elected, will complete the Alice Springs to Darwin rail link.

Labor were in government for 13 years and did absolutely nothing. As a result of the Prime Minister's announcement during the regional summit, the Alice to Darwin railway will go ahead—7,000 new jobs will be created for Australia. As part of that project, Australians will have something to look to again, something like the Snowy Mountains scheme—a nation building exercise for our country. In fact, the Alice to Darwin railway has been referred to as the 'steel Snowy Mountains'. This will create real activity, real business activity, as well as joining the southern parts of Australia to our northern shores. It will help with trade. It will be a tremendous outcome for Australians and, as I say, importantly it will create a lot of jobs. The summit overall was an outstanding success, Senator Brownhill. *(Time expired)*

Goods and Services Tax: Base

Senator FAULKNER (2.51 p.m.)—My question is directed to Senator Hill, the Minister representing the Prime Minister. Does the minister recall the Prime Minister's many comments that the GST rate and base were locked in by the special arrangements required to alter them, arrangements that required the agreement of all heads of government? Isn't it true that the current agreement with the states and territories allows the Commonwealth government to unilaterally change the GST base until 1 July 2001? The Prime Minister is able to unilaterally apply the GST to some Olympic tickets, motivated entirely by spite. Doesn't the Howard government also have 18 months during which it could unilaterally decide to remove the GST from certain goods and services without the state based lock-in mechanism?

Senator HILL—Leaving aside the attempt to revisit the previous question, which was a touch pitiful, if I might say to the Leader of the Opposition, but perhaps it is a sign of the

new alliance between Richo and Senator Faulkner, which we have seen in relation to another matter in recent times when Senator Faulkner went on Richo's radio program and Richo said, 'Oh, it's great to hear from you, John. It's wonderful'—warm and cuddly—'You're welcome any time, John,' he said—

Senator Faulkner—You should read the court transcript.

Senator HILL—Actually I have got the transcript, if you want me to read from it. I might do it after question time.

The PRESIDENT—Senator Hill, ignore the interjections and just concentrate on the question.

Senator HILL—I must say that I am puzzled by the apparent substance of the question because I thought the GST rate was locked in by law.

Senator FAULKNER—I asked the Leader of the Government in the Senate, who failed to answer the question: isn't it true that the current agreement with the states and territories allows the Commonwealth government to unilaterally change the GST base until 1 July 2001? If you do not know the answer to that, Minister, perhaps you should find out. Madam President, I ask a supplementary question. In the light of this window of opportunity available to the Commonwealth government, what guarantee can we have—given the statements of the Prime Minister in relation to the application of the GST to some Olympic tickets—that the government will not unilaterally increase the rate or reimpose the GST on all food?

Senator HILL—I will go back and read my law, but I was under the impression that we actually had legislated on this matter.

Senator Schacht—It's a transitional period, Hilly.

Senator HILL—Everyone on the other side is apparently full bottle on this particular matter. What is the opposition suggesting? Are they suggesting that this government is going to go out and increase the rate? What a nonsense! Why would we—

Senator Faulkner—We're just pointing out your hypocrisy. That's what we're doing.

Senator HILL—So it relates back to Richo and the Olympics tickets. Well, I am sorry, we think the high rollers of the Olympics ought to pay GST. If the ALP in New South Wales think they shouldn't because that upsets Richo and the boys, then I am sorry, that is too bad. As much as Senator Faulkner wants to come in here and defend Richo, we will not cower to them. *(Time expired)*

Great Barrier Reef: Prawn Farm

Senator BARTLETT (2.54 p.m.)—My question is to the Minister for the Environment and Heritage and it concerns a proposed prawn farm at Armstrong Beach, just south of Mackay in Queensland. I know the minister has visited the area and would be aware of the strong concerns of the local community about the environmental impact of the prawn farm. Is it not the case that the planned prawn farm is situated on the very edge of the Great Barrier Reef world heritage area? Can the minister indicate to the Senate what the level and composition of discharge from the farm into the world heritage area are going to be? Can he assure the Senate and the people of Queensland that there will be no negative impact on the Great Barrier Reef Marine Park as a result of this discharge? Is the minister going to exercise his power and meet his obligations and the commitments he gave to the local people of the Mackay region to protect the Barrier Reef from the environmental impacts from developments such as the proposed prawn farm at Armstrong Beach?

Senator HILL—The short answer is yes, but I would use the opportunity to remind the honourable senator that federalism has within it some responsibilities that have to be met by the states. The primary responsibility in relation to natural resource management in fact rests with the states. Constantly it is put to the Commonwealth government that it should be intervening to ensure that states are behaving in a responsible way environmentally when, in fact, I would suggest that, in the first instance, senators who have any influence ought to be going to those state governments and bringing political pressure to ensure that they behave properly, whether it applies to excessive land clearing as we have

seen in Queensland, whether it applies to new coal fired power stations that are being licensed all the way up the Queensland coast at the moment, or whether it applies to discharge from aquaculture ventures on the Queensland coast.

It is true that, if there is a detrimental effect to world heritage values, then by virtue of us being a party to the international convention, we have a responsibility and we will act. I should not be necessary for us to do so because the state should be accepting its primary responsibility to ensure that discharge from aquaculture ventures is not such that it causes damage to the environment. Unfortunately, there have been deficiencies within Queensland law which have meant that in some instances major aquaculture ventures have in fact been established with little or no environmental assessment and with potential environmental downsides in terms of discharge that could be damaging to the marine environment.

In the case of developments that do abut the world heritage area, yes, the Commonwealth will meet its responsibility to ensure that there is no damage to world heritage values. We have drafted regulations to that effect. We are currently in discussions with the Queensland government, which now says that it is interested in legislating a new process which will ensure that these developments in the future are environmentally sound. Our first impression is that the new provisions may well be adequate—certainly an improvement in that regard—but they do not cover circumstances such as Armstrong Beach, which was approved prior to any such change within Queensland law coming into effect. The fact that Queensland has failed of course does not absolve us of our responsibility, and we will take whatever action is necessary to ensure that world heritage values are properly protected.

Senator BARTLETT—Madam President, I ask a supplementary question. I am sure that the minister would be aware that this particular development is being constructed as we speak, that every day further areas are being cleared and that the ponds for the prawn farm are being dug. It is pleasing that the minister has indicated that draft regulations have been developed but, surely, unless they are actually tabled and implemented they are going to have no impact at all. Given that the minister has given a commitment that is welcome to the Senate that he will act to uphold his responsibilities even if the Queensland government does fail, when exactly is he going to act? Is he going to wait until the farm is operating and discharging waste and then step in, or is he going to actually take a preventative approach and implement his regulations in advance to prevent any damage being done?

Senator HILL—That unfortunately demonstrates a misunderstanding. The construction of the plant is a matter under Queensland authority, not the authority of the Commonwealth. The Commonwealth can stop the discharge of waste into a world heritage area if it is doing damage to world heritage values; it cannot stop the development of the aquaculture project. There is, of course, no discharge into the marine environment now. Therefore, we do not have the power, as I understand the law, to stop what is currently occurring. That is why at this stage sensible practice would say that the Queensland government should act responsibly and do something within its area of jurisdiction at the appropriate time, which would have been months ago but now is not too late—I would agree with the honourable senator on that. But you cannot pass to the Commonwealth responsibilities that it does not have. With regard to our responsibilities, we will meet them. *(Time expired)*

Goods and Services Tax: Rates

Senator SHERRY (3.01 p.m.)—My question is to Senator Hill representing the Treasurer. Does the minister recall the Treasurer's comments with regard to the wholesale sales tax system when he said:

> It is infinitely simpler than zero, 12, 22, 32, 37, 41 and 45 per cent, which is Australian Labor Party policy.

How then does the minister explain the seven different tax rates that will apply under the GST, such as zero and 10 per cent to Olympic tickets, GST-free items such as food, input taxation for other services, an effective five per cent rate on caravan parks, 10 per cent to

most other goods and services, plus a differential rate for both the luxury car tax and wine equalisation tax? Given the Treasurer's criticism of the differential tax rates applying under wholesale sales tax, don't these very same criticisms now apply to the GST? Just how do seven different effective GST rates create a more simplified, efficient, easy to understand tax system, as claimed by the Treasurer?

Senator HILL—Because basically there is one rate of tax—a GST tax. But I thought the interesting thing within the honourable senator's question was the acknowledgment of the deficiencies of the wholesale sales tax system, which his Labor Party still support. He puts the question in terms of the acknowledged complexity and therefore costliness of the wholesale sales tax system and implicitly, if not explicitly, acknowledges one of its major shortcomings. Of course, we know from Labor's record in government that they imposed an expensive and complicated tax system that all Australians, apart from the ALP, recognised was in need of significant reform. I regret to say that if the honourable senator cannot see that a GST system imposing one rate is not simpler than that I am very sorry for him, but that is a fact of life.

Senator SHERRY—Madam President, I have a supplementary question. The GST effectively has seven different rates. Isn't it a fact that one of the major reasons for the massively increasing complexity of this new tax to which the government has itself already proposed over 900 amendments is due to the government's deal with the Australian Democrats? When will the Howard-Lees team get the GST right so that small business can plan with certainty?

Senator HILL—I will take that as a willingness of the ALP therefore to support the amendments currently before the Senate in order to give small business the certainty that Senator Sherry claims is currently missing. With just a touch of cooperation from the ALP in relation to tax reform in this country, the whole community would be better off. Madam President, I ask that further questions be placed on the *Notice Paper*.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Goods and Services Tax: Car Industry

Mobil Refinery: Port Stanvac

Senator SCHACHT (South Australia) (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Industry, Science and Resources (Senator Minchin) to the questions without notice asked today.

In trying to answer two questions about the impact on the car industry of the GST-motivated strike by car buyers, all the minister offered the Australian car industry—one of the most important manufacturing industries in Australia and certainly the most important manufacturing industry in South Australia—were a few glib remarks that there had been consultation and that the government was keeping a close eye on it. There was no offer of assistance to ensure that the car industry is able to get through this transition to the new tax without losing jobs and car sales in this country.

It was pointed out by the shadow minister, Mr McMullan, that during the recent referendum campaign the minister made 10 statements about the need to maintain the Queen as the head of Australia and only one statement about the issue of the car industry and the present drop in car sales in this country. It may be that the only car that this minister has an interest in is the outdated Toyota Crown sedan because of its name. That may be the only model of car he is interested in. He has shown no interest in dealing with a government inspired drop in car sales.

The opposition and certainly the car industry have now been warning people for several months. The minister quoted figures today to show that for the 12 months ending in October this year there had been only a three per cent drop in car sales. What he did not point out is that if you take only the last four or five months since the legislation was actually carried there has been a catastrophic drop in new car sales in this country. What we find amazing on this side, particularly those of us from South Australia, is that Senator Minchin is a South Australian senator. He should know

as well as anybody from South Australia the absolute importance of the car industry to the economic wellbeing of South Australia.

South Australia, as a regional economy in Australia, has to be given close attention at all times. Recently, the Prime Minister had a major regional seminar, a three-day confab, where the building of the Alice Springs-Darwin railway line was announced. The most important thing to the regional economy of South Australia is actually the car industry and the component industry that goes with it. Senator Minchin is not paying appropriate attention to the car industry. He is not a proactive minister for industry in this country.

I now turn to the non-answer he gave to my question about the future of the refinery at Port Stanvac. When I gave him the opportunity to guarantee the continuing existence of the Port Stanvac refinery, he gave no such assurance. He basically conceded that the report coming down on 30 November will recommend, with his support, the closure of the Port Stanvac refinery. This will mean several hundred direct and indirect jobs will go from South Australia. If the minister and this government are serious about looking after regional economies, they cannot glibly allow such a major manufacturing facility in South Australia, in regional Australia, to be closed down. The minister has not been very successful with the petroleum industry in this country. He has failed to negotiate a petroleum oil code. He tried. In the end, he gave up.

Senator Ferguson—Whose fault is that? Yours, because you voted against it!

Senator SCHACHT—He would not guarantee long-term franchisees a future in their own industry. With his plan to reduce the refineries in Australia to maybe only two or three, a brand name will not stand for anything at all. It will be purely a price mechanism. Again, franchisees in the oil industry will be the victims of this minister's inability to have a comprehensive plan for manufacturing, distribution and retailing in the petroleum industry. This minister as an industry minister has been an abject failure. *(Time expired)*

Senator FERGUSON (South Australia) (3.09 p.m.)—You always know when the Labor Party are not fair dinkum, because they ask Senator Schacht to open the batting. When Senator Schacht opens the batting, you can be sure it is an issue of not too great importance. They call in Senator Quirke or one or two others to come in behind to fill in the gaps. Senator Schacht asked a question himself about 'mobile' refineries. The only thing that has been particularly mobile in South Australia is Senator Schacht's position on the Senate ticket, which Senator Quirke and Senator Bolkus will continue to make sure is pretty mobile.

Senator Schacht has had a pretty mobile position on the front bench of the Labor Party, having ruined the situation of small business when he was small business minister. He has held a variety of other portfolios, but he has been consistently mobile. Every job that Senator Schacht has ever tried to do he has not done well, so he has had to be moved to another one. That is why his position on the Senate ticket currently is very mobile, some would say fluid, in South Australia.

This is no doubt why Senator Schacht got up and asked his scaremongering question about the refinery and the attitude of the Minister for Industry, Science and Resources towards the petroleum code, towards doing something for the petroleum industry. If Senator Schacht and his colleagues on the other side had supported the government, the situation would be better than it is today. It is all very well for Senator Schacht to say that the minister has walked away from the petroleum industry; the Labor Party have walked away from the petroleum industry, and they have left a situation which is very difficult for the people involved in petrol reselling and in other areas.

Senator Schacht raised the issue first about Senator Minchin's position in relation to the car industry and to the number of sales being made. The Labor Party will never take into account the fact that last year in Australia there were record sales of motor vehicles. The motor vehicle sales for this year are slightly less. Is there any reason why the sales should not be slightly less in Australia this year after a record year last year? It is still the second highest number of sales on record. The

scaremongers from the other side of this chamber are trying to tell us that there is a crisis because we are having only the second highest sales on record in the motor vehicle industry.

We have had continual questions of Senator Minchin, asking what the position is and what the government is going to do—as if, in relation to sales tax or any of the taxes that apply, a government is likely to telegraph any changes that may or may not take place in the future. This opposition is continually presenting to this chamber that the car industry is in diabolical strife, when it is having the second best year on record. The government will continue to monitor the issue of motor vehicle sales closely. This government has always taken particular account of how the actual sales are going before making any decisions.

Contrast that with the attitude of the Labor Party. Senator George Campbell will remember this, because he was not in parliament at the time. In 1993 we heard the then Prime Minister say that that government would bring sales tax down to 15 per cent to match the proposed GST at the time. This was government policy. In order to help the car industry, they said that they would bring the sales tax down to 15 per cent. And what happened immediately after the election, when Prime Minister Keating was returned to government? He was not content to just put the sales tax back up to 20 per cent; he put it up to 22 per cent.

After promising the Australian people a 15 per cent sales tax, Prime Minister Keating put it up to 22 per cent. And what was the level of car sales in the early 1990s? Less than half, in most cases, what it is today. To this Labor opposition, who cry wolf about what is happening in the car industry and what effect the GST might have, I say: just look at your own record. Currently, the car industry is going through the second best year it has ever had. I say to the senators opposite: don't you forget that.

Senator GEORGE CAMPBELL (New South Wales) (3.14 p.m.)—The only two people in this country who believe that the car industry is not in crisis at the moment are Senator Ferguson and Senator Minchin. Senator Minchin is fast becoming known as the 'monitoring monarchist from South Australia' because the only response that he has been able to present in this chamber to issues relating to the auto industry is: 'We are monitoring it.' In response to a question that he was asked on 11 October 1999 about what was happening with the industry, he said:

> We are monitoring car sales closely. We do not want to see the industry suffer.

In response to a question on the industry on 21 October 1999, he said:

> I have said repeatedly that of course we are working with the industry to monitor sales over this critical period leading up to 1 July.

But nowhere has Senator Minchin said what this government is going to do or is doing about meeting the crisis that has presented itself in this industry. What he did say in response to that question on 21 October—and this is a nice bit of tautology—was:

> Facts are not rhetoric. As I said—

now listen to this, Senator Quirke—

> sales are forecast by the industry itself to be 760,000 this year—the second best ever on record.

What is the gem he then came up with? He said:

> That is a fact.

A forecast by the industry has suddenly become a fact. That is how far off beam this minister is in respect of this industry and what is occurring within it.

When I asked a question on 11 October, he said, 'We are monitoring what is going on.' However, local car makers considered the situation so serious that they had a crisis meeting in mid-October to address the situation. In fact, in late October Ford announced that it would close down production for two days and Mitsubishi announced that it would shut down for an additional three days at Christmas. Is this an industry that is not in crisis—that does not have a problem as a result of the implementation of the GST? Passenger vehicle sales for October 1999 are down 12.7 per cent or the equivalent of 33,298 cars on the figures from October 1998. These are the vehicles that we have produced in this country, Senator Ferguson. They are

not the total sales of vehicles in this country, but the vehicles that we produce.

Last week, Mitsubishi, Ford, Toyota and Holden—the four major producers in this country—along with the Federal Chamber of Automotive Industries called on the government to improve its GST transitional arrangements for their industry as the buyers strike continues to worsen. A Dandenong truck manufacturer, Iveco International Trucks, is experienced in the effects of this buyers strike and has led the workers to agree to a four-day week and a fall in company profits. Truck sales have fallen from over five trucks per day to 2.5 trucks per day. That is what is happening in real terms within the industry. There is a backlog of over 100,000 unsold cars, a continuing five-month decline in car sales and a marked drop in vehicle registrations—the lowest level of registrations since 1997.

This is firm and unequivocal evidence that a buyers strike is occurring at the moment. And what is Senator Minchin doing? He is doing absolutely nothing. I think we got a bit of an insight into where Senator Minchin has his eyes focused at the moment. An article in today's *Sydney Morning Herald* states in part that a source close to the Liberal Party:

> sees Senator Minchin as Mr Howard's 'closest adviser and confidant. Nick doesn't do anything silly'.

As far as the auto industry is concerned, Nick has not done anything at all.

> Senator Minchin's the court ideologue, even more the true believer than his leader. According to one Liberal, 'he's not driven by personal ambition as much as his vision of [achieving] a socially conservative Australia'.

He is certainly not driven by any concern for the needs of auto workers in this country. *(Time expired)*

Senator LIGHTFOOT (Western Australia) (3.19 p.m.)—Senator Campbell predictably goes on about what the minister has done and what the minister has not done and says that both are detrimental to the car industry. That is not the fact. The fact is that some of these areas were decimated by Senator Campbell when he was in the trade union movement. Here he is preaching to the government, but his union movement decimated the car industry and it was only this government that brought it back onto its feet. You have the audacity to stand here and tell us that you are the saviour of the car industry when you tried to wreck the automotive industries in Australia.

Let me give you some facts—not this hogwash that Senator Campbell has given us. The fact is that, in spite of a cheap South Korean won, a cheap Japanese yen and the collapse of the economy in Malaysia—countries that all export cars to Australia—the car industry in Australia has flourished. Of course there is going to be some hiatus between the production of motor cars and the introduction of the GST, but do you know that the car industry in Australia is going to produce a million units in 2004-05? These units are going to be cheaper—something that the Labor Party could never do. It could never produce a cheap motor car—not even for the workers. It just kept putting up the wholesale sales tax for the workers. It never produced cheap cars. What this government is doing is going to knock $2,000 off the cost of a motor car for the workers.

This is the party that is the champion of the workers: the Liberal-National Party coalition is the champion of the working class. There will be $2,000 off the cost of the average Holden or the average Falcon. If you are a worker and you want to graduate to your own business with a truck, we will knock $50,000 off the cost of a Mack truck. That is what we will do. If you want to get out of the rut that people like Senator George Campbell and the other union movement people have put you in, stick with this government because that is what we will do under the GST.

The other thing that worries Senator George Campbell is that there will be $12 billion worth of tax cuts after 1 July. Every week in your pay after 1 July there will be tax cuts. Not only will we knock $2,000 off the price of the average motor car for the worker but we will give you $12 billion worth of tax cuts in that first year. Not only will this go back into the car industry and make it flourish but the car industry will also get on the coat-tails of the biggest export boom in cars this nation

has ever seen. Even Mitsubishi, not the biggest one in Australia, will export 2,000 cars to the United States.

Senator George Campbell interjecting—

Senator LIGHTFOOT—Senator George Campbell is rather contemptuous of that and says, 'That's not much.' You put all those together, because they are all export dollars for Australia, and there will be cheaper cars for the worker.

We can compete because the fact is that we can still produce motor cars in this country. All the scaremongering by people on that side will not destroy the motor car industry in Australia. It is too dear to us. It is an industry that we look after. It is an industry that other people covet in other areas of the world. How can a high cost nation like Australia produce quality cars at a competitive price? This nation under this government's policies can produce those sorts of things. The evidence is there: more exports, cheaper cars and one million units to be built in 2004-05. I am sorry that Senator George Campbell is leaving.

Senator George Campbell—I am not leaving.

Senator LIGHTFOOT—You should not interject if you are not in your place. You have certainly left your place.

The DEPUTY PRESIDENT—Would you please address the chair, Senator Lightfoot.

Senator LIGHTFOOT—I would be delighted to address the chair, particularly as you are in the chair at the moment, Madam Deputy President. We have to stop the scaremongering, stop this nonsense that the industry in Australia is going to collapse. I know that it is not going to collapse, and those members on this side from South Australia know it too. *(Time expired)*

Senator QUIRKE (South Australia) (3.24 p.m.)—I am waiting for the steak knives. The only thing that was missing from my friend Senator Lightfoot's address were the $49.95 price tag and the steak knives. That was one of his better speeches.

I want to return to Senator Ferguson who seems to have on the brain this thing about preselection in South Australia. A couple of times now he has got up and alleged that Senator Bolkus and I are doing things in South Australia. I just want to say that, when I looked at my whips list earlier, I saw that poor old Senator Chapman is overseas again. I do not think he realises that the shroud is being knitted. I do not think he realises that the coffin has already been ordered.

Senator Patterson—Madam Deputy President, I raise a point of order on relevance. Senator Quirke is not debating the answer to the question. The speakers on this side talked about the issue of the car industry. Senator Quirke needs to get to the issue rather than debating issues about preselection and Senator Chapman.

The DEPUTY PRESIDENT—There is no point of order. The debate has ranged very widely and the issue of preselection has been canvassed from both sides.

Senator QUIRKE—Thank you, that is a very wise ruling. This does involve cars because he is going to be carried in a hearse, and a cheaper hearse. No doubt the services of the blokes who dig the hole will cost 10 per cent more, and the blokes who fill the hole in again will probably charge 10 per cent more.

But at the end of the day, I think it is rather silly to be talking about preselection. If you want to do that, that is fine, that is okay. Senator Chapman will eventually read this *Hansard*. I am not sure where he is now, but we on this side wish him well. We know what perils he will face.

Senator Ferguson interjecting—

Senator QUIRKE—Senator Ferguson, you are the only South Australian with any courage to come in here and defend the indefensible. The reality is that there is a short-term to medium-term problem in car sales in this country. I would have thought it would be perfectly defensible for Senator Minchin or any one of the other senators, maybe even the next senator, whoever that is, to get up and say, 'Well, look, we know there's a problem, we recognise there's a problem but there is a light at the end of this tunnel and it is in July next year; things will be cheaper then and

people who don't buy now will buy then.' But no. What they are saying is: 'It's not there.'

Senator Ferguson—I still had to wait five months for a Holden.

Senator Calvert—I did too—six months.

Senator QUIRKE—You probably want one with brass handles, Senator. At the end of the day, what is going on here is that we are being told that there is not a problem. The rest of the world knows that there is a problem, but we are being told that there is not. We are being told that a problem does not exist, that there will be good sales this year—maybe not quite as good as last year, but they are going to be pretty good—and, at the end of the day, everyone should be happy. Somehow or other this has the Santa Claus ring about it. I must say that, when I was about 15 or maybe a little younger, I finally found out that I had been lied to. After that, I found out about the Easter bunny, and I found out about a number of other things.

Senator Sherry—And the GST.

Senator QUIRKE—Then, as Senator Sherry says, I found out about the GST. Now I am finding out about the car industry. I do not like having the wool pulled over my eyes, and I must say that I do not think the industry does either.

I think the most dissatisfying answer that Senator Minchin gave this afternoon was to the question about the poor old Mobil refinery in South Australia. Without that refinery, we would have to import all our motor spirit. The places in Australia that import all their motor spirit—it might not be the case in the old oil code or the next code or whatever—pay more. If you do not have a refinery, you pay more.

If you shop for petrol around here, it is 5c a litre dearer than in any state where there is a refinery. So I would have thought that Senator Minchin would have been full bottle on this and that he would have been on top of it, making sure that his home state of South Australia was awash with petrol. Sadly, all he could tell us today was, 'There are the vagaries around, and I want to thank Mobil for what they have done.' I do not want to thank them for what they have done; I want to thank them for what they are going to do and for keeping the employment prospects of those workers in place. *(Time expired)*

Senator MASON (Queensland) (3.29 p.m.)—The opposition's professed concern today about a buyers strike reflects a continuing attempt by the opposition, as always, to secure political gain from the process of the government implementing a GST, which is, of course, a long overdue reform. As with so many other policy initiatives at present, the opposition is attempting to secure political advantage by what people on this side call 'scab lifting'. It does not matter what the issue is—whether it is industrial relations, welfare reform or taxation reform—the Australian Labor Party's entire political operation is about scab lifting. If it is industrial relations, they complain that workers' rights will be trampled upon when, in fact, we say that real income has gone up, as it has. In welfare reform, they say, 'We don't believe in mutual obligation', whereas we do. In taxation reform—here again—the opposition says the GST is bad because it is somehow inequitable and somehow there is no benefit when, in fact, it is the only way to go.

With no policies to speak of, the ALP is attempting to secure, indeed mortgage, its political future by scaremongering. In a sense, this issue of what they call a buyers strike reflects right across the political paradigm the ALP's political process at this moment—no policies, just scaremongering. Let me get to the facts. There are many doomsayers—we have just heard from a few of them—who claim that a buyers strike is taking place. In effect, they are damaging the industry.

Senator Quirke is right: the motor industry is a vitally important industry. It provides high levels of employment and does not deserve the type of irresponsible scare tactics that are taking place. As Senator Minchin said today, this government has shown its commitment to the industry through the post-2000 car plan. I quote what Senator Minchin said in the Senate on 19 October this year:

> As I have often said in this place, last year—1998—was a record year for the car industry, with sales of 807,000 compared with 720,000 the year before, which was itself a record.

So under 3½ years of this government, the car industry has had its two best years ever in the history of the automotive industry in Australia. At the time, Mike Kable, the eminent and well-respected motoring writer, wrote in the *Australian* explaining the record year of 1998. He said:

> Last year was a freak because of factors including public confidence in a strong economy, fierce price competition at the "cheap and cheerful" end of the market, new models in all segments and very favourable interest and lease rates.

That is why we had a record year, and that is why, despite a downturn this year, car sales are still doing very well. As Senator Calvert pointed out before, you have to wait four or five months for a new Holden.

The government's GST changes offer significant benefits to consumers, and the industry expects that this will lead to record sales in the future. What the opposition does not want to focus on is the fact that, for the average Australian buying the average motor car, the cost will fall and will fall dramatically. The tax on a typical Falcon or a Commodore will fall from around $4,800 under the wholesale sales tax to around $2,800 under the GST—nearly half. Yet the opposition defends that system and defends the wholesale sales tax arrangement, which has failed and which keeps the cost of the average car up. It has been forecast that, as a result of the tax reduction, vehicle sales will reach nearly a million by the year 2003. Toyota has forecast the local market to grow to one million vehicles by 2005, 30 per cent higher than this year's market. This country can still produce the average motor car at a very good price. Ford has already started planning for this and has brought forward rostered days off to maximise production capacity after the GST.

In closing, I would like to say that we have again seen the opposition indulging in scare tactics and scaremongering. No matter what the field of endeavour—whether it is industrial relations or any sort of reform—they have nothing else except scaremongering. *(Time expired)*

The DEPUTY PRESIDENT—Order! The time for the debate has expired.

Question resolved in the affirmative.

PETITIONS

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

Television Industry: Code of Practice

To the Honourable the President and Members of the Senate in Parliament assembled:

The petition of the undersigned shows: The need for amendments to the Commercial Television Industry Code of Practice to better reflect the community's standards.

We the petitioners therefore ask that the Senate urgently address the following issues.

(1) That commercials and promotions are the same as or of a lower classification as the program being shown, regardless of the time of day or night that the program is being televised. (Refer Codes of Practice, Section 3 on Program Promotions)

(2) That the Australian Broadcasting Authority be given the power to enforce penalties i.e. 'on the spot' fines when the Codes of Practice are breached.

(3) That a 'HOTLINE' be established as per Recommendation 3 made by the Senate Inquiry of February 1997, as stated: (a) a telephone/fax Hotline be re-introduced by the ABA for the public to register complaints about Television programs. The Hotline could work in a similar way to the one operated by the former Australian Broadcasting Tribunal. And (b) that the ABA report on the operation of the Hotline in its annual report.

(4) General (G) Classification zones (refer Codes of Practice, Section 2.12) the times be changed to:

Weekdays 6.00 am—8.30 am and 3.00 pm—8.30 pm

Weekends 6.00 am—8.30 pm

Parental Guidance Recommended (PG) Section 2.14, to be changed to:

(Everyday) from 7.30 pm—8.30 pm to 8.30 pm—9.30 pm

by **The President** (from 71 citizens).

Food Labelling

To the Honourable President and Members of the Senate in the Parliament assembled.

The Petition of the undersigned call on the Federal Parliament to ensure that the current regulations relating to food content are retained by the Australian New Zealand Food Authority and that adequate food labelling is introduced which allows the Australian community to make a real choice when it comes to the purchase and consumption of food.

Your Petitioners ask that the Senate support legislation which will ensure that all processed food

products sold in Australia be fully labelled. This labelling must include:

all additives

percentage of ingredients

nutritional information

country of origin

food derived from genetically engineered organisms

by **Senator Bartlett** (from 151 citizens).

Sexuality Discrimination

To the Honourable the President and Members of the Senate in the Parliament assembled.

The Petition of the undersigned shows: That Australian citizens oppose social, legal and economic discrimination against people on the basis of their sexuality or transgender identity and that such discrimination is unacceptable in a democratic society.

Your petitioners request that the Senate should: pass the Australian Democrats Bill to make it unlawful to discriminate or vilify on the basis of sexuality or transgender identity so that such discrimination or vilification be open to redress at a national level.

by **Senator Bartlett** (from 12 citizens).

World Heritage Area: Great Barrier Reef

To the Honourable President and Members of the Senate in the Parliament assembled.

The Petition of the undersigned shows strong disappointment in the Australian Government's inadequate protection of the Great Barrier Reef World Heritage Area from the destructive practices of prawn trawling. Prawn trawling destroys up to 10 tonnes of other reef life for every one tonne of prawns while clearfelling the sea floor. There are 11 million square kilometres of Australia's ocean territory of which the reef represents just 350,000 square kilometres.

Your Petitioners ask that the Senate support the phasing out of all prawn trawling on the Great Barrier Reef World Heritage Area by the year 2005.

by **Senator Bartlett** (from 17 citizens).

Political Asylum Seekers

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

Whereas the 1998 Synod of the Anglican Diocese of Melbourne carried without dissent the following Motion:

'That this Synod regrets the government's adoption of procedures for certain people seeking political asylum in Australia which exclude them from all public income support while withholding permission to work, thereby creating a group of beggars dependent on the churches and charities for food and the necessities of life;

and calls upon the federal government to review such procedures immediately and remove all practices which are manifestly inhumane and in some cases in contravention of our national obligations as a signatory of the UN Covenant on Civil and Political Rights.'

We, therefore, the individual, undersigned members of Members of the Monash Uniting Church, Clayton North, Victoria 3168, petition the Senate in support of the abovementioned motion.

And we, as in duty bound will ever pray.

by **Senator Tchen** (from 52 citizens).

East Timor

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

This petition of the undersigned shows that the people of East Timor have overwhelmingly voted to become an independent and sovereign nation and the Indonesian Government has failed to fulfil its responsibility to maintain security in East Timor during the period of transmission to independence.

We therefore petition the Senate to require the government and all responsible ministers to:

(a) Withdraw Australia's original de jure recognition of Indonesia's annexation of East Timor;

(b) Suspend Australia's remaining military ties with Indonesia;

(c) Support calls for international institutions to suspend all financial assistance to Indonesia;

(d) Advise the Indonesian Government to direct forthwith the Indonesian Army to disarm the pro-Jakarta militia in East Timor; and

(e) Advise the Indonesian Government to authorise forthwith the UN to dispatch a peacekeeping force to East Timor.

And your petitioners, as in duty bound will ever pray.

by **Senator West** (from 44 citizens).

Petitions received.

NOTICES

Presentation

Senator Payne—to move, on the next day of sitting:

That the Legal and Constitutional Legislation Committee be authorised to hold a public meeting during the sitting of the Senate on 25 November 1999, from 5 pm, to take evidence for the

committee's inquiry into the provisions of the Australian Federal Police Legislation Amendment Bill 1999.

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

That, in relation to the World Trade Organization (WTO) meeting in Seattle, the Senate supports:

(a) an environmental and social impact assessment of proposed new areas of liberalisation;

(b) a reinterpretation of WTO rules and dispute procedures to allow for legitimate action to protect the environment;

(c) the removal of environmentally-harmful subsidies; and

(d) clarification of the relationship between WTO rules and eco-labelling.

Withdrawal

Senator CALVERT (Tasmania) (3.36 p.m.)—On behalf of Senator Coonan and the Standing Committee on Regulations and Ordinances, I give notice that at the giving of notices on the next day of sitting Senator Coonan will withdraw business of the Senate notice of motion No. 4 standing in the name of Senator Coonan for two sitting days after today for the disallowance of the Native Title (Prescribed Bodies Corporate) Regulations 1999, as contained in Statutory Rules 1999 No. 151 and made under the Native Title Act 1993. I seek leave to incorporate in *Hansard* the committee's correspondence concerning the regulations.

Leave granted.

The correspondence read as follows—

Native Title (Prescribed Bodies Corporate) Regulations 1999 Statutory Rules 1999 No.151

12 August 1999
Senator the Hon John Herron
Minister for Aboriginal and Torres Strait Islander Affairs
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Native Title (Prescribed Bodies Corporate) Regulations 1999, Statutory Rules 1999 No.151, which provide the necessary administrative framework for the operation of aspects of the *Native Title Act 1993*.

Subregulation 8(3) provides that a 'prescribed body corporate must ensure that the common law holders [of native title] understand the purpose and nature of a proposed native title decision'. This provision appears to be unworkable as it is surely impossible to *ensure* that a person understands something. The Committee suggests that the subregulation might be better drafted if it required a prescribed body corporate to do everything in its power to assist the common law holders to understand the purpose and nature of a proposed decision, by undertaking the action referred to in paragraphs (a) and (b) of the subregulation.

Paragraph 9(3)(a) allows a document to be good evidence of consultation with and consent by the common law holders of native title if it is signed by 'at least 5 members of the prescribed body corporate'. However, neither the regulation, nor the Explanatory Statement, indicates why give members of such a body are regarded as sufficiently representative of the group.

Paragraph 10(3)(a) provides that a person is entitled to a copy of a document if the person 'has a substantial interest in the decision to which the document relates'. However, r.10 does not indicate who is to determine that question, nor by what means the determination is to be made.

The Committee would be grateful for your advice.

Yours sincerely

Helen Coonan

Chair

Minister for Aboriginal and Torres Strait Islander Affairs
Senator Helen Coonan
Chair
Senate Standing Committee on Regulations and Ordinances
Parliament House
CANBERRA ACT 2600

Dear Helen

You wrote to me on 12 August 1999 requesting my advice on certain aspects of the Native Title (Prescribed Body Corporate) Regulations 1999, Statutory Rules 1999 No 151.

Please find attached a response to the three specific issues raised by your Committee. It has been prepared by ATSIC and the Office of General Counsel in the Australian Government Solicitor.

My way of background, I should explain that the Native Title (Prescribed Body Corporate) Regulations 1999 are essentially the same as the previous Native Title (Prescribed Body Corporate) Regulations. They had to be re-made as a result of the Federal Court case of Mualgul People v Queensland, but they have been in operation in a very similar form for many years.

I hope that my response provides an explanation that is satisfactory to your Committee and that you

will advise me as soon as possible of any further action you wish me to take.

Yours sincerely

SENATOR JOHN HERRON

RESPONSE TO QUESTIONS OF THE SENATE STANDING COMMITTEE ON REGULATIONS AND ORDINANCES IN RELATION TO THE NATIVE TITLE (PRESCRIBED BODIES CORPORATE) REGULATIONS 1999

1. *'Subregulation 8(3) provides that a 'prescribed body corporate must ensure that the common law holders understand the purpose and nature of a proposed native title decision'. This provision appears to be unworkable as it surely impossible to ensure that a person understands something. The committee suggests that the subregulation might be better drafted if it required a prescribed body corporate to do everything in its power to assist the common law holders to understand the purpose and nature of a proposed decision by undertaking the action referred to in paragraphs (a) and (b) of the subregulation'.*

Sub-regulation 8(3) needs to be read as a whole, and in the context of the rest of regulations 8. The sub-regulation sets out just what a prescribed body corporate must do so as to 'ensure' that the common law holders understand the purpose and nature of a proposed decision. The difficulty comes from looking at the words 'must ensure' in isolation.

It is true that subregulation 8(3) refers to an outcome of which a prescribed body corporate could not be certain because it relates to the state of mind of other persons (ie. that the 'common law holders understand the purpose and nature of a proposed native title decision'). However, the intention of subregulation 8(3) might be achieved. If a prescribed body corporate follows the process prescribed by subregulation 8(3) it will satisfy the requirements of that subregulation whether or not the outcome actually occurs.

This does not mean that the reference to that outcome in subregulation 8(3) is superfluous. The reference ensures that a prescribed body corporate is aware of the purpose of the process prescribed by the subregulation. This should assist the prescribed body corporate to decide whether it is 'appropriate' and 'practicable' to give notice of the views of a representative body to the common law holders under paragraph 8(3)(b).

Subregulation 6(2) of the Native Title (Prescribed Bodies Corporate) Regulations 1994, which the 1999 regulations replace, also contained the words 'The registered native title body corporate must . . . ensure that the common law holders understand the purpose and nature of the proposal . . . ' and a similar process for achieving that outcome to the process under subregulation 8(3). The administration of the subregulation has not been found to impose practical difficulties and the drafter was instructed to follow the form of the original regulations in this regard.

2. *'Paragraph 9(3)(a) allows a document to be good evidence of consultation with and consent by the common law holders if it is signed by 'at least 5 members of the prescribed body corporate'. However neither the regulation nor the Explanatory Statement indicates why five members of such a body are regarded as sufficiently representative of the group.'*

A number had to be chosen which was neither unwieldy nor impracticable, but still representative. The number 5 has been used effectively in other indigenous legislation,namely the Aboriginal Councils and Associations Act 1976. Under subsection 45(3A) of that Act, 5 members are required for the incorporation of an association which is formed wholly for business purposes. 5 members are also required for the incorporation of an association which is formed principally for the purpose of owning land or holding a leasehold interest in corporate, which must be formed for the purpose of holding native title rights and interests on trust or managing those rights and interests on behalf of the common law holders (see subregulation 4(1) and sections 56 and 57 of the Native Title Act 1993). Subsection 45(3A) of the Aboriginal Councils and Associations Act 1976 has operated satisfactorily since its passage in 1992.

Subregulations 9(3) and (4) are to the same effect as subregulation 7(1A) of the Native Title (Prescribed Bodies Corporate) Regulations 1994. The drafter was instructed to reproduce the effect of that subregulation in the new regulations.

The requirement that members sign a document as evidence of consultation and consent was designed as an additional safeguard against a prescribed body corporate not undertaking consultations and obtaining consents as it is required to do under Regulation 8, which contains the primary obligation imposed upon a prescribed body corporate to consult with and obtain the consent of the relevant native title holders.

In the absence of Regulation 9 outside bodies seeking a response to a mining proposal, for example, would have to assume that the prescribed body corporate had complied with its obligations under Regulation 8. It is submitted that Regulation 9 provides greater certainty for those seeking the consent of the native title holders and thus makes dealings with native title more workable. From the perspective of native title holders, Regulation 9 provides somewhat more accountability on the part of a prescribed body corporate than other accounta-

bility mechanisms under the Aboriginal Councils and Associations Act 1976. It is designed to achieve a balance between the objective of the prevention of fraud and the avoidance of unnecessary and onerous regulation.

3. *'Paragraph 10(3)(a) provides that a person is entitled to a copy of a document if the person 'has a substantial interest in the decision to which the document relates'. However r.10 does not indicate who is to determine that question, nor by what means the determination is to be made.'*

The question whether or not a person has a substantial interest is one which will depend upon the individual facts of a particular case. It is expected that, in practice, it will be reasonably clear where such an interest exists. In particular, a person engaged in a transaction with a prescribed body corporate to which a decision made by the prescribed body corporate relates would be a person with a 'substantial interest' in that decision. This would include a person who proposes to enter into an indigenous land use agreement, or an agreement reached in the course of a 'right to negotiate' process, with a prescribed body corporate. The provision is intended to facilitate rather than deny access to documents.

Regulation 10 is to the same effect as subregulation 7(3) of the Native Title (Prescribed Bodies Corporate) Regulations 1994. The drafter was instructed to reproduce the effect of that subregulation in the new regulations.

LEAVE OF ABSENCE

Motion (by **Senator Calvert**)—by leave—agreed to:

That leave of absence be granted to Senator Boswell for the period 22 to 30 November 1999 on account of the death of his son, and to Senator Chapman for the period 22 to 30 November 1999 on account of parliamentary business overseas.

NOTICES

Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of the Leader of the Opposition in the Senate (Senator Faulkner) for today, relating to the reference of matters to the Finance and Public Administration References Committee, postponed till 6 December 1999.

General business notice of motion no. 311 standing in the name of Senator Carr for today, relating to the Victorian state election, postponed till 29 November 1999.

General business notice of motion no. 312 standing in the name of Senator Cook for today, relating to the Victorian state election, postponed till 29 November 1999.

General business notice of motion no. 340 standing in the name of Senator Allison for today, proposing an order for the production of Commonwealth-State agreements, postponed till 29 November 1999.

General business notice of motion no. 368 standing in the name of Senator Stott Despoja for today, relating to Internet censorship legislation, postponed till 23 November 1999.

General business notice of motion no. 370 standing in the name of Senator Stott Despoja for today, relating to the appointment of a select committee on the regulation and promotion of biotechnology, postponed till 23 November 1999.

General business notice of motion no. 369 standing in the name of Senator Stott Despoja for today, relating to proposed changes to the higher education system, postponed till 23 November 1999.

Business of the Senate notice of motion no. 1 standing in the name of Senator Allison for 23 November 1999, relating to the reference of matters to the Environment, Communications, Information Technology and the Arts References Committee, postponed till 29 November 1999.

DOCUMENTS

Tabling

The DEPUTY PRESIDENT—Pursuant to standing orders 38 and 166, I present the documents listed on today's *Order of Business*, at item 11, which were received and certified by the President or presented to a temporary chair of committees since the Senate last sat. In accordance with the terms of the standing orders, publication of the documents is authorised.

The list read as follows—

1 **Documents Certified by the President**

Department of the Parliamentary Reporting Staff—Annual Report 1998-1999—Certified by the President on 28 October 1999.

2 **Return to Order—Presented to the President Since the Last Sitting of the Senate**

Discussion paper—The challenge of welfare dependency in the 21st century, by Senator the Hon. Jocelyn Newman, Minister for Family and Community Services (presented to the Temporary Chairman of Committees (Senator Hogg) on 9 November 1999)

3 **Committee Report—Presented to the President Since the Last Sitting of the Senate**

Finance and Public Administration Legislation Committee—*The format of the portfolio budget statements: Second report*, (presented to the Temporary Chairman of Committees (Senator Hogg) on 29 October 1999)

4 **Government Documents—Presented to the President Since the Last Sitting of the Senate**

Aboriginal and Torres Strait Islander Commission—Report for 1998-99. [*Received 28 October 1999*]

Advisory Panel on the Marketing in Australia of Infant Formula—Report for 1998-99. [Received *18 November 1999*]

Attorney-General's Department—Report for 1998-99. [*Received 29 October 1999*]

Australian Centre for International Agricultural Research—Report for 1998-99. [*Received 29 October 1999*]

Australian Dried Fruits Board—Report for 1998-99. [*Received 27 October 1999*]

Australian Horticultural Corporation—Report for 1998-99. [*Received 27 October 1999*]

Australian Institute of Marine Science—Report for 1998-99. [*Received 29 October 1999*]

Australian Sports Drug Agency—Report for 1998-99. [*Received 9 November 1999*]

Commissioner of Taxation—Report for 1998-99. [*Received 26 October 1999*]

Defence Force Remuneration Tribunal—Report for 1998-99. [*Received 5 November 1999*]

Department of Agriculture, Fisheries and Forestry—Report for 1998-99. [*Received 26 October 1999*]

Department of Communications, Information Technology and the Arts—Report for 1998-99. [*Received 29 October 1999*]

Department of Industry, Science and Resources—Report for 1998-99. [*Received 1 November 1999*]

Employment Services Regulatory Authority (ESRA)—Report for 1998-99. [*Received 29 October 1999*]

Health Services Australia Ltd (HSA)—Report for 1998-99. [*Received 11 November 1999*]

Maritime Industry Finance Company Limited—Report for 1998-99. [*Received 10 November 1999*]

Murray-Darling Basin Commission—Report for 1998-99. [*Received 29 October 1999*]

National Capital Authority—Report for 1998-99—Errata. [*Received 3 November 1999*]

National Residue Survey—Report for 1998-99. [*Received 27 October 1999*]

Office of Asset Sales and Information Technology Outsourcing—Report for 1998-99. [*Received 29 October 1999*]

Professional Services Review—Report for 1998-99. [*Received 27 October 1999*]

Protection of Movable Cultural Heritage Act 1986—Report for 1998-99 on the operation of the Act and the administration of the National Cultural Heritage Fund. [*Received 29 October 1999*]

Royal Australian Mint—Report for 1998-99. [*Received 26 October 1999*]

Seafarers Safety, Rehabilitation and Compensation Authority—Report for 1998-99. [*Received 5 November 1999*]

Snowy Mountains Hydro-electric Authority—Report for 1998-99. [*Received 9 November 1999*]

5 **Auditor-General—Reports Nos 15, 16 and 18 of 1999-2000—Documents**

Auditor-General—Audit report for 1999-2000—

No. 15—Performance audit—Management of the Australian Development Scholarships Scheme: Australian Agency for International Development (AusAID). [*Received 25 October 1999*]

No. 16—Performance audit—Superannuation guarantee: Australian Taxation Office. [*Received 15 November 1999*]

No. 18—Performance audit—Electronic service delivery, including Internet use, by Commonwealth government agencies. [*Received 15 November 1999*]

COMMITTEES

Finance and Public Administration Legislation Committee

Report

Senator CALVERT (Tasmania) (3.39 p.m.)—Madam Deputy President, I refer to the second report of the Finance and Public Administration Legislation Committee on the format of the portfolio budget statements. I move:

That the report be printed.

Question resolved in the affirmative.

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

Leave granted.

Senator CALVERT—I move:

That the Senate take note of the document.

I seek leave to have the tabling statement of the chairman of the committee, Senator Parer, incorporated in *Hansard*.

Leave granted.

The statement read as follows—

Inquiry into the Format of the Portfolio Budget Statements

This is the committee's second report on the subject of the Portfolio Budget Statements (PBS). The Senate referred the matter to the committee on 21 November 1996 following a high level of dissatisfaction expressed with both the format and the content of the PBS presented in conjunction with the 1996-97 Budget. In its first report, presented in October 1997, the committee outlined some general principles which it believed were important to be followed in the PBS, but deferred commenting on specifics until the changes associated with accrual budgeting and the introduction of an outcomes/outputs reporting framework were in place.

Not surprisingly, despite the best efforts of all those involved, change of the magnitude introduced in the 1999-2000 Budget documentation was not well understood by all senators. The committee canvassed the views of senators, of the PBS creators and of the Department of Finance and Administration, which is custodian of the PBS guidelines, on what the documents should contain in order to provide sufficient backgrounding to the Appropriation Bills. A variety of views was expressed. From them, the committee in this report has attempted to steer a middle course between senators' desires for more information, more detailed information and more disaggregated information and the practical constraints of the timeframe within which the PBS are put together. In framing its recommendations, the committee has also taken into consideration the devolved administrative framework in which the public service now operates.

The committee has recommended certain changes to the level of disaggregation of appropriations and the inclusion of specific information on forward estimates and the capital use charge. It has resisted calls for the rigid standardisation of the PBS as it firmly believes that one size does *not* fit all, has not done so for many years, and rearguard action to straightjacket the PBS would be inappropriate.

The committee recognises that, for many portfolios, their 1999-2000 reporting framework will continue to evolve, as outcomes and outputs are revised and refined. So too will performance indicators. Inevitably these changes will affect the Senate's ability to monitor performance outcomes. In the circumstances, the committee has not had its final word on this reference. It will continue to monitor the PBS and the annual reports which close the accountability loop and report to the Senate on any further changes it deems desirable in the light of experience with the changed format. Accordingly it invites comment on an ongoing basis from senators or agencies.

I should like to thank those senators, ministers and agencies who contributed to the committee's inquiry by providing submissions or sending representatives to the committee's round-table forum on 17 June 1999. In particular, thanks are due to the former chairman of the committee, Senator Brian Gibson, to whom the lion's share of this inquiry fell.

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

Leave granted; debate adjourned.

DOCUMENTS

Auditor-General's Reports

Report No. 17 of 1999-2000

Report No. 19 of 1999-2000

Report No. 20 of 1999-2000

The PRESIDENT—In accordance with the provisions of the Auditor-General Act 1997, I present the following reports of the Auditor-General:

Report No. 17 1999-2000—Performance Audit—Commonwealth-State Housing Agreement, Department of Family and Community Services

Report No. 19 1999-2000—Performance Audit—Aviation Safety Compliance, Civil Aviation Safety Authority

Report No. 20 1999-2000—Performance Audit—Special Benefit, Centrelink—Department of Family and Community Services.

Senator O'BRIEN (Tasmania) (3.36 p.m.)—I move:

That the Senate take note of Auditor-General report No. 19 of 1999-2000, Performance Audit, Aviation Safety Compliance, Civil Aviation Safety Authority.

In doing so, let me say that I have not had very much time at all to absorb the totality of this report, but the key findings of the report flash alarm bells for the parliament and the Australian community, particularly the community that uses our aviation systems around the country.

This is an area in which the government trumpeted its intention, when it came into office in 1996, to make significant reforms to aviation safety. It criticised the Labor government for its performance in the area and led the Australian people to believe that under their stewardship this would be an area in which there would be dramatic improvements made. Indeed, the government was responsible for effectively removing the existing board and replacing it with a board of its choosing. It is a matter of public record that it has not been a smooth process. Following the implementation of the government's policy and the replacement of the board there have been a number of crises with the Civil Aviation Safety Authority.

But going back to the Auditor-General's report, let me draw to the attention of the Senate and the Australian public some of the matters contained in this report because they are significant. Firstly, the responsibilities of the board. On page 21 of the Auditor-General's report, item 35 says:

> Under the Act, the CASA Board must prepare a corporate plan, covering a period of three years, at least once a year and give it to the Minister. Although CASA was established in June 1995, it has produced only two corporate plans. These plans covered the periods 1995-96 to 1997-98 and 1996-97 to 1998-99. The latter plan, which contained full details of the three phase approach to rebuilding the Authority, was submitted to the Minister in August 1997, that is after the conclusion of the first year covered by the plan. The finalisation of only two corporate plans in the four years since it was established represents a clear breach of the legislation.

Point 37 on the following page says:

> Coincident with the failure to finalise the corporate plans has been the absence of a strategic plan and business plan to guide developments within CASA.

In other words, this is the board responsible for overseeing aviation safety in this country, this is the board that this government put into place to make the major improvements to aviation safety that it said it would achieve. Not only has it not achieved that, but the board has not even met its basic statutory obligations, obligations which were fully known to it and the government. Further in the report, in point 40 on page 23, the ANAO says that some unusual practices have been developing under the stewardship of this board:

> It was drawn to ANAO's attention that there was an increasing volume of unofficial policy changes, ie not authorised by the Director, being added to the contents of the manuals.

I should say here that the manuals represent CASA's policy on matters of aviation safety. The report continues:

> Subordinate staff do not have the authority to vary these manuals, except by way of the specifically documented amendment process.

That is, that the documented amendment process must be authorised by the director. Yet the ANAO is saying that there was an increase in volume of unofficial policy changes not authorised by the director. The ANAO goes on to say:

> The ANAO considers that CASA should ensure that changes in policy, especially when they relate to regulatory matters, are promulgated in accordance with the approved amendment process to reinforce the basic control system actually works.

Of course, one might think that this is about the bureaucracy of the board and not about aviation safety. But, if you go back to page 15 of the report, you will see:

> 13. CASA controls the entry of operators into the aviation industry through the certification process for issuing AOCs and Certificates of Approval. CASA has well documented procedures for assessing applications for the issue and re-issue of AOCs and the issue and variation of Certificates of Approval. The ANAO examined the application of these procedures to a sample of cases in seven CASA area/airline offices (formally district offices). Of the sample operators examined, the audit found that the assessment process had been either fully or mostly documented in only 55 per cent of flying operations and 75 per cent of airworthiness cases. Although acknowledging the small size of the sample, seven out of 12 assessments involving Regular Public Transport (RPT) operations lacked appropriate documentation. In these cases, it was difficult to determine if the applications had been properly assessed or how the delegates had satisfied themselves that the operators were suitable to hold certificates and had the ability to comply with the legislated safety requirements.

It goes on:

> 14. An operator's compliance history is an important factor that should be taken into account when assessing applications to renew or vary certificates as it is an indication of their compliance with

safety regulations. The ANAO found no evidence to suggest that the compliance history for the majority of the sample operators had been considered prior to varying or re-issuing certificates.

All very serious matters indeed. I must say that the comment was made to me that, as this was an Australian National Audit Office report, there were no swear words in it. But, having read this, I can imagine that there might have been a few in the minds of the authors of this document as they uncovered through this audit some of the problems with the administration of aviation safety. Further, it was noted on page 18:

24. The ANAO noted that a number of noncompliance notices (NCNs) have not been acquitted and a number of aircraft survey reports (ACRs) are also outstanding. Inspectors are not implementing the procedures for following up and acquitting noncompliance notices.

A very important matter. Following up noncompliance notices means that there is a possible continuing noncompliance beyond the intended allowed period of noncompliance. It continues:

Although it is recognised that not all NCNs and ASRs are safety critical, there was a significant number of unacquitted NCNs and ACRs to suggest that CASA does not always know if breaches of safety regulations have been corrected.

As I say, very serious matters indeed. The report goes on further on page 23:

43. The Act requires CASA to include performance measures in its corporate plan, and to review its performance against previous corporate plans. In the absence of a recent corporate plan, the ANAO reviewed the performance information relating to entry control, surveillance and enforcement contained in the two most recent Annual Reports.

A little further down the page it goes on to say:

The ANAO considers that there would be benefit in developing performance indicators that clearly identify productivity levels; achievement against plans for major resource area; matters completed within assigned timeframes; and tasks outstanding.

That would seem to be a fairly basic activity for a board in terms of understanding just where their organisation was and certainly if the board was proposing to implement major reforms in relation to its area of responsibility. I will conclude with this comment on page 24:

46. A major recurring theme throughout this report has been the absence of quality management in the performance of CASA's compliance function. Overall, CASA has well documented procedures which, if fully implemented, would provide a reasonable degree of assurance that safety standards are being maintained. However, the ANAO found a lack of consistent adherence to these procedures which puts at risk both CASA's effectiveness and the resulting public confidence and assurance. The measures such as the establishment of the Compliance Practices and Procedures section that CASA has introduced as part of the current restructuring represented an advance on the existing arrangements.

But it goes on to say:

47. The ANAO observed that many of the issues raised and the recommendations arising from this audit were similar to those raised in previous reviews.

Obviously, nothing has been learned. This board has not put into place recommendations—or the spirit of recommendations—of previous reviews. *(Time expired)*

Senator BROWN (Tasmania) (3.52 p.m.)—I add my great concern about this report and seek leave to continue my comments at a later time.

Leave granted; debate adjourned.

Report No. 18 of 1999-2000

Senator LUNDY (Australian Capital Territory) (3.52 p.m.)—Madam Deputy President, I seek leave to return to a previous item under tabling of documents to allow me to move to take note of Auditor-General report No. 18 relating to electronic service delivery, including Internet use, by Commonwealth government agencies.

Leave granted.

Senator LUNDY—I move:

That the Senate take note of the document.

This is an incredibly interesting document to arrive at this point in time because it raises a whole series of issues relative to how a government interacts with its citizens. The report is titled *Electronic service delivery, including Internet use, by Commonwealth government agencies*. Whilst the report restricts its attention to the way in which government departments are fulfilling the policy objectives as stated by this government, and the methodologies that they go

about achieving that, it highlights an area that should be of significant interest to most Australians. Why? Because it documents, quite specifically, the trend in governments to service delivery from traditional means, from over-the-counter services, to an Internet interface.

This is incredibly important at this point in time because, as many people would know, not that many Australians have access to the Internet. Whilst we see there is an incredible expectation within many government departments that their Internet interface will be rated more highly as time goes on, in terms of their capacity to deliver government services, the ability for many Australians to access those services is an area of fundamental neglect.

I want to draw out a couple of the conclusions in this audit report that I believe are of great significance. Firstly, in documenting the trends in growth, we know that 82 per cent of agencies think they can meet the stated target of the government to have an online presence in all agencies by 2001. In fact, 92 per cent of all government agencies have an Internet presence. It has become clear over time that, rather than sticking to their commitment that an Internet service be provided in addition to the way services have been provided to citizens previously, government is persisting in using this transfer into an electronic environment—electronic service delivery—as a mechanism to find some cost savings to remove services, particularly from rural and regional Australia. We are seeing a gradual disenfranchisement of people who currently do not have access to the Internet, as the government seeks to secure efficiency gains for moving to that electronic environment.

This presents a bit of a dilemma because we are at a critical transition stage in terms of the adoption of new technologies in this country. Senators who take an interest in these matters will know how positive I am about the use of the Internet in society, and how it can be a great force for good and certainly of some assistance if managed correctly in closing the gap between the information haves and have-nots in this country. We will not see it used for social progression for positive outcomes in government service delivery if this transition is not managed effectively. The audit conclusions traverse specific recommendations and part of that is identifying impediments to Internet service delivery within government. The report identifies a series of impediments that require its calling on the government to address it specifically, and with some urgency.

I want to refer to some of those recommendations now. The first recommendation is that individual agencies review the legislation as quickly as possible to identify any barriers to the use of the Internet in their service delivery. They should also identify and assess the costs and benefits of reliance on the Internet to deliver government services, ensure they have appropriate privacy and data security policies and practices in place for their Internet sites, monitor and evaluate their service delivery via the Internet to make continuous improvements, and take appropriate action to identify and minimise any associated legal liability for government such as might be created if incorrect or misleading information on an agency's Internet site led to a user's financial loss. Finally, agencies should reassess their risks and related control strategies as the organisation increases its use of the Internet and other forms of electronic service delivery mechanisms.

These recommendations are a brief summary of a comprehensive report that looks at the capability of government to effectively deliver their services. I note with interest the government's involvement today in the ASOCIO conference here in Canberra with a specific stream on government online and how developments are taking shape. There are some significant planks within those recommendations that have been neglected by government to date, including the most important question of privacy. The question of privacy is something that needs to be managed carefully and effectively. In this transition period, this period of great change, we are seeing the government push ahead with this online presence of government departments but neglect the social legislation that is required to give consumers and citizens confidence to use this new medium. Privacy

legislation for the private sector is a critical element of this, as is managing in an electronic environment the privacy of citizens for information held in public hands.

There is a situation at the moment that makes this highly pertinent, and in need of government attention, and that is the way in which privacy is managed and controlled by the private companies that are now engaged, via contracts, to manage the personal information of citizens through the IT outsourcing program. There is a very interesting reference in this document about the various levels of service that the agencies are embarking on and reaching different tiers, I guess, of putting their services online.

Basically the framework goes along these lines. The first stage is just having a web presence online. The next stage is actually providing some back-end services to that particular site such as databasing and allowing people using that site to have access to search mechanisms so they can see how much information they can actually extract from the government. The next tier of service, if you like, in an online presence is putting in some sort of e-commerce facility to allow transactions to occur and information to be exchanged that may involve some financial transactions between citizens and the government. The fourth stage is the ability of that citizen to give permission to that particular agency so that information can be shared amongst the Commonwealth agencies for the purposes of, I presume, better administration.

The bottom line is this: unless privacy is afforded adequate attention, a lot of the government's good efforts, I believe, in getting agencies online will actually be undermined because the public will lose confidence in the government's online presence. Concerns have already been raised about how various private sector corporations are using very sophisticated marketing techniques to collect data from citizens and onsell that information as a revenue raiser, and this includes this recent controversy about Australia Post, not exactly a private sector corporation.

Australian citizens need to have confidence that Commonwealth departments have comprehensive privacy policies so they know this type of manipulation is not occurring with respect to information about themselves. They need to know that, if a private company is managing and handling all of that data through an outsourcing contract, their private and personal information is safe and not being manipulated in any way. At the moment all we have with respect to that is the knowledge that a contract exists, and in fact the government is not prepared to disclose the nature of those clauses within those contracts that it just happens to say protect privacy. No legislative protection exists at this point in time for privacy of that type of information in private hands.

At the same time we are experiencing these challenges, we are seeing a downgrading of and cutbacks to the Privacy Commissioner. As we move through a critical transition period of our development as a nation with new technologies affecting our lives, it is time to ask the government to take care of the social concerns that affect us through periods of such change and to devote more time and attention to the transition frameworks required, like privacy legislation.

Question resolved in the affirmative.

ROADS: ALBURY BYPASS PROJECT

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—I present a response from the Minister for Transport and Regional Services to a resolution of the Senate on 30 June 1999 concerning the proposed Hume Highway upgrade at Albury, together with a document entitled *Cost estimate review: Albury bypass*.

TAIWAN: EARTHQUAKE

The ACTING DEPUTY PRESIDENT—I present a response from Liu Po-lun, representative of the Taipei Economic and Cultural Office, to a resolution of the Senate of 23 September 1999 concerning the earthquake in Taiwan.

COURT OF DISPUTED RETURNS

The ACTING DEPUTY PRESIDENT—For the information of the Senate, I present an order and reasons for judgment of the Court

of Disputed Returns in respect of the case Rudolphy v. Lightfoot.

BUDGET 1998-99

Consideration by Legislation Committees

Additional Information

Senator CALVERT (Tasmania) (4.04 p.m.)—On behalf of the respective chairs, I present additional information relating to the 1998-99 additional estimates hearings for the following committees: Employment, Workplace Relations, Small Business and Education Legislation Committee and Rural and Regional Affairs and Transport Legislation Committee.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT—The President has received a letter from a party leader seeking a variation to the membership of a committee.

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

That Senate Cook be appointed as a participating member of the Economics Legislation Committee.

BILLS RETURNED FROM THE HOUSE OF REPRESENTATIVES

Messages have been received from the House of Representatives agreeing to the following bills without amendment:

Customs (Tariff Concession System Validations) Bill 1999

Customs Legislation Amendment Bill (No. 1) 1999

Message received from the House of Representatives agreeing to the amendments made by the Senate to the following bill:

Stevedoring Levy (Collection) Amendment Bill 1999

FURTHER 1998 BUDGET MEASURES LEGISLATION AMENDMENT (SOCIAL SECURITY) BILL 1999

Returned from House of Representatives

Message received from the House of Representatives acquainting the Senate that the House agrees to the amendment made by the Senate in place of Senate amendment No. 17.

HIGHER EDUCATION FUNDING AMENDMENT BILL 1999

Returned from House of Representatives

Message received from the House of Representatives acquainting the Senate that the House agrees to the amendments made by the Senate.

Third Reading

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

CHOICE OF SUPERANNUATION FUNDS (CONSUMER PROTECTION) BILL 1999

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) (4.07 p.m.)—I move:

That this bill be now read a second time.

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

Leave granted.

The speech read as follows—

The Choice of Superannuation Funds (Consumer Protection) Bill is being introduced today. This bill will achieve a number of objectives—objectives which are fundamental to enhancing Australian business and at the same time ensuring consumer protection and promoting my previously stated goal of empowering consumers to develop, recognise and exercise their consumer sovereignty.

This bill will strengthen consumer protection in the life insurance industry, enhance the accountability of life companies and brokers, and promote regulatory neutrality by bringing the regulation of life

insurance advisers into line with that of securities dealers and their representatives.

In addition, the measures proposed in this bill will promote consumers' ability to assess a range of products and exercise choice as to which products best meet their needs.

In addition to promoting consumer protection and promoting consumer sovereignty, this bill will specifically support the government's Choice of Superannuation Fund legislation. This shows our commitment to having in place an appropriate compliance regime to complement the Choice of Fund initiatives.

The measures will also complement existing prudential requirements under the Life Insurance Act 1995, thereby bringing to fruition a process of reforms intended to achieve a modern, flexible and a strong regulatory framework for life insurance.

This bill contains measures which promote the transparency of information and require life companies, brokers and advisers to give consumers information that allows them to assess the features of both the product being offered and the services being provided.

These measures will bring the regulation of life insurance advisers into line with the current provisions of the Corporations Law applying to securities advisers, and more generally with proposals contained in the Government's Corporate Law Economic Reform Program (CLERP 6).

Accountability of participants in the industry is also addressed in this bill. Life companies will be required to set up an internal Compliance Committee. This committee will be responsible for dealing with consumer-related issues and ensuring that a proper system of management controls are in place to ensure compliance with this bill.

This bill provides scope for the current Life Insurance Code of Practice to be given statutory backing and introduces a range of civil and criminal sanctions.

The measures in this bill are broadly consistent with reforms proposed as part of the Corporate Law Economic Reform Program (CLERP 6).

In conclusion, the reforms contained in the Choice of Superannuation Funds (Consumer Protection) Bill will raise industry standards of service and advice. The reforms will give consumers greater confidence when choosing life insurance products and help them choose among a range of products.

Finally, this bill is designed to support and encourage this thriving industry sector.

I commend the bill to honourable senators.

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

ASSENT TO LAWS

Messages from His Excellency the Governor-General were reported, informing the Senate that he had assented to the following laws:

Australian National Training Authority Amendment Bill 1998

Customs Legislation Amendment Bill (No. 1) 1999

Customs (Tariff Concession System Validations) Bill 1999

ACIS Administration Bill 1999

ACIS (Unearned Credit Liability) Bill 1999

Customs Tariff Amendment (ACIS Implementation) Bill 1999

Customs Legislation Amendment Bill (No. 2) 1999

Fisheries Legislation Amendment Bill (No. 1) 1999

Intellectual Property Laws Amendment (Border Interception) Bill 1999

Parliamentary Service Bill 1999

Public Employment (Consequential and Transitional) Amendment Bill 1999

Public Service Bill 1999

Australian Tourist Commission Amendment Bill 1999

International Tax Agreements Amendment Bill 1999

States Grants (Primary and Secondary Education Assistance) Amendment Bill 1999

Telecommunications (Interception) Amendment Bill 1999

Further 1998 Budget Measures Legislation Amendment (Social Security) Bill 1999

Stevedoring Levy (Collection) Amendment Bill 1999

Appropriation (Supplementary Measures) Bill (No. 1) 1999

Appropriation (Supplementary Measures) Bill (No. 2) 1999

Vocational Education and Training Funding Amendment Bill 1999

COMMITTEES

Finance and Public Administration References Committee

Report

Senator GEORGE CAMPBELL (New South Wales) (4.09 p.m.)—I present the report of the Finance and Public Administra-

tion References Committee on business taxation reform, together with the *Hansard* record of the committee's proceedings, minutes of proceedings and submissions.

Ordered that the report be printed.

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

Leave granted.

Senator GEORGE CAMPBELL—I move:

That the Senate take note of the report.

The report, entitled *Inquiry into Business Taxation Reform*, informs the Senate of the committee's examination of the government's proposals for business tax reform. These matters were referred by the Senate to the Finance and Public Administration References Committee on 14 October 1999 for report by today.

In view of the extremely short time frame available to it, the committee determined it would concentrate particularly on the fiscal impact of the government's proposals to reform business taxation. Thirty-five submissions were received, and 27 witnesses gave evidence at three days of public hearings. The committee also commissioned a modelling exercise.

In the course of the inquiry, the government introduced its first package of legislation in response to the recommendations in the Ralph Review of Business Taxation and, on 11 November 1999, issued a press release announcing the second stage reforms. Of particular concern to the revenue neutrality of the package is: the accuracy of the assumptions which underpin the government's proposals; the reliability of estimates for the level of realisation of capital gains arising from cuts to capital gains tax rates affecting personal income tax, super funds and scrip for scrip rollover relief; and the effectiveness of anti-avoidance measures and their impact on projected revenue gains.

Despite detailed and substantive evidence from expert witnesses, it is not possible to conclude that the package meets the critical test of revenue neutrality. Evidence to the committee illustrated that this is a difficult area to estimate and that there is a diverse range of views, both supported and unsupported. There was no time for sufficiently detailed modelling or full examination of the scope of the stage 2 proposals.

It is noteworthy that the government has addressed the issues of the alienation of personal services in its second stage proposals. This is an area which was under serious consideration by the previous Labor government and which this government has been tardy in addressing, as indeed it has been tardy in addressing the issue of taxation of trusts.

Whilst the government's approach in these areas is welcomed, we note that intense lobbying is already taking place to have the approach modified. Presumably, we will have to wait on the presentation of draft legislation to assess whether or not these anti-avoidance measures will indeed meet their revenue targets. This is an important element in judging the revenue neutrality of the total package. The committee is particularly concerned by the evidence from a senior Australian Taxation Office official that it was 'unclear' whether the proposed new general anti-avoidance rules would apply to arrangements which seek to exploit differences between tax rates on capital gains and on other income.

The key area of disagreement in the revenue figuring behind the Ralph report lies in the CGT proposals, particularly in the treatment of realisations. The committee heard from three US academics who weighed up the findings of up to 13 different studies done in the US following changes to that country's capital gains tax rates. In addition to deciding on the validity of the conflicting conclusions drawn from these studies, the committee was required to consider whether it was appropriate to use US data on realisation experience, given the different tax rates in the US and other features unique to Australia, such as negative gearing, indexation and averaging.

The committee is of the view that revenue neutrality is achievable, but the evidence of this will be in the Senate's consideration of legislation to implement the totality of the package. While noting government senators' contention that the announcement of 11

November 1999 completed the tax reform package, in the absence of detail provided by draft legislation the remaining members of the committee have been left with serious doubts.

The committee concluded that a satisfactory budgetary outcome from business taxation reform measures depends on an extraordinary number of variables. Regrettably, our views diverged on whether the measures will result in revenue generated or revenue forgone and the preferred model and set of assumptions for estimating these. Four points of significance to achieving revenue neutrality are: the accuracy of predicting taxpayers' responses to the measures; the effectiveness of anti-avoidance measures; the impact on revenue of foreshadowed amendments to ANTS and other stage 1 measures; and whether the revenue impact of the package is at risk because its separate components are to be legislated separately.

Without conclusive evidence to support what are essentially judgments about behavioural responses, the growth dividend and economic factors underpinning projections over the next five years and up to 10 years and without details of the legislation to implement the stage 2 measures and foreshadowed ANTS stage 1 amendments, the committee found it impossible to reach a unified conclusion.

I conclude by thanking on behalf of the committee those people who contributed their time and expertise to the committee's inquiry. Many worthy issues were brought to the committee's attention. However, the reporting date prevented these receiving the attention that they deserved. I would like to take this opportunity on behalf of the committee to commend the Hansard reporters for the extraordinary effort they put into providing transcripts so quickly after the public hearings on 11 and 12 November. This contributed significantly to the timely preparation of the draft report and enabled us to meet the time frame laid down by the Senate. I would also like to thank the members of the secretariat for their assistance with this inquiry and to recognise the demands that were placed on them and indeed all committee staff and the Senate printing unit by these very tight reporting deadlines. The effort that they put in was indeed remarkable and they are to be commended for it. I commend the report to the Senate.

Senator MURRAY (Western Australia) (4.18 p.m.)—I wish to follow the chair with an expression of thanks to him and to the deputy chair and to a very efficient secretariat and indeed to a very efficient Hansard. I must commence by apologising for a couple of typos in my supplementary report where 'm' should have been 'b'—I have 'millions' there instead of 'billions'. But the secretariat were very helpful and the tabled report actually has an errata included in it, so I am safe on that one.

I would like to start by saying that this inquiry was deliberately and quite properly restricted to examining the funding issues. It is quite apparent that the four political parties—the two members of the coalition, the Labor Party and the Australian Democrats—who have been involved intimately in this process, and of course Independents and other parties who will follow later on, are all of a mind to be as helpful as possible in getting this Ralph reform package for business tax through the parliament, subject to the very important caveats of revenue neutrality and the fulfilment of some key commitments of the government with regard to avoiding further tax avoidance or minimisation.

The inquiry was deliberately narrowed down to the funding issue, although obviously equity and policy issues were included in there, because, frankly, to review the Ralph report overall would be just an unbelievably massive job. It is an extremely lengthy, complex and difficult document to work your way through. Despite the fact that, in my belief, it will deliver some astonishingly good efficiency and simplicity dividends, it would be a real task for the Senate to try to substitute for the lengthy review process and inquiry that Ralph has already undertaken. Indeed, there was little need for the Senate to do so, since, as the Senate is aware, a number of preliminary reports were made available from Ralph and the process has been very much conducted in the public eye from day one. In that regard, on behalf of my party, we

compliment the government for getting that review under way and for getting it actioned as quickly as they have.

Turning to the inquiry itself, the key elements of the inquiry were whether the package was revenue neutral and, if not, how it could be made revenue neutral. The chair, on behalf of the Labor Party, has already indicated his conclusion that it is not yet revenue neutral but could be made so. That is our conclusion as well. I refer you to our minority report in which we indicate some ways in which we believe this could be done.

The second term of reference within the inquiry I want to draw to your attention was whether there were any uncertainties in the implementation of measures which threaten revenue neutrality. The terms of reference, in particular, picked up the realisation assumptions concerning capital gains tax.

It is the conclusion of the Australian Democrats that the government's projections are overoptimistic and should be materially wound down. The consequence of that is, in fact, to deliver a funding shortfall which would be, we think, of the order of $1.5 billion. We do not, however, think that is an insuperable hurdle and, as I have said, we have expressed some views as to how that could be overcome.

Another area which was to be examined to see whether there were any uncertainties concerned the issue of income being converted to capital. The government itself has acknowledged that that is likely to occur with a budgetary provision of around $180 million. One of the witnesses, Mr Reynolds, from the Hudson Institute in Washington, had indicated that, in his view, there could not be any shift from income to capital, but the fact is the government has already recognised there will be. So you wonder who is right. I think the government is right.

The second issue is how it will be constituted. There are very vague answers to the questions of what ways income will be converted to capital gains. As the Senate knows, it is our strong view, supported by strong international evidence, that the primary way in which income will be converted to capital—as a result of the great difference between the proposed capital gains tax level and the rate of the highest marginal rate of income tax—will be a result of the negative gearing provisions, which are still retained in the government's platform. Both the government and the opposition are committed to continuing with negative gearing. The Australian Democrats remain opposed to it and believe it should be limited and, if possible, outlawed. We think that particular issue will return to haunt future Treasurers, but we recognise that we do not have the political numbers to impose that view on the Senate or on the government and have to put it aside.

The third area of particular concern outlined in the inquiry was whether the timing or the collection and bring forward of revenue would be made uncertain. In our minority report, we draw particular attention to the fact that certain budgetary provisions wash out over a number of years. One of those is accelerated depreciation itself; another is the bring forward of company tax income. We think that, unless those features are catered for in future projections, there may need to be some adjustment to the way in which revenue is budgeted and assessed.

The options for reducing tax avoidance and minimisation developed by the government include those that we, the Labor Party and the government have fought for over this period of time. We are very glad to see, in particular, the attack upon the contractors—the alienation of service income in respect of contractors who are not genuine contractors but who are in fact employees—will be addressed by the provisions being put forward by the government.

The other issue that we have taken a great interest in is the taxing of trusts as companies, but there are numerous other provisions of addressing tax avoidance which will be exceptionally effective, we think, in cleaning up the revenue flow to government. We do, however, believe that a number of further tax avoidance areas need to be addressed. We do not support the continuing tax concessions to super clubs which are rorting the mutuality principle. There are not that many of them but the amount of tax that they avoid is, frankly, a disgrace. We think addressing that issue

would save upwards of $200 million a year. We agree with Ralph that by about 2002 the government needs to be looking very carefully at the concessional treatment of company cars through FBT. We believe that proceeding with the 'option 2' reforms of closely aligning taxable and reportable profits will considerably improve revenue flows.

One of the issues in the report is the further effective reduction in research and development as a result of the company tax cut. It might be an unintended consequence; it is certainly undesirable. If we were to redress that, a little short of $100 million a year would bring it back to about the real effect it is at present. In other words, you would have to lift it from 125 per cent to 130 per cent. We have spelt that out in our report. I conclude by indicating that in the event that we can resolve the funding issues and some of the details in the tax package proposals, the Democrats will be very supportive of the business tax package.

Senator GIBSON (Tasmania) (4.28 p.m.)—First, can I congratulate my colleagues Senator Murray and Senator George Campbell for their comments about the Ralph committee report. I think Mr Ralph and his committee have done Australia a great service in reviewing very thoroughly business taxation for Australia. From the very start, it has been obvious of course why the government started this off: Australia's tax system was too complicated; there were very high compliance costs, no principles and no structure in the system; and we were not internationally competitive. That is why the government engaged Ralph to do this job—in order to encourage investment, jobs and income growth.

The Ralph review recommended a simpler tax system based on principles which would tighten, not loosen, the system and, therefore, provide fewer opportunities for avoidance. It would also bring in a competitive company tax rate and a lower CGT rate which would be competitive with the rest of the world, plus anti-avoidance measures. The government has accepted most of the Ralph recommendations.

A key term of reference for the Ralph committee was that it had to be revenue neutral. His report recommended a package of changes that will be revenue neutral. Unfortunately, the terms of reference of the Senate committee were not looking at the wider issue but confined to this fiscal neutrality. I will quote from some submissions to the committee. Firstly, Mr Reynolds, an American, said in his submission on CGT:

> To some extent I think it is unfortunate that the issue has narrowed itself to the question of revenues and realisations when the really important issues are things like the effect of capital gains tax on entrepreneurship, savings propensities and the dynamics of economic growth in general.

Professor Krever from Deakin University said:

> . . . as director of a tax research institute, I think the overall package has a lot of very positive benefits for Australia. As a package, many elements are going to bring a lot of benefit in terms of introducing economic neutrality and economic efficiency into the Australian tax system and a lot of welcome gains as a result of that.

Let us look at the fiscal context of what this is all about, particularly before getting on to CGT. We have an Australian economy of about $600 billion. We have Commonwealth revenue of a quarter of that—about $150 billion—and we have a business tax package, which is really about company tax reduction, as a principal item of about $3 billion. It is $3 billion in $150 billion, and that $3 billion is balanced by other measures. Most of the committee's review was about arguments about CGT—capital gains tax. The argument was really about $200 million or $300 million dollars one way or the other in the overall balance of this package of $3 billion or the total government revenue of $150 billion. As the Treasury said, their predictions year to year of the budget are within plus or minus two per cent—plus or minus $3 billion. In context, the CGT debate about the quantum is quite tiny.

Submissions to the committee argued about the range of estimates of the effect of a reduction in CGT on revenue to the government. This is based on estimates of elasticity of revenue from those changes. The Ralph committee and the government assumed a figure of minus 0.9 in the long run, which is in the middle of the range of estimates. As Ralph knew before and as was stated in his

report, there is a very wide range of views about what the actual elasticity responses should be. The minus 0.9 used by the government and by Ralph was the same as that used by the US Treasury and is in the middle of the range of estimates provided in the USA. Virtually all the US studies agreed that, in the short run, revenue from capital gains tax would be substantially up. We also had evidence from Ireland, where they recently reduced the capital gains tax from 40 to 20 per cent. A quote from there said that the revenue from CGT went up by 75 per cent. Again, that is a short-run effect.

Why is CGT important? Again, I quote Mr Reynolds's report. He said:

I think what you are proposing to do on capital gains tax is the single most important tax change in Australian history. One of the reasons is the reason you are speaking of: that it brings you out of the mining business, which I greatly respect, into the age of the knowledge industry. Rather than sending your people to Silicon Valley, you will be bringing some of Silicon Valley to Australia.

There was also argument about converting income to capital. The evidence presented to the committee did not undermine the appropriateness of the government's allowance of a total loss of revenue over five years of $500 million from such activity. There were views expressed to the contrary, but there was no firm evidence against that. Treasury advised the committee that the 12-month holding rule would address many of the possible avenues for converting income into capital. It was also pointed out by a taxation official that the already robust anti-avoidance measures would address contrived schemes to convert income into capital.

On the basis of the evidence presented to the committee, it is clear to the government senators that the allowance that the government has made for the possible loss of revenue from arbitration activity is quite appropriate. There was also evidence placed before us about the conservativeness of the estimates of revenue from Ralph and the Ralph committee. They took a conservative view, for instance, on the growth dividend. There was an estimate of 0.75 per cent in GDP growth over the 10-year period, but the Ralph committee took only a fraction of that into the estimates. We had Mr Murphy from Econtech give an estimate to the committee that the growth dividend would be more likely to be 1.5 per cent growth in GDP. The government has taken a very conservative estimate on that.

On 11 November the Treasurer made announcements about non-commercial leases, the alienation of personal services income and prepayments. About $1 billion of extra revenue is to come from that and other measures. Again, we had evidence from the Hon. Ralph Willis, the former Treasurer for the Labor government. He said he had been given evidence when he was Treasurer that, with regard to the alienation measure, which the government has allowed $500 million a year for, that was the lower of the estimates and that it could be as high as $2 billion. We have to conclude that the evidence is that the package is revenue neutral, and much of the evidence given to the committee is in agreement about this.

In conclusion, the government is very pleased with what the Ralph committee has recommended, having gone through this process. The evidence placed before the committee has confirmed the government's estimates of revenue neutrality for the package. I am pleased to hear sentiments expressed from the other two major parties that they want to get on with this business tax review and get the legislation through the parliament and enacted as soon as possible. I thank my fellow senators and the staff for their activity with regard to the Senate committee inquiry.

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

CHOICE OF SUPERANNUATION FUNDS (CONSUMER PROTECTION) BILL 1999

Report of Superannuation and Financial Services Committee

Senator COONAN (New South Wales) (4.37 p.m.)—On behalf of Senator Watson, I present the report of the Select Committee on Superannuation and Financial Services on the provisions of the Choice of Superannuation Funds (Consumer Protection) Bill 1999,

together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

SOCIAL SECURITY AMENDMENT (DISPOSAL OF ASSETS) BILL 1999

Report of Community Affairs Legislation Committee

Senator COONAN (New South Wales) (4.37 p.m.)—On behalf of Senator Knowles, I present the report of the Community Affairs Legislation Committee on the Social Security Amendment (Disposal of Assets) Bill 1999, together with submissions and *Hansard* record of proceedings.

Ordered that the report be printed.

COMMITTEES

Community Affairs References Committee

Report

Senator CROWLEY (South Australia) (4.38 p.m.)—I present the report of the Community Affairs References Committee on proposals for changes to the welfare system, together with the *Hansard* record of the committee's proceedings, minutes of proceedings and submissions.

Ordered that the report be printed.

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

Leave granted.

Senator CROWLEY—I move:

That the Senate take note of the report.

I wish to speak only very briefly to this report. On 21 October, the Senate referred to the Community Affairs References Committee, for inquiry and report by 22 November, proposals for changes to the welfare system contained in certain documents. Those documents included a draft discussion paper which, it had been expected, would have been released by the Minister for Family and Community Services on 29 September in conjunction with her speech on the future of welfare in the 21st century.

These documents have been the subject of an order of the Senate requiring the Minister for Family and Community Services to table the documents. The minister had not complied with the order before the matter was referred to the committee. However, on 9 November the minister presented to the President a paper, entitled *Discussion paper: the challenge of welfare dependency in the 21st century*, which the minister argued met the requirements of the order of the Senate.

The Senate directed the committee to hold a hearing on 12 November, and it directed certain officers of the Department of Family and Community Services to be present at that hearing to give evidence. The department sought to have some of these officers, who were unavailable on 12 November or who had not been involved in the formulation of the document, excused from attending the committee, and the committee agreed, subject to any further requests—should that be necessary—to have further meetings of the committee.

Prior to the committee's hearings, the minister indicated by letter that she would be claiming public interest immunity in respect of certain documents relating to the inquiry. The committee sought the advice of the Clerk of the Senate concerning the letter, and copies of correspondence are contained in the committee's report. The committee also sought clarification from the minister concerning her proposed claim of public interest immunity and whether any ministerial direction had been issued to departmental officers concerning the evidence to be given to the committee. A response was received from the minister's chief of staff indicating that a direction had been given to officers attending the hearing.

During the hearing, the departmental officers provided evidence on the development of the discussion paper from the first draft to the final version released by the minister on 9 November. The committee has noted that the officers remain steadfast in their view that the document remained substantially similar and that there were stylistic changes but its ambit of coverage remained the same. I think this is a terribly important point: the document remained substantially the same; there were

stylistic changes but the ambit of coverage remained the same.

It is a matter of concern to the committee that a document that remained substantially the same should have a claim for such protection as was asked for and insisted on by the minister. However, the committee considers that this view has been undermined by the minister's refusal to make public earlier drafts of the discussion paper. The committee has also noted the Clerk's comments on the validity of the minister's claim for public interest immunity. While it is for the chamber to decide such matters, the committee is of the view that the minister's claims for public interest immunity are without validity.

While some might say that this hearing was to a large extent a waste of time, which is the substance of at least part of the dissenting report, I certainly do not concur with that. I always think it is a matter of considerable gravity when documents are sought by the Senate and the government refuses to make them public. This is a drawn out saga, and many of us have a very clear idea of why these documents were not published or provided to the Senate in a more timely way. I believe my colleagues are going to speak on this matter, so I shall leave it for them to elaborate on the findings of that report. I commend the report to the Senate.

Senator KNOWLES (Western Australia) (4.43 p.m.)—I had not intended to speak on the tabling of this report today but, having heard Senator Crowley's contribution, I am left with no option. If you look at the majority report on this issue, you can see that the Labor Party has a majority in this committee. Clearly, this was an exercise of simply trying to obtain documents that are government working documents. The Labor Party was in office for 13 long years. Anyone who has been here for any period of time would know the Labor Party steadfastly refused to provide to the Senate or to any committee any working documents or anything that came from a department to a minister.

Two of the people on the committee have been ministers, and two of them should know that to be fact. But it did not stop the pursuit of the public servants and the vilification of the minister in this process. The document referred to was a discussion paper. Ever since it was first raised, the Labor Party have referred to it as a policy document—so much so that, on the day of the hearing, they continued to refer to it in policy terms and asked certain individuals questions about reductions in welfare. This is quite wrong. This is quite immoral, but it has not stopped the Labor Party whipping up a storm of fear among welfare recipients by pushing this steadfastly through the media.

I think that is a great shame. Effectively, it means the Labor Party are saying that the government can no longer have working documents and that departments can no longer give ministers advice without the Labor Party having access to it. If they want to have access to that sort of information, I suggest they get themselves elected. They have not got themselves elected—they are in opposition—and they have no right to say that a government must hand over working documents. The part of the majority report that I find most objectionable is the suggestion that departmental officers have been less than honest in providing information. I think that is the height of hypocrisy because the departmental officers have not at any stage flinched from their answers. There was no variation in their answers in response to the same questions—but posed in a hundred different ways—asked by various opposition senators.

I find it absolutely and utterly objectionable that the opposition can come in here and suggest that those departmental officers have been less than honest in the giving of evidence under oath. For the opposition to say—or to even suggest—that they are going to pursue this further simply means they have not trusted the evidence that has been given to them by the departmental officers.

Senator Crowley interjecting—

Senator KNOWLES—Isn't that interesting! A former minister, albeit one whom they call Dozy Rosie—

The ACTING DEPUTY PRESIDENT (Senator Ferguson)—Order, Senator Knowles! I think you had better withdraw that.

Senator KNOWLES—I withdraw it. Senator Crowley says she knows that it was not the departmental officers who gave the information; it was the minister. As a former minister, she should know better. She should know that those officers actually take the oath for themselves, not for somebody else. For her to suggest that they are somehow going to go and perjure themselves in a Senate inquiry to protect somebody else is even more outrageous. I simply say that this has got to the stage where the Labor Party believe that they are in government in exile. They want access to everything—it does not matter what it is—and they believe that the government should not have working documents.

Senator Conroy interjecting—

Senator KNOWLES—You are in exile—that is one thing for sure—but you think you are simply the bee's knees in government. You should just let the government get on with governing, let the minister provide the discussion papers and let the reference group get on with their consideration.

Senator BARTLETT (Queensland) (4.48 p.m.)—I would like to speak briefly on this report as well. As senators would be aware, this issue stemmed from attempts by the Senate—including motions that were agreed to that were originally moved by me—to require Senator Newman to table the discussion paper, which she initially indicated she would not do at all. Subsequently, she indicated that she would table it but was still working on it and, eventually, she did table a document a week or so ago—not too long before the Senate community affairs committee met to consider the discussion paper.

I would like to highlight three main issues. As most people in the press gallery could attest to, the original version of the discussion paper was certainly ready for distribution, and briefings on its contents were being provided to particular journalists, prior to the minister's speech at the National Press Club. It is clear that the discussion paper did exist and I think it is quite disappointing that the minister chose to ignore the order of the Senate and not table that document. To suggest subsequently that it would be inappropriate to table earlier versions of the paper because it would confuse people is, I think, one of the more flimsy excuses I have heard. If the original discussion paper was as similar to the final version as the minister or her department suggests, it is hard to see why there would be any problem in tabling it. That can only lead to reinforcing community speculation about there being a hidden agenda that the government does not want to highlight. I think that is unfortunate in the context of what is an important debate about the future of our welfare system.

The Democrats certainly agree that it is important to consider the future of our welfare system. We would be the first to suggest that it is far from perfect and could do with lots of improvement. I suspect that a lot of that improvement is not the sort of thing that the government would be too keen on, but in many respects I welcome the opportunity to have that debate and I hope that the community does have an open debate. However, I am not convinced that the process of the reference group that the minister has established is the best way to foster that open community debate, but that is the process that she has chosen to utilise. I would encourage all people in the community to participate in that but, more importantly, not be limited to that. There is a need to engage the community more broadly outside the confines of the reference group that the minister has established and to try to overcome some of the negative stereotypes that are once again being generated—that is, trying to label many of the people on disability pensions as 'bludgers' and, similarly, trying to suggest that sole parents are little more than useless drains on the taxpayer.

Those sorts of very unfortunate stereotypes which are starting to gain currency as part of this political debate need to be challenged and need to be challenged strongly. Positive proposals and ideas need to be put forward about how the welfare system could operate more positively for the benefit not just of individual people but the Australian community as a whole. I think the best opportunity to get a successful outcome as part of this process comes from having a broad ranging community debate and not letting the govern-

ment control the agenda in the way that they are trying to. Certainly the Democrats will be seeking widespread community input and ideas and discussion about the broader issues surrounding our welfare system.

Specifically in relation to the report that has been tabled today, and going to the opposition's foreshadowed amendment about the minister's claim of public interest immunity, it is important for the Senate to express an opinion on this. Obviously it is nothing more than an opinion, but again it is important to not let the minister attempt to establish a precedent in this regard. As I said before, the rationale put forward as to why the original order of the Senate was to be ignored by the minister is one that I thought was, and still think is, completely inadequate. I would not want to see that being able to be utilised as a precedent for defying the Senate. I am pleased that the Senate has set the precedent of enacting some form of sanction on a minister who chooses to defy an order of the Senate, and I hope that is a precedent that the Senate does follow up in the future if ministers defy orders of the Senate for similarly inadequate reasons.

In the same way, I think it is important for the Senate to express an opinion about the inadequacy of the suggestion that the minister has made about public interest immunity. For someone who is talking about releasing a discussion paper and talking about welcoming community discussion on what is reputedly the government's next big reform agenda, I found it very curious indeed that a minister would choose to try to claim public interest immunity about discussing her discussion paper. It is quite an unfortunate precedent and again does not augur well for the future of the public debate on the welfare system that we are meant to be having. I think it is important that the Senate expresses an opinion on that. I for one, and I think the Democrats as a whole, do not accept the claim of public interest immunity that was made by the minister.

In conclusion, I think it is important to emphasise that there has been a lot of controversy about the particular discussion paper that was the focus of this report. It was appropriate that the minister be called to account about that and be required to explain her actions in that regard. I think her explanation has been shown to have fallen short of the mark in that area.

That having been established, I do think it is important that we now move on to the more substantial and important issue of the future of our welfare system. I think those people in the Australian community who have concerns about their entitlements being reduced or extra hurdles being put in their way probably are not terribly concerned about the history of discussion papers—which one was tabled and how they were developed. Those are important issues for us and they are important matters of process. But I think people in the Australian community are much more concerned about whether or not their income will be cut than the history of particular discussion papers.

I do think it is appropriate to focus on that issue and get more political and public debate about our welfare system in general and its specifics. We have, I think, focused a lot on the discussion paper and, quite appropriately, the history behind it. But it is important from the point of view of the Australian community that we also do not get further sidetracked by the government's and the minister's inappropriate actions in that regard and that we focus our vision on the future of the welfare system in this country. Hopefully that will lead to some improvements in the system rather than having to defend it against attacks from this government or future governments.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (4.56 p.m.)—As far as this particular issue is concerned, in the opposition's view, we have unfinished business before the Senate chamber. The Minister for Family and Community Services, Senator Newman, has produced, from all reports, what can only be described as a vicious policy assault on the poor and needy in our community.

Of course, we know that Senator Newman has lost the confidence of the Prime Minister, Mr Howard. Of course, Senator Newman has engaged in a cover-up. Of course, Senator Newman has weakened government accounta-

bility processes by inventing new grounds for public interest immunity—grounds which should be repudiated by any responsible government and which certainly should be repudiated by this Senate.

Senator Newman now, after six weeks, has failed to front up to the Senate with her original document, which everybody knows is very different to the sanitised document that was sent to the President of the Senate on Wednesday, 10 November. Somewhere, perhaps hidden in a filing cabinet in Senator Newman's office or maybe in the Prime Minister's office, is the so-called seminal document: her plans, the government's plans, to reconstruct Australia's welfare system. These plans remain under lock and key.

The revised plans and the ongoing reference group process are the work of another minister, Minister Reith, who has lately distinguished himself as Mr Howard's fixer on this particular issue. Unfortunately, the report that we have before us does not reveal Senator Newman's blueprint for welfare, but what it does do, step by step, is reveal Senator Newman's cover-up on this issue. We know that Senator Newman wanted a cover-up on this issue from the very beginning. She wanted her blueprint for welfare to be dropped at the National Press Club, with all the nasty bells and ugly whistles that it contained. But we also know that Senator Newman was rolled—rolled by the Prime Minister. We know that she did not attend the Senate references committee hearing on 12 November because of the humiliation that she had suffered from the Prime Minister and because she refuses to be answerable for her own policy document.

We know that the Prime Minister's office rejected her initial document because, finally, the Prime Minister's office realised that it was politically unpalatable. We know that Senator Newman had to, in a humiliating way, rejig and remake the speech that was presented to the National Press Club to leave some of the nastier bits out. We know that she was forced to invent a face-saving reference group to look at welfare reform. We know that Mr Reith rewrote the policy document to make it more politically palatable. Also, we know that at the last minute Senator Newman and her office put out an outrageous letter claiming public immunity for the original document. It is for that reason I move:

> At the end of the motion, add "and that the Senate does not accept the claim of public interest immunity made by the Minister for Family and Community Services (Senator Newman) in respect of certain documents ordered by the Senate to be produced, or on the grounds for making that claim".

The minister sends off a letter, via her chief of staff, claiming public interest immunity, firstly, for any material which informed the seminal document which could prejudice ongoing cabinet consideration and, secondly, on the grounds, to quote the minister, of 'giving rise to unnecessary speculation which could confuse the public debate'. They are the minister's words. The Clerk of the Senate—

Senator Woodley—The minister is confused.

Senator FAULKNER—That is true. The Clerk of the Senate has already exposed these excuses to be bogus grounds for public interest immunity. The Clerk said of the second ground that, in the past, when similar public candour arguments have been raised, they have been given short shrift by courts. The community affairs committee hearing subsequently revealed that the original document had nothing to do with the cabinet process mentioned in Senator Newman's first ground for immunity. The cabinet process only took form after Senator Newman was rolled and humiliated by the Prime Minister. As I said before, this is unfinished business for the committee and for the Senate. Senator Newman's grounds for public interest immunity are inherently bogus. They set a very bad precedent indeed for accountability in government. To lump all material that informs a document, which may or may not have anything to do with cabinet, as basically cabinet in confidence is pure Jeff Kennett. We have got to deal with this developing and evolving trend in the Howard government before we see this excuse used again to cover up other material which the parliament and the public might have a substantial interest in. The Minister for Communications, Information Technology and the Arts, Senator Alston, has already tried a variation of this approach

in the Senate over material pertaining to the Federation Fund by stating that was cabinet in confidence when such material had absolutely nothing at all to do with the cabinet.

Senator Newman is just trashing proper process in this way and this chamber ought to condemn Senator Newman for that. To say a document should not be released because it might cause unnecessary speculation and confuse public debate is dangerous and counterproductive to public accountability. Public debate around an issue is perhaps confusing to some people, but that is often the case when you have something as contentious as welfare policy. This is an absurd artifice that has been built by the minister; it ought to be condemned by this chamber. It is the minister's job to argue her case before the Senate. If she cannot, she should get out of the game. This is another debate we have had today and the minister is missing in action. If the minister has confidence and pride in what she apparently believes in and embraces, she should be able to defend it. She should have the clout to argue her case in the cabinet, in the parliament, in the public arena—again the minister is missing in action.

I have got to say that this has been a very shabby episode indeed. The process has been a catalogue of failure and panic on the part of Senator Newman, but it has all been Senator Newman's own work. I have to say that if Senator Newman genuinely believes that there is virtually no substantial difference between the document that was tabled and the so-called working draft of the document that has been covered up, why doesn't she come clean? Why does she say that the first document would give rise to unnecessary speculation and confuse public debate? You cannot have it both ways. Why is Senator Newman covering up if the document is not going to give any alarm to people? Why is she saying it is confusing if it is really no different to what has been tabled? Why is it going to raise unnecessary speculation if it is really no different? This does not add up. It is a cover-up by Senator Newman, a cover-up by the government, and another effort by an incompetent minister not willing to defend herself. I commend the amendment to the Senate in the terms that I have moved it.

Senator CHRIS EVANS (Western Australia) (5.05 p.m.)—I understand I have a few minutes in which to contribute to this debate. I want to make a couple of points that I do not think have been made. Firstly, the minister, in seeking to defend her position in relation to this whole matter, has grossly misled the parliament and the Australian community. Look at some of the excuses she has used. She has deliberately misled the public by giving false explanations as to the process that occurred and the panic that gripped her office when the Prime Minister insisted that the paper not be released in the form she had originally proposed.

What was very clear is that the first the department officers who appeared before this committee process—and I cast no aspersions at all on them—knew that the discussion paper was to be withdrawn, and the first they knew that the speech had to be rewritten, was when the senior officer in charge of both projects was instructed on 28 September—the day before the paper was released—that he had to rewrite the speech and withdraw the discussion paper because the government had decided on an alternative approach.

It is very clear that some of the explanations that the minister has given for being pulled into line by the Prime Minister—and now, it appears, by Mr Reith—are quite misleading. She said to us that she had been considering the green paper process and the reference group membership for some weeks. One has to ask the question: why is it that the senior departmental officer charged with the process did not know about it, had never heard about it, until the day before the speech? The minister would have us believe that she had known about it for weeks, but the officer in charge said at the committee hearing that the first he heard of it was the day before the speech. I am much more inclined to believe his evidence than the explanation given by the minister.

Equally, it would be interesting to know what action the minister has taken to investigate the person who posed as a spokesman for her office and went around and briefed all the

journalists in the days leading up to the speech. Obviously a case of criminal activity is involved here because someone purporting to be a spokesperson for the minister's office briefed the *Sun-Herald* and the *Courier-Mail* that a whole range of very stringent attacks on people's welfare rights would be contained in the discussion paper. Senator Newman has denied that those reductions in entitlements were ever included in the discussion paper. She said it was false and misleading for such claims to be made.

Clearly the parliament is owed an explanation by the minister as to what investigations have taken place to find out who this impersonator is—this person who falsely represented themselves as being a spokesman from her office and cruelly misled the journalists from the *Sun-Herald* and the *Courier-Mail* when he briefed them. Clearly they were conned by an impersonator; someone who had no authority as a spokesman for Senator Newman's office or to speak on her behalf. What other explanation could there be? If the minister is to be believed either the journalists made up the stories and both, by osmosis, decided to write that story on the same days or somebody has been impersonating the minister's media officer in order to spread misinformation and lies. I want to know what the minister has done to investigate this very serious breach of parliamentary process and government ethics. If someone has been out there falsely impersonating her media officer, obviously they must be the cause of all this difficulty because, if we are to believe the minister, there was never any intention to reduce entitlements, and the stories that were printed in the press were misleading.

The ACTING DEPUTY PRESIDENT (Senator George Campbell)—The time for the debate has expired.

Rural and Regional Affairs and Transport Legislation Committee

Meeting

Motion (by **Senator Coonan**, at the request of **Senator Crane**)—by leave—agreed to:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public hearing during the sitting of the Senate on Monday, 22 November 1999 from 8 p.m. to take evidence for the committee's inquiry into the Australian Quarantine and Inspection Service and the importation of salmon.

AVIATION: CLASS G AIRSPACE TRIAL

Senator ELLISON (Western Australia—Special Minister of State) (5.11 p.m.)—I table a letter from the Minister for Regional Services, Territories and Local Government, Senator Ian Macdonald, to the President of the Senate dated 22 November 1999 explaining why the government will not be complying with the order of the Senate of 21 October 1999 concerning the Bureau of Air Safety Investigation draft report on the Class G Airspace trial.

COMMITTEES

Procedure Committee

Report

Motion (by **Senator Denman**, at the request of **Senator West**)—by leave—proposed:

(1) That the recommendations of the Procedure Committee in its second report of 1999 be adopted, as follows:

(a) standing order 142(4), relating to the putting of non-government amendments under a limitation of time, be amended as set out in the report;

(b) standing order 139(2), relating to reports on unproclaimed legislation, be amended as set out in the report; and

(c) paragraph 6 of the resolution of the Senate, relating to the registration of senators' interests, be amended as set out in the report.

(2) That the Senate endorse the observations of the Procedure Committee on matters raised by the Rural and Regional Affairs and Transport Legislation Committee concerning estimates hearings.

(3) That the Senate take note of the remainder of the report.

Senator GREIG (Western Australia) (5.13 p.m.)—When I delivered my first speech on 1 September I spoke principally about discrimination and prejudice against lesbian and gay citizens and against our relationships. In part in presenting that speech I tried to bring home the reality of this particular issue—that

is, homophobic discrimination—to those senators who were present in the chamber by pointing out the deficiencies within our own Senate standing orders in terms of the register of interests. As you all know, we as senators are required to declare our pecuniary interests and those of our spouse or partner but the definition of 'partner' to date within Senate standing orders is specifically heterosexist; it nominates opposite sex partners only, precluding all same-sex couples within this chamber from registering the interests of their respective partners.

I find that unacceptable. I spoke of this in my first speech, where I said two things in particular in relation to this: firstly, that I would seek to change it, which is one of the reasons I am on my feet this afternoon. Secondly, I talked about invisibility. I talked about how so often within legislative frameworks, both at federal and state and territory levels, gay and lesbian people and our issues are submerged, disguised, camouflaged. It seems that legislators will take any action that they feel necessary to bury the issue, most particularly through simple and benign acknowledgment of gay and lesbian people and same sex relationships.

I was deeply concerned when I sent my recommendation to the Procedure Committee that that might happen again, and I fear that it has. I asked the Procedure Committee to consider amending Senate standing orders to specifically acknowledge same sex partners, as it specifically acknowledged opposite sex partners. The Procedure Committee is recommending terminology contrary to that which I advocated. While I respect its right to do so, I have to challenge its reasoning. It has presented two forms of terminology which I find very curious. Firstly, it has come up with a strange hybrid Frankenstein term 'de facto spouse'. This, to my way of thinking, is a contradiction in terms. As I understand it, 'spouse' has a specific legal definition that means 'married'. 'De facto' means 'not married' and, as such, 'de facto spouse' is a nonsense term.

Secondly—and, from my perspective, more importantly—it does what I feared it would do: it buries the term. It removes, it sanitises, it whitewashes the term 'same sex couples'. So I come back to my principal point that if we are ever going to advance as a community with equality for all relationships—and that equality is most sadly lacking when it comes to same sex relationships—then we must nominate them. We must acknowledge them. We must specify them. It is simply not good enough to imply same sex relationships through non-gender specific—that is, gender neutral—terms.

There is ample evidence within common law and within government legislation to justify and to illustrate what I am saying. It was in fact within one aspect of the Aged Care Act of only a couple of years ago that the issue of same sex couples came up. The then minister, Minister Warwick Smith, was asked in terms of, I think, rebates for elderly people, because the terminology used was non-gender specific, if that would include same sex couples. He replied unequivocally that it did not. In other words, once again, we had a government minister, a public authority, stating that implied definition in relation to same sex couples was no definition of all.

We have seen also a raft of recent legislation through the Labor governments of Queensland and New South Wales. In Queensland, for example, the state's industrial relations laws were completely overhauled to remove discrimination against same sex couples. This was not done through implication but through specification. That is, there were no gender neutral terms worked within that legislation; the legislation was itself specifically amended to acknowledge and reflect same sex relationships. Again, we find that within New South Wales the state Labor government very recently altered its de facto laws to specifically recognise and acknowledge same sex couples. Again, I make the point that this was done not through implication but through specific acknowledgment.

I make the point also that there has been a number of cases—most particularly with a Mr Brown of Melbourne, Victoria—of people seeking to claim their dead partner's superannuation as a death benefit, as is the right of all married people and heterosexual people in de facto relationships. It is, however, a right

denied to gay and lesbian couples, no matter how long they have lived together and no matter whether or not they have nominated one another as their partners and beneficiaries to that sum of money. Although the terminology used at a state level in terms of the superannuation act was gender neutral and did not specify same or opposite sex partners, in Mr Brown's case it was found that the law did not apply to same sex couples.

That brings me to my key point, which is this: the Procedure Committee is now advocating to the Senate that we should adopt gender neutral terminology in the hope that it will apply to same sex couples within this chamber; I have to argue that it does not and it cannot. I plead with those people who are sincere—or claim to be sincere—about the recognition and rights of same sex partners to specifically acknowledge that. Let us make it very clear. Let us not be ambiguous. Let us be unequivocal within our own standing orders that within this very chamber there are same sex couples whose rights and obligations—and in this case we are talking about obligations—are taken care of.

In originally moving my motion that was, of course, precisely what I was seeking to do. I was asking that for the first time, I understand, in its history the Senate would be acknowledging the existence of gay and lesbian relationships within its own chamber and that we would, therefore, have the right same rights and obligations, even within the very limited and narrow scope of the standing orders.

On that basis I must reject the recommendation of the Procedure Committee. I argue that it is legally wrong. I argue that the definition being proposed is socially wrong. At its core I think many—if not most—gay and lesbian citizens would find it offensive that, once again, their relationships have been relegated to non-specificity. Their relationships have been relegated to not being acknowledged. They are hinted at, implied or suggested, but not stated.

To specifically recognise and acknowledge same sex couples and to not shy or run from them is a very important hurdle for this chamber to jump. On that basis, I must reiterate that I stand by my original claim that, if Senate standing orders are to recognise same sex couples, they must do so specifically and not through implication.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (5.21 p.m.)—I move this amendment to the adoption of the report of the Procedure Committee:

Omit paragraph (1)(c), substitute:

(c) paragraphs 1 to 5 of the resolution of the Senate relating to senators' interests be amended by inserting after the word 'spouse' (wherever occurring), the words 'or partner'.

(d) paragraph 6 of the resolution of the Senate relating to the registration of senators' interests, be amended as follows:

Omit the paragraph, substitute:

6. Interpretation

For the purposes of paragraphs 1 to 5 of this resolution 'partner' means a person who is living with another person in a *bona fide* domestic relationship.

This is an important issue that has been brought to the attention of the Procedure Committee by a motion that was moved earlier this year by Senator Greig after his election as a senator. It is important that we recognise the significance of the registration of senators' interests and the purpose it serves. Put simply, the register ensures that appropriate scrutiny can be made regarding the interests of senators, their partners and their families for it is when conflicts of interest arise that the confidence of the public in the processes of the parliament can be seriously eroded. That has been shown clearly in the episode regarding Senator Parer, for example, in this chamber. Perhaps the most recent example related to Mr Warren Entsch, the parliamentary secretary in the House of Representatives.

As I said, this matter was referred to the Senate Procedure Committee as a result of a motion moved by Senator Greig. The intention was to ensure that the language of the standing orders governing the registration of senators' interests is inclusive, or in my view that was the intention and it is one that I certainly support. It is important that the standing orders do not exclude, in relation to this question of interests, a senator's partner

because of a senator's sexuality. The wording that I am proposing as an amendment to the Procedure Committee's report achieves that purpose in a neutral and, most importantly, a legally sound fashion.

The important task we have here is to maintain and improve what is a workable system of senators' interests and a strong argument can be mounted that we ensure that we have both a legally sound and progressive approach to the Senate standing orders. It is important that we do not use the standing orders in any sense for political grandstanding.

Let me say very clearly that I agree with Senator Greig that same sex couples should not, as a result of their sexuality, be excluded from participating in any aspect of our diverse Australian way of life. It is important in places like this, the Australian Senate, that we take appropriate steps to ensure that discrimination against people on the grounds of either their gender or sexual preference is not embedded in the rules. The amendment that I am proposing here to the Procedure Committee report, which in effect means a change to the standing orders, achieves that very important objective.

The original changes that were proposed by the Procedure Committee were designed to ensure that all people living with senators on a bona fide domestic basis would be required to register their interests as appropriate. The wording in the committee's report was drafted and was unanimously endorsed by the Procedure Committee members, including the representative of the Australian Democrats.

To be fair, our proposal also arose as a result of the issues that have been raised with me in correspondence by Senator Greig. I am not aware if the letter was limited just to members of the Procedure Committee. Senator Greig has just indicated, which is helpful, that the letter was in fact distributed to all senators. But I ought to acknowledge that it is not only because of the drafting of the committee's report but also the nature of the correspondence that Senator Greig has circulated that I, on behalf of the opposition, did take some legal advice on this particular issue.

I think the advice that I have received is reliable, which is that the committee's proposed wording—the wording that is contained in the committee's second report of 1999—might have some unintended effects. It is worth nothing though that I think the wording that is proposed by Senator Greig will also have some unintended effects as well. By including the words 'although not legally married' the proposed wording allows for the importing into the provision of the notion of marriage or a marital type relationship. It could be relied upon for someone to conclude that it was only intended to affect people who could be married but are not—in other words, who would be heterosexual couples. Therefore, I would propose that the words 'although not legally married' actually be deleted. The words are to some extent superfluous and it seems they may also have some unintended legal consequences.

I would like to deal with the issue that Senator Greig raises in his correspondence that he has circulated to all senators. He makes the assertion that 'the common law does not recognise gender neutral terms'. The advice that I have received from legal experts in this area is that Senator Greig is, quite frankly, completely wrong on this particular matter. Senator Greig is wrong in saying that there is case law to the effect that same sex couples are included only if there is a specific reference to same sex couples. I have not been able to be advised of any case that says that. In fact, I believe that no case says that.

I think Senator Greig is also wrong in saying that the cases say that gender neutral language cannot include same sex couples because the cases have always been looking at gendered language such as 'marital relationship' or 'family'. Indeed, it is probable that the correct conclusion is the opposite of what Senator Greig has said, namely, that some of the courts which have looked at these issues would like to go in another direction, that is, find that the terms do include same sex relationships but feel constrained because the wording of the law in issue is so directly gendered. This suggests that, given a wording such as 'domestic partners' or 'domestic relationship', they would take a broad view of

non-gendered wording, that is, that it did include same sex couples without any specific reference to them.

As I noted earlier, the important task here is to maintain but improve where required—and there is improvement required here; a change is necessary here—what is a sound and workable system of senators' interests. This is, as I have said, an argument for a sound and progressive approach to the Senate standing orders. The changes that I have proposed in this amendment ensure that the Senate standing orders are inclusive. They minimise the chance of any unintended effects on this particular issue.

Can I make a point in relation to a question that I noted had been raised publicly, which was concern that this particular matter had been referred to the Procedure Committee and that in some sense this might have delayed the Senate's consideration of this issue. It is true it was referred to the Procedure Committee, and I might say that I strongly argued that be the case because, again, I think you need to argue some consistency in relation to the way you deal with changes to Senate standing orders.

The way this chamber for many years now has dealt with any proposal to change sessional or standing orders has been to refer the matter to the Procedure Committee for consideration. The Procedure Committee is relatively broadly based. It includes government, opposition and Australian Democrat representation. The Procedure Committee has a look at these issues and reports to the Senate, and then it is a matter for the Senate to deal with any such proposal for change as it sees fit. I did want to place that on record because I think there has been some public concern that the opposition had supported a proposal that this matter be referred to the Procedure Committee. Not only did we support it; to be fair, I would have to admit and acknowledge that I in fact proposed such a course of action, which is absolutely consistent with the way that we have dealt with these matters in the past.

I do think that the second report of the Procedure Committee for this year in dealing with this issue in good faith has come forward with a recommendation that can be improved, and that is why I am proposing the amendment in the form that it is being proposed to the chamber today. I believe that this amendment is a significant improvement on the wording of the proposed standing order and the interpretation of the standing order that is contained in the Procedure Committee report. I would commend it to the Senate. I think this is a long overdue, worthwhile and significant reform to our standing orders and one that I hope the whole chamber will be able to embrace.

Senator NEWMAN (Tasmania—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (5.36 p.m.)—The government will not be opposing the amendment.

Amendment agreed to.

Motion, as amended, agreed to.

ABORIGINAL AND TORRES STRAIT ISLANDER HERITAGE PROTECTION BILL 1998

Second Reading

Debate resumed.

Senator WOODLEY (Queensland) (5.37 p.m.)—When the debate on the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 was adjourned prior to question time, I was saying that the Commonwealth is in breach of its obligations under a number of international conventions, and I now need to put on the record where those breaches may occur. These are the possibilities: the Convention Concerning the Protection of World Cultural and Natural Heritage, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

The Australian Democrats accept that the current act requires significant overhaul. The Evatt report notes that under the 1984 act there have been considerable delays in responding to and deciding on applications for protection. This has led to widespread concern among indigenous people that some sites for which protection has been sought have been damaged as a result of delay. Later in this debate, I will put on the record a report of

such damage which was phoned through to me just today. When I have checked the details, in the committee stage I will give this as an example of what we are saying.

The Evatt report goes on to state that 'in its present state the act has lost the confidence of many Aboriginal people'. The Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 does address some of the problems with the current legislation. Significantly, it provides for the separation of decisions between the significance to indigenous people of an area or object and the final decision as to whether to grant protection of that significant area or object. This is a welcome reform.

However, at the same time the bill diminishes the level of protection for indigenous heritage currently available under the Commonwealth, state and territory schemes. In this regard, the bill fundamentally fails to implement the very detailed proposals made in the Evatt report after an exhaustive national consultation process with indigenous and non-indigenous interests. It also fails to face the reality of why indigenous heritage legislation is required—that is, to effectively protect a living cultural heritage which is fundamental to the survival of indigenous people as a distinct social group. Heritage protection legislation is an integral aspect of the way in which indigenous people's identity is continued in the context of non-indigenous economic and social development that is often ignorant and hostile to indigenous culture.

Let me just underline that. We are not talking about legislation which seeks to protect some kind of dead culture, to protect elements of culture which have passed away; we are talking about legislation which seeks to protect the elements of that culture in order that the continuation of that culture can be ensured. We need to note that.

The Democrats will not be supporting the bill in its current form today. While we accept that there is clearly a need to overhaul the current legislation, we simply cannot accept changes which reduce the protection of an indigenous heritage which already exists. There have already been three inquiries into the changes contained in the bill—two joint parliamentary committees in 1998 and finally a Senate committee in 1999. These inquiries are on top of the extensive inquiry conducted by Evatt.

Evidence to all these inquiries has very clearly highlighted that the changes we are considering today are riddled with problems. Some of these problems include: the general and limited number of minimum standards in relation to the accreditation of state and territory heritage regimes; the failure to establish independent heritage bodies at state, territory and Commonwealth levels to administer relevant heritage laws; and the failure to ensure that the Commonwealth remains as a real option of last resort, rather than limiting Commonwealth protection only if such protection is considered to be in the 'national interest'—whatever that may mean in the government's mind.

It is surprising to see that so few of the issues raised at these various committee hearings have been adequately addressed in this bill, and that includes issues which government members of those committees endorsed. In addition, there has been all too little input from indigenous people into the final form that this bill has taken despite submissions from numerous witnesses to all of the inquiries stressing the importance of consulting with indigenous people and facilitating indigenous input. We understand that the government has indicated that it will not even be moving to address the various issues which were raised by its own members in the Senate Legal and Constitutional Legislation Committee's majority report earlier this year.

The evidence we have heard and read as a result of these various committees leaves the Democrats with no doubt that this bill, if it is passed in its current form, constitutes a huge step backwards in the protection of indigenous heritage and the process of reconciliation. In fact, one might say it makes something of a mockery of the Prime Minister's stated commitment to reconciliation in the lead-up to last year's election.

This bill is to the detriment of indigenous Australians because it diminishes the effective level of protection currently available and because it lacks sensitivity to the laws, culture and beliefs of indigenous people. Two of the

main problems with this bill are as follows. Firstly, state and territory schemes which meet minimum standards can be accredited. These minimum standards are very general and would leave the states and territories with schemes which are inadequate and ineffective. Secondly, the Commonwealth will virtually withdraw from involvement in indigenous heritage protection once states and territories are accredited. The Commonwealth will no longer provide an avenue of last resort in indigenous heritage matters unless they can be shown to be in the 'national interest', which is not defined in the bill.

Other concerns consistently raised by indigenous groups during the various committee hearings include: its failure to promote and protect a living Aboriginal culture and heritage; its failure to provide for a high level of Aboriginal involvement in heritage protection; the operation and effectiveness of the proposed state and territory accreditation scheme; and its intention to completely abrogate the Commonwealth's responsibility to protect indigenous heritage in favour of the states and territories.

The 117 recommendations of Justice Elizabeth Evatt have wide support among indigenous people. These recommendations, which have been based on wide-ranging testimony spanning a number of national consultations and 69 written submissions, have largely been ignored. I say shame on the government.

The Democrats have worked closely with the Labor Party and a number of indigenous bodies to come up with a series of amendments to this bill. These indeed reflect the recommendations of the Evatt report. These amendments also reflect issues that were raised in conjunction with the Labor Party in the Senate committee's minority report. Broadly they include proposals in relation to the following: that the Commonwealth should retain a direct role in ensuring the ongoing protection of indigenous heritage under this act through appropriate forms of access to Commonwealth protection orders; that an Independent Heritage Protection Agency be established to administer the Commonwealth statutory responsibilities; and that minimum standards for accreditation be implemented that include integrated heritage and planning processes, establishment of independent heritage bodies, requirements for work program clearance procedures to be conducted by the relevant indigenous people in relation to proposed activities, interim protection whilst a matter is being considered by the independent body, and strong forms of protection for culturally sensitive information.

The key package of amendments the Democrats will be supporting today will (a) establish a Commonwealth Independent Heritage Protection Agency, (b) retain a real role for the Commonwealth as an option of last resort primarily through the improvement to the principles for Commonwealth protection orders, and (c) strengthen and increase the minimum standards for accreditation. In addition, these amendments will ensure that the initial accreditation regimes and later amendments to these will be subject to parliamentary scrutiny and introduce enhanced mediation provisions. They will also see the Commonwealth take responsibility for the protection of significant objects in relation to acquiring and repatriating significant objects from public and private collections both nationally and internationally and enforcing offences in relation to the exhibition and sale of significant objects within Australia without relevant indigenous people's consent.

Indigenous heritage is integral to the very meaning of being an indigenous person and as such is necessarily interconnected to the meaning of country for indigenous identity. We should not forget the very important relationship between native title and traditional law and culture. As the Kimberley Land Council among many others has pointed out, 'Native title is only given meaning through traditional law and culture. Diminution of either heritage or native title laws inevitably leads to diminution of the other.'

During the term of this government we have unfortunately already seen the watering down of native title rights in a racially discriminatory way. I draw to the attention of the Senate that this has been recognised by the United Nations Committee on the Elimination of Racial Discrimination and has lowered Australia's international standing. Let me

point out that the government cannot wriggle out of this one. In fact, the action of the government on this issue has been a disgrace. The fact that they were not prepared to allow the United Nations committee to visit Australia to back up its claim that there were no problems in itself should be condemned by everybody. If there is no problem with the actions of this government, it should have been prepared to subject those actions to scrutiny. I notice that this government is quite prepared to sell our farmers and other people for the sake of some international covenants but when it comes to protecting human rights it just refuses to front up.

The Democrats condemn this government for the way it has watered down the rights of indigenous people in this country, and we condemn the government for many measures contained in this bill. We will not continue to play a part in this by supporting this bill today in its present form but will be supporting the amendments to be moved which have the joint support of the Labor Party and the Democrats and some other senators.

Senator CROSSIN (Northern Territory) (5.49 p.m.)—The Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 has been around since the last session of parliament. When you consider the record of this government on issues related to indigenous people such as native title, the environment protection bill, reconciliation and even the preamble, it is not surprising the way they have approached this bill. It is sad but not surprising. It is only in relatively recent times that national governments have accepted that they have an overriding responsibility for the protection of Aboriginal culture and other heritage. The Commonwealth has constitutional powers and responsibilities for indigenous heritage protection under a number of provisions—most notably of course the race power, section 51 of the Constitution.

The Aboriginal and Torres Straight Islander Heritage Protection Act 1984 was introduced as a temporary measure. However, the original sunset clause was removed two years later and it became permanent legislation. In 1995, as some of my colleagues have alluded to today, Justice Elizabeth Evatt was asked by the then Minister for Aboriginal and Torres Strait Islander Affairs to review the legislation and to propose how that legislation could be strengthened in order to secure better protection for Aboriginal and Torres Strait Islander heritage.

Her report, the review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, better known as the Evatt report, was presented to the current Minister for Aboriginal and Torres Strait Islander Affairs in August 1996. I should point out that, while the Labor Party acknowledges that changes need to be made to the 1984 act, there is extreme disagreement about the way in which this federal government has approached this legislation. The Evatt report is the defining document regarding the legal regimes for the protection of indigenous heritage protection in Australia today. The report is a 370-page overview of the heritage protection regimes, with 117 recommendations resulting from extensive consultations in every state and territory and 69 written submissions.

The parliamentary joint committee on native title inquired into the Evatt report, resulting in their own recommendations regarding the drafting of Commonwealth heritage protection legislation. These recommendations are contained in the joint committee's 11th report. While not surprising, given the federal government's attitude to indigenous issues, this government has chosen to ignore most of the important recommendations contained in the Evatt report. What is perhaps more surprising is that the federal government chose to ignore the more important recommendations of the joint committee when drafting the legislation.

The Evatt report's recommendations regarding changes to the act were based on the following principles: that the protection of Aboriginal heritage is a major national responsibility; that a need exists to provide a protection mechanism of last resort at a Commonwealth level where state and territory regimes fail to provide adequate protection; that effective protection for indigenous heritage should be provided through the early consideration of issues; that effective indigenous consultation and genuine mediation

should occur; that indigenous Australians should be acknowledged as an integral part of the recognition of the significance of their heritage and have participation in protection decisions; that duplications of functions should be avoided by encouraging states and territories to adopt adequate protection standards and accredit their process; and that a need exists to be able to protect confidential information about the significant sites and to provide a clear decision making process under the Commonwealth act to avoid court proceedings.

However, as examination of this legislation will make clear, the government has not adhered to these principles in drafting the legislation now being considered by the Senate. What are the problems with the current bill before us? Firstly, the government has used the idea of accreditation to drastically limit its own involvement as a mechanism of last resort. The Commonwealth government has made it quite clear that it is prepared to pass the primary responsibility for management of the protection of indigenous heritage issues to state based regimes. The government should set minimal reasonable standards in consultation with indigenous Australians but, instead, it intends to provide for minimum protection.

As part of this process of passing responsibility of heritage protection to the states, the states and territories have the opportunity to develop and gain accreditation for their own heritage protection regimes. However, the low standards of accreditation mean that indigenous heritage protection will be subject to the political needs of the states and territories. The weak minimum standards of accreditation, set out in the proposed section 26, will ensure that the minister must accredit regimes that are inadequate. The standards that must be attained by state and territory regimes do not meet those recommended by the Evatt review. They are too general and they lack the detail of those set out in the Evatt review. For example, there are no requirements regarding indigenous control over assessments, access rights and review rights, regarding provision for early consideration of heritage issues in the planning processes or regarding guarantees of resources to secure effective access to state and territory remedies. It should be remembered that, if states get it wrong on indigenous heritage protection, it will not be those states that will be held accountable in international forums; it will be Australia as a nation that will be criticised.

There is also the question of national interest. If an application for protection is received from the state or territory with an accredited heritage regime, the only way the Commonwealth can intervene is if the minister considers that intervention would be in the national interest. Justice Evatt has said that this would be incompatible with maintaining the Commonwealth procedure as a last resort mechanism. She wrote in the report:

> The protection of Aboriginal heritage is an important national interest in itself, and . . . the protection procedure under the Act should be available as a mechanism of last resort in all cases . . . The national interest provisions place a new and significant barrier in the way of heritage protection.

The concerns of Aboriginal people in a particular regional locality would not necessarily equate with a national interest.

The majority report of the 11th and 12th report of the joint committee has suggested that the bill be amended to ensure that the national interest itself includes the protection of indigenous heritage. The minority report of the Senate Legal and Constitutional Legislation Committee recommended, in relation to the national interest, that, for the purposes of this legislation, the term 'national interest' be defined to embrace the need to protect indigenous heritage and to uphold Australia's international obligations. Currently, the concept of national interest as contained in the bill does not ensure that the Commonwealth is available as a mechanism of last resort.

There are poorly defined procedures under this act. Procedural problems include the fact that it requires applications for protection orders to be made orally, conflicting with the Evatt review recommendations that applications should be able to be made easily and that a valid application would be one that is made orally or in writing on behalf of Abo-

riginal people or a group of Aboriginals seeking the preservation or protection of an area from injury or desecration. It also does not provide that written responses must be provided for decisions made under the act.

The government has also failed to adequately involve indigenous Australians in the protection regimes. In the Evatt review it was recommended that an Aboriginal Cultural Heritage Advisory Council be established to give advice to the federal minister on issues arising under the act. However, this has not happened. The bill does not allow Aboriginal people to exercise any control over the process or to have responsibility for decisions relating to the protection of their heritage. Neither is there any requirement for state and territory regimes to establish Aboriginal heritage bodies.

There is a lack of protection of confidential information, particularly information relating to significant areas and objects that is not protected from unauthorised disclosure and is contrary to indigenous tradition.

It winds back indigenous people's human rights. Again, as has been pointed out in the minority report, this bill further winds back indigenous people's human rights and their rights to adequately protect their culture. These are rights acknowledged in Australia's obligations under the Convention for the Elimination of Racial Discrimination and other instruments such as the Covenant for the Protection of World Cultural and National Heritage, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Regarding Commonwealth responsibility, the Evatt report concluded:

> . . . the Commonwealth has international, moral and legislative obligations to ensure that Aboriginal heritage in its broadest sense is nurtured and protected in a comprehensive and consistent way.

This legislation does not ensure that that will happen. I can provide one example in relation to Junction Waterhole in the Northern Territory. Conservative state and territory governments have sought to override the interests of indigenous people on the grounds of development in this instance. An important example occurred in the Northern Territory in the early 1980s, when the Northern Territory government wanted to build a dam at Junction Waterhole in Alice Springs, a site of special significance to Arrernte Aboriginal people and women in particular. The Northern Territory government sought to bypass the interests of traditional owners—those with the prerogative to make decisions about sites around Alice Springs—by issuing a certificate for the dam. It was not until the federal Labor government intervened to stop the dam from proceeding that desecration of an important Aboriginal site was prevented.

Today I received correspondence from the legal department of Pitjantjatjara Council Inc. It says:

> The Pitjantjatjara Council Inc. Legal Service act on behalf of Anangu Pitjantjatjara (AP), the body that administers the Pitjantjatjara Lands in South Australia and also for the Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council Aboriginal Corporation.

It is interesting that, in their plea for us to not support this legislation, they go further in expanding on the example of the Northern Territory situation. They say in their letter: By way of illustration, members of the NPY Women's Council had direct experience with the operation of the Act in the early 1990s when it was invoked to protect the Junction Waterhole area near Alice Springs, where the Northern Territory Government had decided to construct a dam. The proposed construction area contains sites of significance to women from the Northern Territory and South Australia as part of a shared storyline. The Women's Council's constituents joined with others in the Territory in an attempt to save the area from inundation. The Act was used as a last resort and a protection order granted by the then Minister for Aboriginal Affairs, Robert Tickner.

The letter goes on to say:

> Under the proposed regime, the Territory legislation, often held up (incorrectly) as offering adequate protection, would undoubtedly be watered down to meet the weak minimum accreditation standards proposed in the Bill, and the 'national interest' barrier would in all likelihood bar recourse to the Commonwealth.

However, under this bill the federal government would not have been able to protect the site in Alice Springs had it not been for the heritage protection legislation that existed and the right of the federal minister to issue a protection order. This protection order still

stands. It appears that the government would not have been able to intervene under the current proposal unless the government decided it was necessary in the national interest. As we have already seen, the definition of what constitutes 'national interest' is narrow.

More importantly, this bill does not have the support of Aboriginal and Torres Strait Islander people, who were not adequately consulted during its preparation. While there were numerous submissions in relation to this bill from indigenous Australians and bodies that represent their interests, it is noticeable that not one submission from indigenous organisations or individuals supports the government's legislation. The Aboriginal and Torres Strait Islander Commission has expressed its concern that this bill 'presents a major threat to indigenous heritage'. ATSIC Chairman, Gatjil Djerrkura, said that this piece of legislation is 'a clear abdication of the government's responsibility regarding indigenous heritage protection'. While it is not uncharacteristic for this government to ignore the advice and concerns of ATSIC, it is somewhat surprising that it has chosen to ignore even important recommendations of the joint committee which examined the bill, a committee whose membership had a majority of coalition members.

The Australian Labor Party's national platform commits us to strengthening heritage protection legislation to deliver improved economic, social and cultural outcomes for all Australians. Heritage protection and associated legislation has not in the past presented significant barriers to economic development in Australia. One cannot help but conclude that this legislation is flawed. Why? Because it almost totally abolishes the Commonwealth's role as a mechanism of last resort. It fails to provide adequate standards for state and territory regimes, and it fails to engage indigenous Australians in the protection of their own heritage. In short, this legislation actually serves to weaken indigenous heritage protection rather than improve the protection of Aboriginal and Torres Strait Islander heritage.

In conclusion, let me read again from the letter I received today from the Pitjantjatjara Council. It says:

> The Bill needs to be rejected and completely redrafted following extensive consultations as recommended by Evatt, particularly with Aboriginal people. There have not been anything approaching acceptable levels of consultation on the content of the Bill . . . Its passage and implementation would serve only to put Aboriginal Australians in a weak and helpless position in relation to the protection of their cultural heritage, which needless to say would not assist the process of reconciliation between Aboriginal people and other Australians.

(Quorum formed)

Senator COONEY (Victoria) (6.07 p.m.)—The legislation before the chamber is entitled the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. It purports to replace the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. It is aimed, as many acts are—not only here but in other parliaments as well—at preserving those symbols, those actualities and those substances of life which are important to us all. I recently went to Tasmania, a great state of Australia, for the 150th anniversary of one of our predecessors, who arrived in 1849. Quite a lot of people turned up from a number of generations.

When we got there, we felt a great sense of history, a great sense of identity and a great sense of importance. We went from Burnie to Waratah, to houses in which people had lived. We went to the graves of our ancestors, who are now buried there, and to places where there had been family farms and so on. So the idea of protecting our heritage is something that is within us all. To everybody who has been anywhere near Australian life over the last few years, it is quite clear that Aboriginals and Torres Strait Islanders have a deep and abiding connection with their past, as we all have, and that there are places and objects that bring back and symbolise the proud history of the Australian Aborigines and the Torres Strait Islanders.

That was recognised in 1984 when this parliament passed the Aboriginal and Torres Strait Islander Heritage Protection Act 1984. If you look at the table of provisions, it gives

an idea of what that act now does. Section 4 talks about the purposes of the act:

> The purposes of this Act are the preservation and protection from injury or desecration of areas and objects in Australia and in Australian waters, being areas and objects that are of particular significance to Aboriginals in accordance with Aboriginal tradition.

That act went about laying down how that was to be done. Under part II, 'The protection of significant Aboriginal areas and objects', there is division 1, 'Declarations by minister', and division 2, 'Declarations by Authorized Officers'. There have been instances in which those powers have been used by the relevant minister of the time—Mr Robert Tickner and Mr Gerry Hand are ministers who come to mind.

Part IIA of the act talks about Victorian Aboriginal cultural heritage. Being from Victoria, I am particularly anxious to see that the intent of the provisions of that particular part is preserved. I think of Framlingham, where Mr Geoff Clark has done so much work. I do not want to pick out other people from down there, but Victoria has had a proud history of indigenous people struggling for their rights. It is sometimes thought that, Mr Acting Deputy President Bartlett, people from your state and from the Northern Territory and Western Australia are the people who drive this, but the people from Victoria are most important in this particular area.

There is no doubt that everybody in this chamber wants to preserve the heritage of Aboriginals and Torres Strait Islanders. The issue is: how far does each of us want to go in carrying out that purpose? I remember being in Boston and going to a cemetery in the middle of the town. That cemetery has been preserved because it contains the bodies of great people in American history. It contains the graves of people who have made outstanding contributions not only to America but to the world in general and who have been identified with the struggle of the founding fathers going to America. So this idea of preservation is universal. In that case, the people of Boston have gone to a lot of trouble to preserve that history.

The issue arises as to whether or not the new bill demonstrates a commitment to the preservation of indigenous heritage that passes the test. I agree with those who spoke before me who said that this bill does not pass the test. First of all, it takes away the minister's ability to make a declaration in the way that this is currently expressed in the 1984 act and disperses it among the states and territories so that—and this has been spoken about here before—they now become the primary source of protection for these great areas of heritage, for symbols of the indigenous people and even for the human remains that may be found. It is disappointing to find us going back to a concept of the states and territories preserving something when, by their record, we know that they are unlikely to do so. This bill tries to settle the tension between the indigenous people who want to preserve a glorious heritage and the people who want to develop—and I am not against developers—in a way that is not suitable given the history of a place or the thing that they want to develop.

This bill is a most insecure instrument in that it allows the states to make decisions, and the states are much more subject to pressure in this area than the Commonwealth. The Commonwealth is fragile enough, but to go any further should, in my view, not be allowed. That is why there are many amendments to be made to this legislation. If you look, for example, at clause 26—which talks about the standard for the accreditation of the laws in force in a state—it deals with the provision that will enable the Commonwealth to give accreditation to the laws that a state might develop to control what happens to indigenous land. If you look at clause 26(1)(c), it bears out the problems that this legislation produces. It states:

> Subject to subsection (2), the following are standards for the accreditation of the laws in force in a State or self-governing Territory in relation to the matters referred to in paragraphs 24(a), (b) and (c).

These matters talk about the application by states and self-governing territories for accreditation. It goes on to state:

> . . . that those laws provide for decisions in relation to the significance of areas or objects to be made in consultation with indigenous persons and sepa-

rately from any decisions in relation to the protection of those areas or objects.

Simply to require that there be consultation with indigenous people is clearly not sufficient. If decisions about our own heritage—be it the graves of our fathers, mothers, grandfathers and grandmothers and so on, or be it some property that we may have owned or been attached to—were to be made after consultation with us and that is all, we would feel very upset about that.

What we would prefer and what we should be entitled to, I would have thought, is an ability to have an effect on the decision being made—either by being part of the group that makes the decision or by having our statements taken on board. But simply to say that there has to be consultation is not giving protection to the concepts, thoughts and aspirations of the indigenous people whom this act will affect. To simply say that there has to be a process whereby they are consulted but in no other way taken notice of is not going to the point, particularly when this is replacing stronger provisions on this matter in the existing act. It is true that there are situations where the relevant minister can come in and take action directly but they are very limited, and that is not a sufficient provision to enable this bill to work fairly.

An issue that has been raised is: what is in the national interest? The expression 'national interest' simply means that people can make any such decision they want, as long as it looks reasonable. And anything can be made reasonable, depending on how you put the facts and what facts you care to choose.

There have been reports on matters related to this legislation, including one from the Legal and Constitutional Legislation Committee, on which I have the honour of serving as a member. A report dissenting from the main committee report was produced by a group of senators: Senator Margetts, whose going from this chamber has been to its great loss; Senator McKiernan; Senator Woodley; and me. That dissenting report made a dozen recommendations which were very sensible; they were recommendations which I thought could be taken on board. For example, recommendation No. 8 says 'that the state and territory accredited regimes should be subject to ongoing monitoring and review as well as periodic formal review'. That sounds like a reasonable recommendation. It is saying that, if you are going to have this system of accreditation, it should be kept constantly under review.

One thing that happens with a lot of the legislation that is passed in this chamber is that it is put out into the public arena but there is never any attempt to ensure that its provisions are complied with, either by setting up a system of review or by setting up a number of inspectors to go out and look at whether the provisions are being taken on board and so on. It will be very difficult, given the frequency with which elections take place in various states—and at the Commonwealth level too, for that matter—to ensure that the accreditation standards are kept up to date. If they fall away, then you could have grave sites, areas of land or particular objects desecrated. Once they are desecrated, that is the end of it and they are not protected. So it is important to ensure that whatever legislation is passed is complied with by the states and territories to which it applies.

Recommendation No. 1 says 'that the Commonwealth should retain a direct role in ensuring the ongoing protection of indigenous heritage under this act', and I have dealt with that. I want to talk a little about recommendation No. 4, which says 'that an Aboriginal heritage advisory council be established under the proposed act consistent with the recommendations of the Evatt report'. Justice Elizabeth Evatt, a person of profound learning, great experience and deep wisdom, is someone whom we as a legislature should take note of. The recommendations that she made in her report are ones that this chamber should, as far as possible, given its political make-up, put into operation.

Recommendation No. 11 of the dissenting report says 'that this legislation provide for the protection of non-contemporary indigenous art and other instances of indigenous culture from expropriation and exploitation, whether for commercial gain or for other purposes'. That goes to the issue of indigen-

ous people being in control of their own objects of tradition and their own areas.

This bill recognises that there must be protection for the heritage of Aboriginal and Torres Strait Islanders. Its objectives are good and should be supported, but the mechanism by which those objectives are to be realised is faulty. Hopefully the amendments to be pressed by the opposition, together with the Democrats and, no doubt, Senator Brown, will be accepted by the government.

Senator BROWN (Tasmania) (6.27 p.m.)—I know that I am not the next in order, but I am quite happy to take the call.

The ACTING DEPUTY PRESIDENT (Senator Bartlett)—I can call dinner instead, unless you want to be in continuation.

Senator BROWN—Yes, I will. I support the comments that have just been made by Senator Cooney and the need for a thoroughgoing review of this legislation with amendments. I cannot do better than to quote from the indigenous community who have put documents before the Senate to achieve that end.

First, I will read the general principles and summary of proposed amendments for the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998 which come from the Central Land Council, the Kimberley Land Council, the Northern Land Council and the Western Australian Aboriginal Native Title Working Group, and I will comment on the following fundamental principles which they say structure their document. Firstly, they draw attention to the aim of the protection of indigenous heritage and say:

> Effective protection and transmission of a living cultural heritage is fundamental to the survival of indigenous people as a distinct social group. It is an integral aspect of the way in which indigenous peoples' identity is continued in the context of non-indigenous economic and social development that is often ignorant or hostile to indigenous culture and its relationship to the land.

Secondly, they point to the Evatt report as the appropriate compromise between indigenous and developmental interests—and this surely is the heart of the matter. They say that 'the Evatt report on the review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 is the appropriate benchmark for reform of Commonwealth and state/territory heritage laws'. I will continue my remarks after the dinner break, if that meets with the Senate's approval.

Sitting suspended from 6.30 p.m. to 7.30 p.m.

Senator BROWN—Before the suspension of the sitting for dinner, I was reading the fundamental principles which structure the document of several of the land councils in the north, which is a response to this legislation. The second comment they make relates to the Evatt report. The document states:

> The Report is the result of extensive consultations throughout Australia with indigenous and non-indigenous interests and represents a careful compromise between development concerns and indigenous heritage protection. This submission—

that is from the land councils—

> firmly believes the Evatt Report must be used as the blueprint for reform and the following principles reflect the detailed recommendations in that Report. Many essential recommendations are not included within the Government Bill, including ensuring the Commonwealth is a real option of last resort, establishment of an independent Commonwealth heritage agency and a range of minimum standards for State/Territory accreditation.

The third point of principle is the relationship between Commonwealth and state or territory responsibilities to head heritage protection.

The councils say this:

> The Commonwealth Government has moral, constitutional and international responsibilities to provide heritage protection. Given the reality of the State's responsibility for land management and planning processes, we acknowledge that the States and Territories have a role in relation to heritage protection. However, primary responsibility for the scope and operation of heritage laws must remain with the Commonwealth and the Commonwealth must remain a *real* option of last resort.

With those principles in mind, the Aboriginal and Torres Strait Islander councils that I have named put forward these key proposed amendments: firstly, the establishment of a Commonwealth independent heritage protection agency—that is a key amendment; secondly, the Commonwealth must remain a real option of last resort—that is where the states or territories fail—primarily through improvement to the principles for Common-

wealth protection orders; and, thirdly, strengthening and increasing minimum standards for accreditation. They then go on to expand those.

I also want to take the opportunity to give the Senate the words of the Pitjantjatjara Council, which were given to many senators today. It is very appropriate that the comments of this council be injected into this debate. They are, of course, comments on the bill before us, which is the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. As an introduction, the Pitjantjatjara Council Inc. Legal Service says that it acts on behalf of the Anangu Pitjantjatjara—the body that administers the Pitjantjatjara lands in South Australia, and also for the Ngaanyatjarra Pitjantjatjara Yankunytjatjara—that is the NPY Women's Council Aboriginal Corporation. The NPY women's council represents Aboriginal women, both on the Pitjantjatjara lands and in the larger cross-border region of South Australia, the Northern Territory and Western Australia.

These organisations urgently seek the support of senators in opposing the passage of the bill through the Senate. They give their reasons. Under the heading 'Evatt's recommendations', they say:

The Bill is not consistent with the recommendation made in 1996 by the Hon. Elizabeth Evatt, AC, following her Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 at the request of the then Labor Government.

Writing to senators, they say:

As you are no doubt aware, Evatt made many excellent suggestions for the improvement of the present Act, including:

. the separation of the question of significance from that of protection

. the establishment of a permanent Aboriginal Cultural Heritage Agency to administer the Act

. a broad definition of "heritage", as exists in the current Act, for State and Territory regimes

. minimum standards for State and Territory legislation which would include independent, Aboriginal-controlled and adequately staffed and resourced Aboriginal cultural heritage bodies, and blanket protection for areas and sites that come within the broad definition

Finally, they say:

. guaranteed access to significant sites for Aboriginal people.

They say:

While the Bill proposes some separation of the assessment of significance from the question of protection, it ignores the most significant of Justice Evatt's recommendations and if passed, would in the main offer a lower level of protection than that available now.

Then they go on to comment on the problems with the bill as they see it. The letter reads as follows:

What the Government has come up with is a weak replacement that abrogates Commonwealth responsibility almost completely to the States and Territories. They would be permitted accreditation on the basis of unacceptably low minimum standards. Moreover, it would impose—

that is, the bill—

an undefined "national interest" hurdle that would probably prevent most attempts to have the Commonwealth deal with matters relating to significant sites or objects. Commonwealth legislation for intervention would no longer be available as a 'last resort' as recommended by Justice Evatt.

The Pitjantjatjara Council Inc. Legal Service then goes on to give an illustration:

. . . members of the NPY Women's Council had direct experience with the operation of the Act in the early 1990s when it was invoked to protect the Junction Waterhole area near Alice Springs. The Northern Territory Government had decided to construct a dam.

I think many of us remember that very clearly. They go on to say:

The proposed construction area contains sites of significance to women from the Northern Territory and South Australia as part of a shared storyline. The Women's Council's constituents joined with others in the Territory in an attempt to save the area from inundation. The Act was used as a last resort and a protection order was granted by the then Minister for Aboriginal Affairs, Robert Tickner.

Under the proposed regime—

they say—

the Territory legislation, often held up (incorrectly) as offering adequate protection would undoubtedly be further watered down to meet the weak minimum accreditation standards proposed in the Bill. The 'national interest' barrier would in all likelihood bar the final recourse to the Commonwealth for Indigenous people where their heritage was threatened.

It is not proposed here to list all the flaws in the Bill—

that is, in the letter from the Pitjantjatjara Council. They go on to say:

You—

that is, senators—

are no doubt aware of them by now.

Briefly, however, they go on to list them as:

. unacceptably low minimum accreditation standards including no requirement for a broad definition of 'heritage' as recommended by Justice Evatt. There is no requirement for independent, Aboriginal-controlled cultural heritage bodies. There is no guarantee of access to sites for Aboriginal people.

. no blanket protection of Indigenous Australians' heritage.

. no 'last resort' protection, when accredited States and Territories fail to protect heritage, because the low minimum accreditation standards and the 'national interest' barrier will work to preclude access to Commonwealth protection for most.

The Pitjantjatjara people go on to this conclusion:

This Bill, if passed, will put many Aboriginal people in a worse position than that which they currently enjoy in relation to the protection of sites and objects of significance. Their State and Territory governments will be able to be accredited on the basis of a protection regime of an unacceptably low standard, and their access to the Commonwealth, which has a Constitutional and moral obligation to protect Aboriginal sites and objects, will be virtually non-existent.

The bill—

the Pitjantjatjara people say—

needs to be rejected and completely redrafted following extensive consultations as recommended by Justice Evatt, particularly with Aboriginal people. There have not been anything approaching acceptable levels of consultation on the content of the Bill.

We senators are strongly urged by the Pitjantjatjara Council not to vote for this bill. The council goes on to say:

Its passage and implementation would serve only to put Aboriginal Australians in a weak and helpless position in relation to the protection of their cultural heritage, which needless to say would not assist the process of reconciliation between Aboriginal people and other Australians.

For those reasons I am opposed to this legislation. The Australian Greens oppose this legislation. We will be supporting the amendments that severally have been put forward by the other parties on this side of the chamber. We strongly urge the government not only to go back and look at its legislation but also to do the right thing and adequately take into account these extraordinarily strong and heartfelt views of the indigenous people who feel they are the losers—and indeed they are—under this legislation.

Senator CROWLEY (South Australia) (7.40 p.m.)—I rise to speak on the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. Senator Brown has just about taken my speech away from me because I came in here with the letter from the Pitjantjatjara Council's legal service. I will certainly make reference to it. I think the points that Senator Brown has raised in going through that letter are some of the points it is so important and so necessary to raise in relation to this piece of legislation.

It has been an interesting exercise to go through the history that has led up to the introduction of this legislation into this parliament. It is important to remember that an Aboriginal heritage bill was introduced by Labor in 1984. That legislation at that time was, we need to remember, pre-Mabo. It particularly focused on the protection of static heritage rather than what I think people are now realising is an important thing, that is, having a piece of legislation that takes into account heritage that is part of a living culture, not just things and places. Subsequently, the introduction of the Mabo legislation, the recognition of native title and the recognition that native title and the rights that go with it actually can survive all sorts of steps, laws and decisions taken by governments in this country for nearly 200 years were also important things to deliberate prior to this piece of legislation.

Following the Heritage Protection Act 1984 and post-Mabo the Labor government asked Justice Elizabeth Evatt to review the heritage act and make recommendations as to how it could be improved if it was necessary to improve it, and so on. As Senator Brown has just read out, some of the points that Justice

Evatt made by way of suggestions to improve the act included:

. the separation of the question of significance from that of protection.

It is an interesting point to make that a clear mind helped a whole lot in sorting out that distinction. It is clearly a point that has been confused in the past, and here is the clear recommendation of Justice Evatt.

. the establishment of a permanent Aboriginal Cultural Heritage Agency to administer the Act

. a broad definition of "heritage" as exists in the current Act, for State and Territory regimes

. minimum standards for State and Territory legislation which would include independent, Aboriginal-controlled and adequately staffed and resourced Aboriginal cultural heritage bodies, and blanket protection for areas and sites that come within the broad definition

. guaranteed access to significant sites for Aboriginal people.

I was interested to read in Senator Bolkus's speech in the second reading debate on this matter an important point about blanket protection. Protection was a point that both government and opposition members of the Joint Committee on Aboriginal and Torres Strait Islander Affairs agreed to. This was not something that the opposition has arrived at; this is something that has enjoyed support from across the parties. Yet it is not something that has been offered by way of protection under this legislation. As Senator Bolkus says, every member of committees that have considered this legislation, irrespective of party political differences, has shared the view expressed in the Evatt report that indigenous heritage sites, objects and human remains should be the subject of blanket presumptive protection.

It is an important consideration that you should start off presuming that there is that kind of protection. As Senator Bolkus said, we would not doubt for a moment that someone seeking to excavate land in Rome, London or Cairo—or any other site within what we would like to call the 'cradles of civilisation'—should be guided by certain unquestioned principles. It is very interesting that this legislation has not guaranteed that presumptive protection, despite the fact, as I have said, that it has enjoyed cross-party support, despite the fact that it was a strong recommendation from the Evatt report. That is one of the points of significant disappointment for me.

Secondly, particularly with recent discussions about referendums, we have been reminded of successful referendums in this country. One was a referendum in 1967 about allowing the Commonwealth to make laws regarding Aboriginal people. The community of Australia were very clear that it would be right and proper for the Commonwealth to be able to make laws and decisions regarding Aboriginal people. Yet here is a bill going to something as important as Aboriginal heritage—and, indeed, as I have said, more than static heritage; trying to take into account living heritage, part of an ongoing culture—actually palming responsibility for this protection back to the states.

There is any number of examples we can find of where the states' idea of protection for Aboriginal culture and Aboriginal heritage—to say nothing of Aboriginal people—is no longer acceptable. It is recent decisions and actions by states that give us concern. I am not talking about decisions by the states 100 years ago. I am talking about very recent decisions to challenge Commonwealth legislation in this area by suggesting that the states ought be able to do it in their own way, and their own way has invariably meant watering down the protection provided to Aboriginal heritage and culture. I do find it quite astounding that the Commonwealth government would legislate away a significant part of responsibility for protection of Aboriginal heritage. I have no idea what was in the minds of the government when they drew that conclusion and put it into law.

The other point that I find extremely contradictory too is the removal of last resort protection by appeal to the Commonwealth. Again, I think that has to be a backward step. I do not know this, and I have absolutely no capacity to say it, but I will say it nevertheless: I wonder how long that would survive. Given the international covenants and constitutional rights, why would it be that in this piece of legislation we could remove that last resort protection?

What does Aboriginal heritage mean, and how do we actually talk about protection of a living culture? It is an extremely difficult and challenging task at the best of times. We can actually think about how we protect our own culture—'our' culture here meaning 'non-Aboriginal' culture in Australia. How do we actually decide what will be protected and how it is to be protected? Everybody in this place—senator or not—would have any number of examples about the brawls that go on about what is heritage and how it should be protected, all the way from cutting down trees to protecting certain houses to finding things bulldozed in the middle of the night and there goes the heritage, and so on.

We know how difficult this area is. That actually highlights why it is all the more important that we have a tough protective legislation for Aboriginal culture and Aboriginal heritage, which have in fact been tossed aside and completely ignored and disregarded for so much of the time of white settlement in this country. In some ways we need to be even more thoughtful, considerate and thorough in legislating protection for Aboriginal heritage and culture.

Some time ago on a different inquiry—it was an environmental inquiry—I was in Broome with a committee. It was really very interesting to be driven around that township and listen to the local council telling us the benefits of Broome and what was proposed, including the proposed development of a large hotel on a piece of land overlooking a glorious piece of water. 'But, of course,' said the councillor through gritted teeth, 'you would know—wouldn't you—out of the blue come claims for Aboriginal sacred sites.'

It just so happened that on the bus was a person who was informed about things Aboriginal. That person said, 'Isn't it interesting. These are not recently discovered Aboriginal sacred sites; indeed, they were documented and registered in Perth under the appropriate legislation eight years ago. If there is an error, it has been because one state department has failed to inform another state department that these sites were there and claims had been made for their protection.' I might say that the first councillor was right annoyed to discover that this kind of story was being given to a Senate committee. But I must say this senator, as part of a Senate committee, was really very interested to get both sides of that story.

I can certainly imagine that, as Broome is a fair way from Perth, it might not be easy to determine which department covers building rights and approvals for construction and development. You might not necessarily remember to ring up and check with the department that covers Aboriginal sacred sites and pieces of heritage. You might forget to do that. Maybe it is one of those consequences of the tyranny of distance and if the legislature were in Broome, this would be less likely to happen. But Western Australia is not going to change in the near future. People or departments need to have flags or reminders on legislation to say, 'Hey, don't forget to check if there are any other things going down here.'

But it also illustrated to me how readily we find the argument 'Oh well, you'd expect that there will be an Aboriginal sacred site found here' used very often in an entirely derogatory way to suggest that there are no serious Aboriginal sacred sites or Aboriginal heritage. It is just something troublemakers pull out of the bottom drawer when they want to agitate. I think it is terribly important that we acknowledge that is not the story, that is not the case and that in very large part Aboriginal heritage has been walked over, trampled over, ignored and beaten into nothing or into the dust. That accounts not only for the things, the places and the sites but also very much for the people too. We should take no comfort in past practices. We do know of the many stories that illustrate the point I have just been making: that you can pull out the sneering line 'Well, we'd expect an Aboriginal claim here' as a straight piece of pejorative abuse.

So I do believe it is critical that, in legislation for Aboriginal protection and for Aboriginal heritage, we make sure that there is no watering down of that protection, particularly when we can find example after example around Australia where you would not hold your breath on the protection that states offer or provide even now, though I have to say

that my state of South Australia can hold its head fairly high in terms of Aboriginal land rights and heritage protection. Even so, we are a Commonwealth parliament and we are talking about legislation that covers the whole of Australia. It seems to me entirely proper that we should have some minimum standards that are uniform across the country. The idea, for example, that heritage protection in South Australia is vastly superior to what happens just across the border in any direction, I suppose we could say, seems to me to be a very insufficient state of affairs. I believe it is very important that we actually have the benefit of some kind of consistent, uniform, decent and reliable protection legislation across the whole country. I think it is unacceptable that the standards of protection from one state to another and from one territory to another be significantly different. I find that very unacceptable.

We have an opportunity at the end of the millennium to pass heritage protection legislation for Aboriginal and Torres Strait Islanders that is something we can be proud of. We have the opportunity in this legislation to either reject the legislation or adopt the significant amendments that the Labor opposition intends to put forward. Many of those pick up on the important points raised by the Evatt inquiry and highlighted in the letter from the Pitjantjatjara council that, as I mentioned, Senator Bob Brown has taken us through in such detail. I am pleased to pick up on this letter too because, of course, the Pitjantjatjara lands are a very large part of the state of South Australia. It is interesting that the Pitjantjatjara council legal service is not satisfied with the protection that has been offered for its lands in South Australia. It is concerned to see that protection strengthened and provided uniformly and equally across all the states of its territory—but for all Aboriginal people.

In closing, the other important thing that we should remember is that Aboriginal heritage protection is not only about something that is good for Aboriginal people. It is something that is good for Australia. It is something that Aboriginal and non-Aboriginal people should be proud to know about and to be contributing to the protection of. It is extremely important to ask ourselves questions about how much tolerance we demand of Aboriginal people in supporting non-Aboriginal cultural heritage, much of which has been built on their lands and certainly in the past without a thought of asking them about what they thought. We ask Aboriginal Australians to participate in and to walk along with non-Aboriginal culture in this country. We have the opportunity here to ask non-Aboriginals to walk with Aboriginal people in the protection of their culture and their heritage.

It is quite interesting to think back to 1967 and to just what has happened in the years since. For some of us that is pretty recent history and there have been some extraordinary and significant changes over that time. There has also been over that time continual damage to, desecration of and walking over both places and people. I believe this legislation should be defeated or very significantly amended if we are to honour our commitment to Aboriginal people and their heritage.

Senator HILL (South Australia—Minister for the Environment and Heritage) (7.59 p.m.)—I thank the honourable senators who participated in the debate on the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998. There is obviously disagreement about the detail but I am pleased that there is widespread recognition in this place that the existing act is in need of reform. Principally, we have been motivated to ensure that there is in place legislation that provides a high level of protection for indigenous heritage places whilst ensuring that the roles and responsibilities of the Commonwealth, states and territories are clearly defined.

To achieve that goal, we have sought to introduce a system through this bill characterised by a set of standards which will need to be met by the states and territories if they wish to receive accreditation from the Commonwealth. These standards and the processes envisaged in the bill provide considerable incentive for the states and territories to improve their own legislation—in states that have adequate legislation and have been accredited, a system of national heritage protection that relies on those state processes

while allowing the Commonwealth to act if it is clearly in the national interest; in states that have not sought or received accreditation, a system that allows the Commonwealth to act to protect indigenous heritage places if all state processes have been exhausted; and the separation for the first time of the assessment of the significance of a place from the decision as to whether to issue protection orders. Under our proposed arrangements, the Commonwealth minister will no longer make a judgment about significance. Instead, a new Director of Indigenous Heritage will perform this role with the potential under certain circumstances for the outcomes of those assessments to be tested by a second independent process.

During the development of this bill, the government has been conscious of the views of the parliament and the broader community. This is why this version of the bill includes a number of improvements over that which was introduced in June last year. In particular, we have made changes to ensure that the Director of Indigenous Heritage has certain qualifications relevant to that person's role, to clarify that the bill does provide blanket protection for significant heritage places and objects in the standards that states and territories will need to meet prior to accreditation and to include a new standard requiring the states and territories to separate decisions in relation to heritage significance from decisions in relation to protection. It is the government's firm view that this bill represents a considerable leap forward in the way the Commonwealth meets its responsibilities in this area.

In concluding this second reading debate, I wanted to put on record my appreciation for the role that Justice Evatt has played in this reform process. While the government has not proceeded with all of the recommendations of her report, Justice Evatt's contribution to the development of the bill has been considerable.

I also just briefly wanted to use this opportunity to say a few words about Justice Robert Hope, who passed away recently at the age of 80. Justice Hope is perhaps best known as a jurist and for his role as a royal commissioner on two occasions in relation to security matters. In an incredible full and varied life, he also served as a New South Wales Court of Appeal judge, as an infantryman during World War II, as President of the Civil Liberties Council and for 22 years as Chancellor of the University of Wollongong. But I mention him in the context of this debate, however, because it was Justice Hope who, in 1974, completed a report into Australia's heritage which directly led to the establishment of the Australian Heritage Commission and the Register of the National Estate.

What was remarkable at the time was that the processes he recommended were the first occasion on which heritage across the spheres of the natural built and indigenous were considered in a holistic way. The reforms that he promoted and which were adopted by the Whitlam and Fraser governments really paved the way for the identification and protection of heritage places in this country. I am sure his passing has been felt by many in the heritage community and in those many other spheres in which he was influential.

Unfortunately, the Senate will not be able to proceed to the committee stage of this bill because the Australian Democrats and the ALP, joining as a block on this occasion, as I understand it, have well in excess of 100 amendments in the process which are not currently available for debate. Whilst this is particularly disappointing as this piece of legislation has now been around for a very long period of time and gone through an exhaustive committee process on a number of separate occasions, it is obviously not possible for the Senate to debate amendments which are still not before the chamber and to which the government has obviously not given the careful consideration it must.

I trust, however, that this evening the amendments will be available and the government can give them the consideration that is required and that, within a day or two, this chamber might be able to return to the committee stage and hopefully complete the process of this bill in order to give the benefits in terms of indigenous heritage protection, which is the objective of this government. I commend the second reading debate, whilst saying that I am disappointed that we

are not able to now proceed to a conclusion of the debate.

Question resolved in the affirmative.

Bill read a second time.

Ordered that consideration of this bill in committee of the whole be made an order of the day for the next day of sitting.

FEDERAL MAGISTRATES BILL 1999

FEDERAL MAGISTRATES (CONSEQUENTIAL AMENDMENTS) BILL 1999

Second Reading

Debate resumed from 20 October, on motion by **Senator Ian Campbell**:

That these bills be now read a second time.

Senator BOLKUS (South Australia) (8.07 p.m.)—The Federal Magistrates Bill 1999 and the Federal Magistrates (Consequential Amendments) Bill 1999 establish the Federal Magistrates Service and provide for its jurisdiction and procedures. The Federal Magistrates Service will be a chapter III court under the Constitution. While the judicial officers of the court will be styled as 'magistrates', they will in fact be judges appointed under section 72 of the Constitution and will have all of the privileges that attach to federal judges. The federal magistrates are intended to be a 'lower class' of judicial officer to judges, as the government has expressed.

It is intended that the Federal Magistrates Service will operate independently from, but cooperatively with, the Federal Court of Australia and the Family Court of Australia. It is hoped that the Federal Magistrates Service will be as informal as possible consistent with the discharge of judicial functions. It will be up to the Federal Magistrates Service itself to make its own rules, which will largely determine issues of practice and procedure. However, the bill includes provisions which the government claims are designed to assist the Federal Magistrates Service to develop procedures that are simple and as efficient as possible, aimed at reducing delay and cost to litigants.

It is worth noting some of the claimed objectives of the government. Amongst them are: the court will have the power to set time limits for witnesses and to limit the length of both written and oral submissions; there will be provision for discovery and interrogatories only if the court considers they are appropriate in the interests of the administration of justice; if the parties consent, the court will be able to make a decision without an oral hearing; there will also be more emphasis on delivering decisions orally in appropriate cases rather than parties having to wait for reserved judgments; and, finally, there will be the power to make rules to allow federal magistrates to give reasons in shortened form in appropriate cases.

The service will place emphasis on using a range of means to resolve disputes. There will be no automatic assumption that every matter will end up in a contested hearing, and the use of conciliation, counselling and mediation will be strongly encouraged in appropriate cases. Parties will be encouraged to take responsibility for resolving their disputes themselves where this is practical.

The idea of establishing a federal magistracy has long been considered. The concept is broadly supported, although many, if not most, state attorneys-general have expressed a preference for the work of the proposed magistracy to be given to state magistrates either directly or through those magistrates holding dual commissions. The 1995 report entitled *Funding and Administration of the Family Court of Australia* produced by the Joint Select Committee on Certain Family Law Matters also supported this approach. It is worth noting that the current Attorney-General was a member of that committee and agreed with its recommendations.

More substantive argument has surrounded the form that the federal magistracy should take, in particular whether it should be integrated with the Federal Court and the Family Court or established as a separate court as is proposed in these bills. The A-G first announced that the government was considering the establishment of a separate court in May 1996. However, the idea was never seriously progressed until after the 1998 election and in

response to mounting criticism of delays in the Family Court. The establishment of this court was formally announced as part of the 1998-99 budget.

There has been a Senate inquiry into this proposal, and submissions to that inquiry have been quite mixed in their support for the legislation. The Federal Court of Australia, the Human Rights and Equal Opportunity Commission, National Legal Aid, Victoria Legal Aid and Relationships Australia all broadly support the proposal, although a number of them have suggested amendments to the bills. However, the bills are opposed by the Family Court of Australia, the Law Council of Australia, the Family Law Section of the Law Institute of Victoria, the Law Society of New South Wales and the Victorian bar. The previous Victorian Attorney-General, Jan Wade, the Queensland Attorney-General, Matt Foley, the Tasmanian Attorney-General, Peter Patmore, and I believe the New South Wales Attorney-General, Jeff Shaw, also oppose the bills but favour the greater use of state magistrates exercising federal jurisdiction.

It is also important to note that the Australian Law Reform Commission in its 1997 report *Seen and Heard* also expressed a preference for the centralising jurisdiction in matters relating to children in the Family Court utilising federal magistrates. The ALRC has also referred these views—as you, Deputy President McKiernan, will understand—to the committee.

The principal criticisms of establishing a separate Federal Magistrates Service have been around for quite some time. In short, they can be surmised as follows: that the government has not justified the need for a separate court; that the $27.9 million allocated could be more efficiently spent in the existing court structures; that the Federal Magistrates Service will see a further $5 million per year taken from the Family Court to fund its operations, further depleting the ability of that court to respond to the delays it already faces; that the concurrent jurisdictions of the Federal Magistrates Service and the Family Court and Federal Court will complicate and confuse the delivery of court services for litigants by creating an unnecessary stream and may see the courts compete for work; and, finally, particularly in the family law area, rather than reducing delays, the Federal Magistrates Service may in fact increase demand for litigation by creating unrealistic expectations that it will depart from established precedent.

A number of technical and jurisdictional deficiencies in the bill have also been pointed out. In particular, there is growing concern that the service may have extensive jurisdiction largely supplanting: one, the Family Court in matters involving children and family property disputes worth up to $300,000 or with consent; and, two, the Federal Court in trade practices matters up to $200,000 and various industrial matters including freedom of association, which was the type of litigation which occurred during the waterfront dispute.

In response to these concerns, we note that the Attorney-General has referred to the recently released discussion paper of the Law Reform Commission into the federal civil litigation system, which found considerable inefficiencies in the handling of disputes by the Family Court as a basis for justifying the legislation. It is also important to note that the Australian Law Council has rightly criticised this contention by pointing out that the inefficiencies in the Family Court will not be fixed by creating a new court with another layer of bureaucracy. If we are to fix those problems, then, as the Australian Law Council says, we must change the management practices and culture that currently permeates the Family Court.

Accordingly, the opposition is concerned that these bills have more to do with the desires of the government to appease some groups who have claimed that the Family Court is biased against men. The opposition is also concerned that this bill has more to do with the personal animosity that is known to exist between the Attorney-General and the Chief Justice of the Family Court. If these are the motivations for these bills, then obviously they are not satisfactory. However, if the purpose of this bill is to address problems in the administration of Australia's family law system, then there are better ways of doing it.

Labor's preference is for a Federal Magistrates Service that is, at the very least, integrated with the Family Court. We also believe that the management problems within the court would be better addressed by (1) moving to a collegiate management structure similar to that which applies in the Federal Court; (2) moving to the introduction of team based docket management techniques for cases to ensure greater personal attention by the court to the progress of individual cases and to spread the court's workload more evenly between its judges; (3) moving to ensure that litigants comply with the procedures of the court in a timely manner; (4) moving to increase the preparedness of the court to enforce its orders against parties; (5) moving to make greater use of directed and timely mediation rather than assuming that all cases need to be mediated at predetermined stages of their progress through the courts; (6) moving away from the so-called 'simplified procedures', which have delayed the identification of information vital to the proper and effective mediation and resolution of disputes; and (7) improving the data collection procedures of the court so as to identify more accurately the causes of the inefficiencies in the procedures of the court.

The principal problem that the opposition has with these bills—and this was explained in the House of Representatives debate—is that they are not the most cost-effective way of addressing the problems in the Family Court. In addition to the new funding provided in the budget—some $27.9 million over four years—funding will be transferred from the Federal and Family Courts in recognition of the fact that the service will be taking over some of those courts' workload. The amount of funds to be transferred from the Federal and Family Courts is to be negotiated with those courts and will be shown in additional estimates. We are told to anticipate that this will be some $5 million a year. The Attorney-General's Department noted in its paper entitled *Options for a Federal Magistracy*:

> [a separate Court] would require significant autonomous administrative structure. Although some registry staff sharing between existing courts could initially take place, it could be expected that in the long term, it would become necessary to employ separate staff to undertake the administration of the Court . . . This option would also eventually require discrete accommodation at least in major cities with registry facilities, other infrastructure support and courtrooms (or access to courtrooms) . . . the cost of this option is likely to pose significant difficulties.

That is the kernel of our concern in respect of this proposal. It is estimated that almost all of the additional $27.9 million over four years will be translated into additional administrative costs. The 16 proposed magistrates will replace the 19 SES Band 2 registrars currently provided by the Family Court and the $5 million a year expected to be transferred from the Family Court is likely to cover their cost. In short, the government's proposal will cost the Australian taxpayer some $27.9 million but deliver three fewer judicial decision makers, although, in fairness to the Attorney-General, the magistrates will exercise judicial power rather than the delegated judicial power currently exercised by the registrars. It is difficult to conceive therefore how the proposal will reduce delays in the Family Court other than through maybe marginal efficiencies gained in the handling of disputes in an abbreviated manner.

Despite the very real concerns that the ALP has about the service, we will not oppose its establishment. If we were to do so, I know that the government would claim that we are preventing them from fixing the delays in the Family Court system. That is one claim that we will not allow the government to make. Labor will give the government the opportunity to implement this proposal and, as the shadow Attorney-General has said, if it works to reduce the delays, he will be the first to congratulate them. However, if, as everyone expects, the bill does little to address this problem, as the shadow Attorney-General has already stated again, Labor will review the operation of the court taking into account the sorts of reforms that I foreshadowed to see whether a more effective approach is available.

That said, there have been quite a number of technical criticisms of the bill. In particular, concerns have been raised from a number of sources during the Senate committee process. These concerns centre on inappropri-

ate intrusions into the jurisdiction of the Family and Federal Courts, the erosion of the rights and protection of litigants, and the failure of the bills to ensure proper accountability of the judicial process. For example, the government is inappropriately seeking to give jurisdiction to the Federal Magistrates Service to hear matters under the Workplace Relations Act 1996 including injunctive powers relating to industrial disputes under section 127 and the freedom of association provisions which, if passed, would include the addition of anti-union provisions in the Workplace Relations Amendment (More Jobs, Better Pay) Bill 1999.

These are notoriously complex areas of law, inappropriate for determination at a magistrates level. As the opposition has previously noted, disputes as complex as the waterfront dispute involve extensive application for injunctive relief under section 127 of the Workplace Relations Act 1996. But we recognise that the government's proposals are consistent with its desire to prevent the Federal Court from examining these issues. Increasingly the Federal Court, by construing domestic law according to international standards, has become a significant and appropriate bulwark against the government's radical industrial relations reforms. Labor is not prepared to see that role watered down.

So in the committee stage of the debate on this bill I will move a number of amendments to both of the bills. We reserve the right to move further amendments as the debate continues, but I think it is fair to say that we will move all the amendments we intend to move at the start of the committee stage of the legislation. We will vote for the second reading of both bills, but we will vote against the third reading of the consequential amendments bill if our amendments removing jurisdiction in relation to matters under the Workplace Relations Act 1996 are unsuccessful.

Finally, I refer the Senate to the second reading amendment which I will move. The amendment to the Federal Magistrates Bill 1999 encapsulates the opposition's position on the bills as a whole. The amendment notes our concern at the efficacy of the government's response to delays in the Family Court and draws the Senate's attention to the need to address the problems identified in the Australian Law Reform Commission's discussion paper. It proposes to take a constructive approach to examining the problems in the Family Court. It seeks to establish an inquiry into the case management techniques of the court and to establish best practice standards as to how these matters should be handled in the future. It goes to what the opposition sees to be the heart of the problems that the Family Court faces. I commend the second reading of this bill to the Senate. I propose to move the following amendment:

At the end of the motion, add:

"but the Senate:

(a) believes that the Federal Magistrates Service proposed in the Bill is unlikely to reduce the delays currently being experienced in the Family Court unless significant additional resources are provided; and

(b) calls upon the Government to work with the Family Court of Australia to address the problems identified in the discussion paper entitled *Review of the Federal Civil Justice System* released by the Australian Law Reform Commission".

Senator LUDWIG (Queensland) (8.22 p.m.)—The Federal Magistrates Bill 1999 will establish the Federal Magistrates Service and provide for its jurisdiction and procedures. Submissions to the Senate committee have been mixed, with groups which did not offer support also recommending considerable amendments to the bill.

As outlined in the minority report from the Senate committee, the principal criticisms of establishing a separate Federal Magistrates Service—the Senate has heard them tonight, but I think it is worth reiterating some of them—are: the government has not justified the need for a separate court; the $2.7 million allocated could be more efficiently spent in the existing court structures; the Federal Magistrates Service will see a further $5 million per year taken from the Family Court to fund its operations, further depleting the ability of that court to respond to the delays it already faces; the concurrent jurisdictions of the Federal Magistrates Service and the Federal Court will complicate and confuse the

delivery of court services for litigants by creating an unnecessary stream with the courts basically competing for work; and finally—one of the major criticisms in the family law area—rather than reducing delays, the Federal Magistrates Service may increase demand for litigation by creating unrealistic expectations that it will depart from the established precedent.

If you then go to some of the matters raised in the report of the Labor members on the committee, it is very interesting to take the time to examine some of the detail in the bill, because the devil is in the detail. As the Senate has heard, over a long period of time there has been a sufficient groundswell of support for this type of court. However, in coalescing this type of court into legislation, you always encounter some unintended consequences which necessitate the detail being examined and scrutinised sufficiently to ensure that the result is what is intended. I quote recommendation 1 from the Labor members of the committee as follows:

> The Labor members of the committee recommend that the bill not be opposed. However, we express our concern that the Federal Magistrates Court as presently structured will do little to address the problem of delays in the Family Court. In particular, it does nothing to address the underlying concerns about the administration and practice of the Family Court of Australia.

The bill proposes a new Federal Magistrates Service, but, in our view, it does not go to the detail. It has not examined the current situation or looked at how you can ensure that delays or problems that are created in the Family Court could be overcome fairly and with consideration. Rather, a view is expressed that a Federal Magistrates Service would be required.

Having lived in country towns in Queensland, I wonder, after examining the structure, how the service will be provided in towns like Cunnamulla, Roma, Charleville or a town in far western Queensland such as Mount Isa, and all the other areas. In Queensland, the current state system is the Magistrates Court, which provides a similar service whereby some of the outcomes could be easily dealt with as an alternative solution to the present arrangement proposed in this bill—certainly if one of our prime motivators is to ensure that we have an efficient, simple and effective system that has accessibility underpinning it. If the service is going to have the confidence of business people and of unions—as this bill is structured, unions may have to use it—and of the wider community, you are going to have to ensure that it is accessible, streamlined, cheap and affordable and that it does not provide a duplicate system that people can point to and simply say, 'This is a duplicate service and it is not as efficient; it does not stretch as far; and it doesn't provide the same level of service that we've been used to or that we could otherwise obtain.' One of the important things that the general community will be looking for is that there will not be the delays that are currently experienced in the Family Court.

One of the matters raised in the report by the Labor members on that committee was giving the Federal Magistrates Service jurisdiction for section 127 under the Workplace Relations Act, part 10A of the Workplace Relations Act 1996 and for appeals from the AAT. The view of the Labor committee members was that that section should be deleted. I have some experience in the industrial arena and in the administrative appeals area.

Dealing firstly with the industrial relations issues, in the state system the Magistrate's Court is utilised, but it is utilised for a range of reasons, which I will go through. The court effectively provides for accessibility and provides a low cost means for industrial relations to be dealt with in remote areas. In the Queensland state system of industrial relations, the magistrate dons a hat called an industrial magistrate's hat and thereby allows accessibility for people to that system. It also then extends to conferences for reinstatements but on the same basis—where the commission cannot otherwise deal with it. It is very much, with all due respect to the Queensland industrial magistrate's service, a lower order area, where it provides and facilitates outcomes at that first contact.

A concern in respect of this is that it does not provide for that. It provides for a much higher order area, where the requirements will

be placed upon the magistracy to come up with outcomes under section 127 of the Workplace Relations Act 1996 and then deal with what are, in effect, very complex industrial relations matters which then will be subject to appeal and could be challenged. By and large, from my own experience, the matters under section 127 and other matters that might arise under this particular area are extremely complex and deserve considered views, usually by people who have had long experience, either through their work in the industrial relations area or through their knowledge of the industrial relations system from sitting on the full court or as a single judge of the Federal Court.

Where matters such as this do arise, they usually arise in the first instance before an industrial commissioner. They sometimes arise in the second instance through the full bench of the Industrial Relations Commission or on appeal to the Federal Court, usually before a single judge but sometimes on appeal to the full court, consisting usually of three Federal Court judges. One would hope that, at least by that time, those learned judges have had the opportunity to digest and consider much of the information and provide reasonable outcomes.

When you look at the report, the system that concerns the committee is that, at the first port of call, there may be an inability of the system to adequately deal with them in a comprehensive and final manner. One of the things that will concern unions and employers is that, if they cannot have considered and final judgments in respect of these by people who have reasonable experience in the area, you find that their ability to continue in that vein is somewhat lessened. They tend to relax and not wish to pursue that particular area as willingly as they otherwise would. As a consequence, they might try to find alternative arrangements, which are not helpful to anyone.

One of the matters of concern is the amount of press that has been generated in this area. I turn to a number of articles that have appeared, such as 'Judges in attack on confusing new court'. One of the criticisms is that:

> The creation of a federal magistrate's court to ease the burden on the Family Court has been attacked as retrograde and inefficient by the Chief Justice of the Family Court, Justice Alistair Nicholson. During the first days of public hearings into the Federal Magistrates Bill, Justice Nicholson said that the proposal to add another court to the already bewildering courts exercising the same jurisdiction would create confusion, fragment the court system and lead to forum shopping and reshuffling matters.

The article went on to say:

> Far from improving services to the public, we see it as heavily reducing that service.

When I go back to the earlier matter I mentioned, it is the detail that needs to be examined finally to ensure that, if there is to be a service such as this introduced through this bill, that service operates effectively and fairly, is open and has an accountable string attached to its bow.

Other criticisms have been levelled at the bill in the industrial relations area. On 2 September 1999, the *Australian* had a headline: 'ALP hits at Reith's kangaroo court law'. Concerns are expressed in that article by Michael Ballard, a workplace relations writer. The article states:

> A new magistrate's court will be granted jurisdiction over two of the most crucial aspects of industrial law under fresh legislation which the federal opposition claims is intended to create a kangaroo court. The federal magistrate's court, which will hear Family Court and some Federal Court cases, will be given power to judge freedom of association disputes and applications to prevent industrial action under section 127 of the Workplace Relations Act.

That is one of the other areas which I earlier alluded to. There is the concern that, when you take distinct areas where they might otherwise not be aware of them and put them into a service such as this, you end up with unintended consequences which flow on. Those unintended consequences may have serious ramifications for employers, employees and unions. The particular area they came from is usually well equipped to deal with those, such as the Industrial Relations Commission and the Federal Court.

I foresee this will only spark further litigation as people dissatisfied with their earlier judgments at this low level seek review whichever way they can. We know from

experience that the courts will by and large get around privative clauses or ouster clauses where they possibly can. They will not be constrained by privative or ouster clauses. They will seek to ensure that true appeals can be achieved and thus to ensure that, if they are dissatisfied at that lower order level, they can find a suitable appeal mechanism or a suitable place to air their grievances and then allow them to be heard. It is a matter that deserves serious consideration and a matter that should not be left easily.

In terms of the cost, when you look at the extraordinary blow-out to $27.9 million, the question is raised: will you get as a consequence an efficient and cost-effective system? Could you utilise what is already there more efficiently and get true value from the $27.9 million allocated? Could it be better spent in ensuring that the current state court system efficiently deals with things in a quick manner? Other areas, such as the Family Court, might benefit from the injection of those sorts of funds.

We will be watching the government very closely over the ensuing months to ensure not only that the money is well spent but that there is scrutiny placed upon the government to ensure that the outcomes they say will flow do flow easily and without impediment. Particularly in the family law area, they say that, rather than reducing delays, the Federal Magistrates Service may increase demand for litigation by creating unreal expectations. They also say that it will depart from established precedent.

You have to be very careful when you set up these types of arrangements and then say that some of the rules that would otherwise apply—where lawyers would expect the rules to apply—will be relaxed and that precedent may not necessarily be the be-all and end-all. When you introduce these sorts of measures, you have to be very careful that everyone plays fairly by the same rules and does not seek to exploit the area—or, alternatively, to utilise the area to win a point based on spurious arguments.

We will also be very carefully watching this to ensure that litigation does not increase, that there are not unrealised expectations and that, in providing the cost-effective services claimed, those matters are delivered. We will be watching to ensure that it is a transparent process and that the process of appointing the judges themselves is also a transparent process, as they will be chapter III judges under our Constitution, with life tenure. In addition, the recommendations by the committee, particularly recommendation 6—which contains the detail of how the system will operate—hit the nail on the head. Recommendation 6 states:

> The Labor members of the Committee recommend that the provisions preventing the issuing of discovery, interrogatories and subpoenas except by leave of a Federal Magistrate should be deleted.

The system is untried and will provide an area in which we will have to be vigilant to ensure that the outcomes are as stated. In conclusion, the Law Council of Australia has also sought certain amendments, and I suspect we will get an opportunity in the committee stage to go through those and to argue some of the detail. I look forward to that opportunity. The grant of the jurisdiction to the Federal Magistrates Service—particularly in relation to section 127 of the Workplace Relations Act, which is under the industrial disputes area and touches upon the freedom of association provisions—should not be countenanced, especially in such a notoriously complex area of the law.

Senator COONEY (Victoria) (8.42 p.m.)—I will continue from where Senator Ludwig left off. This court is called a magistrates court but, if you look at the jurisdiction it has, it is more akin to a county court in Victoria, a district court in other states or a magistrates court in Tasmania. It has, for example, a jurisdiction in family matters where the property in dispute is of a value of up to $300,000 and, more than that, it can deal with children. It is a court with a very significant jurisdiction, so it should be looked at most carefully. Given that, there is some concern to be expressed about the mechanism by which this court is to be given its jurisdiction and the mechanism by which it is to go about its business. If I can give an illustration, clause 33C(1) of the Federal Magistrates (Consequential Amendments) Bill 1999 states:

> (1) If a proceeding of a kind specified in regulations made for the purposes of this subsection

> is pending in the Family Court, the Family Court must, before going on to hear and determine the proceeding, transfer the proceeding to the Federal Magistrates Court.

So what happens is that the government can step in and affect the jurisdiction of the Family Court and the Magistrates Court, even in the situation where there is a matter pending in the Family Court. I turn to this issue because it illustrates just how uncertain matters are going to be for people who want go to court. Most litigants do not quite apprehend whether a matter is in a Magistrates Court, a county court, a Supreme Court or a Federal Court—they leave that to their lawyers—but they do know when they have to go from one building to another or when they are told that, although their matter was about to be heard, it now has to be transferred to another court. So they do understand the problems that are associated with transferring from one jurisdiction to another. For a government to interfere in that situation through the use of regulations is, I think, a matter for alarm. The use of regulations not only in this section but in other sections as well is to be feared.

I have illustrated my point in terms of the Family Court and how family law matters are to be dealt with. I think this legislation gives too little weight to the seriousness of the matters that come before the Family Court. The Family Court deals with emotions and with the way that families are made up—it is about the tearing apart of relationships that have been very deep and very intimate. In my view, this is a more serious matter than a situation where hundreds of thousands of dollars are involved. How relationships are resolved affects a person's whole life and that of their children and how a number of people will go forth from that time on. That is a serious matter and of great moment. Yet we are going to send those sorts of matters to what is termed a Magistrates Court.

I do not want to in any way denigrate the ability these magistrates no doubt have, but I do point out that the drawing of distinctions between courts—whether they be state or federal courts—indicates that the people who draw those distinctions have a particular approach to or view of the importance or otherwise of those things. To send matters such as those that can be sent under this legislation to the Magistrates Court instead of to the Family Court sends a very bad message indeed. The other thing in that context is that it would be proper, if matters are to be sent to the Magistrates Court, that the overall supervision or monitoring be left in the hands of the Chief Justice of the Family Court. That is not the situation here—because of clauses like 33C, he is unable to say where matters are going to go.

Moving away from the Family Court for the moment, matters that occur in the workplace—and I am sure that Senator Collins will be addressing this—will be able to originate in the Magistrates Court. Again, where very serious issues are in question in the industrial sphere, it is not suitable that they should be heard anywhere but in the most important courts in the land. Again, the issues arising under the Trade Practices Act can be taken to the Magistrates Court. That is an area where the industrial relations of this country become quite involved and where things ought to be defined before matters go any further. So, overall, I am saying that the concept of a Magistrates Court is a very reasonable and proper one, but the relationship between the Federal Magistrates Court and other courts, such as the Federal Court and the Supreme Court and Magistrates Courts in the states, should be clearly defined before we go further.

This should not be left in any way to regulations and it should now be made clear to the chief justices of the Federal Court and the Family Court. Those chief justices should be in a position to know exactly where they stand and where their courts stand in relation to litigation and they should be given the proper control over their own courts and over the business before the Magistrates Courts—otherwise the litigants that come before the system of all these courts are going to be quite confused and injustice then becomes much more likely than would otherwise be the case. One purpose of this legislation—and it is a purpose to be praised—is to make litigation simple and cheaper, but again there is the problem that, in trying to achieve a great

purpose, the purpose is betrayed by efforts being wrongly exerted. By that I mean that there is in here, for example, an ability for not only lawyers to appear to represent people but also other people to appear in that role, who are to be defined by regulations.

There is a mantra that lawyers are bad people, that they are after money and nothing else and that they complicate procedures. That might be a mantra but it is not true. Litigation is made cheaper and much more speedy by people who know what they are about. It is, in my view, a mistake to leave in the air and leave uncertain in this legislation who will be able to represent people before the Magistrates Court. We do not know that, because the one class of person who can represent people before the court is to be defined by regulation. So, again, that is another illustration of where matters are not well defined in this legislation as it now stands, and it needs a considerable amount of amendment to put it right.

It is said in this legislation that matters have to be more speedily done, that there has to be mediation available and that all sorts of procedures can be used to make things better. That again, as I have said, is to be praised. Perhaps I should read out clause 42, which indicates that. Clause 42 states:

> In proceedings before it, the Federal Magistrates Court must proceed without undue formality and must endeavour to ensure that the proceedings are not protracted.

That is a good thing. It then goes on in clause 43 to set out the practice and procedure. Clause 44, the section I have already dealt with, states:

> A party to a proceeding . . . is not entitled to be represented by another person unless:
>
> . . . .
>
> (b) under the regulations, the other person is taken to be an authorised representative . . .

Then it goes on and talks of interrogatories, discovery and subpoenas. This again is an attempt to make things work as they should, to take matters out of the court's control and put them into legislation, and hopefully things will be made to proceed better than they presently do.

But those sorts of things have been tried again and again. Courts allow interrogatories and discovery to be had as of right and then they withdraw the ability for parties to do those things. The rules may say that interrogatories and discovery can only be issued by leave and then that becomes complicated as well. So I think what will happen through this legislation is this: the regulations, on the one hand, will make things too vague; on the other hand, the matters that are in the legislation—such as rules of evidence, interrogatories and discovery—will make things too cumbersome for the court to properly administer. So we are getting a situation where good justice is being endangered by legislation which, with some amendment, could be made much better.

Senator McKiernan and I, being the dissenting members of the committee which looked into this, made a number of recommendations, some of which have been dealt with by Senator Ludwig. But, just going to some of them, they indicate the matters that I have been raising so far. For example, recommendation No. 10:

> The Labor members of the committee recommend that the bills should be amended to ensure that as far as possible persons appointed as Federal Magistrates are suitable to deal with family law matters.

That goes to the issue that I began with, the issue of the Family Court. The Family Court, as I have said, deals with matters, in my view, of the most fundamental and most vital nature. If we are to have the Magistrates Court and if we are to give that court the jurisdiction that the bill says it should have in family matters, then we should have people on that court who have an understanding of just what it is to go through a divorce, and a divorce where children and property are involved.

Recommendation No. 8 states:

> The Labor members of the committee recommend that the provisions for short form reasons for decisions should be deleted.

This goes to another issue, which is this: in an attempt—a very praiseworthy attempt—to get the system working better, the legislation says that there should be a short form of

reasons given in particular circumstances. The Labor members say that, if a person goes before a court and a decision is given against him or her or it, then he or she or it should have a full understanding of why that decision was reached and the judge or the magistrate involved should set out those reasons in a way that does justice to the seriousness of the litigation. Most litigation is a serious matter for those who are involved in it.

Although informality, brevity and all those sorts of things we have talked about for years in the courts and in this chamber are good, nevertheless fundamentally in the end people want to know why a decision has been given against them. Justice must not only be done but must appear to be done, and that often times takes more than just a short judgment and a rushing through of proceedings such as could be allowed by this legislation.

Recommendation No. 5 of the Labor members of the committee is that the Family and Federal courts be given a supervisory role over the process of the transfer of proceedings between those courts, the Federal Magistrates Service and the state Supreme Court. I have already dealt with who will be in control of litigation that washes around the system. A litigant should not have to be concerned about where his, her or its matter is going to be decided and should not have to chase his, her or its case through the system. A necessary way over that is to give the Family and Federal courts a supervisory role in where this litigation is, where it is going and who is hearing it.

Recommendation No. 3 of the Labor members of the committee is that the jurisdiction of the Federal Magistrates Court should not be determined by regulation. I have talked about that to some extent but, again, I would have thought it is self-evident that regulations are not the way to run law courts, particularly Chapter III law courts, and that, if there is an issue of jurisdiction or if there is an issue of where matters go, that should be clearly set out in the primary legislation itself. I would have thought that is self-evident.

Recommendation No. 2 of the Labor members of the committee is that the provisions giving the Federal Magistrates Court jurisdiction, under section 127, part 10A of the Workplace Relations Act 1996, for appeals from the AAT be deleted. I have spoken about the Workplace Relations Act and I think Senator Collins is going to talk about that, but I will say something about the Administrative Appeals Tribunal. The people who sit on the Administrative Appeals Tribunal are very highly qualified and very experienced. The Administrative Appeals Tribunal has done an excellent and outstanding job over the years. I think that to, as it were, demean the members of that tribunal by allowing appeals from them to a single magistrate is not acceptable, and it is the sort of thing that could easily be deleted from the act. It would be fitting, not only in terms of giving the proper credit and proper standing to the AAT but of getting justice done much better than is presently the situation. There are some other recommendations. Although my time has run out, I will have something more to say during the committee stage.

Senator JACINTA COLLINS (Victoria) (9.03 p.m.)—As has already been highlighted by Senator Cooney, my intention in this second reading debate is to focus on the industrial relations implications of this bill, as indeed did Mr Bevis, my colleague in the other house. I apologise to the Senate if my focus is on how certain aspects of this bill will undermine the jurisdiction of the Federal Court. This is similar to how various aspects of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999—soon to come before the chamber after our committee reports—have endeavoured to undermine the role of the Australian Industrial Relations Commission and its dealings with industrial relations matters. It is unfortunate that the government has brought this matter on quite so quickly today, because the management of government business in relation to our committee's report is such that we have got only about a day to prepare a minority report to their report in that area. Again, I apologise if I am somewhat focused on the government's attempt to undermine the Industrial Relations Commission and the Federal Court in the context of this other bill, which has also been referred to in discussions about this magistrates court bill.

Let me go firstly to the Labor senators' recommendation No. 2 in relation to the jurisdiction of the Federal Magistrates Service. This recommendation highlights the point that, whilst the establishment of the magistracy is something that we and the Democrats support as a general principle, in particular in relation to industrial relations matters we have some very serious concerns. They are serious to the extent that, if our proposals are not picked up, we will be moving some amendments.

I need to draw these provisions into a much broader context because, really, the small amount of discussion of matters of industrial relations in the context of this magistrates bill reflects the fact that the provisions in this bill are really part of the government's industrial relations agenda rather than the agenda associated with the establishment of the federal magistracy. I think the easiest way to highlight the way they relate to that agenda is to concentrate on the points that Mr Bevis made in the other place when this bill was debated. The consequences of the two bills will allow forum shopping on certain issues across three jurisdictions. Those three jurisdictions will be the federal magistracy, the state supreme courts and the Federal Court.

What areas are we looking at? We are not looking at some of the areas that have been highlighted in the inquiry that I have participated in on the second wave of the government's industrial relations agenda, such as the government's very limited and last resort approach to compliance with respect to entitlements for workers. No; the areas we are actually talking about are injunctive powers relating to industrial disputes under section 127 and the freedom of association provisions, which, if passed, would include the additional anti-union provisions of the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999. We are talking about only those two areas.

The main argument that seems to have been stressed in a variety of matters under this legislation is that delays in the Family Court and the Federal Court demonstrate the need for the magistracy to be established. But there is absolutely no evidence at all that this is necessary in the Federal Court's jurisdiction on industrial relations matters. In fact, there was no evidence at all before the Senate committee that looked at the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 with respect to the need to access state Supreme Court jurisdictions on those precise matters.

This is part of a government ideological agenda. It has nothing to do with delays in the Federal Court and the Family Court. It is actually an attempt to undermine the ability of the Federal Court to deal with sometimes very complex legal matters, and to undermine the authority of the court in much the same way as the government perhaps would like also to undermine the origin of the High Court. I am curious to see what develops in the future in the area of decisions that have been made on a number of industrial matters. I refer, firstly, to the waterfront or Patrick dispute where the government was seriously embarrassed about its activities. Secondly, the most recent example is the High Court's dealing with the constitutionality of the government restricting awards to 20 allowable matters. What is the government's response? The government's response is an attempt to curtail the jurisdiction of these courts and establish a junior magistracy to deal with matters when there is no demonstrated need around timeliness or access with respect to the matters that are being referred in industrial relations. There may well be a very good argument in relation to some Family Court type matters, but there is absolutely no argument at all in relation to industrial relations matters.

I want to highlight a couple of points which were made in Senator Greig's minority report because they are the very points that need further clarification. The first point is that the Australian Democrats say they are 'not opposed to the creation of a federal magistracy'. Labor agrees. They note the majority of submissions were 'of the view that reforms to overcome delays in the Federal Court and the Family Court are needed, but not on industrial relations matters'. They say they will 'pursue a constructive approach with the federal Attorney-General, and that of importance will

be measures that increase the capacity of the new jurisdiction to enhance access and equity, particularly as it pertains to'—I will concentrate on their list—'the proposed industrial jurisdiction'. If this government were serious about ensuring that they enhance access and equity with respect to the proposed industrial jurisdiction then the list of matters that jurisdiction would discuss would be much longer than, firstly, injunctive powers relating to industrial disputes under section 127 designed particularly to attack workers' bargaining positions and the role of unions and, secondly, the freedom of association provisions which, if passed under the current bill that the Senate committee has been addressing, equally would attack the bargaining position of workers.

How the Democrats have got into a position where they see the capacity of the new jurisdiction as being to enhance access and equity with respect to proposed industrial jurisdiction is well beyond me. I hope that is a position that they are giving some further thought to, because if the minister for misrepresentation, Minister Reith, has been running that argument by them they need to have their eyes well and truly opened.

The final point in the Democrats' report is that they are seeking clarification from the government on the proposed transfer provisions between the magistracy and the Federal Court jurisdictions. It is that last sentence that gives me some hope that the Democrats will precisely clarify the very limited scope that is being discussed here on magistracy and industrial relations matters and will see that it is definitely more clearly part of the government's agenda in relation to industrial relations that the Democrats have serious concerns about in other areas. I hope also their concerns in those other areas will include the parallel provisions that will allow for shopping across three jurisdictions. This is the government that prattles rhetoric about wanting one unitary system and yet, at the same time, if they are going to assist the bargaining position of employers—because we all know, according to Minister Reith, why the government are here and whose interest it is that they seek to represent—then the Democrats will want to look again very carefully when they are reflecting this rhetoric in relation to enhancing access and equity. I know that in many areas after their experience with the Workplace Relations Act 1996 their eyes have been opened somewhat, and I hope that caution will be expressed in relation to the matters in this bill as well.

I now want to look at some of the closer details. As I mentioned earlier, the legislation supplants the jurisdictional powers of the Federal Court. Almost all the experts—the 80 Labor lawyers that have put concerns in relation to the workplace relations bill—have said similar things in relation to the state supreme courts; that the undermining of the Federal Court is the real agenda here. The government has not appreciated some recent Federal Court decisions, in particular in relation to adopting our international obligations. The government does not seem to like to hear issues on our international obligations raised at all in relation to industrial relations. In fact, the government recently encouraged the situation where we must separate any connection at all in relation to international discussions on trade and international discussions on industrial relations. But the government's idea about what discussions really are is, 'Let's draw out dialogue as far possible, for as long as possible, so that we can pretend that our reform agenda isn't really what it's about. For instance, we are trying to extend consideration of the workplace relations bill even further while we're pretending that we're having dialogue that we're not really having.

Anyway, this is the situation that the government through this bill is seeking to enhance further as well. It continues to astound me that Minister Reith is able to get by with this rhetoric about establishing unitary systems when that is obviously what he is not doing. How on earth can you justify a reference to state Supreme Courts out of the federal system at the same time to a new federal magistracy while still the Federal Court has the same jurisdiction? It is simply messy public policy. The only real agenda can be to undermine the jurisdiction of the Federal Court, to undermine the bargaining

position of workers and to try to diffuse embarrassment created by issues such as the waterfront dispute when it is finally fully challenged through the courts. Again, this is what the government is about.

If you look at some of the evidence before our inquiry into the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 you will see examples of how the government is quite happy to encourage situations—despite general employer organisation concern—where you have workers locked out of their workplace for up to eight months before you get any determination out of the commission. How can that be access and equity?

While we are talking about access and equity, just look at the resourcing arrangements for the Australian Industrial Relations Commission. Its workload has probably at least doubled, but the resources made available to the commission have diminished significantly, to the extent that the government appointed president has raised these issues of concern recently. Again, I want to highlight that the issues of access and equity in relation to industrial relations need very different solutions to those proposed under this bill.

Speeding up the process in relation to other Federal Court matters and other Family Court matters through more complex matters going to the superior court judge, while others go to the federal magistracy, makes sense. But it does not make sense on the two issues that are being referred in relation to industrial relations. It makes no sense at all. As I have highlighted, if we were talking about general compliance matters—award compliance; workers getting redress for underpayment—then maybe access and equity for workers would be very important under those circumstances, particularly for non-union members.

But that is not what the government is about. That is not included in this. No, we are concentrating on those provisions which attack unions and undermine workers' bargaining power. That is all. There is no common interest argument here. There is no evidence here in relation to timeliness problems in relation to the two issues that the government has highlighted. There are, however, very strong arguments that those two matters actually require a high level of expertise in the complexity of the matters being addressed. Could you imagine a magistrate dealing with the Patricks dispute, for heaven's sake? Could you imagine a magistrate dealing with the constitutionality of 20 allowable award matters, which might be the next thing on the government's wish list? Of course not. So why allow that forum shopping in relation to these issues in the first place?

One thing that has not been addressed—and in fact the Democrats do not highlight it in terms of the clarification they want in respect of transferring provisions—is what role the Office of the Employment Advocate is going to have in this schema. Is the Office of the Employment Advocate actually going to be able to further matters to the federal magistracy? Is that intended here? The inquiry that we are in the process of completing has already raised serious concerns about the competency and bias of the Office of the Employment Advocate, which is the office that currently has responsibility for the freedom of association provisions. Let us extend it further: rather than moving those responsibilities to a body which is reasonably well-respected and regarded as an independent umpire, let us just give it to the federal magistracy. Let us see if we can pursue those matters further in that area, rather than through the commission and through the Federal Court.

When you are dealing with fairly complex matters, like these two IR related matters, introducing another jurisdiction is simply going to protract, rather than limit, the timeliness associated with various matters as they move through one jurisdiction to another. There has been no established reason—as to the nature of cases, the number of cases or the type of cases in these areas—why one would anticipate that a magistrate could resolve them. In fact, you could pretty much bet that ultimately nearly all of the cases that I am aware of would end up in the Federal Court, because of their very nature.

So timeliness and access are not being addressed. Equity is not being addressed in relation to industrial relations matters either.

The government would be much better off focusing on improving the role and capacity of the Australian Industrial Relations Commission to handle these matters, rather than through the federal magistracy. If the government were really genuine, it would be looking at broadening the matters that the magistrates could deal with, rather than taking its current approach—which the minister has put quite clearly in his directives—of last resort with respect to compliance in relation to workers' entitlements.

So we have the matters where the minister instructs his department that they only pursue compliance with respect to workers entitlements as a matter of last resort. But, if you focus on the two issues that we are referring to the proposed magistracy, you have much higher priority and you have three jurisdictions to shop around. Who do you think is going to be in the position to jurisdiction shop? Of course, it is not going to be individual workers; it is going to be those employers—and many are not in this category—that are prepared to go all-out to extend their bargaining position and work against the interests of workers generally.

Another issue that has been highlighted that is similar to the one in the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill 1999 is that of judicial competence or the establishment of justices, magistrates, commissioners, et cetera. We have a variety of concerns about the terms for commissioners under the workplace relations bill that are proposed for the commission but I note here the establishment of part-time magistrates, something that concerns us and also the Democrats. There was some very curious evidence before us in the committee on the Workplace Relations Legislation Amendment (More Jobs, Better Pay) Bill about some of the coalition's members and about the distinction between the judiciary. *(Time expired)*

Senator McKIERNAN (Western Australia) (9.23 p.m.)—At the outset of my speech on the second reading of the Federal Magistrates Bill 1999 I apologise that I was not here to hear the contributions by all of my colleagues on this very important piece of legislation. I would have particularly liked to be here when Senator Cooney, my partner in crime on the committee, gave his dissertation, but that is the way of things in this particular building: from time to time you are engaged in four, five or six things at once and you cannot be in all places at all times.

I do not want to—and hopefully I am not going to—cover ground that has already been covered by others. I note that Senator Bolkus, the lead speaker for the opposition on this bill, went into quite a deal of the history and the development of the legislation. The concept has been around for quite some period of time and Senator Bolkus, in his contribution, gave a very detailed dissertation on how it arrived, so I will not repeat that. I want to confine my remarks more or less to the minority report by the Labor members of the Senate Legal and Constitutional References Committee.

In doing so, I want to make some general remarks about the operations of the Senate committees and the process we go through in looking at legislation that is before the parliament, the Senate. It is a very valuable process which provides the community, interested groups, organisations and indeed individuals with the right to examine proposed legislation, come before a Senate committee to give their views on the record and allow their views to be tested by members of the committee.

The inquiry that the Federal Magistrates Bill was subjected to during the course of August was relatively short compared with other inquiries that committees engage in from time to time. We had only two days of public hearing, in Sydney and in Melbourne, but a diverse range of witnesses appeared before the committee on both days. For example, in Melbourne on 17 August the representative of the Victorian Department of Justice appeared. We then had the Chief Justice of the Family Court of Australia, and a number of his colleagues from the Family Court also appeared to give evidence.

The Law Council of Australia was represented by senior persons from that organisation, as indeed was the Law Institute of Victoria. The Victorian Bar Council also appeared before the committee and a dear

friend of mine, the Hon. Alan James Barblett, appeared in a private capacity. Alan was the former Deputy Chief Justice of the Family Court of Australia—a great West Australian who celebrated a birthday recently. He is undertaking an inquiry into the operations of Comcar and I would suggest that his experience on the Family Court of Australia is ideal preparation for him to conduct that inquiry. We look forward to his report on that in due course.

The Hon. John Fogarty also appeared before the committee, in a private capacity. John Fogarty is a former judge of the Family Court of Australia and was also very involved in the development of the child support scheme that we have in operation in our society. He was in charge of a review of the child support scheme, as I recall.

On Wednesday, 18 August again we had a diverse group of witnesses appearing before us: Centrecare Australia, the Child Support Agency, the Department of the Treasury, Family Services Australia and the Federal Court of Australia, who were very supportive of the provisions of the bill and were, I might say, in some conflict with the Family Court of Australia. It was interesting to get different views from two of the federal courts that operate within this country. Relationships Australia also appeared and, of course, representatives of the Attorney-General's Department, led by the Deputy Secretary, Mr Richard Moss, also attended.

The reason for going through all of those in length was not only to illustrate the opportunity that is there for the community as a whole to give evidence before Senate committees but also to illustrate that on this particular bill the witnesses came from very diverse areas of our society to give their views to a Senate committee on the operations of a somewhat controversial piece of legislation. Certainly we have dealt with much more controversial legislation in this place in the past and probably will do in the future, but there is some controversy about this legislation and quite diverse views, as I said, came from widely representative bodies in our society.

The committee, after hearing all of the evidence and while taking account of the 25 or so submissions that were presented to it, came to different viewpoints. The government members of the committee, although there was some disquiet expressed within the committee about some of the provisions and some of the ways that the Federal Magistrates Bill would operate, came forward with a recommendation that the bill be passed without amendment.

At the time, I found it quite peculiar because the Attorney-General's Department, when they appeared before the committee, said that their minds were open to some of the suggestions for amendment that were put forward to the committee in the public hearings. Without being critical of my colleagues on the committee, it was disappointing that they, as members of the committee, did not take those suggestions further and press the point with the Attorney-General and with the Attorney-General's Department for these suggested modifications to the bill.

The Labor members of the committee—Senator Cooney and I—have signed off on a quite detailed report, which stretched to some 15 pages by my account. I know it was a fair amount of writing at a time when we were under pressure from other areas as well. Our first recommendation states:

> The Labor members of the Committee recommend that the Bills not be opposed. However, we express our concern that the Federal Magistrates Court, as presently structured, will do little to address the problem of delays in the Family Court. In particular, it does nothing to address the underlying concerns about the administration and practice of the Family Court of Australia.

The establishment of the Family Court comes with some cost to the community and to the Australian taxpayer. It is estimated that almost all of the additional $27.9 million that has been allocated over the next four years to the Federal Magistrates Service will be translated into additional administrative costs. The report also states:

> Amongst other functions, the 16 proposed Magistrates will replace the 19 SES Band 2 Registrars currently provided by the Family Court and the $5

million a year expected to be transferred from the Family Court is evidently meant to cover their cost.

20. In short, the Government's proposal will cost the Australian taxpayer $27.9 million more but deliver 3 less judicial decision-makers—although in fairness to the Government, the Magistrates will exercise judicial power rather than the delegated judicial power currently exercised by the Registrars. It is difficult to conceive therefore how the proposal will reduce delays in the Family Court other than through marginal efficiencies gained in the handling of disputes in an abbreviated manner.

It is not an insignificant amount of money that parliament is considering here in the establishment of this service. If the service was going to deliver greater efficiencies in the Family Court of Australia, I think the Labor members of the committee might have been mindful to be quite laudatory in support of the proposal. Even the government members of the committee recognise this, and paragraph No. 34 of the opposition senators' report states:

Finally, the Report of the Government members of the Committee contains a frank admission that the average delay in proceedings before the Family Court is now 71.7 weeks. This figure is only slightly reduced from the record high of 72.2 weeks in June 1998.

35. These delays are a staggering 29 weeks longer than the Family court's performance standards and 12 weeks longer than when Labor was in office.

These delays are problematic for the people who are waiting to get a resolution to the difficulties that they are experiencing. I think there is an admission in government circles—and there certainly is within the Family Court itself—that the delays are of concern to all concerned and that things ought to have been done to reduce them. But, of course, there were massive cuts to the budget of the Family Court in budget year 1996-97, and the court itself has not yet recovered from those cuts. If the Federal Magistrates Service was going to alleviate those problems, as I said before, I think the opposition members of the committee might have been laudatory in their support of the provisions of the bill.

My colleague Senator Collins has addressed the concerns of the impact of the Federal Magistrates Bill 1999 on the Workplace Relations Act 1996. In order to save the time of the chamber, I will merely refer honourable colleagues to her comments and ask that they take them into consideration along with the minority comments from the committee from paragraphs 39 on, including the opposition senators' recommendation No. 2. In all, we have put forward some 11 recommendations to the Senate. We ask for consideration on each of them, and I think that consideration will happen when the Senate gets to the committee stage of the debate on the bill.

One matter I do want to refer to, because it did take up quite a deal of time and dialogue and was the subject of a series of questions, including, I might add, from government members of the committee, was the proposal for part-time magistrates, a concept which may have some merit but also could be extremely problematic. I think it was former Justice Fogarty who drew attention to the matter in the first instance.

Linked with the concept of part-time magistrates is the proposal that some of the magistrates will be based in rural areas of Australia. That is of merit in itself but, as I think Mr Fogarty pointed out again, a judge based in a rural area will come under even more community focus than will a judge who is based in a major capital city or in a metropolitan area of a capital city. If that person is also going to be employed only on a part-time basis, one can imagine what the individual may or may not be doing with the remainder of his or her time.

A matter we have not tested, quite frankly, in the report is the constitutional question that arises out of the appointment of a part-time magistrate. Is it within the terms of the Australian Constitution to allow for a person who is not fully engaged in the exercise of a judicial function? It will take greater minds than mine to address that particular question, but I think the committee—and I include myself in this—should have pressed that matter a little further.

However, that brings me back to the processes of the Senate committees. As it turned out, we were rather pressed for time, and the matter of the constitutionality of the appointment of part-time members was something we had intended to address. We were seeking

advice from one of the learned academics attached to the Australian National University. However, we did have a reporting date to get to as well. All senators can look at the *Notice Paper* to see the number of other matters on the agenda for the Senate Legal and Constitutional Committee. Unfortunately, we did not get to that but, hopefully, that can be deliberated upon in some detail during the committee stage of the bill. It is possible that the minister, in winding up the second reading debating stage of the bill, will refer to that but, if that is not the case, it will be referred to during the committee stage.

I had not intended to speak quite as long as I have. I hope I have not covered ground that has been covered previously by my colleagues. I commend the opposition senators' report to the Senate.

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

REGIONAL FOREST AGREEMENTS BILL 1998

Consideration of House of Representatives Message

Debate resumed from 20 October, on motion by **Senator Ellison**:

That the committee does not insist on its amendments to which the House of Representatives has disagreed, and agrees to the additional amendment made by the House of Representatives to the bill.

The TEMPORARY CHAIRMAN (Senator McKiernan)—The committee is considering message No. 322 from the House of Representatives in relation to the Regional Forest Agreements Bill 1998. The question is that the Senate does not insist on the amendments disagreed to by the House of Representatives.

Senator O'BRIEN (Tasmania) (9.40 p.m.)—Let me first say that the opposition has agreed to this matter coming on today, notwithstanding the fact that our spokesperson in the Senate, Senator Forshaw, is absent from the Senate today and will be absent until later this week. However, we have never taken a position which could or should be seen to be delaying the progress of this matter. Indeed, the point can be well made that, had the government not disagreed with the Senate's amendments to this bill, the RFA legislation would now be in place and operating.

It should be noted that, if the motion moved by the minister, Senator Ellison, were carried, this would involve the Senate backing down on all 15 amendments that it made to the bill in late August and early September. I want to take the Senate through the Senate amendments. The Senate committee stage consideration of the RFA Bill began on 25 August and concluded on 2 September. The debate was extensive and wide ranging.

The 15 successful amendments can be grouped as follows. Senate amendments Nos 1 to 3 inserted objects in the act consistent with the National Forest Policy Statement of 1992 and require RFAs to have regard to these objects. Amendments Nos 4 and 6 require RFAs proposed after 1 March 1999 to be subject to a limited process of public and parliamentary scrutiny. Amendment No. 5 requires all RFAs to provide structural adjustment packages for affected workers.

Amendment No. 7 requires the minister to establish a comprehensive and publicly available national forest database. Amendment No. 8 maintains oversight of RFA forestry operations in listed world heritage areas or Ramsar wetlands. Amendment No. 9 empowers the parties to an RFA to amend it provided they have consulted interested stakeholders. Amendments Nos 10 to 13 clarify the Commonwealth's potential compensation liability chiefly by linking compensation to actual losses arising from the curtailment of legally exercisable rights. Amendments Nos 14 and 15 require certain information about the commencement or amendment of an RFA to be published in the *Gazette*.

Without adequate explanation, the government has determined to reject out of hand every single amendment made by the Senate. By dismissing the opposition's valid concerns, the government's approach is hardly conducive to maintaining bipartisan commitment to the national RFA process. How can the government justify rejecting amendments to set up, for example, a forest database or to allow RFAs to be amended by mutual agreement, or requiring the text of an RFA to be published in the *Gazette*? When it seeks to

portray itself as the friend of the timber workers, how can it justify rejecting out of hand the Senate's amendments requiring RFAs to provide workers with structural adjustment measures to cushion the negative impact of reduced harvesting levels?

Equally, it must be said that the Senate has a responsibility to protect the interests of taxpayers by defining the Commonwealth's liability to pay compensation if it takes certain future action. Labor supports the concept of compensation if the Commonwealth takes such action but is concerned that the government's bill provides no specific basis on which compensation is to be determined. The government has failed to argue what is wrong with Labor's amendments to clarify these liabilities or to put forward any alternative of its own.

The key sticking points are clearly the objects clause and the provision for parliamentary scrutiny. No-one has successfully identified any aspect of the objects clause that is not part of the agreed national goals of the National Forest Policy Statement of 1992—goals that have been agreed to by the Commonwealth and states. No-one has persuasively identified any basis on which these objects could cause legal difficulties.

I turn finally to the provisions for limited public and parliamentary scrutiny. These provisions are not perfect because, frankly, the opposition has been forced by the government to consider this legislation in the middle of the RFA process with a number of RFAs signed, others in the process of being signed and others still at a relatively early stage of negotiation. These circumstances are not of Labor's making. Our amendments seek to give the parliament a limited role in the process, something that is not unreasonable for agreements that we hope can be sustained for 20 years.

While the government has engaged in scaremongering about our procedure, what alternative has it put forward? The answer of course is none. Whatever the government may say to the industry about security, let there be no ambiguity about what the government said in its statement of reasons for rejecting the Senate's amendments. In black and white the government has said, 'If there is a concern that RFA requirements are not being complied with, it is open to parliament to amend or repeal the bill.' Frankly, if that is the best advice the government can give the Senate, it should not be surprised should the Senate wish to stick with the opposition's proposals, which is far preferable in terms of a public policy position.

The government's stated position is: put in place a regime for the recognition of agreements, the exempting of certain areas from Commonwealth environment legislation, the establishment of agreements with a projected life of 20 years, the building of industry investment and the lives of forestry workers based on an understanding that this will be legislation which lives long enough to see those agreements met in full. But the government is saying, 'If the parliament in future is concerned about what we do now, amend the legislation or repeal it. Don't stop us from doing what we want to do.' What the government is saying—not directly in its statement but by obvious implication—is, 'Expose the Commonwealth, expose the taxpayers, to massive compensation if we get it wrong. Just close your eyes and let us do what we want. If we get it wrong, then the taxpayer can pay in the future.' That is what the government is asking of the opposition. That is what the government is asking of this Senate.

Progress reported.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being 9.50 p.m., I propose the question:

That the Senate do now adjourn.

Alice Springs to Darwin Railway

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (9.50 p.m.)—I am holding in my hand a very used copy of the 1937 report of the board of inquiry appointed to inquire into the land and land tenure industries of the Northern Territory of Australia. The inquiry was chaired by W.L. Payne of the Queensland Land Administration Board and J.W. Fletcher, who was a pastoralist. It is a fascinating document that I plan to use to

set the recent good news announcement of the Alice Springs to Darwin railway in context.

This project has a long history. Work commenced on the Darwin to Pine Creek railway in 1886 when the Northern Territory was still under South Australian control. This was to be the first section of the proposed north-south transcontinental railway. In accordance with the terms of the contract with the South Australian government, the contractors commenced by importing 300 Chinese and 150 Singalese and Indians. At the height of activity in 1887 'the Asiatic population increased by over 2,000, at one time nearly 3,000 being employed on railway work alone'.

The construction of this early railway had enormous social implications for the Northern Territory. It helped to transform the Territory into the cosmopolitan place that it is now and could also be seen as sowing the seeds of our close links with the Asian region. It is fascinating to speculate on the social implications that the current railway will have for the Territory, both in the construction phase and upon completion. Unfortunately time tonight does not allow this.

Let me return to the Payne and Fletcher report. The government took over the Pine Creek line in October 1889. It was extended in 1917 by the Commonwealth government to Katherine and further in 1929 to Birdum. On 1 January 1911, the Commonwealth assumed control of the Territory through the Northern Territory Acceptance Act 1910. A condition of the transfer was:

> That the Commonwealth, at some indefinite time in the future, should construct a transcontinental railway from Pine Creek southwards to a point on the northern boundary of South Australia.

I also note from the report:

> The Commonwealth undertook to benefit the trade of South Australia by constructing and operating a railway from Oodnadatta to the Territory (since completed to Alice Springs) so that production from the southern section of the Territory would go through Adelaide and other South Australian centres.

This quote shows how our perceptions have changed. The nation as a whole was insular and the people in the north only looked south for markets. Now we in the Territory have entered markets in many countries around the world, particularly in Asia, and look to maximise the opportunities that this railway will provide us for expanding those markets and entering new ones.

At the time of transfer, there was a total of 1,001 kilometres of transcontinental railway in South Australia and the Northern Territory. This consisted of the Darwin to Pine Creek and Port Augusta to Oodnadatta sections. The Commonwealth extended further sections in 1929 with the completion of the 471-kilometre Oodnadatta to Alice Springs line at a cost of £1,713,179, which is approximately $82 million in today's value, and the Darwin to Pine Creek railway at a cost of £1,431,488, which is approximately $68 million in today's value. It is interesting that the two projects together were three per cent of the then government expenditure.

From this very brief overview, it is obvious that the project has a long and interesting history. The Northern Territory government must be congratulated for the tenacity with which it has pursued the project since self-government in 1978. The unflagging desire and vision it has shown to develop this most important part of the infrastructure of the Territory is a testament to the hard work and commitment of several Chief Ministers but, perhaps most importantly, the work of former railway minister, Barry Coulter. The enthusiasm and energy which Barry Coulter has shown for over a decade to bring this project to fruition is amazing, and he must be very proud to see the railway so close to commencement. He bowed out of politics when it was certain that all that could be done to ensure the success of the railway was done. His task was complete, and there is no doubt he needed a rest.

The Labor Party reacted to the news of the railway announcement in their usual predictable fashion. After a grudging welcoming of the news, it was negative carping. The Labor Party in the Territory and their mates in Canberra have no vision or policies of their own and can only resort to attacking federal government decisions and actions that benefit the people of the Territory and the nation as a whole. It is time Labor developed some

policies, and it is also time that they stopped talking down projects that stand to benefit Territorians.

Let me briefly outline the scope of the project and show how greatly this enormous development will benefit the Territory. The Northern Territory government will contribute $165 million. The South Australian government will contribute $150 million. The federal government financial commitment of $165 million, in addition to leasing the Alice Springs to Tarcoola section of the track at nominal cost to the successful consortium, is a sign of the Commonwealth's vision and commitment to the project. I commend the federal government for this. The total government contribution, out of an estimated $1.23 billion cost of the project, is $480 million. The successful tenderer for the project, the Asia-Pacific Transport Consortium, will contribute the remaining $750 million.

Construction will commence in May 2000 and should be completed by mid-2003. The railway will be 1,410 kilometres long and the approximate cost per kilometre is $872,000. The detail of contractual arrangements should be signed off with the private consortium by Christmas. By March 2000, the financial arrangements will be finalised. It is anticipated that, at the peak of the construction phase, there will be 7,000 new jobs generated in construction, associated areas and spin-off industries. The Northern Territory and South Australia will benefit from having at least 70 per cent of the project expenditure spent in local economies. Access Economics has calculated that employment will be boosted nationally by 17,000 people and that GDP will increase by $9 billion over the next 25 years.

There are other benefits that are not solely economic. The railway will have strong environmental benefits, with estimates of an annual average of 40 million litres of fuel being saved and a consequent reduction in carbon dioxide emissions of 100,000 tonnes annually over the first 50 years. The tragic events in East Timor and the necessarily increased focus on defence and strategic issues relating to Northern Australia, and Darwin in particular, have highlighted the importance of the railway for Australia's future capability. In the tourism area, there has already been a strong expression of interest from the operators of the *Ghan* to extend their service to Darwin. Imagine a rail journey from Sydney to Darwin—it would most definitely be one of the great train journeys of the world.

The project is a symbol of the attitudes of the Northern Territory Country-Liberal Party government and the federal Liberal-National Party coalition government to development. It shows the can-do attitude of the two governments and their willingness to undertake tasks that, whilst they may be difficult and of great magnitude, are necessary and of vital importance to the nation. The Prime Minister, John Howard, and the Deputy Prime Minister, John Anderson, both endorsed this new great railway commitment and vision at this month's significant rural summit.

The Northern Territory, South Australian and federal governments have now not succumbed to Labor's negative carping regarding the railway but have worked hard to finalise a dream—a dream that will see benefits to Territorians for generations to come. This project is about creating infrastructure for the Territory and for the nation. It shows that there are politicians and governments who are courageous enough to have vision and shrewd enough to see that vision implemented. When the railway is completed in 2003, it will be the final link in a chain that binds all the capital cities of our country in a ribbon of steel.

Dairy Industry: Deregulation

Senator O'BRIEN (Tasmania) (9.59 p.m.)—I want to address my comments this evening to issues relating to the deregulation of the dairy industry. Last week, I met with dairy farmers in Smithton, Devonport and Scottsdale in Tasmania. The meetings I attended were organised by Mr Brendon Thompson from the Tasmanian Farmers and Graziers Association. I understand he is the president of the dairy branch. The meetings provided me with the opportunity to talk to farmers directly about the evidence taken by the Rural and Regional Affairs and Transport

References Committee on the impact of deregulation on the dairy industry.

I consider it important that I met with Tasmanian dairy farmers and discussed the committee's conclusions and the recommendations the committee made to government. Senators Calvert and Watson were both invited to attend those meetings to talk to farmers. Unfortunately, neither was able to attend any of the meetings. I say 'unfortunately' because the federal government was the subject of criticism at those meetings by a number of farmers, and if Senators Calvert and Watson had been there they could have provided Minister Truss with some direct feedback.

The farmers at those meetings raised a number of issues. Their main concern was lack of certainty about the future of their industry. A number of farmers said they had sought advice on the status of the Australian Dairy Industry Council package but could not get a straight answer. A number of sharefarmers at those meetings asked whether they would be entitled to assistance through the Australian Dairy Industry Council package. The answer was basically, 'We don't know yet. We're still talking to the government about the detail of the package.'

It is clear that, despite the fact that the dairy industry is our third largest rural exporter, the Howard government is not prepared to assist it to manage further deregulation. If the government had been doing its job properly, there would be a plan in place to manage the end of the domestic market support scheme well before now. Such a plan, involving both the industry itself and all the states, should have been settled last year. That would have ensured that Australian dairy farmers would have been able to plan their futures in an orderly manner. If some farmers wished to leave the industry, they could plan for an orderly exit. If some farmers wanted to take the opportunity to expand their operations, they could also plan with some confidence. The settlement of a clear plan for the industry would also mean that banks would have a clear view of the industry and its future. In this regard, the government failed. Not only did it fail to have a proper plan in place for the dairy industry in 1998 but it appears that it will not have any sort of comprehensive plan in place for 1999.

It is important to note that the domestic market support scheme ends on 30 June next year. That has been known since 1995. The demise of that scheme is now about only seven months away. The Australian Dairy Industry Council provided the government with a plan to help the industry manage the impact of further dairy deregulation in April this year. There was no response from the Howard government until the end of September. We are now up to 22 November and, as I said, we are still a long way from settling a number of key issues.

It is clear that the government's view on this matter is very much one for the industry to deal with itself. Once the government finally ticked off the amended ADIC package, the industry was told by the government that the industry had to go to the states and convince them of the merits of the plan. It is my view that this is very much the responsibility of the Howard government. That was the view of the committee, and I am sure it is the view of the industry. That is the basis for the committee's first recommendation in its report. Recommendation 1 calls on the government to set up a meeting as a matter of urgency with all state ministers responsible for not only the dairy industry but also regional development. The decision of the new Victorian government to hold a plebiscite of dairy farmers in that state to determine their views about the future structure of the industry has been used as a reason to delay such a meeting. The plebiscite is to be completed by 20 December. Regardless of the merits of that argument, it is vital that such a meeting take place before Christmas.

One of the key topics to be considered at that meeting must be the regional implications of the further deregulation of the industry. It is essential that the federal government and the states have in place regional assistance packages before the end of the DMS and before the end of state regulation—if indeed that happens by 30 June next year. The regions that will be adversely affected by the changes—and there will be a number of

them—must be properly informed as to how they will be affected and what level of support they will receive from governments well before deregulation occurs.

I am sure that Senator Macdonald would agree that the management of the regional effects of legislative changes, such as those planned for dairy farmers, is clearly the responsibility of government and industry. This presents an important test for the Deputy Prime Minister, Mr Anderson. After the hoopla of the recent rural summit, if he fails to properly provide for these communities he will be held accountable, as he should be.

A number of farmers raised with me concerns about the impact of the levy, which will be imposed on milk to cover the cost of the adjustment package, on their returns. That is the levy which is part of the Dairy Industry Council package, which the government finally signed off in an amended form earlier this year—not much earlier, I must say. The farmers I mentioned were concerned that they would meet the full cost of the levy in the form of lower farm gate prices for their milk. They said that it was impossible to tell how returns from milk were distributed among the various sectors of the industry.

This is an important matter, and it was addressed by the committee. We recommended that the Australian Competition and Consumer Commission monitor costs and prices in the dairy industry so that dairy farmers are not unfairly burdened with the cost of the proposed levy. That is a matter for the Treasurer, Mr Costello, to deal with, and I hope that he refers this matter to the ACCC in a timely manner. Farmers attending the meetings in northern Tasmania raised concerns about the operations and accountability mechanisms of cooperatives. Those concerns were also raised during the dairy inquiry, and the committee has recommended that an investigation take place. I plan to follow through on that matter at the earliest opportunity.

In conclusion, governments are usually very slow in responding to recommendations from Senate committees. I would hope that in this case Minister Truss, Minister Anderson and the Treasurer, Mr Costello, are quick to respond.

Senator McGauran—Are you for or against it?

Senator O'BRIEN—We are now within months of a further and significant change in an industry that exports about $2 billion worth of product each year. It is an industry, certainly in Tasmania and Victoria, that can rightly claim to be the most efficient in the world. It will be tragic if the Howard government simply ignores its responsibilities to the dairy sector and fails to offer the support the industry needs. Can I say, through you, Madam President, to Senator McGauran that if he had bothered to read the report, he would know precisely the position of the opposition. It is a unanimous report signed off by members of the government and the opposition that states very clearly our position on deregulation. If the senator is not aware, perhaps he ought to read the report.

Republic Referendum

Senator SCHACHT (South Australia) (10.08 p.m.)—I rise to speak on this adjournment debate about the recent referendum on the republic. I do not know whether the parliament will have an opportunity to have a more formal debate about the referendum and its outcome within the next three weeks—I suspect not. Those of us who supported the yes case have supported for the last decade Australia becoming a republic. We should place on the record some comments and observations about the campaign.

Senator McGauran—Are you accepting it?

Senator SCHACHT—No, I will not accept the result. I will continue to campaign for an Australian republic. I made it clear before that, if the referendum was defeated, I would continue to campaign, because I believe it is the correct position—just as, in the 1890s, I am glad that some politicians, some leaders of our country and certain state premiers did not accept the first defeat on Australia becoming a nation of our own. If they had accepted the defeat of the first referendum, we would not have become the Commonwealth of Australia by 1 January 1901.

There were at least three different referendums during the 1890s. So I make it quite clear to those opposite who support the constitutional monarchy that many of us will continue to campaign. I am very pleased that Kim Beazley, the leader of the Labor Party, has made it very clear that he will go to the next election with a program on the issue of progressing the debate on Australia becoming a republic. I believe that will again be a significant issue—not a major issue but one of the issues on which the people of Australia at the next federal election can compare the Labor Party led by Kim Beazley looking forward into the 21st century with the present Prime Minister looking backwards to the 19th century.

If John Howard had been around in the 1890s, I suspect he would have voted against having a Commonwealth of Australia. It is a great shame that the only thing that John Howard will be remembered for in 10 years time is the fact that he voted no and supported a constitutional monarchy continuing in Australia. In 10 or 15 years time, most Australians, 90-plus per cent, will be incredulous that the then Prime Minister in 1999 campaigned against Australia becoming a republic.

As with all those other leaders in the coalition and elsewhere in the community who campaigned against Australia becoming a republic, that is probably the only record they will ever be remembered for. What a negative record it will be. Senator Minchin will be remembered only for his contribution of saying no—as will Tony Abbott and Bronwyn Bishop. They will be remembered only for saying no. What a disappointing record for succeeding generations: the only notable thing these people did was to delay Australia becoming a republic under the guise of the leadership of the present Prime Minister.

After the referendum result, I was very pleased to see that public opinion forced the Prime Minister to acknowledge that one of the little scams he was up to—that he was going to open the Olympic Games—came unstuck. Many of us publicly said, 'You can't have it both ways. If you want to have a constitutional monarchy in Australia, the head of state is the Queen. Under IOC rules, she should open the Olympic Games and, if you want an Australian to do it, it should be her representative in Australia, the Governor-General.' After several days of the Prime Minister looking exceedingly seedy and sleazy on this issue, he finally gave in.

The PRESIDENT—Senator, that is not an appropriate way to express that. I would ask you to withdraw that.

Senator SCHACHT—What, 'seedy' or 'sleazy'?

The PRESIDENT—Both. You can express yourself using quite different language.

Senator SCHACHT—In the end, the Prime Minister had to ignominiously withdraw from the little scam he was trying to pull.

The PRESIDENT—Senator, I do not regard that as parliamentary language.

Senator SCHACHT—What, 'scam' or 'ignominious'?

The PRESIDENT—The whole way that you are casting aspersions on a member in another place.

Senator SCHACHT—In deference to you, Madam President, I will withdraw. But the Prime Minister has ignominiously been defeated on that issue, and so he should have been. It is a great pity that we will not be able to use the opportunity at the opening of the Sydney Olympic Games next year to have a new President of Australia, showing that Australia has taken a significant step forward, opening the Olympic Games. What a wonderful message, what a wonderful image and what a wonderful development that would have been. But, through the effort of this Prime Minister and his supporters, that has been defeated in one of the most scurrilous campaigns.

What was the image they used? 'Don't trust a politician.' That was the campaign. Senator Minchin says, 'Don't trust a politician.' He is a politician. He is actually saying, 'Don't trust me. I've been elected to this parliament, but you cannot trust me as a member of parliament to make a decision on who is to be the head of state.' John Howard in effect said the

same; Bronwyn Bishop said the same; Tony Abbott said the same. Senator Boswell said the same—but, to give Senator Boswell his due, he was a genuine monarchist, rather than a promoter of this sleazy campaign, this sleazy idea that you can defeat the referendum by saying, 'Don't trust a politician.'

I have to say that at the next election we will throw that back at Mr Howard, Senator Minchin, Tony Abbott and Bronwyn Bishop. We will say to the people, 'You are dead right: you cannot trust those four. They have said it themselves. It is self-incrimination that they cannot be trusted.' We will use that in the next election campaign and I bet you that the Australian public will take great delight in saying, 'Well, there are four people whom we want to give the big heave-ho to.' They have admitted themselves that they cannot be trusted. But the denigration of this parliament by those four people is disgraceful. You cannot in the end expect people to believe in the parliamentary institution and in parliamentary democracy when four of our significant parliamentary leaders go around saying, 'We cannot be trusted. The politicians cannot be trusted.' It is a disgraceful effort on their part.

At least some people did argue that they supported a constitutional monarchy as a better symbol than having an Australian President and did not get down into the gutter with the idea that you cannot trust a politician. That is actually giving succour to One Nation and all that they stand for. That is what they campaign on, as do all those other rabid elements on the right. 'Do not trust a politician'—that is what Pauline Hanson always said. She said, 'I am not a politician. I am a member of parliament, but I am not a politician.' She tried to separate herself from that role. We had four members of the coalition government making that same point, and I think it is a disgraceful one. I also have to say that I think it was a disgraceful effort on the part of those direct electionists, such as Phil Cleary, Ted Mack and others, who argued that they got into bed with the constitutional monarchists to help defeat the referendum.

I want to conclude on this issue by commenting on the lack of leadership and the hypocrisy of this government and this Prime Minister. Many of us who campaigned in the sixties, seventies and eighties to end apartheid in South Africa have found it very odd to see our Prime Minister, who in the seventies and eighties totally opposed the imposition of any sanctions on South Africa to bring about the end of that evil regime of apartheid, in South Africa, as large as life, offering an Order of Australia to Nelson Mandela. He did say something that we would agree with: that Nelson Mandela is now one of the great figures of the 20th century. But there is John Howard, who only a decade ago said that there was no need to put sanctions on South Africa. If we had followed his advice in the mid-eighties, Nelson Mandela would probably still be in jail, the then racist regime would probably still be in power and there would have been a lot more loss of life among black Africans who were trying to get democracy in their country.

I have to say that it is the height of political hypocrisy for the Prime Minister to then stand up and offer an Order of Australia to Nelson Mandela. I do not begrudge Nelson Mandela having any honour from Australia, but I do question its being given to him by this Prime Minister because, if he had had his way in the eighties, Nelson Mandela would still be in jail. For him to then get up and proclaim, I suspect, some little publicity advantage for himself is disgraceful. In the last month this Prime Minister has shown a complete lack of leadership, vision and ethics or morals concerning how this country ought to be governed and how the Australian community should understand the way that this country should be going forward into the 21st century. *(Time expired)*

Innovation Investment Fund

Senator LUNDY (Australian Capital Territory) (10.19 p.m.)—I rise tonight to reflect upon an article that was published on Tuesday last week in the *Australian*. The headline implied that the government had some capacity to realise a large windfall gain as a result of an investment of $2.2 million in an Innovation Investment Fund licensed

venture capitalist. I reflect on this on the basis that this particular story was published in the midst of the Australian Venture Capital Association conference in Melbourne, at which we had a number of international guests, as well as a gathering of the venture capital community, to discuss a range of issues. But my concern really stems from the irresponsibility of the minister's office—that is, with the way that it put forward information about this alleged windfall.

The story went along the lines that the value of the company invested in by that particular fund with a licence under IIF—which was AMWIN—had realised a significant capital gain and that, because of the government's initial investment of $2.2 million, somehow the government stood to gain $278 million from that investment. A government spokesperson quoted in this story said—in response, I presume, to the journalist's questions—that the government would consider how they were actually going to cash in their shares or realise their investment. The implication of this, of course, was that somehow the government had the capacity to realise their investment. I think that is patently false and that statement requires an urgent clarification from Senator Minchin's office.

There are two issues here. First, there is the structure of the Innovation Investment Fund, the IIF, and how those funds work with the government putting in a two for one public dollar on investments to get those funds started. Secondly, there is the ability by which the participants in those funds actually realise their returns after a period of time. On the first point, the structure of those funds is such that the government does provide a $2 for $1 investment. In this case, I think it afforded up to $28 million in public funding for this particular investment. The company that had such a phenomenal gain over a period of time was LookSmart. Australian entrepreneurs Tracey Ellery and Evan Thornley have achieved a great success with their innovative ideas and received a number of awards here in Australia—Internet awards, export awards, venture capital awards and general recognition for their entrepreneurial spirit and great success with their Internet company LookSmart.

The government's claim that it somehow had access to the windfall gain experienced by the fund that backed this company in the first instance is absolutely ludicrous. The headline itself was misleading to the whole investment community because it implied in some way that the government had the capacity to withdraw from that investment basically at its discretion. The bottom line is that the government had no capacity to do that. The implication from the minister's office, I believe, put the IIF scheme into a position where it reflected badly on the government, and very badly on the minister's office, because it presented, very painfully for the minister, a very high level of ignorance about the way that scheme operated.

The other issue for the government is that it was not going to realise those types of gains at all. What it was talking about in terms of the $278 million was, in fact, the overall return to that particular fund of which the government had a proportion of the interest. With the way the IIF works, I presume the minister's office either was aware of it and was choosing to mislead the journalist in the hope of a bit of a good news story or, in fact, was painfully ignorant of it and just did not know the story at all when asked the question.

In fact, after a period of escrow, the government gets back its original investment in the Innovation Investment Fund, the licensed venture capital fund. On top of that, it gets something like a long bond rate for that investment, as one would get with any public investment, which I think is sitting at about 6.25 per cent. In addition, under IIF, the government gets a 10 per cent return. So the maximum return the government would get is its complete initial investment, plus 6.25 per cent, plus 10 per cent. That is a long, long way short of the claimed return implied by the minister's office in this article.

It is worthwhile reflecting on those two points: (1) the figures quoted in the article were absolutely inaccurate; and (2) the implication that the government had somehow the capacity to realise any return on its invest-

ment before the required period of escrow and subsequent delays required by the licensing terms of the IIF was inaccurate. From a political point of view, it was absolutely outrageous and irresponsible, but it was also a shame. It was a shame because it did not reflect well on the efforts of so many in the Australian community to bring our venture capital industry to a position where we can benefit from some of the economic growth that is occurring in new technology industries, and particularly in the information technology area.

At this point what seems to have happened is this: the government saw a good news story—and let's face it, what LookSmart has been able to achieve is quite incredible. As an Internet company having gone public, its share price has skyrocketed and there have been phenomenal returns for all of the early investors. Here we have a government that has decided, 'Hey, let's be a little strategic here and hang off the back of this good news story at a strategic time.' The only problem is that the minister's office got it painfully wrong; they got their facts wrong and they got their figures wrong. All of that was there in the newspaper in the computer section for the investment community to see.

This is not a good look for the Australian government. It is not what the Australian community needs in terms of a program that ostensibly is heading in the right direction in terms of promoting investment in this area of seed and early capital for innovation companies. Yet at this stage we have not seen anything—certainly I have not seen anything—where the minister has sought to clarify the misconception that his office so actively supported.

Certainly it is nothing new for this government—and I am sure that many other governments have done it as well—to want to hang off a good news story or claim credit in some way for the success of a couple of highly focused entrepreneurs, but perhaps it should do so with a little more care. Perhaps the government should do it in consultation with those other original investors. Perhaps it should ring the department in the first instance to find out the terms and conditions of that original investment. Perhaps it should pick up its own document of its own program and read the terms and conditions of the investment and how it will realise those returns. That would be acting responsibly. It certainly would have ensured that the misinformation presented in this particular article would not have got out.

I would like to convey to the minister my concerns and those of many who saw that article and queried what capacity the government had to withdraw its investment at that very early stage, when the whole point of it was to encourage a form of patient capital for these early investments. I would ask the minister to clarify precisely what the terms and conditions are with respect to IIF licence program investments by governments; what exit strategy at the time was, and now is, available to government investment; and, indeed, in this case just what the return to government is. And I would ask that those particulars be made public. Until the government does that, this will remain a shameful exercise of the government hanging off the success of a couple of remarkable entrepreneurs and those who had the vision and foresight to invest in this company at an early stage, which has allowed them to grow in the way that they have.

Republic Referendum

Senator McGAURAN (Victoria) (10.29 p.m.)—I just want to pick up, in the brief time available, some comments made tonight by Senator Schacht about the result of the referendum held some weeks ago in this country. Talk about sore losers, with the sour speech coming from Senator Schacht. We are used to hearing some sour speeches coming from Senator Schacht, but tonight he has certainly taken the cake. He simply was not willing to accept the result, as I believe the constitutional monarchists would have accepted the result. Here we have the prime example of someone who represents so many who, from the time the result came in on Saturday night, have not been willing to accept the result of the Australian people and this country's democratic processes. You just do not get much worse than that.

He claimed that the constitutional monarchists have brought disgrace upon the parliament. What of the other side who are not willing to accept the result of a referendum on our constitution? You cannot get any higher democracy than that and we as parliamentarians have to accept that. But he and, as he says, the many he represents do not. Talk about learning nothing and being bound to make the same mistakes again should there to be a constitutional referendum down the track. And talk about the disgrace—that is the word Senator Schacht threw around this parliament so freely this evening towards the Prime Minister and any other constitutional monarchist like my good friend Senator Minchin and others—in not accepting the most basic, important and serious democratic process that we have in this country.

I admit that the slogan 'Don't trust politicians' is not something that I would have thrown up necessarily, but to think that that was the turning point is, again, to not learn the lessons of this referendum. They have learnt nothing. Look at the results that came in on Saturday night, Senator Schacht, and you will see that although that petty slogan may have rung a bell with some of the voters, it was not the reason the referendum was lost. The results were telling: not one single state supported the referendum. And this is the most telling point: not one single rural, country or regional seat supported the referendum throughout the whole of Australia. Not one Labor Party seat voted yes on the referendum—not one traditional blue-collar Labor Party seat—bar Victoria where some did. However, it should be noted for the record that Victoria was a no vote state. Many on the night and days after tried to claim that Victoria was the only yes vote state; but, in the end, convincingly enough, it was a no vote state.

Look at the results. One of the primary reasons from a federal electorate seats analyses of the vote was that people saw this as a chardonnay republic. That is one of the key reasons why it lost. Look at the Labor vote: Labor supporters would not vote yes on this republic. The country vote would not vote yes on this republic, but the North Shore seats in Sydney voted yes. More than anything else—it was not a single factor—the Australian people saw it as a chardonnay republic. It got off to a bad start years ago when Mr Keating put it up, and it went downhill from there when Mr Turnbull took over the campaigning. The whole approach of the campaign from Senator Schacht and the republican side is where it all faltered. It did not falter from that single 'Don't trust the politicians' slogan. There were other reasons, and the chardonnay set republic was one of the main reasons.

There was another slogan which was very effective in the minds of the public: 'If it isn't broken, don't fix it.' To me that was the winning slogan that had the most telling effect amongst the voters in what was for most a very difficult decision. However, once the decision was made 55 per cent of Australians voted no to a republic. Many were doubtful right up to the election day. We have a political culture in this country envied by others in the world, and the slogan 'If it isn't broke, don't fix it' played most in the minds of the voters on election day.

There were deceptions on the other side, Senator Schacht. The republican side ran big deceptions, none more than the Australian flag, but it did not fool the Australian people. They knew that once a republic was up, the Australian flag was gone—pretty simple—and they wanted to keep their existing flag. That was another reason they voted the referendum down. We saw frequently on television an intelligent analysis of the whole argument. All Australian voters had access to the arguments and to the debates, and I do not doubt that there was an intelligent analysis that they simply did not want this republic at all—a republic that was going to bring in 69 changes to the constitution. They thought that was all too much at this time.

Senator Schacht, your simplistic and embittered analysis—

The PRESIDENT—Senator, your remarks should not be directed directly to Senator Schacht. They should be directed to the chair.

Senator McGAURAN—Let me say, through you, Madam President, to those on the other side: the coalition had a free vote on this matter. This was another very important

play in the whole analysis on the referendum night. It was quite evident that some on this side supported the constitutional monarchy and others did not. There was a bit of rough and tumble between the coalition and between members of the Liberal Party. It was a vigorous, honest, open debate; it was worthwhile having and we should do it again.

But the other side did not have a free vote, and that played out in the electorate too. They did not trust the other side because they knew that they were party to the biggest deception of all in that many in their ranks were actually constitutional monarchists who wanted to keep the existing system because it maintained a very safe and envied political culture. They did not trust the claim that you were being honest with the Australian people. So when you talk about 'Don't trust politicians', I would say, 'Don't trust your side because you never gave a free vote on this; you were never up front and honest about the intentions of individual politicians.'

This was not a matter for party politics—you should have allowed a free vote. So do not talk about a dishonest approach and, as Senator Schacht attempted to do, single out one person—the Prime Minister—as if he could have turned the whole tide on this vote and turned the Australian public against a republic. The point is that he was honest from the start. He was consistent from the start. As Prime Minister he gave the Australian people a chance in a referendum to make their own decision. He never varied from his position. I do not know what you are talking about, Senator Schacht, other than that you are being sour and do not accept the result.

In regard to the Prime Minister stepping down from opening the Olympics, he did that graciously because he knew only too well that that would have become a political football. He did not stand on his pride in this matter so the games would be kept free of politics—at least from a federal point of view—and so all could enjoy it as a non-political event. It is truly a great Australian event to which we look forward. In conclusion, much of the deception, much of the stuff-up, was in the republican campaign camp, Senator Schacht.

Senate adjourned at 10.38 p.m.

DOCUMENTS

Tabling

The following documents were tabled pursuant to the order of the Senate of 1 December 1998:

Public servants—Accountability, rights and responsibilities—Statements of compliance—Department of—

Defence.

Education, Training and Youth Affairs.

Foreign Affairs and Trade.

Health and Aged Care.

Veterans' Affairs.

The following documents were tabled by the Clerk:

A New Tax System (Goods and Services Tax) Act—Regulations—Statutory Rules 1999 No. 245.

Aged Care Act—User Rights Amendment Principles 1999 (No. 2).

Agricultural and Veterinary Chemicals Code Act—

Order—Statutory Rules 1999 No. 242.

Regulations—Statutory Rules 1999 No. 247.

Australian Prudential Regulation Authority Act—Regulations—Statutory Rules 1999 No. 246.

Australian Wool Research and Promotion Organisation Act—Regulations—Statutory Rules 1999 No. 273.

Civil Aviation Act—Civil Aviation Regulations—

Amendment of section—

20, dated 15 October 1999.

29, dated 25 October 1999.

Civil Aviation Orders—

Exemptions Nos CASA 35/1999, CASA 36/1999, CASA 38/1999, CASA 39/1999 and CASA 40/1999.

Instruments Nos CASA 1028/99, CASA 1029/99 and CASA 1045/99.

Directive—Part—

105, dated 27 and 29 September 1999; 1, 5, 7 [3], 8, 11 [2], 14 [2], 15, 22 [6], 23 [2] and 27 [2] October 1999.

106, dated 5, 15 [4], 22 and 23 October 1999.

107, dated 7 October 1999.

Statutory Rules 1999 No. 262.

Corporations Act—Regulations—Statutory Rules 1999 No. 237.

Customs Act—

CEO Instruments of Approval Nos 11-31 of 1999.

Regulations—Statutory Rules 1999 Nos 248-250, 270, 274 and 275.

Defence Act—

Determinations under section 58B—Defence Determinations 1999/41-1999/48.

Regulations—Statutory Rules 1999 No. 235.

Department of Health and Aged Care—Letter advising implementation of the *Health Legislation Amendment Act (No. 2) 1999*, dated 4 November 1999.

Endangered Species Protection Act—Declaration under section 18 amending Schedule 1—99/ESP8.

Excise Act—Regulations—Statutory Rules 1999 No. 265.

Financial Management and Accountability Act—Regulations—Statutory Rules 1999 No. 272.

Fisheries Management Act—Northern Prawn Fishery Management Plan 1995—Direction No. NPFD 29 (Amendment of Directions Nos NPFD 24 and NPFD 25)

Great Barrier Reef Marine Park Act—Regulations—Statutory Rules 1999 No. 252.

Health Insurance Act—Regulations—Statutory Rules 1999 Nos 254-258.

Jervis Bay Territory Acceptance Act—Administration Ordinance 1990—Fees Determination No. 1 of 1999 [Electricity supply].

Migration Act—Regulations—Statutory Rules 1999 Nos 243, 259 and 260.

National Health Act—

Determinations under Schedule 1—IHS 16/1999-IHS 18/1999.

Regulations—Statutory Rules 1999 No. 236.

Navigation Act—Marine Orders—Orders Nos 16 and 17 of 1999.

Occupational Health and Safety (Commonwealth Employment) Act—First Aid—Approved Code of Practice for First Aid in Commonwealth Workplaces—1999—OHS—BK- 16.

Passports Act—Regulations—Statutory Rules 1999 No. 253.

Patents Act—Regulations—Statutory Rules 1999 No. 261.

Primary Industries (Customs) Charges Act—Regulations—Statutory Rules 1999 No. 266.

Primary Industries (Excise) Levies Act—Regulations—Statutory Rules 1999 No. 267.

Primary Industries Levies and Charges Collection Act, National Residue Survey (Customs) Levy Act and National Residue Survey (Excise) Levy Act—Regulations—Statutory Rules 1999 No. 269.

Primary Industries Levies and Charges Collection Act, Primary Industries (Customs) Charges Act and Primary Industries (Excise) Levies Act—Regulations—Statutory Rules 1999 No. 268.

Privacy Act—Credit Reporting Determination 1999 No. 1.

Product Rulings PR 1999/98-PR 1999/101.

Public Service Act—

Australian Agency for International Development Determinations 1999/4 and 1999/5.

Foreign Affairs and Trade Determination 1999/19.

Public Service (Defence) Determination—

1999/8, Overseas Conditions of Service (Public Service (Defence) Determinations 1999/1 and 1999/7—Amendment).

1999/9, Overseas Conditions of Service (Public Service (Defence) Determination 1999/1—Amendment).

Public Service Determination 1999/6.

Senior Executive Service Retirement on Benefit Determinations 1999/58-1999/61.

Radiocommunications Act—

Radiocommunications (Transfer of Licences) Determination No. 1 of 1995 Amendment 1999 (No. 1).

Regulations—Statutory Rules 1999 No. 271.

Sales Tax Determination STD 1999/6.

Superannuation Act 1976—Declaration—Statutory Rules 1999 No. 263.

Superannuation Act 1990—Declaration—Statutory Rules 1999 No. 264.

Superannuation Contributions Determination SCD 1999/6.

Superannuation Industry (Supervision) Act—Regulations—Statutory Rules 1999 No. 239.

Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act—Regulations—Statutory Rules 1999 No. 240.

Superannuation (Self Managed Superannuation Funds) Taxation Act—Regulations—Statutory Rules 1999 No. 241.

Sydney Airport Curfew Act—Dispensation granted under section 20—Dispensation No. 13/99.

Sydney Airport Demand Management Act—Slot Management Scheme Amendment Determination 1999 (No. 1).

Taxation Determinations TD 1999/46-TD 1999/63.

Taxation Ruling—

TR 97/12 (Addendum).

TR 1999/15.

Telecommunications Act—Telecommunications Numbering Plan Amendment 1999 (No. 3).

Telecommunications (Carrier Licence Charges) Act—Determination under paragraph 15(1)(e) No. 2 of 1999.

Telecommunications (Consumer Protection and Service Standards) Act—

Regulations—Statutory Rules 1999 No. 234.

Telecommunications (Emergency Call Service) Determination 1999.

Therapeutic Goods Act—

Instrument of approval under section 23AA, dated 22 October 1999.

Therapeutic Goods Order No. 54B (Amendment to Therapeutic Goods Order No. 54).

Trade Practices Act—Regulations—Statutory Rules 1999 Nos 238 and 251.

Veterans' Entitlements Act—Instruments under section 196B—Instruments Nos 64-85 of 1999.

Workplace Relations Act—Regulations—Statutory Rules 1999 No. 244.

PROCLAMATIONS

A proclamation by His Excellency the Governor-General was tabled, notifying that he had proclaimed the following provisions of an Act to come into operation on the date specified:

Aged Care Amendment (Omnibus) Act 1999—Schedules 1, 2 and 3 and items 1 and 2 of Schedule 5—21 October 1999 (*Gazette* No. S 496, 21 October 1999).

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Aged Care: Resident Classifications

(Question No. 1236)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 12 August 1999:

With reference to residents in aged care for the 1997-98 and 1998-99 financial years:

(1) How many residents were classified as: (a) concessional residents; and (b) assisted residents.

(2) How many of those classified as concessional residents had their homes included in the asset test.

(3) How many of those classified as assisted residents had their homes included in the asset test.

(4) Of those who had their homes excluded from the asset test, can the reason for their exclusion be indicated, for example partner residing in home, carer residing in home, dependent child residing in home.

Senator Herron—The Minister for Aged Care has provided the following answer to the honourable senator's question:

(1) Concessional and assisted resident ratios are calculated as a rolling percentage of new resident bed days occupied by concessional and assisted residents. This ratio is used to determine whether services are meeting their concessional targets.

The ratios were:

Date	Assisted residents	Concessional residents	Concessional and assisted residents
June 1998	4.8%	45.4%	50.2%
May 1999*	4.4%	44.9%	49.3%

* Latest available figures

(2) No concessional residents have their homes included in the assets test for determining whether they are concessional residents.

Concessional residents by definition must either have not owned their own home within the last two years, or own a home that qualifies for exemption from the assets test. The resident's home is exempted from the assets test if the home has been occupied by the resident's:

(a) partner or a dependent child at the time of entry to care. A dependent child includes a child under 16 or a full time student under 25;

(b) carer continuously for the past two years and the carer is eligible for an income support payment; or

(c) parent, sibling or child for the past five years and they are eligible for an income support payment.

(3) No assisted residents have their homes included in the assets test for determining whether they are assisted residents.

Assisted residents by definition must either have not owned their own home within the last two years, or own a home that qualifies for exemption from the assets test. The resident's home is exempted from the assets test if the home has been occupied by the resident's:

(a) partner or a dependent child at the time of entry to care. A dependent child includes a child under 16 or a full time student under 25;

(b) carer continuously for the past two years and the carer is eligible for an income support payment; or

(c) parent, sibling or child for the past five years and they are eligible for an income support payment.

(4) The Department does not collect data on the reasons for assisted and concessional residents' homes being protected.

Smith, Ms Lisa Marie: Australian Passport Reissue

(Question No. 1341)

Senator Robert Ray asked the Minister for Justice and Customs, upon notice, on 23 August 1999:

(1) What were the circumstances surrounding the failure of the Department of Foreign Affairs and Trade to notify the Australian Federal Police (AFP) of the granting of a new Australian passport to Ms Lisa Marie Smith until 6 months after it was issued on 10 September 1996.

(2) (a) When did the AFP first issue a passenger alert for Ms Smith and (b) to whom is such an alert issued.

(3) When did the AFP first become aware that the Australian Embassy in Athens had granted a new passport to Ms Smith.

(4) (a)When did the Australian Government issue a formal request for the cancellation of her passport; (b) which agency provides advice to the Government in such circumstances; and (c) when was that advice provided in the case of Ms Smith.

Senator Vanstone—The answer to the honourable senator's question is as follows:

(1) and (4) The issues raised in these questions are matters for the Minister for Foreign Affairs.

(2) (a) 26 August 1996 (b) Passenger alerts are issued to all Australian ports of entry and departure.

(3) The AFP was orally informed on or about 14 February 1997 and received written advice on 17 February 1997.

Regional Telecommunications Infrastructure Fund: Digital Decoder Additional Funding

(Question No. 1345)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) Did the Government provide funding, in addition to the funding provided through the Regional Telecommunications Infrastructure Fund (RTIF), to partially subsidise the cost of new digital decoders in regional Australia in the 1997-98 financial year; if so (a) how much funding was provided; (b) what process was used to identify the projects that received funds; and (c) who approved the allocation of this funding.

(2) If applications were invited for this additional funding from the Government: (a) how many applications were received; and (b) how many applications were rejected.

(3) (a) What was the nature of each project; (b) what was the level of funding sought in each case; (c) when was each project considered; (d) when was each project approved or rejected; (e) and in which federal electorate was each approved and rejected project located.

(4) Who sponsored each application made for funding through the above funding arrangements.

(5) Did the Government provide any other funding for any other projects, other than through the RTIF and the above funding, to subsidise new digital decoders in the 1997-98 or 1998-99 financial years; if so (a) how much funding was provided; (b) what process was used to identify the projects that received funds; and (c) who approved the allocation of this funding.

(6) (a) What was the nature of each project; (b) what was the level of funding sought in each case; (c) when was each project considered; (d) when was each project approved or rejected; and (e) in which federal electorate was each approved and rejected project located.

(7) If applications were invited for this additional funding from the Government: (a) how many applications were received; and (b) how many were rejected.

(8) Who sponsored each application made through the above funding arrangements.

Senator Alston—The answer to the honourable senator's question is as follows:

(1) Yes.

(a) The Government provided $3.2 million in November 1997, to partially subsidise the cost of new digital decoders in regional Australia. A separate decision of the independent Regional Telecommunications Infrastructure Fund (RTIF) Board provided $8 million towards this initiative.

(b) The funding was provided in the form of subsidies towards the purchase of new digital decoders by eligible domestic viewers or self-help retransmission sites under the Remote Area Broadcasting Services (RABS) scheme, not to "projects" per se. The process to identify eligible RABS viewers or self-help sites involved set eligibility criteria being discussed and agreed among the commercial RABS broadcasters and the Department. The Government agreed that its $3.2 million funding was to be distributed via the Networking the Nation program. The same process applied to both the Government and RTIF subsidy funding. The RABS broadcasters entered into contracts with the Department to administer the process.

(c) It was agreed between the Department and the RABS broadcasters that, where there were no apparent problems with the subsidy application, the application could be treated as automatically approved and a voucher could then be issued directly by the broadcaster. All cases where the applicant's eligibility for a subsidy was either unlikely or uncertain were referred to the Department, which formally decided on the basis of the set criteria and formally conveyed the decision to the applicant.

(2) Precise information on numbers of applications received and rejected is not available, as applications were sent direct to broadcasters who were able to reject applications where further advice did not need to be sought from the Department. The Department was only advised of clearly eligible applications, to maintain a database of redeemed vouchers, or applications where eligibility was uncertain.

(a) Approximately 3970 applications were received by the RABS broadcasters over the period in which the Government's $3.2 million was used to pay the RABS subsidies.

(b) About 100 applications were rejected formally by the Department over the above period, after being referred to the Department by the broadcasters.

(3) (a) The RABS subsidy process involved individual applications for a subsidy towards purchasing a new digital decoder. In each case, the applicant submitted a completed, standard application form to their respective RABS broadcaster for consideration and processing.

(b) If the applicant was a domestic RABS viewer, the level of subsidy/funding sought was $750. If the applicant was a self-help retransmission site, the level of subsidy/funding sought was $2500. If the applicant was a Broadcasting for Remote Aboriginal Communities Scheme site, the level of subsidy/funding sought was $3500.

(c) Under the contracts agreed between the Department and the RABS broadcasters, each application was considered by the RABS broadcasters in chronological order of receipt. While time-lags varied, indications are that, on average, applications were considered within 2-3 weeks from time of receipt.

(d) If applications were approved on first consideration, vouchers were issued within one week. If applications needed to be referred to the Department for decision because the applicant's eligibility was either unlikely or uncertain, and the Department decided to reject the application, the applicants were usually advised by letter within two weeks.

(e) Since the only geographic criterion was that the applicant had to currently own superseded analogue RABS units for TV viewing in the licence area of one of the RABS broadcasters, no records have ever been collected on breakdown of applications by federal electorates.

(4) Applicants were the registered owners (or agent, if owner absent) of the existing, analogue decoders.

(5) No.

(6) Not applicable.

(7) Not applicable.

(8) Not applicable.

Regional Telecommunications Infrastructure Fund: Funding Applications

(Question No. 1346)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) How many applications, by federal electorate, for funding through the Regional Telecommunications Infrastructure Fund were considered by the RTIF Board in the 1997-98 and 1998-99 financial years.

(2) What was the nature of each of the above applications; and (b) in each case what was the value of the grant sought.

(3) How many of the above applications, by federal electorate, for funding through the RTIF were approved.

(4) In relation to the applications made for assistance through the RTIF, how many were supported by the relevant state or territory advisory panel.

(5) When applications for assistance through the RTIF were supported by the relevant state or territory advisory panel but rejected by the RTIF Board, in each case what was the reason for the Board rejection.

Senator Alston—The answer to the honourable senator's question is as follows:

(1) The Board considered 451 applications in the 1997-98 and 1998-99 financial years. Attachment A provides details about applications for funding under the program, by federal electorate, as sought by Senator O'Brien. The information is based on the electorates in which the applicant organisations are based, not necessarily the electorates which will benefit from funded projects. The list includes seven applications to vary funding for previously approved projects which are not included in the figure for applications provided above.

(2) Attachment A lists applications by category and the value of the grant sought for each proposal. Copies of Attachment A are available from the Senate Table Office.

(3) The Board approved 236 projects in the 1997-98 and 1998-99 financial years. Attachment A outlines the number of projects approved by federal electorate. The list includes seven applications to vary funding for previously approved projects which are not included in the figure for approvals provided above.

(4) 194 applications have been supported by state and territory advisory panels to the end of 1998-99. This figure does not include 36 multistate applications submitted to the Board, as there was not unanimous support for those proposals from the state panels; 9 applications about which the relevant state panels provided no comments; 57 applications about which the relevant panel provided only general comments; or 12 state government applications which were not submitted to the relevant panel for its consideration.

(5) Of the 194 applications supported by state and territory advisory panels, the NTN Board did not approve 21. The table at Attachment B lists the funding criteria against which the applications were rejected. Copies of Attachment B are available from the Senate Table Office.

Regional Telecommunications Infrastructure Fund: Funding Applications

(Question No. 1347)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) On how many occasions, and on what dates, were applications for funding through the Regional Telecommunications Infrastructure Fund (RTIF) considered by the RTIF Board in the 1997-98 and 1998-99 financial years.

(2) At each of the above meetings: (a) how many applications were considered; and (b) how many of the applications considered were approved.

Senator Alston—The answer to the honourable senator's question is as follows:

(1) The Networking the Nation (NTN) Board met on nine occasions (including three teleconferences) during the 1997-98 and 1998-99 financial years to consider funding applications. The dates of the NTN Board meetings are outlined in the table below.

(2) Information on the number of applications considered and approved during NTN Board meetings is provided in the table below. This does not include applications to vary funding for projects already approved.

Date of Board Meeting	Applications considered	Applications approved
11 July 1997	1	1
13-14 November 1997	78	40
9 February 1998	1	1
25-26 March 1998	113	49
28 May 1998	3	2
29-30 July 1998	89	44
5 November 1998	1	1
25-26 November 1998	89	54
11-12 May 1999	76	44
Total	451	236

Regional Telecommunications Infrastructure Fund: Application Assessment Criteria

(Question No. 1348)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) What are the criteria applied by the Board of the Regional Telecommunications Infrastructure Fund (RTIF) to assess applications for assistance.

(2) Do the above criteria require each application for assistance to reach a minimum standard before that application is considered by the board; if so, who undertakes the preliminary assessment of each application before it is referred to the board.

(3) In the 1997-98 and 1998-99 financial years how many applications for assistance through the RTIF failed to meet the minimum standards required for referral to the board.

(4) (a) What was the nature of each project that failed to meet the minimum standards required;

(b) what was the amount of funding sought; and (c) from which federal electorate was each failed application made.

Senator Alston—The answer to the honourable senator's question is as follows:

(1) A list of the criteria applied by the Networking the Nation Board to assess applications for assistance is at Attachment A.

(2) There is no requirement for applications for assistance to reach a minimum standard before they are considered by the Board. All applications for assistance from eligible applicants are referred to the Board for its consideration.

(3) Not applicable.

(4) Not applicable.

Regional Telecommunications Infrastructure Fund: Advisory Panel Members

(Question No. 1349)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) What are the names of the members of each state and territory Regional Telecommunications Infrastructure Fund Advisory Panel.

(2) (a) What are the qualifications and experience of each member of each of the above panels; and (b) when was each member appointed to each panel.

(3) (a) What process was followed in assessing possible members for the above panels; and (b) who approved each appointment.

(4) (a) What is the cost of operating each panel; (b) how often did each panel meet; and (c) where did each Advisory Panel meet, in the 1997-98 and 1998-99 financial years.

Senator Alston—The answer to the honourable senator's question is as follows:

(1), (2), (3) and (4)—under arrangements established during the Networking the Nation program's implementation, the states and territories are responsible for all matters relating to the NTN State and Territory advisory groups including appointing members, providing resources for the panels and convening meetings.

The information sought by Senator O'Brien would be available only from the relevant State and Territory government organisations.

Regional Telecommunications Infrastructure Fund: Coordinators

(Question No. 1350)

Senator O'Brien asked the Minister for Communications, Information Technology and the Arts, upon notice, on 25 August 1999:

(1) Is there a Regional Telecommunications Infrastructure Fund coordinator located in each state and territory; if so: (a) what is the name of each coordinator; (b) what are the qualifications of each coordinator; and (c) when was each coordinator appointed.

(2) (a) what selection process was followed in the appointment of these coordinators; and (b) who made each appointment.

Senator Alston—The answer to the honourable senator's question is as follows:

(1) Networking the Nation coordinators have been appointed in each state and territory.

(a) The names of the NTN state coordinators are provided below:

State/Territory	NTN State Co-ordinator
Australian Capital Territory	Ms Helen Hill, Chief Minister's Department
New South Wales	Ms Shirley Lean, Department of State & Regional Development
Tasmania	Ms Maria Jeffries, Department of Premier & Cabinet
Victoria	Dr Jeff Rich, Multimedia Victoria
Queensland	Ms Elizabeth Nunn, Department of Communication and Information, Local Government and Planning
South Australia	Mr Trevor May, Department of Industry and Trade
Northern Territory	Ms Gabrielle Mullen, Office of Communications, Science and Advanced Technology
Western Australia	Mr Tony Dean, Department of Commerce and Trade

(b), 2(a) and (b)—under arrangements implemented during the NTN program's establishment, the states and territories are responsible for appointing NTN co-ordinators in their own jurisdictions.

The information sought by Senator O'Brien on the appointment of the NTN coordinators, including their qualifications, would be available only from the relevant state and territory government organisations.

Goods and Services Tax: Regular Passenger Transport Services

(Question No. 1351)

Senator O'Brien asked the Minister representing the Treasurer, upon notice, on 24 August 1999:

(1) What costs associated with the provision of regular passenger transport services (RPT) by domestic airlines will attract a goods and services tax (GST).

(2) Can the airlines recover all of the GST paid on the above costs; if so, on what basis could the Managing Director of Qantas, Mr James Strong, claim on the Sunday program on 22 August 1999 that there would be a major flow through of the GST to domestic aviation; if not, which of the above costs do not attract a refund of GST paid.

(3) Has the Australian Competition and Consumer Commission (ACCC) commenced an inquiry into the price increase being applied to air tickets already being sold for flights after 1 July 2000; if so: (a) by how much have ticket prices increased; and (b) what component of that increase is attributed to the impact of the GST; if not, when will the ACCC investigate the increases in ticket prices already being imposed by the airlines.

Senator Kemp—The Treasurer has provided the following answer to the honourable senator's question:

(1) Most of the inputs of an airline will be subject to a GST. Inputs not subject to GST when purchased by the airline include: GST free food used in the preparation of airline meals and catering; and input taxed financial services used by the airline.

(2) Yes.

The airline will charge GST on the price of a domestic airline ticket (except where it is for the domestic leg of an international journey) and may need to increase the price of domestic airfares to recover this cost. However, any increase should be less than the full 10 per cent GST because of cost savings from tax reform through the abolition of embedded taxes.

(3) The ACCC has been discussing with a number of major companies, including the airlines, the possibility of them providing public compliance commitments to the guidelines on price exploitation. Public commitments and voluntary compliance program will not take the place of enforcement action if circumstances warrant the exercise of that option.

The ACCC's guidelines on price exploitation recognise that an element of GST may be incorporated in invoices where a GST liability may exist for goods or services that will be supplied on or after 1 July 2000.

Nursing Homes: Closures

(Question No. 1360)

Senator Chris Evans asked the Minister representing the Minister for Aged Care, upon notice, on 25 August 1999:

(1) How many nursing homes have closed down or changed ownership in the 1997-98 and 1998-99 financial years.

(2) How much money was collected from residents in those nursing homes through the Government's accommodation charge prior to the closure or change of ownership.

(3) How much money was provided to those nursing homes through the concessional resident supplement prior to the closure or change of ownership.

(4) How much of the money collected from residents in those nursing homes was spent on capital works prior to the closure or change of ownership.

(5) How many hostels have closed down or changed ownership in the 1997-98 and 1998-99 financial years.

(6) How much money was provided to those hostels through the concessional resident supplement prior to the closure or change of ownership.

(7) How much of the money provided to those hostels through the concessional resident supplement prior to the closure or change of ownership was spent on capital works.

Senator Herron—The Minister for Aged Care has provided the following answer to the honourable senator's question:

(1) I am advised that 43 nursing homes changed ownership and 2 nursing homes closed in the 1997-98 financial year. This does not include closures of facilities which have used their funds to rebuild elsewhere, or have combined with other facilities on the same site.

(2) The accommodation charge amount, if any, is determined by private agreement between the resident and the residential aged care service. The accommodation charge amount is kept by the

service, and does not affect Government subsidies. Data is not collected on individuals paying the charge in services that have closed or have changed ownership.

(3) The amount of concessional resident supplements paid to service providers cannot, with reasonable effort, be disaggregated to identify the amounts paid for the periods before the closure or change of ownership of nursing homes.

(4) The Department collected aggregated data on building activity from a survey of residential aged care services for the period from 1 October 1997 to 30 June 1998. That data is unable to be disaggregated to identify the amounts paid for the periods before the closure or change of ownership of facilities.

(5) I am advised that six hostels changed ownership and one hostel closed in the 1997-98 financial year. Data on the closures and changes in ownership for the 1998-99 financial year is currently being collected.

(6) The amount of concessional resident supplements paid to service providers cannot, with reasonable effort, be disaggregated to identify the amounts paid for the periods before the closure or change of ownership of hostels.

(7) Concessional resident supplement, like all supplements, can be used for either care or capital upgrading. Facilities make a considered decision on how best to use funding from concessional resident supplements. Services that do not invest in capital upgrading and subsequently cannot meet strict building certification requirements cannot receive concessional resident supplements. Services whose quality of care and services do not satisfy the accreditation standards by January 2001 will not be funded by the Commonwealth Government.

Nuclear Weapons: Year 2000 Compliance

(Question No. 1379)

Senator Brown asked the Minister representing the Minister for Defence, upon notice, on 31 August 1999:

(1) In light of the unanimous Senate resolution of 12 August 1999, on the year 2000 (Y2K) computer problem and nuclear weapons systems, as well as growing international concern on the subject, and in light of Australia's close security arrangements with the United States of America (US), has the Government made any representations whatsoever to the US to ask it to stand down nuclear forces.

(2) Has the Government full and free access to all information relating to the Y2K preparedness of nuclear weapons-related computerised command and control and monitoring systems at Pine Gap and North West Cape.

(3) Is the Government aware of, and has it completed, evaluations of the implications of the fact that these facilities will experience Y2K some 12 hours before systems on the US mainland.

(4) What will be the implications for global strategic stability of failures in the systems at Pine Gap and North West Cape.

(5) (a) What is the state of Y2K preparedness of computerised submarine communication systems at North West Cape; and (b) can the Minister respond to statements by Brookings Institute analyst, Mr Bruce Blair, that low-frequency communications systems for submarine communication cannot be renovated.

(6) Is the Government aware of concerns that have been expressed with reference to the Y2K preparedness of Russian computerised nuclear command and control systems.

(7) Has the Government seriously examined the implications of failure on the 'fail-deadly' system known as 'Perimeter'.

(8) What steps has the Government taken, and what steps does it plan to take, to ensure that 'Perimeter' is never activated.

Senator Newman—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) The Government has sought advice on a number of occasions from the United States on measures being taken to ensure the safety of U.S. nuclear forces over the period of Y2K concern. The United States has assessed that there is "no risk of accidental launch" of nuclear weapons over the period of Y2K concern. Nonetheless, this issue is being taken very seriously by the U.S., which inevitably has the greatest vested interest in ensuring that any potential problems are eliminated. The Government is satisfied that the U.S. is taking all necessary precautions to manage this issue.

The Government has not asked the U.S. to stand down its nuclear forces. However, if Russia and the United States were to reach an agreement on the standing down of nuclear forces then Australia would welcome that. In order to maintain nuclear stability, any such agreement would need to be verifiable and enjoy the total confidence of the relevant Nuclear Weapon States.

(2) The Government does have full and free access to all activities at Pine Gap and North West Cape, including Y2K preparedness. Pine Gap, however, is a satellite ground station for intelligence collection, and as such is not involved with the command and control of nuclear weapons. The VLF facility at North West Cape is capable of low volume communication with submerged submarines, including US submarines. In the case of these latter systems, North West Cape is a last resort

means of communication. The Government is satisfied that the US is taking all the necessary precautions to manage this issue.

(3) The Government is aware that the change to the year 2000 will occur for the facilities at Pine Gap and North West Cape some 12 hours before systems on the US mainland. This has been a consideration in evaluating the implications of Y2K for these facilities.

(4) The Government is confident that there will be no failure of systems of either Pine Gap or North West Cape over the Y2K period.

(5) (a) North West Cape was certified Y2K compliant in August this year.

(b) No.

(6) Yes. The Government is aware that the United States and Russia have been working intensively to ensure that their nuclear weapon command and control systems are insulated from possible Y2K difficulties. The Government welcomes the announcement on 13 September by the United States and Russia on the establishment of a Y2K Centre for Strategic Stability in Colorado to eliminate any risk that a Y2K problem might arise in early warning systems. This centre will allow personnel from both countries to monitor early warning data on missile and space launches and also report on other potentially destabilising events which might be caused by Y2K failures, such as communications problems.

(7) No. The Government has no detailed knowledge of the Russian systems known as 'Perimeter'.

(8) Since the Government has no detailed knowledge of the Russian systems known as 'Perimeter' it is not in a position to take steps to ensure that 'Perimeter' is never activated. However, as stated in part (6), the Government is aware that the United States and Russia will work intensively to ensure that their nuclear weapons command and control systems are monitored closely for possible Y2K difficulties.

Goods and Services Tax: Department of the Prime Minister and Cabinet Preparations

(Question No. 1402)

Senator Faulkner asked the Minister representing the Prime Minister, upon notice, on 2 September 1999:

With reference to the effect of the goods and services tax (GST) on the internal operations of the Minister's portfolio (that is, not relating to the services provided to the public), and in relation to each of the agencies within the portfolio:

(1) What preparations have been undertaken to date in regard to the introduction of the GST on 1 July 2000.

(2) (a) What has been the total cost of those actions already undertaken; and (b) how much of these costs relate to: (i) consultancies, (ii) staff training, (iii) computer software, (iv) extra staff, (v) stationery, and (vi) other (please specify).

(3) Was the cost of undertaking this work included in the portfolio's 1999-2000 budget appropriation; if so, how was this funding identified; if not, what other area of funding has been used for this purpose.

(4) What future preparations are planned or expected to be required in regard to the introduction of the GST on 1 July 2000.

(5) (a) What is the total cost of the actions planned, or the estimated cost of expected actions; and (b) how much of these costs relate to: (i) consultancies, (ii) staff training, (iii) computer software, (iv) extra staff, (v) stationery, and (vi) other (please specify).

(6) Was the estimated cost of undertaking this future work included in the portfolio's 1999-2000 budget appropriation; if so, how was this funding identified; if not, what other area of funding has been used for this purpose.

(7) Is there expected to be any change in the ongoing running costs of the department/agency after the commencement of the GST; if so, what is the extent of the difference in costs.

(8) Are there any other GST-associated costs which the portfolio agencies will incur prior to the commencement of the GST; if so, what are those costs.

Senator Hill—The Prime Minister has provided the following answer to the honourable senator's question:

Department of the Prime Minister and Cabinet

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. circulation of information to management and relevant staff explaining the likely effect of the GST;

. attendance by key staff at GST awareness session run by the Australian Taxation Office (ATO) and the Department of Finance and Administration (DoFA);

. preparation of a project plan to ensure readiness by 1 July 2000;

. review of all contracts which span the commencement date;

. preliminary analysis of systems' requirements;

. discussions with areas involved in user charging; and

. establishment of GST project team, project manager and sponsor responsible for managing the GST implementation.

(2) No direct external costs have been incurred to date. Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) Not applicable.

(4) A further examination of all processes relating to accounts payable and accounts receivable is required. A user group meeting with the supplier of the Department's financial management system is planned for October. The Department has been advised that the financial information system is GST compliant. The project team will test this.

(5) The department is not planning to incur any external costs.

(6) Not applicable.

(7) The Department is not in a position to estimate any ongoing impact of the GST on running costs but it does not expect there to be a significant impact.

(8) The Department does not expect to incur any other GST associated costs except for the marginal cost of internal staff time allocated to the task.

Office of National Assessments

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. circulation of information to management and relevant staff explaining the likely effect of the GST;

. review of contracts which span the commencement date; and

. preliminary analysis of systems' requirements.

(2) No direct external costs have been incurred to date. Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) Not applicable.

(4) Staff will attend information sessions and access other advice provided by DoFA and the ATO. Processes relating to accounts payable and accounts receivable functions will need to be changed. The Office of National Assessments (ONA) will be reliant on advice and assistance from the Department of the Prime Minister and Cabinet.

(5) ONA is not planning to incur any direct external costs.

(6) Not applicable.

(7) The Office is not in a position to estimate any ongoing impact of the GST on running costs but it does not expect there to be a significant impact.

(8) The Office does not expect to incur any other GST associated costs except for the marginal cost of internal staff time allocated to the task.

Office of the Inspector-General of Intelligence and Security

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. circulation of information to management and relevant staff explaining the likely effect of the GST; and

. preliminary analysis of systems' requirements.

(2) No direct external costs have been incurred to date. Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) Not applicable.

(4) There is expected to be minimal preparation, given the size of the office and the nature of its work. The office will however, monitor information provided by central agencies and act upon it as necessary.

(5)—(8) No extra costs have been identified at this stage.

Office of the Official Secretary to the Governor-General

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. internal auditors have provided briefings on the implications of the GST;

. staff have attended GST awareness training run by the ATO and DoFA; and

. agency is investigating options for the replacement of its present cash based financial management information system (FMIS).

(2) Cost of actions already undertaken: Consultant $925.

Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) No. It was considered that any such costs would be minor and could be met from the normal running cost appropriations of the Office.

(4) The Office will be reviewing all its contracts and agreements which extend beyond July 2000 to ensure coverage of any GST implications. The Office will ensure that all its accounting systems are capable of recording the extent of GST paid or collected. The Office will review its invoice stationery design to include provision for the GST. Invoices are expected to be produced through the

FMIS and thus no additional stationery costs can be directly attributed to the GST.

(5) The cost of the work identified in Part (4) cannot be quantified at this stage, but is expected to be very minor. No major training or consultancies are anticipated.

(6) No.

(7) The Office is not in a position to estimate any ongoing impact of the GST on running costs but it does not expect there to be a significant impact.

(8) The Office does not expect to incur any other GST associated costs except for the marginal cost of internal staff time allocated to the task.

Office of the Commonwealth Ombudsman

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. circulation of information to management and relevant staff explaining the likely effect of the GST;

. review of contracts which span the commencement date; and

. attendance by key staff at GST awareness session run by the ATO and DoFA.

(2) No direct external costs have been incurred to date. Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) Not applicable.

(4) Staff will attend information sessions and access other advice provided by DoFA and the ATO. Processes relating to accounts payable and accounts receivable functions will need to be changed.

(5) The Office is not planning to incur any external costs.

(6) Not applicable.

(7) The Office is not in a position to estimate any ongoing impact of the GST on running costs but it does not expect there to be a significant impact.

(8) The Office does not expect to incur any other GST associated costs except for the marginal cost of internal staff time allocated to the task.

Australian National Audit Office

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. circulation of information to management and relevant staff explaining the likely effect of the GST;

. review of contracts spanning 1 July 2000 and establishment of central contracts register (in progress);

. attendance by senior staff at external training courses and seminars;

. commencement of initial assessment and scoping phase;

. establishment of GST project team, project manager and sponsor responsible for managing the GST implementation;

. evaluation and selection of consultants to facilitate planning phase; and

. identification of major milestone dates.

(2) Cost of actions already undertaken: Staff Training $1,300.

Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) The cost of this staff training was included in the Australian National Audit Office's (ANAO) 1999-2000 budget appropriation and accounted for in professional development costs. Additional GST related expenditure was not separately identified as the project scope and total cost could not be definitively quantified at the time of preparing budget submissions. The qualifications and experience of a significant proportion of ANAO staff will mean that much of the work will be completed using existing resources. Any additional costs will be absorbed within the ANAO's total 1999-2000 budget.

(4) This will be determined at the conclusion of the initial assessment and scoping phase, however, it is likely that some training, external advice and amendment to stationery, including invoices, will be required. We have been advised that the ANAO financial information systems are GST compliant and therefore do not anticipate significant additional expense in this regard. This will be tested as part of the GST project.

(5) The engagement of a GST expert to facilitate the initial assessment is estimated to cost $6,000 to $9,000. Until the completion of the initial assessment and scoping phase it is not possible for the ANAO to confirm this cost or estimate the cost of any additional expected actions with any degree of certainty.

(6) The estimated future GST transition costs were not separately included in the ANAO's 1999-2000 budget appropriation. The costs will be absorbed within the ANAO's budget appropriation.

(7) The ANAO expect that there will be some changes to the ongoing running costs of the ANAO. However, until the scoping phase is completed and ATO clarification sought in relation to particular issues, the ANAO is unable to determine the extent of these.

(8) The ANAO is not in a position at this time to identify or quantify any other GST related costs likely to be incurred prior to 1 July 2000.

Public Service and Merit Protection Commission

(1) The following preparations have been undertaken to date in relation to the introduction of the GST:

. review of operations and systems requirements; and

. review of all contracts which span the commencement date.

(2) No direct external costs have been incurred to date. Marginal internal staff costs have been incurred in relation to the action undertaken in Part (1).

(3) The internal resources used to date will be absorbed in the Commission's 1999-2000 budget appropriation.

(4) Internal staff training, particularly in relation to revenue raising activities, and some re-configuration of the Commission's finance system will be required.

(5)—(6) At this stage it is not possible to estimate the cost of the planned work. Any costs incurred will be absorbed in the Commission's 1999-2000 budget appropriation.

(7) Not known at this stage.

(8) At this stage we know of no other costs other than those included at question 5.

Goods and Services Tax: Department of Veterans' Affairs Preparation

(Question No. 1418)

Senator Faulkner asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 2 September 1999:

With reference to the effect of the goods and services tax (GST) on the internal operations of the Minister's portfolio (that is, not relating to the services provided to the public), and in relation to each of the agencies within the portfolio:

(1) What preparations have been undertaken to date in regard to the introduction of the GST on 1 July 2000.

(2) (a) What has been the total cost of those actions already undertaken; and (b) how much of those costs relate to: (i) consultancies, (ii) staff training, (iii) computer software, (iv) extra staff, (v) stationery, and (vi) other (please specify).

(3) Was the cost of undertaking this work included in the portfolio's 1999-2000 budget appropriation; if so, how was this funding identified; if not, what other area of funding has been used for this purpose.

(4) What future preparations are planned or expected to be required in regard to the introduction of the GST on 1 July 2000.

(5) (a) What is the total cost of the actions planned, or the estimated cost of expected actions; and (b) how much of these costs relate to: (i) consultancies, (ii) staff training, (iii) computer software, (iv) extra staff, (v) stationery and (vi) other (please specify).

(6) Was the estimated cost of undertaking this future work included in the portfolio's 1999-2000 budget appropriation; if so, how was this funding identified; if not, what other area of funding has been used for this purpose.

(7) Is there expected to be any change in the ongoing running costs of the department/agency after the commencement of the GST; if so, what is the extent of the difference in costs.

(8) Are there any other GST-associated costs which the portfolio agencies will incur prior to the commencement of the GST; if so, what are those costs.

Senator Newman—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

Department of Veterans' Affairs (including Veterans Review Board)

(1) My Department has:

. formed a GST Implementation Team, and has appointed the Director Running Costs as the Project Director. The team comprises six staff members from DVA National Office;

. prepared a draft overall GST Implementation Plan; and

. appointed Deloitte Touche Tohmatsu, a professional accounting firm, with legal expertise to assist DVA in the transition to GST implementation and compliance.

Various officers of my Department have attended several conferences including a three-day Australian Financial Review Conference held in Sydney in August, a GST for Public Sector Seminar (Australian Society of CPAs) and training sessions conducted by the National Institute of Accountants.

(2) (a) The total cost to date is $16,657, (b) (i) nil, (ii) $13,740 including travel, (iii) nil (iv) nil, (v) nil and (vi) $2,917 GST Manuals/Guides

(3) No additional provision was made in the portfolio's 1999-2000 budget appropriation.

(4) Key elements of my Department's current overall GST Implementation Plan are to:

. appoint Divisional and State Office representatives/liaison points

. alert appropriate areas of the need to carefully word contracts that may extend beyond 30

June 2000 to recognise impact of GST on prices

. create a GST Quick Reference Guide

. establish an Issues Register

. develop an Intranet site

. develop a comprehensive budget

. set up accounting structure and staff information to handle transitional issues for 1999-2000

. provide initial training of DVA purchasing staff regarding impact of GST on operations

. determine the status of Defence Service Homes (DSH) Insurance for separate GST registration

. ascertain estimated credits and establish the legal basis for the retention of GST credit refunds (check S 31 Agreement implications)

. redesign DVA invoice in line with GST Regulations

. update prices on all DVA services and other products sold externally

. review policy in relation to staff allowances (eg travelling allowance) and reimbursements in light of impact on GST

. update the accounting system:

. to ensure recording of GST credit on purchases and meeting of record keeping requirements

. to enable the lodgement of electronic returns and the claiming of credit for GST paid on inputs

. to facilitate the charging of GST on outputs and the issue of approved invoices

. review all key payment systems including Human Resource Information System, Repatriation Transport System etc.

. register DVA (and DSH Insurance, if appropriate) as a GST entity

. review the policy on external user charging

. review the policy on purchasing

. calculate the impact of GST in inputs and outputs, and the receipt of GST credit, on DVA's Budget

. check supplier readiness

. provide comprehensive training of purchasing staff

. undertake an audit of DVA's readiness to cope with the introduction of GST

. review prepayments to determine if any GST credit can be claimed in first return

(5) (a) The total cost of the actions planned is unknown at this stage. A comprehensive cost exercise to establish a robust budget is being undertaken. A broad estimate is around $1m this financial year.

(b) (i) currently being evaluated, (ii) $20,000, comprising travel for GST Project Team to all states, and Consultant Training modules, currently being evaluated, (iii) my Department is currently investigating costs with software suppliers, who advise at this stage that they are unable to give firm costings, as significant detail on the GST implementation is not yet available, (iv) $511,968 based on the need to backfill the GST Implementation Team Members, (v) not yet determined, and (vi) n/a.

(6) No additional funding was provided in the 1999-2000 Budget to implement the GST in the portfolio. All costs are planned to be met out of existing departmental expenses.

(7) Apart from savings arising from the abolition of wholesale sales tax, there is not expected to be any changes to departmental expenses.

(8) At this point my Department is not aware of any other associated costs. However, as noted in the answer to part 5 categories of costs to establish a comprehensive budget for the GST implementation project are being assembled.

Australian War Memorial

(1) The Memorial has recently appointed its Finance Manager as the project leader for implementation of GST into the Memorial. This officer will be responsible for:

. interpretation of the new legislation and the implications for the Memorial

. briefing of the Australian War Memorial Council, senior management and staff of the implications for the Memorial

. review of any policies that are impacted on by the GST

. any enhancements to supporting systems development of policies and associated processes for accounting transactions needed to support the new GST processes

To date, the Assistant Director Corporate Services, Finance Manager, Assistant Finance Manager and Shop Manager have attended seminars to gain an overall understanding of the new GST. The Finance Manager and system administrator have also attended workshops in relation to GST implications for supporting systems. Department of Finance and Administration and the Office of Government Online gave presentations at the workshop.

The Memorial is currently investigating what system changes will be required and how they will be achieved. A full review of the Memorial's services is currently being undertaken to determine what services will be subject to GST and a briefing

paper is being prepared for the Australian War Memorial Council.

(2) (a) The total cost to date is the sum of (ii) and (iv) below.

(b) (i) nil, (ii) $585, (iii) nil, (iv) no additional staff have been appointed to date—the only staff cost being the time for officers to attend training courses which is estimated to have cost $1,000—$1,500, (v) nil, and (vi) nil.

No additional provision was made in the portfolio's appropriation for costs of implementing GST into the Memorial. Costs of staff are being met from within the Memorial's 1999-2000 salary budget, training costs from within the annual budget for staff development and training and any software changes from the software maintenance budget.

(4)

. Attendance at additional seminars and workshops to understand the GST and also keep up-to-date with new information coming from the Australian Taxation Office (ATO) and also the newly-formed unit in the Department of Finance and Administration (DoFA).

. liaison with ATO and DoFA and detailed discussions about Memorial specific issues and how the GST is to be applied

. liaison with software suppliers in relation to necessary system enhancements to support GST processes

. networking with other government agencies and the system user group

. review of various Memorial policies (eg pricing and selection of suppliers) and various services to determine which are GST-related

. briefing of Council members, senior management, and staff on GST issues

. re-design of invoices for customers

. registration of Memorial for GST—Australian Business Number (ABN)

. arrangement for contract for software consultants to make necessary system changes, testing of changes, training staff, and documentation

. development of new policies and procedures to support GST processes eg policy of timing of lodgement of forms, cash flow planning, costing of GST charges and rebates etc

(a) $75,000, (b) (i) $15,000, (ii) $10,000, (iii)$15,000, (iv) $30,000, (v) nil, (vi) $5,000—other indirect staff costs, eg briefing managers on the GST and changes

(6) No additional provision was made in the portfolio's appropriation for costs of implementing GST into the Memorial. Costs of staff are being met from within the Memorial's 1999-2000 salary budget, training costs from within the annual budget for staff development and training and any software changes from the software maintenance budget.

(7) No.

(8) Nil at this stage.

Department of Family and Community Services: Departmental Decisions Reviewed under the Administrative Decisions Act

(Question No. 1443)

Senator Faulkner asked the Minister for Family and Community Services, upon notice, on 21 September 1999:

(1) Since 3 March 1996, how many decisions of the department and all portfolio agencies have been the subject of applications for review under the Administrative Decisions (Judicial Review) Act 1977.

(2) Of these applications, how many related to: (a) agency staffing matters; (b) agency client matters; or (c) other (please specify general area).

(3) How many applications: (a) have been: (i) finalised, and (ii) withdrawn by the applicant; and (b) remain unfinalised.

(4) (a) What was the cost to the department or agency of defending each of these actions; and (b) what was the quantum of costs where they were awarded against the Commonwealth, where appropriate.

Senator Newman—The answer to the honourable senator's question is as follows:

(1) One.

(2) (a) Nil.

(b) One.

(c) Nil.

(3) (a) (i) Nil

(ii) One.

(b) Nil.

(4) (a) Negligible.

(b) Not applicable.

Department of Defence: Departmental Decisions Reviewed under the Administrative Decisions Act

(Question No. 1445)

Senator Faulkner asked the Minister representing the Minister for Defence upon notice, on 20 September 1999:

(1) Since 3 March 1996, how many decisions of the department and all portfolio agencies have been the subject of applications for review under the Administrative Decisions [Judicial Review] Act 1977.

(2) Of these applications, how many related to: (a) agency staffing matters; (b) agency client matters; or (c) other (please specify general area).

(3) How many applications: (a) have been: (i) finalised, and (ii) withdrawn by the applicant; and (b) remain to be finalised.

(4) (a) What was the cost to the department or agency of defending each of these actions; and (b) what was the quantum of costs where they were awarded against the Commonwealth, where appropriate.

Senator Newman—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) 9

(2) (a) 9

(b) nil

(c) nil

(3) (a) (i) 3

(ii) 1

(b) 5

(4) (a) Case 1: $16,841.70; Case 2: nil; Case 3: $11,810.95; Case 4: $12,302.65; Case 5: $10,844.40; Case 6: $6,566.50; Case 7: $1,007.50; Case 8: $5,179.00; Case 9: See answer for Senate Question on Notice No 1463.

(b) nil.

Department of Family and Community Services: Departmental Decisions Reviewed under Common Law

(Question No. 1461)

Senator Faulkner asked the Minister for Family and Community Services, upon notice, on 21 September 1999:

(1) Since 3 March 1996, how many decisions of the department and all portfolio agencies have been the subject of applications for review under the common law, including prerogative writs.

(2) Of these applications, how many related to: (a) agency staffing matters; (b) agency client matters; or (c) other (please specify general area).

(3) How many applications: (a) have been: (i) finalised, and (ii) withdrawn by the applicant; and (b) remain unfinalised.

(4) What was the cost to the department or agency of defending each of these actions; and (b) what was the quantum of costs where they were awarded against the Commonwealth, where appropriate.

Senator Newman—The answer to the honourable senator's question is as follows:

(1) (a) Five.

(2) (a) Two.

(b) Three.

(c) Nil.

(3) (a) (i) One.

(ii) Nil.

(b) Four.

(4) (a) Costs are unknown as yet for three unfinalised cases. Costs for the fourth unfinalised case currently $85,000. Costs for the one finalised case $63.

(b) Nil.

Department of Defence: Departmental Decisions Reviewed under Common Law

(Question No. 1463)

Senator Faulkner asked the Minister representing the Minister for Defence, upon notice, on 20 September 1999:

(1) Since 3 March 1996, how many decisions of the department and all portfolio agencies have been the subject of applications for review under the common law, including the prerogative writs.

(2) Of these applications, how many related to: (a) agency staffing matters; (b) agency client matters; or (c) other (please specify general area).

(3) How many applications: (a) have been: (i) finalised, and (ii) withdrawn by the applicant; and (b) remain unfinalised.

(4) What was the cost to the department or agency of defending each of these actions; and (b) what was the quantum of costs where they were awarded against the Commonwealth, where appropriate.

Senator Newman—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) 1

(2) (a) 1

(b) nil

(c) nil

(3) (a) (i) 1

(ii) nil

(b) nil

(4) (a) $1,319.00

(b) nil

Department of Family and Community Services: Freedom of Information Requests

(Question No. 1479)

Senator Faulkner asked the Minister for Family and Community Services, upon notice, on 21 September 1999:

(1) What are the: (a) formal qualifications; (b) relevant experience; and (c) employment classification/grade, of each departmental officer who has made initial stage decisions regarding requests under the Freedom of Information Act since 3 March 1996.

(2) What are the: (a) formal qualifications; (b) relevant experience; and (c) employment classification/grade, of each departmental officer who has made internal review decisions regarding requests under the Freedom of Information Act since 3 March 1996.

Senator Newman—The answer to the honourable senator's question is as follows:

The detailed information referred to in the honourable senator's question is similar to that sought in his question, number 839, asked on 11 May 1999, in conjunction with other related questions. In response to that question, Senator Hill advised, on behalf of the Prime Minister, that the resources required to answer the questions would be an unwarranted diversion of resources of departments and agencies. As the honourable senator's question is similar to that previously asked, except for additional items of information requested at (1) (c) and (2) (c), and the information is not readily available from departmental records, the response to the question remains that collation of the detailed information requested would be an unreasonable diversion of resources.

Treasury: Internal Staff Development Courses

(Question No. 1492)

Senator Faulkner asked the Minister representing the Treasurer, upon notice, on 20 September 1999:

(1) How many internal staff development courses has the department, or any agency on the portfolio, conducted since 3 March 1996.

(2) What is the cost of internal staff development courses in the department, or any agency in the portfolio, has conducted since 3 March 1996.

(3) How many staff have attended staff development courses the department, or any agency in the portfolio, has conducted since 3 March 1996.

(4) (a) How many internal staff development courses conducted by the department, or any agency in the portfolio, since 3 March 1996 have contained training on making decisions under the Freedom of Information Act; and (b) of this number, how many: (i) were specifically focusing on the subject of freedom of information decisions, and (ii) how many dealt with the issue amongst others.

(5) What is the total cost of the courses in (4).

Senator Kemp—The Treasurer has provided the following answer to the honourable senator's question:

The Department's approach to staff development provides for responsibility at both Corporate and Divisional levels. The collection of information sought would be a major task and involve considerable expenditure of resources and effort, which we are not in a position to provide. Agencies across the portfolio have also been unable to allocate sufficient resources to gather the requested information.

Department of Defence: Internal Staff Development Courses

(Question No. 1499)

Senator Faulkner asked the Minister representing the Minister for Defence, upon notice, on 20 September 1999:

(1) How many internal staff development courses has the department, or any agency in the portfolio, conducted since 3 March 1996.

(2) What is the cost of internal staff development courses the department, or any agency in the portfolio, has conducted since 3 March 1996.

(3) How many staff have attended internal staff development courses the department, or any agency in the portfolio, has conducted since 3 March 1996.

(4) (a) How many internal staff development courses conducted by the department, or any agency in the portfolio, since 3 March 1996 have contained training on making decisions under the Freedom of Information Act; and (b) of this number, how many: (i) were specifically focusing on the subject of freedom of information decisions, and (ii) how many dealt with the issue amongst others.

(5) What is the total cost of the courses in (4).

Senator Newman—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) (2) and (3) General information regarding the training and development of Defence personnel (civilian and uniformed) in non-military training

activities is available in the Department's Annual Reports which are tabled in Parliament.

Information from financial year 1997 onwards is not readily available. The restructuring of the Defence Organisation as a result of the Defence Reform Program had a significant effect on the ability of the Department to track the attendance of Defence personnel attending non-military training courses.

To provide a more detailed response to the honourable senator's question would involve substantial expenditure of time and resources. I am not prepared to authorise the time and effort that would be involved.

(4) (a) and (b) This information is not readily available. However, staff from the Department's Freedom of Information (FOI) Directorate provide training on FOI, including decision-making, to courses attended by in-house legal officers whose responsibilities may include advising FOI decision-makers. Moreover, the Directorate issues guidance on decision-making with each FOI request referred to a decision-maker.

(5) This information is not available.

Aboriginal and Torres Strait Islander Commission: Internal Staff Development Courses

(Question No. 1507)

Senator Faulkner asked the Minister for Aboriginal and Torres Strait Islander Affairs, upon notice, on 21 September 1999:

(1) How many internal staff development courses has the department, or any agency in the portfolio, conducted since 3 March 1996.

(2) What is the cost of internal staff development courses the department, or any agency in the portfolio, has conducted since 3 March 1996.

(3) How many staff have attended internal staff development courses the department, or any agency in the portfolio, has conducted since 3 March 1996.

(4) (a) how many internal staff development courses conducted by the department, or any agency in the portfolio, since 3 March 1996 have contained training on making decisions under the Freedom of Information Act; and (b) of this number, how many: (i) were specifically focusing on the subject of freedom of information decisions, and (ii) how many dealt with the issue amongst others.

(5) What is the total cost of the courses in (4).

Senator Herron—The Aboriginal and Torres Strait Islander Commission has provided the following information in response to the honourable senator's question is as follows:

(1) 638

(2) $1,453,100

(3) 6086

(4) (a)6 (b)(i)2 (ii)4

(5) $36,178

Treasury: External Staff Development Courses

(Question No. 1510)

Senator Faulkner asked the Minister representing the Treasurer, upon notice, on 20 September 1999:

(1) How many departmental officers have attended external staff development courses since 3 March 1996.

(2) What is the total cost of the external staff development courses attended by officers of the department, or any agency in the portfolio, since 3 March 1996.

(3) How many external staff development courses attended by departmental or agency staff since 3 March 1996, have contained training on making decisions under the Freedom of Information Act; and (b) of this number, how many: (i) were specifically focusing on the subject of freedom of information decisions, and (ii) how many dealt with the issue amongst others.

(4) Of the courses relevant to (3), which agencies or consultants provided that training.

(5) What is the total cost of the courses in (3).

Senator Kemp—The Treasurer has provided the following answer to the honourable senator's question:

The Department's approach to staff development provides for responsibility at both Corporate and Divisional levels. The collection of information sought would be a major task and involve considerable expenditure of resources and effort, which we are not in a position to provide. Agencies across the portfolio have also been unable to allocate sufficient resources to gather the requested information.

Department of Defence: External Staff Development Courses

(Question No. 1517)

Senator Faulkner asked the Minister representing the Minister for Defence, upon notice, on 20 September 1999:

(1) How many departmental officers have attended external staff development courses since 3 March 1996.

(2) What is the total cost of the external staff development courses attended by the officers of the department, or any agency in the portfolio, since 3 March 1996.

(3) (a) How many external staff development courses attended by departmental or agency staff since 3 March 1996 have contained training on making decisions under the Freedom of Information Act; and (b) of this number, how many: (i) were specifically focusing on the subject of freedom of information decisions, and (ii) how many dealt with the issue amongst others.

(4) Of the courses relevant to (3), which agencies or consultants provided that training.

(5) What is the total cost of the courses in (3).

Senator Newman—The Minister for Defence has provided the following answer to the honourable senator's question:

(1) and (2) General information regarding the training and development of Defence personnel (civilian and uniformed) in non-military training activities is available in the Department's Annual Reports which are tabled in Parliament.

Information from financial year 1997 onwards is not readily available. The restructuring of the Defence Organisation as a result of the Defence Reform Program had a significant effect on the ability of the Department to track the attendance of Defence personnel attending non-military training courses.

To provide a more detailed response to the honourable senator's question would involve substantial expenditure of time and resources. I am not prepared to authorise the time and effort that would be involved.

(3) (a) and (b) and (4) This information is not readily available. However, staff of the Department's Freedom of Information Directorate (FOI) attend courses and FOI Practitioner Forums conducted on a regular basis by the Australian Government Solicitor.

(5) This information is not available.

Department of Family and Community Services: Freedom of Information Requests

(Question No. 1533)

Senator Faulkner asked the Minister for Family and Community Services, upon notice, on 21 September 1999:

(1) Of the requests for disclosure of information under the Freedom of Information Act dealt with by the department, or any agency in the portfolio, since 3 March 1996, how many requests have been made by: (a) a member of the House of Representatives; or (b) a member of the Senate.

(2) Of the cases relevant to (a) and (b) in (1), how many requests regarding access were: (a) partially successful; or (b) refused.

(3) Of the cases relevant to (a) and (b) in (1), how many requests regarding charges were: (a) partially successful; or (b) refused.

(4) Of the cases relevant to (2) and (3), how many of the department's or agency's written reasons for decision used, as grounds for refusal under the Act, a reference to members of Parliament having access to parliamentary processes to seek information from departments.

(5) Is the department, or any agency in the portfolio, aware of any provision contained in legislation, or departmental guidelines, or practice where the applicant's employment provision can be, or has been, used as grounds for refusing access to documents and/or refusing to waive charges, other than that set out in (4).

Senator Newman—The answer to the honourable senator's question is as follows:

The detailed information referred to in the honourable senator's question is identical to that sought in his question, number 947, asked on 11 May 1999, in conjunction with other related questions. In response to that question, Senator Hill advised, on behalf of the Prime Minister, that the resources required to answer the questions would be an unwarranted diversion of resources of departments and agencies. Senator Hill also advised that much of the information sought is available publicly through annual reports tabled by the Attorney-General. As the honourable senator's question is identical to that asked earlier, the response to the question remains that collation of the detailed information requested, which is not readily retrievable from systems in my portfolio, would be an unreasonable diversion of resources.