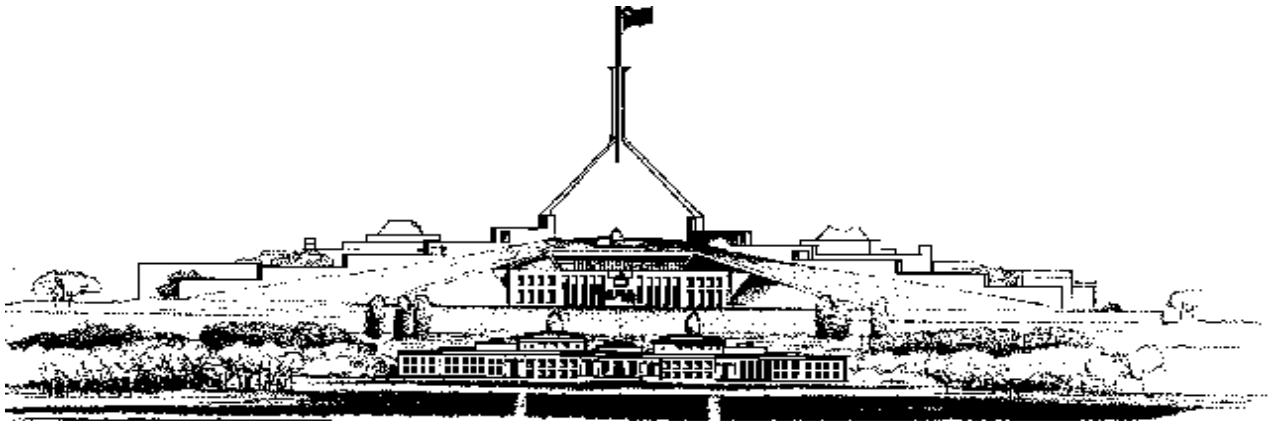




COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

No. 14, 2001

WEDNESDAY, 26 SEPTEMBER 2001

THIRTY-NINTH PARLIAMENT
FIRST SESSION—TENTH PERIOD

BY AUTHORITY OF THE SENATE

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SITTING DAYS—2001

Month	Date
February	6, 7, 8, 26, 27, 28
March	1, 5, 6, 7, 8, 26, 27, 28, 29
April	2, 3, 4, 5
May	9, 10, 22, 23, 24
June	4, 5, 6, 7, 18, 19, 20, 21, 25, 26, 27, 28
August	6, 7, 8, 9, 20, 21, 22, 23, 27, 28, 29, 30
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December	3, 4, 5, 6, 10, 11, 12, 13

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<i>SYDNEY</i>	630 AM
<i>NEWCASTLE</i>	1458 AM
<i>BRISBANE</i>	936 AM
<i>MELBOURNE</i>	1026 AM
<i>ADELAIDE</i>	972 AM
<i>PERTH</i>	585 AM
<i>HOBART</i>	729 AM
<i>DARWIN</i>	102.5 FM

Wednesday, 26 September 2001

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

BUSINESS

Consideration of Legislation

Motion (by **Senator Ian Campbell**) proposed:

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

Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001
 Air Passenger Ticket Levy (Imposition) Bill 2001
 Air Passenger Ticket Levy (Collection) Bill 2001
 Bankruptcy Legislation Amendment Bill 2001
 Bankruptcy (Estate Charges) Amendment Bill 2001
 Cybercrime Bill 2001
 Customs Tariff Amendment Bill (No. 4) 2001
 Defence Legislation Amendment (Application of Criminal Code) Bill 2001
 Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001
 Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001
 Indigenous Education (Targeted Assistance) Amendment Bill 2001
 Intelligence Services Bill 2001
 Intelligence Services (Consequential Provisions) Bill 2001
 Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001
 Motor Vehicle Standards Amendment Bill 2001
 Olympic Insignia Protection Amendment Bill 2001
 Regional Forest Agreements Bill 2001
 Taxation Laws Amendment Bill (No. 5) 2001
 Taxation Laws Amendment Bill (No. 6) 2001

Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001

Workplace Relations Amendment (Minimum Entitlements for Victorian Workers) Bill 2001.

Senator BROWN (Tasmania) (9.31 a.m.)—I oppose this move. The list of bills is long. There are some 20 or more bills. The government knows full well that some of those bills are opposed very strenuously by me on behalf of the Greens and, I have no doubt, by other senators. If you look towards the end of that list, Madam President, you will find the Regional Forest Agreements Bill 2001. Let me make this clear. This bill is hugely important to my home state of Tasmania. It has, amongst other measures, a compensation clause so that, if any further forests are protected in Tasmania, the people of Australia will have to pay the woodchip companies simply for keeping their chainsaws out of those forests. I am not talking here about tens of dollars or hundreds of dollars or hundreds of thousands of dollars or even millions of dollars. We are looking at tens or hundreds of millions of dollars being given to big woodchip corporations like Gunns—the biggest forest destroyers in the Southern Hemisphere—for doing nothing, for having created nothing, simply for not destroying some of the grandest forests on the face of the planet and their wildlife.

The government has this bill on a list to be exempt from the cut-off and therefore to be allowed to be immediately considered by the Senate—which has not, by the way, even seen the truncated committee proceedings result in this place as yet. A memo has gone around the traps overnight saying that our friends the Democrats were responsible for holding up this bill. I do not know what other people think about that. I point out that, without my having been in this place to tackle this bill at every juncture, it would have gone through by now. I say that on the basis of a great deal of analysis of how that bill has gone in this place. You will know, Mr Acting Deputy President Murphy, that when the bill came in here last time it was one of the longest debates in parliamentary history. I tackled it clause by clause, participle by participle, and I will do that again.

The only way this bill could get through this place would be by the Labor Party applying the guillotine so that the chainsaws may be unleashed in the next two days. I know, Mr Acting Deputy President, that you would not have a bar of that.

So putting this bill on this list is simply an inflammatory action by a government which wants to have its legislation expedited in the next couple of days. The Greens are going to facilitate any reasonable move to ensure that legislation does go through here—

Senator Calvert—You represent a majority of Tasmanians, do you?

Senator BROWN—Senator Calvert has been reading the latest opinion polls, too. The recent poll that was released on the matter of the destruction of forests by the woodchippers in Tasmania shows that 70 per cent of Tasmanians want it stopped. The fact that 70 per cent or more of the members of this Senate want the chainsaws to go in faster has not cowed the people of Tasmania. They have greater sensitivity for their forests and they object to the job shedding woodchip industry, which is marauding those forests and giving a pittance to Tasmania. The Deputy Premier of Tasmania, Mr Lennon, and the Premier, Mr Bacon, with their chainsaw driven policies, have failed to produce jobs in that industry. They totally back Prime Minister Howard in giving the forests of Tasmania to the woodchippers, at the same time as jobs are being shed. The Tasmanian government says, 'Great, we have the biggest export per capita income of any state in Australia.' But do you know what, Mr Acting Deputy President? Tasmanians are also the poorest people per capita in Australia. That means we get the biggest amount for exports per head of population but the lowest real income. I will tell you what that means. It means that we are being ripped off. We are being ripped off by an industry which is scalping Tasmania's natural resources and lining its pockets. That is Labor policy. That is Liberal policy.

If the government wants to continue to bring on to the agenda this piece of legislation for the destruction of forests, then I will continue to oppose it. I did not get into this place to sit here lamely and allow pieces of

legislation like this to be pushed through in the last days of a parliament. This bill has been sitting on a shelf for three years. I will tell you, Mr Acting Deputy President, why it is here today: because the government, if it has not been in agreement with the Labor Party, has flagged that it wants the Labor Party to guillotine this legislation. There is nothing covert about that. The Minister for Forestry and Conservation, especially appointed by Mr John Howard, Wilson Tuckey, has publicly said, 'Come on, Labor Party, guillotine this legislation through the Senate; knock out the Democrats and the Greens in doing so.' I ask the Labor Party: are you going to go along with that? It is very important to what is going to happen here in the next couple of days, I can tell you—and the Leader of the Government in the Senate ought to be listening to what I am saying.

Senator Robert Ray—He has got other problems.

Senator BROWN—He might have other problems, Senator Ray, but he has a big one here and he should concentrate on it. He is going to have a very hard time of it. I am not going to go home to Tasmania saying, 'Oh well, what could I do?' Some 150,000 log trucks this year alone were to go from the forests to the woodchip mills, only to get a pittance for those woodchips in Japan and Korea with all the on-costs for Tasmania, and the government just puts the legislation on a list and says, 'We want to slip that one through in amongst other pieces of legislation,' including the Air Passenger Ticket Levy (Imposition) Bill 2001. The blasting of forests will hit the Tasmanian tourist industry. Tourism is putting on jobs in Tasmania; woodchipping is losing them. Who gets the forests which are central to the health of both those industries? The woodchippers get them. I will tell you why. They have the influence in the halls of power in this place. They have their pens poised over cheques for the fighting funds for the big parties for the election. Mr Acting Deputy President, being a Tasmanian I know you will—

Senator Calvert—You are not a Tasmanian. You did not come from Tasmania. You were not born there.

Senator BROWN—I know that—

Senator Calvert—You stop every damn thing that we try to do in Tasmania, and you know it.

Senator BROWN—Listen to the bleat of Senator Calvert, who wants to put an imposition on the Tasmanian tourist industry. He wants to put \$10 on every ticket as a disincentive for people to come to Tasmania. That is what the Liberal senators are doing. Are Labor senators going to support that? Yes, they are. Not only do we have the log trucks carting the health of the tourist industry to the woodchip mills but we have another piece of legislation which the government wants to slip through and deal with without proper debate, because it wants to go to an election, which is going to hit Tasmanian tourism and hit it hard.

The collapse of Ansett, as you know, Mr Acting Deputy President, has been a disaster for Tasmania. I am very concerned about small business. Some small businesses have been very dependent on package tours from Ansett. The problem is that they give the tourists on those package tours their accommodation and their victualling and Ansett pays them six weeks later. Now they are caught in the position where, for the last six weeks, they have been providing the service and they may not be paid. That is very damaging to small business. That is very damaging to jobs. It should not be Labor policy to do anything but to underwrite those people in Tasmania.

Instead of that they seek to impose a \$10 tax on other people coming to the state—wind it down further. We will get a debate on that one as well. I am not in favour of that escaping the proper forms, the proper debating processes, the proper consideration and the proper input from the public that enables it to be part of this motion. There are many pieces of legislation here. Some of them need looking at. Some of them we can sensibly come to an agreement on have been canvassed or are machinery pieces of legislation that simply help the good working of legislation that is already in place. That is a different matter. But I am not going to be party to a process for ramrodding pieces of legislation through the Senate which injure Tasmania's interests.

Senator BARTLETT (Queensland) (9.43 a.m.)—I speak to this motion which seeks to exempt around, from a quick glance, 22 bills from the cut-off provision, which in effect enables all 22 to be debated over the next two days or possibly Friday if, by some strange circumstance, we end up sitting on Friday as well. It does not mean that all will be debated—in fact, I am sure they will not—but it enables them to be debated.

I am not going to oppose the motion as a whole, but, as I have outlined a number of times before on behalf of the Democrats, we not only are opposed to the Regional Forest Agreements Bill 2001 but also believe that the underlying issues behind the bill need further examination. Through the Selection of Bills Committee, the Democrats attempted to have that bill referred to a committee for proper consideration. It was referred to a committee but clearly not for proper consideration—clearly inadequate examination—and that was a source of not only frustration but also great anger to people who have been trying to get the facts on the greater scrutiny of the operation of forestry agreements. It is consistent for the Democrats to continue to ensure that this bill does not come on for debate before adequate scrutiny is undertaken. The Senate, in my view, would be considering it in an ill-informed way. It would be tying the taxpayers in to potentially hundreds of millions of dollars of future compensation without fully knowing the reality of the industry. I think that would be negligent in the extreme.

On behalf of the Democrats, I certainly oppose exempting the Regional Forest Agreements Bill 2001. We do not believe it is necessary to debate that legislation this week; we do not believe it is appropriate to debate that legislation this week. If it does come on for debate, I can assure you that we will not only be sitting here all day Friday but also through the weekend, if necessary, to try to ensure that this legislation is not passed, given the lack of adequate information that has come to light about the detail behind the industry. Given the importance of getting some of the other legislation through, I do not think that would be a terribly constructive approach. There is possibly one

other bill on the program, although it is not listed here, that has already been exempted from the cut-off, and that would probably meet a similar fate if it were brought on. I do not think it is in the interests of anybody, including the government, to have the sparse available remaining hours used up in that way.

This Regional Forest Agreements Bill 2001 is one that does require full examination. It should be done properly through a committee inquiry receiving evidence from people with expertise in this area. Ideally, it should be an independent inquiry that can delve into some of the dubious practices of the industry, but we have not been able to establish that yet. We do not believe this legislation should come on now. I think the best way of dealing with it procedurally would be for me to propose that the motion be amended to omit the Regional Forest Agreements Bill 2001 from the cut-off order, if that is able to be proceeded with. I move:

Omit "Regional Forest Agreements Bill 2001".

Senator HARRADINE (Tasmania) (9.46 a.m.)—I am normally against the exemption from the cut-off. The cut-off is there in standing orders for a very good reason: so that this chamber, which is a house of review, can exercise its responsibilities. But I understand the difficulties all of us are in at the present moment and the desire held by the government. I think all of us, although some will not admit it, do not want to be sitting here on Friday and miss their aircraft. Much as we like Canberra, we like home better, so I have sympathy with the motion.

Contrary to one comment made by Senator Brown, I do think we should exempt the Air Passenger Ticket Levy (Imposition) Bill 2001 and the Air Passenger Ticket Levy (Collection) Bill 2001 because unless we deal with these pieces of legislation, like it or not, thousands upon thousands of former Ansett employees will not get their entitlements. If we are here for the workers, we have to stand up for them in this matter. I will be supporting the exemption of those pieces of legislation from the cut-off order. However, during the debate I will be advancing my view that there should not be a levy on all tickets and that consideration

should be given to whether this should be imposed upon regional Australia—including on travel to and from the state of Tasmania. Of course the bulk of the employees are in Sydney and Melbourne. Without further ado, I support the cut-off motion.

Senator ROBERT RAY (Victoria) (9.49 a.m.)—I am not sure of the latest statistics on the cut-off, if this motion is passed. I think we will reach 150 in the session. That is quite a milestone. I heard what Senator Brown had to say about cut-off motions. I think this is the reality: giving these bills a cut-off and seeing them passed is almost irrelevant, depending on the nature of the bill—that is, if they are non-controversial, they will go through, so we will not have to worry about them. There are one or two bills that we would acknowledge no government could have planned for—that is, the ticket levy legislation—and we would like to see that legislation passed. I understand Senator Harradine may be moving amendments to that legislation, so it cannot be regarded as non-controversial. But, frankly, if most of the rest of the legislation is regarded by the Senate as controversial, it is not going to get up this week and we doubt that the parliament will be sitting again prior to a federal election.

This just reinforces the variety of management problems we have had this week. I am pleased to see Senator Ian Campbell back in the chamber, and I know he will accept our condolences for the circumstances that resulted in his absence earlier in the week. My experience in all these things is that you need certainty, and the government is not giving us certainty as to what we are doing over the next two or three days. I know there has been a variety of discussions, but my knowledge of these things is only second-hand. Things were put on the table yesterday, final answers have not been given and now, not only with this motion but with several others, pre-emptive action is going to be taken. Let us come together, agree on what we can agree on and then take the necessary pre-emptive action.

Senator Harradine interjecting—

Senator ROBERT RAY—Yes, I can pretty much second-guess the nature of the

discussion, Senator Harradine. Probably one of the reasons I am addressing the chamber at the moment is to facilitate these amiable discussions that are going on, given the fact that we are going to have a guillotine introduced very shortly. As I said, the bills in this cut-off motion fall into three categories—controversial, not accepted in the chamber, and not going to be debated this week no matter what the government's intention is.

Just so the government's intention is understood, they want to squeeze the Labor Party on the package of migration bills and force us to guillotine them, because they know we have given a guarantee that the bills will be completed this week, although we never said when this week. That, in turn, is intended to provoke the Democrats to guillotine through the Commonwealth Electoral Amendment Bill 2001 in revenge for our dealing with the migration bills: win-win for the government. If they are a bit lucky, they will go for three out of three, with another piece of controversial legislation that Senator Brown and the Democrats do not want up. So win-win-win for the government. Well, I do not think so, I do not think we will be playing that game—not until the government come in here and say what their agenda is for the rest of the week. We do not want any weasel words; no saying that they have to go off to consult with the Prime Minister and that they have not had a response yet so they can then salami-slice us. If that is the intention, if that is the strategy, if that is what they intend to do, we do not intend to play that particular game.

What we want to know is what the end line is. It is not going to be explained to us in response to the points being made on the cut-off motion. We have had to delay the motion for the meeting of the Senate later tonight because we cannot get a resolution of where we are heading, and as soon as this matter is resolved the Leader of the Government in the Senate intends to move that the migration bills be urgent and to guillotine them through by midday. That does not accord with any of the previous negotiations and tentative agreements reached, nor have the government fulfilled their obligation to deliver a response on what they were supposed to re-

spond on. What they are doing is playing games. What they are going to do is salami-slice things through. They are not going to get away with it—not now, not ever. It is time for a bit of honesty. What is your bottom line? Tell us what your bottom line is and we can get on with the business of the Senate. Don't tell us what the bottom line is and we are going to have a very fractured time before we reach the bottom line, which may be taken out of the government's hands and determined by others.

Senator CARR (Victoria) (9.54 a.m.)—We have a situation arising which is not unprecedented in the Senate's history. In the last week of a parliament and in the last week of a sitting similar circumstances have arisen. However, in a week when we are obviously sitting for the last time before an election—it is widely rumoured that the government intend to make the necessary arrangements to have CHOGM cancelled and to have an election called on the weekend—we can expect there will be an additional pressure on the legislative program. I see government senators are shaking their heads, presumably to indicate that the government would not act in such a manipulative manner and that they would of course at all times honour what they say. The truth of the matter is that there is ample evidence to suggest that that is not the way in which this government function. On the contrary, given the media reports, there is very strong evidence to suggest that what this government intend to do is to have CHOGM cancelled and to call an election as soon as possible to maximise what they perceive to be their short-term advantage arising from the refugee question and to seek to capitalise on the deterioration in the international situation.

We all understand that governments get an advantage out of those sets of circumstances. What does that mean for us in this chamber? We have a situation here where at the beginning of the last sitting week before the election the government has declared that they want 47 bills processed through this chamber. Some of those bills are highly controversial and in normal circumstances it would be expected that some time would be spent considering their implications. The Labor

Party's caucus position and the decision of the Labor Party, which all us here have committed to implement, are such that the package of migration bills will be carried. There will be debate and a reasonable amount of time made available to discuss those matters, but they will be carried. The government has our commitment on that.

What we then have is a whole series of other measures that the government seek that we carry. In this debate we have the issue of the application of the cut-off motion to 21 bills. Of those, only three are currently in the chamber. Three have been received by the Senate; the others are still in the House of Representatives. That is a measure of the chaos in the government's management of its own legislative program. No doubt there will be appeals made in the public arena—we have seen them overnight—to suggest that somehow or other this lack of management and appalling chaos in the legislative program is the responsibility of the opposition. That is the way it is run, according to this government's lights: problems are not of their making; they are always someone else's.

We have a situation to which I think we have to respond. If we look at the numbers, we see that there have been something like 335 bills exempted from the cut-off by this opposition during the last two parliaments—that is, during the life of this government. We have another 21 here today that the opposition are also supporting, because we say that the approach to these matters has to be based on the assumption that the government are entitled to have their legislation considered in a reasonable manner, with due regard to the rights of others. So we are not trying to deny the government the right to consider their legislative program; we are in fact trying to assist them to get some management into the program. It is an irony, is it not, that the opposition have to provide advice to the government on the best way to proceed? We do not say that we are necessarily going to support each piece of legislation, but without some assistance this government would be in a helluva state. That is all we are trying to do: provide them with some assistance. But what we do not like is having to sit down, as

we did yesterday, and discuss with the government a proposition which would see a managed approach to the consideration of these bills—which the government say are so important—only to find the next day that we still have no answers to the questions that were asked.

Let me take a moment or two to put that in perspective. As of last Wednesday and Thursday, I have, on behalf of the opposition, been seeking from the government a list of priority bills. We have been trying to establish what it is that the government itself wants to achieve out of this last week of the parliament. We have been presented with two lists so far. One came very late in the piece last week, which we were told was not a final list—and we understand how difficult it is for the government to reach its priorities; this has made it transparently obvious that it is not able to determine priorities. This is a government that cannot work out what it wants to do. It wants everything but does not know how to achieve it. So we have a situation where the government basically wants to play off one group within this chamber against another group. That is what the government believes is the best way of working through the problem when it cannot determine its own priorities.

Last night, the opposition once again suggested to the government that there needed to be an approach that incorporated all the different components of this chamber. That is the way in which the Senate works best: with an acknowledgment that there are strongly held differences of opinion here and that the nature of the electoral system is going to mean that it is not possible for the government just to walk in and say, 'This is the proposition and you're going to have to accept it.' That is not the way the Senate works. Governments always complain about it. I know that we did when we were in government—and, no doubt, after the next election will come the time when we are in government again and there will be future complaints from us. But the fact remains that anyone who knows anything about how this place works knows that you have to reach accommodations with people.

Senator Robert Ray—And keep your word.

Senator CARR—The other component that Senator Ray reminds me of—and perhaps he pre-empted me in some ways—and that I have tried to put to this chamber on many occasions now is that it is critically important that, if you say you are going to do something, you do it.

Senator Robert Ray—Thank goodness Senator Campbell is back.

Senator CARR—Senator Campbell, I do appreciate the difficulties that you personally have been experiencing in recent times, and we have all passed on our condolences in that regard. But I am so pleased that you are able to return to get some order into this government, because it is quite apparent that it does not know what it is doing. It is not capable of reaching a decision.

What has been suggested is pretty straightforward. We are saying we are prepared to make sure that the government's program is considered and considered properly, and that there be a definite end to consideration of the migration bills. We are not going to allow these bills to be discussed ad nauseam. People are entitled to put a view and to do it in a timely way. We are more than happy to exercise a balanced approach on that matter. We are also saying, though, that a lousy piece of legislation designed to help out a political organisation that is essentially incapable, as this government is, of running its own affairs—namely, the Liberal Party of Australia—should not receive the largesse of the taxpayer when the party cannot organise itself to sort out the differences between its national office and its state branches.

We have a bill that this government seeks to present which would see a problem, as it is put, sorted out within the Liberal Party—a \$15 million problem sorted out within the Liberal Party, to the point whereby this parliament is supposed to intervene to assist the Liberal Party to come to a resolution between its national offices and its state branch offices with regard to the distribution of public funds. We say that that is not our job. If you cannot govern yourselves, you cannot

govern the country: that is the old adage. But we are expected to use valuable time in this chamber to give that issue priority over such matters as education, the royal commissions, fuel, the Ansett passenger ticket levy, the intelligence bills and various taxation bills. We are supposed to give those issues lesser consideration so that the government can spend more time sorting out its political problems.

We have before us 21 bills that you are saying we should give exemption to. We will give you the exemption, but we will say this now: when you move the guillotine, we are entitled to know what the response is to the package that was discussed yesterday. We are entitled to know the government's response. These are matters that are with the Prime Minister at the moment. Who is holding up the legislative program here? John Howard. Be clear about that: it is John Howard. The government is incapable of making political decisions, because it wants everything and has totally disregarded the legislative processes to achieve its legislative program. It has to work out what it regards as more important.

Handing \$15 million to the national office of the Liberal Party at the moment would appear to be more important than the consideration of all the other issues that are on the program. That is the question the Prime Minister has to work out. He could organise his state branches, his state divisions, to make those arrangements to make sure that the national office of the Liberal Party is funded. That is how we do it; it is not so difficult. It is not appropriate, however, to try to hold the entire Senate legislative program hostage because you cannot organise a couple of letters and cannot talk to one another within the Liberal Party and come to some basic conclusions about the way in which these matters should be considered.

As I said, probably this will take it to 250-odd bills that we have exempted from the cut-off. In the last parliament, we rejected one bill—the electoral bill—although that was finally carried against our wishes. In the 38th Parliament, there were 18 bills that were rejected for exemptions, and in the last parliament there were none. So we have a

situation where the government now has to make some hard decisions. We are entitled to know where it stands. We want a definite answer. Is it rejecting the proposition that was negotiated yesterday? Is the Prime Minister saying no to that? If he is, then let us hear it. If he saying yes, then we can get on with this and make sure that there is appropriate time allocated to allow the proper consideration of the legislative program.

Amendment agreed to.

Original question, as amended, resolved in the affirmative.

PARLIAMENTARY ZONE

Approval of Works

Consideration resumed from 25 September, on motion by **Senator Hill**:

That, in accordance with section 5 of the Parliament Act 1974, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being the design and content of slivers for Reconciliation Place in the Parliamentary Zone.

Question resolved in the affirmative.

Senator Brown—Can I have my opposition to that last motion recorded please.

The ACTING DEPUTY PRESIDENT (Senator Murphy)—You certainly may.

MIGRATION AMENDMENT (EXCISION FROM MIGRATION ZONE) BILL 2001

MIGRATION AMENDMENT (EXCISION FROM MIGRATION ZONE) (CONSEQUENTIAL PROVISIONS) BILL 2001

BORDER PROTECTION (VALIDATION AND ENFORCEMENT POWERS) BILL 2001

MIGRATION LEGISLATION AMENDMENT BILL (No. 6) 2001

MIGRATION LEGISLATION AMENDMENT BILL (No. 5) 2001

MIGRATION LEGISLATION AMENDMENT BILL (No. 1) 2001

MIGRATION LEGISLATION AMENDMENT (JUDICIAL REVIEW) BILL 1998 [2001]

In Committee

Consideration resumed from 25 September.

MIGRATION AMENDMENT (EXCISION FROM MIGRATION ZONE) (CONSEQUENTIAL PROVISIONS) BILL 2001

The CHAIRMAN—When we adjourned last night, we had just completed schedule 1, item 7.

Senator BARTLETT (Queensland) (10.08 a.m.)—by leave—The Democrats oppose the following items in schedule 2, as set out on sheet 2395:

(4) Schedule 2, item [4], page 7 (lines 8 to 20), **TO BE OPPOSED.**

(6) Schedule 2, item [5], page 7 (line 21) to page 8 (line 3), **TO BE OPPOSED.**

(8) Schedule 2, item [6], page 8 (lines 4 to 16), **TO BE OPPOSED.**

Given that I anticipate there will be a guillotine applied on these bills at some stage today, I will truncate my comments severely, if very reluctantly, because in truncating my comments, I in no way wish to imply that these are not important issues. But I do want to have the opportunity to, even if fleetingly, get through some of the issues at least to a degree.

Schedule 2 removes third country provisions which require that a person must seek asylum in the country in which they first have the opportunity. In our view, this is dangerous. It means in the way that it reads that, basically, someone cannot seek protection in Australia if at any stage they resided for a continuous period of at least seven days in a country where they could have sought and obtained effective protection. I have a question of the minister in relation to this, which I will ask in a second when he is listening.

Our concern is that this is too blanket. It applies, as I understand it, to a number of different potential visas, and we think that is fairly dangerous because, quite clearly, whilst a person may have passed through a country where they may have been able to seek effective protection, there is no guarantee when they are in Australia seeking to obtain protection that that avenue of protection in the third country is still available to them. It does not take into account that circumstances could have changed. In the Democrats' view, it therefore creates too great a risk that somebody could be removed

when they are not able to obtain effective protection elsewhere.

I wanted to ask the minister a question about this because, as I understand it, these three clauses will prevent people from applying for a refugee subclass 200 visa, a global special humanitarian visa or a visa for the woman at risk class. That therefore applies to anybody seeking those visas from anywhere outside Australia; it is not actually specifically linked solely to someone who is in the exclusion zone. It applies to somebody who is making an application from anywhere outside Australia—so anywhere else in the world in that effect. That is my understanding of it and I just want to clarify that with the minister. In any case, our objections to that remain.

I have circulated some fall back amendments which I will not proceed with, given the time, but they were aimed at providing a little more flexibility in the event that somebody had travelled through a country in which they may have been able to apply for a visa. The alternative proposed is that, in order to be disqualified, the person must have a continuing legal right to enter, reside in or re-enter the third country, and we think that would be a safer approach and leave Australia less at risk—or, more importantly, leave the person less at risk. In any case, the Democrats oppose those items. I would seek clarification from the minister in relation to the question I asked.

Senator SCHACHT (South Australia) (10.12 a.m.)—I, like Senator Bartlett, recognise that there may well be a guillotine applied sometime in this debate, so I will try to restrict my remarks to specific questions. Not knowing when the guillotine will be applied—and we still have 5½ bills to go in the package—some of my questions will relate to things further down the track. Other bills might be guillotined and I might not be able to ask my questions later, so I will get them on the record now.

As we are dealing with applicants applying for refugee status, I want to ask the minister questions vis-a-vis where we are at with the so-called *Tampa* boat people. Minister, has the government been given any indication that, other than New Zealand, any other

countries would be willing to take the so-called *Tampa* boat people after they have been processed on Nauru? Specifically, there are rumours that Canada and Norway might take some of them.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.14 a.m.)—In relation to the last question put by Senator Schacht, the government is currently negotiating a number of options and I am unable to answer that question at this stage due to those negotiations pending. In relation to Senator Bartlett's question, his understanding of clauses 4, 5 and 6 is correct.

Senator SCHACHT (South Australia) (10.14 a.m.)—If those negotiations are not successful, Minister, and no other country takes any refugees other than New Zealand, which has indicated that it will take 120 of the 400-plus *Tampa* refugees—and there are others on other boats but just dealing with those—what will Australia do with those who are not successfully processed in those terms? Will they be taken by Australia if they meet the refugee determination or will they be returned at Australian expense to the countries from which they came?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.15 a.m.)—The government will address that situation when it comes to it. Negotiations are pending at this stage and it would be unwise to guess what may or may not happen. It is a hypothetical question and one that the government cannot answer at this stage. I do not think in any event it would be wise to do so.

Senator SCHACHT (South Australia) (10.15 a.m.)—The so-called *Tampa* boat people have been sent to Nauru at considerable expense to the Australian taxpayer in what we have paid Nauru and all the other expenses. You are saying (1) that there is no indication yet that any other countries are agreeable to take them and (2) that we do not know what will happen to the percentage that will be successful. Can you explain this to the Senate: is it probable that Australia will have to take a sizeable percentage of those people, or will they be left permanently on Nauru?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.16 a.m.)—The commitment I can give is that the Australian government will abide by its international obligations in relation to this. It will ensure that its obligations and the process attached thereto will be abided by. Which country may or may not take people and what may or may not happen is a question that the government cannot answer, and it really should not because it would be unwise to do so. When you are dealing with other countries, you cannot go out and say who you think might or might not take people. Senator Schacht knows that very well. In the realm of international relations, that is something you have to be sensitive to. This government and previous governments have been of a like mind in relation to how they deal with other countries and the sensitivities which are involved when you are dealing with negotiations on the international level.

Senator SCHACHT (South Australia) (10.17 a.m.)—I appreciate that, Minister, and I have not pressed the point. I am sure that the government at the moment would probably not want to raise any spectre of there not being successful negotiations. But I will not press the point. My next point is this: New Zealand has agreed to take 120; it has publicly announced that it is going to take 120 of the 400-plus so-called *Tampa* boat people. They would then get residency status in New Zealand. Under our bilateral arrangements with New Zealand, once they have residency in New Zealand, will they have the opportunity to come to Australia within two or three years?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.18 a.m.)—If they become New Zealand residents, just like any other New Zealand resident, it is conceivable that they could make that application.

Senator SCHACHT (South Australia) (10.18 a.m.)—I just make the point, Minister, that we have so far spent \$150 million stopping them coming to Australia. That is the government's plan: to stop them coming to Australia. New Zealand has made a generous offer to 120 and they are going to be, within three years, within Australia, as I understand

it, if they want to come. It is a very expensive process just to delay them for a maximum of three years before they, if they wish to, can come to Australia. It just shows you that, in my view and the opposition's view, much of this policy has been decided on the run without thinking through the real implications. At \$20 million a week, it is a pretty expensive policy on the run.

I now get to the cost issue. Figures have been speculated on in the press. I have used the figures here and so far in the debate you have not denied the figures I am quoting. For the record, is it a reasonably accurate estimate that in total, for the use of the Australian armed forces patrolling in the Indian Ocean and all the other expenses, this present exercise is now running at a cost of \$20 million a week to the Australian taxpayer?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.19 a.m.)—I have not acquiesced in any way in relation to the figures that Senator Schacht has mentioned. Yesterday, Senator McKiernan asked for a financial impact statement on this and that is being assessed at the moment and we will advise that in due course. It is an ongoing cost.

I stress, in relation to the question of New Zealand residency, that it is not automatic that these people would be here in three years. I said it was conceivable. These people would have to pass the usual tests of New Zealand residents wanting to come to Australia. Such things as skills and other matters would be taken into account. I reject very firmly that these people will go to New Zealand, become residents and then automatically come to Australia. They would have to go through the usual processes that anyone else would have to go through.

Senator SCHACHT (South Australia) (10.20 a.m.)—Minister, what are the skills tests that apply to people who are residents of New Zealand applying to come to Australia? What are the skills tests that this government applies to our Anzac colleagues?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.21 a.m.)—We will take that on notice and have those details to Senator Schacht shortly.

Senator SCHACHT (South Australia) (10.21 a.m.)—Are there any at all?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.21 a.m.)—My advice in relation to Senator Schacht's question is that, if these people became New Zealand residents, the situation in relation to them coming to Australia is that there is a process they would have to go through. The advice was that the aspect of skills would be one of a number of considerations. We will take the detail of the skills aspect on notice and get back to Senator Schacht.

Senator SCHACHT (South Australia) (10.21 a.m.)—Surely one of your advisers from the department—you have got about eight of them sitting there—must know whether there is actually a skills test and, if there is, what it is.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.22 a.m.)—We will get back to Senator Schacht on that.

Senator Schacht interjecting—

Senator ELLISON—We want to make sure that we give Senator Schacht a correct answer. We will get that detail and get back to him shortly.

Senator McKIERNAN (Western Australia) (10.22 a.m.)—These are extraordinary circumstances. We are now told that there is a skills test for New Zealand residents entering Australia. If that is the case, the minister ought to outline what the changes in the legislation are to allow that to occur. It is my understanding that there is free movement of people between Australia and New Zealand and New Zealand and Australia. In fact, for a New Zealand citizen who wants to move to Australia and settle in Australia, there is absolutely no test. I would not have expected Senator Ellison, the Minister for Justice and Customs, to know that. But I do expect the senior officers of the Department of Immigration and Multicultural Affairs to be in a position to advise the minister so that the minister in turn can advise the committee of this very important law, which is not a new law. It has been in place for many years.

We saw an example here last night when Senator Harris got up and spouted about something he did not know about. Senator Harris can be excused because he is a new senator. Senator Ellison can be excused because it is not within his portfolio. But the officers of the Department of Immigration and Multicultural Affairs cannot be excused for not knowing about these provisions. We are entitled to a proper answer to the question that has been asked. Otherwise, if it is left, you are in danger of misguiding the Senate.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.24 a.m.)—The detail of that answer is being obtained, and I have said that it will be available shortly. It would enhance the debate if we could move on to another matter and revisit this shortly.

The TEMPORARY CHAIRMAN (Senator Murphy)—The question is that schedule 2, items [4], [5] and [6], stand as printed.

Question resolved in the affirmative.

Senator BARTLETT (Queensland) (10.24 a.m.)—I will not progress with Democrats amendments (5), (7) and (9) on sheet 2395, given the time. It is a similar issue. It is just trying to be helpful in providing another option, but, given the amendments are not going to get up anyway and given the time constraints, I will move on.

I move to the next section: schedule 2, item [7], clause 447.224, which the Democrats are opposed to. It opposes the quota on particular classes of visa. This is again an interesting component of the legislation that, among many, probably has not been given a lot of attention, in amongst all the other various things. The section, as I read it, relates to the criteria that need to be satisfied at the time of the decision as to whether to give a visa. This is yet another new refugee visa class, the 'secondary movement offshore entry (temporary) visa'.

A range of criteria has to be satisfied at the time of the decision for the person to be able to get one of these visas. One of those criteria is that the number of these secondary movement offshore entry (temporary) visas

granted in a financial year must not exceed the maximum number of visas as determined by *Gazette* notices that may be granted in that financial year. Also, the number of particular visas—including refugee humanitarian class XB visas, which I think is one of the ones we were just dealing with—should not exceed the maximum number of visas. As I understand it, it puts a cap on the number of secondary movement offshore entry (temporary) visas that the minister will grant in any particular year. So it would be in the minister's power by gazettal.

I would like to ascertain, firstly, from the minister whether that number that is gazetted will be disallowable or not. A hypothetical future minister in the next government—it may be that One Nation sweeps into power and Pauline Hanson is the immigration minister—could set the cap at one. Perhaps Senator Harris will be immigration minister, and he is more humane, so he sets the cap at five. Does this provide that power? What is the rationale for that? Is this the first time that we will be putting that sort of cap on people who are in effect onshore arrivals, even though they are offshore because we have excised it from the migration zone? Secondly, what happens to everybody else who makes applications that are eligible in all other ways except for the fact that the cap has already been met, the number has already been filled?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.28 a.m.)—Senator Bartlett raised a couple of questions. To answer the first, it is not a disallowable instrument. In relation to this method of capping, I understand there is a capacity to cap the migration program. I understand that is done by gazettal. I can foreshadow that Senator Bartlett will then want to know if that is disallowable or how that is governed. I am getting instructions on that as well. In relation to the method of capping, that is done elsewhere in the migration program as well, so this does not necessarily stand alone. It is not a unique aspect; capping does exist elsewhere.

The TEMPORARY CHAIRMAN (Senator Murphy)—The question is that

schedule 2, item [7], clause 447.224 stand as printed.

Question resolved in the affirmative.

Senator BARTLETT (Queensland) (10.29 a.m.)—I move Democrat amendment No. 11 on sheet 2395:

(11) Schedule 2, item 7, page 11 (lines 12 to 16), omit clause 447.311, substitute:

The applicant is a member of the family unit of a person who satisfies, or has satisfied, the criterion in clause 447.211.

This amendment basically removes the requirement that a member of the family unit of a person applying for a visa must be in the same country as that person. As I understand it, it would provide greater scope. The legislation as it stands at the moment would require, under clause 447.311, that the applicant is in the same country as the person as well as being a member of the family unit. The Democrats believe that that is unduly harsh. There is plenty of evidence of people's experiences in seeking protection visas where the families have been separated. This particular component of the legislation will basically increase the prospects of families being separated, through those many families that are separated and are in different countries not being able to be linked in a visa application. We think that is an anti-family measure—from a government that talks about family values—and it strikes at the heart of the extreme torment that many refugees suffer; that is, the ongoing indefinite separation of immediate family, which can be amongst the most difficult aspects for them to endure.

Amendment not agreed to.

Senator McKIERNAN (Western Australia) (10.31 a.m.)—I have a question in regard to the matter I asked the minister about on the financial impact. Is there any indication of when we might be getting a response to our questions about the financial impact? The matter was addressed quite early in the committee stage of the debate on the first bill, and I had expected some information on it yesterday evening. Certainly we were expecting that some information would have been worked on overnight and that you

might be in a position to inform the committee on the matter.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.32 a.m.)—As Senator McKiernan would appreciate, a number of departments and agencies are involved in this; it is not just the Immigration officials who are here in the chamber today. That makes it all the more difficult to get the costs on this. We are working on it, and I am afraid that I cannot put it any stronger than that.

Senator SCHACHT (South Australia) (10.32 a.m.)—Minister, when the cabinet took the decision to carry through not only the legislation but this process of intervening with the *Tampa*, sending the SAS troops in to board the ship, sending the Navy and the Air Force for scrutiny and paying the money to Nauru, I presume that it was a cabinet decision that the Treasury and the Department of Finance and Administration were involved in. Being good bean counters—to say the least—in Finance, they would have an ongoing detailed analysis of what is being spent. I cannot imagine the finance department allowing an open cheque to be spent without their knowing on a daily basis what is being spent. They are not that incompetent and they are not that soft-hearted, even for the immigration department.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.33 a.m.)—That still does not change the complexion of the fact that it is ongoing. The costs are ongoing—there is no question about that. Events occurred which have incurred cost, and Finance have to basically do what we are doing. We go to Finance on this matter and say, ‘What is the cost?’ They have to assess that from each of the agencies. You are talking about costs which have been incurred, as I understand it, and that is what we are trying to seek for you.

Senator SCHACHT (South Australia) (10.34 a.m.)—Finance know the costs that have been incurred. I do not believe that they are that incompetent or that soft that they would let any department spend this sort of money without their being informed on a daily basis. They are not that incompetent and they are not that stupid to allow a tab to

be run up without their knowing each day what the tab is across half a dozen departments. If that is the case with your government, then you are monumentally financially incompetent. You should know up to yesterday—I will include yesterday; within the last 24 hours—what has been spent on this whole process. You cannot say that you do not know, because Finance do know.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.35 a.m.)—With due respect, you have changed the question. You now say, ‘Costs up to yesterday.’ If that is your new question, we will look at it in the light of costs up to yesterday.

Senator MCKIERNAN (Western Australia) (10.35 a.m.)—The question has been on notice overnight. Surely you or your advisers are in a position to give the committee some information. So far, absolutely nothing has come back from you. There are costs to date—and I went through this last night—that you would be in a position to know. People are being held on a naval ship off Nauru—there must be some knowledge in the government as to the cost per day of that. Why won’t you give us the information? Why are you hiding this type of information? We are supporting the legislation, but we also have obligations to the taxpayers to indicate to them and find out for them what the cost of all this is. We have seven pieces of legislation and different financial impact statements dealing with each of them. In some of those financial impact statements, it is said that there are going to be savings. For crying out loud, surely the cabinet when it looked at these did some estimates on what the savings would be—not only the expenditures. Why can’t we be in a position to fill in some of the holes in regard to these very important pieces of legislation that are being considered by the chamber?

You have us jammed up against a wall because there is going to a guillotine on the bills and we do not want to waste the valuable debating and probing time of the committee. But these are very proper questions to put on notice to ask what the financial costs of all this is to the taxpayers. A bribe is being paid to the government of Nauru. If we were in different times, if we were not at the end

of a parliamentary session, you could bet your life that we would be spending a day or maybe more probing the conditions of that bribe. How is the Australian taxpayers' money that is being paid to the government of Nauru going to be spent? Will it be spent properly, or will it be divested to private interests, as previous money has been divested by some individuals within the government? We are not going down that track at this stage; we do not want every single dollar and cent accounted for. But there must be some estimates of what it has cost to date, what it is costing currently and what the projected costs and savings are in the future. Why can't you face up and put something on the record, Minister?

Senator BROWN (Tasmania) (10.38 a.m.)—I was out for a couple of minutes earlier, but I just wondered if the minister had responded to last night's question about the parameters for people of wealth coming into the country.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.38 a.m.)—That question is still being dealt with. I hope to have shortly some information for Senator Brown on that. I will give advice as a follow-up to another question I said I would take on notice. It is to Senator Brown on a matter relating to the conferral of rights to proceed against the Commonwealth. That was section 78 of the Constitution. I said I would give him an example of where the Commonwealth had altered that conferral of rights.

An example of Commonwealth law subsequently restricting that power to bring proceedings against the Commonwealth is the Safety, Rehabilitation and Compensation Act 1988, which restricts the ability of Commonwealth employees to bring common law actions against the Commonwealth in respect of injury arising out of their Commonwealth employment. That is an example where the Commonwealth has the power to confer rights to bring proceedings against the Commonwealth, has done so and then has restricted that conferral of rights. That is an example similar to what we were talking about yesterday.

Senator BROWN (Tasmania) (10.39 a.m.)—I thank the minister for that. I am not sure about the particular case that he refers to and indeed whether it has been challenged and what the pre-existing law was, because that is quite important. In the current case the legislation removes rights that pre-existed for earlier asylum seekers in the country. The point I was making last night was that section 78 of the Australian Constitution—under the heading 'Proceedings against Commonwealth or State'—says that the parliament 'may make laws conferring rights to proceed against the Commonwealth'. That is conferring rights on citizens to proceed against the Commonwealth in the courts.

What the Constitution does not say is that the Commonwealth may remove or constrict rights to proceed. It can set the laws, but once there are laws available to citizens I do not see how the Commonwealth can be in the business of cutting across the constitutional right of people to proceed against it in the Commonwealth. It would be interesting to know whether there had been any court action against the example the minister spoke of.

There has been an overnight hunt and they have found one piece of legislation more than a decade ago that might be seen as a parallel. I submit that it is not, and I submit that there are real problems with chapter III of the Constitution in what the government is doing in this legislation today. I think it is a real attempt to erode the Constitution, and it is one of the reasons that the Greens are opposed to it.

Senator SCHACHT (South Australia) (10.41 a.m.)—On the question of funds, following on from my colleague Senator McKiernan, just let us get this straight. It seems to me that either this government is financially incompetent in managing and monitoring the amount of money being spent—therefore, you cannot tell us what has been spent to, say, yesterday—or you do not want to tell us because you are embarrassed by the amount of money that has been spent. And, as we have discovered, most of those who go to New Zealand will be in Australia, if they choose to, within three years, despite

the expenditure of hundreds of millions of dollars.

Let me get a little bit more specific to help the bean counters. Is the \$30 million to Nauru being paid as a general grant? Is it being paid as a tied grant? Is it being paid as budget supplementary assistance to Nauru? Is it being paid out of the Immigration line? Is it being paid out of AusAID? Are you going to claim and count it as foreign aid, to boost what we spend on overseas aid as a percentage of GDP? If the officers do not know which department has sent the cheque for \$30 million and how it is being paid, this is monumentally incompetent.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.43 a.m.)—Can I recap on the question of financial impact. Today we are getting a different sort of question from what we got yesterday. Senator McKiernan asked a question, which he is entitled to ask, wondering whether there are any more figures on the finances and costs of the legislation. Then Senator McKiernan said that it would be helpful to the committee if there were ‘some indication of the cost to the taxpayer of the new regime that is being put in place’. Today we have Senator Schacht saying, ‘What are the costs up to yesterday of what has taken place?’ We have two different questions here. One is the estimated cost of the legislation—that is, a projected assessment as to what this new regime will cost—and then there is the question of what it has cost up until yesterday. So there are two different questions to be addressed, and the third question is about the method of funding to Nauru. I understand that we can have details to you shortly on that latter question.

When I have indicated to the committee that we would get information shortly we have done so, and we are clearing up those queries. There is no problem with that. But, when you have a question as to what this all will cost, that is a very different assessment. It is saying: what will the new regime cost the taxpayer when it comes into force and over what period of time? The other question is more definite: what has it cost up until yesterday? They are the questions we are addressing. In relation to the third question

as to the method of funding to Nauru, we will have information shortly. We are pursuing the other more definite question and the other question will take longer because it is about a projected cost that we have to look at.

Senator SCHACHT (South Australia) (10.44 a.m.)—Some of us have had some experience in government and I cannot imagine, unless there is an absolute shambles in cabinet, any minister fronting up with any legislation or a policy proposal without it going through the Department of the Prime Minister and Cabinet with the appropriate costings on it. When we were in government, if you put that up they would not even let you get on the discussion paper, even on the agenda. You are trying to tell us now that the officers do not know and they have to go and find it. I would have thought that it was the first thing they would have brought in the briefcase with them to be in the advisers box. Whether it is a matter of what you have spent already or, as in the case of Senator McKiernan’s very good question, what is the financial impact of the legislation, that has to be in the cabinet submission. If it changes, you would have to put a supplementary memo in. I cannot understand the shambles that you are operating in or whether there is just incompetence in trying to explain it.

Senator McKIERNAN (Western Australia) (10.45 a.m.)—The minister selectively quoted from some of the questions that I asked last evening. If he looks through all of the questions that I asked last evening, I started just after 8 o’clock asking him about the financial impact statement and two hours or so later I asked whether there were any answers forthcoming. None were. On one particular occasion, when I followed through with a question, the minister just sat there dumbfounded.

The end result of all of this is that we have not got any information as yet. This is inexcusable. We are dealing here with legislation which has retrospective effect. There is no need for the minister to try to run around corners on this. The bills have got retrospective effect and the money in many cases is already spent, and there must be some indication or some information within the De-

partment of Immigration and Multicultural Affairs—certainly within the Department of Finance and Administration—and overall within the Prime Minister's office or within the cabinet office of what the expenditure has been to date. Not answering the questions or not providing any information at all is creating a scare campaign in the community. We are talking about big dollars of expenditure here, some of which I, as an individual, would be supportive of. We, as an opposition party, are supportive of the legislation. But we are entitled to know what the expenditures are. Indeed, we are entitled to know what the estimates of savings are as well, because that is an important offset. But so far we are not getting anything. That is inexcusable.

The legislation, as I said, has got retrospective effect. There have been dollars spent so far. We are aware of the bribe to Nauru. We do not know what the conditions are on it and, had we had more time and were not under the threat of a guillotine and pressure from the other five bills that need also to be debated here, we would press the matter even further. We need information on the financial expenditure and on the financial impact statement. Senator Ellison, if you were in our position, you would be pressing this matter as well. It is quite a responsible thing for an opposition party to be pressing on.

Senator SCHACHT (South Australia) (10.48 a.m.)—I will make it even easier, Minister. You are the Minister for Justice and Customs, I understand, and are in charge of Customs. Customs are involved through Coastwatch. I will ask you simply: starting from the day the government intervened in what we call the *Tampa* affair, what has been the increased cost to Customs and Coastwatch? In your own department, have your own officers advised you how much you have spent? It is a simple question.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.49 a.m.)—As I understand it, in relation to Coastwatch there have not been additional costs for new crew or new resources, because we are still working with the crew we have and the resources which this govern-

ment has provided to Coastwatch. So, in that respect, we have simply prioritised Coastwatch's efforts on these issues, as we would with anything else. The advice I have is that there is no increased cost in that regard. We have prioritised Coastwatch to task in certain areas. You have asked what the cost has been to date. That is a question in relation to the Coastwatch operation. I am not going to go into detail where we have tasked certain flights for operational reasons.

Senator Schacht—I am not asking that.

Senator ELLISON—But I am saying that we have not purchased additional planes or engaged extra crew and, therefore, there has been no extra cost. It is a question always of prioritising where we have flights, and that is how we do it with Coastwatch. We do that quite normally. We had the interdiction over a tonne of cocaine: we obviously tasked Coastwatch flights down to the Shark Bay area to look at that. Where we have intelligence, we task Coastwatch to look out for where we think there may be incursions. That is the answer that I have in relation to Coastwatch.

I might just add in relation to another question Senator Schacht raised—and I think that this does indicate that we do take these questions on notice seriously and we have been answering them—about Port Jackson that I am advised the whole of the waters of Sydney Harbour are appointed as a port under section 15 of the Customs Act. I am also advised that it is therefore a proclaimed port under the Migration Act—in particular I refer to section 5. This in turn means that the whole of the waters of Sydney Harbour are within the migration zone. The relative instrument under the Customs Act was made on 25 March 1998.

Senator SCHACHT (South Australia) (10.51 a.m.)—Thank you for that answer. I presume that the definition of Port Jackson is from the line across the entrance between North Head and South Head and all the waters contained within it.

Senator Ellison—Contained within the harbour.

Senator SCHACHT—Thank you for that, Minister. I am somewhat astonished

that, at this moment when the Prime Minister has announced almost a crisis with the problem of boat people, the number one agency established by the previous government and continued by this government to protect our borders against the penetration of illegal immigrants—Coastwatch, which is part of Customs—has, you have told me, not been provided with one extra cent in this so-called immigration crisis. I am astonished. When the crisis was announced I would have thought, knowing how bureaucracies work, that Coastwatch would have been the first in to see you, saying, ‘Minister, there is a crisis, the Prime Minister has announced there is a crisis: this is a chance for us to get more money for more planes, even on a leased short-term basis, to fly more patrols and to get more people to crew our own Coastwatch boats so that we can patrol more days per week and more weeks per month.’ But you tell us that the only change that took place was a prioritisation of existing resources.

I agree with you that that is an operational matter. I know that as a former Customs minister. I am not going to get up here and ask where units were shifted from—because that might be useful information for people who want to be involved in illegal activities—but I am astonished that the government did not give one red cent more to Coastwatch, the pre-eminent protector of our borders, in this crisis where the Prime Minister has announced that we are being flooded with illegal immigrants. This just proves to me that it is time we had, as the Leader of the Opposition announced, a properly funded coastguard established in Australia.

You are saying, despite all the rhetoric, that you have not given Coastwatch one cent more. Instead, as I now understand it, you have said, ‘We are not going to give them one cent more, but we will get the Navy and the Air Force up.’ So I ask the question: have the Navy, the Army and the Air Force made any specific requests for increased funding for steaming time, wages and resources for them to be steaming backwards and forwards and around in circles in the Indian Ocean to stop more boats coming in? Can we get that figure? I would be astonished if Defence

have not already put a bill in to Finance and Treasury saying, ‘This is what the cost is.’ I presume that is where the leak has come from that this is costing \$20 million a week in Defence expenditure.

If you cannot tell us how that \$20 million a week breaks down, there is a crisis in how you are managing the finance and cash flow or how you are not managing it—or is there just an open cheque? I cannot imagine a Treasurer or a finance minister ever agreeing to an open cheque, no matter how badly the Prime Minister wants something. So we have cleared up that there is no extra money for Coastwatch. Can you now give us the figures on what Defence are spending? And why did the money go to Defence rather than to Coastwatch?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (10.55 a.m.)—Of course, Senator Schacht is totally wrong when he says that we have denied the importance of this matter by not giving Coastwatch any extra funding. We have given record funding to Customs since we came to power. This is a government that has given record funding to Customs and Coastwatch—\$120 million for the Prime Minister’s coastal surveillance task force and \$58 million for eight new Customs vessels. The Prime Minister’s coastal surveillance task force saw the purchase of new aircraft for Coastwatch. This is record funding which the previous government had never, ever given. We have resourced other law enforcement agencies in a similar way.

What we have done in this instance is enhance the partnership between Coastwatch and Air Force and Navy. We have always had that. The previous government involved Navy in this, and this government has too. We have seen a task force, formed of personnel from Air force and Navy, looking at the north-west of this country, and that has worked in with Coastwatch. We have seen, I think, five vessels deployed around Christmas Island, sea based radar and surveillance with P3 aircraft from the Royal Australian Air Force. It is no secret, and quite appropriate, that Coastwatch has engaged the Navy for Fremantle class patrol boat hours. That was going on before. Even before this matter,

we had Navy working with us—and quite rightly so. We have very good cooperation with Navy and Air Force. I witnessed that just recently when I went to Christmas Island.

So the involvement of Navy and Air Force is nothing new. It has been going on for some time. Yet Senator Schacht says that that in some way justifies a coastguard, which is going to cost about \$1 billion—or more like \$2 billion in today's terms. In 1984, it was the Leader of the Opposition, Mr Beazley, who said that a coastguard would be unnecessary and ineffective on a cost basis. It was rejected then, and in today's terms it would cost billions of dollars if you were have a coastguard. For Senator Schacht to be raising that red herring now is really rather shallow. The issue of cost has been taken on notice, and I stress again that we are working on that.

Senator McKIERNAN (Western Australia) (10.58 a.m.)—If ever there were a bill that required referral to a committee for scrutiny, it is this bill and this set of bills. I think the exercise that we are going through has now proven, once and for all, that the Senate committee processes are absolutely necessary. We have been jammed up on this, and we understand why we have been jammed up. Had this gone to a committee, the questions we are putting now would have been directed to the officers of the department. Were we to be given the fudging answers that the minister is giving us now, we would have brought the matter back to the chamber and been prepared to press the minister—to push the matter—to get the required information. The absolutely necessary detailed information is just not forthcoming because we have not got the Senate committee processes in place.

We have really made a mistake in regard to that. It is absolutely necessary. I was criticised in the other place yesterday because of the statements I have made about the bill—that I am supporting it now but, later on, I will move to change it. Absolutely I will move to change it—absolutely we will move to change it—when we get the information. Why aren't we getting the information? Why

are you hiding, Minister? What are you hiding?

You are going into an election with your surplus being dribbled away as it goes, thousands upon thousands of jobs being lost daily, and you do not give an iota about that. There is a requirement for you as the responsible minister to give the committee some information on the costs of the legislation that is going through the chamber. You are fudging it. I suspect that the information is there. I suspect that you have the information. I suspect that it has been considered in cabinet. We know about the \$20 million bribe. That is out in the public. But what about the rest of it—\$150 million on this thing, \$150 million on that, another \$20 million here and another \$30 million there? Why is the information not yet available to us?

It was not the opposition's timing to bring these bills in, it was not the opposition's timing to bring about the *Tampa* crisis, but we have to fulfil our obligations in its place to get information about the various costs. I put it to you, Minister, that the information is at the fingertips of the officers at the advisers desk. Why will you not relate that to the committee? It is not as if you have not had notice on this. From a committee point of view, the notice was given last night. From your own point of view and from the Department of Finance and Administration's point of view, the notice was given in the drafting of the bills, because they require that type of information before they give the okay on it. There must be some estimates at least—if not estimates, then actual costs to date—and I am grateful for the little bit of information you did give to Senator Schacht in regard to Coastwatch.

I put to you, Minister, that you are actually hiding something here. Why are you hiding it? Is it because of fear of an electoral backlash because of the amount of taxpayers' dollars that you are expending on this matter without any accountability? The next parliament, whoever is in government—and I certainly hope it is the Australian Labor Party—will have to revisit this. Even if we are not in government, Minister—

Senator Schacht—You will have to.

Senator McKIERNAN—you will have to do it. Because the Senate is a house of review we will fulfil this and we will go through the estimates process. This will come out. We might as well start the process on that now with the information that you have got available to you, because there is information. We can almost be certain and sure that there is information.

Senator BARTLETT (Queensland) (11.02 a.m.)—This last half-hour or so highlights the immense frustration of the process we are going through with each new question that comes up. As I said earlier this morning, the Democrats are barely saying anything, despite our immense opposition to these bills, just to make sure that we get some opportunity to scrutinise the various bills. The questioning has been left to the ALP predominantly and to Senator Brown. But with each new question that comes up we see another hole in this legislative arrangement, another piece of subterfuge. It really begs the question about all of the great, proud statements that are made about how the Prime Minister has the majority of Australians on side with his approach—they back his approach. I am sorry, but I just refuse to believe that. If the Australian public were aware of the facts—and they are not even able to be here to be made aware of some of the facts—they would not be supportive of such a farcical approach to dealing with this. Even if they do not have the bleeding heart approach of the Democrats, even if they have a more rigid approach to how arrivals should be processed, there is no way people would knowingly support such a farcical and shabby approach as this.

I agree totally with the comments Senator McKiernan has just made. I acknowledge his saying that we have made a mistake in not referring this to a committee. I have to make the point that it was not the Democrats' choice to bring these bills on now; it was the ALP supporting the government's intent on that. I just say again for the record that that is a shame.

Senator McKiernan—It was the government's choice. Fair go. They are in charge of the business, not us.

Senator BARTLETT—To take that interjection: it is always in the power of the opposition, even if you are going to say it is the government's legislation, to at least send it to a Senate committee to, if nothing else, ensure that we can do it more efficiently there rather than do it in the less efficient way we are doing it here and not getting the answers.

Senator Ellison interjecting—

Senator McKiernan—You get to sit at the cabinet table more often than we do.

Senator BARTLETT—If only. I do have a question on the aspect of this bill that creates two new temporary visa classes: the secondary movement offshore entry temporary visa and the secondary movement relocation temporary visa. I have already spoken in this debate about the negative aspects of temporary visas and the number of negative consequences that have applied and made the point that when they were first introduced with the support of the Labor Party in 1999 the Labor Party said that this will not work and the government will have to come back and explain why. What they are doing is coming back and saying, 'Give us more,' and they are getting it. Again, the opposition are saying that it is not going to work and is going to cause a lot more hardship in the process.

The temporary protection visa has been significantly criticised by a range of human rights organisations, refugee advocates, welfare organisations and legal groups which have expressed that it does contravene some of our international obligations. In my view, apart from anything else, it is causing immense suffering to a lot of temporary protection visa holders who are genuine refugees. They are not permitted to leave the country, cannot sponsor family members to Australia, are denied access to a range of settlement services and assistance in getting work, have curtailed social security payments and are subject to a range of other mechanisms that basically are aimed, quite deliberately, at making their lives as unpleasant as possible—and here we are now extending that.

With the secondary movement offshore entry temporary visa, which applies for 36

months—three years—the visa holder is permitted to travel to enter Australia. Once they are in they cannot leave or, if they do, they lose their visa. At the end of that period they cannot apply for a substantive visa other than another protection visa. Firstly, I want to clarify whether that means that they can only apply for another temporary visa or they will be able to apply for a permanent protection visa at that stage. Secondly, does that also mean that if, say, in that three years they have been here they have married or something like that they will not be able to apply for a spouse visa or any other similar visa or any other family reunion visa even at the end of that three-year period?

Does the same thing apply with the temporary relocation visa, which is now for 60 months, or five years? Can the minister confirm that that temporary visa is retained for five years? Do the same restrictions apply in terms of access to government services and the like that apply to other temporary protection visa holders currently? Is it the case similarly with that that at the end of the five years they cannot apply for any visa other than another protection visa? Is that subsequent protection visa also only a temporary one?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.08 a.m.)—There were, I think, in excess of eight questions on that point from Senator Bartlett. We will take those questions on notice and endeavour to have those answers to Senator Bartlett shortly. In the meanwhile I seek to table information on the Business Skills Migration Program that touches on a question asked by Senator Brown. It contains other information in relation to the Business Skills Migration Program and deals with the amount of assets that are involved. I seek leave to table that information.

Leave granted.

Senator BROWN (Tasmania) (11.08 a.m.)—That is not good enough, Madam Temporary Chair.

Senator Ellison—Have a look at it first and see what you think.

Senator BROWN—No, minister. I have asked in the committee for the information to

come from you so that it goes into *Hansard*. The tabling process means that does not happen. What I wanted, rather than me now photocopying that and distributing it to members of the Senate, was a simple exposition from you, if you would not mind—through you, Madam Temporary Chair—on what the wealth provisions are for people coming into Australia.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.08 a.m.)—We are attending to the distribution of that now. I will consider that second request of Senator Brown's. In the meantime we are pursuing those other questions of Senator Bartlett's, which were both numerous and complex, and we will endeavour to have some information shortly.

Senator BROWN (Tasmania) (11.09 a.m.)—I am not going to be fobbed off like that. I asked last night for this information. We know that the government is about to move the guillotine on this legislation and slam debate shut in here. I will deal with that when it comes. But the minister and his minions have had all night and this morning to answer a simple question, which is: what are the wealth provisions that allow people to queue jump into Australia? This is legally queue jumping, sure, but the minister knows the point I am getting at is that if you have enough money in your pocket and you want to come to Australia you can buy your way in under the existing law. I want to know from the minister how much money you need in your pocket. What are the conditions? He indicated last night that it was complicated. It may be complicated for him. He now wants to put a couple of pages onto the table, which avoids a record going into the *Hansard* and avoids him giving the simple sort of exposition that the people of Australia should get on this. This is a debating chamber.

Senator Ellison—Tabling in the Senate is an appropriate course of action.

Senator BROWN—It is not. You have not tabled the answers to any of the other questions that have been asked here and I am not going to let you get away with it on this one, particularly as the guillotine is coming. I am taking from this that the minister simply

does not know; he cannot get his head around it. But if he can, then I challenge him to tell the chamber what the provisions are that allow people to buy their way into the country, to get to the front of the queue, to avoid getting into sinking ships and to get on a jetliner, travel first-class, land here and get into the country because they have wallets that are big enough to do it. That is the question I have been asking the minister. Tabling a document in response to an important question like that is totally unacceptable.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (11.11 a.m.)—Madam Temporary Chair, I will fix the problem right now. I seek leave to incorporate in *Hansard* the document. You cannot do better than that.

Leave granted.

The document read as follows—

FACT SHEET

DEPARTMENT OF IMMIGRATION AND MULTICULTURAL AFFAIRS

24. BUSINESS SKILLS MIGRATION

The Business Skills visa class of Australia's Migration Program encourages successful business people to settle permanently in Australia and develop businesses.

What benefits to Business Skill migrants bring to Australia?

These migrants bring with them knowledge of overseas markets, business networks, cultural practices and languages other than English, as well as their specific business skills and experience.

- It is intended that they will benefit Australia by:
- developing international markets;
- transferring capital and making investments;
- creating or maintaining employment;
- exporting Australian goods and services;
- introducing new or improved technology;
- substituting Australian-made products for goods that would otherwise be imported; and
- adding to commercial activity and competitiveness within sectors of the Australian economy.

What are the results so far?

Aggregate data from survey of Business Skills class migrants shows that (for arrivals after 1 July 1995):

- 83 per cent are engaged in a business;
- each new business employed an average of 4.7 staff;
- 64 per cent of businesses had export earnings. 4 per cent of businesses had export earnings worth over \$1 million;
- 13 per cent of those in business had an annual turnover of AU\$1 million or more;
- on average cumulative funds transferred to Australia by principal migrants were \$843 000; and
- average financial investment in the business was \$325 000.

Where do business migrants come from, and where do they settle in Australia?

In 1999-00, the top ten source countries were: Indonesia, Malaysia, Taiwan, South Africa, Hong Kong, Singapore, Germany, the United Kingdom, Kenya and South Korea.

- 33 per cent had settled in NSW, 15 per cent in QLD, 27 per cent in WA, 17 per cent in Victoria; with the other states and territories gaining less than 1 per cent each.

What is the demand for the program?

Demand for business migration has increased in recent times. In 199-00, 6,260 business migration visas were granted to business people and their families. This compares with over 6080 visas issued in 1998-99 and 5,300 visas issued in 1997-98.

What sort of business people can be granted a Business Skills visa?

Business owners, senior executives and investors are eligible to apply for a Business Skills visa. Business people may make an application for most Business Skills visas overseas or in Australia.

Business owners are required to demonstrate that they have had a successful business career overall and that for two of the four fiscal years preceding their application they have:

- had net assets in business of not less than AU\$200 000;
- been involved in and responsible for the overall management of a business in which they have at least ten per cent ownership;

As well as meeting these requirements, business owners must pass a points test which assesses factors such as turnover, annual labour costs, total business assets, age, language ability and net personal assets.

Senior executives must demonstrate that they have had a successful business career and:

- for two of the four years preceding their application they have been employed in the top three levels of management of a business which has an annual turnover of not less than AU\$50 million;
- pass a points test which assesses factors such as age, English language ability and net personal assets.

Investment-linked applicants must demonstrate a history of successful ownership and management in business and/or investment activities. In addition, applicants must:

- make an investment into a State or Territory government security of between AU\$750 000 and AU\$2 million, for a period of three years;
- demonstrate that they have assets worth at least 50 per cent more than their proposed investment; and
- pass a points test which assesses age and English language ability.

Established Business in Australia applicants can only apply for this visa while in Australia, and while holding a temporary visa other than a Bridging visa or a Criminal Justice visa. They must demonstrate that they:

- have managed a business in Australia in which they have at least ten per cent ownership, for 18 months prior to application;
- have had assets in Australia worth \$250 000, of which \$100 000 must be invested in the business, for 12 months prior to application;
- have been resident in Australia for a total of nine months during the 12 months prior to the application;
- pass a points test which assesses turnover or exports, number of employees, net assets, age and English language ability.

Regional Established Business in Australia applicants can only apply for this visa while in Australia, and while holding a temporary business entry (long stay) visa. (subclass 47). They must demonstrate that they:

- have managed a business in a designated area of Australia, in which they have at least ten per cent ownership, for two years prior to application. (Designated areas are: all of Victoria, SA, NT, Tasmania and the ACT and anywhere in QLD except Brisbane and the Sunshine and Gold Coast, WA except Perth and NSW except Sydney, Newcastle and Wollongong;
- have achieved an annual turnover of at least \$200 000 or exports of at least \$100 000 in

that business for each of the two years prior to application;

- have had assets in Australia worth \$200 000, of which \$75 000 must be invested in the business, for two years prior to application;
- have been resident in Australia for a total of one year during the two years prior to the application;
- pass a points test which takes account of age, English language ability, number of employees and net assets.

State/Territory sponsorship

There are also options for State/Territory governments to sponsor a migrant who is a business owner, a senior executive or a regional established business owner. The requirements for applicants sponsored under these arrangements are lower than those for other applicants.

What must the business migrants do after they arrive in Australia.

The expectation is that they will:

- establish a new business; or
- become an owner or part-owner of an existing business in Australia with a significant level of ownership; and
- actively participate in the management of the business; or,
- having established a successful business as a temporary resident, remain in Australia permanently to continue that business.

The progress of business migrants is monitored after their arrival in Australia. Where no significant steps have been taken towards engaging in business within the first three years of arrival, the Minister for Immigration and Multicultural Affairs has the power to cancel the right to Australian residence of the business person and his/her family. Some 76 visas were cancelled during 1998-99.

Information on Australian immigration matters is available through the Internet on:

<http://www.immi.gov.au>

The Department also operates a national telephone inquiry line on 131 881, for the cost of a local call anywhere in Australia.

Fact Sheet 24. Produced by the Public Affairs Section, Department of Immigration and Multicultural Affairs. Revised on 25 August 2000.

Senator BROWN (Tasmania) (11.12 a.m.)—The same question arises. We are here to debate this issue. Let the minister get up and not only tell members of this chamber, but listeners and people in the gallery,

what the conditions are that enable people to buy their way into the country. He has ducked it twice. The information is there if people want to go scrambling for it, but it is still not here for the immediate debate in this chamber. This process is not acceptable.

I see the hawks are gathering. I see the tumbrels are rolling. I see the guillotine approaching. I see the minister ducking at the same time. What a travesty this is. What a travesty that this government should be moving to gag this debate as the minister ducks answering a question like that. What a travesty it is that we have such important matters still to deal with in this chamber and the government wants to guillotine the legislation. I should explain, Madam Temporary Chair, in case you are not aware of it, that to your right there is a group of ministers standing in the chamber, including the Leader of the Government, Senator Hill, and the Manager of Government Business, Senator Campbell, with the yellow documents in front of them which give them the words that enable them to guillotine the legislation so that we end this debate and so that they can get on to other legislation which is far less significant in terms of the good running of this country. One of the things that we are not going to get to debate if that process goes ahead is mandatory sentencing. The government wants to truncate this debate so that we do not get to look at the matter.

The TEMPORARY CHAIRMAN—Order! There are a million discussions going on in here. There is a discussion going on between the speaker and the chair. Senator Carr and Senator Hill, I would appreciate it if your discussion were not held in between the speaker and the chair.

Senator BROWN—I object too, Madam Temporary Chair. I want that discussion to end because I know what is happening here—

The TEMPORARY CHAIRMAN—Senator Brown, We cannot ask senators to stop discussing things but we can ask for some order.

Senator BROWN—Nor would I want to, but it is disorderly to discuss things between you and me and across the table.

The TEMPORARY CHAIRMAN—I have made that point, Senator Brown.

Senator BROWN—You have quite rightly made that point, and finally it has ended. What they were discussing, by the way, chair, for your enlightenment—and the discussion is now going to take place outside the chamber—is the Labor complicity in moving the guillotine on this debate. Can you believe it? I have not seen it before in the five-plus years I have been in this chamber. I have never seen the Labor Party getting together with the government to gag debate on an issue as important as this, particularly when at least two of these bills have been opposed for the last three years by the Labor Party. I will tell you why they were opposed. It was because they deprive people of their right to go to courts in Australia and of their right to take class actions to get justice in Australia.

They are two principles that the Labor Party ought to be upholding. What are they doing here? They are moving to ensure that the government gets seven bills through, including those two, in the course of this morning. What am I trying to do? Trying to explain this process before that guillotine drops. I have just 10 minutes in which to do that.

I want to go back to mandatory sentencing. Over the last five years, the Democrats and the Greens, together with the Labor Party, have been opposing mandatory sentencing. People will remember mandatory sentencing in the Northern Territory, which ensnared people in pretty desperate circumstances, quite unjustly, and took away the right of the courts to determine, if they were guilty, what the appropriate punishment was. The Labor Party, the Greens and the Democrats got through the Senate the Greens' legislation overriding the mandatory laws of the Northern Territory. In the House of Representatives, where Labor took up that legislation, with a very feisty and positive performance from Mr Andren, the member for Calare, the Howard government was forced to act by sheer public outcry and concern by members of its own backbench.

As a result of that, mandatory sentencing, at least for children, was effectively removed

in the Northern Territory. Interpreters were brought into the courts for the first time, so indigenous people could understand what was going on, and diversionary programs that were appropriate and educative were made available rather than jail, which was effectively a university for further crime. Now we have a Northern Territory election which has changed the government up there and is leading to the abolition of mandatory sentencing altogether. It is a Labor government doing that in the Northern Territory. But not in this chamber, not in this parliament. We now have mandatory sentencing being brought into federal legislation for the first time in this nation's history. What a black spot that is. People who are involved in helping desperate others to get into this country face five- or eight-year mandatory jail sentences.

And what about those who get caught up unintentionally by this rushed legislation? It happened in the Northern Territory; it will happen under this legislation. The minister says that we will not have the situation where people who give harbour to a group of refugees in Australia are caught up under mandatory sentencing. My legal advice is that that is not the case. For example, people harboured East Timorese refugees when the Indonesian military was in charge of their country. We had illegal East Timorese refugees flee to Australia. There were 1,500 of them, if I remember correctly. People who were harbouring them or making it known that they would give harbour to others who came from East Timor could be ensnared by this legislation. They could go to jail for five years or eight years. The court cannot intervene. And Labor is supporting it, can you imagine?

What is more, the next amendment for the Greens will be cut short in a moment by the Hon. Senator Hill, who is now in the chamber on the telephone, getting last-minute instructions from the Prime Minister. The Greens amendment, which says, 'Let's not have retrospectivity in this law,' will also be cut down. What is that retrospectivity there for? It is there to enable any breach of the law by Mr Ruddock or any Commonwealth officer on the *Tampa* in the gross mishan-

dling of an incident where a ship's captain went to the aid of refugees and was then ensnared by domestic politics in Australia. That was a disgraceful episode which has done enormous damage to Australia around the world.

The government here is legislating to say, 'If we committed illegal acts there, we are going to get off. If Mr Ruddock gave orders which were against the law of this country, we will get round that by retrospectively saying, 'It's okay for him.' Tell that to the Australian public. Ask them how they would like legislators who simply put through pieces of legislation to say, 'I broke the law, or I may have broken the law—I'm not even sure about it—but I'm going to put through a bill to make sure I don't have to go to court over it and I can't be challenged in the court.' That is what Mr Ruddock is doing in this piece of legislation. And guess what? Labor is supporting it. Can you believe that?

Senator Lightfoot—That's the new spirit of cooperation.

Senator BROWN—Senator Lightfoot opposite says it is the new spirit of cooperation between the government, the Labor Party and One Nation, who have led the charge—and I give due acknowledgment of it—in terms of the policy direction which is encapsulated in these seven bills. It is One Nation territory. It was One Nation first; the Howard government followed; the Beazley opposition is now with them. This unholy triumvirate is cutting down the rights of not only asylum seekers to this country but also Australian citizens who continue to have the decency to want to uphold international law and want to be humanitarian towards people who are fleeing desperate circumstances. So it is left on the other side for the Greens, the Democrats and Senator Harradine to be taking a stand against that.

If ever there was an argument for the Senate to act as a house of review, this is it. If ever there was an argument for there to be more than the old parties in the Senate, this is it. Whatever happens at the next election, I hope people remember this hour and can see value in making sure there are more non-big-party people in this chamber after that election so that there can be a bigger opposition

when it comes to hugely important legislation such as this.

Just a while ago, Senator Schacht was asking for information about how much taxpayers' money has been wasted on the *Tampa* fiasco. It is somewhere between \$100 and \$200 million—enough to have put them all on the QEII and sent them to Canada. We would still have had change out of it. But this government got itself into that enormous expenditure of taxpayers' money, doing the wrong thing, because it was pressing an election button. It now intends to have an election somewhere in the middle of November through that misdirection of both policy and taxpayers' money. This nation is going to be the one that picks up the long-term tab for that.

If there is one thing that makes me feel good about being a Green, it is being here to be able to fight for the principles which have been abandoned by the government and Labor in this set of legislation. By crikey, I feel that there needs to be a voice for humanitarian principle and for a fair go in this chamber when the big parties get together as they have done on this occasion. It is not only that we are going to see the debate guillotined, it is the principle that is involved in this nasty legislation that we have got to fight. The government is going to say that it has to expedite this legislation. But you know, Chair, and it is abundantly clear to everybody watching the debate, that there has been no filibuster on this debate; nobody could say there has.

The majority of time in the debate has been taken up very properly by the opposition asking questions of the government and Senator Bartlett taking a very formidable role in putting the alternative point of view, with me. But there has been no filibuster. This has been a very proper debate, particularly in the absence of a Senate committee allowing the public and the community groups and the interest groups right round this country to feed their point of view into this important Senate debate. There is no filibuster involved in this guillotine that is coming up. This is pure expedience and cutting across proper functioning of this parliament by the government, backed by the op-

position. It is the lowest form of abuse of the standing orders.

The TEMPORARY CHAIRMAN (Senator Knowles)—Senator Carr, could you sit down please?

Senator BROWN—To kneel before the government!

The TEMPORARY CHAIRMAN—Senator Brown, do you wish to continue your remarks?

Senator BROWN—Not while there is a conversation taking place between you and me. It has finished so now I will continue. The guillotine is being used here, in the lowest form of abuse of parliament. It is being used to cut off a debate which is decent, which is warranted, which is essential to the proper functioning of this parliament. What a disgusting hour in Senate history we are enduring at the moment.

Motion (by **Senator Ian Campbell**) proposed:

That progress be reported.

Senator Brown—I think it would be very good of the manager of government business to give a reason for reporting progress at this time.

The TEMPORARY CHAIRMAN—Senator Brown, I am sure you know that this a procedural motion.

Senator Brown—Yes, it is a procedural motion. I am just trying to inject some decency into it.

The TEMPORARY CHAIRMAN—Senator Brown, I ask you to resume your seat.

Question resolved in the affirmative.

The ACTING DEPUTY PRESIDENT (Senator George Campbell)—Order! The Temporary Chairman of the committee, Senator Knowles, reports that the committee has considered the Migration Amendment (Excision from Migration Zone) Bill 2001 and related bills, has made progress and seeks leave to sit again.

Motion (by **Senator Ian Campbell**) proposed:

That the committee have leave to sit again at a later hour.

Senator BROWN (Tasmania) (11.28 a.m.)—I oppose the motion. I do not believe that we should be sitting at a later hour of the day like this unless the government has come up with a reason for doing so. I have not heard that reason. If we are going to sit at a later hour of the day, what are we going to move on to discuss now? This is a change of the schedule that we have before us. That is not on the red anywhere that I can see. I would like to have an explanation from the government as to what we are going to do between now and sitting at a later hour of the day, and indeed as to what the later hour of the day is going to be. I suspect that the government has just fluffed its approach to the guillotine but I do not know that. If we are going to sit at a later hour of the day, is that so that there can be further discussions undertaken between the government and the opposition as to how they are going to apply the guillotine? We were having a very constructive debate in the committee. The minister was having some difficulties in answering questions but nevertheless that debate was taking place.

There are a number of important amendments to be dealt with right now, which come from the Democrats and me. One of those amendments is to overrule the provisions in the border protection bill which would allow retrospectivity to the law so that the minister, Mr Ruddock, or the Prime Minister or anybody involved in government would escape the law if there were challenges to what they have done over the last couple of months. The implication in the legislation is that the government is aware that it may well have broken the law. What is the legal advice? What is it that the government has been advised is against the law in its handling of the *Tampa* affair? Was it sending the SAS troops onto that ship, poorly instructed and without proper government backup that enabled a challenge to take place in the Federal Court and now an appeal to the High Court being mooted or are there other matters that the government is wanting to avoid having to face in the courts further down the line? Indeed, what is the legality of the current handling of the people aboard the *Manoora*?

Just in the last day, the government has indicated that it may well be using force to remove people who have been taken aboard the *Manoora* from that ship. When that happens, we will get another bout of international criticism and condemnation. No doubt the government has been caught on the wrong foot as far as the *Manoora* is concerned. It should never have taken the action of sending that ship to Nauru. It should have brought the original asylum seekers ashore at Christmas Island. That way we would have found that the processing would be well under way, \$100 million would have been saved of taxpayers' money, and those people aboard the ship who may be cheats would be well on their way to being sent home. The process has taken much longer and will be much more intractable now that the ship has been diverted to Nauru and its passengers on to New Zealand. The government has made a mess of it, but it has compounded that with this iniquitous legislation it has brought into the Senate today. I oppose this motion. Unless the government can give good reason as to what the Senate will debate and why this package of legislation should be interrupted to do that. It would have been a courtesy to the chamber for Senator Hill to have informed us about that when he moved the motion.

Senator HILL (South Australia—Minister for the Environment and Heritage) (11.32 a.m.)—The Senate would well be aware that there are a considerable number of important packages of legislation on the Senate *Notice Paper* and that the Senate is anxious to have their passage. Some of the packages of legislation are extremely urgent. Apart from the seven migration bills, there is important legislation to deal with the funding of primary and secondary schools, the royal commissions legislation to facilitate the two royal commissions that are being set up, the Commonwealth Electoral Amendment Bill 2001, which the government regards as a bill of high priority, the air passenger ticket levy bill, which will enable the funding of government support for entitlements of Ansett workers, and the fuel legislation bill which deals with alternative energy and will enable the existing scheme to exist for a further year. There is a critically important package

of legislation to do with our intelligence services and, for Senator Brown's interest, includes parliamentary scrutiny. There are important tax bills—the New Business Tax System (Thin Capitalisation) Bill 2001 and the New Business Tax System (Debt and Equity) Bill 2001 which, I understand, involves about \$400 million. There is the Motor Vehicle Standards Amendment Bill 2001 dealing with the importation of motor vehicles, the regional forest amendment bill that Senator Brown refers to from time to time, the Taxation Laws Amendment Bill (No. 6) 2001 and the Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001 which will allow federal magistrates to deal with migration matters. I could go on but they are just a few of those bills. The point I am seeking to make, for Senator Brown's interest, is that there is a large legislative workload before the Senate and the government, while not wishing to unduly rush any part of it, is nevertheless anxious that each part be debated.

The seven migration bills are very important bills. I do not disagree with that. They put into place the government's response to illegal entry. The government have taken what we believe is a firm but fair position on illegal entries and want legislative support in the form of these seven bills. The debate has now been around for some considerable time. During our last sitting, we debated a couple of bills which were in similar terms to these, including the border protection bill. Since returning for this week of sittings, the Senate has debated these bills since Monday. We sat the Senate until midnight on Monday night, we sat the Senate until midnight on Tuesday night, and we have been sitting the Senate this morning on the migration package. It is the view of the government that there has been adequate time to scrutinise the detail of this bill, as well as allowing a time for a second reading contribution from every senator, other than on the government side, who wished to participate in that debate. We heard the philosophical position on these issues from many senators around the chamber.

In the view of the government, time is running out. We believe it is important that

we proceed with a vote on these bills. The purpose of seeking to sit again, if subsequent motions are passed, will be to request that the Senate vote on these bills. We will vote on each amendment to the bill—we are not trying to cut that short—starting at midday today. That is what the government is about. There is no surprise. I am surprised to hear Senator Brown say that he is surprised because we have been talking about this since yesterday. Senator Brown had a representative present at a meeting yesterday. I confirmed to the Australian Democrats again last night that we would need these bills to be voted on by midday today. It is apparent to the government that without this restraining influence there will be no end to this debate. Therefore, we do not see that we have any alternative but to move this series of motions and seek a vote on the bills before the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.38 a.m.)—In speaking to the question before the chair I wish to make a few points about the procedural issues that the Senate is currently considering. I think it is well known to senators that there are some elements of the government's legislative program that certainly do not warrant urgent debate or that—in the case of the Commonwealth Electoral Bill—do not warrant debate at all, given that the need for that particular legislation could be obviated by a simple letter—

Senator Robert Ray—A 45c stamp.

Senator FAULKNER—Forty-five cents, as Senator Ray says—from the Federal Director of the Liberal Party to the Australian Electoral Commission.

Senator Robert Ray—I am going to give them a stamp and an envelope, privately bought.

Senator FAULKNER—I have always said you are very generous, Senator Ray. Senators would be aware—this chamber has debated the urgency of that bill—that the view of the opposition is that that should not be dealt with prior to the conclusion of this sitting period. I think it is also important to place on record, given the nature of the con-

tributions that have been made, that it is the view of the Australian Democrats, and Senator Brown on behalf of the Greens, that the Regional Forest Agreements Bill should not be dealt with in this sitting period either. This is the thing that occurs sometimes in the Senate: there are different political imperatives from government, opposition, minor party and independent senators. For the good functioning of the place we all have to take account of those different views and priorities. Sometimes the Senate has to consider trying to limit debate, which in this place, on any piece of legislation or package of legislation, can blow out to an inordinate degree.

In relation to the bills that Senator Hill has asked us to declare urgent—that is, the migration package—the opposition had a different view to the government. It is true to say that at a discussion amongst the parties that was convened on the initiative of the opposition—I asked Senator Hill whether he would consider doing so and he did have a leaders and whips meeting, which I think was the right advice, and Senator Hill took the right action in convening that meeting—it was made clear that the government wanted to declare these bills urgent, with voting to commence last night. I think, to be accurate, Senator Hill, that the time was 11 p.m. last night. I note that Senator Hill nods in acknowledgment.

The view of the opposition is that it is a very important package. You have to get a balance between not having all the Senate's time taken up on debating that package and, equally, ensuring that the amount of time for debate is adequate on such a significant package of bills. It was our view that it was appropriate that the sittings of the Senate on Monday night be extended to midnight and that the sittings of the Senate last night be extended to midnight to debate this package. It was our view—and I expressed it to government and the minor parties at the meeting that Senator Hill convened on our initiative—that we felt that perhaps it would be reasonable to see this debate conclude and for voting on amendments to commence after the taking note of answers to questions in question time today.

That was the view of the opposition. In other words, we felt that 2½ days debate with extended sittings in the Senate was a reasonable amount of time to debate and consider a complex and important package of legislation. You have to make these decisions; at the end of the day you have to try and find an appropriate balance. That was the one that the opposition found and I think it was appropriate. I did indicate, on behalf of the opposition, that if agreement could be reached about the balance of the program, our view would be that within those time constraints it would be reasonable to move a guillotine motion.

I know that is not going to find favour with the Australian Democrats; it is not going to find favour with Senator Brown. I appreciate that they have different views to the opposition on that particular issue, but I would like those senators to acknowledge that the opposition is extending a courtesy in relation to the guillotine motion that was not extended to it on a previous occasion. We made it very clear around the table that we would not tolerate, or even contemplate, a gag on the guillotine motion. On the issue that Senator Hill raised, I made this point very clear at the meeting that was convened in relation to all amendments before the chair being put. The standing orders of the Senate were changed in 1999 allowing for that to occur—again because of the difficult experiences the opposition faced when a guillotine was proposed and gagged and questions before the chair were not even put.

The committee did not have an opportunity to express a view on matters that had been properly moved and which warranted at the very least a view of the committee being expressed. That is a very important principle. There are very different views in the chamber about political priorities and unless you try and come to agreements outside the chamber in a sensible atmosphere whereby people can express those views and come to a balanced conclusion, you do not get very far in this business.

I repeat that the Commonwealth Electoral Amendment Bill 2001 is one that the Labor Party says should not be dealt with in this sitting. We are very clear on that and have

been consistent on that now for a long time. I appreciate that the Australian Democrats and the Australian Greens have a view about the Regional Forest Agreements Bill 2001. It may not be shared by government and opposition. But if debate commences on a bill like that it can be never ending; it can swallow up the whole program, because it is not too hard to filibuster in this place, as everyone knows. That is why it is important to come to agreements on these sorts of issues.

I indicate on behalf of the opposition that even though the proposed guillotine is for voting to commence on these questions before the Senate at an earlier stage than the opposition suggested—we suggested after question time today, not before—it is within the broad parameters, I suppose, of what we suggested. On that basis, I indicate to the Senate that, given the opposition has been successful in convincing the government to extend the time for the Leader of the Government in the Senate to declare urgency on these bills, the opposition will vote for that proposition when it is put a little later, after this particular matter before the chair is dealt with. That is our position. We will vote for the proposition that the bills as outlined by Senator Hill be declared urgent.

But I also want to say this: I have suggested to Senator Hill in a private conversation—normally I do not repeat private conversations, I will quickly add, but on this occasion I think it is a not unreasonable thing to do—that we ought to have another discussion about how we handle the remainder of the program, and he agrees, because we only have 1½ sitting days left. There is urgent business: the Labor Party have consistently acknowledged that a significant number of bills before us are essential bills. They need to be dealt with; they have to be dealt with in this, the last week of sitting of the Senate before an election is called. We accept that. We are responsible and sensible about how we approach these issues. There is essential, urgent legislation that needs to be dealt with and we will give priority to that legislation and we will always try and consider mechanisms that allow us—understanding different views in the chamber and the need for ade-

quate debate—to deal with such essential legislation.

We reject that mechanism being used to bring forward legislation like the Commonwealth Electoral Amendment Bill 2001, which is clearly not urgent—it is not even required at all; it is being used as a lever by the government to try and advantage its own party political self-interest. I think it is important for the Senate to acknowledge that that has been attempted here consistently by the government. I think another discussion about handling the balance of the remainder of the program will be important but I accept, and the opposition accepts, that this package of migration bills is urgent; it is essential; it does need to be dealt with by the Senate. Although we might quibble about a couple of hours more debate, give or take, I think that will be the approach that the opposition takes on this issue.

Senator BARTLETT (Queensland) (11.50 a.m.)—The Democrats oppose this motion. For the procedurally minded, my understanding of the effect if the motion goes down is that we then go immediately back into committee and reconsider the important work that the Committee of the Whole was doing. It is important to oppose this motion because that would enable us to get on with the business of examining the many flaws in the package of legislation.

I remind the Senate that we only got to the tail end of the second bill and we were finding plenty of flaws along the way. Indeed, that bill introduced two brand new categories of temporary protection visas. I had some fairly straightforward questions. The bill does this major thing—it introduces two new major categories of visas—and I asked a question about what the implications of those are and I could not get an answer. They had to take it on notice because it was too complicated. That is the sort of level of preparation and understanding the minister has about this particular bill. That was just one important aspect of one of the seven bills.

It is important, in the view of the Democrats, that we do not accept this motion and that we get back into the important role of considering that legislation in detail because, despite statements by Minister Hill and to a

lesser extent by Senator Faulkner, I do not believe there has been anywhere near adequate time given to consider these bills. And that has been highlighted as much by the questions asked by Labor senators as it has by questions asked by the Democrats or others. They have clearly highlighted that there is a lack of information and a lack of answers about the impacts of the bills and about how they are going to be put into operation—even further, a lack of opportunity to clarify and outline what the real impact is.

As I said before, I believe there is no way that the Australian public would be anywhere near as supportive of the Prime Minister's approach if they actually knew the detail of these bills. We are being prevented from making them aware of what the details are. We are not able to get explanations from the government—not that we would probably get them anyway, because they do not seem to know. We are not able to outline them ourselves because we are being cut short.

Passing this motion will enable the minister to go through the procedure for declaring the bills urgent bills and then bringing down a guillotine. I understand from what Senator Hill said that the guillotine will come into play from 12 o'clock, which means it will be an instant cut-off. That will in effect gag any further debate at all on the bills or any further statements of any sort other than debate, potentially or possibly, on the motions he is going to move about declaring them urgent. Unless we vote against this motion, any further opportunity for examination of the bills and for the government to be held to any sort of accountability will be lost. That of course is what the government wants. That indeed is one of the major purposes of the package of bills—to prevent the government's actions in the whole area of refugee and migration law from being open to scrutiny by the parliament or the courts. This is symbolic of what is happening here now.

It is worth saying—as I have said in the debate a couple of times over the past couple of days—that we look back now with a great degree of shame on the debates and what the parliament passed in 1901. I believe we will

do the same in relation to these bills when we look back on 2001. In that sense, I say to the people in the gallery that you are witnessing a bit of history that will be pointed to for many years to come. You do not always see historic things happening in the Senate. Usually it might appear a bit dry and drab. Maybe this is still sounding dry and drab, but let me assure you that it is quite historic. The processes that we are going to go through now, I believe, are going to be looked back on by not just historians but legal analysts and political analysts as one of the darkest days in Australia's history of parliamentary process—and not just because the appalling range of terrible measures contained in the legislation being passed undermine human rights, undermine the rule of law, prevent scrutiny of government activities, give absolute power to a government minister, his department and officers of the Commonwealth, including thousands of people, and give absolute power beyond scrutiny of the courts to this government and governments to come.

It is incredibly draconian legislation way out of proportion with the issue that it is trying to deal with. We will look back on it with horror not just because of the content of the legislation that is being passed but because of the political dynamic that surrounds it. It is not just a failure in terms of the appallingness of the legislation; the failure of our political process is almost as appalling. There is a very strong probability that a majority of people in this chamber—including on the coalition side—are, if not opposed to all of these bills, opposed to components of these bills. The proper will of the parliament is being subverted by the immediate short-term interests of political parties and the rigid political party discipline that applies in Australia. One of the things I could at least say in the favour of the parliament of 1901, in reading the debates, is that when they were debating the White Australia legislation there was clearly a lot more flexibility in how people voted on particular clauses and bills. At least that legislation took four months to debate, although they still got it horribly wrong.

On this occasion, it is a clear case where the short-term political interest of the government is to give themselves absolute power, to put themselves beyond the rule of law, to give themselves the opportunity and the ability to keep genuine refugees out of Australia, and to be able to turn people away without any fear of retribution. More importantly than that, seeking political advantage in the upcoming election means the government are willing to divide the nation and generate anxiety, fear, hatred, antagonism and vilification within the community for their own short-term political ends. That is their political agenda. That has won out over their principles, aims and concern about due process of law, due processes of the Senate or even decent law. I know, given how many lawyers there are in the coalition, that plenty of them know that these bills are full of rubbish, even from a legal point of view.

From the Labor Party's side of things, their political agenda is that they recognise that they have been outmanoeuvred politically by John Howard on this one, in my view because they did not take a strong leadership position in the first place in opposing Mr Howard's and Mr Ruddock's divisive, destructive agenda—or not opposing it strongly enough. There was no clear alternative position for the public to grasp on to. When Mr Howard says he is doing something, people think, 'We're not sure if we totally agree with it, but at least he's doing something. Somebody has got to do something.' Unfortunately, the something that he is doing is completely appalling and will not even address the problem. It will increase the suffering of very vulnerable people and will increase the burden on the taxpayer by millions and millions of dollars. But hey, at least he is doing something! They do not see any alternative from the opposition, because there is no alternative other than a few more coast guard boats out there and talking nicely to Indonesia.

In that sense, because of lack of leadership, it is no wonder that there has been a political vacuum for John Howard to exploit. Now Labor's political positioning and short-term agenda is that they want to neutralise this issue as one that cannot be used against

them, by letting all this rush through, despite the acknowledgment by most of them that these bills are significantly flawed in many ways. It is a bit of a confusing message from different people in the Labor Party about how flawed the bills are and which bits are flawed. Indeed, Kim Beazley himself, in his comments in the *Hansard* in the House of Representatives, said that Labor is supporting these bills because they are good bills. He said they will be effective and workable.

That is obviously a very different message to what we have been hearing not just in the Senate from Labor members but from others in the other place when they have been allowed to speak—which has not been very often. Outside this place a lot of them are saying that these are not actually terribly good bills, they are not going to work, they are very flawed and we might have to come back and fix them up. Indeed, we heard today that not only would Labor have to come back and fix them up but even the government would have to come back and fix them up, because they are so flawed—and that is quite likely the case.

The political agenda of the ALP is clearly to neutralise the issue; it is a bit unfortunate that some refugees will suffer in the meantime and that our rule of law will be undermined, but that is the price that you pay. For completely differing reasons, there is a coalition of very short-term political interests between the Liberal Party and the Labor Party, each of them combining to basically toss aside and ignore the incredibly severe deficiencies in this legislation and the incredibly appalling consequences that will flow from our passing these bills. In that sense, it is almost as dark a thing as the legislation itself—the fact that our political process has got to the stage where instantaneous short-term political expediency has won out so comprehensively over our responsibilities as parliamentarians. Sure, we all have a role in being political; sure, political interests and political positioning come into it. But there has to be a balance and there has to be a line in terms of our responsibilities and our role. Surely our first, second and third responsibilities have to be—particularly in major areas of legislation—the impact, the effect,

of the legislation on individual human beings, on groups of human beings, on communities, on society, on Australia, on the globe. All of those groups are going to be affected by what we are doing here today and all of those consequences are being ignored.

Again I note the comments from Mr Beazley in relation to these bills that the legislation 'is being supported because it is legal, because it is workable and because it will be effective', as opposed to the comments from Senator Schacht, who said:

... it is true that we could vote it all down and do what the Democrats ask us. But the more I read of this legislation, the more I think we absolutely ought to let it pass and let the government stew in the hilarity that this sort of legislation is going to create. It is unworkable.

I do not think the refugees will be 'stewing in hilarity' as a consequence; I do not think they will find the situation too hilarious. Many people in the Australian community cannot quite see the humour either. It is interesting to note, and appropriate to refer to, an advertisement that appeared in today's *Age* newspaper from a range of prominent Australians calling for a change in the treatment of asylum seekers, disagreeing with the treatment of asylum seekers by Australia and calling for a change in policy. One thing that is different from parliament 100 years ago is that, when they were debating the White Australia Policy, they were not checking the latest news updates on their laptop in the chamber. I have just seen on the AAP news service that Kim Beazley said he had not seen that advertisement but that his message now is not that this legislation is workable. The article states:

Mr Beazley said it was the government's legislation and it stood to be judged on the success of it.

It sounds like he is coming round to Senator Schacht's way of thinking: 'blame the government; it is not our fault.' The article continues:

"... they've got their acts through, they've said those acts are necessary to protect those borders (and) we'll see if they protect the borders," he told reporters.

"My view is that you're not going to protect the borders until you get in place a decent agreement with Indonesia and you get in place a coastguard.

So his view is now that the legislation will not protect the borders because we are not putting in place a coastguard or a decent agreement with Indonesia—but he is still passing the legislation. It is good to see that Senator Schacht's line of argument is so influential that it has now converted Mr Beazley away from his previous position that these bills are workable, legal and will be effective in protecting our borders. Today Mr Beazley is saying that that will not occur. Today he is saying:

You will not be able to sustain this level of naval activity for a huge length of time. It's unaffordable.

He has been reading Senator Schacht's speeches, just as I have, and he is echoing Senator Schacht's comment that it is unworkable. It is amazing.

Obviously, Mr Beazley is incredibly embarrassed by the advertisement in the *Age* calling for a change in treatment. It is supported by all the usual suspects: various professors, a number of fine upstanding members of the community and the Hon. Malcolm Fraser. Everyone knows that he is just a bleeding-heart former Liberal Prime Minister that somehow or other has got a heart in his old age—a quaint person that the Liberals wish they could disown somehow! Obviously that is no embarrassment to Mr Beazley. But alongside the Hon. Malcolm Fraser is the Hon. Michael Duffy, a fairly esteemed former Attorney-General of the Labor Party in the Hawke years. Also on the list is the legendary Hon. Gough Whitlam, the great Labor Party icon, who is held in high esteem. He also is calling for a change in the treatment of asylum seekers.

I hope that Labor members listen to their elder statesperson in relation to this call. They still have the opportunity; they can vote against this motion and we can get back into debating the bills and trying to get a change in the treatment of asylum seekers. This is their opportunity. I really do hope that they take up that opportunity because I believe that, whilst we are all guilty at times of being political and looking at the political angle, we cannot let that get in the way of our broader responsibility to ensure that we uphold our role as parliamentarians, as asses-

sors of legislation, as protectors of the rights of the Australian community and as protectors of, in particular, the rights of the weak and the vulnerable more than anyone else. Refugees are amongst the weakest and the most vulnerable in our communities. Many of the people that will be affected by the legislation we are dealing with are members of the Australian community already. Many more, as a consequence of these bills, will still end up in the Australian community but with fewer rights: they will be Australians with fewer rights than other Australians. That will be the outcome of these bills. On top of that, the legislation will affect many other people around the world. Some in this chamber say that we should worry only about Australians and not everybody else, that it is the problem of other people. I do not hold that view. I hold the view that we have a responsibility first and foremost to Australia as Australian representatives but that we have a broader, general responsibility for global citizens as well. This legislation will also impact on them.

It is very significant legislation, and I believe that we should re-examine the issues whilst we have the opportunity. As Senator Brown said, we have not been filibustering on this debate. Indeed, this morning most of the questioning has come from Labor members and they have exposed quite skilfully some of the holes in the legislation. We are certainly not wanting to talk this out; I could even give the commitment that we would allow it to come to a vote before the end of the week. But we do believe that it desperately needs some more spotlight shone on it, if for no other reason than to get increased community awareness about the absolute moral bankruptcy of the coalition government in relation to this legislation.

We are passing up an opportunity to really expose the full depths of the moral, intellectual, political and legal bankruptcy of this coalition government represented through these bills and the devastating social consequences that are occurring as a result of the fact that the Prime Minister has won this debate in the community at the moment because there is insufficient opposition and insufficient awareness of the morally bank-

rupt way in which he is operating. In effect, letting these bills through without further debate will not just pass very bad law but will again enable the Prime Minister to stay ahead of everybody else in continuing to push his divisive and destructive agenda.

In conclusion I should note that Senator Hill, in his comments, mentioned a number of bills that the government was keen to have debated and included amongst those was the Regional Forest Agreements Bill. He may not have been aware that this morning the Senate refused to exempt that bill from the cut-off, so I am assuming he just had not caught up with that and that that bill is not going to be dealt with.

I listened with interest to the statements that Senator Faulkner made on previous guillotines that had been applied in this place. I acknowledge those and take them on board. If all of us examine how things are done and have been done in the past, we might think about how they could have been done differently. It is useful to get contributions about how these things can be done in different ways to at least provide the best opportunity for each side being able to get their stances on the table. As for the process that was followed then, different people had different aspects of control over it, but I think it is a fair point to make that that was not an ideal mechanism or an ideal process.

Guillotines are never ideal, but there is no point in adopting a position of mock purity about it. As Senator Ray said the other day, I think all of us, with the possible exception of Senator Brown, could support them. I am sure that if the circumstances were right Senator Brown could also be persuaded to support a guillotine if it meant saving Tasmania's forests as a consequence. I am sure even he would consider a guillotine then, although I am sure it would be a humane one. So the issues are as much about recognising when the will of the Senate might be that that be put in place while trying to do that in an effective a way as possible and acknowledging that it might not have been done in the best way in the past. I am not sure this is the best way either and I would have liked a lot more time, and for that reason I would like to see this motion opposed.

Senator ROBERT RAY (Victoria) (12.09 p.m.)— I would like to thank the Greens and the Democrats for not fully exploiting the government's stupidity of trying to move to a guillotine out of committee. You always move a guillotine when you are in normal business. The whole standing orders are constrained to limit that debate. We could have had in fact 10 speeches of 20 minutes each on what we have just heard. The Greens and the Democrats have not decided to exploit it—I thank them for that—but it is a very stupid act. You do not just get out of committee to move the guillotine, you wait until you are well outside of it; otherwise we could have had 10 speeches of 20 minutes each on whether we resume at a later hour this day. So I would like to at least thank the minor parties for not exploiting it.

Senator HARRADINE (Tasmania) (12.10 p.m.)—I rise to indicate that I oppose the guillotine, particularly as it is on a very, very important issue which goes to the lives of so many thousands of people. I do not intend to speak any further because the more that I speak the less time there will be for committee considerations.

Senator Robert Ray—No, that is not right—12 o'clock is the proposed time, 10 minutes ago.

Honourable senators interjecting—

Senator HARRADINE—I am sorry. Things have changed since last night, have they? I am concerned about the fact that the guillotine is coming down now. I indicated in my speech on the second reading my great concern about this legislation—how it undermines so many things that Australia really stands for. I understand that the government has concern over the security of Australia's borders. That is a matter not only of government interest but of interest to all of us—we all agree with that—but in no way at any time during the committee stage debate has the government advanced any real proof that our borders are under attack and that they are not properly protected. Of course, if it is suggested that they are not properly protected, the government is falling down on the job.

The whole point is that persons cannot be provided with a visa unless those persons are determined, in accordance with proper procedure, to have a well-founded fear of persecution if they are returned to the country from which they came. Too little has been said about that, but those are the facts. Whether it is convenient for the government to make those assessments elsewhere than on mainland Australia is for them to determine. Whether it is convenient or not is not the issue; it is whether our own borders are properly protected and whether our obligations are being discharged, particularly our obligations not to refole. Those are the important questions that we need to be considering.

Furthermore, we need to increase our efforts to seek cooperation from other governments in the area, including the Indonesian government. One of the reasons that I was not here for the start of this debate is that I have just come from a meeting between members of the Joint Committee on Foreign Affairs, Defence and Trade and the new Indonesian ambassador. What we need to do is put more effort into cooperative measures to stop people smuggling through Malaysia and Indonesia. I feel sure that that cooperation will be forthcoming. I oppose the guillotining of this debate. There are a large number of issues which need to be discussed and, because of the guillotine, we will not be able to give these matters the thorough consideration that they all deserve.

Question resolved in the affirmative.

Declaration of Urgency

Senator IAN CAMPBELL (Western Australia—Manager of Government Business in the Senate) (12.16 p.m.)—I declare that the following bills are urgent bills:

Migration Amendment (Excision from Migration Zone) Bill 2001

Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001

Border Protection (Validation and Enforcement Powers) Bill 2001

Migration Legislation Amendment Bill (No. 6) 2001

Migration Legislation Amendment Bill (No. 5) 2001

Migration Legislation Amendment Bill (No. 1) 2001

Migration Legislation Amendment (Judicial Review) Bill 1998 [2001]

I move:

That these bills be considered urgent bills.

Senator BROWN (Tasmania) (12.17 p.m.)—Pursuant to contingent notice, I move:

That so much of standing order 142 be suspended as would prevent debate taking place on the motion.

Here we have the government moving to guillotine the debate on these seven migration bills which not only affect asylum seekers and our humanitarian handling of those asylum seekers but also affect the rights of Australians who are concerned for them to approach the courts and to see that they are treated in a decent and time-honoured way as Australia has treated them for decades. This guillotine is turning around the ship of state and proper conduct of the parliament and saying, because the Prime Minister does not want it, 'Go away, an election is in the offing, so let us not have proper process in here, let us not have proper debate, let us not have proper feedback from the Australian community. Let us make parliament the prerogative of the Prime Minister's office.' What he is saying is: 'Guillotine it; the parliament is not necessary, the Senate is not necessary. We will run this country from Mr Howard's office.' That is where we are at.

I warn people watching this that we need the Senate, the Greens, the Democrats and Senator Harradine like never before when the big parties get together to move against democracy in this country, whatever their excuse might be. The alarm bells are sounding not just for the asylum seekers but for proper democratic process in this great country of ours. I have never seen, during my time in the Senate, the opposition get together with the government in such a tawdry process of truncating proper debate on matters so important to the nation. Ultimately, we are enforcing One Nation policy

on asylum seekers, a policy so repudiated by the big parties just two years ago, and in doing so the government and the opposition are not going to allow proper debate in this place. We have a schedule to sit for weeks more before this parliament rises, but there is an unspoken statement in here that the Prime Minister is going to rocket the country to an election in the coming weeks on the basis of opinion poll results. That is why this guillotine motion is here: to foster his election prospects and let democracy be damned—and the opposition goes along with that. What a rotten day for proper government of this country. What an appalling absence of oppositional responsibility from the Labor Party on a matter as important as this. If ever a day demonstrated the need for the Senate to have strong representation from other than those in the big parties, today is it.

I remind you, Mr Acting Deputy President, that these pieces of legislation remove the right not just of asylum seekers but of Australians to go to the courts. I have argued that in some respects they try to override the Constitution. These pieces of legislation try to give cover to the government for any illegal acts it may have been involved in since the *Tampa* was turned away after the Prime Minister's minions asked the captain of that ship to go to the rescue of those people in the South Java seas. These pieces of legislation will introduce mandatory sentencing for the first time in our national laws, and here is the Labor Party backing the Liberal Party backing One Nation in that endeavour. What a low task this is not just for democracy but for decency in the way we, as legislators, handle this nation's affairs.

Let me give a commitment on behalf of the Greens that we will oppose it all the way. We do not have the numbers, but we do have the principle in this matter—a principle shared by the Labor Party until the last couple of weeks but abandoned as it also messed up its trajectory following the total mishandling of the *Tampa* affair by the Prime Minister. It is a pretty low pass that we should be now guillotining these pieces of legislation with government support through the Senate. (*Time expired*)

Senator BARTLETT (Queensland) (12.22 p.m.)—For those in the gallery wondering precisely what we are debating, I clarify that we are debating through the stages of an attempt by the government, with the support of the Labor Party, to guillotine and so prevent any further debate or examination of seven migration bills. To be as fair as possible in the circumstances, we have had examination of two of them to some extent, curtailed because we knew this guillotine was coming down, and five we have not really had a chance to look at in detail at all. If this motion is passed, it will enable us to debate the attempt by the minister to declare that these bills be considered urgent bills. That has the effect of the government then being able to put an allocation of time, and that time, the government has indicated, will be midday. Given that we are passing retrospective legislation, it is probably appropriate that we pass a retrospective guillotine as well. But the Democrats are going to try and ensure every opportunity for some last-ditch effort for the Senate to resume its responsibilities and actually examine these pieces of legislation in the detail that they deserve.

Even in the debates that we have had, we really have not got to a stage where the consequences of these bills have been able to be outlined and some of the internal inconsistencies within them pointed out. We were just about to finish dealing with the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001, which empowers the Commonwealth or a Commonwealth officer to hold a person who arrives in the exclusion zone now created at Christmas Island and other places and take them off to a country that the minister decides is safe for the purposes of assessing refugees—as has happened with Nauru and looks likely to happen with Kiribati as well. It makes it legal for the government to basically grab someone and take them off somewhere else.

The Border Protection (Validation and Enforcement Powers) Bill 2001, which we actually did not get to examine in detail, makes it legal for a person to be turned back from Australian shores by, again, an officer of the Commonwealth—which encompasses a very

wide range of people: Customs, the defence forces and the like—and taken to a place outside of Australia. It does not say which place outside of Australia. It does not have to be the same place, using the powers under the exclusion zone consequential provisions bill. That part means they can take these people to a country that the minister has declared is appropriate. But, under the border protection bill, they do not have to take them there. They can take these people to a place—it could be any place—and they are exempt from any legal consequences for taking them to that unnamed place. There is no extrapolation of what ‘a place outside Australia’ means. Does it mean sending them back to Indonesia, does it mean sending them back to Afghanistan or does it mean just towing them back out into the high seas and letting them sit there? It does not say, but what it does say is that wherever they take these people they cannot take any court action against them for doing it.

It is those sorts of things that really need exposing in these bills. You can argue in debate the policy of needing to do various things with people, and the Democrats will oppose you strongly because the whole approach of what is being suggested is completely unworkable in a policy sense, but more absurd is that the legal framework being put in place to implement that unworkable policy is filled with even more holes. It does not even hold the government to account or Commonwealth officers to account in implementing that policy. They can do it as badly as they like and there will be no legal recourse for these people.

As I said yesterday in this place, through these bills we are giving absolute power to a whole range of Commonwealth officers—an enormous number of people. We all know the saying about what absolute power does to people. It is incredibly dangerous to give out that sort of power. The only possible argument for that sort of thing could be in a state of extreme national emergency or major national threat, such as wartime and that kind of thing. We may be engaging in war shortly, but it is as sure as hell not with asylum seekers. They are the last people that should be subject to these sorts of extreme legislative

measures. The Democrats strongly believe that standing orders should be suspended so that this motion to make the bills considered urgent can be debated.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.27 p.m.)—I want to say, very briefly, that this motion will not be supported by the opposition. The truth is that this is the last sitting week before the election. Every senator should know that. The more we chew up time on these sorts of procedural motions—suspension of standing orders and the like—the less time we actually spend on the substantive issues before the chair. That is the reason we will be voting against this suspension motion.

Question put:

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

The Senate divided. [12.32 p.m.]

(The Acting Deputy President—**Senator George Campbell**)

Ayes.....	11
Noes.....	<u>52</u>
Majority.....	41

AYES

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

NOES

Abetz, E.	Bishop, T.M.
Bolkus, N.	Boswell, R.L.D.
Brandis, G.H.	Buckland, G.
Calvert, P.H. *	Campbell, G.
Campbell, I.G.	Carr, K.J.
Chapman, H.G.P.	Collins, J.M.A.
Conroy, S.M.	Crossin, P.M.
Denman, K.J.	Eggleston, A.
Ellison, C.M.	Evans, C.V.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Gibbs, B.
Harris, L.	Heffernan, W.
Herron, J.J.	Hill, R.M.
Hogg, J.J.	Hutchins, S.P.
Kemp, C.R.	Knowles, S.C.
Lightfoot, P.R.	Ludwig, J.W.
Lundy, K.A.	Macdonald, J.A.L.

Mackay, S.M.	Mason, B.J.
McGauran, J.J.J.	McKiernan, J.P.
McLucas, J.E.	Murphy, S.M.
O'Brien, K.W.K.	Patterson, K.C.
Payne, M.A.	Ray, R.F.
Schacht, C.C.	Sherry, N.J.
Tambling, G.E.	Tchen, T.
Troeth, J.M.	Vanstone, A.E.
Watson, J.O.W.	West, S.M.

* denotes teller

Question so resolved in the negative.

The ACTING DEPUTY PRESIDENT (Senator George Campbell)—The question now is that the bills be declared urgent bills.

Question resolved in the affirmative.

Allotment of Time

Motion (by **Senator Ian Campbell**) proposed:

That the time allotted for the remaining stages of the Migration Amendment (Excision from Migration Zone) Bill 2001 and six related bills be until midday today.

Senator BROWN (Tasmania) (12.37 p.m.)—Pursuant to contingent notice I move:

That so much of standing order 142 be suspended as would prevent the motion being debated without limitation of time and each senator speaking for the time allotted by standing orders.

There ought to be time for a matter like the guillotining of these bills to be properly debated by this place. We would expect that the opposition would be supporting the chamber in having that time. But, once again, we now know that that is not going to be the case, that the opposition is going to join the government and One Nation in cutting off the rightful process of debate of this matter. Let me return to one matter that the minister in committee was not going to speak to the committee about.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Brown, you have the call.

Senator BROWN—Yes, but I cannot proceed until we get some order in the Senate.

The ACTING DEPUTY PRESIDENT—Senator Brown, I can hear you quite clearly. Please proceed. Senator Brown, do you wish to proceed or shall I put the question?

Senator BROWN—Yes, I do. Madam Acting Deputy President, you might do the decent thing and have the Senate brought to order before I proceed.

The ACTING DEPUTY PRESIDENT—I believe the Senate is in order. Senator Brown, do you wish to have the call?

Senator BROWN—I do wish to have the call and I will continue, but objecting to that ruling. That is quite improper of you, Chair, and you should think on that again.

The ACTING DEPUTY PRESIDENT—You are reflecting upon the chair, Senator Brown?

Senator BROWN—I am saying, Madam Temporary Chair, that your ruling is not proper in that circumstance.

The ACTING DEPUTY PRESIDENT—You are reflecting on the chair. Is that correct?

Senator BROWN—I am saying that the ruling you made was not proper. There are people standing right around the chamber, there are half a dozen conversations taking place. You would not make that ruling if it were a different senator standing here, Madam Acting Deputy President.

The ACTING DEPUTY PRESIDENT—Senator Brown, do not reflect upon the chair. I invite you to continue your remarks.

Senator BROWN—And I will continue my remarks standing by what I have just said. That said, Chair—

Senator Abetz—You are offensive, bullying a female chair.

Senator BROWN—Well, when you get the government and opposition breaching the forms of the chamber like this, you would expect that the chair would not. I will stand strong for the proper conduct of this place right through. You may depend on that and the public may depend on that, even if they can see what is going on in here.

One matter that the minister did not want to bring to the chamber's attention this morning was that in the last three years some 17,000 rich migrants were allowed into this country simply because they fulfilled a set of rules which included, amongst other things, that they may have assets of \$200,000 or

\$250,000. The point I was trying to bring in here is that we are seeing these draconian laws brought in to cut the rights of people who are trying to flee tyranny to get into our country for their own safety. But, at the other end, the government is fostering the rights of people who are wealthy, who are already advantaged, to simply buy a ticket and stay in this country. What an extraordinary set-up that is. We have had all these implications about these poor people trying to get into the country, about queuejumping and so on, but we have a legalised system whereby if you are a millionaire you can jump right to the front of that queue.

Senator Patterson—That's wrong.

Senator BROWN—Government members opposite are saying that is wrong, but they do not have time to debate this. They do not have time to debate it because they are moving the guillotine. I will continue to try to debate this over the disorder there is in the chamber at the moment.

Senator Patterson—You never talk about that in question time.

Senator BROWN—The interjections coming from the government members opposite would be better put in a debate in the proper way in this parliament, a debate that we are not getting to get at the moment. I return to the fact that we should have time to debate adequately the remaining provisions in this legislation, including the provision for mandatory sentencing, and including the retrospective provision to cover the government in the mishandling of the *Tampa* affair and, I submit, properly to look at the overall impact of curtailing the rights of Australians and asylum seekers.

Amongst those who are joining in the call for a better deal for people coming to our shores are former Prime Ministers of both the Labor Party and the Liberal Party. I do not think Malcolm Fraser or Gough Whitlam would be with the government and the opposition in here today. They would be with the Greens and the Democrats in opposing what is happening here today because they have a different set of ethics, a set of ethics that is being abandoned by the big parties today in this squalid run to truncate the Senate's proper debating abilities on their way to an

election. That is pretty poor form by the government and pretty poor form by the opposition. The only consistent people in this are One Nation, who have now been joined by the big parties in the direction that the legislation, this guillotined brace of bills, will take this nation.

Senator BARTLETT (Queensland) (12.43 p.m.)—I understand that this process continues on into the time allotted for matters of public interest even though the motion for allotting time has not yet been voted on, which is a bit unfortunate because it will mean that we will end up having to conduct the votes on these bills and the various amendments over the lunchtime period. I am particularly irritated at the fact that these bills are going through and very irritated with the guillotine happening. I do not particularly want to ruin people's lunch, but there are a couple of matters in relation to these bills as well as the bills themselves that are very significant.

I think they will warrant a division to enable votes to be put on the record in relation to them, particularly given that a number of senators, publicly and privately, in the media and in the chamber, have expressed varying levels of apprehension and concern about some or all of these bills. In that context it is particularly appropriate that people are compelled to voice their opinions via how they actually vote in this place. Despite the occasional suggestions that they are government bills so we should blame the government, we are all responsible for how we vote in this place, and we should be held accountable in that regard.

The motion that we will be prevented from examining further beyond this four-minute contribution is to put a motion to allocate time, and the specified time is 12 o'clock. As I said before, it is a retrospective guillotine. It is pretty blunt, fairly brutal and fairly representative of the brutal approach this government has taken towards refugees. There was a curious comment from one of the departmental officials at the only committee hearing we were able to have into most of these bills, last Friday. The official said that it is a bit like having an axe—you can use that axe to chop wood; it does not

mean you are going to chop somebody's head off. This guillotine is certainly chopping off the bills. I think it is also going to lead to chopping off the opportunity for protection for many refugees and, quite literally, it could lead to some of them having their lives cut short. It is that serious a matter.

The government, in moving the motion concerning the allocation of time, specified that time is running out and that we have to get other bills through. Time is running out only if we are going to run to an election. We do have the ability to come back and debate this further. That is in the government's hands. It is only because of the government's obsession in running to an early election, exploiting the political and social divisions and exploiting the destruction of the community that they have caused for political purposes, that they are going to run to an election. That is why they do not have enough time. Time may be running out for debating other bills, but time is really running out for the refugees. Time is running out and is about to expire for our rule of law in this country. Time is about to run out for the opportunity for any sort of appropriate legal oversight of the actions of the government in relation to the operation of the Migration Act—not just today but tomorrow and for the next indefinite period of time.

This is a very dark day, as I said before. The result is a great disappointment to the Democrats, one we will continue to try to fight through the public arena, because we believe there is a desperate need for as strong as possible a voice of opposition—of clear, straightforward opposition, not opposition one day, half-opposition the next, 'not really' the next, total agreement the next and maybe opposition the next day. I never used to get into this flip-flop idea of Kim Beazley that Mr Howard used to use, but I am starting to agree with it. From one day to the next, as you ask about Labor's view on these bills, you cannot tell what his real view is about the bills.

The Democrats will be consistent in opposing not just these bills but the whole underlying, destructive, unworkable, divisive policy approach of the government of the day. We believe there is a desperate need for

a strong voice of opposition to that and many other approaches of this government, and we will certainly seek, as much as we can, to continue to do that.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (12.48 p.m.)—Let me be brief in my contribution on the question before the chair. It is very important to point out to the Senate that in this circumstance—that is, the last sitting week before the election—the more time we take on procedural questions before the Senate, the less time will be available to the Senate to discuss the substance of the urgent and essential legislation that is before us. That is the key point.

Sure, we can all use a whole range of techniques, procedures and tactics to try to blow out debate. What can be done if senators are minded to use those mechanisms that are at their disposal is well known to the opposition. But, when you use them, you have to balance up the fact that it is going to take away the Senate's time on the crucial legislation that is to come before us. The one thing we have been able to establish and agree on is that there are a significant number of bills before us, there is a significant amount of legislation that deserves consideration by this chamber before the end of this week. That is the point. There is a considerable amount of legislation that warrants consideration by the Senate and a decision by the Senate on its fate.

Most of the legislation that the Leader of the Government in the Senate has spoken about previously—take, for example, the Royal Commissions and Other Legislation Amendment Bill 2001, the air passenger ticket levy package, the Intelligence Services Bill 2001, a range of taxation laws and a raft of non-controversial bills—is not only essential and urgent but actually agreed around the chamber. What we are attempting to do is ensure that the bills where there is not agreement—the bills which are politically controversial—do not have priority in the government's legislation program.

We all know that governments determine their own legislation program. Everyone knows that. The Senate, where there is not a government majority, responds to it. We have

tried to be reasonable. That is why we are supporting this guillotine motion. I stress again that we are not willing to gag the guillotine motion, which might mean that this debate will go a little longer than is otherwise the case.

That choice remains with the Senate. I think most senators would prefer to have a debate not on these procedural questions but on the important priority legislation that is before us. That is how I am looking at it. I have got to say to the Australian Democrats senators who are in the chamber and to Senator Brown that that is how the opposition are addressing these issues. We accept there is a limited time. There has been a lot of nonsense spoken about the Senate coming back in three weeks after the end of this sitting week to have an opportunity to debate legislation. Let us be frank. This is the last sitting week before the Prime Minister hops in the white car and goes out to Yarralumla to call the election. We all know that is the case. No-one from the government has suggested for one minute that that is not the case.

That means that certain legislation gets a priority that it otherwise would not have. If the Manager of Government Business or the Leader of the Government in the Senate is willing to stand up here and say to us now that this is not the last sitting week before the election and that we will be back in three weeks time and we will have an opportunity for a couple more weeks to discuss a great deal more legislation, then it is a different ball game. But no-one has said that, Madam Acting Deputy President. Ask yourself why. It is because everybody knows that this is the last chance. That is why we are taking this approach on this question. (*Time expired*)

Question resolved in the negative.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—The question is that the allotment of time be agreed to.

Question resolved in the affirmative.

Remaining Stages

The ACTING DEPUTY PRESIDENT—The time for considering the bills has expired.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (12.54 p.m.)—I table a supplementary explanatory memorandum relating to the government amendments to be moved to this bill. This memorandum was circulated in the chamber on 21 August 2001. I also table two supplementary explanatory memoranda relating to the government amendments to be moved to this bill. The memoranda were circulated in the chamber on 29 April 1999 and 24 September 2001.

The ACTING DEPUTY PRESIDENT—The question is that the government amendments to all the bills be agreed to.

The amendments read as follows —

In respect of the Migration Legislation Amendment Bill (No. 1) 2001:

Schedule 1, item 4, page 4 (lines 8 and 9), omit “within 35 days of the notification of the decision”, substitute “within 35 days of the actual (as opposed to deemed) notification of the decision”.

Schedule 1, item 6, page 5 (line 6) to page 6 (line 9), omit section 486B, substitute:

486B Multiple parties in migration litigation

Application of section

- (1) This section applies to all proceedings (*migration proceedings*) in the High Court or the Federal Court that raise an issue in connection with visas (including if a visa is not granted or has been cancelled), deportation, or removal of unlawful non-citizens.

Consolidation of proceedings

- (2) Consolidation of any migration proceeding with any other migration proceeding is not permitted unless the court is satisfied that:
 - (a) the consolidation would otherwise be permitted under other relevant laws (including Rules of Court); and
 - (b) the consolidation is desirable for the efficient conduct of the proceedings.
- (3) No appeal lies from a decision by the court not to consolidate proceedings under subsection (2).

Other joint proceedings etc.

- (4) The following are not permitted in or by a migration proceeding:

- (a) representative or class actions;
- (b) joinder of plaintiffs or applicants or addition of parties;
- (c) a person in any other way (but not including as a result of consolidation under subsection (2)) being a party to the proceeding jointly with, on behalf of, for the benefit of, or representing, one or more other persons, however this is described.

Relationship with other laws

- (5) This section has effect despite any other law, including in particular:
 - (a) Part IVA of the *Federal Court of Australia Act 1976*; and
 - (b) any Rules of Court.
- (6) However, this section does not apply to a provision of an Act if the provision:
 - (a) commences after this section commences; and
 - (b) specifically states that this section does not apply.

Exceptions to general rules

- (7) This section does not prevent the following persons from being involved in a migration proceeding:
 - (a) the applicants in the proceeding and any persons they represent, if:
 - (i) the regulations set out a definition of *family* for the purposes of this paragraph; and
 - (ii) all of those applicants and other persons are members of the same family as so defined;
 - (b) a person who becomes a party to the proceeding in performing the person’s statutory functions;
 - (c) the Attorney-General of the Commonwealth or of a State or Territory;
 - (d) any other person prescribed in the regulations.

Schedule 1, item 11, page 9 (line 28), omit “paragraph 486B(4)(a) or (d)”, substitute “paragraph 486B(7)(a) or (d)”.

In respect of the Migration Legislation Amendment (Judicial Review) Bill 1998 [2001]:

Schedule 1, item 7, page 6 (lines 5 to 11), omit subsection (6), including the note.

Schedule 1, item 7, page 7 (after line 5), after section 475, insert:

475A Section 476 not to affect the jurisdiction of the Federal Court in certain cases

Section 476 does not affect the jurisdiction of the Federal Court under section 39B or 44 of the *Judiciary Act 1903* in relation to:

- (a) a privative clause decision that is a decision made on a review by a Tribunal under Part 5 or 7 or section 500; or
- (b) any other decision in respect of which the Court's jurisdiction is not excluded by section 476.

Schedule 1, item 7, page 7 (lines 8 to 21), omit subsection (1), substitute:

- (1) Despite any other law, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have any jurisdiction in relation to a primary decision.

Schedule 1, item 7, page 7 (line 26), omit "section 48B, paragraph 72(1)(c), section 91F," substitute "subsection 37A(2) or (3), section 48B, paragraph 72(1)(c), section 91F, 91L, 91Q."

Schedule 1, item 7, page 7 (after line 27), after subsection (2), insert:

- (2A) Despite any other law, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have any jurisdiction in respect of:
 - (a) a decision of the Principal Member of the Migration Review Tribunal or of the Principal Member of the Refugee Review Tribunal to refer a matter to the Administrative Appeals Tribunal; or
 - (b) a decision of the President of the Administrative Appeals Tribunal to accept, or not to accept, the referral of a decision under section 382 or 444.
- (2B) Despite any other law, including sections 39B and 44 of the *Judiciary Act 1903*, the Federal Court does not have any jurisdiction in respect of a decision of the Minister under Division 13A of Part 2 to order that a thing is not to be condemned as forfeited.

Schedule 1, item 7, page 7 (lines 28 to 31), omit subsection (3).

Schedule 1, item 7, page 8 (line 4), omit "subsection (1) or (2)", substitute "this section".

Schedule 1, item 7, page 8 (after line 4), at the end of section 476, add:

- (5) The reference in subsection (2) to section 345 is a reference to section 345 of this Act as in force before the commencement of Schedule 1 to the *Migration Legislation Amendment Act (No. 1) 1998*.
- (6) In this section:
 - primary decision** means a privative clause decision:
 - (a) that is reviewable, or has been reviewed, under Part 5 or 7 or section 500; or
 - (b) that would have been so reviewable if an application for such review had been made within a specified period.

Schedule 1, item 7, page 8 (line 12), omit "Registry of the".

Schedule 1, item 7, page 8 (lines 14 to 31), omit subsections (2) to (4), substitute:

- (2) The Federal Court must not make an order allowing, or which has the effect of allowing, an applicant to lodge an application referred to in subsection (1) outside the period specified in that subsection.
- (3) The regulations may prescribe the way of notifying a person of a decision for the purposes of this section.

Schedule 1, item 7, page 9 (after line 9), at the end of section 478, add:

- ; or (c) in any case—a person prescribed by the regulations.

Schedule 1, item 7, page 9 (after line 18), at the end of section 479, add:

- ; or (c) in any case—a person prescribed by the regulations.

Schedule 1, item 7, page 9 (line 22), omit "or (2)".

Schedule 1, item 7, page 9 (lines 23 and 24), omit "the High Court or the Federal Court (as the case requires)", substitute "the Federal Court".

Schedule 1, item 7, page 9 (lines 29 and 30), omit "or (2)".

Schedule 1, page 10 (after line 31), after item 7, insert:

7A Subsection 486A(1)

Omit "decision covered by subsection 475(1), (2) or (4)", substitute "privative clause decision".

7B After section 486A

Insert:

486AA Intervention by Attorney-General

- (1) The Attorney-General may, on behalf of the Commonwealth, intervene in a proceeding resulting from an application referred to in subsection 486A(1).
- (2) If the Attorney-General intervenes in such a proceeding, the High Court may make such orders as to costs against the Commonwealth as the court thinks fit.
- (3) If the Attorney-General intervenes in such a proceeding, he or she is taken to be a party to the proceeding.

486AB Operation etc. of decision

The making of an application referred to in subsection 486A(1) does not:

- (a) affect the operation of the decision; or
- (b) prevent the taking of action to implement the decision; or
- (c) prevent the taking of action in reliance on the making of the decision.

7C Subsection 486C(1)

Omit “(the *relevant issue*)”.

7D Subsection 486C(2)

Repeal the subsection, substitute:

- (2) Those persons are:
 - (a) a party to a review mentioned in section 479; or
 - (b) the Attorney-General of the Commonwealth or of a State or a Territory; or
 - (c) a person who commences or continues the proceeding in performing the person’s statutory functions; or
 - (d) any other person prescribed by the regulations.

Schedule 1, item 8, page 12 (lines 1 to 13), omit subitems (4) and (5), substitute:

- (4) The amendments made by items 7A and 7B apply to decisions made after the commencement of those items.
- (5) The amendments made by items 7C and 7D apply in relation to proceedings that are commenced after the commencement of those items.

Question resolved in the affirmative.

The ACTING DEPUTY PRESIDENT—The question now is that the

Democrat amendments to all the bills be agreed to.

The amendments read as follows—

In respect of the Border Protection (Validation and Enforcement Powers) Bill 2001:

Page 1 (after line 5), after the title, insert:

Preamble

Whereas Australia is a party to the United Nations Convention on Refugees and the Protocol relating to the Status of Refugees, and thereby shares the profound concern of the United Nations for refugees, and endeavours to assure refugees the widest possible exercise of their fundamental rights and freedoms;

And whereas Australia, recognising the social and humanitarian nature of the problem of refugees, welcomes genuine refugees fleeing persecution in their homelands on the grounds of race, nationality, religion, membership of a particular social group, or political opinion;

Page 1 (line 6), after “Australia”, insert “therefore”.

Page 2 (after line 8), after clause 3, insert:

3A Expiration of Act

This Act ceases to be in force on 1 July 2002.

Clause 7, page 4 (after line 14), at the end of the clause, add:

- (3) No costs are payable to:
 - (a) the Commonwealth; or
 - (b) a Commonwealth officer; or
 - (c) any other person who acted on behalf of the Commonwealth in respect of an action to which this Part applies;

in respect of proceedings to which this section applies that were instituted on or before the day on which this Act receives the Royal Assent.

Schedule 2, item 5, page 10 (line 26) to page 11 (line 24), omit the item.

In respect of the Migration Legislation Amendment Bill (No. 6) 2001:

Page 2 (after line 5), after clause 3, insert:

4 Expiration of Act

This Act ceases to be in force on 1 July 2002.

Schedule 1, item 2, page 3 (lines 11 to 13), omit paragraph (a), substitute:

- (a) a non-citizen in Australia to whom Australia has protection obligations under any of the following:
- (i) the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly of the United Nations on 10 December 1989;
 - (ii) the Convention on the Rights of the Child, adopted by the General Assembly of the United Nations on 20 November 1989;
 - (iii) the International Covenant on Civil and Political Rights, adopted by the United Nations General Assembly on 16 December 1966;
 - (iv) the Refugees Convention as amended by the Refugees Protocol; or

Schedule 1, item 3, page 3 (lines 18 to 22), omit the item.

Schedule 1, item 4, page 3 (line 23) to page 4 (line 7), omit the item.

Schedule 1, item 5, page 4 (line 17), omit “the essential and significant reason”, substitute “a relevant and contributing factor”.

Schedule 1, item 5, page 4 (line 18), omit “the essential and significant reasons”, substitute “relevant contributing factors”.

Schedule 1, item 5, page 5 (lines 1 to 11), omit subsection (3).

Schedule 1, item 5, page 5 (lines 12 to 30), omit section 91S.

Schedule 1, item 5, page 6 (line 12) to page 7 (line 16), omit section 91U.

Schedule 1, item 5, page 6 (line 25), omit “; or”, substitute “; and”.

Schedule 1, item 5, page 6 (lines 26 and 27), omit subparagraph (iv).

Schedule 1, item 5, page 7 (line 17) to page 9 (line 25), omit section 91V.

Schedule 1, item 5, page 9 (line 26) to page 10 (line 11), omit section 91W.

Schedule 1, item 5, page 4 (line 21), omit “and discriminatory”.

Schedule 1, item 5, page 4 (line 28), after “physical”, insert “or mental”.

Schedule 1, item 5, page 7 (line 24) to page 8 (line 13), omit subsections (2) and (3).

Schedule 1, item 5, page 8 (line 28) to page 9 (line 18), omit subsections (5) and (6).

Schedule 1, item 5, page 9 (line 31) to page 10 (line 11), omit subsection 91W(2).

In respect of the Migration Legislation Amendment Bill (No. 5) 2001:

Schedule 1, item 1, page 3 (after line 26), after subsection (2), insert:

- (2A) An officer to whom information is disclosed under this section must treat that information as confidential and must not, either directly or indirectly, divulge or communicate the information to another person except in the course of his or her duties as an officer under this Act.
- (2B) An officer who contravenes subsection (2B) is guilty of an offence punishable, on summary conviction, by a fine of 50 penalty units or imprisonment for 12 months, or both.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

In respect of the Migration Legislation Amendment Bill (No. 1) 2001:

Page 2 (after line 24), after clause 3, insert:

4 Expiration of Act

This Act ceases to be in force on 1 July 2002.

Page 11 (after line 26), at the end of the bill, add:

Schedule 3—Review of certain matters

Migration Act 1958

After section 507

Insert:

508 Review of certain matters

- (1) The Minister must cause an independent review to be undertaken by a person or body of the operation of the following Acts:
 - (a) *Border Protection (Validation and Enforcement Powers) Act 2001*;
 - (b) *Migration Amendment (Excision from Migration Zone) Act 2001*;
 - (c) *Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001*;
 - (d) *Migration Legislation Amendment Act (No. 1) 2001*;
 - (e) *Migration Legislation Amendment Act (No. 5) 2001*;
 - (f) *Migration Legislation Amendment Act (No. 6) 2001*;

- (g) *Migration Legislation Amendment (Judicial Review) Act 2001.*
- (2) The review must be undertaken as soon as possible after the first anniversary of the first day on which all of the Acts mentioned in subsection (1) have commenced.
 - (3) The person or body undertaking a review must give a report of the review to the Minister.
 - (4) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

In respect of the Migration Legislation Amendment (Judicial Review) Bill 1998 [2001]:

Page 2 (after line 9), after clause 3, insert:

4 Expiration of Act

This Act ceases to be in force on 1 July 2002.

The Senate divided. [1.00 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes.....	10
Noes.....	<u>53</u>
Majority.....	43

AYES

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

NOES

Abetz, E.	Alston, R.K.R.
Bishop, T.M.	Bolkus, N.
Boswell, R.L.D.	Brandis, G.H.
Buckland, G.	Calvert, P.H. *
Campbell, G.	Campbell, I.G.
Carr, K.J.	Chapman, H.G.P.
Collins, J.M.A.	Conroy, S.M.
Crane, A.W.	Crossin, P.M.
Denman, K.J.	Eggleston, A.
Ellison, C.M.	Evans, C.V.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Gibbs, B.
Harris, L.	Heffernan, W.
Herron, J.J.	Hogg, J.J.
Hutchins, S.P.	Kemp, C.R.
Knowles, S.C.	Ludwig, J.W.

Macdonald, I.	Macdonald, J.A.L.
Mackay, S.M.	Mason, B.J.
McGauran, J.J.J.	McKiernan, J.P.
McLucas, J.E.	Murphy, S.M.
O'Brien, K.W.K.	Patterson, K.C.
Payne, M.A.	Reid, M.E.
Schacht, C.C.	Sherry, N.J.
Tambling, G.E.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.
West, S.M.	

* denotes teller

Question so resolved in the negative.

The PRESIDENT—The question now is that the Australian Greens amendments be agreed to.

The amendments read as follows—

In respect of the Border Protection (Validation and Enforcement Powers) Bill 2001.

Part 2, page 3 (line 2) to page 5 (line 5), Part 2, omit the Part.

Schedule 2, item 5, page 10 (line 26) to page 11 (line 24), omit the item.

Schedule 2, item 9, page 13 (line 13) to page 14 (line 24), omit section 245FA.

Question resolved in the negative.

Senator SCHACHT (South Australia) (1.03 p.m.)—by leave—I wish to make a very brief statement in the form of a question, as a result of the impact of the guillotine on this range of bills. Before the guillotine was moved, there were questions to the minister, particularly from Senator McKiernan and me, on costs—what has been spent so far and what will be spent. The minister gave an undertaking to take those questions on notice and to get the information to us as soon as possible. Until the guillotine was moved, we were expecting to have that information supplied to us while the debate was still continuing on the package of bills. Will the minister still provide to the Senate the responses to the questions asked during the debate today and yesterday by various senators, particularly those about costs asked by me and by Senator McKiernan?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (1.05 p.m.)—by leave—Senator Schacht knows that those questions—and there were a number of them—have been taken on notice. We are working on them. We did not give an undertaking as to the time in which they

would be answered. We are making efforts to get that information, and we are persisting with those efforts.

Senator Bartlett—Madam President, I seek leave to make a brief statement before the final vote on these bills is taken.

Leave not granted.

The PRESIDENT—The question now is that the remaining stages of the bills be agreed to and that the bills be now passed.

The Senate divided. [1.10 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes.....	50
Noes.....	<u>10</u>
Majority.....	40

AYES

Abetz, E.	Alston, R.K.R.
Bishop, T.M.	Boswell, R.L.D.
Brandis, G.H.	Buckland, G.
Campbell, G.	Campbell, I.G.
Carr, K.J.	Chapman, H.G.P.
Collins, J.M.A.	Conroy, S.M.
Coonan, H.L. *	Crane, A.W.
Crossin, P.M.	Denman, K.J.
Eggleston, A.	Ellison, C.M.
Evans, C.V.	Ferguson, A.B.
Ferris, J.M.	Forshaw, M.G.
Gibbs, B.	Harris, L.
Heffernan, W.	Hogg, J.J.
Hutchins, S.P.	Kemp, C.R.
Knowles, S.C.	Ludwig, J.W.
Macdonald, I.	Macdonald, J.A.L.
Mackay, S.M.	Mason, B.J.
McGauran, J.J.J.	McKiernan, J.P.
McLucas, J.E.	Murphy, S.M.
O'Brien, K.W.K.	Patterson, K.C.
Payne, M.A.	Reid, M.E.
Schacht, C.C.	Sherry, N.J.
Tambling, G.E.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Watson, J.O.W.	West, S.M.

NOES

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

* denotes teller

Question so resolved in the affirmative.

Bills read a third time.

MATTERS OF PUBLIC INTEREST

The PRESIDENT—The Senate will now proceed to matters of public interest.

Faulkner, Senator John: Alleged Smear Campaign

Senator ALSTON (Victoria—Minister for Communications, Information Technology and the Arts) (1.14 p.m.)—I rise to again pursue the matter of Senator Faulkner's sewer and the apparently preferential treatment received by him from Sydney Water. I note at the outset that, when I spoke on this matter on 9 August, Senator Faulkner complained:

As usual, Senator Alston did not do me the courtesy of indicating that he was going to address these matters.

This really is a bit rich. The matter first found its way into the public arena as a direct result of Senator Faulkner rising in this chamber on 9 August and saying:

I want to tell you a story about my sewer.

He then proceeded to bag me and Senator Heffernan. Did he forewarn us? Of course not. The fact is that Senator Faulkner has established the ground rules for etiquette in this matter but, as usual, with his acute victim complex he is totally unable to accept any responsibility for his own behaviour.

I also make it plain that, contrary to allegations made by Senator Faulkner, I have not relied on or spoken to any Liberal Party informant in relation to this matter. Instead, I have based my concerns on documents made available by Sydney Water. Senator Faulkner's attitude to date seems to be simply to tough the matter out, no doubt on the advice of his good friend and mentor, Senator Ray, who on his own admission has been through all the relevant documents and financing arrangements in considerable detail.

The critical issue which remains unanswered is that, despite Sydney Water making it clear that Senator Faulkner should pay for the cost of the extension or lead-out to the adjoining property, as a result of what he chooses to describe as argy-bargy, he managed to persuade Sydney Water not to charge him one cent for the extension works. How did this come about? Anyone familiar with the practices of government utilities such as Sydney Water would know that, despite the fact that extensions to adjoining landowners'

properties are not strictly for the benefit of a primary landowner such as Senator Faulkner, many thousands of citizens have found themselves in this situation and have been required to bear the cost of such extensions. Yet Senator Faulkner appears to have been able to engineer a much more favourable result for himself, a result which ordinary citizens can only envy.

I raised some very important questions about how Senator Faulkner achieved such an outcome, and I asked whether he talked to the New South Wales Labor government to obtain this result. My information is that he did speak to Mr Craig Knowles, the then New South Wales Minister for Urban Affairs and Planning, and that Mr Knowles asked for Senator Faulkner's problem to be sorted out. I also asked whether he contacted the ministerial section of Sydney Water and, if so, why. My information is that he did. I am also informed that Senator Faulkner was irate and abusive with Sydney Water staff over a period of several weeks. What is truly extraordinary is that, despite very serious allegations being put on the public record on 29 August, Senator Faulkner chose not to say one word about them until I again raised the matter in the chamber on 19 September, three weeks later.

As soon as I did so, Senator Ray jumped to his feet and made it plain that he had been through all the documents, the financing arrangements and the issues with Senator Faulkner. Following my second contribution on the matter, Senator Faulkner immediately came into the chamber and made it plain that he was unaware of what I had said, although he was happy to claim that I had 'probably made wild and unsubstantiated allegations' which he said he would have a look at some time in the future. He then proceeded to provide a rambling and discursive contribution which did not deal with any of the matters of substance raised by me and certainly did not throw any light on whom Senator Faulkner had approached, directly or indirectly, within the New South Wales government or Sydney Water and how he had managed to persuade Sydney Water to forgo their claims. Instead, he went on at great length about how he did not want a sewer line under his house but

was forced to have one. It is not at all clear whether this was intended to refer to the extension or the lead-out or whether it was simply yet another red herring cast by Senator Faulkner to cover up his refusal to deal with the substance of the issues.

The most that Senator Faulkner was prepared to volunteer was that 'it is true that I paid by way of a variation of the building contract at the time at least \$3,000 and possibly up to \$8,000 towards that work'. It is beyond comprehension that Senator Faulkner cannot be more precise about how much he paid, to whom and for what works. Senator Faulkner is clearly able to produce all the relevant documents, as he has already told the chamber that they are available for inspection by anyone other than the Liberal Party. Unless he does produce those documents, it is quite clear that he is not prepared to come clean about the circumstances of this matter.

In two previous speeches I have asked Senator Faulkner to state whether he brought political pressure to bear in relation to this matter and, if he did, what kind of pressure he used. What does Senator Faulkner mean when he refers to 'frustrating argy-bargy'? I have asked whether he exerted political influence for private gain, and again he has refused to respond. I have asked these questions for a very good reason. Today, I wish to table a new document that makes it clear that political influence did occur in this matter. The document is a fax cover sheet dated 9 September on Sydney Water letterhead. It refers to the work at Senator Faulkner's property, and states:

As a matter of urgency, i.e. political influence, this work has been started today.

I repeat:

As a matter of urgency, i.e. political influence, this work has been started today.

What this document reveals is that political influence was exerted in relation to sewerage work at Senator Faulkner's property. It does not say who exerted that influence or exactly what the result of that influence was: nevertheless, it is now clear that Sydney Water was subjected to political influence in relation to this matter. So we have a situation where the documentation clearly states that

political influence was exerted in relation to the private work being done by a senior politician. We also have a situation where the documentation also clearly indicates that a sewer extension that was to be paid for up-front by Senator Faulkner ended up being paid for by Sydney Water.

I note Senator Faulkner's presence in the chamber. I also note that he has no documents with him. I therefore presume he is once again going to simply make some very general statements on the matter without responding with any seriousness to the matters raised. Given the seriousness of these matters and Senator Faulkner's consistent and cavalier disregard of normal accountability processes, I have decided to refer this matter to ICAC, in order that a detailed and impartial assessment can be conducted. Perhaps I could show that letter to Senator Faulkner, and then—

Senator Faulkner—You can just table it.

Senator ALSTON—All right. I table the document.

Senator Faulkner interjecting—

Senator ALSTON—It is just that it has not been shown.

Senator Faulkner—You did not tell me you were going to speak, either.

Senator ALSTON—I made my reasons for not doing so plain at the beginning. It was because, when you first raised this matter in the chamber and bagged me and Senator Heffernan, you did not alert us to the matter.

Faulkner, Senator John: Alleged Smear Campaign

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (1.21 p.m.)—I did not hear the beginning of Senator Alston's contribution. I was informed that he was on his feet speaking about this issue again. I have of course read the other contributions that Senator Alston has made on this same issue, and you can sum up what Senator Alston is saying simply: what he has accused me of is using my public position to exert political influence for private gain. I deny that allegation absolutely. There is no truth to that allegation

whatsoever. Ironically, the truth is that my public position prevented me from exerting influence in a private dispute with Sydney Water to avoid substantial private loss on my part.

I have set out the facts on this matter publicly on two previous occasions, but I will take the opportunity to set them out again briefly today. This matter arose when I was renovating my house in 1996. Initial advice provided to me by a Sydney Water representative was that, in order to avoid building over a sewer line that terminated in my backyard, a two-foot long section of the sewer could be disused and a new terminal point and connections created. However, subsequently, Sydney Water advised that this sewer main would need to be extended right under the dwelling and into an adjoining property—which is a vacant property, in fact—on the other side of my block. This was to facilitate sewerage service for possible future development of that vacant property, which is an electricity substation. The vacant property is owned by Energy Australia—as I say, it is an electricity substation—and Energy Australia subsequently advised me that they had no plans to change the usage of the property and they did not require any sewerage provision on the property. Notwithstanding that, Sydney Water decided to insist on the sewer extension.

My records indicate that I paid, by way of variation to my building contract, at least \$3,000 towards the necessary work for the sewer extension. But, of course, as I have said before, it did not end there. The excavation that was dug for this sewer line caused consistent flooding in my house, and I spent in excess of \$20,000 to fix that problem. I took out a second mortgage on my home to pay for that rectification work. Five years after the event, Senator Alston grandly announces to the chamber that he will refer this matter to the New South Wales ICAC. Frankly, I could not care less who he referred it to. He can take it to the Privy Council, for all I care. He can do whatever he likes with it. After all, Senator Alston has referred this to journalist after journalist after journalist in the gallery, and so has his sidekick in this particular matter, Senator Heffernan. He was

the mastermind, of course, of the Seyffer scam, and he has not had the courage to come down and argue this very poor case—quite frankly, he does not argue any case in the chamber. But Senator Alston, particularly, and his flack have been up there in the parliamentary press gallery now for week after week slandering me and libelling me to senior gallery journalists—but with no luck at all in the gallery. The minister for communications has taken his smears and slanders to senior media people outside the press gallery, and so far he has had no more luck there.

But, just to be clear, there is no truth to any of Senator Alston's allegations. There is no truth to any of the allegations that Senator Alston has made. Specifically, there is no truth to Senator Alston's allegation that I used my public position to exert political influence for private gain. This matter, raised two days before this parliament gets up for the federal election, is a politically motivated libel and slander put about by people whose notions of decency do not go beyond loyalty to the Liberal Party. Ask yourself: why is Senator Alston doing this; why is he taking this step? I will tell you why: because he has been singularly unsuccessful in badgering the press gallery here in Parliament House to get this story up.

Let me say a little more about that. One prominent gallery journalist was encouraged to put in an FOI request to Sydney Water. That journalist looked closely at all the material, including the document that Senator Alston has tabled. That document has been in Senator Alston's possession for so long, and I have no idea why he has waited until today to table it—well, I probably do understand why he has waited until today to do so. But that FOI request produced a range of documents, including the one just tabled by Senator Alston. That journalist looked very closely at all the material and decided that there was nothing improper in this matter—and not only that there was nothing improper in it, but that there was nothing worth reporting. The journalist did the right thing in asking me to put my side of the story before publication. I made the same offer to that journalist as I have made to every one of the

many who have been encouraged by Senator Alston to pursue this story: have a look at my files to see what really happened; examine my receipts; have a look at my bank account, if you like; inspect the sewer, if you like. I have nothing to hide.

I paid my contribution to this work, and that is one of the things that Senator Alston fails to understand. Naturally, I did not pay Sydney Water; I paid the contractor. I paid my contribution towards the extension of the sewer under my house to a vacant block next door, the owners of which had no need for it and did not want it, and Senator Alston seems to think that there is some difference between the extension of the sewer under my renovations and the construction of a sewer leadout to the block next door. There is none. They are one and the same job. The adjacent block begins at my building line.

There have been a number of journalists in the gallery who have shown sufficient interest in the urgings of Senator Alston and his flack to get in touch with me about these allegations. I appreciate the fact that they have given me the opportunity to present them with the facts before proceeding with this matter. Most recently, Senator Alston has been trying to get this story up on the basis of the document that he tabled today, a document signed by a Sydney Water employee that alleges the job at my house was being done urgently due to political influence. This document has been raised with me by a number of those journalists. It was in the FOI that I mentioned. But let me say about the allegation that this job was being done urgently due to political influence: I categorically deny that allegation. I neither exerted political influence nor sought to exert it.

I accept that there is an issue here, and I did when I first spoke on this matter. There is an issue of reality and perception. When a public figure argues his or her case in a private dispute with a public utility, where does the private persona end and the public persona begin? Like anyone, I am going to press my case if I think it is reasonable, and I argued my case as John Faulkner, citizen. That is how I argued my case. I did not argue it as Senator John Faulkner, a public figure. I ac-

cept that it may well have been known, and probably was known, to those employees of Sydney Water who dealt with this issue that I was and am a public figure. If one of them assumed incorrectly that this job was being done urgently because I was demanding special treatment as a public figure, frankly there is nothing I can do about it. There is nothing I can do about that.

The situation here is that, in short, Senator Alston has got a nil return for his efforts in trying to get this story up. So in his frustration, because not one of the people he has peddled this story to in the press gallery or beyond the press gallery has thought it reportable, Senator Alston, two days before the parliament gets up, is now playing the last card off the bottom of the deck. He is prepared to make a completely vexatious, completely mischievous referral to a public body in an attempt to damage me politically at this time and get some publicity for a completely unfounded slur. That is what he is trying to do. He has not been successful so far, so now he is playing the last card in the deck.

I have said this before: if I had any influence, this sewer line would never have been extended under my house, and I certainly would not have had to pay thousands of dollars towards it, but I accepted Sydney Water's decision to put the sewer line through and I paid up. As I said before, people can scabble around in my sewer all they like—Senator Alston and Senator Heffernan have been doing that for months. You can keep scabbling around in my sewer, and all you will find is the aforesaid Senator Alston and Senator Heffernan.

Australian Defence Forces

United States of America: Terrorist Attack

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (1.36 p.m.)—Today I rise to pay tribute to those men and women who are serving in the Australian defence forces. There has been some discussion in recent days about the issue of conscription. I want to put on record that the Australian Democrats welcome the announcement by the Prime Minister that he would not introduce conscription. The Democrats have always said that we would

only ever support conscription in the event of a military attack on the territory of Australia requiring a significant increase in troop numbers to repel. Aside from the moral issues to be considered around conscription and, of course, conscientious objection, calls for conscription do not recognise that today's defence personnel are highly trained and skilled. I acknowledge the comments made this morning by the Australian Defence Association that:

No country is introducing conscription these days and most of these countries who have had conscription in the past are getting out of it. It doesn't produce a professional army of the sort that is needed in modern conflict.

We may see Australian service personnel deployed in the near future to take part in the US-led actions against terrorists and those who harbour them. The Democrats have made very clear their view on this in the last two weeks but, because there are some who have sought to misrepresent our stance, I am going to state it again. Firstly, we condemn terrorism. We express heartfelt condolences to those who have been struck by it not just in America but in countries around the world. The parliament, though, must have the opportunity to examine in detail the commitment of Australian troops to battle. It is one thing to provide intelligence support or to send medical personnel, but the commitment of troops to war is another thing. In fact the ANZUS Treaty says very clearly that the United Nations Security Council would have a central role. I urge particularly those government members who have asserted that the UN does not have a role in present events—and people have asserted that in recent days in this place—to actually read the ANZUS Treaty.

I recognise that, in our sorrow, there is a great desire for us to do something, for us to act, but it must be effective and it must be proportional. Courage, compassion and commonsense must guide us, and we must respect the rule of law—domestic and international—and, of course, the rules of war, including that civilians are not legitimate targets and that the ultimate aim here is peace, not World War III. As the Democrats'

foreign affairs and defence spokesperson, Senator Vicki Bourne, has pointed out:

Our security interests lie in building confidence in the international community. We must work to foster institutions that will enable nations to cooperate in the face of these new threats.

What we have called for and what we need in this country is an informed debate, and we must listen to the experts in the field, experts like Dr William Maley, Professor of Politics at the Australian Defence Force Academy and a specialist on Afghani issues. Dr Maley gave an address here today in the parliament, sponsored by Senator Vicki Bourne, on the issue of international terrorism.

If we do see Australian troops sent to serve in conflict overseas, I urge all Australians, whatever their views, to recognise that the decision to participate in this conflict is not made by the troops. If the decision is made, it must be made by government.

I hope we never see scenes such as those that occurred when the troops returned from Vietnam. I can recall the abuse in the streets—soldiers being called murderers and red paint being hurled at them. I believe very strongly in the importance of protest—it is a right I uphold—but I think those protests have to be targeted accurately and I would hate to see those scenes repeated. So the moral responsibility is that of government, not of individual service personnel. The troops went where they were sent. Division in the Australian population about whether Vietnam was a just war produced a lack of community support for our veterans, and we all know that Vietnam has had a particularly psychological hangover for those who fought it as well as for their families. There have also been physiological effects, and people are aware of accounts of those and research that shows a higher incidence of conditions such as spina bifida and a suicide rate among children of Vietnam veterans three times that of their peers. So the Vietnam War had a huge influence on Australia, even for those not born at the time.

Along with Senator Bartlett, I wrote about some of these issues in a recent article for the *Australian Journal of International Affairs* on the 50th anniversary of the ANZUS Treaty. A few media commentators, along

with Senator Sue Knowles in this chamber this week, have criticised me for writing about young people's views on ANZUS. That is strange, because that was the topic that was given to me by the editors of the journal. Senator Knowles told me to 'Leave this to the grown-ups'. One of the things I commented on in the article, requested by the *Australian Journal of International Affairs*, was that this generation, whose first-hand experience of Gallipoli was probably the movie, is going in growing numbers on 25 April each year to spend sunrise in Turkey. Ten thousand mostly young people flock to Gallipoli for the Anzac Day dawn service and the War Memorial's visitor numbers continue to rise. The two world wars, those who served in them and those who have lost loved ones are not forgotten in this country. They have a great deal of emotional resonance for younger generations.

I have met with many organisations and individuals from the veterans' community, most recently a veterans' group who were advocating in relation to the health gold card on behalf of those who served this nation during the Second World War. It often strikes me that the impact of the war is felt long after the cease-fire: once those celebrated scenes of dancing in the streets stop, there is a terrible burden of pain and loss carried by many who went and by many more who waited at home. So the events that are occurring now will have implications for the rest of this century. If unwise decisions about Australia's involvement in war are made now in anger or in haste, they will be regretted in sorrow over lifetimes.

I take the opportunity today to pay tribute to those people who work for organisations like Legacy who care for widows, children and other dependants of deceased veterans. The men and women of this organisation voluntarily support those who have lost loved ones who have served this nation. They do it through many activities, including financial assistance and practical advice and help. They are an absolutely inspiring example of the way the veterans' community and ordinary Australians pitch in to help others who have been affected by war. They do it not only in an inspirational way but in a

selfless way. A national gathering of Legacy clubs of Australia starts tomorrow here in Canberra. The theme of the conference is 'Keeping pace with change'. Legacy have been doing this work since 1923, but sadly their work is still needed today and I have no doubt it will be needed in the future. We all feel sorrow, frustration and anger at the horrific terrorist attacks and at the prospect, too, that there may be further deaths of innocent people. Legacy provide an inspiring example of how to direct our energies and feelings in a practical and positive way to help victims of war.

There are some sections of the population whose responses to the terrorist attacks have not been practical or positive, and I condemn those who have attacked the Muslim community in Australia. I also condemn those ministers in this government who have linked asylum seekers to terrorism. There is an expression that says that the first casualty of war is truth. I do not know whether that is true, but certainly truth is often a casualty in an election campaign. Sadly, we have witnessed examples of that in this chamber in the last couple of weeks.

I have been horrified by the willingness of some members of this government to make false accusations against the Australian Democrats. Senator Knowles again in this chamber implied that the Democrats did not join in the condemnation of the acts of terrorism. What an outrageous and false implication. Not only is it an outrageous implication but it is disproven by the comments by my colleagues and me in this place. A letter from me as Leader of the Australian Democrats has appeared in a number of newspapers saying:

Those responsible for the attacks must be brought to justice and be punished for their crime.

But the same day that Senator Knowles made her comments, a National Party senator, Senator Sandy Macdonald, said that it seemed that I 'believe that these terrorists should merely be counselled and not brought to justice'. What a malicious thing to say, and doesn't it fly in the face of every statement that I and my colleagues have made inside and outside the chamber? As I have said before on the record:

The difficulty of bringing those responsible to justice is frustrating, but it is important that grief does not ruin reason. Leaders must keep cool heads and pain must be tempered by patience.

There is no quick salve as the task to actually find, let alone punish, the guilty is only just beginning. To continue:

We cannot turn our backs and we cannot strike out blindly. There will be no appeasement, but the response to the terrorist attacks—

and I state this again for the record—must be proportional.

What is particularly vicious about these attacks by government senators is that they know that I lost a friend in the World Trade Centre, and I sent my condolences to his family during that condolence debate on the first day that parliament sat in this sitting fortnight. They know that my sorrow and that of my party is heartfelt, yet they have made these accusations—accusations that seem to have stuck. I have been asked by members of the community, 'Is it true? Do you and the Democrats not condemn the attacks in America? Do you have some sympathy for terrorists? Do you think that they should be counselled and not brought to justice?'

At the time of writing my comments for this speech, three Australians are confirmed dead, there are 20 for whom we hold grave fears, and 10 are still unaccounted for. I understand that a number of people who were previously missing have been found safe, and that is of course wonderful news. Those people who are responsible for these malicious attacks—and I am talking about the terrorist attacks—and responsible for the murders not only of these Australians but of people in America from a range of nationalities must be brought to justice.

But the one thing that my party, the Australian Democrats, does not want to see is any more innocent deaths. I hope that that clears the record, and I do hope that no government senators will come into this place and say such things again or say them outside this place—although in some ways I wish they had put them on the public record by speaking outside the chamber; I do not think they would have dared, for obvious legal reasons. I hope that those senators

whom I have mentioned today, those senators who have interjected during divisions and debates, and even the senator who sent me a rather interesting note after my speech in the condolence debate, will think twice before making such malicious comments about me or my party again, especially after the events we have witnessed over the last couple of weeks. Goodness me, if those events teach us anything, don't they teach us that we have to be more compassionate, cooperative and good global citizens?

Northern Territory Indigenous Australians

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (1.49 p.m.)—The proximity of today to a federal election of course makes me very contemplative because, as a Territory senator, I will be retiring on the day of that next federal election. When I look back over the 14 years that I have been a member of the Senate, my three years in the House of Representatives and my three years before that in the Territory parliament, I am very proud of my long political career. But the comments I want to make today are essentially those that I still consider to be unfinished business. There are many issues that we get embroiled in from day to day in the heat of the passions of politics at any particular time and the themes that are run by government, but there are, naturally, underlying currents at all times so that no matter when we go, how we go or where we go there will always be unfinished business and things that we regret we did not do or that we should have done in a better way.

Let me outline a number of the themes that I still want to see my successors and my colleagues who are still here in the Senate pick up, perhaps with some of the passion that I have tried to share on these issues. The first of those is self-government or statehood for the Northern Territory. I was elected to the Legislative Assembly in the Northern Territory in 1974, when it was created as the first fully elected assembly in the Northern Territory. I have been wedded to constitutional development ever since. I have been an advocate for statehood for the Northern

Territory ever since and will be so, along with many other Territorians and people outside the Territory who believe that the ultimate objectives of the Territory and its development can only be linked when the Northern Territory joins the other states of Australia with constitutional equality. I therefore call for a national referendum on statehood for the Northern Territory and for an ongoing and passionate debate on that particular issue.

The second theme that I want to address is Aboriginal progress or Aboriginal participation within our community. Again, reflecting on my career since 1974, the issues of native title, Aboriginal land rights and reconciliation have been very important and have underpinned much of the debate and the improvement in Aboriginal communities. There is still a hell of a long way to go. Many Aboriginal communities in the Northern Territory can still only be described as having Third World or Fourth World conditions, and there is a tragedy that reflects itself in so much of the lifestyle of Aboriginal communities. I feel rather impotent that, despite 20-odd years of work in those areas, we have still not achieved the significant gains that we need.

I believe the areas of violence and family abuse and the need for very close links to parental responsibility, in a way that is both culturally appropriate and also embraced within our wider Australian community, should tax us very severely. The dreadful mortality rates in all Aboriginal communities can be sheeted home essentially to public hygiene. I know there are many other health and lifestyle contributory factors, but unless public hygiene is fundamentally addressed it will continue to underpin those awful mortality rates that exist.

Aboriginal education is a challenge; it has always been a challenge. My father was a pioneer in that area just after the Second World War. Former Senator Bob Collins has recently done some very important work in this particular area that I acknowledge addresses those issues of education in Aboriginal communities. Going across the generations, my son is now a lecturer for the Northern Territory University in food and nutri-

tion, teaching back to basics programs for Aboriginal communities.

So I say sorry. I say sorry very fundamentally for the things that I have not done and the programs that I have not accelerated fast enough, particularly across the sensitivities of the generations of Aboriginal people with whom I have grown up, loved and participated. But I did not get enough done, and I hope that others will pick up many of those important programs.

In relation to the wider community of the Northern Territory, we saw in this chamber a couple of years ago the debates on the important issue of euthanasia. I am still a champion for euthanasia and for legislation in that area and, whilst we in this chamber very closely dropped the ball on legislation that impacted or imposed on the Northern Territory, I would hope that that issue will again be visited, perhaps after a period of five or 10 years as the community matures. Again, I would call for a national referendum on the issue of euthanasia because I believe that will set at a particular point in time a very important debate.

The issue of taxation on remote and rural parts of Australia is also important. We must review from time to time the important impact of taxation on innovation, industrial development and incentive, and population growth and improvement for the Northern Territory. I would certainly call on my colleagues—and I note that the Assistant Treasurer has joined us in the chamber and I would invite him—to keep that issue alive in future Commonwealth budgets after I have left the chamber.

The north Australian railway is that exciting part of transport on which we have all focused, and the Commonwealth has made a very significant financial and moral commitment to that railway. The next call is for sea lanes into Asia to make that whole transition of transport from Tasmania through the eastern states and into the Northern Territory very important. The sea lanes will bypass the wharves of Sydney and Melbourne—and I think that is important—but at the same time they will make for major transport and business improvements. Similarly, air freight, both interstate and overseas, is a major area

of challenge, and companies like Qantas, as they look again at air transport in the new world today, must be called on to make those important links between Darwin and Singapore, Manila and elsewhere. Again, I think it is important to develop that.

We will see a natural population increase in the Northern Territory over the next few years. That will bring with it potential. At the same time, immigration into the Northern Territory has always been important, and it will continue to be so. The ethnicity of the Northern Territory is one of its greatest assets and its greatest challenges.

Part of my electorate has been the Indian Ocean territories of Christmas Island and Cocos (Keeling) Islands, and they have proved to be very important in recent events. The potential of a space base on Christmas Island brings with it phenomenal opportunities that will impact right around Australia but also, importantly, on that island. Both Christmas and Cocos islands are important strategic defence locations. I have often described them in speeches as Australia's aircraft carriers in the Indian Ocean. They should be complemented with additional naval facilities and defence facilities. Cocos (Keeling) Islands would make a marvellous training facility. On Christmas Island, there is an important commercial opportunity.

That brings me to the wider issue of defence and security on which we are all so focused at the moment. In my period in the Senate, I have been so pleased to see the build-up of major facilities in Northern Australia by both the coalition and the Labor administrations. It was timely, it was important and it is part of the sociology now of the Northern Territory. Just as significant is the security base of Pine Gap in Central Australia. With its large number of employees—I think there are some 400 American employees and some 400 Australian employees—it is important that Pine Gap always be at the forefront of major defence and security planning. The integration of Pine Gap further into the scientific and educational opportunities for the Northern Territory provides a tremendous challenge for the future and for any future government.

When we look at a community like the Northern Territory that experiences fast growth and population change with the increase of young people maturing within the community, we must always focus on jobs. Mining and tourism—and, importantly, because of the relationships with Indonesia and Timor, the oil and gas developments—will mean that there will be phenomenal job opportunities for thousands and thousands of young Australians into the future, and it is pleasing to see that so many of the current government's programs complement those particular developments.

The Northern Territory is an important place for me because my family has a 75-year history there, but I have noticed importantly in recent years a very significant change of culture within the Northern Territory. I mentioned ethnicity, I mentioned the Aboriginality, but I also mentioned the itinerancy of so many other Australians. Almost every Australian family has an intimate and immediate link to the Northern Territory, and it is very important for those reasons that we look to the future, as the Northern Territory, I am sure, will continue to grow when I am no longer one of its stewards here in the federal parliament.

QUESTIONS WITHOUT NOTICE

Aged Care: Funding

Senator WEST (2.00 p.m.)—My question is to Senator Vanstone, representing the Minister for Aged Care. Can the minister confirm that leaked documents from the Department of Health and Aged Care identify the need for an additional \$300 million a year to improve the quality of aged care services? Hasn't the minister's own department now joined aged care consumers, providers, doctors and nurses in calling for additional funding to ensure proper care of our frail elderly? Doesn't this report reflect the reality that care funding has been cut in real terms over the last five years, that there has been a decline in qualified staff and that the community has genuine concerns about quality of care?

Senator VANSTONE—Senator West, thank you for the question. I did earlier in the

week have a brief in relation to a leaked document—

Honourable senators interjecting—

Senator VANSTONE—All right, an alleged leaked document, if someone wants to be a genius. The question was not asked about that with any great degree of promptness—in other words, this question, frankly, is about old news. The brief is no longer in front of me. However, when I read it—if we are talking about the same document; I put that proviso on it—it was a departmental document. It related to discussions between officials and not something that reflected what the government had done or had been involved in. I put a rider on that. I am being a bit careful because I do not have it in front of me any more. If you are referring to the document that I think you are, it was a departmental document and not a document that the government itself had produced. I will have it probably early this afternoon—I can easily get it back—and I will give you such answers as I have in the brief that I had earlier. If there are any questions not answered in that, I will refer the rest of it on to the minister.

Senator WEST—Thank you, Minister. Madam President, I ask a supplementary question. Doesn't this leaked report, even if it is an internal departmental issue, support the concerns raised by the Productivity Commission in its inquiry into nursing home funding and the report from the Department of Veterans' Affairs which identified concerns about the viability of nursing homes? Does the government expect the community to believe that the Minister for Aged Care is right and that her own department is wrong when it comes to knowing how to ensure proper care for the frail elderly?

Senator VANSTONE—With respect, Senator, I would have thought that even you would have realised that in the aged care area the previous government—a government of your persuasion—had absolutely nothing to be proud of. When we came to government, there was a dramatic undersupply of beds. We have dramatically increased that situation. There was no coherent quality accreditation system, and we have fixed that problem. By having quality accreditation you

find people who do not measure up. That is the whole purpose of having such a system. Senator, if you want a long debate on aged care in Australia, you will find this government is very happy to have it, because our record far exceeds anything you ever did.

Economy: Performance

Senator WATSON (2.04 p.m.)—My question is directed to the irrepressible Assistant Treasurer, the Hon. Rod Kemp. Will the Assistant Treasurer inform the Senate of the continued success of the Australian economy under the responsible management of the Howard government? How important is it to get the fundamentals right in the face of increasing uncertainty in the world economy? Is the minister aware of any alternative approaches to economic management and how do they measure up to those policies pursued by the Howard government?

Senator KEMP—Thank you to Senator Watson for that particularly important question. Senator Watson has a name in this place as a person who always focuses on the key issues, so it is not surprising that he would ask an important question like that. This morning the Treasurer and the Minister for Finance and Administration announced the budget outcomes for the year 2000-01. I am very pleased to report to the Senate that the Commonwealth general government sector has achieved an underlying cash surplus of \$5.6 billion and an accrual fiscal surplus of \$5.9 billion. This was the fourth consecutive cash surplus recorded by the government and is significantly stronger than the outcome originally budgeted for.

The surplus enabled the government to reduce the level of Commonwealth general government debt by \$13.8 billion—\$3.5 billion more than expected at the time of the last budget. Net debt has fallen from a peak of almost 20 per cent of GDP in the last of the Labor years of 1995-96 to just 5.8 per cent of GDP at 30 June 2001. The debt position of 5.8 per cent of GDP is one of the strongest debt positions in the world. In dollar terms, it is worth noting that the coalition government has repaid around \$57 billion of the debt that was left to us from the discredited Keating Labor government.

The second part of the question dealt with the alternative policies that may be on offer. Let me quote from an editorial in today's *Australian*. It says:

... if Mr Beazley looked a little closer, he'd see that his own timidity and the demons of Labor's flawed strategy are simply coming back to haunt him.

... ..

Who is that man pretending to be our next leader?

... ..

Mr Beazley eroded Labor's strengths by failing to explain Knowledge Nation and losing moral authority by bringing his daughter into the political debate.

I think that this is particularly important:

... Labor pushed an open-ended GST roll-back, claiming it would make the tax fairer and simpler, when it can only make it more complex and ad hoc. Voters know vested interests will queue for relief and that it will help only a few people.

The editorial in the *Australian* went on to say:

Labor's GST roll-back policy is a joke, and the party's frontbench knows it ... Labor should not gloss over its refusal to rejuvenate and reinvent itself since the last election. The frontbench has the same faces, most of whom have made little impact.

What the *Australian* was saying is what I have been saying in this chamber time and time again: that the Labor Party's GST roll-back policy is a joke. No-one can tell us what roll-back means, no-one can tell us how much it will cost, no-one can tell us how much it will be financed—and we are within weeks, presumably, of an election being called. After 5½ years the Australian public deserve better.

Senator WATSON—Madam President, I ask a supplementary question. How do those alternative approaches to economic management measure up to those policies pursued by the Howard government?

Senator KEMP—That is another good question. The Howard government is a low tax, low interest rate government and the Labor Party, let me say, has a record of 13 years of being a high tax government and a high interest rate government.

Honourable senators interjecting—

The PRESIDENT—Order! I cannot hear the answer being given with the amount of noise in the chamber.

Senator KEMP—The Labor Party's record speaks for itself. Under the Labor Party the interest rate levels for people in business at one stage reached over 20 per cent. It was an appalling record. They gave us the 'recession we had to have' and, as the editorial in the *Australian* pointed out, essentially the same people that mucked up the Australian economy under Keating are still on the frontbench of the Labor Party and are now holding themselves out as good managers. It is a joke!

Aged Care: Kalgoorlie Nursing Home

Senator McKIERNAN (2.09 p.m.)—My question is directed to Senator Vanstone, representing the Minister for Aged Care. Can the minister confirm that the Moran Health Care Group has signalled it will close down the 60-bed Kalgoorlie Nursing Home at the end of the year? Is the minister aware that Anglican Homes will take over the bed licences from the nursing home but that they will understandably take until the end of next year to have those beds built? Given the 12-month gap between when Moran is proposing to close the 60 beds and when they will be reopened under a different provider, what arrangements has the government put in place to ensure the continuation of adequate aged care services in Kalgoorlie?

Senator VANSTONE—I thank Senator McKiernan for the question. Senator McKiernan, I compliment you on your tie today. It is one of the few ties that you wear that actually matches your shirt. With the red and green, Senator, I think that it is very Christmassy and, since this is one of the last few days that we might sit before Christmas, I congratulate you on that. I have got an answer, Senator. It may not answer all the questions that you have asked, so I indicate at the very beginning that, to the extent that it does not, I will take the additional questions to Mrs Bishop. Nonetheless, the information provided to me is, yes, there is a decision by the Moran Health Care Group to close the Kalgoorlie Nursing Home. It will not mean that residents will have to leave the region. Mrs Bishop announced on Friday last

week a restructuring grant of \$1.4 million to Anglican Homes Inc. to contribute towards the construction of a new 45-bed nursing home in Kalgoorlie. An allocation of 15 high care places has also been approved for Anglican Homes. It is expected that 30 high care places will be transferred from the Moran Health Care Group to Anglican Homes with the other 30 high care places transferring to a Moran home in the outer metropolitan area of Perth.

Anglican Homes will build the new home adjacent to their current low care home, Tineti Lodge, in Kalgoorlie and it will be completed before the end of 2002. That is a good outcome for Kalgoorlie. The building of the new aged care home will address Kalgoorlie's residential aged care needs and will be consistent with the government's emphasis on targeting capital funds to rural communities. The grant does clearly demonstrate the government's ongoing policy of allocating funds where they are most needed, therefore ensuring the best possible care for frail and older Australians. Senator, if there are more questions in your initial question that are not answered by that, I will refer them to Mrs Bishop.

Senator McKIERNAN—Madam President, I ask a supplementary question. Thank you for that response, Minister. Thank you also for the compliment on the tie. The credit should go to Jackie, not to me, on this occasion. In regard to the response that you have given, there is a 12-month gap between the closure of the home and the new beds becoming available and I ask whether you are aware of concerns that the Moran Health Care Group will not be admitting new residents and that, as a result, the frail and elderly in Kalgoorlie will have access to the care they need.

Senator VANSTONE—I do not have any information other than that which I have already given you. Of course I would be concerned—as Mrs Bishop would be—about the adequate supply of services in any area of Australia but particularly in the remote areas that have in the past perhaps been disadvantaged. I will pass your concern on and Mrs Bishop may respond to that when she re-

sponds to the earlier parts of your question that were not answered.

**Aviation and Tourism Industries:
Assistance**

Senator SANDY MACDONALD (2.07 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Minister, will you inform the Senate of steps taken by the government to assist the aviation and tourism industries in the wake of the terrorist attacks in the United States? How will these actions help protect Australian jobs?

Senator HILL—There is no question that both the aviation and tourism industries are facing some significant challenges in the current climate. In fact, the Australian economy as a whole faces a degree of uncertainty due to the current global economic situation. But, fortunately for Australia, the Howard government has a proven track record of responsible economic management: low inflation, 880,000 new jobs and the lowest interest rates for home buyers for more than 30 years.

Most importantly, we go into these uncertain times with a budget that has been in surplus now for five years in a row. Compare that with the record of the previous Labor government, a government that left us with \$80 billion of debt—\$80 billion of debt run up in their last five years of government, a huge debt run up when Mr Beazley was the finance minister of this country. Mr Beazley's record of economic management: big budget deficits, exploding government debt, high interest rates, up to one million unemployed and big tax increases. That was Labor; that was Mr Beazley. That is their record.

As I have said in other instances in relation to health or education, if the government manages its economy well it can afford to assist in difficult times. So, in relation to the tourism industry, because we have been able to balance the books, we have been able to give some assistance in the Ansett circumstances. We have provided third party war indemnity cover to airlines operating in Australia, a move that will keep them in the air in these uncertain times—that is, the

broader uncertain times. In the wake specifically of Ansett's troubles, we have supported moves to re-establish vital air links to regional Australia, something of great interest to coalition senators. We have also ensured that, if Ansett does go into liquidation, Ansett workers will receive their statutory and community standard entitlements. Unlike Labor, we will not abandon them. Labour did not do any such thing in its 13 years of government.

The only alternative we have from Mr Beazley in relation to Ansett is that he says we should bail them out; we should spend another \$200 million of taxpayers' money. He does not say how it will be spent; he does not say how it will be raised; he does not say what it will achieve. What he says is, 'Spend another \$200 million of taxpayers' money.' Not surprisingly, the following day, the ACTU—the trade union movement which runs the Labor Party—came out with its four-point plan to save Ansett and point one was that the government should put in \$200 million of taxpayers' money. This is presumably to help fund the new trade union air movement—the ACTU Solo of the skies. Or is it going to be the Flying Bourkes, perhaps? The unions running an airline with taxpayers' money: this is Mr Beazley's apparent alternative.

No wonder the Australian people are so confused about Mr Beazley. This was the Mr Beazley who in government said, 'Government shouldn't bail out airlines.' Now, because he thinks there are some short-term political votes, we get a backflip: 'This government should.' We should not be surprised because spend, spend, spend was always the way of Mr Beazley. (*Time expired*)

Senator SANDY MACDONALD—Madam President, I ask a supplementary question. But before I ask it, could you ask Senator Cook to stop interjecting because I can hardly hear the answer.

Senator Cook—I am trying to get him to tell the truth.

Senator SANDY MACDONALD—I think those of us on the backbench, Senator Cook—where you should be—can hardly hear the answer. Minister, will you inform

the Senate of the approach of former governments to airlines in financial trouble, such as Compass? How does the current government's approach differ?

Senator HILL—I know this is embarrassing for Senator Cook because when he was a senior finance minister within the last government—trade minister, as I recall—he said the books were in surplus when they were \$10 billion in deficit.

Senator Cook—They were in surplus. You are lying about me.

Senator HILL—That is the level of economic incompetence that Mr Beazley still has on his frontbench 5½ years later.

The PRESIDENT—Senator Cook, you will withdraw that accusation.

Senator Cook—He is lying about me but I withdraw the statement, Madam President.

The PRESIDENT—Unconditionally.

Senator Cook—I unconditionally withdraw that I said he is lying about me.

The PRESIDENT—Withdraw that. That is not an unconditional withdrawal.

Senator Cook—Madam President, I am unconditionally withdrawing the statement because standing orders require me to do so.

The PRESIDENT—You are unconditionally withdrawing because I have asked you to do so, and you should not be shouting and interjecting at the level you have been.

Senator HILL—Madam President—

Senator Cook—Ask him to tell the truth.

Senator HILL—I am telling the truth. It is exactly the same people still sitting on the frontbench of Labor who drove this country into debt: \$80 billion of debt in just five years, their last five years in government.

Senator Cook—That is a lie.

The PRESIDENT—Senator Cook, you can debate this later.

Senator Faulkner interjecting—

Senator HILL—Senator Faulkner said it was an outstanding record. Eighty billion dollars of debt, \$10 billion of deficit: what an achievement for Labor! That is what Labor is putting up as an alternative, is it, Senator Cook, for this next election? When they were

in government, what Senator Collins—who was then the minister—said was that they would not only not bail out Compass, they would not bail out any airline—no ifs, no buts, no maybes. That is the difference. *(Time expired)*

Aged Care: Places

Senator McLUCAS (2.20 p.m.)—My question is to Minister Vanstone, representing the Minister for Aged Care. Can the minister confirm how many high and low care operational aged care beds there were on 30 June this year, excluding flexible care places? Can the minister confirm that this figure is well below the government's target for operational beds for 30 June? Can the minister also confirm that the average wait for a nursing home bed, which jumped from 29 days in 1998 to 55 days in 2000, has continued to grow in 2001? Isn't it a fact that the shortfall between the government's aged care bed target and the operational beds and the growing wait for a nursing home bed are symptoms of a failure to plan for the care needs of our ageing population?

Senator VANSTONE—There are a number of questions contained in that one question, all of which relate to the provision of aged care places. I think it is perhaps not understood by Senator McLucas—otherwise she would not have led with her chin and asked this question—that the Howard government has provided more places, more money and better care in a transparent system of aged care which was clearly not there when we came to office. We have significantly increased the number of aged care places available for older Australians.

When we came into office in 1996, the Auditor-General found that there was a 10,000 aged care place deficit left by the previous Labor government. Over the last three years, more than 32,000 new places have been released to make up for the deficit and to work towards meeting new growth. In 1995-96, the former Labor government spent \$2.5 billion on residential aged care. The outlay in the 2001-02 financial year is expected to be \$4.2 billion. The total income, including contributions from residents, available to the providers of residential aged care during the five years following the Howard

government aged care reforms is projected to increase from \$4.2 billion in 1997-98 to \$6 billion this year—an increase of some 41 per cent.

Under the previous Labor government, an analysis of the quality of the building fabric found that 13 per cent of nursing homes did not meet the relevant fire authority standards, 11 per cent of nursing homes did not meet the relevant health authority standards, 70 per cent of nursing homes did not meet the relevant outcome standards and 51 per cent of nursing home residents were living in rooms with three or more beds. Professor Gregory's assessment of the previous government's achievement in this area was a fail. Senator, I think that gives you a pretty clear indication of any comparison between what the previous government did and what this government has done. You asked some detailed questions there that I know are not answered by what I have just told to. I will be happy to forward them to Mrs Bishop and get you a reply.

Senator McLUCAS—Madam President, I ask a supplementary question. I note that the senator will provide me with some further information. I also note that you avoided answering my very clear question about the number of operational beds that we had at 30 June this year just gone. Isn't it a fact that in the last two years under Labor there were 5,500 new aged care beds built and that in the last two years under John Howard there were just 1,245 new aged care beds built? Doesn't this show that almost all of the new beds that the Minister for Aged Care boasts about allocating will remain phantoms, never built and no help to the thousands of families desperately searching for nursing homes bed for their frail relatives?

Senator VANSTONE—Senator McLucas, I admire your courage and determination to continue with this line of questioning. There are simply two figures that you need to bear in mind. One is provided by the Auditor-General. It is not something that I have cooked up or that Mrs Bishop has cooked up; it is something that the Auditor-General found. That is, when we came to office there was a shortage of 10,000 aged care beds. If I were in your position, Senator,

I would not be pointing out anything about the Labor record, because you will simply be met with the Auditor-General's confirmation that you left office with a shortage of 10,000 beds.

The other point you might like to bear in mind, Senator, is that over the last three years more than 32,000 new places have been released to make up for the deficit and meet the need for growth. Senator, I see you pointing in the air and smiling, because you think that when money is allocated a home can be built overnight, which it cannot. (*Time expired*)

Unemployment: Australian Industry

Senator CHERRY (2.26 p.m.)—My question is to the Minister for Industry, Science and Resources. In recent weeks, Australian industry has lost 1,000 jobs at Coles Myer, 760 jobs at Daimaru, 16,000 at Ansett, 500 at South Pacific Tyres, 550 at Email, 3,000 at Pasminco, 900 at Bradmills, 400 at Arnotts and 750 at Gate Gourmet. All of these job losses add on to the 93,000 full-time jobs lost over the last year in Australia. With seven unemployed people for every vacancy, does the government still ascribe to the view that growth will be enough to cut into Australia's chronic unemployment? Isn't it the case that this government has no strategy in place to deal with an economic downturn, to restore business investment confidence and improve the job generation capacity of the Australian economy?

Senator MINCHIN—One thing we can be sure of is that neither the Democrats nor the opposition have any policies that are relevant to modern economic management in a globalised economy. This government over the last 5½ years has done an enormous amount to ensure that this economy is extremely competitive internationally, is an engine of jobs growth, is an engine of business growth and ensures that we are flexible enough and able to withstand external shocks. What the Democrats in particular do not seem to understand is the manifest responsibility on governments in an increasingly integrated world economy to ensure that their businesses, and their economies in particular, are able to withstand the sorts of external shocks which, no doubt, the world is

about to experience, if it has not already. That is our fundamental obligation. That is what tax reform has been all about. That is what workplace relations reform has been all about. That is what reform of the government's fiscal position has been all about.

We have had almost no help from the opposition parties whatsoever in our endeavours to ensure that Australian business, and the Australian economy more generally, is able to withstand these shocks. Our policies, achieved despite opposition from most of the parties in this chamber, have ensured that we have had one of the best performing economies in the developed world, an economy that has been growing faster than just about any other developed economy, generating jobs at a rate envied by economies around the world, with the lowest inflation and lowest interest rates that we have experienced in a generation. Obviously, in a dynamic economy like this businesses come and go. That is inevitable in a dynamic economy of this kind.

We wish that Australian management across the board was at world standards. It is not always the case. This government has set the policy framework and the economic conditions which enable well-run businesses to thrive, and there are thousands of businesses around this country thriving, creating jobs and generating exports. We have had the most stunning export performance this country has ever seen over the last couple of years. Even in the manufacturing sector, with the car industry now exporting \$4 billion worth of goods every year, it is a tremendous performance. If only we had had the full and willing support of the opposition parties, we might have done even better.

Senator CHERRY—Madam President, I ask a supplementary question. I am sure the Ansett employees and the many Australian tourism operators will be pleased to know that businesses and industries 'come and go'! The Treasurer also points out that Australia has very low interest rates, yet full-time employment is falling, business investment is flat-lining and the message today in the papers is that Australia's fiscal cupboard is bare. The minister may be aware that our near Asian neighbours are responding to the

world economic downturn with multibillion dollar fiscal stimulus packages; Australia is being told to tighten its belt. Isn't it the case that this government has no measures being put in place to cushion the effect of the looming global recession on Australian industry and the unemployed?

Senator MINCHIN—I do not know whether Senator Cherry watches the midday news, but I just saw an Access Economics spokesman say that the domestic economy in this country is still booming. Housing is still very strong and domestic growth is very strong because of the policies of this government. We have stimulated the economy—what do you think we did last year, in a policy you supported, by injecting \$12 billion worth of income tax cuts into this economy as part of the stimulus package? The housing industry policies have done an enormous amount to stimulate the economy. The tax cuts that we brought to manufacturing have made our manufacturing sector that much more competitive. We have car sales at record levels. The economy is in outstanding shape to withstand any external shocks which we may now experience.

Education: University Funding

Senator BOLKUS (2.31 p.m.)—My question is to Senator Ellison representing the Minister for Education, Training and Youth Affairs. I ask the minister: is he aware of figures recently released by the Australian Vice-Chancellors Committee that demonstrate that university funding from the Commonwealth was some \$311 million lower in the year 2000 than it was in 1994? Can he also confirm that, if this cut had not been made, the additional funding would have allowed the funding of some 40,000 more places for Australian students at universities?

Senator ELLISON—There is great news for people in the tertiary sector and those people who want to get a place at a university in Australia today: as I said yesterday, there will be over 20,000 new places over the next few years. In relation to funding—

Opposition senators interjecting—

Senator ELLISON—Senator Bolkus asked a question, and I will answer it. The total funding available to higher education

institutions, including research, has remained relatively stable over the period 1996 to 2001. Between 2001 and 2003, funding will grow by over \$256 million or 4.4 per cent, including initiatives announced this year. When you include the forecasts for 2001 to 2003, you see an increase of \$256 million, or an increase of 4.4 per cent, in tertiary education funding.

Senator Carr—Is that Commonwealth money or not?

Senator ELLISON—Senator Carr should listen to this: in constant prices, total higher education funding under the Higher Education Funding Act—

Senator Carr—How much of that is Commonwealth money?

The PRESIDENT—Order! Senator Carr, it is one thing to interject; that is disorderly. To sit and shriek in the way that you have been doing is totally disorderly and could be interpreted as being deliberately in breach of the standing orders.

Senator ELLISON—I was just explaining to Senator Carr and the Senate that higher education funding under the Higher Education Funding Act rose this year. In 2002 that funding will be the highest ever. That puts paid to the question by Senator Bolkus on Commonwealth funding. What we have are record levels of funding to the tertiary education sector from not only the private sector but also the Commonwealth.

Between 1983 and 1991, Commonwealth funding per student fell—under Labor, it fell. It then rose in 1997 and has remained relatively stable since. Claims of underinvestment by the AVCC are not borne out by the facts. I note that, while the AVCC proposes that the government component of operating grants be returned to the level of the mid-1990s, it does not propose that HECS be reduced to the level of that time. What the AVCC is proposing, therefore, is a large increase in operating resources, when the current level of resourcing per student place that universities are expected to deliver increased from 1991 to 1997 and has been maintained since then. Senator Bolkus ought to get his facts straight. What we are looking at is record funding in relation to—

Senator Bolkus—Madam President, I rise on a point of order going to relevance. My question went directly to the level of Commonwealth funding. I asked the minister: is it not a fact that funding decreased by some \$311 million from the funding figure under the previous government? That was question No. 1. Question No. 2: is it also not a fact that, had funding been continued at that level, there would have been 40,000 more places available for students and universities? They are the questions, and I ask you to direct the minister to answer them.

The PRESIDENT—There is no point of order. You are merely repeating the questions.

Senator ELLISON—We are providing through Backing Australia's Ability some \$1.47 billion in additional funding for higher education over five years. It specifically recognises the need for improved infrastructure in universities—a very important point which no doubt even Senator Bolkus would appreciate. That funding includes \$337 million over five years to universities for research infrastructure. It also provides \$246 million over five years to upgrade the basic infrastructure of universities such as scientific and research equipment—very important for Australia today.

What we are doing—and what we announced yesterday with our Federation Fellowships—is looking to bring back Australia's best and smartest minds from overseas and keep those people in Australia. That is essential for research. It is also essential for the tertiary education sector. It is something which Labor never, ever did. The levels of funding from the Commonwealth sector are much higher than Labor ever had when it was in office. Today fee-paying students also provide a source of income for the tertiary education sector which it did not have previously. There are record levels of funding available to the tertiary education sector from not only the private sector but also the Commonwealth government.

Senator BULKUS—Madam President, I ask a supplementary question. I note that the minister, even though asked to do so, did not answer the question specifically. As the

minister claims that everything is fine with our universities, can he explain: (1) why university funding from the Commonwealth has fallen every single year since John Howard became Prime Minister; (2) why there was a reduction in the number of Australian students at universities in the year 2000 for the first time since the Prime Minister's beloved 1950s; (3) why Australia is one of only five OECD countries to reduce investment in universities; and (4) why the staff-student ratio is increasing? I ask the minister: isn't the Howard government still trying to weaken Australia's universities to set them up for Dr Kemp's much cherished \$100,000 full-fee plan?

Senator ELLISON—Senator Bolkus really is grasping at straws. This government stands on its record of funding for the tertiary education sector and, as I outlined yesterday in the initiatives that we have announced, we are looking further afield to areas like research which are so important to the tertiary education sector. I have outlined the infrastructure funding, I have outlined the extra places that we have provided for Australians who want an education at an university. What about the 670 extra regional places in the tertiary education sector? We do not hear about that from the Labor Party opposition or Senator Bolkus. What about those Australians, especially young Australians, in regional Australia who want to go to university? We have just announced 670 extra places in regional Australia for those people—greater opportunities and greater access to universities around this country, not just in the cities.

Goods and Services Tax: Diesel Fuel Rebate

Senator HARRIS (2.38 p.m.)—My question is to Senator Rod Kemp, the Assistant Treasurer. Minister, has the government investigated the economic circumstances of farmers, commercial fishermen, civil contractors, miners and those in other industries suffering economic hardship while waiting for their diesel fuel rebate implemented under the government's tax reform? If so, what is the result of that investigation, and will the government take steps to alleviate the hardship experienced by those industries?

Senator KEMP—One of the many ways that we are able to help a wide range of sectors is through the diesel fuel rebate, and this government's record in providing assistance to industry through lower taxes and rebates is second to none. Senator, if you have some specific concerns about delays in repayment of the rebate, if you could give me the actual facts and details, I will have those investigated for you. As I said, this government has a very fine record in this area, and I think this is widely recognised by industry. But, if you have some information about people who are waiting unduly for the rebate, perhaps you could forward that to me and I will have that investigated.

Senator HARRIS—Madam President, I ask a supplementary question. Minister, would the government commit to amending the GST legislation to provide for those eligible for the diesel rebate or other exemptions to be issued with identification sufficient to allow the fuel rebate deduction to be made at the point of sale?

Senator KEMP—Senator, we are always keen to look at ways in which one can further assist industry. If anyone has any comments on improvements, we are always pleased to look at those—some are practical, some are not, obviously—but I think probably the best thing you could do to assist your cause is to give me the details of the particular areas where you are concerned. This may well be a matter for the Queensland government, and I have a feeling that there may be an issue there. Senator, let me look at the facts that you have, and we will see what we are able to do to assist.

Education: Funding for Non-government Schools

Senator CARR (2.41 p.m.)—My question without notice is to Senator Ellison, representing the Minister for Education, Training and Youth Affairs. Is the minister aware of a confidential DETYA report entitled *The right ingredients but the wrong recipe* that casts serious doubt on the allocation mechanism adopted for the distribution of the \$14 billion Commonwealth funding to Australia's 2,600 non-government schools? Can he also confirm that this report, prepared by one of Australia's leading experts in the field, iden-

tifies major technical flaws and problems in the current SES model and concludes:

As a result of problems it is quite clear that the SES index, in its present form, is not suitable for the purpose of guiding large-scale resource allocation decisions for Australia's non-government schools.

Can he further confirm that the report states that the method used to develop the current SES funding model is 'a complete corruption of the intended standardisation process'?

Senator ELLISON—I am aware of a paper prepared by Dr Ken Ross which was entitled *The right ingredients but the wrong recipe*. That was prepared for the Department of Education, Training and Youth Affairs on the SES funding in relation to non-government schools. The central argument of that paper is that the SES index should be constructed at the school level, rather than at the census collection district level, because SES scores and funding entitlements are assigned at the school level. There is very little difference between the method used to construct the SES index and the Ross method. Independent analysis indicates that the correlation between the results of the two methods is just under one per cent. The CD level method has a number of advantages over the Ross method, and this is what Senator Carr should remember.

We have devised a scheme of funding which fixed what Labor had before. It was recognised that the prior ERI funding for non-government schools was out of date, defunct and not working. What we recognised with the SES model was the capacity of the parents of the children that went to those schools. What was important for us was to look at that rather than at the assets of the school. You had to look to the parents of those students who go to non-government schools, because there are a lot of non-government schools, as Senator Carr would acknowledge, that have parents who make sacrifices to send their children to that school—and they are not well off themselves. Our SES model acknowledges that. So we have a much better method of analysing the needs of those schools, and we have fixed the previous system which existed under Labor. That ERI index, which was

under Labor, did not work. It was not accurate and it was unfair. We are recognising the socioeconomic background of the people who send their children to those schools, and that is important.

The CD level method that we have adopted has a number of advantages over the Ross method which Senator Carr has mentioned. The advantages are stability, flexibility and simplicity. Senator Carr might want to listen to this: our index is not affected when schools open or close or change their operating patterns. In contrast, the method which he ascribes to would require the recalculation of SES scores for all schools and would change the funding entitlements of many schools. We provide stability in relation to our model.

In relation to flexibility, the index can be applied to new and remapped schools without a complete reanalysis of the data. In relation to transparency, the information used in the calculation of the schools' SES scores is readily available. Schools wanted to have this transparency, and we have given it to them. Regarding simplicity, the calculation of school SES scores is straightforward, easily understood and avoids the complexity and volatility of other methods, which is something else that people wanted. When we conducted that review of funding for non-government schooling people told us that they wanted stability, flexibility, transparency and simplicity. That is what we have given them in our new SES method of funding for non-government schools. We have also recognised the individual circumstances of those Australian parents who send their children to those schools—the parents who make sacrifices to send their children to those schools. It is important to recognise that rather than the assets of the school.

Senator CARR—Madam President, I ask a supplementary question. If the minister says that the model that the government is now using is superior to Dr Ross's, I ask him whether he can confirm that Dr Ross is not only a national expert but also a world expert on allocative mechanisms of this type. Can he confirm that the very indices that this government is using are known as the Ross indices? Can he also answer this question:

how can the 2,600 non-government schools have any confidence in the Howard government's funding program when DETYA itself clearly acknowledges that the allocative mechanism has been so completely—to use the report's term—corrupted?

Senator ELLISON—I reject entirely that the Department of Education, Training and Youth Affairs has said the system has corrupted the funding to non-government schools. Over an extensive period we have looked at—

Senator Jacinta Collins—No, this report says it.

Senator ELLISON—Senator Carr said the department did. He is absolutely wrong and he should get his facts right. We have reformed funding for the non-government school sector. This government believes in a strong government school sector and a strong non-government school sector—something which Labor did not believe in when it was in government. We believe that Australian parents should have choice in relation to where they send their children to school. That is a fundamental choice which all Australian parents would want to have. With our funding we recognise the individual circumstances of people rather than bricks and mortar.

Health: Aboriginals and Torres Strait Islanders

Senator LEES (2.48 p.m.)—My question is to Senator Vanstone, the Minister representing the Minister for Health and Aged Care. I ask the minister whether she is aware of the Commonwealth Grants Commission report on indigenous funding released a few days ago or the Institute of Health and Welfare report released earlier this year. Both reports show how little is spent by the Commonwealth on direct primary health care services for Aboriginal and Torres Strait Islander Australians. This latest report suggests the figure is 82 cents in the dollar; the earlier report suggests it is 74 cents in the dollar. Minister, can your government justify so little money being spent on indigenous Australians? Is this of concern? Finally, if your government is re-elected, will you commit to at least increasing the level of ex-

penditure for indigenous people relative to that for non-indigenous Australians for basic primary health care services?

Senator VANSTONE—I thank the senator for her question, which is on an area that we both have a common interest in. Senator, if I may be forgiven for saying, your question was phrased in a slightly ungenerous fashion. The implication is that this government is not doing enough. In fact, the government has done an enormous amount in this area and I would like to share some of that with you. I am not sure about the Grants Commission report: I do not have information on that. If I can get any information for you, I will do so.

The Institute of Health and Welfare report that you mentioned is something that I do have some information on. What that indicated was that in 1998-99 expenditure from all sources on health for Aboriginal and Torres Strait Islander people came to the equivalent of \$3,065 per Aboriginal and Torres Strait Islander person versus \$2,518 for non-indigenous people. That means that the expenditure from all sources was only 22 per cent higher than for the general population. I say 'only 22 per cent higher' because, as you may well understand, Senator, indigenous people have a two to three times heavier burden of illness than other Australians—a 12 to 17 times higher risk, for example, of diabetes—and a life expectancy that is 15 or 20 years lower. So we would expect higher per capita expenditures. The report showed that the total expenditure had increased by more than 15 per cent since 1995-96.

Senator Lees—Madam President, I raise a point of order, although I hate to interrupt the minister. My point of order is one of relevance directed back to the question. I am not talking about all expenditure, including hospitals. My question was specifically about Commonwealth expenditure on indigenous health: Medicare, PBS and indigenous health services that are directed at community level.

The PRESIDENT—I am sure the minister is aware of the question.

Senator VANSTONE—Thank you, Madam President. The government is aware

that more funding is needed. Having said that the total expenditure had increased by more than 15 per cent since 1995-96, that compared with a 10 per cent increase for the rest of the community. So at least the rate of increase is better in that context. We are nonetheless aware that more money is needed. The government has significantly increased funding for Aboriginal health since taking office in 1996. By 2003-04, spending on specific indigenous health services will rise to more than \$252 million per annum—a real increase of 86 per cent.

The 2001-02 budget provided a further \$40.2 million over the forward estimates period to the Aboriginal and Torres Strait Island primary care health access program. That means the government is committed to that program for five consecutive years of growth, increasing the base funding by more than \$55 million per annum. We have also committed \$20 million over six years to improve living conditions in remote communities by extending the Army-ATSIC community assistance program. The rate of funding increase has to be consistent with the rate at which it can effectively be spent.

There is concern about the proportion of funding from the Commonwealth that the indigenous community gets through the MBS and PBS. The access there is at a much lower rate than it is for others. Indigenous people use MBS at only 41 per cent compared to non-indigenous people and at 33 per cent for the PBS. The report shows that there have been improvements. I see you nodding, Senator Lees. I would have welcomed some acknowledgment of that in your question. The Health Insurance Commission has introduced streamlined Medicare enrolment, billing and claiming arrangements, we have allowed salaried doctors working in Aboriginal community-controlled health services to bill Medicare and we have arranged for Aboriginal health services to have pharmaceuticals available for their patients in remote areas where it is difficult to access community pharmacies. I do not know the degree to which you have visited these communities, Senator Lees, but in some of them there is not a chemist. You do not just pop down to the shop and get your prescription filled. It is a very difficult matter sup-

plying those particular services to a wide range of these communities, partly because of the location issues. (*Time expired*)

Senator LEES—Madam President, I ask a supplementary question. I thank the minister for her answer, but she has touched on some of the very issues that these reports have highlighted, including the lack of access. In particular, I stress again, we are not talking about hospital services, because indigenous people are very heavy users of the end of our health system as they are so ill. So I ask the minister: while you have made some improvement to indigenous health services, will you commit, if you get back into government, that this will be one of the key issues you will focus on until we at least get some equity?

Senator VANSTONE—I think the mere fact that by 2003-04 spending on specific indigenous health services will rise to more than \$252 million—a real increase of 86 per cent—says enough about this government's commitment in that area. But I invite you to take yourself up to Elcho Island to speak to the health workers there about what they have done in dramatically reducing scabies—from a rate of up around 30 per cent down to a rate of five per cent—because of the long and consistent work by the health workers there and the assistance given to them by the Australian Army. I am not sure what the hard percentage was—I think it was in the 30s; it might have been higher—but it has gone down to something like five per cent.

You shake your head, Senator, but scabies is a real problem later in life for renal disease. Speak to Fiona Stanley about the need for early intervention and the difference it makes if you put swimming pools in communities—like there is at Ngukurr, for example. Take yourself, for example, to Daly River and see the difference in the housing there and the difference that makes to health outcomes. (*Time expired*)

Education: Funding for Non-government Schools

Senator CROSSIN (2.55 p.m.)—My question is to Senator Ellison, representing the Minister for Education, Training and Youth Affairs. Minister, with regard to the

leaked confidential DETYA report related to the SES system of funding for non-government schools, can the minister confirm that in the analysis of the current SES system's failures the report alludes to possible political interference in the development of the SES model? Can the minister confirm that the report states that Minister Kemp had an entrenched negative view of the previous ERI mechanism and that his view:

... may have encouraged the researchers to accelerate the construction and implementation of the SES Index without sufficient time to reflect upon what had already been learned from 25 years of systematic research.

Does the minister acknowledge that Minister Kemp actively hastened the development of a flawed mechanism for the allocation of billions of dollars in schools funding in an outrageous manipulation for blatant political purposes? (*Time expired*)

Senator ELLISON—I was part of the ERI review back in 1997 when I was schools minister and I can tell you that the impetus for that review came from the school sector. I totally reject what Senator Crossin has had to say about Dr Kemp's involvement. I know first-hand that there was an impetus from the non-government school sector for a review of a system which was unfair and not working.

Senator CROSSIN—Madam President, I ask a supplementary question. Minister, doesn't this leaked confidential departmental report, entitled *The right ingredients but the wrong recipe*, conclude by identifying the need for the construction of an alternative model to 'establish a valid revised SES index'? Can the minister now confirm that the Howard government is preparing a revised SES funding model to alter the funding arrangements for Australia's 2,600 non-government schools?

Senator ELLISON—In short, the department has received comments on the SES approach from a number of different sources and is continuing to monitor the impact of the new arrangements on the non-government school sector—as one would expect. At least we are doing something about education, unlike the opposition with their noodle nation. They do not have a plan

at all. Noodle nation is the best thing that they can come up with in education. For them to attack our review of the non-government sector is absolutely hypocritical.

International Competitiveness: Government Policy

Senator TCHEN (2.57 p.m.)—My question without notice is to the Minister for Communications, Information Technology and the Arts, Senator Alston. In view of the low standard of questions asked by opposition senators—

The PRESIDENT—Senator, ask your question.

Senator TCHEN—perhaps mine can serve as a model. Minister, what positive steps is the government taking to boost Australia's ability to generate new ideas and improve our international competitiveness? Is the minister aware of any credible—I am almost hesitant to put that in—alternative policy positions?

Senator ALSTON—I hope I can rise to the challenge.

Senator McKiernan—Just as well you wrote the question because you couldn't understand that one.

Senator ALSTON—I am not sure that I understood the point of that one either. Just to truncate the propositions, the fact is that we have done heaps in this area, including: the 15 Federation Fellowships announced last night, which represent huge good news in attracting people back to Australia and keeping the best and brightest here; the Prime Minister's science prize being awarded to Professor Donald Metcalf—again a huge achievement for work that has been done almost entirely in Australia; legislation to introduce the HECS style loan scheme that has now passed the Senate; and the announcement of some 2,000 undergraduate places. We have also announced the recipients of the Major National Research Facility funding arrangement and guidelines for the ICT centre of excellence. So, as far as the government is concerned, it is all happening. But on the other side there is not a word—not a thing happening.

Honourable senators interjecting—

The PRESIDENT—Order! The level of noise in the chamber is unacceptable.

Senator ALSTON—We have got a \$3 billion innovation action plan on the table. Have Labor signed off on it? No. What is their alternative? They do not have one. The tragedy is, if you remember back before the dot com implosion, they used to talk about concept stocks—blue-sky stuff, fly-by-night operators. They did not really have a business case, but they had a good idea. The political equivalent is vision: ‘I have got an idea 10 years down the track. Just elect me with a blank cheque for three terms and I will deliver the goods.’ The tragedy is that, of course, it does not work. It does not wash for a moment. Let us look at the poor old Knowledge Nation. Mr Beazley told the Sydney Institute a couple of months ago:

Our headline value, our headline priority, our headline commitment is Knowledge Nation. You will be hearing a lot more from me over the coming months about Knowledge Nation. It is a reform agenda for Australia’s future. It is a vision I am absolutely committed to. It is a picture of where we want to take the nation.

In other words, it is everything but a policy. Where are we a couple of weeks out from the election? Of course, we have got absolutely nothing. This is the centrepiece. If you saw that humiliating piece with Mr Beazley in his sandwich board the other day, you would have seen that it is now down to No. 4 on the list. Clearly, Knowledge Nation is slipping very quickly out of sight.

But what really crystallises this flip-flop mentality and the problem that Mr Beazley has in the polls—which has nothing to with recent events; it is an accumulation of a lack of commitment and a lack of resolution—is that he has already announced 141 inquiries. He is going to have a royal commission into government advertising—that is a very good way of spending money, isn’t it! Not only that but, in relation to detention centres, they are going to have a full-blown judicial inquiry to determine what the problems are. In other words, you do not even know that there is a problem but you can have a judicial inquiry to find out if there are any problems. It is ludicrous.

On East Timor, they are going to have a judicial inquiry to ensure that the parliament and the Australian public have not been misled. In other words, they are not alleging that they have been misled; they are just going to have a judicial inquiry to see whether they have. On it goes: they are going to have a wide ranging inquiry into working hours. Well, I tell you what the inquiry will tell you: that the mob over there has been paid under false pretences. They have not done any policy work for nearly six years. They are going to have an inquiry into dairy co-ops.

Even the GST roll-back—close to Senator Kemp’s heart—is not actually set in concrete either. You know how it was the number one agenda item. Now they are going to have an inquiry, a review process, to look at possible measures down the track. It is all pretty embarrassing at this late stage in the game. All of these inquiries and reviews are no substitute for the real thing. The punters know it, and they are very disappointed. You do not have to take my word for it. Martin Ferguson said:

Winning back trust demands more than holding a Summit or a Forum.

He is dead right. (*Time expired*)

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

ANSWERS TO QUESTIONS WITHOUT NOTICE

Australian Defence Force: Surveillance Operation

Senator MINCHIN (South Australia—Minister for Industry, Science and Resources) (3.02 p.m.)—Senator Faulkner asked me a question yesterday in my capacity as Minister representing the Minister for Defence. I seek leave to incorporate a response in *Hansard*.

Leave granted.

The response read as follows—

SENATOR FAULKNER asked the Minister representing the Minister for Defence on 25 September 2001:

My question is directed to Senator Minchin, representing the Minister for Defence. Minister, what is the cost of the additional surveillance being undertaken by the Australian Defence Force in

the Indian Ocean and to the north of Australia? Can I also ask whether Defence will be supplemented for this additional tasking, or is the Defence portfolio being expected to absorb these unforeseen costs?

Madam President, I ask a supplementary question. I thank the minister for taking the question on notice. I also ask the minister to confirm that it is now the government's intention that the current naval operation being conducted in our northern waters, which according to some sources is costing more than \$20 million a week, will actually continue indefinitely. Will any other Royal Australian Navy operations and exercises have to be cut in order to pay for this indefinite operation?

The Minister for Defence has provided the following answer to the honourable Senator's question:

There have been numerous media reports on costs incurred by the Department of Defence to support the Government's initiative on the management and deterrence of unauthorised boat arrivals.

The Department has stated on the public record before the Federal Court of Australia that its costs as of 2 September were approximately \$3 million per day for the deployment of Defence assets on and around Christmas Island.

However, it should be made clear that \$3 million a day is a full cost figure that covers both direct costs (such as fuel, spares, servicing, personnel and supplies) and indirect costs (such as depreciation of assets). Defence would incur most of these costs if the assets were performing other tasks and were not engaged on these operations.

The net impact of these operations on Defence is much smaller than the \$3 million per day full cost. The best estimate for the net additional costs is around \$200,000 to \$250,000 per day. Other long-term costs, such as additional maintenance, are yet to be determined.

The Government is yet to decide how this net impact is to be funded.

No further information is available in response to Senator Faulkner's supplementary question.

ANSWERS TO QUESTIONS ON NOTICE

Question No. 3670

Senator CROSSIN (Northern Territory) (3.03 p.m.)—Madam President, I have a request under standing order 74(5) in relation to an unanswered question to Minister Bishop. I ask Senator Vanstone representing the Minister for Aged Care in the Senate if she can provide me with an explanation as to

why I have not received an answer to my question, which is numbered 3670, in relation to the handling of complaints at Tracy Aged Care.

Senator VANSTONE (South Australia—Minister for Family and Community Services and Minister Assisting the Prime Minister for the Status of Women) (3.03 p.m.)—In short, Senator Crossin, I do not have an explanation as to why you now do not have an answer, but I have made some inquiries of Mrs Bishop's office and I do have an explanation as to when you will have one, which may actually be a better thing. I am told that the answer has been cleared by Mrs Bishop and will be lodged in what has been described as 'the normal manner' this afternoon.

ANSWERS TO QUESTIONS WITHOUT NOTICE

Education: Funding for Non-government Schools

Senator CARR (Victoria) (3.04 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Justice and Customs (Senator Ellison) to questions without notice asked by Senators Carr and Crossin today relating to SES funding of schools.

The opposition has obtained a copy of a damning indictment of the government's new education funding model which had been much touted by Dr Kemp, which he says is much fairer and is the basis on which the Commonwealth allocates \$14 billion worth of public funds. This is a funding model that provides some \$3.6 million extra per year to schools such as Caulfield Grammar School, \$3.9 million extra per year to schools such as Wesley College in Melbourne and \$3.1 million extra per year to Trinity Grammar School. That is the funding model that we are talking about today.

This is the funding model which has been the subject of a profound critique by one of not only this country's but the world's leading statisticians in this field. This is a report prepared by Dr Ken Ross—the same Dr Ken Ross whose name is used for the indices that are actually used to allocate this money. This is a man who actually knows what he is

talking about—unlike what we have seen today from the government, which has sought to denigrate his response and to say that it has a better method of allocating money, better than the way the world expert says is how it should be done.

In fact, the government today acknowledges that it has undertaken its own review and that, subject to its own review of the SES funding model, a Ms Ann Hardy out of the University of Canberra has undertaken a consultancy for this government entitled 'Advice on aspects of the special socioeconomic status', which I understand is the basis for this new review. This is why we asked the question about how the non-government schools can have any confidence in the government's model when everybody who knows anything about it understands just what a flawed and corrupted system of allocating money we have before us.

Under this model Adass Israel, an extremely poor small Jewish school in Melbourne, has a higher SES score than Haileybury, higher than Geelong Grammar, higher than Geelong College, higher than King's School in Sydney and higher than Trinity Grammar. This model produces those sorts of results, and you have to ask why that is the case. Dr Ross points out to us:

... the formula construction "recipe" that was used to transform raw census data into the SES Index contains major technical errors ...

The paper goes on to say:

As a result of those technical flaws, the SES Index, in its current form, is not suitable for the purpose of guiding large-scale resource allocation decisions among Australia's non-government schools.

I seek leave to table this report.

The DEPUTY PRESIDENT—Is leave granted?

Senator Herron—We have to see it.

Senator CARR—Subject to you seeing it, I take it that leave will be granted.

The DEPUTY PRESIDENT—No. Leave has not been granted at this stage. You can try again after it has been read by the government. You may like to try at the end of your speech.

Senator CARR—We have here a document which shows that the purpose of this formula is essentially to meet political guidelines. 'Senior policy makers', the government says. The report quotes Dr Kemp directly:

Senior policy makers said that the EER program was inadequate to meet the government's needs and as a consequence it may well have influenced the way in which the processes of producing this corrupt model were developed.

The paper claims:

... in developing the SES model no serious attempt by the department was made to capitalise on widely available knowledge.

I put the view that there has been quite clear political interference in the production of the model which allocates \$14 billion. We have what the report describes as a complete corruption of the standardisation process. We have, essentially, a model which produces a result which demonstrates just how unfair the government's funding model is—a distorted model, a model which does not take into account the resources of schools, a model which presents those that are paupers as if they were wealthy and those that are wealthy as if they were paupers. We have a government which has approached the non-government schools and which oversees substantial sums of money being allocated to the already wealthy. There is deliberate manipulation in the way this government has presented this funding model. (*Time expired*)

Senator TIERNEY (New South Wales) (3.09 p.m.)—Here we have another example of Senator Carr systematically working his way through the education system, trashing its reputation bit by bit. He started with the TAFE system about two years ago. He claimed all sorts of terrible things were wrong with the TAFE system. What the inquiry found after 18 months was that there had been considerable improvements, in the record of this government, in the TAFE system—in the way it was reorganised, in the way it moved to private provision, and in the way quality controls came in. Even though Senator Carr at the time was claiming there were all sorts of problems, what the research showed, particularly in Western Australia and in South Australia—

Senator Crossin—That is not true.

Senator TIERNEY—Senator, it is true. The inquiry showed that one per cent of the providers were creating problems and the states moved quickly to rectify that. Any industry that has only one per cent of problems is doing pretty well. That has been rectified. Senator Carr then tried to trash the reputation of Australia's universities with his inquiry into higher education but could not find any vice-chancellors who said that quality had reduced. We had a question earlier today from Senator Cook claiming that public funding for universities had dropped, when the reality is that it has been stable. In the last six years funding for students has been stable and this is all about to increase considerably over the next two or three years.

It is a great pity that what Senator Carr did with the universities made the papers in Asia, because they were very minor and often easily corrected problems. The soft marking particularly is a matter that could be handled by the universities. Unfortunately, the impression he left overseas was that these problems were widespread. That was not the finding of the report. Tomorrow when we debate that matter, with the tabling of the report, I will deal with that further.

Senator Carr, having gone through TAFE and the universities, is now dealing with schools. I would like to place on the record, in the broad framework, that public schooling in this country is 88 per cent funded by the state departments of education. They are putting up funding in a very small way—in the case of New South Wales about two per cent a year. We contribute 12 per cent of the funding to public schools and we have been putting our share up at a rate of five per cent—now six per cent—per annum. So we are really pulling our weight in that area. That brings me to the point of what Senator Carr is discussing today in relation to the funding of the private school system which, because of the way our constitutional arrangements have evolved, has become more the responsibility of the federal government.

Let me put one point very strongly. The average student in a public school is funded by taxpayers at a rate of over \$6,000 a year.

The average private school student is funded at over \$4,000 a year. In other words, there is quite a gap. Who makes up that gap? Parents make up that gap and there are other ways in which schools can raise funding. The net effect of this is that the taxpayer is saved \$2.3 billion every year because parents put that funding into private schools. Then we come to the question of the public money that goes into private schools and whether that is fairly distributed between the schools. Certainly under the Labor Party the answer was no.

The old educational resource index everyone agreed was a failure. It was distributing the funds in an inequitable way and it needed reform. Even the Labor Party, at the end of last year, voted with the government to reform the system. The SES system that we have brought in is far superior, and it actually got the support of the Labor Party at the end of last year. It corrects a lot of the anomalies of the old education resource index. A lot of schools were grossly underfunded over the years and the new system has corrected that. It is a far better system. It is a system that was supported by Labor and it still deserves that support.

Senator CROSSIN (Northern Territory) (3.14 p.m.)—I rise on the motion to take note of the answers given by Senator Ellison to the questions asked by Senator Carr and I regarding school funding. Unlike my colleague Senator Tierney, I will stick to the relevance of taking note of the answer to the question. The question was not about TAFE funding or higher education funding. Perhaps on another day I will respond to the very inaccurate statements that Senator Tierney made in relation to those two elements of the education industry.

The report referred to, entitled *The right ingredients but the wrong recipe*, was used by the Department of Education, Training and Youth Affairs. Senator Ellison said that the report was simply provided for that department; that is not correct. This report is in fact a paper about the technical issues related to the construction of the new SES index used. The SES funding model used by this government in allocating funding to schools

came into place this year. Let me just go to the conclusions of this report, which says:

It was shown that there were particularly a large number of very serious technical problems associated with the construction process. As a result of these problems, it is quite clear that the SES index, in its present form, is not suitable for the purpose of guiding large-scale resource allocation decisions for Australia's non-government schools.

This report comprehensively shows that this government has botched it again when it comes to looking after the education system in this country. This report shows that the technical issues related to how schools will be funded in this country are seriously flawed. It is a very good analysis of the way in which the census collection data are used against a school system. It talks about the fact that the SES system uses only occupation, education and income dimensions. It does not talk about tenancy, family stability or Aboriginality. It does not talk about the assessment of isolation. It does not include a measure of ethnicity. In other words, this is a funding model that is seriously flawed.

The suggestion was that the department take much more time in looking at the technical issues relating to this funding model before it was implemented. But no, the minister was hell-bent on getting rid of the previous ERI model. He felt that the ERI model was not adequate and he had very negative views about it. In an exercise of political expediency, he hurried through the research and the implementation of the SES index. He put it through very hastily to coincide with the next four years of the quadrennial funding for schools.

This government has provided \$700 million extra to the non-government school system over the last few years. This government has had a definite policy emphasis on propping up and promoting the non-government school system at the expense of the public system. This government provides \$1 million a year to each of the 58 schools in category 1, as compared to only \$60,000 a year to Catholic schools—apart from any inflation they might benefit from—and \$4,000 per year to public schools for the whole of the school. It goes from \$1 million to \$60,000 to only \$4,000.

Yet this government—and we have just heard Senator Tierney say it a minute ago—thinks that this new system is fair, that it is a just and equitable funding system. We have uncovered this system today thanks to the work of Dr Ken Ross and his report used by DETYA. This system is seriously flawed. It has technical problems and it has matters that need to be seriously addressed and revised. This government was so concerned about propping up the non-government sector that it rushed through this funding model despite the fact that there are serious problems and serious inadequacies in the way in which this funding system is applied. (*Time expired*)

Senator TCHEN (Victoria) (3.19 p.m.)—Senator Crossin was right in one aspect when she said that Senator Tierney, when he started, did not focus on the question before the Senate, but it was important for Senator Tierney to do that because it gave a sense of the history of how this question came about. The question we are discussing concerns school funding, but it is also a fact that Senator Kim Carr, who is the self-anointed education expert on the Labor side—

Senator Jacinta Collins—He's our spokesman.

Senator Crossin—He's the parliamentary secretary.

Senator TCHEN—He is not the shadow minister, though, is he? The self-anointed education expert has spent the last three years hunting around for some topic to talk about. He started with TAFE, went on to universities and eventually ran out of other topics and reached school education and school funding. It is important that Senator Crossin has a sense of this history as well. Obviously, she has no understanding of how Senator Carr came to develop these views.

There were a couple of things self-evidently wrong in Senator Carr's speech, but I will come back to them later. First, let us look at the basic idea of the fundamental issues that are being changed by the government in the non-government school funding area. Non-government schools have over the years been funded through the education resources index system. We all know that. The problem with the ERI system, put simply, is

that the more you have the less you get. A school which had been prudent and had managed its resources well, regardless of whether it needed more money or not, would not get additional funding under the old system. As Senator Tierney said, the ERI system has been thoroughly discredited. It has even been abandoned by the Labor Party, although Senator Kim Carr seemed to be still fighting a rearguard action to defend it.

The new system, the socioeconomic status system, looks at the parents' needs rather than the schools' needs, because underlying all these changes is the government's idea that education is a matter for the parents to decide. It is important that the parents of the children have a choice, have a say, about where they wish their children to have their education. It does not do justice to the parents' aspirations if we—because of some ideological barrier—deny to schools that provide good education the funding to continue to provide the sort of education excellence that not only serves those children at the schools but, by example, also lifts the education standard right across the spectrum.

The SES system is based on looking at the parents' socioeconomic status on the basis of the census information. It matches the parents' addresses against census collection districts. The important thing about census collection districts is that they are the lowest level that you can get detailed, credible, reliable statistical information for households. No other system is as reliable. That is the important point. That is why census information is used rather than a school based system, because a school based system always relies on voluntary information of a questionable standard. There are students from poor families in rich schools as well. Senator Carr made some points about very rich, or well-managed, schools getting extra funding. The important thing is surely what sort of education standard those schools provide. Senator Carr does not care about what sort of education they provide, just about how rich they are. He does not care about whether they are using their money wisely. (*Time expired*)

Senator JACINTA COLLINS (Victoria) (3.24 p.m.)—Unfortunately, in this discussion

in the chamber today, both Senator Tierney and Senator Tchen have missed the point. The government's message here does not even seem to be consistent. The issue being challenged by this leaked document is that the claims by the government that the SES funding index would provide a more equitable way of distributing recurrent funding and that the SES system would foster equity, transparency, simplicity, flexibility and cost are wrong. The government claims are wrong and their own department is telling them so.

Senator Tierney, in his contribution, attempted to discredit Senator Carr. Senator Tchen sought to follow but did not really quite follow how this place conducts itself. I will address that point in part before I go into the problems with the government's case here. Senator Carr is the Labor-anointed parliamentary secretary for education. He is not a self-anointed expert; he has a representative role in this chamber and that is quite clear, Senator Tchen. As part of that representative role, he today has highlighted serious problems with the SES model and he has given credit to those problems through a departmental report that has been leaked. We have sought today to table that report. As I understand it, the government will not allow leave, so it is incumbent upon us to refer to components of that report which highlight these problems.

In question time today, the minister acknowledged the problems cited in this report and he would not deny that further changes could occur now to this botched SES model. People listening to this debate might recall that this model is so botched that, although the government originally pretended that it was based on a system utilised within the Catholic system, even the Catholic system did not want to touch it. Here are some of the reasons why. Rather than the system fostering equity, what this report has found is that, as a result of the bungled formula, some rural and isolated communities, some communities with high rates of unemployment and some communities with large concentrations of recently arrived people from non-English-speaking backgrounds have been judged to be wealthier than they really are.

The consequences of this and this formula have reduced the proportion of funds going to these needy communities. I would have asked—if additional questions had been allowed today—whether the minister will immediately release the new modelling proposed in this report, and when he will tell us how he is going to address the corruption that occurred with this SES model. The Labor Party's position with respect to this model is not new. It is clearly outlined in the minority report produced by Labor senators as a result of the inquiry into that model. Let me read further from this leaked report, corroborated again by what we put in our report to the Senate on this legislation:

... the formula construction 'recipe' that was used to transform raw census data into the SES Index contains major technical errors which include: the use of the wrong units of data analysis, the erroneous application of standardization procedures, the use of incorrect data element weights, and problems with the choice of census variables and socioeconomic dimensions. As a result of these technical flaws, the SES Index, in its current form, is not suitable for the purpose of guiding large-scale resource allocation decisions amongst Australia's non-government schools.

The minister had his chance today to address these very serious claims—they are more than claims; this is a departmental report about how this tool operates—and he missed it. He missed the opportunity to deny that inequity is being produced by this system or to inform the Australian public about what he is going to do about it. What is the minister going to do about his own department's loss of confidence in the tool that he pushed through the system and held the Australian public and parliamentary system to ransom over, in terms of denying school funding to the sector for the year ahead in order to get this blunt instrument through? (*Time expired*)

Question resolved in the affirmative.

Senator Tambling—In the course of that debate, Senator Carr sought leave to table a document. Leave is not granted.

Health: Aboriginals and Torres Strait Islanders

Senator LEES (South Australia (3.30 p.m.))—I move:

That the Senate take note of the answer given by the Minister for Family and Community Services (Senator Vanstone) to a question without notice asked by Senator Lees today relating to the funding of health care for Indigenous Australians.

I rise to take note of answers from Senator Vanstone to both my main and supplementary questions on the issue of indigenous health. I would like to begin by very clearly defining the question because I was talking specifically about Commonwealth expenditure. I was not talking in any way about money that is spent through the state governments, or money that is spent through the hospital system on issues such as renal dialysis, or money that is spent privately, perhaps through private health insurance or private hospitals, or indeed money spent through local governments. I was looking specifically at direct expenditure by the Commonwealth on the health services for indigenous peoples.

There have been three reports—and I have here two of the most recent ones. In each of those reports, we have seen the same basic findings that indigenous people enjoy a lot less spent on them than do non-indigenous Australians. The original report by the Australian Institute of Health and Welfare had it around 65 cents in the dollar. In the second report by the Institute, it was up to 74 and, in this latest report released a day or so ago, it is now up to 82 cents in the dollar. I wish to acknowledge the comment from the minister that this government has made a difference. They certainly have made a difference, but there is still an enormous way to go before we can even say that we are approaching equity. In particular, if you look at the health status of indigenous Australians, you acknowledge the chronic health problems that they have, the fact that indigenous babies are far more likely to be born underweight and to die in those first few years and that indigenous Australians generally die some 19 or 20 years on average before non-indigenous people.

You can see from the statistics how urgent it is that we increase considerably the amount of money spent on indigenous Australians. In this latest report by the Com-

monwealth Grants Commission, it is not just in health where the expenditure on indigenous Australians is a lot less than spending on the rest of the community. Despite much of the hype we hear from time to time from governments of all persuasions, claiming what wonderful managers they are and how much they are spending, when you get down to it and analyse the statistics and the numbers, you see that actually less money is being spent on people who have far greater need. On page 144 of this report it says:

On the evidence presented to us, the poorer health status of indigenous people and their greater reliance on the public health system this would justify at least doubling of the average rate of per capita expenditure.

It is extremely important, as we move into a federal election campaign, that we get commitments, particularly from the government and the opposition, not only to increase expenditure on indigenous health but also to increase the open, honest and frank way in which we discuss the levels of funding. If we look at the call indigenous people make on state services, we see that their needs are so great that there is extra money spent. But this is the high intensity end, the acute end of Australia's hospital system, which looks at renal dialysis, at acute care and at services such as the Royal Flying Doctor Service and evacuations out of communities.

I note the comments from the minister about how a community is dealing with the specific health issue of scabies and about how there had been some improvements. I have to remind the minister that we still have basic problems with services in the Northern Territory. We still have problems dealing with TB and leprosy—illnesses that are not seen across the general community. While there are some programs dealing with some of the critical issues, so much more money, so much more expenditure, is needed to be put into Aboriginal controlled health services. It is the Commonwealth's responsibility to fund them, and those services are significantly and seriously underfunded at the moment.

I am not even beginning today, in the short time I have, to look at other issues the

minister mentioned. Senator Vanstone mentioned a swimming pool in one of the communities—if only that were possible more generally across the indigenous communities or some sort of recreation facility to at least reduce some of the problems with petrol sniffing and alcohol abuse. In my short time today, I wish to stress again that we need real commitment from this government. (*Time expired*)

Question resolved in the affirmative.

NOTICES

Presentation

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

That the Senate—

- (a) notes, with great sadness, the untimely passing of one of the nation's leading spokespeople on Aboriginal health issues, Dr Arnold (Puggy) Hunter, of Broome in Western Australia on 3 September 2001;
- (b) acknowledges that Dr Hunter's tireless efforts to improve Aboriginal health services spanned some 30 years, and included leadership roles with the Broome Regional Aboriginal Medical Service, the Kimberley Aboriginal Medical Services Council, the National Aboriginal and Torres Strait Islander Health Council; and the National Aboriginal Community Controlled Health Organisation; and
- (c) pays tribute to Dr Hunter for his enormous contribution in raising national awareness of Aboriginal health problems and in improving access to health services for Aboriginal communities throughout Australia.

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

That the Senate—

- (a) notes that:
 - (i) the mandate of the United Nations (UN) mission for the organisation of a referendum of self-determination in Western Sahara (MINURSO) expires on 30 November 2001,

- (ii) there has been little progress in the implementation of the UN/OAU peace plan for Western Sahara,
 - (iii) the UN Secretary General's Personal Envoy, Mr James Baker III, has proposed a 'Draft Framework Agreement' calling for the abandonment of the peace plan agreed by both parties in 1988,
 - (iv) the only just, legal and lasting solution to the conflict in Western Sahara is to allow the Saharawi people to exercise their right to self-determination in a fair and just manner, and
 - (v) a failure by the UN to implement the peace plan would lead to a deterioration of the situation and would have dire consequences for the whole region;
- (b) calls on both parties in the conflict, Morocco and the Frente Polisario, to fully cooperate with the UN in its efforts to organise a free and fair referendum in Western Sahara; and
 - (c) urges the Commonwealth Government to make representations to:
 - (i) the UN, urging it to proceed as soon as possible in organising the long overdue referendum of self-determination, in accordance with the UN/OAU peace plan and all relevant UN resolutions, and
 - (ii) the Moroccan Government to fully cooperate with the UN and respect human rights in the occupied territories of Western Sahara.

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

That the following matter be referred to the Select Committee on Superannuation and Financial Services for inquiry and report by the first sitting day in August 2002:

The adequacy of the tax system and related policy to address the retirement income and aged and health care needs of Australians.

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

That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of Australia's stock exchanges be extended to the last day of the 39th Parliament.

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

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade References Committee on the recruitment and retention of Australian Defence Force personnel be extended to the last day of the 39th Parliament.

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

That the Rural and Regional Affairs and Transport References Committee be authorised to hold a public meeting during the sitting of the Senate on 27 September 2001, from 10 am, to take evidence for the committee's inquiry into Ansett Australia.

Senator George Campbell to move, on the next day of sitting:

That the order of the Senate of 20 June 2001 relating to the production of documents concerning departmental and agency contracts be varied to read as follows:

- (1) There be laid on the table, by each minister in the Senate, in respect of each agency administered by that minister, or by a minister in the House of Representatives represented by that minister, by not later than the tenth day of the spring and autumn sittings, a letter of advice that a list of contracts in accordance with paragraph (2) has been placed on the Internet, with access to the list through the department's or agency's home page.
- (2) The list of contracts referred to in paragraph (1) indicate:
 - (a) each contract entered into by the agency which has not been fully performed or which has been entered into during the previous 12 months, and which provides for a consideration to the value of \$100 000 or more;
 - (b) the contractor, the amount of the consideration and the subject matter of each such contract;
 - (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and

- (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.
- (2A) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:
 - (a) the list is not up to date;
 - (b) not all relevant agencies are included;
 - (c) contracts all of which are confidential are not included.
- (2B) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.
- (3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (3A) In respect of letters including matter under paragraph (2A), the Auditor-General be requested to indicate in a report under paragraph (3) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.
- (4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.
- (5) This order has effect on and after 1 July 2001.
- (6) In this order:

agency means an agency within the meaning of the *Financial Management and Accountability Act 1997*;

autumn sittings means the period of sittings of the Senate first commencing on a day after 1 January in any year;

previous 12 months means the period of 12 months ending on the day before the first day of sitting of the autumn or spring sittings, as the case may be;

spring sittings means the period of sittings of the Senate first commencing on a day after 31 July in any year.

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

That the following aspects of the general insurance industry in Australia be referred to the Select Committee on Superannuation and Financial Services for inquiry and report by the last sitting day in March 2002:

- (a) motor vehicle insurance; and
- (b) public liability insurance for community and sporting organisations,

with particular reference to:

- (a) the cost of insurance products;
- (b) the cost of public liability insurance and schemes that have reduced costs and better calculate and pool risk, as in some overseas jurisdictions;
- (c) the conduct of insurers; and
- (d) the adequacy of the existing consumer protection regime, including industry 'self-regulation' and complaint and dispute resolution services,

but not including any reference to matters contained within the terms of reference of the Royal Commission into the failure of HIH.

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

That the Senate—

- (a) notes the growing support amongst the people of Melbourne for the noble game of rugby league; and
- (b) calls on the Minister for Communications, Information Technology and the Arts (Senator Alston) to use any powers available to him under the *Broadcasting Services Act 1992* to ensure that, if Channel 9 does not broadcast the NRL grand final live nationally, then the people of Melbourne will have an alternative opportunity to view this important game.

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.36 p.m.)—I give notice that, on the next day of sitting, I shall move:

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

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in *Hansard*.

Leave granted.

The statement read as follows—

REGIONAL FOREST AGREEMENTS
BILL 2001

Purpose of the Bill

The purpose of the Regional Forest Agreements Bill 2001 is to provide legislative commitment and support for the outcomes of the Regional Forest Agreements and for ongoing action to implement the Forest and Wood Products Action Agenda through the Forest and Wood Products Council.

Reasons for Urgency

Ten Regional Forest Agreements (RFAs) between the Commonwealth and three state governments have now been concluded since the agreement between governments to implement RFAs in 1995. Some state governments have challenged aspects of the outcomes of these agreements, introducing uncertainty about continuing government commitment to the RFAs.

The substance of the bill has been extensively debated in the parliament. This bill honours a commitment to regional communities, industry and some state governments. It will commit the Commonwealth unequivocally to the outcomes achieved in the RFA process and increase the certainty essential to RFAs being effective. Failure to pass the bill in this session potentially means there would be a long period of uncertainty about the future of the RFAs.

This could undermine the work of successive Commonwealth and state governments, since the National Forest Policy Statement of 1992, to improve intergovernmental institutions and decision processes to support comprehensive forward planning of forest use. Passage of the bill would also underpin ongoing action under the Forest and Wood Products Action Agenda through the Forest and Wood Products Council.

(Circulated by authority of the Minister for Forestry and Conservation)

Senator McGAURAN (Victoria) (3.37 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 I shall withdraw business of the Senate notice of

motion No. 1 standing in her name for 12 sitting days after today for the disallowance of Space Activities Regulations 2001, as contained in Statutory Rules 2001 No. 186 and made under the Space Activities Act 1998. I seek leave to incorporate in *Hansard* the committee's correspondence concerning these regulations.

Leave granted.

The correspondence read as follows—

9 August 2001

Senator the Hon Nick Minchin
Minister for Industry, Science and Resources
Parliament House
CANBERRA ACT 2600

Dear Minister

I refer to the Space Activities Regulations 2001, Statutory Rules 2001 No. 186, that provide for a licensing and safety regime in relation to space launch activities.

Regulations 2.02 and 2.03 specify, respectively, that a launch facility and a launch vehicle "must be as effective and safe for its intended purpose as is reasonably possible" having regard to its design, construction and purpose. It is not clear what is intended by the word "reasonably" in this context, since what is possible is qualified by the factors of design, purpose and (in the case of a launch facility) construction. The Committee would appreciate your advice on whether the word 'reasonably' is necessary in these two regulations.

Paragraph 2.04(2)(j) requires the holder of a licence to notify the Minister in writing of certain details about employees and deemed employees. The details include name, qualifications, usual place of residence, and employment history for the past 10 years. The Committee notes that this reporting requirement covers deemed employees, a category which includes persons who perform a service for the licence holder, and the Committee seeks your advice on whether the Privacy Commissioner was consulted about these requirements and, if so, what the views of the Commissioner were.

The Committee would appreciate your advice as soon as possible but before 10 September 2001 to enable it to finalise its consideration of these regulations. Correspondence should be directed to the Chair, Senate Standing Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely
Helen Coonan
Chair

29 August 2001

Senator Helen Coonan

Chair

Standing Committee on Regulations and Ordinances

Parliament House

CANBERRA ACT 2600

Thank you for your letter of 9 August concerning the Space Activities Regulations 2001, Statutory Rules 2001 No. 186, which set out a licensing and safety regime in relation to space launch activities.

In safety regulation, the concept of risks being as low as reasonably possible (or ALARP) recognises that the cost and physical difficulty of avoiding a risk plays a part in assessing whether or not a particular safety management regime is acceptable. This is normally achieved by weighing each opportunity for an incremental reduction in risk against the presumed benefits in terms of avoidance of injury. If it is shown that there is a gross disproportion between the benefit and the cost, the risk reduction being insignificant in relation to sacrifice required to achieve it, the person upon whom the duty is laid discharges the burden of proving that compliance was not reasonable. However, it is ultimately a matter for courts to decide, on a case-by-case basis, whether duty-holders have complied with duties qualified in this way.

Deleting the word "reasonably" would carry the implication that duty holders would have to take all possible steps to reduce or avoid risk, regardless of the cost or physical difficulty involved. This would produce a regime that is impractical, because of the enormous burden it would place on duty holders. Accordingly, it is recommended that the word "reasonably" be retained in Regulations 2.02 and 2.03.

You also refer to paragraph 2.04(2)(j) of the Regulations, which requires the holder of a licence to notify the Minister in writing of certain details about employees and deemed employees. This Regulation supports Section 18(e) of the Space Activities Act 1998, which requires that the Minister is satisfied that granting a space licence will not compromise Australia's national security, foreign policy or international obligations. I am advised that discussions with the Department of Foreign Affairs and Trade and the Attorney-General's Department indicated that information sought by paragraph 2.04(2)(j) was the minimum required to make an assessment and assure the Minister about such matters.

Officers from my Department consulted the Attorney-General's Department about the Privacy implications of paragraph 2.04(2)(j) of the Regulations and were advised that applicants should be

notified of their obligations under the Regulations and that advice be provided on how the Government planned to use the information provided. These matters are addressed in the 'Guidelines for Industry on the Space Licence', which are currently being finalised and will become a public document.

Yours sincerely

Nick Minchin

Senator the Hon Nick Minchin

Minister for Industry, Science and Resources

Parliament House

CANBERRA ACT 2600

Dear Minister

Thank you for your response dated 29 August 2001 concerning the Space Activities Regulations 2001, Statutory Rules 2001 No. 186.

The Committee notes your advice that the Attorney-General's Department advised that applicants should be notified of their obligations under the Regulations and that advice be provided on how the Government planned to use the employee information provided. However, it is unclear how this obligation affects deemed employees.

The Committee therefore seeks clarification on whether a deemed employee is made aware at the time that he or she agrees to provide the service that information about them (10 year employment record) will be supplied to the Minister.

The Committee would appreciate your advice as soon as possible but before 17 September 2001 to enable it to finalise its consideration of these regulations. Correspondence should be directed to the Chair, Senate Standing Committee on Regulations and Ordinances, Room SG 49, Parliament House, Canberra.

Yours sincerely

Helen Coonan

Chair

Senator Helen Coonan

Chair

Standing Committee on Regulations and Ordinances

Parliament House

CANBERRA ACT 2600.

Thank you for your letter of 30 August 2001 concerning the issue of privacy concerns for deemed employees under the Space Activities Regulations 2001.

The Space Licence Guidelines, which are to be provided to industry to assist in the preparation of

applications for space licences, will clearly applicants of the need to comply with Schedule 3 of the Privacy Act 1988. The Guidelines will further state an applicant must inform employees and deemed employees, at the time of engagement of the requirement to provide their personal particulars to the Space Licensing and Safety Office, including their 10 year employment record, as part of the documentation requirements for a Space Licence and that this information may be closed to other government agencies.

I note that the Guidelines are still in draft form and that they will shortly be circulated to industry for comment. A copy of the relevant section of the Guidelines is attached for your information

Yours sincerely

Nick Minchin

17 September 2001

Attachment

Extract from Draft Space Licence Guidelines

6.1 Disclosure of Information

The information contained in the application form and accompanying documents will be used to assist in determining whether the applicant is fit and proper to be involved in activities regulated under the Space Activities Act 1998 and the Space Activities Regulations 2001. The information is required to be collected under the Space Activities Regulations 2001 and may be disclosed to the relevant Commonwealth Departments involved in the assessment of national security, foreign policy or international obligations. The accompanying documents may also be provided to other bodies, such as relevant State/Territory and local governments, for the purposes of obtaining comments on the plans to enable the Minister to assess the application. Failure to provide this information could affect the applicant's eligibility to be granted a space licence or launch permit.

Applicants should be aware of any obligations they may have under the National Privacy Principles set out in Schedule 3 of the Privacy Act 1988.

Applicants are also advised of the need to inform employees and deemed employees at the time of their engagement of the requirement to provide personal particulars to the SLASO, including information on their ten year employment history and place of residence and that this information may be disclosed to relevant agencies as noted above.

COMMITTEES

Selection of Bills Committee Report

Senator McGAURAN (Victoria) (3.37 p.m.)—On behalf of Senator Calvert, I present the 15th report of 2001 of the Selection of Bills Committee.

Ordered that the report be adopted.

Senator McGAURAN—I also seek leave to have the report incorporated in *Hansard*.

Leave granted.

The report read as follows—

SELECTION OF BILLS COMMITTEE REPORT NO. 15 OF 2001

1. The committee met on 25 September 2001.
2. The committee resolved to recommend –
 - (a) That the provisions of the following bill be *referred* to a committee as follows:

Bill title	Stage at which referred	Legislation re-Committee	Reporting date
Proceeds of Crime Bill 2001 (see appendix for statement of reasons for referral)	Immediately	Legal and Constitutional	22 November 2001

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

- Air Passenger Ticket Levy (Imposition) Bill 2001
- Air Passenger Ticket Levy (Collection) Bill 2001
- Employment, Workplace Relations and Small Business Legislation Amendment (Application of Criminal Code) Bill 2001
- Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001
- Health Legislation Amendment Bill (No. 3) 2001
- Migration Amendment (Excision from Migration Zone) Bill 2001
- Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Bill 2001
- Border Protection (Validation and Enforcement Powers) Bill 2001

- Royal Commissions and Other Legislation Amendment Bill 2001
- Taxation Laws Amendment Bill (No. 5) 2001
- Taxation Laws Amendment Bill (No. 6) 2001

The committee recommends accordingly.

3. The committee *deferred* consideration of the following bills to the next meeting:

Bill deferred from meeting of 7 August 2001

- Constitution Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001

Bill deferred from meeting of 21 August 2001

- State Elections (One Vote, One Value) Bill 2001

Bill deferred from meeting of 28 August 2001

- Australian Citizenship Legislation Amendment Bill 2001

Bills deferred from meeting of 25 September 2001

- Family Law Amendment (Child Protection Convention) Bill 2001
- Olympic Insignia Protection Amendment Bill 2001
- Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001

(Paul Calvert)

Chair

26 September 2001

Appendix 1

Name of bill:

Proceeds of Crime Bill 2001

Reasons for referral/principal issues for consideration:

The principle of civil forfeiture where if, a person can be shown, on the civil standard, to have engaged in a serious offence [defined to be, drug offences, money laundering, people smuggling, property offences involving more than \$10,000 and several offences against the Financial Transaction Reports Act 1988 (FTR) involving at least \$50,000] all the property which remains the subject of a restraining order, because it has not been shown to be lawfully derived, is forfeited.

The principle that literary proceeds orders can be made where the court is satisfied to the civil standard that the person has committed an indictable

offence and that the person has derived literary proceeds.

Production orders requiring documents to be produced even though they might incriminate the person (where derivative use immunity is provided to the producer).

Examination orders which can be made by a court once a restraining order is in place requiring the suspect, an owner of restrained property or a spouse of any such person to answer the questions of an approved examiner and the DPP about the affairs of any person.

A new scheme for legal assistance where legal assistance will generally be provided by Legal Aid Commissions under a proceeds aid agreement between the Commonwealth and the States and Territories.

Possible submissions or evidence from:

Community groups, legal groups, law enforcement agencies

Committee to which bill is to be referred:

Legal and Constitutional Legislation Committee

Possible hearing date(s): To be determined by the Committee

Possible reporting date: 22 November 2001

(signed) Paul Calvert

Whip/Selection of Bills Committee member

Rural and Regional Affairs and Transport Legislation Committee

Report

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

That business of the Senate order of the day no. 3, relating to the presentation of the report of the committee on the provisions of the Regional Forest Agreements Bill 2001, be postponed till a later hour.

Community Affairs Legislation Committee

Extension of Time

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

That the time for the presentation of the report of the Community Affairs Legislation Committee on the Disability Services Amendment (Improved Quality Assurance) Bill 2001 be extended to 24 October 2001.

NOTICES

Postponement

Items of business were postponed as follows:

General business notice of motion no. 1044 standing in the name of Senator Allison for today, relating to energy efficiency and low pollution standards for new power stations, postponed till 27 September 2001.

General business notice of motion no. 1057 standing in the name of Senator Carr for today, relating to education, postponed till 27 September 2001.

COMMITTEES

Privileges Committee

Report

Motion (by **Senator Robert Ray**) agreed to:

That the Senate endorse the findings at paragraphs 15(a) to (f) of the 100th report of the Committee of Privileges.

BUSINESS

Hours of Meeting and Routine of Business

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Health and Aged Care) (3.40 p.m.)—I ask that government business notice of motion No. 1 be taken as formal.

Senator ROBERT RAY (Victoria) (3.41 p.m.)—by leave—This was delayed subject to talks. We have not heard back on those talks although I understand that they were successful. I think that Senator Tambling or Senator Campbell should give a very short two-minute explanation of what we will be doing by extending the hours tonight and under what conditions, whether it is without divisions, without quorums, and what legislation will be discussed so that everyone in the chamber will be aware. It would be very helpful. I do not think you will then find that the motion will be opposed.

Senator IAN CAMPBELL (Western Australia—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (3.42 p.m.)—by leave—I did hear what Senator Ray was asking as I was sitting peacefully in my office. There was a successful leaders and whips meeting and it was agreed that we will

sit tonight to deal with second readings only of a range of bills. There is agreement on what those bills will be. It will be for second readings only, with no divisions and no quorums, and the debates will not be closed this evening so that other senators will be able to make speeches tomorrow. I know there is one senator present who wishes to do so. There has also been agreement on completing a series of important pieces of legislation prior to the adjournment of the Senate at roughly the normal time tomorrow night.

Senator CARR (Victoria—Manager of Opposition Business in the Senate) (3.43 p.m.)—by leave—The opposition would agree to the report that has just been indicated to the Senate. There is an agreed list of legislation which will be processed prior to our normal rise tomorrow night. The aim is for the Senate to get up at around 6 p.m. tomorrow, the intention being that tonight we provide opportunities for senators to speak on a range of bills which go to the taxation system and thin capitalisation and debt and equity, royal commissions, air passenger ticket levy, fuel legislation, intelligence services, motor vehicles standards, taxation laws amendment and jurisdiction of Federal Magistrates Service, bankruptcy and tax laws. That would allow people to participate in other traditional events that are standard procedure in this parliament on Wednesday night. It would be on a no quorums, no divisions basis, as we understand it. Tomorrow, the intention is that the committee stages of bills be processed and that senators be given the opportunity to incorporate speeches tonight if they so wish. I understand that the government have given an undertaking that that occur. There should be a capacity to facilitate the program on an agreed basis.

Leave granted.

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

That, on Wednesday, 26 September 2001:

- (a) the hours of meeting shall be 9.30 am to 6.30 pm and 7.30 pm to adjournment;
- (b) the routine of business from 7.30 pm shall be government business only; and
- (c) the question for the adjournment of the Senate shall be proposed at midnight.

REPUBLIC (CONSULTATION OF THE PEOPLE) BILL 2001

First Reading

Motion (by **Senator Stott Despoja**) agreed to:

That the following bill be introduced: A bill for an Act to provide for the electors to be consulted, at the same time as the general election for the House of Representatives, on whether Australia should become a republic and on whether they should vote again to choose from different republic models

Motion (by **Senator Stott Despoja**) agreed to:

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

Bill read a first time.

Second Reading

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (3.45 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 final sitting of the Commonwealth Parliament during the centenary of Australia's Federation provides a fitting occasion to assess how far we have developed as a nation.

It also allows us to look forward to the next step Australia should take as a proud democracy.

Our history records slow but steady democratic progress. However, at times Australia's states and colonies adopted undemocratic constitutional and electoral arrangements.

These included the law restricting the right to vote to the male head of the family. Another was plural voting. This practice, where wealthy landowners could vote not only in the electorate where they lived but also in an electorate where they owned land, persisted in Western Australia until 1963.

Throughout the nation, women and particularly indigenous Australians had to campaign for the right to vote.

Thankfully, over time our attitudes and institutions have become increasingly democratic, to the extent that it would now be laughable to suggest that gender, race or wealth could determine an Australian's right to vote.

This evolution reflects the deeply held Australian value of egalitarianism. Sadly, that sentiment is still not reflected in the structure of executive power under the Australian Constitution.

We retain an archaic model where the British Monarch inherits our country's highest office simply for being born as the heir and successor of Queen Victoria I.

Australia's head of state should be chosen according to the Australian values of merit and performance, not according to birthright.

The current model is undemocratic and inappropriate. If we were writing a constitution for Australia in the 21st Century, it would also be unlawful.

It limits those who can aspire to Australia's highest office to a family living on the other side of the world. It discriminates according to gender, race, religion and class. Most significantly, it discriminates against every Australian.

We have repeatedly witnessed the farcical result of these arrangements for contemporary Australia. At last year's Sydney Olympics, even Prime Minister, John Winston Howard defied protocol and refused to invite Australia's head of state, Her Majesty Queen Elizabeth II to open the Olympics.

This was a significant admission by Australia's leading monarchist. The Prime Minister was acknowledging how inappropriate it would have been for a foreign Monarch, universally recognised as the Queen of England rather than the Queen of Australia, to open such a symbolic event for our nation.

Becoming a republic is the next step in enhancing Australia's democracy. It would cast off the key components of our constitutional arrangements that no longer reflect Australian values.

However, if the new republic is to be truly democratic, Australians must own the process.

With this Bill, the Australian Democrats are proposing to begin the process towards a second republic referendum with a plebiscite at the general election after 2001.

The plebiscite would ask two questions. The first is:

Do you want Australia to become a republic?

The second is:

If most Australians decide they want a republic, do you want the opportunity to choose from different republic models?

The first question is designed to settle the politically motivated debate about the wishes of the Australian people. Monarchists have argued that the failure of the 1999 referendum represented a

definitive rejection of republicanism. The truth is the referendum rejected a model. It was not a rejection of republicanism itself.

In a recent article in the Australian Journal of Political Science, Associate Professor David Charnock shows that the votes of direct electionists were as important as those of monarchists in the defeat of the republic referendum, according to survey data from the Australian Constitutional Referendum Study 1999.¹

I believe that the underlying community support remains for a republic. The most recent poll, the Newspoll of August 22, confirms that most Australians are in favour of Australia becoming a republic.

A positive response to the first plebiscite question would provide a direct mandate from the people to proceed with the development of a further model or models for a second republic referendum. No election or opinion poll could provide this process with a greater foundation of legitimacy. This process must begin and end with the Australian people.

The second question would settle a further dispute about how to proceed with the development of a republic model. On the assumption that voters express 'in principle' support for a republic in response to the first question, the second question asks whether an opportunity to choose between different models should be provided.

There must then be a process for developing a model or models to put to the people. The vital point about this process is that it must engage the community and give Australians a sense of ownership of the outcome.

One proposal designed to achieve this is a fully elected constitutional convention, one that would be better resourced and have a longer reporting time than its predecessor. As a delegate to the previous Constitutional Convention, I believe this proposal has merit.

However, there are a number of viable alternatives. A special committee, consisting of experts and community leaders to consult widely and report is one option. Whatever approach is taken, the participation of the Australian people is paramount.

It is notoriously difficult to affect constitutional change in this country. Of the 44 proposals to alter the Commonwealth Constitution, only 8 have been successful. The approach suggested by this Bill is, we believe, an inclusive and participatory starting point. I am proposing a process, not endorsing a model.

The advantage of a plebiscite is that it puts the question of whether Australia should become a republic beyond doubt. This is raw democracy in action. In this regard, it has an advantage over the first republic referendum process. It offers democratic legitimacy through a direct mandate from the people.

I note and welcome the Opposition leader, Mr Beazley's commitment to the use of plebiscites to further the republican cause. Holding a plebiscite in conjunction with a general election also offers a cost-effective mechanism for determining the will of the people.

I look forward to hearing from Deputy Liberal leader, Peter Costello on this issue. The Treasurer showed admirable leadership during the 1999 referendum campaign and the support of all parties will be needed for Australia to take the next step.

In conclusion, the process by which Australia is to become a republic must be democratic. The people will only approve a model that is based on inclusion and participation.

We must replace the inappropriate symbolism of the British Monarch with the Australian tradition of egalitarianism, so our head of state is chosen on merit and performance not birthright. The use of plebiscites is the best available mechanism for gauging popular sentiment and allowing the people to control the process.

This debate has also highlighted the need to *Change Politics*. We need to be able to discuss issues honestly. During the 1999 referendum campaign we witnessed Howard Government Ministers telling people "you can't trust politicians," a cynical tactic designed to divide the republican vote.

We even witnessed monarchists deny that Queen Elizabeth II held Australia's highest office, in a shameless attempt to create confusion and deliver a "No" vote to Australia becoming a republic.

This ploy deliberately misled the public. I believe it was offensive to Her Majesty, who has earned the respect of monarchists and republicans alike during her long reign.

Australia will always retain close relations to Great Britain through our shared history, culture and economic ties. Australia will also retain these links through its membership of the Commonwealth of Nations, headed by Her Majesty, Queen Elizabeth II.

The republican debate is pro-Australian not anti-British. It is about standing up for values Australians cherish, egalitarianism and democracy.

I commend this Bill to the Senate.

1 Charnock D, 'National Identity, Partisanship and Populist Protest as Factors in the 1999 Australian Republic Referendum, *Australian Journal of Political Science*, Vol. 36, No. 2, pp. 271-291

Senator STOTT DESPOJA—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Employment, Workplace Relations, Small Business and Education References Committee

Extension of Time

Motion (by **Senator Ludwig**, at the request of **Senator Jacinta Collins**)—by leave—agreed to:

That the time for the presentation of the report of the Employment, Workplace Relations, Small Business and Education References Committee on the education of gifted and talented children be extended to 22 October 2001.

ABORIGINAL DEATHS IN CUSTODY

Motion (by **Senator Ridgeway**)—as amended, by leave—agreed to:

That the Senate—

- (a) notes with great sadness that an Aboriginal man died in custody on 17 September 2001 in a Queensland gaol, nearly two months to the day since the previous Aboriginal death in custody in Western Australia on 18 June 2001;
- (b) acknowledges that:
 - (i) whereas Indigenous people in New South Wales were eight times more likely than the general population to be imprisoned in 1991, this figure rose to almost ten times more likely in 1998,
 - (ii) this over-representation of Indigenous Australians in our nation's gaols stems initially from their higher rate of appearance at court, which is amplified at the point of sentencing, with Indigenous offenders sentenced to prison at almost twice the rate of non-Indigenous offenders, and
 - (iii) this situation is contrary to the recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody, which emphasised the need to reduce the disproportionate levels of Aboriginal people in

custody, and to use incarceration as a measure of last resort; and

(c) calls on the Government:

- (i) to re-affirm its commitment to addressing the unacceptably high levels of social, economic and cultural disadvantage experienced by Aboriginal Peoples and Torres Strait Islanders in recognition that this disadvantage contributes to Indigenous over-representation in our gaols, and
- (ii) in consultation with Aboriginal Peoples and Torres Strait Islanders and their representative organisations, as well as state and territory governments, to commit to reviewing the national strategy with the aim of reducing the rate at which Indigenous persons appear in court and the rate at which they are taken into custody.

COMMITTEES

Scrutiny of Bills Committee Report

Senator COONEY (Victoria) (3.47 p.m.)—I present the 13th report of 2001 of the Standing Committee for the Scrutiny of Bills. I also lay on the table *Scrutiny of Bills Alert Digest* No. 14 of 2001, dated 26 September 2001.

Ordered that the report be printed.

Senator COONEY—I move:

That the Senate take note of the report.

I want to say a few words. This committee is one that I have great attachment to and affection for and indeed great pride in. On the off-chance that this may be the last opportunity this year to speak about this committee, can I, in short but nevertheless very sincere terms, thank my fellow members of this committee—my deputy chairman, Senator Crane, who has brought wisdom and experience to this committee; Senator Crossin, who likewise has brought a great quality to the committee; and Senator Ferris, Senator Mason and Senator Murray—all of whom I owe a great debt to, because they have brought to the committee a wealth of wisdom, a wealth of experience and a wealth of goodwill. I think this committee has brought forward very successful reports, and it is due to them.

Can I also thank from the bottom of my heart—and I say that sincerely—the secretary of this committee, James Warmenhoven; and Margaret Lindemen, who is someone to whom I owe a great deal of gratitude. She is going overseas for three years and I wish her all the best there. May I also pay tribute to Professor Davis, who prepares the template for the reports and looks at the various pieces of legislation that come before this chamber and chooses those parts which seem to offend the terms of reference of the committee. Can I also thank Bev Orr, who came to the committee in recent months and has added mightily to it.

Question resolved in the affirmative.

Privileges Committee

Report

Senator ROBERT RAY (Victoria) (3.51 p.m.)—I present the 101st report of the Committee of Privileges, relating to persons referred to in the Senate.

Ordered that the report be printed.

Senator ROBERT RAY—I move:

That the 101st report of the Committee of Privileges be adopted.

This is the 38th in a series of reports recommending that a right of reply be accorded to persons who claim to be adversely affected by being referred to—either by name or in such a way as to be readily identifiable—in the Senate. On 17 September 2001 the President of the Senate received a submission from Mr Jack Marges, on behalf of the staff and faculty of Greenwich University. It concerned a matter reportedly raised by Senator Carr in the Senate on 7 June 2001. The President referred the submission to the Committee of Privileges under resolution 5.

On examining the *Hansard* reference, the committee discovered that the comments were made during a Senate committee hearing. Normal practice would be for the matter to be forwarded to the relevant committee. The Committee of Privileges noted, however, that on 25 June 2001 Senator Carr referred in the Senate to Greenwich University in the following terms:

Every single allegation that I have made about Greenwich University ... has been demonstrated to be correct.

It therefore decided to consider the submission at its meeting on 20 September, and recommended that a response in the terms included in the report I have just tabled be incorporated in *Hansard*. The committee always reminds the Senate that, in matters of this nature, it does not judge the truth or otherwise of the statements made by honourable senators or persons who seek redress.

I must add from a personal point of view that Senator Carr is a recidivist. I think this is the fifth occasion on which the right of reply has been exercised against him, compared with a miserly two in relation to Senator Alston and Senator Knowles and a miserly one in relation to me. I have pointed out to the Committee of Privileges that every time we put in a right of reply we make Senator Carr's day, and I am not in the business of doing so. However, duty impels me to put this response down. No doubt Senator Carr will make some more injudicious remarks. No doubt the people associated with Greenwich University will write to us again. We have finally, I think, found the answer to perpetual motion.

Senator CARR (Victoria) (3.53 p.m.)—I am moved by Senator Ray's report to draw to the attention of the Senate that this complaint against me to the Privileges Committee is one of many, as he has already said, from a group of friends—one could only describe them now as friends!—out at Greenwich. It is quite apparent to me that this bizarre and wonderful organisation out there at Greenwich is worthy of public discussion and debate! Not many universities can claim to be led by convicted criminals. What we have here is a vice-chancellor—a doctor of divinity, no less—convicted of stealing from the Brotherhood of St Laurence. That surely is an unusual set of circumstances that warrants public debate. How many universities, or people who claim to be universities, can claim that sort of approach to rehabilitation? That is what I call it: rehabilitation. It is a second chance for convicted criminals—we put them in charge of people who claim to be running a university. That is unusual, and I am sure that in itself is worthy of debate.

It strikes me that we do have a mob of shysters and crooks out there at Greenwich, and we have a government that has given them aid and comfort. Their stupidity out at Greenwich is surely only beaten by the stupidity of the Minister for Regional Services, Territories and Local Government. He gave them the authority to operate. Senator Macdonald was the one that took the assurance from this group of shysters.

The DEPUTY PRESIDENT—Senator Carr, I hope you are not reflecting upon a member of this place.

Senator CARR—I am reflecting on Senator Macdonald's incapacity to understand the most basic elements. He made an assumption that an Internet university could not operate just on one island. He directed the Administrator of Norfolk Island to sign off on a bodgie piece of legislation that set up a group of people out at Norfolk and allowed them to claim that they were an Australian university. In so doing, he brought into disrepute all universities in this country. This is a group of people that have now sought to sue an organisation of private colleges for the sum of \$30 million, because they said there might be some alarm bells raised by the operations of this organisation.

The minister signs off on such bodgie legislation and directs the administrator to set them up, and then of course the government fails to do anything about it. I did raise a few points, and I have mentioned this once or twice in the past. Every single point I have made about this bunch of crooks has been demonstrated to be correct. That is the basis of the complaint today. The truth hurts, I know that. I know how difficult it is. It is not just me that is saying this, though. The head of the Higher Education Division of the Department of Education, Training and Youth Affairs, Mr Michael Gallagher—whom I do not always quote favourably; he has in recent times made comments which I have had cause to disagree with—at a government inquiry into this bunch of shysters said that the standards were unacceptably low for an Australian university. He said:

It is important that the university understands just how far behind it is in terms of Australian expectations.

We would expect that it would take some time for Greenwich University to rectify these deficiencies seriously ...

It clearly has a long way to go before it reaches anywhere near university standards. Frankly, from what we saw in the review process, much of what it is accepting at doctoral standard would not pass muster at high school.

So the head of the Higher Education Division of the Commonwealth department says that they are operating an outfit out there that would not pass as a high school in the rest of Australia. But the minister for territories instructs the Administrator of Norfolk Island to sign off on this bodgie outfit. It is rare that we see this sort of candour from an Australian public servant, particularly in this government. We know how they have sought to control and manipulate the official arrangements. We saw it today in the debate on the socioeconomic index. The expert findings that this government has in terms of school funding, and the way they tried to suppress that report, showed just how corrupted their arrangements have been.

When Mr Gallagher says that this university does not measure up to the standards of a high school, that is refreshing. I can only endorse those comments wholeheartedly. That is in essence what I have been arguing. Why is this outfit headed up by a convicted criminal? He is only surpassed by the activities of the Duke of Brannagh, the man that buys the titles to the royal thrones of the Russian Federation, the French royal throne and a number of others and claims to be a noble. He of course is the chancellor out there. How is it that you have a vice-chancellor who is a convicted embezzler and a man that claims to be an aristocrat, the duke, running this arrangement? It is quite apparent that there is reason for serious consideration.

I think we are entitled to ask a few questions about Dr McKechnie's, the embezzler's, doctorate in business administration. If he was convicted under those circumstances, how did he get such a job? I would have thought that the Minister for Regional Services, Territories and Local Government would have something to say about this, but we have heard nothing from him. Dr

McKechnie is a very colourful figure. A doctor of divinity stealing from the Brotherhood of St Laurence must take a special skill that could be exercised only at what this group of people call a university! We are able to pursue dishonest people in a whole range of areas. As a person interested in education, I think I am entitled to ask a few questions about an organisation that presents itself as a university. Dr McKechnie's behaviour is not unusual, it is not out of the ordinary, in the way that Greenwich University operates; it is unusual and out of the ordinary for an Australian educational institution.

This institution represents a threat to Australia's international reputation. That is why I am so concerned about it, that is why I have pursued this issue for three years and that is why I will continue to raise these issues. I expect the government to do something about it. They have had plenty of opportunities and they have failed to do anything about it. Minister Macdonald ought to be condemned for his failings. Dr Kemp should have forced something to happen on this matter. They have a Commonwealth government report that says that this outfit is not up to scratch—not even up to the standards of a high school. But what action has been taken by the government? Have they contacted the Norfolk Island government to say, 'We expect you to repeal the legislation that establishes this institution'? No, they have not. They have written letters drawing attention to the inadequacies of the legislation; they have not asked for the legislation to be repealed. The Norfolk Island administration said that they would take action on the findings of the report. No action has occurred, and the Commonwealth has not taken any action to follow the matter up.

As a parliament, we are entitled to examine the operations of the Duke of Brannagh. We are entitled to have a look at the operations of the vice-chancellor, Dr McKechnie. We are entitled to look at the so-called faculties operating at this shonky outfit. We will no doubt hear a great deal more from them on this matter. Perhaps Senator Ray will come in here and say, 'There are no findings in this matter. They have a right of reply.' What they have to understand, though, is that

this is an issue that will not go away by the government seeking to ignore it. The government has defended these shysters for too long. It is now up to them to look at themselves and change the situation. The government is looking very silly over this.

The case at Greenwich is a very good example of the way in which, as far as I am concerned, parliamentary privilege ought to be used. It ought to be used because it is the only avenue we have when dealing with a group of shysters who are extraordinarily litigious and who sue the office workers of private organisations such as ACPET because their officers even raise a question about alarm bells. There probably is a lamp-post waiting for me out at Norfolk; I understand that. But I would not be the first to have raised these questions, and ultimately I will not change my position simply because matters are referred to the Privileges Committee. I thank Senator Ray for the opportunity once again to be able to canvass some of these issues, and I trust that there will be other opportunities. However, if the government feels moved to actually do something about it, it will bring an end to this issue.

Question resolved in the affirmative.

The response read as follows—

APPENDIX ONE

RESPONSE BY MR JACK MARGES, ON BEHALF OF STAFF AND FACULTY OF GREENWICH UNIVERSITY, AGREED TO BY MR MARGES AND THE COMMITTEE OF PRIVILEGES PURSUANT TO RESOLUTION 5(7)(B) OF THE SENATE OF 25 FEBRUARY 1988

It has been brought to our attention that on Monday, 25 June 2001, Senator Carr referred in the Senate to certain inaccurate and misleading comments made at hearings of the Employment, Workplace Relations, Small Business and Education Legislation Committee on 7 June 2001, during consideration of estimates for the Department of Education, Training and Youth Affairs. The comments related to the qualifications of staff and the academic faculty at Greenwich University and the content of certain curricula offered by Greenwich University. I am writing on behalf of the staff at Greenwich University who are concerned at the implications of these statements made under parliamentary privilege. The comments made to the legislation committee directly attack the reputation and academic credibility of all of us, and we seek to have this injustice corrected.

It was stated that there is a lack of qualified faculty and core staff to supervise academic activity at Greenwich University. However, the administrative headquarters of Greenwich University on Norfolk Island is staffed by well qualified individuals who are responsible, together with the Deans, for engaging and supervising academic faculty. The Registrar has a PhD from London University, the Academic Dean has a PhD from Sydney University, the Bursar has an economics degree from the Australian National University, and the Academic Officer has an Honours degree from Sydney University and is a PhD candidate at Wollongong University. This core staff assists the Deans in the process of appointing new faculty, they oversee and facilitate the ongoing administrative matters relating to faculty, and are charged with ensuring that only fully qualified individuals are admitted to the faculty of Greenwich University. Greenwich faculty are expected to meet rigorous requirements in order to serve as course instructors or student committee members. There are currently 163 Faculty, 157 of whom have a PhD. All of these faculty members had their highest degree verified at the time of appointment, and only those whose degrees were awarded by an accredited university (nationally accredited and listed on the UNESCO World List of Universities) were accepted as faculty members. Indeed the majority of our faculty are PhD graduates from highly regarded North American and British universities including Cornell, UCLA, Harvard, Walden, Northwestern, New York and London, to name a few. In rare cases, individuals who are recognised experts in their fields have been accepted to the faculty with less than a doctoral degree. These include three members of faculty whose highest qualification is a Masters degree, and three registered Medical Doctors who are recognised for their area of specialisation. Only a small number of faculty (less than 10%) are graduates of Greenwich University; Greenwich graduates are only considered for faculty positions if they have an exceptional student or postgraduate record.

The standard of graduate theses and dissertations has been criticised. However, the Review Committee who visited the university headquarters on Norfolk Island did not read any manuscripts, but had only a short time to glance at the titles of a handful of examples. In fact had the committee members asked, they would have found that the material they glanced at was not pertinent to their investigation, but were documents from the period prior to the establishment of Greenwich University, Norfolk Island. At the time of their brief visit (less than four hours) to the university, no students of Greenwich University (Norfolk Is-

land) had submitted or completed a manuscript. Furthermore the committee members did not seek to speak to any students or faculty members.

It was stated that there is a lack of systems in place to coordinate communication amongst academic staff. This is demonstrably untrue. The University has an excellent vehicle for conducting ongoing dialogue amongst faculty, administrative staff, and faculty governance committees, in the form of the University's Academic Council and Academic Oversight Committees, and the following online private on-line forums are in place for this purpose: Academic Council, Committee on Research, Committee for Academic Support, Committee on Curriculum and Instruction, Committee on Outreach and Development.

It was wrongly stated at the Senate committee hearing that Greenwich University offers programs in Deep Sea Settlement and Deep Space Settlement. Greenwich University does not, and never has, offered Deep Space Settlement or Deep Sea Settlement Programs as part of its curriculum. This would be abundantly clear to anyone reading the documentation supplied to Mr. Gallagher and DETYA. It is noted that not one page of the extensive documentation supplied to DETYA has been placed before the Senate, neither the Submission documents nor the response to the Report.

Mr. Gallagher has criticised the programs in Computer Science offered by Greenwich University because they do not teach students to "design and construct" or "fix" computers. Mr. Gallagher has failed to understand the very significant difference between computer scientists who design software, as opposed to computer technicians and hardware engineers who design and fix the physical components of a computer and peripheral equipment. The Greenwich University degrees in Computer Science do not pretend to have anything to do with computer hardware design or repair. They are specifically for students who wish to work in the information technology arena as computer scientists with roles in statistics, actuarial and mathematical analysis, operational research, numerical analysis, cryptography, database design, graphical design, systems development and programming.

We request that the above be admitted into the public record as it is essential that these inaccuracies be corrected in order to avoid defaming the credentials of Greenwich University staff and faculty.

Jack Marges

on behalf of the staff and faculty of Greenwich University

**Finance and Public Administration
References Committee
Report**

Senator GEORGE CAMPBELL (New South Wales) (4.04 p.m.)—I present the final report of the Finance and Public Administration References Committee on its inquiry into the mechanism for providing accountability to the Senate in relation to government contracts, entitled *Commonwealth contracts: a new framework for accountability*, together with submissions received by the committee.

Ordered that the report be printed.

Senator GEORGE CAMPBELL—I move:

That the Senate take note of the report.

On Wednesday, 12 April 2000 the Senate referred to the Finance and Public Administration References Committee the mechanism contained in general business notice of motion No. 489, better known as the Murray motion. This report is the committee's final report on the mechanism proposed in general business notice of motion No. 489. The motion, which provides for accountability to the Senate in relation to government contracts, was passed as a Senate order on 20 June 2001.

The committee's first report on the inquiry into the mechanism for providing accountability to the Senate in relation to government contracts was tabled on 26 June 2000. In the report, the committee undertook to report again on the motion after the Auditor-General had conducted his performance audit on the use of confidentiality provisions in Commonwealth contracts. That report, Audit Report No. 38 2000-01: *The use of confidentiality provisions in Commonwealth contracts*, was tabled in the parliament on 24 May 2001.

Today, the committee once again tables a report that identifies inadequacies and inconsistencies in public reporting systems that undermine the effectiveness of accountability mechanisms intended to provide for transparency in Commonwealth contracting, an area of substantial public expenditure. The committee has drawn on key government documents that state the government's inten-

tion to be accountable to the public. Its view expressed in the Commonwealth Procurement Guidelines is that 'openness and transparency in administration, by external scrutiny through public reporting, is an essential element of accountability'. Because of these statements supporting open government, the committee concludes that the lack of available information about government contracts is a result of inadequate information systems and needs to be addressed by those that manage them.

The committee's recent experience of the inquiry into the government's IT outsourcing initiative has provided a useful background to this report. There is no room to doubt that the Auditor-General's criticism in Audit Report No. 38 2000-01 of the lack of guidance available to agencies on the use of confidentiality clauses in Commonwealth contracts is well founded. There is also no room to doubt that the impact of this has been reduced access to information that should be in the public domain.

The report reiterates five of the recommendations in the final report of that inquiry *Re-booting the IT agenda in the Australian Public Service* as the first steps to be taken to ensure more accountability in Commonwealth contracting. If these recommendations are adopted, legislation would be enacted to secure the application of the principle that information relating to Commonwealth contracts should be in the public domain unless there are sound reasons for withholding it. This would not be able to be signed away, either deliberately or unwittingly.

The committee considers the absence of clear written advice about contractors' public accountability responsibilities and the requirement for them to be open to parliamentary scrutiny as bordering on irresponsible, particularly in the light of Senate Procedural Order of Continuing Effect No. 32:

... there are no areas in connection with the expenditure of public funds where any person has a discretion to withhold details or explanations from the Parliament or its committees unless the Parliament has expressly provided otherwise.

The recommendations of the IT outsourcing inquiry aim to provide a long-term solution

to the lack of transparency surrounding government policy. It can be expected that it will take time to consider and enact the necessary legislation. In this context, the recommendations of the committee's report *Commonwealth contracts: a new framework for accountability* aim to provide an interim solution through streamlining and adjusting existing systems. In the report, the committee recommends:

- that potential and actual partners to a government contract be informed that contracts and contract related material may be requested by Parliament;
- improvements to GaPS to minimise duplication and therefore reduce compliance costs. The Committee notes the current review by the Department of Finance and Administration is yet to be finalised and hopes these recommendations will be taken into account.
- improved annual reporting in that more timely and meaningful information about consultancies and contracts entered into by an agency would be available than the current annual reporting provisions provide; and
- amendments to the Senate order of June 2001 to strengthen and clarify it.

Earlier today I gave notice that tomorrow I will move that the order be amended. The amendments are intended to strengthen and clarify the order in the following ways: the reporting period for tabled letters and the scope of confidentiality are more clearly defined by the revised wording; the amended wording confirms the availability to the Auditor-General of contracts not listed on agency web sites; and, in the interests of presenting more complete information, the proposed wording requires that agencies advise the value of the contracts listed and provide the basis for estimates of compliance costs. It also proposes that ministers' letters state which departments and agencies are covered by that letter, report on non-compliance in any or all of the agencies for which the minister is responsible and advise if no contracts fall within the terms of the order.

The committee wishes to make clear that it continues to support the existing order, so these changes should not be seen as alleviating the government of the requirement for it to comply. Should the Senate not agree to the revised wording, it is the committee's intention that the existing order continue to

apply. The committee emphasises that the government's response to the Senate order tabled on 27 August 2001 does not justify ministers' or agencies' non-compliance. The government's response refers to advice from the Australian Government Solicitor 'that the order is probably beyond the Senate's powers because it requires information to be provided to the public and not the Senate or a Senate committee'. The Government Solicitor is also reported to have advised 'that it is likely that the Parliamentary Privileges Act 1987 would not provide absolute privilege in respect of the publication of information on the Internet'. In the committee's view, the doubts expressed by the government about the application of parliamentary privilege to the publication of information on the Internet are groundless. The act applies to:

... the formulation, making or publication of a document, including a report, by or pursuant to an order of a House or a committee and the document so formulated, made or published.

On 31 August 2001, the committee wrote to the Manager of Government Business in the Senate, Senator Ian Campbell, to request a copy of the legal advice that claims the Senate has exceeded its powers in this order. On 11 September, his office advised that the committee's request was forwarded to Senator Hill's office and Minister Fahey's office. As of today, 26 September, one month after the government made its surprising statement, the committee has received no response to its request for the basis of the opinion. In the absence of the reasoning behind the government's claims, the committee sought the views of the Clerk of the Senate on the claims. His advice, provided at appendix B of the report, supports the committee's opinion that the order is within the Senate's powers and that the lists published on the Internet are covered by the Parliamentary Privileges Act.

The committee makes four further points about the government's response. First, the order requires the provision of information to the public. The Freedom of Information Act 1982 is the relevant point of reference, rather than the 1989 *Guidelines for Official Witnesses before Parliamentary Committees and related matters*, which have still not been

updated. Secondly, it should be clearly understood that the committee accepts and the Senate order provides for agencies to act within relevant statutory provisions when publishing contractual details. Thirdly, the committee does not accept information may be withheld only on the basis that an undertaking has been given. Given the Auditor-General's findings on the overuse of confidentiality clauses, there are grounds to question the credibility of undertakings made. Fourthly, ministers are required to comply with the Senate order by tabling letters on the 10th sitting day of the relevant parliamentary session.

The public has a right to be notified of current and new Commonwealth contracts, to know if any agency is withholding contractual information and the reasons for doing so. The recommendations in the report being tabled today advance the committee's objective of a legislative and administrative framework that promotes and safeguards the principle of openness in Commonwealth contracting.

Question resolved in the affirmative.

**MIGRATION LEGISLATION
AMENDMENT BILL (No. 6) 2001
Report of Legal and Constitutional
References Committee**

Senator McKIERNAN (Western Australia) (4.14 p.m.)—I present the report of the Legal and Constitutional References Committee on the provisions of the Migration Legislation Amendment Bill (No. 6) 2001, together with the *Hansard* record of the committee's proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator McKIERNAN—I move:

That the Senate take note of the report.

I am not going to canvass the contents of the report. It is a very short report. The Senate intervened in the proceedings of the committee's inquiries yesterday and decided that the Migration Legislation Amendment Bill (No. 6) 2001 which was under inquiry would be dealt with in the chamber itself. That has happened and there is no need now for me to canvass the contents of the bill, much as I

would like to. But time is at a premium, so I am going to resist all temptations to do that. It is appropriate on the occasion of presenting the last report for the year of the Senate Legal and Constitutional References Committee to put on the record my thanks to my colleagues on the committee who have assisted us in what was a very busy year. In particular I thank the deputy chairman of the committee, Senator Marise Payne, but all other colleagues on the committee who ensured that the deliberations of the committee were thorough and professional and that the witnesses who appeared before us were treated with the respect they deserved. We think that we fulfilled our obligations to the Senate.

I would also at this time pay tribute to the secretariat of the committee. It is not an easy task being a member of a secretariat of a committee which has the task of servicing not only the committee itself but also sometimes the minorities that are contained in the committee. The secretariat that services the Senate Legal and Constitutional References Committee also services the Senate Legal and Constitutional Legislation Committee, and that has been experiencing an equally busy time with very short turnovers for the presentation of reports. The committee secretariat is led by Dr Pauline Moore and I, on behalf of all committee members—and I am sure on behalf of members of the legislation committee—put on the record our thanks to her and her dedicated team for the assistance and advice they have given to us in the course of this year.

Senator BARTLETT (Queensland) (4.17 p.m.)—I would also like to speak to this report of the Senate Legal and Constitutional References Committee on the provisions of the Migration Legislation Amendment Bill (No. 6) 2001. It is a brief report but it is an important issue both in terms of process and the content of the committee's inquiry and hearing. Firstly, I would like to back up Senator McKiernan's comments and thanks to the committee secretariat for their work throughout the year, including on this last report which was, of course, truncated ahead of time. The final couple of hearings were cancelled, even though they had been organ-

ised and booked, I understand. I would also like to pass on my thanks to the committee secretariat and pay tribute to the chair and deputy chair of the committee who, I think, do quite good job, amongst the best that I have had experience of. You can certainly tell the difference between a bad chair and a good chair and bad committee members and good committee members, and the chair and the deputy chair have come out on the good side of the ledger by a good margin. Given that this is the last report of the committee for the life of this parliament, I think that it is appropriate to put that on the record.

It is also appropriate to put on the record the history of this report. The report is five paragraphs long. The list of people providing submissions is longer than the content of the report itself, I think, which is a bit of an indication of the unusualness of the report. We are debating the report on the legislation after the Senate has actually passed a vote on the legislation, which I think is fairly unusual. I do not know whether it is unique, but it is certainly very rare and it is certainly very undesirable. Indeed, it is probably a bit misleading to say 'after' the Senate has debated the legislation because we were stopped from considering it in committee and then we were stopped from debating it in the chamber. We did get a debate on the second readings of the bill but only in conjunction with six other bills; so it was difficult to focus precisely on the contents of just that one bill, although I did do that to some extent and couple of other speakers did as well.

The amendments that I had drafted to the bill were based very significantly on a couple of the submissions that were made to this inquiry. If we had not had the attempt to get this aborted inquiry started, then I probably would not have been able to develop those amendments. Yet even those amendments were not able to be considered; they were just mashed in with every other members' amendments and put as one single vote without any explanation about what they were about. That pretty much symbolises the government's whole approach to this. Let us not forget that this is the government's legislation, and the government should be condemned for it and condemned for every step

of the way that they have taken with this. This report, in a sense, is a sad little footnote that symbolises the government's approach to this bill and the whole issue.

The amendments that the Democrats put forward in the chamber were specifically drawn from some of the submissions that were provided to the committee. That highlights why we do all of this committee work and why we have the secretariat doing what they do and why we use the committee process to save the time of the chamber here. We have lots of complaints from the government that we have got lots of other bills and we cannot spend so much time on the migration bills. We had to spend time on them here because we were not allowed to spend time on them in committee. That is another reason why the committee process is so valuable. We had one hearing which had the department officials, Dr Mathew from the ANU in a private capacity and four representatives from the United Nations High Commissioner for Refugees, including their regional representative. The UNHCR put forward a number of concerns on the bill and I framed a number of my amendments around those. They suggested that the bill would be improved if we did these things and I drafted amendments in response to that. I could not do it through the committee process because our deliberations were cut short by a joint vote of the coalition and the Labor Party. But it is the government's legislation, of course—let that not be forgotten. Without debating the legislation itself—even though I did not get a chance to do that—it is worth highlighting the number of concerns that were raised, including by the UNHCR, which obviously has special expertise in the area of refugees and in protecting the rights of refugees and in ensuring that we do not breach our international obligations and, more importantly, that we do not breach fundamental human rights in sending people back to face persecution. It is a pretty fundamental thing.

I think most Australians, despite some speculation to the contrary at the moment, would not support deliberately, openly and blatantly sending someone back to a situation where they would face serious persecu-

tion. We need to consider that in relation to this bill. The UNHCR quite specifically stated that this bill, if passed unamended, could well lead to Australia breaching that fundamental obligation of non-refoulement. This is incredibly serious, and normally the committee would note that in its report and bring that back to the chamber. It would be a serious piece of information for the chamber to consider and it would be taken into account in considering the legislation and any potential amendments. But in a sense, even with the hearing that we had, we were not able to bring that information back to the chamber, because we were not able to present the report and we were not able to debate the bill in detail to provide that information. It was a clear case where, I believe, the Senate voted on something where people did not know what they were doing. I am sure that the government, including the minister in the chamber who had carriage of the bill, did not know precisely what the ramifications were of even this one piece of legislation.

I would like to thank the people that put in submissions to the committee and made an effort in a very short time frame to provide feedback about potential problems to assist the committee and the Senate in its duty and responsibility to assess the legislation properly, ensure that it did not breach fundamental rights and even ensure that it met the government's suggested policy aims. The policy aims of the government of restricting the definition of 'refugee' was not something that I supported, but it was quite clear that the way in which the government was doing this was not even the most effective way. It was done in a way that led to a much higher risk and a much greater probability of going outside our obligations under the refugee convention than the government would like to have admitted.

The organisations and individuals that provided submissions included the Refugee and Immigration Legal Centre; Amnesty International from Queensland; the Department of Immigration and Multicultural Affairs; Ms Helen Finch; Pat Coleman; the WA Amnesty International refugee team; and the Uniting Church in Australia, who have been scathingly critical of this government's leg-

islation and its overall legislative package. In fact, virtually all the mainstream Christian churches throughout Australia have condemned outright, with little equivocation or qualification, this government's approach to this area. This so-called government of Christian values has been repeatedly condemned outright by Christian churches throughout the country for its approach—condemned on moral and ethical grounds, as well as, through submissions such as these, on technical legal grounds. I think the government should stand condemned on that.

Senator Ferris interjecting—

Senator Ian Macdonald interjecting—

Senator BARTLETT—It is interesting that the government members are so sensitive about the facts of the matter being put on the record, even in this situation. They have tried to close down the debate in the Senate so that the public cannot not be made aware of what they are doing and they have tried to stop people being aware of the universal condemnation by church leaders and people with expertise who have looked into the issue in detail—who have moved beyond the cheap, shallow, divisive rhetoric that is ripping our community to bits and actually looked at trying to take a constructive approach. It is that sort of thing—that sort of straightforward approach—the government does not want people to hear.

Senator Ferris—You have a shameful poster in your office, and you know it!

Senator BARTLETT—I agree, Senator Ferris, it is shameful and it is a disgrace that we have not been able to properly address this issue. Others that provided submissions included the Maryfields Friary; Ms Rebecca Smith, in a private capacity; Amnesty International Australia; Dr Susan Kneebone; the United Nations High Commissioner for Refugees, as I mentioned before; and the Human Rights and Equal Opportunity Commission, another body set up to try and provide protection for individuals and protection of individual legal rights from excessive abuse of power by government. Protecting the rights of individuals from abuse of power by government is the sort of thing that you would think the Liberals would stand up

for—but obviously not anymore. The Human Rights and Equal Opportunity Commission highlighted some extreme concerns with this bill, as they did with the whole package. Then we had submissions from Dr Mathew and Ms Walker.

I thank those people for providing submissions. I apologise to them that the committee was not able to consider them fully because of the thuggery of this government in forcing this legislation and the package through without proper consideration. As I said before, this is a dark day for democracy and a particularly bleak day not just for refugees but for many Australian citizens who have had their legal rights fundamentally restricted as a consequence of this and other pieces of legislation that passed this day. I would have said more previously, but I was prevented from doing so. (*Time expired*)

Senator COONEY (Victoria) (4.27 p.m.)—I would like to start my address by paying tribute to the Chair of the Senate Legal and Constitutional References Committee, Senator McKiernan. I have known him for many years now. He is a fellow senator of yours, Mr Acting Deputy President Lightfoot, from Western Australia. I see in front of me Senator Evans, another great Western Australian. Of all of these great Western Australians, I want to concentrate particularly on Senator McKiernan and pay tribute to him for the way he has led this committee over the last few years. He has produced great reports, and I think the committee as a whole owes him a great deal, as does this chamber and the parliament—and as does Australia.

I also acknowledge Senator Bartlett's efforts, work and drive in this area of migration and the work of other members of the committee: Senator Payne, the deputy chair, who did grand work; Senator Mason, who has now taken over as deputy chair and who has made great contributions to this committee; and Senator Coonan, who brought a very keen and generous mind to the committee.

The Migration Legislation Amendment Bill (No. 6) 2001 that the committee was looking at has now passed into law, subject to the Governor-General's action upon it. As

has been said, that makes the work of the committee redundant, but perhaps I can say this about the legislation that has passed here today. Parliament is supreme with its legislation in respect of the powers it has under the Constitution. But there is an issue of the separation of powers, and there is an issue of what we do to our courts. The courts underpin the civil life that we all enjoy. The courts have come in for some attack in recent times, particularly in respect of migration legislation, but the courts are made up of outstanding men and women who are dedicated to seeing that the rule of law prevails in this country.

It is a pity that the legislation that was put through today constitutes a massive attack on the judicial quality control that the courts exercise in this area and that they should exercise in this area, because it is important that justice is done, and the courts of this land are noted for that throughout the world. The courts form an institution which protects us all under the rule of law. Parliament certainly must take great account of what the majority says, but the minority has rights. That is what the Ten Commandments are all about: setting out rights that prevail across the whole of society, whether for the minority or for the majority. We as a parliament must take account of not only the numbers but also the morality of the situation. In doing that, we play a part in the way the system works, and the courts are a most central part of that. I want to pay tribute to the judiciary and, speaking for myself, I think it is a real problem that courts have now been largely removed from an area in which they should be allowed to operate.

Perhaps I can also say in that area something about the case which was brought in Melbourne in respect of the *Tampa*. The boat that was bringing people down to Australia got into trouble and the *Tampa* picked them up as they came—

Senator McKiernan—'Ship', more properly.

Senator COONEY—from Indonesia. Ship, more properly; Senator McKiernan, thank you for correcting me there. An action was brought in respect of matters involving the *Tampa*, and some criticism has been

made of those who brought the action. They were people from the Victorian bar and the Victorian legal profession generally. As I look down the list, I know many of them and they are most honourable people. I would like to name them all but I have not got time.

I should point out that I have an interest which I should declare in this. My daughter-in-law Emma Hunt was intimately connected with that case—and so I should state that when talking about this matter—and I should say that, since that case, she and my son Sean have got their daughter, Eleanor, a small kitten. Eleanor is my only grandchild. In any event, the cat she had previously died, and so they got her a kitten, which they have called Tampa. That does indicate that I have a conflict of interest—well, not a conflict of interest but an interest in putting this matter forward.

Senator McKiernan—A vested interest.

Senator COONEY—A vested interest, as Senator McKiernan says. I want to return to the issue of these people who brought this case and the solicitors and the barristers who were involved in it. I want to read a part of the judgment of the Hon. Justice French—a judge, Mr Acting Deputy President, who comes from your proud state of Western Australia. You would of course know that, Mr Acting Deputy President.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—He comes from a fine legal family, in fact.

Senator COONEY—Yes, thank you, Mr Acting Deputy President. He comes from a fine legal family, as you say. He found against the applicants, those people who were bringing the action in the interests of the people who were on the *Tampa*. Four judges, as you know, Mr Acting Deputy President, considered this matter. Mr Justice North, a most distinguished judge, was the judge at first instance, who found in favour of the applicants. Then on appeal the presiding judge was the Chief Justice, the Hon. Michael Black, a most highly respected jurist, one respected throughout the common law world, and he found in favour of the people on the *Tampa* and found on behalf of the applicants in effect. Justice French found

against them, but he had this to say—and I think it is proper, especially on a broadcast day, that I read this out:

The counsel and solicitors acting in the interests of the rescuees in this case have evidently done so pro bono.

In other words, they did it for nothing, out of their commitment to justice. Mr Justice French went on:

They have acted according to the highest ideals of the law. They have sought to give voices to those who are perforce voiceless and, on their behalf, to hold the Executive accountable for the lawfulness of its actions. In so doing, even if ultimately unsuccessful in the litigation they have served the rule of law and so the whole community.

Mr Acting Deputy President, as you would expect from people from Western Australia, they understand that, even though a person or a group of people might have been unsuccessful, they ought be acknowledged for the high ideals that they bring to the matter. I see that the yellow light is on and that my time is nearly over, so I will not be able to name them, but I would like to acknowledge those people on both sides—not only the applicants but also those who were responding—but particularly those on the side of the applicants, because they were acting pro bono and were pursuing a great cause. I seek leave to continue my remarks later.

Leave granted; debate adjourned.

COMMITTEES

Public Accounts and Audit Committee Report

Senator CALVERT (Tasmania) (4.38 p.m.)—On behalf of Senator Gibson and the Joint Committee of Public Accounts and Audit, I present the following report of the committee: *Report No. 386: Review of the Auditor-General Act 1997*. I move:

That the Senate take note of the report.

I seek leave to incorporate the tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

Madam President, on behalf of the Joint Committee of Public Accounts and Audit, I have pleasure in presenting the Committee's Report No. 386, Review of the Auditor-General Act 1997.

Madam President, the success of Australia's democracy owes much to the ability of the Parliament to scrutinise and hold executive government to account. This is a key feature of successful parliamentary democracies.

The Auditor-General, as an independent officer of the Parliament, plays a key role in the accountability framework by supporting the Parliament in its scrutiny function.

It is essential that the legislation underpinning the Auditor-General is current and provides the Australian National Audit Office (ANAO) with sufficient powers and privileges to scrutinise the administration of government agencies.

The Auditor-General Act 1997 (the Act) came into effect on 1 January 1998. The Act provides for the Joint Committee of Public Accounts and Audit (JCPAA) to examine the budget estimates of the ANAO and to make recommendations to Parliament on the proper resourcing of the office.

In addition, the JCPAA determines the audit priorities of the Parliament and advises the Auditor-General of those priorities.

Madam President, the role of the JCPAA provides for a strong and practical relationship between the Auditor-General and the Parliament.

Other features of the Act include a number of provisions which strengthen the Auditor-General's role as external auditor of Commonwealth agencies, authorities and companies and their subsidiaries.

The Act provides the Auditor-General with a comprehensive mandate to conduct, with some limited exceptions, financial statement and performance audits of all government entities.

In view of the Committee's significant legislative responsibilities to guard the independence of the Auditor-General it was considered timely to conduct a review of the Act.

The overall finding is that the Act provides an effective framework for the ANAO to carry out its functions. The Committee, however, has identified the following sections of the Act where legislative amendments will provide enhancement:

Section 19 – Comments on proposed reports

Section 19 of the Act provides the framework for ensuring that a proposed report is provided to an agency and, where necessary, persons with a special interest in the report. These groups have 28 days to respond with written comments and the Auditor-General must consider those comments before preparing a final report. Currently there is no provision in the Act which provides for the

Auditor-General to circulate extracts of draft reports.

The Committee supports the ANAO proposal that section 19(3) be amended to allow extracts of draft reports to be provided to affected parties. While the Auditor-General currently provides extracts of the report to parties with a special interest, this is done outside the legislative framework and therefore recipients are not subject to the confidentiality requirements of section 36(3).

The major concern raised during the inquiry is whether Parliamentary privilege applies to ANAO working papers and draft reports. Advice from the Australian Government Solicitor concluded that although the 'position is not clear, unless and until a court decides to the contrary, the Auditor-General could properly argue that the creation of working papers and the preparation of draft reports are part of proceedings in Parliament'.

The Committee considered that in view of the uncertainty as to whether Parliamentary privilege applies to Auditor-General working papers, draft reports and extracts of draft reports, there should be more examination of this matter. The Committee, therefore, recommended that the Privileges Committees of both the Senate and the House of Representatives examine this matter.

Under section 19(4) recipients of a proposed report have 28 days to provide written comments for consideration by the Auditor-General. The Act does not direct the Auditor-General to include comments provided by recipients of draft reports. The Department of Defence indicated that the fact that the power is discretionary does not give due consideration to the interests of agencies.

The Committee believes and has recommended that the Auditor-General must include recipient comments, in full, in a proposed report.

Sections 32 and 33 – Access Powers of the Auditor-General

Sections 32 and 33 of the Act provide the legislative framework for the access powers of the Auditor-General.

Madam President, the Committee has long held a view that the Auditor-General's access powers should be increased to include within its scope access to the premises of Commonwealth contractors.

The Committee notes that standard access clauses have been developed jointly by the ANAO and DoFA and are available on the DoFA website.

The Committee considers that the standard access clauses should be included in all government

contracts unless there are strong reasons not to. In those cases where government agencies decide not to include in their contracts clauses which give the Auditor-General access to the premises of Commonwealth contractors, then they must account for this decision.

The Committee, therefore, has resolved that, as part of its power to review and change the Annual Report Guidelines, it will require government agencies to include in their Annual Reports a list showing all contracts by name, value, and the reason why the standard access clause, which provides the Auditor-General with access to the premises of Commonwealth contractors, was not included in the contract.

Section 15

In relation to section 15, the Auditor-General indicated that the requirement to provide a copy of an audit report to the responsible Minister is restrictive in that other Ministers with a special interest in the report cannot be sent a copy. The Auditor-General proposed that section 15 be amended 'to allow the distribution of single agency reports to any Minister with a special interest in the report'.

The Committee supports this proposal and has recommended amendments to subsection 15(2) to provide the Auditor-General with the power to provide a copy of a completed report to a Minister who has a special interest in the report.

The Committee is confident that these proposals will enhance the Auditor-General Act 1997 and will ensure that the Australian National Audit Office can continue to perform efficiently and effectively.

In conclusion, Madam President, I would like to express the Committee's appreciation to those people who contributed to the inquiry by preparing submissions and giving evidence at public hearings.

I would like to thank the members of the sectional committee for their time and dedication in conducting this inquiry. I also thank the secretariat staff who were involved in the inquiry: – the Secretary, Dr Margot Kerley, Ms Maria Pappas, Mr Ngan Thai and inquiry secretary, Mr Stephen Boyd.

Madam President, I commend the Report to the Senate.

Question resolved in the affirmative.

Native Title and the Aboriginal and Torres Strait Islander Land Fund Committee Report

Senator FERRIS (South Australia) (4.38 p.m.)—I present the second interim report of the parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund on the committee's section 206(d) inquiry, Indigenous land use agreements, together with the *Hansard* record of the committee's proceedings and documents presented to the committee.

Ordered that the report be printed.

Senator FERRIS—I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

Background

The Committee's Duties

Since early 1999, the Native Title Committee has been inquiring into an aspect of land management under the Native Title Act 1993: that is, indigenous Land Use Agreements (ILUAs). I am pleased to table the Committee's report today.

The Committee has always been aware that the inquiry to be completed pursuant to s.206(d) of the Act would be extensive. Under that section there are now seven separate and significant matters on which the Committee is required to report.

The Committee has accordingly decided to prepare a number of interim reports that focus on each specific matter. For instance, the Committee has recently advertised for submissions to the next matter that it will examine under s.206(d)(i) of the Act: the effectiveness of the National Native Title Tribunal. But up until this week the committee has been focussed on ILUAs.

The ILUA Amendments

The Senate passed the Native Title Amendment Bill 1997 on 8 July 1998. That bill introduced ILUAs to the native title statute. ILUAs were designed to provide a flexible, certain and efficient method of facilitating agreements about land use with native title holders.

The Committee Inquiry

The inquiry centred on an examination of the ways in which ILUAs operate in practice. Of course, the Committee considered evidence across Australia. Evidence was heard in South Australia, Queensland, Western Australia and the Northern Territory as well as in Canberra on sev-

eral occasions. And thirty nine parties presented written submissions. The Committee is satisfied that it has heard from a very wide range of interests in this matter.

The Negotiation of Agreements - Positive Developments

ILUAs have been registered since September 1998. In the three-year period since then, experience has demonstrated that ILUAs have considerable potential to recognise rights to country and to facilitate land use proposals. Currently there are 26 ILUAs registered with the Native Title Tribunal and a further 105 are in negotiation.

Difficulties Arising

Nevertheless, certain issues have arisen that indicate that ILUAs, like any other form of agreement-making, con present difficulties.

The negotiation can be a time-consuming and resource-intensive process. In part, this is the understandable consequence of the complex process of reaching agreement with native title holders who may, for instance, live in a number of locations.

As experience builds, however, and with it the capacity of all parties to negotiate, the time and resources necessary to negotiate ILUAs will hopefully diminish. In particular, difficulties associated with identifying native title groups are expected to decline as native title determinations increase.

Solutions to this kind of difficulty are not possible through amendments to the Act. Similarly, if parties are unwilling to negotiate, the statute cannot assist them. Further, even where parties are willing to embrace negotiation, it takes time for them to develop relationships that are conducive to agreement-making.

The Importance of Resources

The Committee consistently heard about the problems presented by the lack of resources on the part of those who are willing to negotiate ILUAs, despite the extra \$86 million which the government has targeted for native title assistance. However, it is clear that the negotiation of ILUAs is still being affected by the stretched resources of native title representative bodies.

Notwithstanding the extra \$17.4 million given to ATSIC in the most recent Budget to help representative bodies, the Committee has recommended that more financial resources be made available for the negotiation of ILUAs.

In addition, it is recommended that adequate funding be provided to prescribed bodies corporate to enable them to fulfil their statutory functions. These are the organisations that represent native title holders and which will increasingly

have functions and responsibilities in regard to ILUAs.

Other parties to ILUAs confront similar resource constraints. Pastoralists, smaller miners and remote shire councils also face inadequate resources. While funding available through the Attorney-General's Department enables some parties to participate in negotiations, there is evidence that many others still face significant difficulties meeting all of the costs incurred in the negotiation process.

Notwithstanding the recent injection of an extra \$15.9 million to the Attorney-General's department to provide assistance in native title matters, the Committee has recommended that the Attorney-General's Department review its Guidelines for the Provision of Financial Assistance in Native Title Cases to ensure that non-native title parties receive adequate assistance for their participation in the negotiation of ILUAs.

Recommended Statutory Amendments

Generally speaking, stakeholders agree that the statutory framework for ILUAs is sound and that the 1998 amendments to the statute remedy a number of deficiencies of the original Act in relation to land management.

Nevertheless, in the course of the Committee's inquiry several suggestions were made for further amendments. In response the Committee has recommended some amendments to the Act.

ILUAs as Contracts

The interaction between ILUAs and the common law of contract has been unclear. In particular, the operation of the normal contractual remedies in regard to termination and rescission of a contract may be excluded by the present provisions of the Act.

The Committee has concluded that an amendment to the Act is required to clarify the contractual status of an ILUA upon registration.

If ILUAs are subject to normal contractual principles, another area of uncertainty can arise. There is a difficulty in relation to the status of an ILUA that remains registered yet has lost its contractual effect by operation of the common law.

The Act specifies the particular circumstances under which the Registrar can deregister an ILUA. However, the circumstances specified in the Act would permit ILUAs to remain on the Register even though they have lost contractual effect. The Act needs to be amended to allow the Registrar to deregister an ILUA in those circumstances.

The Tribunal

The National Native Title Tribunal has also pointed out that the Act does not currently pro-

vide for it to assist parties to resolve disputes arising under a registered ILUA. The Committee has concluded that the Act should be amended to give the Tribunal powers to assist in such dispute resolution when requested.

Further, the Act should specify the ways in which an amendment to a registered ILUA can be made. Consideration should be given to providing different processes for amendment depending upon the type of amendment proposed to the agreement.

Summary

It is clear that ILUAs will not resolve all of the land use issues that arise on land subject to native title interest. Nor were they intended to. Consequently, many parties are pursuing agreements outside the framework of the Act; in other cases alternative mechanisms within the 'future act' regime under the statute are more suitable for serving the particular needs of parties.

The Committee, however, is encouraged by a growing body of evidence that the use of ILUAs is being welcomed to cooperatively address land use issues.

Apart from the amendments recommended to the Act, and the resource difficulties facing both native title parties and non-native title interests, it is clear that the statutory framework supporting ILUAs is capable of delivering consensual, certain and flexible outcomes to the benefit of all parties.

I would also like to take this opportunity to thank the secretariat of the Native Title Committee, Peter Branca, Jackie and Rosalind and my parliamentary colleagues who worked co-operatively together on this most important land management issue.

I commend the Native Title Committee's nineteenth report to the Senate.

Public Works Committee

Report

Senator CALVERT (Tasmania) (4.39 p.m.)—On behalf of the Parliamentary Standing Committee on Public Works, I present the 14th report of 2001, entitled *Housing Redevelopment at Enoggera, Brisbane*. I move:

That the Senate take note of the report.

I seek leave to incorporate my tabling statement in *Hansard*.

Leave granted.

The statement read as follows—

Introduction

On behalf of the Parliamentary Standing Committee on Public Works I would like to make some brief comments on the Committee's Fourteenth Report of 2001, *Redevelopment of Residential Areas at Enoggera, Queensland*.

The proposed redevelopment is adjacent to the Gallipoli Barracks, Enoggera which is approximately 6 kilometres north west of Brisbane.

The proposed works involve the construction of 66 detached houses at a projected cost of \$15.5 million.

The housing redevelopment will, subject to approval, start in April and be ready for occupation in December 2002.

Need

The Defence Housing Authority currently manages a total of 1124 properties in Brisbane. A Defence Housing Forecast for Brisbane has forecast an increased need of 1320 properties as at 1 July 2001 and future growth is expected.

The proposed housing redevelopment at Enoggera helps to meet this increased need for Defence accommodation in Brisbane.

Key issues

During the public hearing the Committee's focus was on possible soil contamination of the site by concentrations of heavy metals including arsenic.

The Defence Housing Authority commissioned an independent examination of the site, which revealed that arsenic concentrations detected were above Queensland Environmental Protection Agency Environmental Investigation Levels.

The consultant's report commented that the levels of arsenic 'appear to be naturally occurring.'

In addition, the consultants recommended that, '... it would be prudent for future land owners to be advised of the presence of elevated concentrations of arsenic in the natural soil to minimise the potential of adverse human health impacts via excess soil ingestion or use of home grown fruit and vegetables.'

In view of these environmental concerns the Committee scrutinised DHA on its proposed remediation strategy.

DHA is currently in consultation with the Queensland Environmental Protection Agency about the status of the site.

DHA confirmed that it would not proceed with the project if there was an adverse environmental finding.

As a result the Committee made three recommendations, which if implemented will ensure that the project proceeds only if favourable environmental assessments are received.

Other issues

The Committee notes that the community consultation process undertaken by DHA appears to be effective, and, based on the evidence provided to the Committee, there are no adverse concerns about the project.

The South Queensland Area of the National Consultative Group of Service Families strongly supports the proposed housing redevelopment.

The Consultative Group spokesperson indicated that the location of the development provides excellent access to:

- transport;
- spouse employment; and
- schooling choices.

Conclusion

The Committee concludes that there is a need for the proposed work. Therefore, it should proceed at a projected cost of \$15.5 million subject to a positive finding by the Queensland Environmental Protection Agency regarding soil contamination issues.

Departure of Mr Colin Hollis

Finally, I would like to say a few words to highlight the great contribution to the work of the Public Works Committee by the honourable member for Throsby, Mr Colin Hollis.

Colin is retiring at the next election and it is possible that this may be the last opportunity for me on behalf of the committee to raise this matter in the Senate.

Colin has served on the Public Works Committee continuously since February 1985 and was Chair from October 1987 to January 1996.

I have found his knowledge of the workings of the Committee to be extremely valuable to me as Chair and he has always operated in a totally bipartisan manner with the sole aim of ensuring that the expenditure on public works was necessary and that the Commonwealth was obtaining value for money.

Colin was Chair during a number of very busy periods, including 1995, when the Committee tabled 29 reports.

Some of the particularly complex inquiries included:

- Badgerys Creek airport
- Decontamination of the Albion Explosive Factory and

- The Australian Advanced Air Traffic Control System

To mention only a few.

Colin was, and remains, not afraid to subject witnesses to a searching examination and expected them to be well briefed and insisted that witnesses could substantiate their evidence.

However, Colin was able to bring to his questioning a dry sense of humour, which on many occasions lightened an otherwise tense situation.

Amongst the members and staff of the PWC, Colin was famous for his punctuality.

Public and private meetings always started on the dot of the advertised time. Witnesses soon learnt that to be late did not endear them to the Chair.

Colin's punctuality became such a byword that in his absence from a private meeting the Committee had included in the minutes a comment to the effect that even in his absence the meeting commenced on time as usual.

The Public Works Committee will miss Colin:

- for his knowledge of the work of the Committee;
- his ability to quickly get to the substance of the issues being considered;
- his bipartisan approach; and
- most importantly, his good humour and camaraderie.

We wish him well.

I commend to the Senate the report that I have tabled.

Question resolved in the affirmative.

MOTOR VEHICLE STANDARDS AMENDMENT BILL 2001

Report of Rural and Regional Affairs and Transport Legislation Committee

Senator CALVERT (Tasmania) (4.39 p.m.)—On behalf of Senator Crane I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Motor Vehicle Standards Amendment Bill 2001, together with the *Hansard* record of the committee's proceedings, and documents presented to the committee.

Ordered that the report be printed.

PARLIAMENTARY ZONE

Proposal for Works

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (4.40 p.m.)—

In accordance with the provisions of the Parliament Act 1974, I present a proposal for works within the Parliamentary Zone, together with supporting documentation, relating to artworks and finishes to Speakers Square at Commonwealth Place in the Parliamentary Zone. I seek leave to give a notice of motion in relation to the proposal.

Leave granted.

Senator IAN MACDONALD—I give notice that, on the next day of sitting, I shall move:

That, in accordance with section 5 of the *Parliament Act 1974*, the Senate approves the proposal by the National Capital Authority for capital works within the Parliamentary Zone, being artworks and finishes to Speakers Square at Commonwealth Place in the Parliamentary Zone.

**AIR PASSENGER TICKET LEVY
(IMPOSITION) BILL 2001**

**AIR PASSENGER TICKET LEVY
(COLLECTION) BILL 2001**

First Reading

Bills received from the House of Representatives.

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

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

Bills read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (4.42 p.m.)—I table two revised explanatory memoranda relating to the bills and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

**AIR PASSENGER TICKET LEVY
(IMPOSITION) BILL 2001**

The grounding of Ansett on 14 September was a sad day, both for Australia and the Australian aviation industry. Ansett is a proud name in our aviation history, and its employees are dedicated and hard working.

As the number of passengers in need of immediate assistance to complete their travel falls away,

communities in regional Australia and Ansett employees are our top priority. This Bill is part of a package of two bills that the Government has introduced to establish an Air Passenger Ticket Levy is about those employees.

The Australian Government is still working hard with the administrators to get Ansett back into the skies again, and, if we are successful, many of the employees that are suffering from an uncertain future will be able to return to the industry that they have served before.

However, no matter how hard we work to deliver the best outcome, we must also plan for the worst.

We have encouraged Ansett employees to register their interest with our entitlement scheme hotline and, the Government and the administrators will, of course, be seeking funding of the outstanding employment entitlements from the assets of the Air New Zealand Group.

The Government is also drawing up legislation to provide for employees to be placed ahead of secured creditors when companies become insolvent.

The Australian Securities and Investments Commission (ASIC) has commenced a formal investigation into the collapse of Ansett, focussing on possible breaches of directors' duties under the Corporations Act. This will include investigating compliance with the insolvent trading provisions of the Act and Air New Zealand's potential liability under those provisions.

In addition, it is more than likely that the assets of the Ansett group of companies will be sufficient when realised to meet the outstanding employment entitlements. If the administrator has no choice but to wind up the company, Ansett employees will have needs that must be met quickly, and early payment of entitlements that are rightfully theirs will help them through this difficult period as the industry readjusts.

In order to ensure that Ansett employees' entitlements for wages, annual and long service leave and pay in lieu of notice are met in full, the Government will establish a Special Employees' Entitlements Scheme for Ansett group employees (SEESA). SEESA will ensure that Ansett employees get paid all their unpaid wages and unpaid leave, and their pay in lieu of notice. SEESA will also meet their redundancy entitlements up to the community standard of 8 weeks.

The levy will be administered by the Department of Transport and Regional Services, and funds raised through the levy will reimburse the agency for payments in connection with the scheme. It will also meet the costs of the arrangement and the Government's costs in administering the levy.

The levy will be imposed on each ticket used to board a flight starting its journey at an Australian airport. Only the first flight taken by the passenger holding the ticket will attract the levy so, for example the levy will not be applied to the return flight.

The levy, which will apply to electronic as well as the more traditional paper ticketing, will be set at ten dollars, and will be collected on behalf of the Commonwealth by airlines. The cost of the scheme to the airlines will be absorbed by them.

We have begun discussions with airline operators on the best system for administering the levy at the lowest cost for both airlines and the Government.

Following these discussions the Government has proposed a number of amendments to the Bills. The amendments are designed to address a number of implementation issues that have been raised by the airline operators.

In particular, the airlines advise that all other levies and taxes they collect are collected when a ticket is sold. They suggest that implementation of the levy on 1 October 2001 would be facilitated if the basis on which the levy is imposed were changed so that the levy would be:

- due to be paid by the purchaser at the time the ticket is sold; and
- due to be collected by the ticketing airline at the same time.

If a ticket were cancelled, the levy would be refunded or transferred in the form of a credit. If the ticket were non-refundable and the flight not taken, the levy would also be able refundable. However, if for any reason the value of the ticket was reduced or partially refunded, the levy would remain payable.

The principal difference between what is currently proposed in the Bill and the amendment described above is that the levy will be imposed on tickets sold (and not cancelled) not tickets used.

It was also clear from these discussions that the ticketing systems of some airlines would mean that they would be unable to collect the levy as proposed.

Therefore, one of the amendments would allow me to enter into alternative collection arrangements where it was necessary.

The levy will be applied to every ticket purchased on or after 1 October 2001 and will continue until it has met the cost of payments made to former employees of Ansett Australia under SEESA and related administration.

In the event that the levy generates a surplus before it is ended, the Government will distribute

that surplus in accordance with a scheme it will prescribe by regulation. I want to make it clear that it is not the Government's intention to distribute that surplus to the benefit of the airlines that collected the levy, nor will it be used as a windfall for the Government.

Aside from the detail of the package, there are two broader issues that I want to address here.

The size of the potential losses from any permanent grounding of Ansett is staggering. It has the potential to be one of the biggest corporate collapses in Australian financial history. In the event of such a collapse, the budget is simply not able to bear the cost of the unpaid entitlements of Ansett employees. The package authorises payments of up to five hundred million dollars to meet the costs associated with the SEESA.

It is not fair that we tax the whole of the community to support this need - but it is appropriate to impose a tax on airline users.

Similar approaches have been used in other cases of industry restructuring such as the stevedoring industry, and to address industry specific problems, including aircraft noise abatement measures and the increased cost of monitoring for foot and mouth disease.

As with the imposition of other, similar levies to deal with other specific circumstances, we do not believe that this will affect the recovery of regional air services after the grounding of Ansett. However, we will monitor the effect of the levy on regional Australia to ensure that this is the case.

It is also important to note that the package does not impose a levy on passengers who take possession of their ticket outside Australia. This is a problem that affects Australia, and we will deal with it here. The exemption means that the levy will not place any great impediment on one of our most important export industries.

The question of who is to blame for the grounding of Ansett is a question for another time. The Government has already made its thoughts clear on this subject, and it is now a matter for the administrators and the courts.

In the meantime, Ansett employees have a right to their entitlements, and, if these are needed to help them through these uncertain times. This package will allow the Government to meet their needs in a timely way.

AIR PASSENGER TICKET LEVY
(COLLECTION) BILL 2001

I refer to the statements made in the Air Passenger Ticket Levy (Imposition) Bill 2001 speech.

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

Ordered that the resumption of the debate be made an order of the day for a later hour.

**TAXATION LAWS AMENDMENT BILL
(No. 6) 2001**

**FUEL LEGISLATION AMENDMENT
(GRANT AND REBATE SCHEMES)
BILL 2001**

First Reading

Bills received from the House of Representatives.

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (4.43 p.m.)—I indicate to the Senate that the bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the *Notice Paper*. I move:

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

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (4.44 p.m.)—I table a revised explanatory memorandum relating to the Taxation Laws Amendment Bill (No. 6) 2001 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

**TAXATION LAWS AMENDMENT BILL
(No. 6) 2001**

This bill implements a number of important announced Government measures.

As announced in the recent budget, the Government will provide capital gains tax relief for shareholders in Listed Investment Companies. In particular, this bill will amend the income tax law to provide shareholders in listed investment companies with the benefit of the capital gains tax

(CGT) discount on certain capital gains made by these companies.

The Government is introducing this measure to remove a tax distortion in indirect investment choices for investors, and to allow these shareholders the benefits of the CGT discount. The amendments apply to eligible gains made by listed investment companies on or after 1 July 2001.

Following the recommendations of the Ralph Review of Business Taxation, in 2000 the Government legislated provisions to deal with the alienation of personal services income. The legislation is directed at people who earn income as individuals but who claim to be businesses so as to avoid paying income tax at individual rates. It does not affect people who are genuinely in business. Obviously it is not fair to wage and salary earners if people who earn their income as individuals do not have to pay tax at individuals rates just because they have entered some artificial device.

This bill contains important improvements to the measure which will reduce compliance costs for taxpayers, and also some minor technical amendments to ensure the measure operates as intended. In particular, the bill will modify the way the law applies to certain agents, and provide that all taxpayers earning personal services income will be able to self-assess whether they are independent contractors against the results test. If the results test is passed, then they are not affected by the alienation measure. The results test is based on the traditional tests for independent contractors and is passed where someone is paid to produce a specific result, provides their own tools of trade (if required) and is liable for the repair of defective work.

Taxpayers will also be able to apply to the Commissioner for a personal services business determination, regardless of how much of their personal services income comes from one source. This will help taxpayers who want greater certainty about their status.

This bill also includes provisions associated with the financial collapse of the HIH group of companies. As a consequence of the financial collapse of the HIH group of companies, the Commonwealth has established a scheme to assist certain qualifying individuals and small businesses who experience financial hardship as a direct result of the collapse. This bill contains measures to ensure that there are no unintended income tax or GST consequences arising from transactions occurring as a result of a HIH rescue package.

Other amendments to this bill also include amendments to the Petroleum Resources Rent Tax Assessment Act 1987 (PRRT) to remove the uncertainty surrounding the determination of a price for gas produced in integrated gas to liquid projects.

A new methodology will be used to determine the price of the gas. This methodology will only be used when there is no comparable price for the gas and when there is not a sale of gas at the PRRT taxing point. This measure is the result of extensive consultation with industry.

The bill will also amend the 5 year rule which applies to classify expenditures for the purpose of calculating PRRT liability.

Schedule 2 to this bill will amend the Income Tax Assessment Act 1936 to extend income tax exemption to businesses that are owned or controlled at the local government level. The amendment ensures that where an income tax exempt municipal corporation or local governing body owns or controls a business, that business is also exempt from income tax.

The exemption supports the National Competition Policy which is designed to improve the efficiency and service delivery of businesses at the local government level and will apply to income derived after 30 June 2000.

Finally schedule 3 of the bill amends the residency rules for superannuation funds to allow funds, in particular self managed superannuation funds, to retain their residency status while their trustees are temporarily overseas for up to two years. This adds necessary clarity to the law in this area and is a sensible reform which will benefit self managed funds in particular.

Full details of the measures in the bill are contained in the explanatory memorandum.

I commend the bill.

FUEL LEGISLATION AMENDMENT (GRANT AND REBATE SCHEMES) BILL 2001

The Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001 contains amendments to the Customs Act 1901, the Excise Act 1901 and the Diesel and Alternative Fuels Grants Scheme Act 1999 to extend the sunset provisions of the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme. The bill also extends eligibility for emergency vehicles under the Diesel and Alternative Fuels Grants Scheme as well as making a number of administrative amendments to the scheme.

These amendments will extend the schemes until 30 June 2003 allowing the Government to incor-

porate the findings of the Fuel Taxation Inquiry into the development of the Energy Grants (Credits) Scheme.

The amendments to the Diesel and Alternative Fuels Grants Scheme will extend the scope of the scheme for emergency vehicles of 4.5 tonne or more gross vehicle mass to provide a grant for all fuel used in these vehicles and associated auxiliary equipment whether the fuel is used on road or off road. This amendment will benefit emergency services organisations, particularly rural fire service providers, and will reduce the administrative workload on rural fire service volunteers in calculating the amount of fuel eligible for a grant.

The administrative amendments to the Diesel and Alternative Fuels Grants Scheme make changes to the grant period provisions; extend the period for reconciling and repaying advances; insert a provision allowing claimants to authorise a third party to make claims on their behalf; and replace the statutory formula for calculating eligible fuel use with a regulation making power. The amendments are intended to reduce the cost of compliance for businesses by simplifying record keeping requirements and claiming arrangements.

Full details of the measures in the bill are contained in the explanatory memorandum.

I commend the bill.

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

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

Ordered that the resumption of the debate be made an order of the day for a later hour.

HEALTH INSURANCE (DIAGNOSTIC IMAGING SERVICES TABLE) AMENDMENT REGULATIONS 2001 (No. 4)

Motion for Disallowance

Senator CHRIS EVANS (Western Australia) (4.45 p.m.)—I move:

That the Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No. 4), as contained in Statutory Rules 2001 No. 157 and made under the *Health Insurance Act 1973*, be disallowed.

The opposition has moved to disallow the Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No. 4), because its inquiries indicate that the regulations were made for an improper purpose: they were made by a minister who is

determined to take his revenge over the scandal that effectively has ended his career—the MRI scan scam. A few weeks ago, the Minister for Health and Aged Care announced that he would be bowing out of politics at the next election. This came as a surprise to many but it appears that Dr Wooldridge has been unable to go into retirement without taking a parting shot at Dr Carr's practice. These regulations can only be seen as an attempt by Dr Wooldridge to use his power as a minister to pursue a personal vendetta against a doctor who blew the whistle on the biggest Medicare fraud in Australia's history.

Senator Ian Macdonald—Mr Acting Deputy President, I raise a point of order: is it parliamentary to make accusations of a personal vendetta against one of the most honourable ministers of this government? Should Senator Evans be allowed to make those comments in his speech?

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—There is no point of order, Senator Macdonald.

Senator CHRIS EVANS—Thank you, Mr Acting Deputy President. I understood that question time finished at about 3 o'clock. The history of this matter is a little complex but, in essence, on the fateful night of the 1998 budget, there were 59 MRI machines operating and there were another 54 contracts to buy new machines, 33 of which had been signed in the previous six days. The 59 existing machines were never part of what came to be known as the scan scam and no benefit flowed to the operators of these machines from inside knowledge of the minister's decision to include machines under contract in the extension of Medicare rebates.

North Shore Radiology and Nuclear Medicine is a major radiology practice that has operated outside the Royal North Shore public hospital for many years, and is now located inside the new North Shore Private Hospital. It was among the first to get into MRI and bought its first machine in 1991. This machine was still operating and due for replacement in 1998, and the partners ordered a replacement machine some two months before the 1998 budget; they later

ordered a second machine to expand their capability, using the new technology of open architecture MRI. These machines were installed in new premises in 1998 and 1999 respectively, and they continue to operate.

In September 1999, the minister was finally forced to act in an attempt to bring the scan scam under control. He set a deadline for submitting statutory declarations if people holding orders wanted to claim that they had a binding contract prior to the 1998 budget. A month later, the minister made another change to try to deal with the mess that he had created. He continued the eligibility of all the machines that had been operating on 12 May 1998 and he revoked the eligibility of all machines installed since the 1998 budget, with three exceptions. They were machines that replaced machines existing before that date—four machines which had been under contract since before 10 February 1998 and three machines contracted after that date but which were in regional towns of high need. This brought the total number of eligible machines to 66, which included the GE Signa Horizon operated by North Shore Radiology. This number increased to 67 earlier this year, when a Perth radiology practice showed that its scanner had been ordered on a contract that replaced a contract signed before 10 February 1998.

On the advice of the Government Solicitor, the government accepted that the machine had to be treated as eligible under the minister's rules. The partners at North Shore Radiology did not submit a statutory declaration for their second machine before the cut-off, and hence it has never been eligible for Medicare rebates. It will not become eligible by virtue of this disallowance. It will remain a private machine. However, the first of the new machines owned by North Shore Radiology had been approved by the Health Insurance Commission for receiving Medicare rebates, because it was a replacement of the original machine installed in 1991. Under the minister's regulations, it was clearly eligible and it has been attracting Medicare rebates since it was installed. This replacement machine is called a GE Signa Horizon MRI and it is the target that the minister has

hit with these regulations to punish this particular radiology practice.

On 4 April 2001, the HIC reviewed its position in the wake of the Perth case and wrote to North Shore Radiology and Nuclear Medicine to say that it no longer believed that the Signa was eligible. It did not give specific reasons for this and did not explain why it had taken the view that this scanner no longer met the requirements. After an exchange of legal letters and the receipt of further advice from the Australian Government Solicitor on 21 June this year, the HIC finally conceded that it had no grounds for removing the eligibility of the Signa Horizon machine at North Shore Radiology under the regulations as they stood. This advice was given verbally in a phone conversation on 28 June and confirmed in writing by a letter dated 24 August. This letter states that the HIC was satisfied that the Signa Horizon had been eligible under the previous regulations since 1 November 1999. However, as a result of the new regulations adopted on 1 July 2001, only those machines listed in the schedule would continue to be able to access the Medicare rebate. In other words, what the lawyers had agreed to was undone by the minister intervening with these new regulations now before the Senate.

There is direct evidence of the minister's personal intervention. Thursday, 28 June was the last sitting day of the budget session of parliament. It was the day that the HIC decided to concede that the Signa Horizon scanner was eligible—and it was on that same day that the minister intervened and overrode this decision. We know all this because we have the benefit of a file note taken by a lawyer at Blake Waldron who discussed the issue with an officer in the Professional Review Division of the Health Insurance Commission. The note makes it clear that the matter has been decided by the HIC but that 'upper management' then prevented a letter to this effect being sent. The note quotes a senior officer saying, 'The minister wants to be privy to the issues.' In other words, it is transparently clear that the minister is the person driving this regulation. He has decided to adopt it because his previous at-

tempt to exclude this MRI scanner had failed on legal grounds.

The only thing achieved by these regulations is that one particular MRI machine is excluded for eligibility for Medicare rebates. This is achieved by replacing the previous criteria, which spelt out which machines were eligible, with a schedule giving the actual machines and their locations. If the GE Signa had been included on the list, the same 67 machines would be eligible today as they were on 28 June. If this disallowance is carried, it will have no effect on the other MRI machines; it will simply restore the eligibility that the minister took away by regulation on 28 June this year.

The question here I think is: what is the minister's motive? Why has he taken it upon himself to pursue this issue and use any means possible to exclude this one machine? There has only been silence from the minister on this question, but we believe that the answer may well be found in who the leading partner in this practice was at the time of the scan scam. Dr Peter Carr was not only the person responsible for placing the order for this machine, he was also a member of the Royal College of Radiologists negotiating committee and was present at the fateful meeting on 6 May 1998. More than this, Dr Carr also spoke to the *Sunday Age*, which reported on 27 May 1999 his recollections of the meeting and the fact that he had declared his pecuniary interest because he had two MRI scanners on order from earlier in the year. This was a crucial point because it was the strong corroboration for the fact that the minister had raised at the meeting his intention to extend rebates to machines under order as well as those operating—and this was the key issue about whether or not there had been a leak about the budget decision which had led to so many orders being placed.

The minister tabled two statutory declarations—from a public servant, Ms Penny Rogers, and one of his staff, Dr Rachel David, who both claim that Dr Carr had not made this disclosure. These statutory declarations were later shown to be incorrect on material issues, but the Auditor-General finally reported that he was unable to determine what had taken place at the meeting.

The minister escaped with his reputation tarnished, but the crucial proof about what was said at the meeting was never found because there was no tape of the conversation, the department surprisingly took no minutes and there were no other records that came to light.

Dr Wooldridge recently claimed that he had a photographic memory for facts, citing his ability to remember the names of people he was introduced to at a debutante ball and repeat them in order. However, when it really counted, Dr Wooldridge could not remember who was at the meeting with radiologists or what he told them. His photographic memory suddenly evaporated and his disclosure of budget secrets has been forever clouded in mystery. Hopefully, one day, the truth will emerge—either the participants will break their silence or a new investigation will turn up evidence of what really led to the largest medical fraud in Australia's history.

In this light, it is somewhat less mysterious that the outgoing minister has moved to silence one of the people who could bring his story undone. By acting against North Shore Radiology, the minister is trying to give a message of intimidation to anyone else who dares to speak the truth. This is simply unacceptable and contrary to every principle of ministerial duties. There are no legal grounds for these regulations targeting one particular machine, and any rationalisation provided by the government will be seen for what it is—a continuation of the cover-up of the MRI scan scam.

I therefore ask the Senate for their support for the disallowance of these regulations. While this action will have no effect other than to restore to North Shore Radiology what is rightfully theirs, it is an important principle and it is important that we protect people against misuse of ministerial power. I hope that this vote will remove one of the gags that has kept the truth about the MRI scam from the Australian public.

Senator HARRIS (Queensland) (4.56 p.m.)—I rise to speak in support of the disallowance motion. These amendments to the Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No. 4) relate solely to the administration of

eligible MRI equipment and providers. On 24 August 2001, on the advice of senior counsel, the Health Insurance Commission expressed the commission's satisfaction that the high field MRI scanner operated by North Shore Radiology and Nuclear Medicine met the status required of eligible equipment within the definition of the Health Insurance 1999-2000 Diagnostic Imaging Services Table Regulations effective from 1 November 1999.

However, from 1 July 2001, the regulations were amended to provide that only scanners listed on the schedule to the regulations would be considered eligible equipment for the purpose of claiming a Medicare benefit. The scanner at North Shore Radiology and Nuclear Medicine was then not included in the schedule. However, every other practice with a scanner installed in the practice on budget night 22 May 2001 now enjoys Medicare rebate approval, with the exception of the North Shore practice.

North Shore Radiology and Nuclear Medicine is a highly respected practice. It provides quality MRI services, with a valuable and full range of MRI studies to both outpatients and sick in-patients at North Shore Private Hospital. This practice has been established for over 10 years and, during that period, many radiologists have been trained at that facility. This disallowance motion will not disadvantage any other MRI providers, and it will in no way disadvantage patients requiring MRI scans. However, the amendment to the regulations do affect the right of North Shore Radiology and Nuclear Medicine to practise their trade with Medicare rebate eligibility. Denying their eligibility to Medicare rebates affects their business and their livelihood. On behalf of Pauline Hanson's One Nation, I support the disallowance motion.

Senator LEES (South Australia (4.59 p.m.)—I am not sure whether the Minister representing the Minister for Health and Aged Care will be responding to any of these comments today. I begin by saying that I do not think this is quite a completely black and white issue, but I do not think we can avoid the fact that the original MRI machine had been operating since 1991 and that the de-

bate is over a replacement machine. I also acknowledge the additional information provided by Dr Wooldridge's office. But after trawling through all of that and reading the information and having my staff—and I thank Kerrie Thornton for all of her work on this—meet with the people from North Shore radiology I think it is fairly obvious that either this one has slipped through the net or, as Senator Evans has discussed, there was some question mark as to some relationship between people's membership on a committee and the decision to leave this particular machine off the list.

The Democrats will be supporting this disallowance motion. It is most unfortunate that this one machine has been somehow—and I leave that for perhaps further explanation from the Minister representing the Minister for Health and Aged Care—overlooked through the process. I acknowledge that there was a third machine involved and that a rebate was asked for. This is a replacement. This has since been withdrawn. So we are basically down to the question of whether it is legitimate that a company be allowed to replace an older machine with one that they described as state-of-the-art. How did this all get mixed up in what became known as the scan scam? And what is the government going to put on the record as their explanation as to why this one odd machine has been left out?

We support the new system that is now in place where we have an open and transparent mapping of where the machines are. We have the demographic information as to how many machines there are per head of population. I draw the minister's attention to my home state, where I know the Queen Elizabeth Hospital is very concerned about their ineligibility. Western Australia is probably the next state that is going to need some adjustment to the access to magnetic resonance imaging. It is a technology that we do not want to deny people who have an urgent need, but it is certainly not one that can spread uncontrolled, otherwise costs will simply blow out of all proportion. This certainly is a technology that needs to be regulated, and we support the new system but not

this set of regulations that somehow has avoided listing this one particular machine.

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (5.02 p.m.)—Can I, first of all, just say how disappointed I was with Senator Evans's speech, in that in the safety of this coward's castle he chose to make a very personal, offensive, inaccurate and cheap attack on the Minister for Health and Aged Care, Dr Wooldridge. Dr Wooldridge is one of the most successful health ministers this nation has ever known. He is honest, he is committed, he is respected and he has done more for the health of Australians than any other minister in the history of our Commonwealth parliament. I particularly say that as a regional Australian myself and on behalf of rural and regional Australians. The work that Dr Wooldridge has done for country Australians will live long after Dr Wooldridge has left this place. The money and the facilities that he committed to helping people in rural and regional Australia in last year's budget and in this year's budget was, off the top of my head, almost \$800 million. That sort of assistance to rural and regional Australia was never thought of by health ministers under the previous Labor government and, I regret to say, under health ministers before the 13 years of Labor.

This regulation is all about ensuring access to MRI services throughout Australia. Before this government acted to put MRI onto the MBS, there were only 18 publicly funded units. The fact that Australians will now have access to 72 funded MRI units, whereas three years ago they had access to only 18, shows that we are committed to improving access to MRI, especially in those areas where it is most needed. The government appointed an independent committee chaired by Professor John Blandford to examine the best way to continue to improve access to MRI. This committee determined that, while access was good with a base of 66 units, there were some areas that were underserved and in fact needed a MRI unit. The Blandford review decided that the most effective and accountable mechanism to apply the MBS to additional units was the tender

process. This process has now been completed and six additional units have been allocated to outer metropolitan and regional areas in Australia: at Liverpool, Penrith, Dandenong, Southport, Nambour and Orange.

This process has been excellent for patients. The additionally funded units will provide by far the majority of their MRI services at no cost to patients. In its 13 years in government the ALP was completely unable to get the medical profession to agree to this kind of charging policy on diagnostic imaging services. In fact, it did not even try. The independent MRI Monitoring and Evaluation Group that this government has established will continue to work to ensure that other underserviced areas throughout Australia will gain access to MRI. The government is determined to ensure that the recommendations of the Blandford review on the location of machines are not subverted by additional machines being located in places where they are not required—that is, in North Shore. A machine that goes into North Shore is a machine that could have gone into helping country Australians, and I would have thought that Senator Harris might have been interested in country Australians rather than in looking after the North Shore people, who do not really need this.

It is disappointing to me as a country Australian that the opposition parties are combining to defeat this regulation which would have provided additional help for country Australians perhaps in preference to those fortunate people who live on the North Shore. To disallow this regulation would simply result in additional cost to the taxpayer, but of course the Democrats and One Nation, never having any prospect of being in government, do not worry about those things and Labor obviously do not care if they think they can make a political point. I call upon the Senate to put the interests of patients first and allow this regulation.

Before I sit down, I should also mention that Australia has not only been blessed by having such an effective health minister but also been particularly blessed by having the Parliamentary Secretary to the Minister for Health and Aged Care in the form of Senator

Grant Tambling. Senator Tambling may not be with us all that much longer, but he has done an outstanding job in his work as parliamentary secretary. In many instances it has had an international flavour. He regularly works on the joint New Zealand-Australian groups that oversee drugs and other activities. Senator Tambling has a justifiably enviable reputation for the work he has done in the field. I guess this week marks the passing of two of the most effective and most dedicated people we have had in charge of health in Australia for a long time.

Senator Lees—Mr Acting Deputy Speaker, I seek leave to speak again very briefly in response to the minister's statement.

Leave not granted.

Senator HARRADINE (Tasmania) (5.08 p.m.)—Because of circumstances, I am not in a position to vote on this issue. At a later time, I therefore intend to move that the debate be adjourned and made an order of the day for the next sitting. I regret that I am not over this matter.

The ACTING DEPUTY PRESIDENT (Senator Hogg)—Senator Harradine, I understand that you will need to move the adjournment outright and not speak to that. There is no debate on that. Otherwise you forgo your right to speak. The only other way is to seek leave to continue your remarks. Are you going to move the adjournment of this matter?

Senator HARRADINE—I move:

That the debate be now adjourned till the next day of sitting.

Question resolved in the affirmative.

STATES GRANTS (PRIMARY AND SECONDARY EDUCATION ASSISTANCE) AMENDMENT BILL (No. 2) 2001

In Committee

Consideration resumed from 19 September.

Senator CARR (Victoria) (5.12 p.m.)—When I look across the table, I notice that there is no government minister to deal with this bill, the States Grants (Primary and Sec-

ondary Education Assistance) Amendment Bill (No. 2) 2001.

Senator Ian Macdonald—I'm here.

Senator CARR—You are here? This will be terrific. Perhaps you could start by explaining to me why it is that the government has sought to increase the funding by 300 per cent for this expenditure. While you are doing that, perhaps you can explain to me how it is that the government has met all the guidelines, as it claims, despite the fact that a number of schools have been approved as new schools but quite clearly are campuses of existing schools. I trust that the officers moving into position are able to assist me with some answers to these questions. While we are at it, Senator Macdonald, I would like to know whether you are dealing with this bill on behalf of the government.

Senator IAN MACDONALD (Queensland—Minister for Regional Services, Territories and Local Government) (5.13 p.m.)—Is that the first question?

Senator Carr—I have asked you three questions so far.

Senator IAN MACDONALD—You have not sat down to let anyone answer. In your typical rude fashion, you ask the questions and then do not sit down and allow anyone to answer them. In answer to your question, if needs be I can seek advice from my advisers and answer the questions. I am sure Senator Ellison, who has done a fabulous job in this area for a long time, will be down very shortly. He will probably be able to answer the questions without the assistance of advisers. Until that occurs, I can certainly proceed, with the assistance of the advisers.

It is important to emphasise the work that the Howard government has done in this area, and the work that Dr Kemp has done. He has been a particularly successful minister. Senator Ellison himself did a lot of work in this field, both in his own right in his former portfolio and now in representing Dr Kemp in this chamber. The work that the Howard government has done over a long period of time will help Australia in the future. It will certainly help all those involved in the education system, and that is again

something that the Howard government has been committed to doing for a long time. Whilst I would have loved to stand here and answer all the questions in detail, I see Senator Ellison has arrived. Since he is the expert, I will leave him to answer all those questions that I know he so technically understands.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.15 p.m.)—Thank you to Senator Macdonald, who has got a vital interest in regional matters and especially educational matters in regional Australia, unlike the Labor opposition, who are not interested in the 670 more places that we are bringing in for tertiary students in regional Australia.

Senator Tambling represents the Northern Territory very well in these aspects and it is going to be a shame and a great sadness to see Senator Tambling go, because the Northern Territory will be all the poorer for his departure and we will miss his good and sound representation. Senator Tambling, you have been a great advocate for the Territory and it is a shame that some people up there do not realise it. We have got very important legislation here—

Senator Carr—Sit down and I'll ask you some questions so you don't have to filibuster like this.

Senator ELLISON—I am looking forward to the questions that Senator Carr will put to us and will endeavour to provide answers.

Senator CARR (Victoria) (5.16 p.m.)—I have been trying to be helpful. Senator Macdonald is clearly out of his depth, as usual, and not able to answer very simple questions as to why the government has failed to fulfil its basic obligations under its own guidelines. It has a 330 per cent increase in the appropriations for the payments of new establishment grants for alleged new schools. I asked the minister why this was and he was unable to answer. I asked the minister whether it is true that the guidelines have been fulfilled in all cases and he was unable to answer.

The last time we were discussing this issue, I raised the question of the Christian

College Geelong and I was told by the officers, through the minister, that the available information at the time was that this school had been granted the establishment grants not on its application but automatically. We discovered that there are essentially two components to the guidelines: new schools must be registered and must be genuinely new schools, not existing schools. If they are merely campuses of existing schools, they are not entitled to the money.

Of course they have to meet certain other criteria apart from state registration and the fact that they are a genuinely new school. They have to be schools that are not for profit and they have to meet certain other requirements for state registration. In terms of the Commonwealth requirements, very little seems to be done. In particular, the question arises as to the capacity of DETYA to make its own investigations of any new group calling itself a new school. I raised the question of the Christian College Geelong and I was told that, on the basis of the information available, they were eligible for the grant.

It concerns me that there is the Christian College Geelong—which is going under the business name of the Christian College Highton, according to ASIC—and later in the appendices there is an umbrella body of the Christian College Geelong, or the Christian College Highton, called the Christian College Institute of Senior Education. They are both registered in Victoria but the latter is registered as the ‘Christian College senior campus’ on the official forms before ASIC. That is in fact the designation the school gives itself. My reading of the guidelines is that, if a school is a separate campus of an existing school, it is not eligible for money. Why is it, when a school describes itself as a senior campus in its registration forms before ASIC, that it is getting money? That is the question that concerns me. What action was taken by the Commonwealth department to ascertain the veracity of the claims being made that this was in fact a new school?

I also note that on 31 December 1995, Mr John Enos ceased to be on the board of both the Christian College—which now runs the Christian College Highton—and the Chris-

tian College Institute of Senior Education, that on 22 July 2000, Wilga Ruth Morris was appointed to the boards on both companies, and that on 29 August 2001, Mr Albert Ernest Bell of Dimboola became a director of both the Christian College Institute of Senior Education and the Christian College Geelong. We have the same people being appointed to the different bodies on the same days and registered on the official registration processes through ASIC. Mr Christopher Golden became a director of both companies on the same day on 29 August 2001. Christian College Geelong and the Christian College Bellarine have for several years—back to 1997—lodged identical documents with ASIC on the same dates.

It strikes me that there is a prima facie case according to these documents that they are in fact one and the same entity. Minister, what action did the department take? Given that there are the same personnel involved in both institutions and that one school is registered on the ASIC site as a senior campus of the other, and that the changes that have occurred within the official registration process are reflected in all the various institutes that I referred to—giving the impression, on a prima facie basis, that they are one and the same body, although with separate legal registration—there is no doubt that there is a senior campus operating here of the other institution. I ask the minister: what action did the Commonwealth take to ascertain the veracity of the registration process in Victoria?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.21 p.m.)—Senator Carr asked about the role of DETYA in relation to examining the funding in that situation. When a new school applies for funding, the Department of Education, Training and Youth Affairs assesses the application to see if it meets the relevant legislative and administrative requirements for approval for Commonwealth general recurrent grants funding. There are a number of quite different criteria to be met where a school applies for general recurrent funding as a new school, as opposed to the establishment of a new campus. They include state recognition as a new school, the approved authority being incorporated and the

school being not-for-profit. A funding level is also determined for the new school. None of those matters are relevant where an application is for a new campus of an existing school. Because of the funding implications involved, a key focus for the department is whether an application is for a new school or a new campus. Where an application is considered to be for a new campus, the students at the campus continue to be funded on the basis of the existing schools funding level. A new school, however, receives its own level of funding.

I will deal separately with the cases that Senator Carr mentions. During the course of the hearing by the Employment, Workplace Relations, Small Business and Education Legislation Committee concerning the reference on the Innovation and Education Legislation Amendment Bill 2001, Senator Carr asked a series of questions about the Christian College Highton and the Christian College Geelong. These questions were taken on notice, and Senator Carr received detailed answers to those questions. In the circumstances, I think that covers the queries that Senator Carr has raised. The Christian College Institute of Senior Education was legitimately approved as a new school and therefore was eligible to receive establishment grants. This decision was made after consideration of a number of factors and on the balance of the evidence available at the time. A further consideration of the case since then has confirmed the original decision to be correct. The application was for a new school, not as a campus of Christian College Highton. It predated any announcement by the government about the availability of establishment grants. It was considered in detail by the department and on its merits to ensure that all requirements under the legislation and guidelines were met.

I think Senator Carr also mentioned Kewdale college in Western Australia. The Western Australian registration authority recognised Kewdale college as a new school and not as a campus of an existing school. Senator Carr made much of a reference by the school to itself as a campus. While we legislators have great consciousness of the technical meaning of various terms, we should

acknowledge that the use of language in relation to schools can be quite flexible. For example, we can refer to a state school, a public school or a government school, and they can mean all sorts of things in different states. In this case, the school, Kewdale, is referred to as being a campus. The language is clearly used loosely because the school's application was for a new school and, on the basis of advice from the Western Australian authorities and the department's own examination, it was a new school.

Recently, the department formally checked with the office of non-government and international education in the Western Australian department of school services. That office has advised that the school at Kewdale went through the full registration process for a new school. In fact, the Kewdale school went through the prior planning process as a new school and the Western Australian minister was satisfied that it had met the various criteria for approval to start up in Kewdale. The school underwent a full inspection of its teachers, curriculum and buildings. This process is much more rigorous to that which applies to the establishment of a new campus.

This sets out quite clearly the rigorous approach that the Commonwealth has adopted and how it works in tandem with the state authorities in relation to the approval of a new school. I think that deals with the question raised by Senator Carr in relation to Victoria and to the Kewdale college in Western Australia.

Senator CARR (Victoria) (5.26 p.m.)—I thank the minister for his answer. I repeat, though, that the state registration processes are measuring entirely different things. They are not examining the establishment of a new school for the purposes of a Commonwealth establishment grant. However, the Commonwealth takes it to be the case that mere registration is the start of the process and automatically upon registration, it would appear, the moneys will flow. The Commonwealth takes no independent action to establish the veracity of those registration processes. I have indicated in the case of the Western Australian school that it does refer to itself as a new school, but so does the

school in Geelong. For instance, in its latest telephone listing—it is a simple matter: you check the *White Pages*—it describes its campus as a ‘senior campus’. These are publicly available documents. It is not just in the ASIC registration; it is on their web site, in the telephone book and in a range of other documents. This suggests to me that very large sums of public money are being expended for a program where the Commonwealth has lost control of the eligibility assessment processes. The Commonwealth office relies upon the states to examine a registration process which is for an entirely different process and purpose.

Senator Ellison—Don’t you trust the Labor state of Western Australia?

Senator CARR—This was actually taken before the last election in Western Australia, Senator Ellison. You know only too well that that is the case. It matters little whether it is a Labor state. When it comes to the spending of Commonwealth money, you know that the states are only too happy to spend money. Irrespective of the nature of the political party in office in any of the states, be it in Victoria or Western Australia, the registration process that operates for the establishment of new schools by the states is an entirely separate process to the payment by the Commonwealth of establishment grants. When the Commonwealth relies upon the state processes that are set up for an entirely different purpose, you are making a fundamental administrative error.

Senator Ellison—You did the same thing when you were in government.

Senator CARR—Minister, I put to you that you do not have the capacity any longer because of what you have done to the Commonwealth department of education. You have stripped it, you have ringbarked it and you have gutted it. You have essentially taken away the capacity of the Commonwealth to control the expenditure of its own revenues.

I understand we are under some pressure of time, and I will honour that. We will get this bill through by teatime. Minister, you say that it is a new school—

Senator Ellison—Do you support it?

Senator CARR—There are requests here. The request—as you well know, Minister—is that we should have a balanced approach to this. We are seeking that \$30 million be spent on government schools, as well as this money. We are saying that, when it comes to expenditure on schools, we have to consider the issue of need. We are not saying that people are not entitled to support from the public purse. What we are saying is that the allocation has to be made on the basis of need. The position the government is trying to present to the public—

Senator Ellison interjecting—

Senator CARR—We saw what a bodge arrangement the SES turned out to be. You have known for six months that the leading authority on the SES has canned your SES model. Dr Ross knows how corrupt it has been. He has been speaking to the department. I see that Mr Evans is in the advisers box. He would know only too well the accuracy of what I am saying. At this point I seek leave to table Dr Ross’s report.

The TEMPORARY CHAIRMAN (Senator Hogg)—Is leave granted?

Senator Ellison—The minister is making it available anyway, but leave is granted. He has beaten you to it, Senator Carr.

Senator CARR—I appreciate the minister’s generosity in that regard. Dr Ross will be only too happy to hear that his very thorough report has been given such wide coverage. No doubt that is why people write these reports, so that they can be debated—this internal confidential work for DETYA. What he says is that the process is essentially being corrupted, that the existing model for the distribution of moneys is not suitable for the widespread allocation of such large sums of money. He goes on to refer to senior policy makers in the department. In fact, he quotes Dr Kemp as saying:

... inequitable, ... inflexible, discourages private investment ...

And so on. Dr Ross goes on to say:

This view of the poor performance of the Education Resources Index may have encouraged the researchers to accelerate the construction and implementation of the SES Index without allowing sufficient time to reflect upon what had al-

ready been learned from 25 years of systematic research.

So the government knows just how bodgie the SES arrangements have been. We have heard today that the government is undertaking its own review of the SES formula. Ms Ann Harding's work in Canberra, the special socioeconomic status consultancy, is the basis for that review. It was commissioned by the National Centre for Social and Economic Modelling at the University of Canberra. That is the truth of it, Minister. You are not denying what I am saying. It was commissioned on 1 May this year. That is the basis for the review that you have undertaken. We know the score. We also know what Dr Ross is indicating. You know Dr Ross, don't you, Minister? You were part of the process that established the SES formula. You were the schools minister at the time. You know that he is the pre-eminent authority in this area, both here and internationally. In fact, the Ross indices are named after him. This is the man whose opinions you say do not count for very much.

Senator Ellison—I never said that.

Senator Carr—You did not say that? I am pleased that you agree that he is a pre-eminent expert in the field and that his opinions do count for a great deal. When he says that the dimensions of the SES formula were being corrupted, he is right. They have been corrupted by political influences. This brings me back to the point that, when it comes to the payment of establishment grants, the Commonwealth does not have the capacity any longer to determine the veracity of the registration arrangements made by the states. I ask the minister: if you do not have that capacity, do you have the capacity within the department to at least check the Internet sites?

Take the case, for instance, of All Souls St Gabriels School, a new school in Charters Towers. According to its web site, it is having the 25th anniversary of its amalgamation from two separate schools—an event that occurred in 1977. But you say that it is a new school—25 years out of date. If they are having a reunion of all the ex-students of the new school, that is not a bad effort. Minister, can you explain to me why that school gets

treated as a new school when it is having a 25-year reunion?

Senator Ellison (Western Australia—Minister for Justice and Customs) (5.34 p.m.)—Senator Carr has referred to All Souls St Gabriels School in Charters Towers, Queensland. It was formerly owned and operated by the Queensland Anglican school system. In January 2000 the system advised the department that it had closed the school and paid out all the staff. It had sold the land and buildings to the Charters Towers City Council and the Dalrymple Shire Council. A new governing body was formed, which entered into an agreement to lease the land and buildings from the Charters Towers City Council and the Dalrymple Shire Council. There was no transfer of assets from the Anglican diocese to the new governing body. The school applied for approval as a new school and was registered as such by the Queensland Office of Non-State Schooling. Senator Carr needs to remember that. It was registered by the Queensland authorities as a new school. While the new school opened on the site of the old school, a new owner had purchased the school and a new company took over the running of the school. You have a situation where the old school was sold and the staff were paid out. There was a complete change in the school. You had the closing down of an old school and the starting up of a new one. The Queensland authorities recognised this as a new school. There is nothing untoward in relation to that.

On the question of the SES funding of the non-government school sector, the Minister for Education, Training and Youth Affairs, Dr Kemp, released a statement today and also a copy of the Ross report. There was no hiding of this report or running away from it. The minister said:

The new socioeconomic status method of assessing the needs of non-government schools was developed over three years with extensive consultation with all sections of the non-government school sector. It was subjected to rigorous testing, including a large-scale validation exercise, the results of which were published in 1999. The department invited and analysed an alternative method of calculating the SES. When outcomes for the two methodologies were compared, they

had a .999 correlation; that is, the outcomes were virtually identical.

And that is what I said in question time today. The results of that analysis have been released by the minister and the point made by the minister is that this is a complete beat-up by the opposition. It is a shabby attempt to discredit the government's new fair and equitable method of funding for the non-government school sector. As the minister said, the opposition needs to look more closely at the Ross analysis, the outcomes of which are almost identical to those adopted by the government. That is a matter of record.

Senator CARR (Victoria) (5.38 p.m.)—Since the minister has been so forthcoming on the question of the Ross report, let me draw the Senate's attention to what it does say, because far be it for me to misrepresent what a pre-eminent statistician like this is saying about what is the cornerstone of the government's allocative mechanism for the spending of \$14 billion. I think it is only reasonable. He says the report:

... was accompanied by a great deal of discussion and debate concerning political and financial impacts. In contrast, there appears to have been little or no systematic commentary or debate on the technical issues related to the construction of the SES Index.

What he says is:

... the raw census data 'ingredients' that were used to construct the SES Index have been shown on many occasions since the 1970s to provide an excellent information ...

And so on. That is the old ERI. He goes on to say:

The second message is that the formal construction 'recipe' that was used to transform raw census data into the SES Index contains major technical errors which include: the use of the wrong units of data analysis, the erroneous application of standardisation procedures; the use of incorrect data element weights, and problems with the choice of census variables and socioeconomic dimensions. As a result of these technical flaws, the SES Index, in its current form, is not suitable for the purpose of guiding large-scale resource allocation decisions amongst Australia's non-government schools.

Unfortunately, it is clear from DETYA's reports, publicity brochures and press releases (concern-

ing a "new approach" to formula funding for schools) that no serious attempt was made to capitalize on widely available knowledge.

He goes on to say:

It is quite significant to note here that the sole source of technical advice for the construction of the SES Index was a university Faculty of Medicine and not a Faculty of Education.

Of even greater concern is that the researchers involved in the construction of the SES Index appear to have overlooked high-quality State government reviews and extensive public consultations (for example, Ministry of Education, Victoria, 1990) and also to have completely missed opportunities—to profit from research advances in Australia, Canada, New Zealand, the USA, and the UK that have used more holistic analyses of educational need for the design of school funding formulae.

He also says, and this is quite tragic really when you think about the implications of it:

However, it is widely known that senior decision-makers considered that the Educational Resources Index had a number of deficiencies ...

He then quotes Dr Kemp. Then he goes on:

This view of the poor performance of the Education Resources Index may have encouraged the researchers to accelerate the construction and implementation of the SES Index without allowing sufficient time to reflect upon what already been learned from 25 years of systematic research.

That is essentially what we have been saying right through this state grants debate. I have to ask myself: how is it that the officers in the Commonwealth department of education allowed this to happen? Why didn't they say to the government or the Senate estimates committee, 'Look, we've got some pretty serious concerns about this based on the information we have available'?

Quite clearly, the government has been engaged in a major cover-up. It has had this report for over six months; Dr Ross, I would expect, has been making comments to the department for a considerable period longer than that, given that he is such a pre-eminent authority in this area. I think we are entitled to ask: why is it that the political intervention by this government to manipulate—what Dr Ross describes as 'to corrupt'—this formula, this allocative mechanism, was allowed to proceed?

The Labor Party and the Democrats have clearly identified, in the process of examining in the committee this particular measure, that there were serious problems because it did not reflect the real needs of Australian children. We understood just how serious it was. But of course the department and the government have maintained throughout that they have produced this perfect model. Their own experts have blown the gaffe. The truth is out there. It is up to—I presume—the government to come clean on the extent of the review that they have now undertaken of the SES model and the extent to which they intend to change the funding mechanisms and the allocations to schools over the current quadrennium. If they know that the system is really crook, what action are they taking to address it? I would be surprised if there are not proposals floating around to change the allocations. That is clearly something we want to have some answers on.

But we are discussing that in the context of this particular bill. If I ask, Minister, perhaps you can give me some advice about another school according to these guidelines. It is the Murdoch College in Western Australia. This is the new school of the campus of the Murdoch University, jointly owned by the university in a commercial company, Alexander Education Group. It has been established by the Murdoch University for commercial gain and caters largely to overseas students. I understand that it has about 100 students from Australia enrolled in it but it is essentially established for commercial gain. Murdoch University has, we all know, been obliged to turn to various commercial and profit making ventures because of the cuts that have been imposed on higher education by the Commonwealth government. This particular operation is one of them. Within the guidelines, I understood that schools were supposed to be operating on the basis that they were not for profit. Why did this particular entity receive assistance?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.45 p.m.)—I thought we dealt with this the other day.

Senator Carr—No, not this one.

Senator ELLISON—We certainly dealt with the question of not-for-profit. In relation to Murdoch College, I do have some information and we are just getting that now. Certainly, as I said the other day, one of the criteria is that the school cannot be run for profit. The question that has been raised by Senator Carr is: have establishment grants been paid to schools that are run for profit? He cites Murdoch College as an example. The Commonwealth schools legislation stipulates that schools funded must not be conducted for profit. The department requires the approved authority of each applicant school to provide a copy of its constitution to ensure that this requirement is met.

Many schools have some activities which generate a financial surplus. For example, a large number of schools provide education for overseas students and make a surplus on this activity. This is in line with the Commonwealth's policy of fostering the export of Australian education. For schools to become involved in exporting education from this country is entirely good news for Australia. If they have a surplus from that, all the better. This is in line with the Commonwealth's policy of fostering export of Australian education, as I say again. The making of a surplus is acceptable under Commonwealth schools guidelines, as long as that surplus is used within the school and not for the benefit of individual members.

Overseas students are quarantined from Commonwealth general recurrent funding. The constitution of Murdoch College in Western Australia was examined to ensure that this requirement was met. At the 2001 schools census day Murdoch College had 304 overseas students. It also provided school education for 167 local students. What I have seen myself is that there have been schools which have charged fees for overseas students, and as a result of the surplus that is derived from that they can pass on the benefits to local students. I have seen that in regional Victoria, where it worked very well at one school I went to. The success that the school had with overseas students could be passed on to the benefit of local students who came from regional Victoria. I would hope that you would not dis-

agree with that as being a good idea, because it allows equity in relation to education and the benefits from this to be passed on to Australian students.

Senator CARR (Victoria) (5.48 p.m.)—I take it from what you are saying that the department has undertaken an audit of the school. Has the department undertaken an audit of this school to establish the veracity of the statements you have just made or are you relying upon alternative sources of advice? I will ask you some specific questions. You have acknowledged that the guidelines require the school to be operating on the basis of not-for-profit—you are now defining a surplus as not-for-profit, which is an interesting concept in itself. Can you confirm the school is jointly owned for a profit company, Alexander Education Group? Is it the case that the Alexander Education Group has set up a new upper secondary school in Western Australia, the Alexander Institute of Technology? They did so this year. Did this school—and I ask specifically—receive an establishment grant? I understand the answer is no. What I would really like to know is, if you could confirm it for me: did this school apply for one? If it did, why did the Murdoch College receive an establishment grant and not the other institute? I will come back to the original question: did the department undertake its own audit to establish the veracity of the claims you have made in regard to the operation of this school?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (5.49 p.m.)—The financial accountability for establishment grant funding is the same as that required for general recurrent grant funding, but the grants of course are separately accountable. That is, the approved authority of the school must furnish the secretary of the department, on or before 30 June of the year following the relevant program, a certificate signed by a qualified accountant stating that an amount equal to the amount or sum of the amounts provided under the agreement and paid for the year has been spent or committed to be spent in respect of that year for the purpose or purposes for which it was granted, namely, to assist new schools with their recurrent costs incurred in their forma-

tive years and to enable them to be more competitive with existing schools.

In terms of educational accountability, the approved authority must agree to do each of the following not later than a date or dates determined by the minister for the purposes of each paragraph: participate in the preparation of an annual report; provide to the minister for inclusion in that report matters addressing the requirements for performance information; provide the minister a report of the kind required by the minister in relation to programs of financial assistance covered by the agreement; and participate in the evaluation of the outcomes of those programs of financial assistance. You have here an accountability which would flush out any aspect of the school running for profit.

I have mentioned that the school might have a surplus in relation to overseas students. That is fine, so long as it is put back into the school. I mentioned one example in Victoria where that surplus goes to the benefit of local students in regional Victoria. That is within Commonwealth government policy. These accountability mechanisms are stringent and, we believe, appropriate in keeping a check on whether these schools are running for profit.

Senator CARR (Victoria) (5.52 p.m.)—The answer to my question is that the government have not undertaken an audit. Under the requirements of the guidelines, the school will send them a note from an accountant to say that the money is going to be spent in accordance with the guidelines and that it will be spent for recurrent purposes. What is the checking mechanism? What is the great accountability mechanism that we are now asked to take notice of? The school writes a letter to the department and says, 'Yes, of course we're following the guidelines and we will spend it accordingly.' If they want to spend it for recurrent purposes or as part of the salary package for the principal—he wants to buy a new suit or a new car—that is consistent with the guidelines.

Here is a clear case that is not consistent with the guidelines. Murdoch College is jointly owned by a for-profit company, Alexander Education Group. The government acknowledge that it makes a profit. They

acknowledge that it has over 300 international students on the site and a little over 100 domestic students. It is a for-profit school; it is clearly outside the guidelines. No procedure was undertaken by the department to audit those arrangements. The college has received eligibility for an establishment grant, and the department has no capacity or opportunity under this government to properly check the facts. The department relies upon a statement from an accountant. This is the mentality that cost us HIH, this is the mentality that cost us Ansett—relying upon an accountant to tell you that you are doing the right thing. What an extraordinary approach to public administration.

Take a school like Hills Montessori School in New South Wales. It was first registered, according to the New South Wales Board of Studies, in February 1998. It was reregistered in 2000. In March 2001 it advertised in the Internet edition of the newsletter *Melbourne Child* a tea party for former students and their parents to celebrate its 20th anniversary. The New South Wales Board of Studies says that it always registers developing and new schools for a limited period of one to two years and then it reregisters those that pass muster. This process can be repeated several times for particular schools. How can a school that was registered in 1998 but was operating for many years prior to that regard itself as a new school?

I understand that there are similar practices in other states and territories. This exposes the flaw in the whole federal approach, where the government says it relies on the states to tell it whether or not eligibility requirements are met for Commonwealth programs. There is an inherent deficiency in that approach.

I also draw your attention to Brighton Montessori School in Victoria. Apart from the fact that it is in Dr Kemp's electorate, it has existed for 23 years. It is largely a preschool, outside of the guidelines; it has only 32 school-age enrolments. It was first registered in Victoria in February 1999. Did it receive an establishment grant? Yes. Was the department aware that it had been operating

for 23 years? Was it an extension of existing provisions for a preschool? Minister, what are the circumstances surrounding the two schools I have just mentioned? Given that we are running out of time—

Senator Ellison—There was Hills Montessori—what was the other one?

Senator CARR—There were two schools: Hills Montessori in New South Wales and Brighton Montessori in Victoria. While you are looking for information on those, I will draw your attention to Somerville Baptist College in Western Australia—another campus auxiliary of Murdoch University.

Senator Ellison—Give the Baptists a break—poor old Baptists!

Senator CARR—I am just making a point, Minister. This is not confined to one group or one state. Riddled through this department is a level of incompetence that is really quite extraordinary. Why is this the case? Because you have run the department down to the point where it is a mere shadow of its former self. It no longer has the capacity to protect the Commonwealth revenues for these important programs. Consequently, last year in October the department realised it did not have enough money from the appropriations. It told the minister, and the minister chose to do nothing about it. The government prepared new legislation instead of amending the legislation that was before the parliament at the time. To cover up the mistake, it tried to bundle the legislation all together in an omnibus bill, hoping that we would not notice a 330 per cent increase in the appropriation and, furthermore, that we would not notice the extraordinary number of schools that, prima facie, are way outside the guidelines. Presumably, money was declared to be available to them when the money was not in the kitty.

So we have two problems: we have had a sudden explosion in the number of non-government schools, and the average size of the schools has doubled. There has been an extraordinary increase in the number of new schools that are seeking additional moneys, and the department is unable to check the basic facts—not able to check the telephone

book, not able to check ASIC, not able to check fundamental public documents that are available—which seem to be in sharp contrast to the opinions given to them by the states.

I have mentioned the Somerville Baptist College in Western Australia; I understand that it is a campus auxiliary of Murdoch University and is a further spin-off from an existing school. It shares the same buildings and facilities as the Winthrop Baptist College—again, outside the guidelines. The Western Australian education authorities were only too happy to provide this information to me; were they able to provide it to the department? Did the department seek advice on these issues? The Western Australian education authorities are only too happy to tell anyone who asks them that Somerville Baptist College is not really a new school. Has the school applied for recurrent funding? Has the school been made eligible for an establishment grant? If it has not, please explain to us why this school falls outside the category when so many others do not. I have 10 minutes or so left, so I will go through a list of schools and perhaps you could give me a response to them.

The next one I would like to ask you about is the Galilee Day Program, a school that operates in the Australian Capital Territory. It was defunded; it became part of a private operation under contract to the ACT education department. As I understand it, it provides services to students who are already enrolled in the ACT government school system. It has five enrolments. Was this school eligible for funding under the establishment grants program?

Another one while you are looking that up is the ninth one I would like to raise today, and there are many, many more. I am just putting a sample to you to indicate what I see as a serious problem, a serious deficiency, within the public administration of education in this country. The Southside Educational Centre in Queensland is a private provider. It has provided services to the Queensland education department. It seems to have a very similar structure and arrangement to the Galilee Day Program in the Australian Capital Territory. The Southside Educational

Centre has eight branches, including the particular one in Queensland I have referred to here. It is listed on the Queensland education department web site as a private 'provider providing alternative education' under its PPAE Program. This program provides, according to the web site, 'educational programs for students on or at risk of suspension' in Queensland state schools. The question is not whether or not it is a worthy institution and not whether or not it is doing a good job, Minister; it is whether or not it is eligible for access to this particular program. I am told that this particular institution provides services including those for profit; that is, as a private school. It is also a TAFE college and training provider. I understand it has an enrolment of 42 in this particular case. Minister, is that school eligible for moneys? Has it applied? Will it, according to this legislation, be receiving grants under the operation of the existing administration guidelines?

I come back to this simple point: has there been any discussion with the states as to whether or not the state registration process is actually designed to recognise a new school as a new school or otherwise, or is it a device that is actually used for the states' purposes? Given that the states are so disinterested in whether a school is new or some other entity, has there been any discussion with the Commonwealth about finding a new mechanism to establish the bona fides of these schools in terms of the Commonwealth guidelines?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.01 p.m.)—At the outset I table two documents—*Farish response to Ross draft paper* and *SES Simulation Project: Validation Report*—both of which comprehensively debunk Senator Carr's argument in relation to his attacks on the SES method of funding. I will now turn to the questions that Senator Carr raised in relation to a number of schools. Firstly, in relation to Somerville Baptist School in Western Australia, Senator Carr was making much about this not being a new school and he asked if it had got funding. I am advised that the school is not eligible for establishment grants, and I think that

takes care of Senator Carr's inquiry in relation to that school. It has not been given the establishment grants, and that is the end of the matter there.

Hills Montessori School, New South Wales: it is alleged that this is an extension of an existing preschool. The New South Wales Department of Community Services registered Hills Montessori School as a preschool. It subsequently applied to receive Commonwealth general recurrent funding as a primary school. Hills Montessori School was approved as a new primary school for receipt of Commonwealth recurrent funding from 1 January 2000, having been registered by the New South Wales Minister for Education and Training to provide school education from kindergarten to year 2. Hills Montessori School may have been in existence for some time as a preschool, but it was first approved for Commonwealth funding as a school in the year 2000. State registration of preschools is under different legislation to the registration of schools.

Senator Carr mentioned three other schools—Galilee, Southside Educational Centre and Montessori Brighton. I understand that the Galilee Day Program was registered as a special new non-government school in 1999. It was not previously registered as a school in the ACT, and therefore that clarifies the position. We are obtaining further details on the other two schools that Senator Carr mentioned. The Department of Education, Training and Youth Affairs, as part of its scrutiny of these schools, also provides random checks of them and actually sends in its officials to conduct those. That is not an unreasonable method of checking up on schools. I reject entirely the allegations of any negligence or unprofessionalism which have been levelled against the department by Senator Carr. The other questions we are taking on notice, and we are trying to get those details for Senator Carr.

Senator ALLISON (Victoria) (6.05 p.m.)—I was not going to make a contribution to this stage of the debate but I feel moved to respond to the report that I have just been given copy of, which was tabled earlier by Senator Carr and the minister. I must say I am not surprised that this report

has been written and provided to the department, but I am surprised by the minister's ready dismissal of it. It is a scathing report. It points very much to departmental incompetence and to the ready acceptance by the minister of that incompetence in the name of pursuing an ideological position in the shortest possible time.

We are not surprised because we could see, when the bill was first shown to us, that this was a flawed model. I would also like to say that this is a sort of cover-up of major proportions that I have not struck in legislation that I have dealt with in the past, and I think that is worth remarking upon. This is the second last day of sitting, if we are to believe what is said about the next election, and it is probably the last opportunity for us to quiz the minister on this report. I would like to ask what the minister intends to do. I note he has tabled some other documents. Obviously there is not time today for us to read those documents, and I would ask specifically: how are the minister and the department responding to the specific and very strong criticisms in this document? Will we see a document which, line by line, answers those accusations which have been made? I regard this as a very serious matter indeed, and I would like to hear the minister's answer—not just some other document that says the SES is fine but a detailed response to this report.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.07 p.m.)—I understand the minister has tabled his response in the other place. The situation, as I said at question time, is that the department will continue to monitor the ongoing implementation of the new SES funding for non-government schools. What I said earlier, Senator Allison, was that the outcomes in relation to the assessment of the different methodologies were very close indeed. When the outcomes for the two methodologies were compared they had a 0.999 correlation; so they were virtually identical. There may be other comments made in that report, but what the minister is saying is that, when you look at the upshot of it all, the results of the analysis are very close. The Farish response, which I have just tabled, deals with

the Ross draft paper in quite a detailed and comprehensive fashion, some four pages of analysis, and I think that in the circumstances I could not be fairer than that.

Senator ALLISON (Victoria) (6.09 p.m.)—I thank the minister for this response, although I have not had a chance to read it yet. It seems to me that, if you have a flawed process and if by luck or by chance at the end of that process it turns out to be a similar answer to what might have been arrived at by a correct procedure, it is still not adequate. I would ask the minister to give the chamber some undertaking that there will be a serious review of this situation. I remind the chamber that when we debated the states grants legislation in December last year the Democrats had already been told by numerous people that in the non-government sector as well as the government sector this would likely deliver some very strange anomalies. That is in fact what has happened. For that reason, we moved an amendment which would have delayed the implementation of this model for 12 months, during which time an independent body—we suggested a national schools board—could examine the model and look at it in terms of its effectiveness as well as the related equity issues. Had the ALP supported us in that amendment, we would not be in the mess that we are in today.

We are facing another flawed aspect of this legislation in the establishment grants. The Democrats voted against the whole bill the last time we dealt with it. We will continue to vote against this legislation. However, we will support the ALP request. We think that, if we are going to be saddled with this inequitable piece of legislation, we should garner some extra funds for government schools which badly need capital works. I keep going into schools that have got falling-down classrooms and portables and totally inadequate equipment. So \$30 million—whilst I think that is about \$100 a student in the government sector—is not to be sneezed at because a few schools will be able to benefit. I say again how disappointing it is that we in this place have to deal with legislation which is so seriously flawed.

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.12 p.m.)—I certainly will convey Senator Allison's comments to the Minister for Education, Training and Youth Affairs when I take the matter up with him. There are no plans for any formal review at this stage. It would be unwise to do so because we had a comprehensive review of the funding for non-government schools with the review of the ERI system. If you announce any further review, you would introduce more uncertainty. The non-government school sector is only just getting used to the new system. I think we have in place a system which has been welcomed by the non-government sector and one which is much more equitable and fair. It really hits the target. We certainly do not want to get in the path of having another review. That, no doubt, would be very favourable to Senator Carr from the Labor opposition. They have got so many reviews on the agenda now. I think it is up to 160 reviews or committees that they have announced.

We grasped the nettle and we set about bringing in a new SES method of funding for the non-government school sector, and it has been widely welcomed. There have been great reforms in education under the stewardship of Dr Kemp. We believe that you need to provide clear direction for people in education and having this review upon a review would just bring in more uncertainty. That is not what we believe is needed or wanted at the moment.

Senator CARR (Victoria) (6.13 p.m.)—Minister, is the government intending to divide on the motion to put these requests or can we take it as read that the support is here for those requests to be carried? You are not going to divide?

Senator Ellison—No.

Senator CARR—If that is the case, I will then sum up. I do notice the Farish comments. Dr Kemp has today circulated some comments regarding the government's response to this damning critique by Dr Ross, the internationally renowned expert, whose report *The right ingredients but the wrong recipe* has clearly demonstrated just how manipulated the SES formula has been. I

also note that Dr Ross draws to our attention that it is important to note that the Farish response is taken from a university faculty of medicine, not a faculty of education. That in itself, I would have thought, is an interesting observation in formulating a model that is obviously of such critical importance.

If we do proceed with the request now, can we get an undertaking that the answers that the government has taken on notice will be given to the opposition by tomorrow? I know that it might take you a little time overnight to establish that. Is that the case, Minister? Is it possible to secure that? Is it possible to get answers by tomorrow to the questions that you have taken on notice with regard to the number of schools that you have not responded to today?

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.16 p.m.)—We can provide those answers, we think, tomorrow. No doubt that would be an opportune time, having regard to what may or may not happen to this bill.

Senator CARR (Victoria) (6.16 p.m.)—Minister, I do appreciate it. I have not known you to let us down, once having given your word on this matter for answers to be given. I will take that in the manner in which you have presented it. Obviously, tomorrow we will have an opportunity to reconsider this bill when it is bounced back from the House of Representatives. The opposition will maintain its position on this request.

There is nothing more important than the education of our children. That is a pretty fundamental principle. We argue that it is through the school system that children grow up and it is at school that they discover themselves and become adults, that at school children learn about the world and their place in it, that schooling is central to the lives of young people and that the policies that underpin schooling shape their experience. School is a place in which values are transmitted. It is incredibly important to the social system and, in fact, to the reproduction of our society. Schooling, as all educators know, has the potential to transform society and to transform individuals.

Australian children are entitled to the full support of this parliament. We have an obligation as legislators, and we have an obligation to Australia's teachers and to parents, citizens and taxpayers. All of those things come together to the point where we have important responsibilities to examine the legacy of schools education that we are leaving behind. The Labor Party say that our commitment is to a universal, comprehensive public education system, and we are also committed to ensuring that people have access to public resources if they want to send their children to non-government schools. But the funding should be allocated on the basis of need.

Knowledge Nation argues that we have an obligation to fulfil that basic commitment to ensuring that our schools do provide centres of excellence, that they are genuinely universal and that they are able to provide genuine quality for every child. Everyone ought to have a fair go. This government, on the other hand, is about ensuring that there is a disproportionate share of public resources going to the already wealthy. It is a very unfair, very unjust and extraordinarily divisive policy. Our request is that there be an additional \$30 million for public education to even up the score a bit, to provide some balance in the funding policies of schools. Many might argue that that is not sufficient. That is an instalment. We ought to make sure that this parliament makes a commitment to the children of this country to provide a balanced and fair approach to schools funding. It is on that basis that I have moved this request. I trust the chamber will support it. I hope that the government will see the wisdom of supporting this request when this matter is sent back to the House of Representatives.

Request agreed to.

Bill agreed to, subject to a request.

Bill reported with a request; report adopted.

NOTICES

Withdrawal

Senator ELLISON (Western Australia—Minister for Justice and Customs) (6.21 p.m.)—I withdraw the government business notice of motion given earlier today propos-

ing the exemption of the Regional Forest Agreements Bill 2001 from the bills cut-off order.

HEALTH INSURANCE (DIAGNOSTIC IMAGING SERVICES TABLE) AMENDMENT REGULATIONS 2001 (No. 4)

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

That the order of the day relating to the adjourned debate on the motion of Senator Evans for the disallowance of the Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No. 4) be called on immediately.

Motion for Disallowance

Debate resumed.

Senator CHRIS EVANS (Western Australia) (6.22 p.m.)—in reply—I draw the Senate's attention to the motion—we were slightly distracted earlier today—which is to disallow Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001 (No. 4). Debate followed about the attempt to remove, from one MRI machine, eligibility to access Medicare rebates. I do not want to delay the Senate very long in reply except to say that I urge the Senate to support the motion. I also urge those who have an interest in this matter to read the government's defence—because there was none. There was a very colourful tribute to the Minister for Health and Aged Care, Dr Wooldridge, but there was no attempt at all to justify what clearly was an act of vindictiveness: to remove eligibility from a particular MRI machine and so affect the viability of the business of this individual, Dr Carr. No justification at all has been given for this change to the regulations that would deny that MRI machine and that practice access to Medicare rebates and it seems to have been attempted for purely personal, vindictive motives. So, as I say, the defence, if you can call it that, was quite telling in that no argument was advanced in defence of these regulations. I commend the disallowance motion to the Senate. As I say, I think the government's position confirms the need for us to pass this disallowance motion and ensure that fair treatment is meted out to that particular radiology practice.

Senator Harris—I seek leave to make a very short statement.

Leave not granted.

Question resolved in the affirmative.

Sitting suspended from 6.25 p.m. to 7.30 p.m.

BUSINESS

Government Business

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

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

Royal Commissions and Other Legislation Amendment Bill 2001

New Business Tax System (Thin Capitalisation) Bill 2001

New Business Tax System (Debt and Equity) Bill 2001

Taxation Laws Amendment Bill (No. 6) 2001

Taxation Laws Amendment (Research and Development) Bill 2001

Air Passenger Ticket Levy (Imposition) Bill 2001

Air Passenger Ticket Levy (Collection) Bill 2001

Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001

Motor Vehicle Standards Amendment Bill 2001

Intelligence Services Bill 2001

Intelligence Services (Consequential Provisions) Bill 2001

Jurisdiction of the Federal Magistrates Service Legislation Amendment Bill 2001

Bankruptcy Legislation Amendment Bill 2001

Bankruptcy (Estate Charges) Amendment Bill 2001

ROYAL COMMISSIONS AND OTHER LEGISLATION AMENDMENT BILL 2001

Second Reading

Debate resumed from 30 August, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (7.30 p.m.)—The opposition supports the Royal Commissions and Other Legis-

lation Amendment Bill 2001. The Royal Commissions and Other Legislation Amendment Bill is intended to ensure that royal commissions can provide information regarding possible contraventions of a law to the agencies responsible for the administration of that law. Specifically, that would include agencies such as the Australian Securities and Investments Commission. The bill is also intended to ensure that royal commissions are able to obtain information from ASIC and AUSTRAC. Royal commissions are interesting creatures. They are literally an exercise in executive power to establish inquiries to advise the executive branch of government on particular policies that should be implemented to address issues that they have identified or to refer, as this bill will do, matters to relevant law enforcement agencies for prosecutions to occur. It is important that the context of how royal commissions collect their evidence and how they liaise with other agencies is clear.

To a degree, royal commissions and commissions of inquiry have the power to compel witnesses to answer questions and produce documents. While the executive may establish royal commissions, the executive cannot confer these powers unilaterally. They must be conferred by statute and are therefore subject to restraints on legislative power. Historically, evidence given to a royal commission was presumed to be admissible in subsequent legal proceedings. However, it may be more accurate to say that the issue turns upon the wording of the relevant act.

Currently, the Royal Commissions Act states that evidence is not admissible against a witness who has appeared before a royal commission 'in any civil or criminal proceedings in any court of the Commonwealth, of a state or of a territory'. In this context, civil or criminal proceedings includes administrative proceedings such as those conducted by agencies like the ACCC or ASIC. The prohibition against the use of compelled evidence in any civil or criminal proceedings is a significant limitation not only on the courts but also on the royal commissions themselves. It poses a significant obstacle to any government that seeks to prosecute conduct that is discovered as a result of the ac-

tivities of a royal commission. It effectively prevents a royal commission from investigating matters that may form the basis of subsequent civil or criminal proceedings. In the context of the collapse of the HIH Insurance group, it is important that the parliament sorts this matter out. Not surprisingly, the origins of this bill are closely tied to the unwinding of the former insurance giant HIH and the response of the Commonwealth government to the problem.

In February this year, the HIH Insurance group started to come to pieces. It was forced to disclose to the market some of its serious internal problems. On 27 February 2001, ASIC announced that it was conducting an investigation into HIH's market disclosures. Trading in HIH shares was suspended on that day, and has not resumed since. Since announcing its initial investigation, ASIC broadened its investigation to cover other potential breaches of the Corporations Law. Importantly, ASIC had decided to look at whether HIH had been trading while insolvent and also whether any of the directors had breached their duties.

The opposition maintained from the outset that what was required of the HIH disaster was a royal commission to be promptly established. There is no doubt that HIH has been the biggest corporate collapse in Australia's history. Its losses are estimated to be up to \$5 billion—not million but billion. HIH creditors may also face up to a two-year wait for interim payments. At first the government resisted opposition calls for the establishment of a royal commission into the collapse of the HIH Insurance group. The government argued that the Australian Securities and Investments Commission could properly investigate the matters.

It was not until a controversy arose regarding the fact that the Chairman of ASIC, Mr David Knott, was also on the board of APRA, the body whose task it was to regulate and oversee the insurance industry, that action was taken. On Monday, 18 June this year, the Prime Minister finally announced the establishment of the HIH royal commission. The commissioner, Justice Neville Owen, started his work on 1 September 2001, some six months after the collapse of

HIH. The stated purpose of the royal commission is to 'Inquire into the reasons for and the circumstances surrounding the failure of HIH prior to the appointment of the provisional liquidators on 15 March 2001'. The opposition has made it clear that, while it supports the terms of reference, it was concerned by the delay in commencing the royal commission. The opposition was also concerned that there was no specific term of reference relating to the hundreds of thousands of dollars HIH donated to the Liberal Party over the last five years.

The royal commissioner's terms of reference revealed underlying concerns regarding the overlap and possible conflicts in the powers and functions of the royal commission and the HIH investigation. The terms of reference expressly noted that ASIC was 'also investigating certain matters surrounding the failure of HIH'.

Senator Faulkner—I'd like to make a speech about this.

Senator COOK—Would you? Let me then draw my remarks to a conclusion. Let me just finish this point, if I may, because I think it is an important one. I said that the terms of reference expressly noted that ASIC was 'also investigating certain matters surrounding the failure of HIH'. They also required the commissioner, Mr Justice Owen, 'to the extent practicable', to cooperate 'with ASIC', avoiding 'duplication' of ASIC's investigation and any adverse impact on any civil or criminal proceeding arising out of ASIC's investigation. I commend the bills to the chamber and I am sure my colleague Senator Faulkner will speak on this matter as well.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (7.38 p.m.)—I was drawn to make a contribution in this debate on the Royal Commissions and Other Legislation Amendment Bill 2001 because of those words of Senator Cook. I commend the speech that he has delivered to the Senate. It was one of the more insightful second reading debate speeches that I have heard in this chamber, and I thank him for the comments he has made. I thought it might be useful for me to pick up where Senator Cook left off.

After all, it is worth looking at one of the more thoughtful analyses that has been made of how the different inquiries in the HIH collapse will work together. I suspect that is where Senator Cook may have taken this issue.

Stephen Donaghue is a respected legal commentator on royal commissions. He is a barrister from Victoria and has also recently written a book on royal commissions, titled *Royal Commissions and Permanent Commissions of Inquiry*. On 20 June 2001, in an article in the *Age* newspaper, Stephen Donaghue noted:

If [ASIC] lays charges, the [royal] commission will not be permitted to use its coercive powers to question any witnesses against whom charges have been laid, because such questioning (even in private) would constitute contempt of court. The laying of charges would therefore seriously impede the commission's ability to conduct its own investigation. If ASIC delays the decision to lay charges, it will become harder to obtain a conviction when charges are eventually laid. That is because answers or documents a witness is required to give to a Royal Commission cannot be used against that witness in subsequent court proceedings. This protection is significantly wider than the protection that operates during ASIC investigations.

Mr Donaghue's argument in the *Age* was that a royal commission, as an instrument of the executive, cannot interfere with a civil or criminal proceeding being undertaken by the judiciary. Further, Mr Donaghue was concerned that there is a statutory requirement that evidence given to a royal commission cannot be used against the witness in any subsequent civil or criminal proceedings.

The opposition shares those concerns and is not convinced that the government has fully dealt with these matters in the amendments it has moved to its own bill. Arguably, the government's amendments will ensure that the HIH royal commission will have the power to discover the truth in relation to the HIH collapse while allowing ASIC to pursue civil prosecutions, the more common and more successful elements of corporate regulation. However, we are concerned that the amendments in relation to possible criminal prosecutions are not sufficiently targeted.

Public interest in the administration of justice arguably requires that evidence relating to criminal liability should be admissible for certain limited purposes. Time will tell whether the government has established the right framework for dealing with these matters.

There is clearly a need for cooperation between ASIC and the HIH royal commission. A link between ASIC and the HIH royal commission would enable information to pass readily between the bodies, facilitating both inquiries. Importantly, this bill deals with the transfer of such information. Nevertheless, it is unclear how both inquiries will operate effectively and avoid any problematic overlaps. As a practical matter, the paths of the ASIC investigation and the HIH royal commission are likely to cross at some point in the future. It may not be sufficient simply to permit the bodies to exchange information or to direct Justice Owen to conduct the commission with a view to avoiding adverse impacts on subsequent civil or criminal proceedings. Nor would it seem to be sufficient for governments to issue simultaneous letters patent.

The possibility of conflict between the inquiries and the implication that the HIH royal commission could raise more issues than it resolves is significant—particularly because the costs associated with the conduct of the commission could be well over \$10 million in total. Some have estimated that the cost could run as high as \$20 million.

Regrettably, the Minister for Financial Services and Regulation has not addressed some significant concerns in relation to the HIH collapse. These include concerns over the staffing of APRA, the ratios of liabilities to assets of insurance companies, and what the minister was advised regarding the capacity of the Australian Securities and Investments Commission. There is no doubt that public confidence in the insurance industry and in the proper, objective, fair administration of this sector has been tarnished by the perception that substantial political donations from HIH to the Liberal Party may have influenced the consideration that they obtained from the executive arm of government—whether it be APRA, the department

or the minister's office. I understand that those allegations will be vigorously denied, but the point I am making is that there is a public perception that that may have been the case.

The public perception that that may have been the case is as concerning as the actuality. I refer, for instance, to a series of headlines that have appeared in newspapers. The *Sun-Herald* of 20 May 2001 stated, 'Party cash in link to gong,' which referred to the HIH founder, Ray Williams, receiving an Australia Day honour in circumstances where HIH had contributed to the Free Enterprise Foundation. There was reference in that article to the contribution by HIH of some \$696,000 over the years to the Liberal Party. I acknowledge that the minister says that that did not influence their treatment, according to law. But, nonetheless, there is a substantial question that needs to be answered. The *Sunday Mail* on 20 May 2001 reported:

Australian Electoral Commission records show HIH Insurance also handed over almost \$800,000 directly to the Liberal Party from 1996 to 1999.

So there is a substantial issue: did the lack of scrutiny, at least in part, result from preferential treatment because of political donations? I state that as a question rather than as an assertion to make the point that the perception that that may be the case is an issue that needs to be addressed. I hope *Hansard* picked up my punctuation in that very important sentence in this speech.

One of the terms of reference of the HIH royal commission needs to be a consideration of whether the scrutiny of the affairs of the HIH group of companies and/or the accountability of the HIH group of companies were affected by the substantial political contributions they made. No company gives \$800,000 without an expectation of some benefit, and that is something the public need to have considered so they can be reassured. The opposition will be watching the royal commission and the ASIC investigation closely to ensure they do fully investigate the collapse of HIH. The opposition's concerns about the terms of reference and the political links between HIH and the Liberal Party do not stand in the way of our supporting this

bill and the amendments moved by the government. I commend the opposition's approach to the Senate.

Senator BOURNE (New South Wales) (7.46 p.m.)—I seek leave to incorporate Senator Stott Despoja's speech.

Leave granted.

The speech read as follows—

The Bill is intended to enhance the flow of information between Royal Commissions and agencies responsible for the administration and enforcement of the law. The Bill facilitates both the flow of information generated by Royal Commissions towards regulatory agencies as well as allowing regulatory agencies to provide some confidential information to Royal Commissions.

The Bill was designed to facilitate the operation of both the HIH and construction industry Royal Commissions. It will also provide similar capacities for any future Royal Commissions.

The Government's amendments will help with the smooth and efficient operation of Royal Commissions.

This week the Royal Commission into the collapse of HIH began. Royal Commissions play an essential role in ensuring that both policy makers, and the Australian public are well informed about not just significant events, but the adequacy of the policy process that was in place at the time those events occurred.

It is essential that we learn from the mistakes of the past if we are to avoid repeating them. The current crisis in the airlines industry is a tragic case in point. The Australian people deserve access to all information concerning the process that led up to the grounding of Ansett. If the government didn't make any implementation mistakes, then it suggests that the overall policy approach is a mistake.

The same is obviously the case with HIH. We must uncover whether it was individual incompetence or systematic failure that led to the collapse of a national insurer. The failure of HIH imposed massive costs on tens of thousands of hard working Australians. We must ensure that either the people or the systems that led to those costs are brought to account, punished and reformed.

Speaking about bringing people to account, it is time we brought someone to account over this government's inaction with regard to protecting Australian workers entitlements and making Directors responsible for their actions.

Time and time again this Government has feigned surprise when major firms collapse without having made appropriate provisions to fund their workers entitlements. This year alone we have seen HIH, one.tel and Ansett collapse suddenly. Sadly now it looks like Pasmenco may join them.

It appears on initial examination that the company has done the right thing and set entitlements aside. The Democrats hope this is the case, but workers should not have to rely on hope. They should be able to rely on sound government policy.

Pasmenco employs more than 3,800 workers. It is the world's largest integrated lead and zinc producer supplying more than 8% of the world's demand for finished zinc and lead metal. It has smelters in Hobart, Newcastle and Port Pirie.

Such a collapse would hit regional Australia hard. Coming on the back of the collapse of Ansett it would be a devastating blow.

The government must take its head out of the sand. There are solutions to this problem. But those solutions will need to be based on policy and legislation, not hope and a booming economy.

The government should:

- Require firms to contribute regularly to a secure fund in order to ensure that sufficient reserves to meet accrued entitlements are always in place.
- Ensure firms take out insurance to meet any unfunded obligations that may exist when a company goes into bankruptcy.
- Remove the limited liability protection for directors in instances where it can be shown that Directors have been negligent in meeting their responsibilities for workers entitlements.

This government has placed so much faith in the capacity of markets to solve all of society's problems it seems completely incapable of action when markets collapse and workers and customers are harmed.

Markets work well when the regulatory structure works well. Businesses will meet their tax obligations when the regulatory structure requires them to do so. Businesses will meet their environmental obligations when the regulatory structure requires them to do so. Sadly, until the regulatory structure is made sufficiently rigorous we can not expect that workers entitlements will be adequately protected.

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

**NEW BUSINESS TAX SYSTEM (THIN
CAPITALISATION) BILL 2001**
**NEW BUSINESS TAX SYSTEM (DEBT
AND EQUITY) BILL 2001**

Second Reading

Debate resumed from 8 August, on motion by **Senator Minchin**:

That these bills be now read a second time.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (7.47 p.m.)—The cognate bills, the New Business Tax System (Thin Capitalisation) Bill 2001 and the New Business Tax System (Debt and Equity) Bill 2001, establish a new thin capitalisation regime and define debt and equity for taxation purposes. More specifically, the thin capitalisation bill, as I will call it, amends the Income Tax Assessment Act 1936, the Income Tax Assessment Act 1997 and the Income Tax Transitional Provisions Act 1997. It does so primarily to introduce a new thin capitalisation regime to prevent an excessive allocation of debt for tax purposes to the Australian operations of multinational companies and to ensure that Australia obtains appropriate tax from those entities that operate internationally. The debt and equity bill also amends both the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 as well as the Taxation Administration Act 1953 principally to implement new rules for determining equity and debt in an equity and, in particular, to define the debt equity borderline for tax purposes.

I am pleased to indicate the opposition's support for this legislation. After all, the Labor Party has committed itself to supporting the package of integrity measures that the Treasurer promised he would introduce in order to achieve a revenue neutral budget position associated with the business tax review measures. Of course, we know that the Treasurer has failed to keep his promises on the introduction of the entire package of measures required. This has demonstrated yet again the problems the government faced by trying to do too much too quickly without sufficient attention to the details and to the ramifications. It appears that it could not get other integrity measures right so it has either

given up on them or tried to patch them up, largely unsuccessfully. I note that the date of effect of these bills is 1 July 2001. So, even with this measure, the government has been pretty slapdash. How much certainty can it give to businesses affected by this measure that are already having to change their arrangements based upon legislation that was introduced on the last sitting day in June and that has not come up for debate in this chamber until tonight?

As these bills deal with anti-avoidance in the new tax system environment, I think it is appropriate to canvass an issue of tax avoidance that has been of considerable concern to the Labor Party, and to the Australian community, coming out of the government's other substantial change to the tax system—the goods and services tax. This issue is the matter of the Groom FEC's GST avoidance scheme. On the wire service tonight, under the Australian general news category, this story appeared: *Dateline*, Brisbane, September 26th, source AAP. It states:

Australian Taxation Office officers have interviewed several Queensland Liberal Party members over an alleged GST scam. The officials today seized documents relating to the matter after interviewing party members in the federal seat of Groom, Channel 10 news reported. The Queensland Liberals have been engulfed in a scandal after allegations that a branch in Groom, held by Small Business Minister Ian Macfarlane, illegally claimed GST credits. Mr Macfarlane has denied any wrongdoing and Groom Federal Electorate Council officials have said it was an honest mistake made on the advice of an accountant. An ATO spokesman declined to comment.

That news item on the wire tonight indicates that what the Labor Party has said in this chamber about the GST scam by the Liberal Party in the federal seat of Groom is based on substantial evidence and truth. It is clear that members of the Liberal Party believe that the GST applies to all Australians except them, and that it is appropriate for them to act, according to this description in the news report I quoted, 'illegally' in order to avoid the GST.

But let me return to my remarks, which expose this scam in all its detail. As I said, these bills deal with anti-avoidance in the new tax system environment, and I want to

canvass an issue of tax avoidance concerning the GST scam in the Groom Liberal Party FEC. We have heard a great deal from members of the government about how this was all just a misunderstanding and a mistake, and those words were repeated again to the media tonight, but let us have a closer look at the facts of the Groom Liberal Party FEC GST scam. Since the matter was first made public by Labor on 23 August this year, Mr Macfarlane has given five versions of his knowledge of the scam. In his first version, on Thursday, 23 August this year, he told parliament:

I am not aware of anything untoward that has been done in the FEC.

In his second statement, on the same day but later in the evening, he said:

The matter was drawn to my attention by the Treasurer's Office in early March and I subsequently raised the issue with the president of the Groom FEC.

In his third version, a short time after releasing that statement, Mr Macfarlane told the ABC's *7.30 Report* that the issue had been discussed on 19 December at a meeting of the Groom Liberal Party FEC at his home. In his fourth version, a statement issued late the following night, he revealed that he had been told of the scam in a telephone call by Margaret Watts on 18 December. His fifth and final version was on 27 August when he told parliament that Mr Neville Stewart had told him of the scam sometime in December. Which story is correct? When did he find out? Was it in December or was it in February or could it have been in March? Who told him about it? Was it Mrs Watts? Was it Mr Costello, the Treasurer? Was it Mr Neville Stewart?

I was beginning to think the next story we would hear was that it was Professor Plum in the kitchen with the candlestick who told him the story. At least in *Cluedo* you eventually get to the truth. If this were not such a serious matter, it would indeed be great comedy, but it is not: it is a cover-up of a potential tax avoidance scheme involving the misleading of parliament. As well as compounding his own deceit, Mr Macfarlane's statement on 27 August raised serious questions about the complicity of senior officials

of the Liberal Party in the GST scam. The Liberal Party confirmed on the same day that, far from being a one-off, the scam had already been used by at least two other Liberal Party branches—the branch in the Leichhardt electorate of parliamentary secretary Warren Entsch and the branch in the electorate of Lilley.

Senator Patterson—I rise on a point of order. I ask that Senator Cook withdraw the aspersion he has just cast on Mr Macfarlane.

The ACTING DEPUTY PRESIDENT—I think it would be appropriate to withdraw that, Senator Cook.

Senator Cook—I am not sure what I said that was against standing orders.

The ACTING DEPUTY PRESIDENT—You used the word 'deceit'.

Senator Cook—I withdraw that word. Returning to the scam, Mr Macfarlane says Groom entered into the scam on the direct recommendation of Queensland Liberal Party president Con Galtos and of state director and now South Australian Liberal Party director Graham Jaeschke. As my colleague Simon Crean revealed shortly after the Labor Party's expose of the scam, the Liberal Party was well aware of its GST obligations as far back as 14 June 2000. Claims by the Prime Minister that the scam was due to a misunderstanding caused by the complexity of the GST cannot be sustained. It is odd that the Prime Minister should invoke the defence of the complexity of his own tax law when he has claimed to small business everywhere in Australia that this law can be managed—that is despite the deafening protests of the small business community that it adds to the complexity of their work, takes extra time, adds hours to their working life and involves them in higher expenditure because they have to hire accountants to do work that they would otherwise have done themselves. However, that is a matter for the Prime Minister.

On 29 August, senior Queensland Liberal Mr Neville Stewart, who is facing a police investigation over more than \$25,000 in expenses that he claimed as Chairman of the Toowoomba Turf Club, returned from over-

seas to give yet another take on the Groom FEC scam. He told ABC radio the next day that he was 'in shock' over the allegations that the GST had been falsely claimed for party fundraisers. His story is that party branches have experienced problems in working out how to handle a GST for fundraisers, and Groom's FEC was no different. He said:

Groom didn't know what to do with the GST situation when we were given the accounts.

The matter had been put to the former state director Graham Jaeschke who sought advice from the party's senior accountant who, at this point, remains unnamed. Mr Stewart further said:

We voted to accept the advice of Jaeschke, which we did. My understanding of the advice that we were given would be that accounts ... would be paid by headquarters and all GST from the division that was collected would be remitted to headquarters.

What an interesting twist. Not only does this confirm that the Groom FEC decided to ignore the pretty direct written advice that they received back in June 2000 from the state office, it also presents yet more evidence of inconsistency in the story being told by the Liberals at local, state and federal level. Mr Stewart said that the advice the Groom FEC had got was that the accounts they received would be paid by headquarters and that the GST collected from the FEC would also be remitted to headquarters. But there was no GST collected by the Groom FEC. They are unregistered, so do not charge the GST. That is the whole point. The Queensland Liberals' advice was that the Groom FEC should be able to get the benefit of claiming the input tax credits through the state branch but would not have to pay the GST on the tickets it sold. A perfect scheme.

Further revelations were made when the letter from former Groom treasurer Margaret Watts to Liberal Party federal director Lynton Crosby was quoted in the *Australian* newspaper on 3 September 2001. The excerpts from the letter showed that the small business minister knew right from the start the scheme was wrong but deliberately did nothing about it. The letter said:

This 'scheme' surfaced in Groom in December 2000. I advised Ian Macfarlane prior to the FEC meeting of my concern that it would develop into a political problem if it became public knowledge. His comment to me was 'I won't be there for the vote—it won't affect me.'

Rather than take immediate action to shut down the scheme, Mr Macfarlane instead deliberately chose to let it run, thus benefiting his re-election campaign by over \$800 at the expense of Australian taxpayers. His comment 'it won't affect me' shows he was well aware of the consequences of the scheme and was already constructing an alibi in the event the scheme was made public. Beyond questions of the conduct of the small business minister and how the scam was effected, there are also technical questions remaining on exactly how the Liberal Party is trying to characterise the Groom FEC transactions and others in other FECs. The thrust of these questions is that the basis of the argument, outlined in the most sketchy terms by the Liberal Party, is premised on the notion that the transaction between the Queensland Liberal Party and the Groom FEC was truly a legitimate taxable supply. This was the transaction involving the payment by Groom of \$8,264.14 on 20 December 2000 and the issuing of a tax invoice by the Queensland Liberals over a month later on 23 January 2001.

One of the key features of a taxable supply under section 9-5 of the GST law is that it is made in the course or furtherance of an enterprise that you carry on. Can the Liberal Party seriously tell us they are in an enterprise of providing a 'cost netting' service—and at a loss? And what a strange 'service'! When the invoice itself says it was 'to net of Picnic Point function—November 23, 2000' does the government really think that what the Queensland Liberals really engaged in was the provision of a service? Doesn't a service require a little more than the payment of money from one organisation to another and the issuing of an invoice more than a month later? This transaction was contrived and should be viewed as being part of a scheme to avoid GST under division 165 of the GST law.

As many in this chamber will be aware, the Labor Party has been conducting its own

GST inquiry over the last month right across Australia. I can tell you that I have heard again and again that the GST has done nothing to reduce the size of the black economy in Australia despite the promises made by the Prime Minister that the GST would close it down. Moreover, the people I have spoken to have told me how annoyed they are with the expanding black economy and they have also indicated they are furious that the Liberal Party themselves are dodging tax. This view is particularly strongly put by those small businesspeople who are trying to do the right thing—they pay the right tax and complete the right forms—when the Liberal Party contrive to avoid the tax.

The damage done to small businesses in this country is shocking, and more than a year on the fallout from the government's GST continues to be felt. But now the harm is made even more heinous by the fact that the Liberal Party themselves have engaged in systematic abuse of the very laws they have forced on the Australian community. No doubt the final budget figures released by the Treasury today will be of very little comfort to those struggling under the GST. While the Treasurer likes to crow about his surplus, small business, families and low income earners will not be joining in the celebrations. They have never been under greater financial pressure as result of the soaring tax burden under Mr Costello.

The Howard-Costello government tax take in 2000-01, even allowing for the removal of state taxes, was \$10 billion higher in today's dollars than in the Keating government's final budget—that is an extra tax grab of \$2,000 from every Australian family. Mr Costello likes to compare his five years as Treasurer with Labor's last five years in office. In Labor's last five years, the average tax burden was just 21.8 per cent of GDP. The average tax take under Mr Costello has been 23.8 per cent of GDP, an extra \$14 billion of tax on Australians in a year! Mr Costello calls his budget good economic management. The truth is it is just Australians paying more tax—except, of course, those Australians who happen to be in the Groom Liberal Party FEC.

In conclusion, while the Labor Party are happy to support these cognate bills because we have a true commitment to ensuring the integrity of the tax system, we say with some emphasis that the Liberal Party should show a similar desire to see that tax is paid. They must own up to their attempts to avoid the GST, pay the GST amount that remains outstanding, and commit to paying their fair share in the future. That is the kind of integrity measure we would love to see from this government.

Senator MURRAY (Western Australia) (8.05 p.m.)—The Australian Democrats are a party that believes that this government and the next government need to continue doing the work to shore up the revenues that are needed to deliver the services that all Australians are demanding. By my estimate we are easily short of about \$10 billion of revenue which is demanded in such areas as health, education, infrastructure, defence, industry policy—we could run through them all. Frankly, the coalition government's efforts in increasing the revenue needed in this country should not be condemned but praised, because you cannot deliver the services people demand unless you attend to the issue of revenue. We, the Australian Democrats, are unashamedly a high revenue party. We are not a high tax party. We agree with John Ralph and Peter Costello, who say, 'Broaden the base and lower the rates.' We agree with that.

But, frankly, you need a lot more money if you are going to deliver the social justice, the social security, the health, the education, the infrastructure and the defence this country wants and is demanding. All the emphasis on tax always has to bear in mind that the purpose of revenue is in fact to deliver the services demanded by the citizens of this country. This is a duo of very important bills which address the Ralph reform recommendations and the very issues I just outlined. Not that you would have known it from the earlier remarks made with respect to the second reading, but this will fulfil the promise to produce over \$1 billion worth of revenue over a four-year period: that is a lot of money.

The original proposition was in fact that \$1.3 billion would be produced and that has been adjusted down to \$1.1 billion as a result of government consultation on the exposure draft of the bill and the recognition that certain transitional measures were necessary. I am not sure if they have not gone a little too far but, believe you me, when people want hospital beds filled, roads built and schools accommodated, I am going to take the \$1.1 billion. I am very glad that the government has moved these bills up the order of priority.

The bills, apart from raising revenue, have the desirable effect of knocking off what is essentially an undesirable tax minimisation practice. That practice has revolved for years around the manipulation of debt versus equity. Equity, as a capital item, has limitations in terms of the tax benefits you can generate. But the association of excess debt or high gearing—of loading up a company with debt—in certain relationships to equity can result in substantial tax benefits to the party doing so, particularly in this instance where it is in fact foreign companies doing just that. Apart from the desirable objective of fulfilling the mantra of lowering the rates and broadening the base, this bill addresses not just a tax mischief but actually what borders on a tax rort. In consequence, the Democrats are pleased with it from both perspectives.

The thin capitalisation rules were examined as part of the Review of Business Taxation. Thin capitalisation simply means that you have not got enough equity and that to create the finance necessary to maintain and run your business you are deliberately factoring in excess debt. The financial impact of this is laid out in the explanatory memorandum to the New Business Tax System (Thin Capitalisation) Bill 2001, and that is outlined as \$10 million in 2001-02—that is when the transitional arrangements are finally locked in, although with respect to some of them it is 2004—in 2002-03, \$395 million will be pulled in; in 2003-04, \$350 million; and in 2004-05, \$350 million. So that is over \$1.1 billion.

The second bill, which is its companion, referred to as the New Business Tax System (Debt and Equity) Bill 2001, states:

The revenue impact of this measure is unquantifiable, although it will protect the revenue base from erosion from deductible returns on certain future financial instruments that are equity in economic substance but debt in legal form.

Some of the people who write these things are positively poetic. That is a beautiful statement of how to drive an integrity issue. To continue:

To the extent that the revenue base is not protected, there could be a potential significant loss to annual revenue.

I think they are being modest. I think that bill in fact will generate revenue. It might be unquantifiable but I think it is a plus not a minus. I am pretty pleased about that because everywhere I go I hear squeals about more money for aged care, for legal aid, for railroads. Hopefully, if you are returned, Senator Minchin, you will put more money into rail, please.

Senator Minchin—We are building Alice to Darwin.

Senator MURRAY—I have got a long list, as you know. It is a serious matter. That is what governments are about: generating the money. It is all very well having a crack at the Labor Party when they are in government or at the Liberal Party when they are in government but both have to have the objective of producing the money to fulfil the needs of our society.

The thin capitalisation rules which provide the circumstances under which a deduction for interest payments would otherwise be allowable will be reduced for an entity. It will mean that the equity component should be increased in terms of its importance. The objective of the thin capitalisation regime is to ensure that multinational entities do not allocate an excessive amount of debt to their Australian operations. This is to prevent multinational entities taking advantage of the differential tax treatment of debt and equity to minimise their Australian tax. The new business tax system bill provides the new rules concerning what is debt and what is equity under the taxation law. As I said, they were reviewed by Ralph and have been improved as a result. It is an integral part of the new thin capitalisation regime, which is to reduce the effect of thin capitalisation, but

it is also important in other areas such as imputation.

If taxpayers can choose the categorisation of either debt or equity simply by regard to the legal structure of an instrument without regard to the substance of the arrangement, that would involve—and has involved in the past—significant revenue cost. The new rules attempt to tax interest according to its nature rather than facilitating the manipulation of tax treatments depending on who are the parties to the transaction. Without this approach, taxpayers could issue instruments that are identical in nature but that are either frankable or deductible to suit the purposes of the parties at the expense of the revenue.

One of the measures that I must refer to briefly in this is a concern that the Property Council had with the original bill. They were concerned with the impact of the associated entity test on managed investment schemes. We are pleased that they advise us that, through consultation with the Australian Taxation Office and the Treasury, the unintended impacts of the bill on the property industry have apparently been addressed. We are assured by them, so I hope that is so.

In conclusion, you would gather from my remarks that the Democrats strongly support this bill. We think it does fulfil the promises made by the government in reaction to the Ralph report. We think it does improve the integrity of the tax system. We are certain that it will generate significant income, as outlined in the budget figures. I am hopeful, on my own reading of things, that they are in fact conservative. I therefore thank the government for bringing this forward, and assure you that we will support it fully.

Senator SHERRY (Tasmania) (8.16 p.m.)—These taxation bills constitute an important anti-avoidance measure agreed to as part of the business tax package. Labor have agreed to support a more comprehensive thin capitalisation regime and will be supporting these bills. While we support the bills, we are concerned that they do not deliver the same regime that the Treasurer announced back in late 1999. Since then, there have been substantial changes to the legislation at a cost of around a quarter of a billion dollars over the forward estimate period. The Treas-

urer, Mr Costello, promised this business tax package would be revenue neutral. It is not. It was on this understanding that the Labor opposition adopted a positive and cooperative approach to business tax reform and supported measures such as lower rates of company and capital gains tax.

The quarter of a billion dollars that the government will forgo in this backflip, or roll-back, of thin capitalisation was intended to offset some of the costs of these tax cuts. However, the Treasurer has breached the commitment he gave, and he is undermining the revenue neutrality of his own business tax reform, at a cost of millions of dollars, through this backdown of thin capitalisation off the budget bottom line. In the same way, he gave away substantial dollars on the budget bottom line through his backdown on the taxation of trusts.

The two bills we are considering provide for a new thin capitalisation regime and, secondly, a comprehensive regime for defining debt and equity for taxation purposes. They are designed to ensure that the excessive interest deductions against the Australian tax base are not available to the Australian businesses of multinational companies. This is a crackdown on tax minimisation by multinational companies, and the government has backed down. Thin capitalisation refers to the practice of overgearing the Australian business of a multinational for tax purposes. Overgearing—carrying higher levels of debt relative to equity—generates a higher tax deductible debt cost, mostly interest repayments. This allows multinationals to claim higher tax deductions—at Australia's expense, at the cost of the general taxpayer—than would otherwise be the case. As a result, thin capitalisation represents a threat to the integrity of the Australian corporate tax base. This puts additional pressure on the taxes to be raised from income tax or from a GST, which most of the rest of the community is required to pay. The thin capitalisation regime is necessary to deal with that threat.

Labor recognised the necessity of this measure in 1987, when we introduced dividend imputation and the current thin capitalisation regime. Both policies were designed to counter the bias towards debt generated by

the tax deductibility of interest payments. Dividend imputation was introduced to improve the incentive for investors to utilise more equity. The existing thin capitalisation regime sets limits for tax purposes on the ratio of foreign debt to foreign equity for certain business entities. It does not set a binding limit on relative debt levels, but it means that interest paid on foreign debt over the allowable ratio is not deductible.

Under the current regime, the allowable ratio of foreign debt to foreign equity is two to one, and six to one for financial institutions, reflecting the different nature of their business. The current regime has worked well but it is not comprehensive. It only applies where the debt has been provided by a foreign entity that owns more than 15 per cent of the Australian company. This bill provides for a more universal regime and should therefore be supported. The thin capitalisation regime is extended to cover Australian owned multinationals with non-portfolio assets overseas and branches, as well as subsidiaries of foreign multinationals operating in Australia. The legislation changes the formula for the maximum debt to equity ratios to include total debt and total equity but also, at the same time, increases the maximum ratio under a two-tier system.

The first tier imposes a safe harbour limit of three to one on a deductible debt to equity for businesses other than financial institutions. The government has argued that this increase in the maximum ratio is justified because of the use of the total debt rather than foreign debt in its calculation. The second tier allows for interest deductions on debts above this level up to an arm's length amount. The arm's length amount is the level of debt that the business could maintain as an independent entity. In addition, a worldwide gearing amount applies to outward investing entities and allows for tax deductible gearing of up to 120 per cent of the average worldwide debt of the entity divided by its average worldwide equity. The legislation also broadens the thin capitalisation regime for authorised deposit taking institutions, commonly known as ADIs, by including outward investing ADIs and by providing for minimum capital amounts based on risk weighted

assets. The legislation also imposes new record keeping obligations on affected entities.

As I mentioned earlier, this legislation represents an important structural improvement to the corporate tax base and it should yield significant revenue. Indeed, according to the explanatory memorandum more than \$1 billion is estimated to be raised from the measure during the next four years. The second bill, the New Business Tax System (Debt and Equity) Bill 2001, provides new definitions of debt and equity for tax purposes. These new rules are important for the thin capitalisation regime as well as other areas of tax legislation such as dividend imputation. The new rules define instruments as debt or equity according to their economic nature rather than their legal characteristics, which can currently be manipulated for tax purposes. Without this approach, taxpayers could issue instruments that are identical in nature but are either frankable or deductible depending on the interests of the parties involved. Such arrangements represent a risk to revenue that this legislation seeks to address. This legislation will be important in safeguarding the corporate tax base and should be supported.

My colleague the shadow Assistant Treasurer, Mr Thomson, pointed out in the House during the debate on these measures that this second piece of legislation is already operating. But regrettably—and we have seen more examples of it this week—the government has so mismanaged the legislative program that the bill was only introduced into the parliament at the end of June and was therefore only debated in the House on 7 August and only brought on for debate in the Senate today, despite being listed for the previous sitting week.

As I mentioned earlier, the Labor Party are supporting these bills as far as they go. They represent important improvements in the tax system, building on the solid foundations that Labor laid in 1987. They go much of the way—not totally—towards reducing the threat to revenue from thin capitalisation arrangements. They play an important role in offsetting some of the costs of business tax reform, but in this respect they do not go far enough. In fact, the bills do not go as far as

the government promised. The government initially accepted all the recommendations of the Ralph committee of review regarding thin capitalisation, and it released an exposure draft to this effect in February 2001. But what we have seen is pressure from the big end of town. The government cracked under the pressure and announced so-called 'significant transitional measures' and a relaxation of some of the provisions.

The consequences of the government's backflip mean that the new rules will apply to an entity's financial year commencing after 30 June 2001 so that entities which do not have a financial year commencing on 1 July will not have to adopt the new rules during a financial year. Secondly, where the proposed new debt and equity rules alter the status of an instrument, entities will be able to elect to retain their current status until 30 June 2004. I emphasise that: 30 June 2004. Taxpayers who claim interest deductions of less than \$250,000 will be exempt from the thin capitalisation rules. If you are claiming interest deductions of, say, \$240,000, you must be engaged in a fairly significant business. If they were interest deductions even of \$20,000, I would argue that you were engaged in some significant business activity. The exemption level is set at \$250,000 in interest deductions. If one assumes an interest rate of 10 per cent for the sake of the argument, depending on the period over which the loan is taken, and interest free payments of \$250,000, you would have to have borrowings of principal of millions of dollars—and these people will be exempt from these thin capitalisation rules. Further, the safe harbour capital requirements for financial institutions will be reduced from seven to four per cent. Also, certain large low-risk assets, such as leases, will be excluded from the definition for financial institutions.

The cost of the measures that I have outlined is significant. It is standing at almost a quarter of a billion dollars that was not covered by other measures in the business tax package. What we effectively have is additional pressure on the budget as a consequence of these changes, and these changes were made as a result of pressure from the top end of town. This is one of a number of

weakened measures that have eroded the revenue neutrality of the business tax package.

This \$245 million backflip is the latest instalment in a spectacular array of gymnastics by the Treasurer, Mr Costello—and the Prime Minister, Mr Howard, for that matter—this year. This level of backflip is starting to equate to the famous—now infamous—commitment, promise, made by the Prime Minister never, ever to introduce a GST. The most costly of the Liberal government's backflips was the withdrawal of the entity taxation legislation at a cost of \$1.2 billion over the next four years. These are two examples of the weak approach by the current government to business tax reform that have cost the Australian public almost \$1½ billion. That is \$1½ billion off the bottom line of the budget that cannot be spent on schools, hospitals and aged care and cannot, for that matter, be spent on the proposed income tax cuts that until recently they were so fond of talking about. I think they were always phantom tax cuts but they have now been ruled out, according to the news media this afternoon.

As I said earlier, Labor adopted a constructive and cooperative approach to business tax reform. We supported reductions in company and capital gains tax, but we did this on the explicit condition that other measures would be introduced to offset the reduction in revenue. In other words, the overall package would be revenue neutral. This is an agreement in writing that was presented by the Treasurer, Mr Costello, to the caucus living standards and employment committee, the Labor Party caucus committee that has jurisdiction over economic matters.

Labor supported building a fairer, more efficient and competitively neutral business tax system. This meant lower rates of business tax, but it also meant eliminating the loopholes that are available to some businesses but not to others, loopholes that are neither fair nor efficient. The letter that I referred to earlier—to the shadow Treasurer, Mr Crean, sent by the Treasurer, Mr Costello—committed the government to 'introduce all the business tax changes announced

in full'. That is not what we have got. This is just another example of a very tricky government.

We have had announced tax changes and a pledge to introduce them in full and, when the time comes to bite the bullet and introduce them, either they are in watered down form or we do not have any legislation at all, which is leaving a gaping hole in the bottom line of the budget of close to \$1.5 billion. Let us not forget: if we had this \$1.5 billion, then the special tax that we are going to have introduced—and passed tomorrow, as I understand—on airline tickets, to cover the debacle of the Ansett collapse and the entitlements of employees, would not be necessary. If we had this \$1.5 billion, we would be able to meet our commitments in the defence areas that have recently had to be upgraded. These are just some examples of the difficulties the government is creating for the rest of the community by this backdown at a cost of \$1.5 billion.

Recently we have had examples of a number of senators opposite bemoaning the fact that Labor did not join Mr Howard and Mr Costello on their great tax adventure and support the GST. There are very many reasons that we have debated on many occasions why Labor vigorously opposed the GST. That is of course before and after that shady deal to get it through between the now banished leader of the Democrats and what should be and hopefully will be a banished government. We opposed the GST because it was unfair to families, it would cause significant problems for small business and it would damage the economy.

Senator Cherry interjecting—

Senator SHERRY—I note Senator Cherry has just interjected. It is true he was not a senator in this place who voted for the package—

Senator West—But what was his role?

Senator SHERRY—Senator West has drawn my attention to the critical role that Senator Cherry played as the supreme architect, the supreme designer, of the GST package that the Democrats ended up supporting, and we obviously do not forget that.

Senator Sandy Macdonald—What are you going to do about it?

Senator SHERRY—We will be announcing our roll-back; we are very proud of it. We will be announcing our roll-back when we know the bottom line of the budget. We have already commenced to announce it. We will be rolling back the GST on funerals, for example. This deceitful government has passed 1,800 amendments to the GST since 1 July last year. We have had massive roll-back by this government on beer tax and petrol tax. We have had a roll-back on charities, priests, swimming lessons and caravan parks—you name it. This government has delivered at least part of the roll-back that should have occurred. We will name our roll-back and detail it in the coming weeks, and we have already commenced to do that. Indeed, I note that the head of the funeral parlours association who is on the Liberal Senate ticket in Tasmania has come out endorsing our roll-back, so we have endorsement from the Liberal Party for the first public announcement of our roll-back on the GST.

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

TAXATION LAWS AMENDMENT BILL (No. 6) 2001

Debate resumed.

Senator COOK (Western Australia—Deputy Leader of the Opposition in the Senate) (8.37 p.m.)—The Taxation Laws Amendment Bill (No. 6) 2001 is an omnibus bill that amends various sections of the Income Tax Assessment Act. This bill, in particular, contains amendments to the petrol resource rent tax—sale of gas; the petrol resource rent tax five-year rule; income tax exemption for local government businesses; superannuation fund residence requirements; and tax relief for shareholders in listed investment companies. The bill also contains the HIH rescue package and, in chapter 7, contains amendments for personal services income as a result of what the government has announced it will do for contractors or those in a contractual position.

Before I speak to the bill, I indicate that, with respect to the petroleum resource rent tax section of the bill, in schedule 1, part 1,

at the end of section 24, there are some extra clauses to be added. I foreshadow that at the committee stage we will be moving an amendment to delete that section. However—and this is why I raise it at the second reading stage—that section of the bill requires us, as a parliament, to endorse changes that are to be ‘worked out in accordance with the regulations’. It is my understanding, in consultations with industry, that the regulations are not yet available and that consultations between the industry players and the government have not been completed so that the regulations are available.

I indicate up-front now for the advantage of the government in dealing expeditiously with this matter that what would deter me from moving my amendment to delete would be an undertaking by the government that it would not action this section of the legislation until such time as it had completed the talks with the industry participants and stakeholders on the regulations and reached agreement with them and signified that reaching of agreement by lodging a statement or letters from them indicating that they agreed. That is the proposal to which I draw the government’s attention. My understanding of how progress is being made is that this is not an onerous issue. The expectation is that it could be swiftly brought to a conclusion. On my understanding, there are no thorny questions that have to be addressed that cannot be resolved without reasonable discussions. That is my advice. As I say, I will get a chance—probably tomorrow—to debate that. I also move an amendment to the motion that the bill be read a second time in the following terms:

At the end of the motion, add:

“but the Senate calls on the Government to use the opportunity provided by this bill to amend the New Tax System legislation to:

- (a) remove the goods and services tax (GST) from the price of women’s sanitary products;
- (b) remove the GST from funeral expenses;
- (c) remove the GST from fees paid by long-term caravan park and boarding house residents;

- (d) compensate charities for the extra burden imposed by the GST; and
- (e) simplify the GST for small businesses”.

The opposition will be supporting this legislation, but we believe that the appropriate step is for the chamber to attach to the second reading the motion I have just moved. It will enable the roll-back of the GST, which Senator Sherry has just referred to and which the government has partly undertaken, to be continued and to be continued in areas that the Australian Labor Party regard as important.

I will spend a bit of time talking about that part of my amendment which goes to removing the GST from funeral expenses. Recently the Labor Party received a submission from the Australian Funeral Directors Association which indicated, among other things, that in their role as the industry’s peak body they had recently conducted a 12-month review of the GST regime in order to assess its impact on their members and clients. Based on this review, the association submitted that the GST has had a detrimental impact on funeral directors and their clients and, therefore, they sought the removal of the GST on funerals and related services on a number of grounds. Their submission noted that the GST was introduced on 1 July 2000, with certain transitional provisions concerning the funeral industry which were effective from 1 December 1999.

Since the introduction of the GST, the association, their members and allied industries have fielded numerous concerns and complaints from their respective clients regarding the impact of the GST. The common theme of this feedback is that the GST is perceived by consumers to be akin to the reintroduction of a death duty. It is said that in life nothing is certain but death and taxes. In the case of the GST, this government has managed to ensure that death goes with taxes. The association says it is clear, from their review, that Australian people resent the fact that someone who has worked hard and paid taxes throughout their life is also taxed upon their death via the GST imposed on funerals and related services. These messages have been conveyed directly to me over the last few

weeks in the course of the ALP's GST inquiry. The Australian people perceive that the GST unfairly taxes the aged, when they are the population demographic least able to afford additional tax. The paper included some statistics concerning older people's income and life expectancy which indicate why the community would be reasonably entitled to hold those views. Essentially, people see GST on funerals and related services as the ultimate insult.

It has been widely commented on in the media, and reflected in submissions made to the Labor Party's GST inquiry, that the small business sector has been particularly hurt by GST compliance costs and the time consuming and cumbersome business activity statement system. Like other industries that are predominantly for small business, family owned and operated, the Australian funeral industry has been very much affected by these issues. In addition to the general resentment of the GST in the community, consumer anxiety and anger are being expressed to the funeral provider. This often places funeral directors and association members in the very difficult position of explaining the workings of the GST to elderly and anxious consumers who are already experiencing emotional difficulties in coping with the loss of a loved one. The association's submission points out that, human nature being what it is, the explanation generally comes down to a broad statement to the effect that you can blame it on the government.

The 12-month review also indicates that for many families, and particularly the elderly, funerals and related services are an unbudgeted and high ticket purchase, relative to most products and services affected by the GST, and that the additional costs brought about by the GST have caused many to rationalise the choice of products and services they would normally consider in order to honour and memorialise their loved ones. As they say in their submission, it is tragic that something as sacred as a funeral ritual—which, after all, is the oldest of humanity's rituals—is being impinged upon in this way by government policy.

A Beazley Labor government will abolish the GST on funerals. Services provided by

funeral directors which go towards a funeral service will be made GST free. This includes, for example, the funeral notice, venue hiring, securing a grave or memorial plaque, the celebrant, coffins, wreaths and floral tributes. Labor will also refund the GST already paid on prepaid funerals, where the service has not been delivered by the time the GST is removed from funerals. This is another instalment of Labor's plan to take the GST off some essential goods and services, to ease the pressure on Australian families.

Imposing a GST on funeral expenses is an unfair burden on Australian families and particularly on the elderly. It is the equivalent, as I have said, of a death tax. It is a terrible time in any family when someone loses a life partner, and it is particularly tough on older Australians. The last thing they need is to be slugged with a tax on top of that. People bear it in the same way in which they have to bear their grief, but it is a burden that they should not have to bear. Under a Labor government, they will not have to bear that burden: Labor will get rid of John Howard's death tax.

I therefore invite members on the other side to support the idea of removing the GST from funerals. Taking the GST off funerals is just one way that Labor will deliver a GST tax cut for families. It is one of a number of reforms that we have already announced in which we will remove the burden of John Howard's unfair GST from Australians who are hit hardest. We will make it fairer by taking it off funeral services. We will make it fairer by taking it off caravan park site fees. Labor will make the GST fairer by taking it off women's sanitary items. Labor will make the GST fairer by compensating charities for the cost of the GST when they help the poorest Australians. Like our other plans to remove the GST from some of life's essentials, making funerals GST free is permanent. Once the GST is taken off it will not be put back and it will not be eroded by inflation. We can make the GST fairer and simpler, but I believe only Labor is prepared to commit to doing that.

I also refer to that item of my amendment which talks about compensating charities for

the extra burden imposed on them by the GST. At the moment, you have the GST clawing back a total of \$15 million every year from emergency relief agencies like the Salvos. The clawback of funding means that 900 agencies like Anglicare, St Vincent de Paul and the Salvation Army have less to give to the growing number of people who are struggling to survive.

Mr Kim Beazley indicated in his budget reply earlier this year that we are committed to relieving the pressure on charities arising as a result of the GST. Labor will provide an additional \$45 million of emergency relief funding over three years, a 57 per cent increase, to return the amount of the GST lost as a result of the government's GST slug on frontline charitable organisations and activities. This payment will be funded by limiting the tax deduction for political donations to just \$100, instead of the Howard government's policy of a \$1,500 limit on such tax deductions. This achieves two worthwhile purposes: firstly, helping the charities and ensuring that their funds for emergency relief are not impacted on by the GST; and, secondly, keeping Australia's political processes clean, in that it does not allow people to influence the policies of political parties via tax deductible donations.

The Prime Minister has been heard to say that there is no finer organisation than the Salvation Army. If he has said that, that is a sentiment with which we very strongly agree. But that kind of observation would have more credibility if the Salvation Army were not battling under the impost of the GST and the government's breaching policies and the like. I urge all in this chamber to support the amendment. The Labor Party, as I have said, intends to support Taxation Laws Amendment Bill (No. 6) 2001.

Senator MURRAY (Western Australia) (8.51 p.m.)—The Taxation Laws Amendment Bill (No. 6) 2001 is a bit of a curdled omelette, I suppose—bits and pieces all over the place—but it seems to have seven major objectives. The first one is to change the way that petroleum resources rent tax is calculated in instances in which there is no clear market price for the transfer of fuel. A number of problems have arisen where there is

either no sale when fossil fuels are transferred between different arms of a related entity and/or the sale price is not considered to be determined at arm's length. The main problems have emerged where conversion from liquid fuel to gas is attempted. The tax is payable at the time of extraction but the end product will not be marketed until after it has been converted. At present it is up to the Commissioner of Taxation to determine a fair and reasonable value of the unfinished product—which, as those of us who have been on these inquiries know, always seems to vary with the temperature of the product. So you can never be sure just how much you are getting of what.

This bill and the accompanying regulations will stipulate a valuation methodology. Secondly, the bill amends the Petroleum Resources Rent Tax Assessment Act to allow for the date used for the assessment of eligible expenditures under the act to be when sufficient information is received for a production licence to be granted rather than from when such a licence was granted. This change is to overcome the impact of lengthening delays in the issuing of licences that the explanatory memorandum states are considered to be unavoidable.

Thirdly, the bill amends the Income Tax Assessment Act 1936 to extend income tax exemption to businesses that are owned or controlled at the local government level. Such an amendment is deemed necessary in order to facilitate the recommendation of national competition policy. Fourthly, the bill allows a self-managed superannuation fund to retain its residency status while the trustees and/or the members of the fund are temporarily out of the country.

Fifthly, there is an extension of capital gains tax concessions to shareholders in listed investment companies. The 50 per cent capital gains tax concessions announced by the government in 1999 apply only to individuals, superannuation companies and managed trusts. Companies are not eligible. This amendment would extend the discount to shareholders of listed investment companies—that is, companies listed on the Stock Exchange that hold 90 per cent or more of their assets as shares in investments in other

companies. These are sometimes known as throughput or flow-through operations. The current system means that shareholders in listed investment companies pay more capital gains tax than members of a managed trust with essentially the same investment outcome. These changes will even up the tax treatment of these two investment mechanisms and will most likely result in some substitution of the listed investment companies for managed trusts—which probably will not appeal to the managed trusts much. The cost to revenue is around \$20 million per year.

This amendment removes one distortion in the tax system but reinforces another distortion—namely, the concessional taxation of capital gains vis-a-vis earned income. That is, it improves the efficiency of an inefficient policy. At some stage, I think the next government is going to have to address the whole question of the relationship between capital and earned income and the tax rates that apply and the arbitrage between the two, unavoidably I think.

Sixthly, the bill amends the Income Tax Assessment Act 1997 to ensure that payments made from the HIIH trust are treated as though they were payments made from an insurer. That obviously makes sense since the trust is stepping in as the insurer. It also ensures that the HIIH trust fund is exempt from income tax. The listed investment issue attracted a lot of lobbying. The seventh part of the bill implements changes to the personal services income provisions. That certainly attracted a lot of lobbying and a lot of media attention. The amendments arise out of concerns about the implementation of the act. Some of these concerns were raised by the Democrats. Some of the concerns were raised by the Labor Party. Some of the concerns were raised by the coalition backbench. Industry itself seems much happier with the latest manifestation; however, we should note that more calls for exemption abound. IT contractors have their own proposed amendments, which exempt their industry, and the case for further exemptions would seem to violate the original intent of the bill.

With respect to this bill, the revenue loss is computed at only \$35 million per annum,

but we should recognise that the actual original effect of the bills, from memory, was about \$435 million a year. It was the research institute of the University of New South Wales which, in a study in this area, said that probably \$2.2 billion was being avoided. In the end those bills attacked perhaps a quarter of the highest estimates available from the researchers, and these bills lop another seven or eight per cent off the original intention. So it is a watered down version of what was originally a valiant attempt, supported by the Ralph review, to minimise the situation whereby employees were masquerading as businesses and avoiding the tax that everybody else who earns a salary has to pay. A number of these amendments on personal services income are welcome and helpful because they obviously reduce inequities, but we need to keep a careful eye on the original intent and ensure that the balance is found between ensuring that genuine contractors and genuine businesses remain taxed as contractors and businesses and people who are employees cannot masquerade as that.

Broadly speaking, according to the explanatory memorandum, the current amendments allow certain agents who satisfy specific criteria to be treated as having received their personal services income directly from the customers of their principal as a result of providing services directly to those customers. It allows all taxpayers earning personal services income, even those earning 80 per cent or more from one source, to self-assess against the results test for conducting a personal services business, which is currently further grounds for the commissioner to give a personal services business determination. This will ensure that genuine independent contractors are not affected by the measure. I must say, since the whole system rests on self-assessment, it would seem fairly obvious that you should ensure that that principle is maintained wherever possible.

The explanatory memorandum says that the amendments will allow all taxpayers earning personal services income, even those earning less than 80 per cent from each source, to apply to the commissioner for a personal services business determination based on the available grounds for a deter-

mination. In other words, they can get certainty by making an application and receiving a ruling. Lastly, there are a number of technical amendments to ensure that the personal services income rules work as intended.

My prediction is that this will continue to remain contentious legislation; it will continue to need attention. It is a difficult area of tax law to develop. Indeed, one of the early problems was that the Treasury and the Taxation Office decided not to implement the formula and the methodology spelt out by Ralph, and only time will tell whether they were right in making that decision. So far, the consequences of the original legislation and its implementation have been highly contentious and have created a great deal of political heat—quite a lot of it probably justified. It is an area that the government of the day and the tax office must keep an eye on. It is an unpopular area because, frankly, you are making people pay tax, which they have been avoiding. People who have not been paying tax who should have been paying tax still do not enjoy it when they have to pay tax.

The last comments I shall make—and I should warn the Labor whips, in case they have another senator listed to speak in this debate, that I am not going to take my full 20 minutes—refer to Labor's amendments, which have been circulated via sheet No. 2411, that are to be moved by Senator Cook. I am delighted that he has circulated those amendments. They will enliven what otherwise would have been a fairly mundane, perhaps even boring, debate. A lot of information is set out here that will occasion some interesting interaction, between the parties, on the floor.

The one item I note is the very first item and it relates to the gas area. I know that Senator Cook has conducted a Labor Party inquiry into petrol prices and energy matters and so on. I will be interested in hearing some of his observations and motivations in relation to item No. 1. Everything else that I see on that sheet of his I am pretty familiar with, but I want to hear his motivations on item No. 1. So thank you for doing that. You have turned what would have been a fairly

mundane exercise into a far more interesting one.

Senator WEST (New South Wales) (9.02 p.m.)—I rise tonight to briefly address a number of issues within Taxation Laws Amendment Bill (No. 6) 2001, particularly those that relate to the GST. I had hoped Senator Murray, on behalf of the Democrats, would have made some comment about what the Democrats were going to do in relation to the Labor Party's proposal to remove the GST from the price of women's sanitary products. If the Democrats do not support us on this particular section of the amendment, I think the leader leaves herself open to some comments about how serious she is on this issue. It is an issue that the Labor Party women members of the caucus have been pushing and working very hard on. It is also an issue that the Leader of the Democrats has indicated she has problems with and concerns about the government's actions.

Now is the time for the Democrats to be seen as actually putting their money where their mouths are, and I hope that all of them support this amendment. Menstruation for women is not an option; it is a compulsory part of being a woman. It is not as though you can avoid it, and there is a need to use certain products to remain socially acceptable when one is moving around in the general public without embarrassing oneself or anybody else. It is a bit like funerals and death. There are two things in this legislation that are not optional: death and, for women, menstruation. This government is making a very tidy profit out of 52 per cent of the population in this country—a very tidy profit, because I will bet that the cost of sanitary products has not gone down. In fact, a myth in this country for a number of years has been that tampons attracted a luxury tax. This was a myth: they attracted no sales tax. But this government has actually taxed menstruation.

I hope, as I said before, that the Democrats will actually support the Labor Party in our amendments. This is our opportunity to put to the people and to the parliament some of our roll-back policy. I have to say that I was amazed that funeral expenses attracted the GST. Funerals and death, as I have said,

are something that you cannot avoid. One thing that anybody who has worked with elderly people—worked in a counselling, nursing or caring position—knows is that, first, before doing anything else, they will make sure, through scrimping and saving, that they belong to a fund that in some way covers the cost of their funeral. Particularly the elderly people we are dealing with now grew up in the Depression and they knew the ignominy and the horror of a pauper's funeral. There is no way that those people want that.

But what has this government done? It has slapped the 10 per cent charge on. Let me tell you that you cannot get much of a funeral for under \$2,000 or \$3,000. So every time you see a death notice in the paper you can tot up that there goes another \$200 or \$300 to the government. When you see the *Sydney Morning Herald's* large column after column, you can certainly quickly add up that it is a very tidy sum that this government is taking off everybody and causing the most devastating impact on those who can least afford it. This is being done to people at a time when they are vulnerable, sad, hurting and grieving. But this government has its hands in their pockets all the way. I am very familiar with the comment that there are no pockets in a shroud and you cannot take your money with you, but I reckon that in this case, with this particular tax, the government has found a pocket in a shroud and it has its hand in that one as well. It is appalling that the government should do this.

I turn to the issue of long-term caravan park and boarding house residents. This is another group in our community who are less well off, less able to afford to live, whose income is usually totally disposed of. They do not have discretionary spending power as we do. They have to spend all they get just to survive. I know an elderly lady who is on a pension and who has been counting up how much the GST has cost her in the 12 months from July of last year to this year. It is over \$1,000 extra that it has cost her. Her pension increases certainly did not cover that amount of money. The thing about the pension increase is that much of it was a one-off. It has stopped. It is not continuing. But, let me tell

you, her increases from GST have continued and she has assiduously noted these increases down—the amount of GST that she is paying each month. It makes pretty harrowing reading. She is elderly; she is frail. To get her shopping, she has to either go by taxi down to the supermarket and come back by taxi, and there is a GST on that, or get it delivered—and now they are putting charges on the delivery, and that is a service so there is a GST on that. This is not at all fair.

We also have the issue of charities. There is GST on every contribution they are making in income. These are the organisations that this government want to give more and more of their social work to. This government have a great desire to abrogate all of their responsibility in the provision of welfare services and give it all to the charities. While they are doing that, they also have their hand in that hip pocket. This is again is an issue that people are concerned about and frustrated about.

The amendments that the opposition is moving are designed to continue the government's roll-back of the GST—1,900-plus amendments that they have made to it in roll-backs. These amendments are designed for and targeted to groups in the community who are in most need—to those groups in the community who have no option as to whether they can pay the GST or not.

I go back, as I said, to the first issue we mentioned, women's sanitary products. Let me remind people that this is an issue of great concern to women in this country. There were demonstrations out at the front of this building on behalf of women who were concerned about the issue. It is not discretionary spending. We were told that menstruation is normal, that it is something that everybody does, that things will be all right, that it is like men shaving. As is evidenced by Senator Cook, who has a beard, men have the option to shave or not to shave. Women do not have the option as to whether to menstruate or not. That has to be the big difference.

Menstruation has also been described as a normal physiological action. It is. But it is also a function where the norm has a wide variation. And many women, as they get

older, have problems with menorrhagia. This requires increased use of these products. Menorrhagia is a medical condition, but I am not sure how you would go about claiming the GST back because it is a medical condition. What is your doctor going to do? There is no way they can prescribe tampons and pads. Menorrhagia is a medical condition that often requires treatment, but people who use the protective items that are needed cannot get a GST exemption.

This amendment is worthy of support. If the Democrats do not support it, I for one will certainly be making sure that all of the women's organisations and young women's groups in this country are aware of what position they took.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (9.12 p.m.)—I am happy to make the shortest second reading debate speech in history in this chamber. On behalf of the Democrats, I should say that I do not want to give Senator West or any of her colleagues an uneasy night wondering what the Democrat response would be, in particular to the amendment concerning removal of the GST on women's sanitary products. For the record, I state yet again that I and my entire party room support that notion and principle. Of course we will be supporting the amendment. We were one of the first groups of people to raise this. Senator West has referred to me specifically, and yes, I was very keen to put on record very early my concern about the fact that sanitary products were not exempt from the tax. That is a view shared by my colleagues, and of course we will support that amendment. In lieu of jumping up at the committee stage, I put that on record.

In relation to Taxation Laws Amendment Bill (No. 6) 2001, my colleague Senator Andrew Murray has quite eloquently and sufficiently outlined the position on the bill as a whole.

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

TAXATION LAWS AMENDMENT (RESEARCH AND DEVELOPMENT) BILL 2001

Second Reading

Debate resumed from 20 August, on motion by **Senator Ian Macdonald**:

That this bill be now read a second time.

Senator O'BRIEN (Tasmania) (9.14 p.m.)—On behalf of Senator Conroy, I seek leave to incorporate the opposition's contribution to the second reading debate on the Taxation Laws Amendment (Research and Development) Bill 2001.

Leave granted.

The speech read as follows—

I would like to remind all Senators of one simple fact:

Business research and development in Australia is in serious decline.

Not only is it in decline now, but it has been in steep decline since 1996, when John Howard's newly elected Coalition Government made the extraordinary and short-sighted decision to slash public spending on research and development.

Until 1996, the measure of Australia's business R&D performance had only ever grown each year - there had not been even one single year of decline.

With every new set of statistics released by the ABS showing a continued declining trend in this area, the credibility of the Prime Minister and his cohorts diminishes by a similar degree.

Ironically, both the Prime Minister and the Minister responsible, the Minister for Industry, have hit out at criticisms levelled at their industry policy (or lack thereof) made by commentators in the lights of these statistics.

They claim that these measurements do not take into account the proposals put forward by the Government in the January Backing Australia's Ability statement.

That may be true, but let no person in this place be fooled - what these statistics do measure is the effect of those 1996 Howard policies that saw hundreds of millions of dollars of public support torn from the research sector.

With all the trumpeting and carry-on surrounding the BAA statement, and all the derision heaped on Labor's comments over these matters, the Prime

Minister should not think he has carried off a triumph in trying to disguise the cause of this national diminution of our research capacity.

Both industry commentators and participants alike know the truth the Howard Government caused the problem, and is now trying to take "the credit for the single largest increase in funding in this area in Australian history" (Senator Alston - "Once again Labor ducks the issue: Kim Beazley's 'Do Nothing Nation'" August 7th 2001).

While Senator Alston's staff were preparing this release, they should have been mindful that the Coalition Government also presided over the largest cuts to public research in Australia's history, and the largest (only) decline in business research and development in recorded Australian history.

It doesn't take a genius to recognise that if you create a massive problem, then your solutions will need to be even larger, and you will face the anger of those affected.

The Howard Government has presided over an ad hoc approach to industrial policies, lacking a broad, central strategy and certainly operating without any appropriate sense of urgency.

Although several reports, including that of the Chief Scientist and the Innovation Summit Implementation Group, have recommended substantial and immediate action to stem the decline in business R&D, the government has taken the simple option of increasing expenditure on measures to promote their short-term political interests, ahead of the harder and more complex task of building long term, strategic investment in Australia's future.

This belated action (belated by several budgets) announced on January 29, is likely to do nothing more than going some way to repair the damage created by their own decisions and will do little to develop the sort of industrial momentum and commitment to innovation so clear in the economies of other nations with whom we compete.

As the President of the Business Council of Australia and others have put the matter recently: "unless we embrace ... change, others who do embrace it will eat us for breakfast."

It is now more than clear that this failure to spend more on research is stifling innovation and dragging down other parts of the economy. The Howard Government simply does not appear to understand that future industries are built on today's research.

It is not surprising that Australia is now perceived by many of our international peers as an old economy with few (and diminishing) prospects of participating fully in emerging industries built on information technology, biotechnology, nanotechnology and renewable technologies.

A carefully constructed Innovation and Industry strategy is needed if we are to reverse these trends. It will require significant effort and investment in education (particularly in science, mathematics, engineering and technology), research and research infrastructure, and industry research and development.

Perhaps more importantly, and certainly an area where the Government has failed the nation, is that fact that such a strategy also depends on an intellectual property regime which rewards innovation and a financial system with the capacity and willingness to fund longer-term, more risky investments in innovative products and processes.

These must be priority areas for policy attention, but under the Coalition, all we have seen are sustained attacks on the research sector, shrinking funding, and even attacks by the increasingly aggressive ATO on specific characteristics of new economy sectors, like the structure of contracting within the IT sector, and the treatment of web development expenses by companies.

So just what is the current state of Australian research and development?

As a result of Howard government policies, business investment in innovation and spending on R&D has fallen sharply. The decision to cut the R&D tax concession from 150% to 125% in 1996 produced an immediate decline from a peak of 0.86% of GDP in 1995-96 to just 0.64% of GDP in the most recent 2001 statistics.

Our expenditure now compares very unfavourably with other industrialised nations. At a time when other nations are investing heavily in the knowledge bases of their economies, the Howard government has effectively reduced business R&D alone by \$1 billion per year.

The current investment is 33% lower than it would have been had it continued to increase at the same rate as over the three years before the cut. A plethora of small and ad hoc grants programs are not an effective alternative and have not filled the gap.

Unless we reverse this trend and start to catch up with our competitors, Australia will miss opportunities to improve our standard of living and squander the skills and creativity of our people.

The Chief Scientist's report describes innovation as "the only way forward."

In the case of Australia's innovation environment, it is interesting to note the advancing maturation of parts of Australia's innovation sector, despite the damage caused by Coalition economic decisions.

The development of a culture of research innovation and development in Australia, manifest through the development of such institutions as Co-operative Research Centres, and the centres of research excellence found throughout our Nation, is a priority for my colleagues and I in the field of public policy.

The value to our national economy of a strong, stable, research and innovation sector is clear - and this Bill, in its present form, does little to achieve this end.

Among other reports, the recent Yellow Pages Global Entrepreneurship Monitor Report, which seeks to create international benchmarks for innovation characteristics and performance across similar economies, demonstrated that high levels of innovation activity are strongly correlated with high economic growth.

The study found that Australia ranked well in terms of some entrepreneurial businesses practices, ranking:

- Fifth in new firm participation, with 3.3 per cent of the population owning all or part of a business established since 1997.
- Fourth in overall entrepreneurial activity, an index combining start-up and new firm activity.
- Fourth in female participation in business start-ups, a factor correlated with high entrepreneurial activity.
- Third in start-up activity, with just over eight percent of the population involved in starting a business at any one time.
- Second in company-sponsored start-ups, with 1.4 percent of the population working on starting a business for their employer in which they would have an ownership stake.

However, while strong in these areas, Australia's performance against other key benchmarks is somewhat lacking. The Yellow Pages survey found that Australia's venture capital industry is under-developed compared with other similar economies.

In terms of venture capital invested as a percentage of Gross Domestic Product (GDP), Australia ranked only 15th out of 19 similar economies in terms of classic venture capital investment.

The United States' percentage of Gross Domestic Product invested was more than seven times that of Australia.

In the critical area of Information Technology, Australia ranked 16th out of 17 countries for investment in the IT industry sector. To again use America as a comparison, the United State's percentage of GDP invested in IT firms was 24 times that of Australia.

It is perhaps in this sector that the damaging succession of several poorly thought-out Coalition policies is having the most troublesome effect.

Despite the relatively recent emergence in commercial terms of consumer technologies in the ICT sector, Australia has not developed a strong, growing domestic industry in terms of the design and production of hardware, software and digital media content, relative to other countries of similar size and economic conditions. In fact, some data suggests that growth will in fact decline over the next three to four years.

Arguably, the lack of concrete public sector support for innovations and development in these critical areas has contributed most to this slide.

Perhaps more importantly, profitability growth in the sector is also predicted to decline in coming years, particularly with competition increasing from international suppliers, and the potential removal of existing import restrictions, most commonly described as parallel importation.

The Australian information industries currently account for only two per cent of the world's information sector activity, and therefore only represents a minor part of what is increasingly becoming a heavily integrated global market for so-named "new-economy" goods and services.

This is remarkable, given the trumpeting by the Prime Minister and others about our alleged

In Australia, the ABS reports the industry generates about \$50 billion across all its component sectors. The industry is highly concentrated in some areas, with the vast bulk of sectoral activity in NSW and Victoria - combined, these States represent more than 70 per cent of employment in the sector and almost three quarters of information industry revenues.

Despite the fact that Australia's combination of a well-educated, innovative workforce and a pleasant physical environment make it ideally suited to this new economic environment, surveys of Australian-based managers of multi-national ICT firms have shown them to be highly critical of Federal Government policy in attracting information industries.

R & D tax treatment

A national industry R&D, policy should meet the several key objectives. It should:

1. Increase spending R&D spending over present levels and over what would be done in the absence of incentives to at least equal the average OECD level.
2. Demonstrably improve public benefits such as employment, exports, import replacement etc.
3. Encourage linkages between public sector R&D institutions and business.
4. Facilitate high-technology based business start-ups and commercialisation of, Australian ideas.
5. Encourage international alliances, in-bound investment and R&D collaboration.
6. Address the needs of all sizes and types of companies.

Such a policy should be based on the recognition that businesses need certainty and continuity in order to plan for innovation. Simplicity of administration is also essential to keep compliance costs low and to maximise take up rates, especially for new and emerging SMEs.

This Bill does very little of that.

The Bill proposes changes to the definition of R&D that will make it a requirement that eligible activities must involve both innovation and high levels of technical risk.

This proposal has been put forward several times in recent years. Each time in the past the Government has either ended up opposing the proposal or abandoning it after consultation.

Analysis provided to AI Group suggests that the outcome of cases cited by the Government as justification for this measure would likely be unaffected by the change in definition proposed.

The proposal represents a further effort to curtail the existing scope of the concession, and should be opposed.

Treatment of Plant

The Bill purports to give effect recent Government announcements relating to the treatment of expenditure on plant for the purposes of the R&D tax concession.

These announcements were made in an effort to placate industry concern about the potential impact of a draft ATO ruling, issued in November 1999. This ruling is still yet to be finalised by the ATO.

However, the Bill also appears to include additional measures, for which there has been no previous announcement by Government and no consultation with industry.

In particular, the Bill includes provisions that would act to 'clawback' the impact of the R&D concession for expenditure on plant by requiring that companies offset any eligible deduction against profits earned as the result of the production of any saleable product that derives from the use of the plant in R&D activities.

This aspect of the Bill is complex in its effect and could only be improved with significant amendment. In essence these provisions of the Bill would seriously undermine the effect of previous Government announcements to provide pro rata access to the tax concession for plant expenditure which has a dual commercial and R&D purpose.

Incremental Tax Incentive

The Bill gives effect to the 175 per cent Premium R&D tax concession, based upon the simplified formula announced in May 2001. However, the Bill also contains additional provisions that provide for adjustment of a company's entitlement, depending on the level of variation in R&D expenditure from year to year.

If a company's level of R&D decreases by more than 20 per cent in any given year, an adjustment amount may be calculated, that may affect the subsequent level of deduction under the premium tax concession. Successive adjustment amounts can be aggregated to provide an adjustment balance.

The inclusion of an adjustment amount and adjustment balance appears to greatly complicate the administration of the incremental, or premium, R&D tax concession, particularly for smaller businesses. It is likely to limit the usefulness of this additional incentive to those companies that have access to a sophisticated level of tax advice. It is also likely to penalise some companies that experience a high level of volatility in R&D expenditure, whatever the reason.

John Howard's document *Backing Australia's Ability* was an attempt to correct the Government's own mistakes.

But the document has failed.

As Kim Beazley has rightly said, Australia faces two choices, and they are stark and they are simple: we will be either a knowledge nation or a poor nation.

In practical terms, becoming a Knowledge Nation will include:

- Strengthening our manufacturing and service industries through the application of new technologies and the reskilling of the workforce;
- Encouraging innovation in emerging fields such as biotechnology, information technology, and green technologies;
- Encouraging every school - public as well as private - to become a centre of excellence;
- Having a world-class university system that attracts the world's leading researchers and teachers;
- Establishing leading-edge telecommunications, transport and research infrastructure;
- And last, but by no means least, a Knowledge Nation will mean helping all of our citizens to improve their skills and gain a secure and well-paid job through properly-funded vocational education and lifelong-learning programs.

Labor's vision to deliver a Knowledge Nation is the right option for Australia's future.

Senator STOTT DESPOJA (South Australia—Leader of the Australian Democrats) (9.14 p.m.)—My speech in the second reading debate on the Taxation Laws Amendment (Research and Development) Bill 2001 will not be as short as the one I have just given, because I do wish to address some of the issues in this legislation, which has been of particular interest to the Australian Democrats, both before we actually viewed the legislation—that is, after the announcement was made by the government in January this year in relation to *Backing Australia's Ability*—and of course since we saw the legislation and were aware of some of its flaws and deficiencies as well as some of the positive aspects of the legislation. We have since worked with the government to reach an

agreement on aspects of this bill and to improve it in quite a valuable way.

I would like to firstly put on record that the Democrats are quite happy to acknowledge the government's preparedness to negotiate on this bill—which is an important bill—and I am certain that it will contribute to a much more healthy business research and development performance in Australia. This bill comes at a particularly crucial stage in Australia's research and development capability. Our total investment in research and development as a nation is not internationally competitive. In fact, the most recent OECD data—from 1998—shows that average gross expenditure in R&D is 2.05 per cent of GDP. In 1999-2000, Australia invested 1.43 per cent of GDP, a gap of 0.62 per cent or \$3.9 billion. When you look at it in a monetary sense, it is actually a lot of money.

Since the imposition of changes to definitions and the lowering of the rate of the tax concession from 150 per cent to 125 per cent in 1996 under this government, we have actually seen an obvious decline in business expenditure in research and development. Business expenditure in R&D has declined each year in real terms and also as a percentage of GDP—that is, the current policy settings for business research and development cannot be described as successful. I am aware of the government's rhetoric in wanting to foster an innovative culture, and obviously a key component of that is ensuring that there are incentives for business and industry to invest in research and development. Currently, the climate does not favour that kind of investment.

This bill does implement some of the changes to the R&D tax concession foreshadowed by the government in the innovation statement from January, *Backing Australia's Ability*—which, in turn, was a partial response to the Chief Scientist's report *A chance to change* and the Innovation Summit Implementation Group's report *Innovation: unlocking the future*. I should point out that, while a number of the measures in *Backing Australia's Ability* are welcomed by the Democrats, we are concerned that the \$2.9 billion package merely slows down the de-

cline in gross expenditure in R&D relative to OECD averages and, moreover, is substantially backloaded, with only \$155 million committed in the first year of the four-year phase-in.

The Democrats support implementation of the two main measures contained in the bill: a tax rebate offset for SMEs and the 175 per cent 'premium' concession. However, there are a number of major definitional, compliance and timing issues that are of great concern to the Democrats—and, I should add for the record, to industry generally. We have certainly met with a number of key industry organisations—lobby groups, advocacy groups—and they have put on record their concerns not only to us but also to the government. I suspect that is why we have managed to reach some of the agreements that we have on this bill. We have no doubt that, in its current form, the bill is likely to further reduce national R&D effort, not increase it—that is, without the agreements struck by the Democrats and by the government, the bill, in its original form, would have actually had a deleterious impact on investment in research and development in this country.

It is telling that at the hearings organisations like Deloitte Touche Tohmatsu, PricewaterhouseCoopers, the Australian Taxation Institute and Business Strategies International were quite explicit in their verbal submissions to the inquiry and in their responses to questions from senators, particularly from the Democrats. When they were asked explicitly whether the bill should be passed or defeated by the Senate if the government would not accept any amendments, they were quite keen that it should be opposed if that were the case. While all acknowledged the benefits of the two main measures in the bill, they argued that the compliance impediments and the narrower definition mean that the package, in aggregate, will be a disincentive for increased business investment in R&D and therefore should be defeated in its current form. So even if the government was not at first willing to listen to the Democrats' concerns, certainly the response from those key industries and companies have made it imperative that they respond and accept some of the

amendments proposed by the Australian Democrats.

The Democrats have taken a leading role in the debate over the changes to the concession, and we are acknowledged by industry for having done so. That is because we, too, are committed to the notion of an innovation culture. We believe that education underpins the very heart of that creative and skilled culture that we require. We are very strong supporters of an investment in our human capital, particularly the notion that education and money for education are investments, not costs. With those views, we were keen to ensure that Backing Australia's Ability was implemented in a way that would be positive, particularly for R&D and particularly for business R&D.

I am actually quite delighted to say that the government has listened to our concerns. As many members would be aware, the government and the Democrats will be moving a raft of amendments that will significantly improve the bill when it comes to the committee stage. In brief, these changes are: firstly, no change to the current definition of R&D, including proposed extension of the exclusions list; secondly, removing trading stock and feedstock provisions from the R&D plant changes; and, thirdly, including R&D Start history if no tax registration history for access to the premium. I want to emphasise that this is a retrospective measure. Companies that are already part of the R&D Start program will be able to count that towards their three-year eligibility. Fourthly, we do support the government's intention to require that companies provide an R&D plan and agree that this will help companies take a strategic approach to R&D. However, we are concerned that the guidelines might be a little too prescriptive. Therefore, we will include an amendment to explicitly say that the guidelines are to be mindful of the size and the complexity of projects so as to ensure that small firms do not have heavy compliance burdens.

Fifthly, we support the introduction of the tax rebate as a genuinely helpful incentive, but we are concerned that the \$1 million threshold may result in perverse outcomes by being a disincentive for companies who

would otherwise spend \$1.1 million, say, on R&D. Accordingly, we will be amending the Industry Research and Development Act 1986 to require that the Industry Research and Development Board annual report include a report on firms' access to the rebate. Sixthly, all measures are to come into effect from 1 July 2001, except plans, which will come into effect on 1 July 2002. This means that companies can take advantage of the positive incentives in the bill immediately. We are very keen to see that happen. It also allows sufficient time for the Industry Research and Development Board to develop appropriate guidelines, in consultation with industry, and for companies to develop their plans in a timely and considered fashion.

There are still items in here and matters contained in the legislation that we would have preferred to change. However, while not optimal, the agreement does substantially improve the bill, and I know it will be welcomed by industry and the R&D community broadly as a positive step forward. Again, I acknowledge the government's preparedness to listen to the concerns outlined by Democrats and industry groups and research and development groups. I am glad that our amendments have been accepted, and I support the amendments that will be coming to us in the committee stage. My office has been in contact with other parties in the chamber to outline the measures that we sought to implement and to provide briefings if wanted. Certainly Senator Harradine's office has been in touch, as has the office of Senator Len Harris from One Nation. We offered the Greens the same information, but they have not taken us up on the offer. I am sure that that is because they are very supportive of the changes that have been made. In closing, I am confident that this legislation and the changes contained therein will contribute to a more healthy business climate and to investment in research and development.

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

**JURISDICTION OF THE FEDERAL
MAGISTRATES SERVICE
LEGISLATION AMENDMENT
BILL 2001**

**CUSTOMS TARIFF AMENDMENT
BILL (No. 4) 2001**

**OLYMPIC INSIGNIA PROTECTION
AMENDMENT BILL 2001**

**MOTOR VEHICLE STANDARDS
AMENDMENT BILL 2001**

**TRANSPORT AND REGIONAL
SERVICES LEGISLATION
AMENDMENT (APPLICATION OF
CRIMINAL CODE) BILL 2001**

**ABOLITION OF COMPULSORY AGE
RETIREMENT (STATUTORY
OFFICEHOLDERS) BILL 2001**

CYBERCRIME BILL 2001

**TAXATION LAWS AMENDMENT BILL
(No. 5) 2001**

First Reading

Bills received from the House of Representatives.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.25 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the *Notice Paper*. I move:

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

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.26 p.m.)—I table a revised explanatory memorandum relating to the Customs Tariff Amendment Bill (No. 4) 2001 and move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

JURISDICTION OF THE FEDERAL
MAGISTRATES SERVICE LEGISLATION
AMENDMENT BILL 2001

As members would be aware, the Federal Magistrates Service has been established under the Federal Magistrates Act 1999. The Service began hearing cases on 3 July 2000.

After little more than a year of operation, I am pleased to report that the Federal Magistrates Service is a resounding success, with many thousands of Australians benefiting from its cheaper, simpler and faster court services. I note that this success could not have been achieved without the co-operation and assistance of the Federal Court and the Family Court.

The Federal Magistrates Service was established to deal with a range of less complex federal disputes that were previously handled by the Federal Court or Family Court, as part of the Commonwealth Government's commitment to ensuring that all Australians have a greater range of options for resolving their legal problems as quickly and as cheaply as possible.

The Service has developed procedures that aim to be as streamlined and as user-friendly as possible, reducing delay and costs to litigants.

Much of the work of the Federal Magistrates Service is in family law but the widening jurisdiction of the Federal Court in recent years has led to an increasing number of routine matters coming before that Court. This has had the effect of diverting judicial resources from more complex areas of the law. Having the Federal Magistrates Service deal with less complex cases means a better use of judicial resources and again, less cost for litigants.

The Service currently shares jurisdiction with the Federal Court in administrative law, administrative appeals, bankruptcy, human rights and consumer protection matters.

Many migration matters are of a routine nature and would be suitable for the Service. This bill amends the Migration Act 1958 to give the Federal Magistrates Service concurrent jurisdiction with the Federal Court in migration matters. The bill also amends the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act) and the Administrative Appeals Tribunal Act 1975 (AAT Act) to remove the restrictions on the FMS hearing migration matters under the ADJR Act and hearing appeals in relation to migration matters under the AAT Act.

I believe that it is important to confer a wider general federal law jurisdiction on the Service. The proposed additional jurisdiction in migration matters will be a significant step in broadening

the Service's jurisdiction beyond family law matters, which has been the main focus of its work.

The Service is able to resolve cases in 6 months and often in less time. This quick processing of cases will be particularly beneficial in the migration jurisdiction where the workload is increasing.

There is provision in the Federal Magistrates Service legislation for matters to be transferred to the Federal Court (or Family Court where appropriate). This means that more complex matters filed in the Service can be transferred to the Federal Court. Similarly, there are provisions for transfer from the Federal Court to the Federal Magistrates Service of less complex matters within the Service's jurisdiction. The transfer arrangements have been working well for the Federal Court and the Federal Magistrates Service.

Giving jurisdiction to the Service does not add another layer or review as appeals from the Federal Magistrates Service go straight to the Full Court of the relevant court. If the Chief Justice decides it is appropriate in a particular case, a single judge can hear the appeal but that judge is exercising the appellate jurisdiction of the Federal Court.

In conclusion, I note that the Chief Justice of the High Court, the Hon Murray Gleeson, recently acknowledged that the Federal Magistrates Service would have an increasingly important role in the Commonwealth legal system. Given the outstanding success of the Federal Magistrates Service in its first year of operation I am confident that the Chief Justice's prediction will be fulfilled.

CUSTOMS TARIFF AMENDMENT BILL (No.
4) 2001

Customs Tariff Amendment Bill (No. 4) contains amendments to the Customs Tariff Act 1995 (the Customs Tariff).

Most of these amendments have been contained in Customs Tariff Proposals and now require incorporation in the Customs Tariff. I will briefly outline the major amendments in the bill.

Schedule one of the bill contains administrative amendments to reflect the cessation of the "Administrative Arrangements to the Year 2000 for the Automotive Industry", on 31 December 2000 and the commencement of the Automotive Competitiveness and Investment Scheme (ACIS) on 1 January 2001.

Schedule three of the bill creates a new item 68 in Schedule four to the Customs Tariff, relating to

the SPARTECA (TCF Provisions) Scheme. The new item will allow for certain textiles, clothing and footwear to be imported duty free from Forum Island countries covered by the South Pacific Regional Trade and Economic Co-Operation Agreement (SPARTECA).

Schedule four of the bill amends item 17 of Schedule four to the Customs Tariff. Item 17 provides concessional re-entry for imported goods that have been exported from Australia and returned in an unaltered condition. The present amendment to the item introduces a new re-import concession for goods, which, when first imported, utilised duty credit owned under the ACIS.

Schedule 4A amends item 44 of Schedule four of the Customs Tariff.

This amendment creates a new table within the item to define its coverage without the need to refer to other unrelated sections of the Customs Tariff and it will be taken to have commenced on 30 June 2001.

Schedule five of the bill creates a new item 69 in Schedule four to the Customs Tariff to provide for the duty free entry of goods imported into Australia for use in space projects.

The concession will take effect from 1 August 2001. It will only be available to goods imported for use in space projects authorised by the Minister for Industry, Science and Resources.

It will facilitate the transfer to Australia of sophisticated space-related technology and technical expertise.

It is expected to be of significant benefit to companies proposing to establish and develop in Australia operations in the high-technology, high-value added space sector.

Schedule 5A further amends the Table in item 44 to reflect tariff changes that will occur on 1 January 2002.

Schedule six of this bill commences on 1 July 2002. This Schedule creates a new item 70 in Schedule four to the Customs Tariff which combines elements of present items 43 and 52. These items permit the entry into Australia, as a single unit, of goods that, because of their nature or size, have been forwarded to Australia in different shipments. Items 43 and 52 have been amended to introduce a closure date of 30 June 2002. The new item 70 will clarify and streamline the operation of these concessions.

Schedule six of this bill also creates a new item 71 in Schedule four to the Customs Tariff which relates to the new Project By-law Scheme announced in the 2001-2002 budget.

This Schedule also revokes three current items in Schedule four to the Customs Tariff.

The new item 71 will allow goods or components not made in Australia, to be imported duty free for specific projects by specific industry sectors under the new Project By-law Scheme. The date of effect for the new item is 1 July 2002.

The policy objectives of the new item are to:

- Encourage and enhance investment in the establishment of world class operations;
- Encourage the involvement of Australian industry in supplying goods and services;
- Lower input costs for industry where there are sound reasons for doing so; and
- Facilitate Australian industry participation in domestic and international supply chains.

The new Project By-law Scheme will significantly benefit Australian industry and streamline administration processes.

Project proponents will be able to import goods that are not made in Australia, or that are technologically superior, progressively through to the commissioning of the project provided that an Australian industry participation plan is completed giving Australian industry full, fair and reasonable opportunity in supplying the project. This is also in accordance with the principles of the Australian industry participation framework recently announced by Commonwealth, State and Territory Industry Ministers.

In addition, the Project By-law Scheme will be expanded to include goods, such as pipelines and conveyors, and components, which are integral to a project. It also expands the range of industry sectors able to access the Project By-law Scheme to projects in the manufacturing and gas supply sectors as well as the current sectors of mining, resource processing, agriculture, food processing and food packaging.

The changes will boost opportunities for Australian industries by encouraging investment, growth and jobs throughout Australia, including rural and regional areas.

The amendments to items 45, 46 and 56 in Schedule Four to the Customs Tariff introduce a closure date of 31 December 2002 for the utilisation of the concessions under these items. This alteration allows for the efficient termination of the present administrative arrangements, and allows the industry sectors a reasonable period of time to import the duty free capital equipment for which it has received approval under the current Project By-law Scheme.

Items 45 and 46 of Schedule four to the Customs Tariff provide concessional entry for capital

equipment not made in Australia to be imported duty free by industries in the mining, resource processing, agriculture, food processing and food packaging sectors for use in approved projects where the total capital expenditure exceeds ten million dollars.

Item 56 of Schedule four to the Customs Tariff provides concessional entry for capital equipment which, in the opinion of the Minister for Justice and Customs, has a substantial and demonstrable performance advantage to be imported duty free by industries in the mining, resource processing, agriculture, food processing, food packaging and some manufacturing sectors for use in approved projects where the total capital expenditure exceeds ten million dollars.

Schedule seven incorporates Senegal in the list of Least Developed Countries in the Customs Tariff. This amendment will provide imports from Senegal with a five percent reduction in the General rate of duty, where applicable

The remaining amendments in the bill are of a technical and minor nature.

OLYMPIC INSIGNIA PROTECTION AMENDMENT BILL 2001

In April this year, the Prime Minister and the Minister for Sport and Tourism jointly released the Government's new sports policy—Backing Australia's Sporting Ability: A More Active Australia. This policy initiative was designed to build on Australia's outstanding sporting achievements of recent years, not only on the fantastic achievements at the Olympic Games but also our world successes in cricket, rugby, netball, tennis, golf, and the list goes on.

This policy builds on the Olympic Athlete Program which produced outstanding results at the Sydney 2000 Olympics with a record haul of 58 medals, including 16 gold. However it goes beyond Olympic sports to assist our best athletes to reach new peaks of excellence by increased support for the athletes, their coaches and other support staff who are involved with competition at the elite level.

The policy also increases the pool of talent from which our future world champions will emerge by encouraging greater participation at the grass roots level. Through the Australian Sports Commission we will be building Active Australia Partnerships with Australian sport and the business sector to deliver new local sporting opportunities including competitions and events. That means more football, netball, tennis, cricket, swimming, basketball and many other sports to many thousands more Australian families.

The result is a sports policy for all Australians, one that supports our elite athletes and also encourages greater community participation in sport, including in rural and regional areas, and especially by young people.

The Government has backed this policy with the necessary funding—we will be injecting an additional \$161.6 million into Australian sport over the next 4 years, bringing our total commitment to sport to a record level of close to \$550 million.

A key aspect of the Government's sports policy is providing incentives for sporting organisations to deliver sporting excellence through self-sustaining, innovative funding arrangements. This is where this bill fits in.

This bill amends the Olympic Insignia Protection Act 1987 to grant the Australian Olympic Committee ongoing protection for the expressions 'Olympic', 'Olympic Games' and 'Olympiad' against unauthorised commercial use for promotional or advertising purposes. These are referred to in this bill as the 'protected Olympic expressions'.

The overall objective of this bill is to help the Australian Olympic Committee—the AOC—generate greater levels of sponsorship revenue from the private sector to fund its Olympic programs by licensing the protected Olympic expressions for commercial use in advertising and promotions. This adds to the support of sport given by the Government and allows the Government funding at the elite level to go beyond Olympic sports.

This bill supports the AOC's special capacity to raise revenue to support the Australian Olympic team's efforts in all future Olympic events. It will help Australia's athletes and support organisations to build on the extraordinary success of the Sydney Games.

The AOC is a unique organisation. It is the body recognised by the International Olympic Committee—the IOC—as the Australian National Olympic Committee. As such, the AOC is responsible for the protection and development of the Olympic Movement in this country, as well as the promotion of its goals and principles. Importantly, as Australia's National Olympic Committee, the AOC has sole responsibility for selecting the members of Australian Olympic teams under the IOC Olympic Charter.

The AOC's fundraising efforts complement the Government's own funding of sport, particularly in the area of elite sport, anti-doping programs and, of course, Olympics participation. This is illustrated by the significant financial support the AOC provides to National Sporting Organisa-

tions. Without the AOC's efforts in this regard it is likely that the call on Government funds to support elite sporting objectives, especially for Olympic Games participation, would be significantly greater than is currently the case.

This bill will further improve the AOC's fundraising capabilities by providing greater protection against ambush marketing—that dubious marketing practice of associating a business with a high profile event without paying the fee to become an official sponsor. The value of the sponsorship and licensing arrangements the AOC is able to secure is directly influenced by the level of certainty it can provide to prospective sponsors regarding the exclusive nature of these arrangements. This bill will increase the level of certainty by making it easier for the AOC to take action against unauthorised commercial use of the words 'Olympic', 'Olympic Games' and 'Olympiad'.

The Government is mindful, however, of the need to protect the interests of third parties. We recognise that the words form a part of our common language and this bill is not intended to prevent their general use. Also included in the legislation are specific provisions clarifying that use of the Olympic expressions for the purposes of criticism, review and the provision of information will not contravene the amended Olympic Insignia Protection Act.

Moreover, it is clear that in today's sophisticated marketing environment there will be many, many avenues that will enable people to refer to their Olympic involvement in advertising or promotion without actually having to use a protected Olympic expression. For example, references to the 'Sydney Games', the 'Beijing Games', and the '2000 Games' all clearly refer to the Olympic Games and are not restricted by this legislation. I would also like to stress that the word 'Olympian' is not protected by this legislation and that this is specifically mentioned in the bill.

The bill protects the interests of Olympians in that it provides a specific exemption enabling them, or their commercial sponsors, to use the protected Olympic expressions to make factual statements about their Olympic achievements in any promotion or advertising context, provided the statement does not suggest an ongoing sponsorship of the Olympic movement.

This exemption is of particular importance, because the Government recognises the financial sacrifices that many athletes and teams have to make to compete at an elite level in their sport. Their ability to gain sponsorship and to market themselves as 'Olympic gold medallists' or 'Olympic athletes' gives some financial recogni-

tion and reward for the years of hard work. Not all athletes and teams will have the sponsorship or marketing opportunities of someone like Ian Thorpe, for example, and it is these lower profile athletes, in particular, that are most likely to need to use the expressions for sponsorship or marketing purposes.

The bill also provides a similar exemption for National Sporting Organisations, the Australian Sports Commission, which includes the Australian Institute of Sport, and State and Territory sports institutes and academies. These organisations play a pivotal role in the training and development of our elite athletes and the Government is keen to ensure that they are able to continue their legitimate fundraising and promotional activities. I am pleased to note that the AOC has already concluded a memorandum of understanding with the Sports Commission regarding the use of the protected Olympic expressions to ensure that both the objectives of the Sports Commission and the AOC are maximised.

A further exemption in the bill relates to coaches, physiotherapists and other non-athlete members of an Olympic Team who have assisted an Olympian at an Olympic event. These parties will be able to use the protected Olympic expressions in factual statements about that assistance in the promotion of their own similar services.

It must be noted that this bill is not intended to affect business opportunities that may arise as a result of an Olympic involvement. Staging the 2000 Olympic Games in Australia has created significant opportunities for Australian business and the Government is committed to assisting industry in capitalising on these opportunities.

Those who have supplied goods or services to a past Olympic Games will be able to use the protected Olympic expressions in factual statements about that supply in promotions of their similar goods or services. This exemption complements other Government initiatives designed to make the most of the positive publicity from the Sydney Games. Of particular note in this regard is Austrade's recently announced Reflection Sydney 2000 Games program, which will showcase the companies that helped to stage the Sydney Games.

This is particularly important in the context of the Government's Game Plan 2006 - Sport and Leisure Industry Strategic National Plan. A key objective of Game Plan is an export target of \$1.3 billion by 2006. Sport and leisure companies will be able to market their intention to bid for supply of their world class goods and services to future Olympic Games—as long as it is clear there is no ongoing sponsorship association with the Olym-

pic movement. I would add that this type of prospective use of the Olympic expressions would also be available to athletes, teams and support organisations.

I would emphasise, however, that the legislation will not override any commercial arrangements or contracts relating to the use of the protected Olympic expressions.

As well as the obvious tourism boost, the Olympics have provided other benefits. For example, the impressive Sydney International Regatta Centre will be a lasting legacy for the people of Western Sydney. It regularly attracts over 40,000 visitors per month and was the site of the recent 2001 Australian Masters Rowing Championships.

A specific exemption will not, however, apply to venues that have hosted an official Olympic event. Generally the purpose of this legislation is not to prevent the use of the protected Olympic expressions in place names or addresses in promotions of commercial activity—as long as that use does not suggest an association with the Olympic movement. This means that Olympic venues can market themselves as they seek to utilise their world class facilities in hosting other events in the post-Olympics environment. However, if venue managements wish to use a protected Olympic expression to suggest an Olympic involvement then, quite rightly, they would need to reach an agreement with the AOC.

Certain existing legal rights to use the protected Olympic expressions will continue unaffected—this means, for example, that a business name which includes the word ‘Olympic’ can still trade under that name, unaffected by this bill.

However, if a business name or a trade mark or design includes a protected Olympic expression and has a registration date from today onwards, or a company name incorporating a protected Olympic expression was used today or after today in relation to a business, the owner of the registration or company name will need to ensure that its use does not contravene the provisions of this bill. That is, it must not be used in an advertising or promotion type activity in a manner that would suggest a sponsorship association with the Olympic movement without the AOC’s authorisation.

To ensure the smooth implementation of this legislation over the long term, the Government intends to undertake an evaluation of its effectiveness immediately after the 2004 Olympic Games. The review will identify any fine-tuning necessary to ensure that the legislation meets the Government’s objectives without impacting on the legitimate rights of third parties.

The attainment of sporting excellence is a national priority. This is well illustrated by the Australian public’s response to the Sydney Olympic Games. The Government is committed to a sports policy that continues to deliver the kind of world class sporting performances that we are becoming used to seeing from our elite athletes. The AOC, because of its special association with the preparation of Olympic athletes and the administration of Olympic-related competition in this country, is a major contributor to the achievements of Australian sportsmen and women. The measures included in this bill will help ensure that Australia’s current high status as an Olympic competitor is enhanced and that Australia’s position as a supporter of the world Olympic movement is also protected and extended.

This bill strikes the right balance between ensuring the AOC is able to support Australia’s Olympic efforts and enabling our Olympic athletes, teams, support organisations and other sporting interests to attract valuable sponsorships to further the development of sport in Australia.

MOTOR VEHICLE STANDARDS AMENDMENT BILL 2001

The Motor Vehicle Standards Amendment Bill 2001 amends the legislative framework to enable new arrangements to apply for the importation and supply to the market in Australia of low volume road motor vehicles, including motor cycles. These vehicles are known as specialist and enthusiast vehicles. The bill is the result of the Government’s decisions announced on 8 May 2000 following a Review of the Motor Vehicle Standards Act 1989. The decisions aim to balance the Government’s commitment to the local automotive manufacturing industry, full volume importers, franchised motor vehicle dealers, importers and converters of used vehicles, and consumers of genuine specialist and enthusiast vehicles. The decisions include revised eligibility criteria for vehicles being imported under the Low Volume Scheme and the establishment of a registered workshop arrangement for the importation and supply of used vehicles to the market. The registered workshop arrangement will operate on a cost recovery basis. It will improve consumer protection for purchasers of used imported vehicles.

To allow existing approval holders to prepare for the introduction of the new arrangements a generous transition period has been agreed. The bill makes provision for regulations to enable termination of approvals issued under the existing approval arrangements. Vehicles which remain

eligible, may continue to be supplied to the market either under the existing Low Volume Scheme approvals or under the Registered Automotive Workshop Scheme until a full changeover in May 2003.

Specialist and enthusiast vehicles are currently imported under the Low Volume Scheme in limited numbers. This scheme makes vehicles available to enthusiasts that may otherwise not be marketed due to the need to amortise over a small number of vehicles the high costs associated with normal certification requirements, for which vehicle manufacturers must demonstrate full compliance with the Australian Design Rules. Under the Low Volume Scheme the cost of certification is reduced by offering a concession against some Australian Design Rules by allowing alternative procedures to those specified to demonstrate compliance. Because of this concession, the scheme does not offer the same high level of assurance of compliance as does the Full Volume Scheme used for vehicles supplied in unlimited numbers. Vehicles imported under the Low Volume Scheme are also exempt from the \$12,000 special duty which is payable on used passenger motor vehicles imported in full volume.

The Government decided that, from 8 May 2000, new applications for approval to import a used vehicle under the Low Volume Scheme would be assessed against tightened and more clearly defined eligibility criteria to ensure that eligible vehicles cater for genuine specialist and enthusiast interests. The new eligibility criteria are currently being applied administratively. The bill allows regulations to be made that provide for the Minister to keep a register of specialist and enthusiast vehicles, set specific criteria and other procedures.

The changes made by this bill are intended to return the Low Volume Scheme to its original intent of catering for the importation of genuine specialist and enthusiast vehicles and to prevent unchecked growth in the importation of used vehicles that are very similar to vehicles already marketed in full volume. Under the revised arrangements, vehicles with diesel engines or high-powered engines, for example turbo-charged, would not in their own right be considered a different model for the purpose of determining eligibility as a specialist and enthusiast vehicle. However, special recognition has been given to the needs of primary producers in allowing four wheel drive vehicles with open tray load areas to be eligible. To assist the viability of the new arrangements, the number of eligible passenger motor vehicles that can be supplied to the market

by individual approval holders will increase from 25 to 100 vehicles per year.

The Government has also decided to introduce a vehicle by vehicle inspection and approval regime for eligible used specialist and enthusiast vehicles involving registered workshops. This is to be known as the Registered Automotive Workshop Scheme. The Review found that the current system of approval of a vehicle of a particular make and model or 'type' was inappropriate for used vehicles. This is because the testing and inspection of a single used vehicle may not be representative of all vehicles of that model. The change will increase the level of assurance that used vehicles being supplied to the market for the first time, comply with the Australian Design Rules in place at the time the vehicle was built.

Carryover of vehicle test evidence to the Registered Automotive Workshop Scheme will be accepted where the evidence can be authenticated and the evidence is representative of vehicles currently being supplied to the market.

The bill provides that a Registered Automotive Workshop will need to meet criteria set out in regulations. The criteria will include the requirement for ISO9001 quality management system certification of the workshop, which will improve the integrity of the trade. Under the new scheme only an incorporated Registered Automotive Workshop will be able to import eligible specialist and enthusiast used vehicles, including used motorcycles. A Registered Automotive Workshop will not be able to be connected/related to another Registered Automotive Workshop. Vehicles will be plated with a used import plate, and the workshop will be required to issue consumer information for each vehicle. The information provided will ensure consumers are aware they are purchasing a used imported vehicle, and also that service and replacements parts may not be available from the recognised franchised dealer for the make of vehicle. In addition, workshops will also be responsible for vehicle recalls. This will require the workshop to identify vehicles which may have a safety defect, advertise or write to owners, and rectify the safety defect free of charge.

The Registered Automotive Workshop Scheme will be funded on a cost recovery basis. A fee will be payable on application for approval to become a Registered Automotive Workshop and a range of other fees will apply including an application to import a vehicle, fitting a used import plate, and adding a new model to the schedule. In setting the fees, particular care has been taken to cater for the operators who import and supply only a small number of specialist and enthusiast

vehicles each year. Their concerns have been addressed by applying a relatively small up-front fee and raising the remainder of the cost from a per vehicle plate fee. A new section is included in the bill to provide the Minister with the necessary powers to implement the scheme. The schedule of fees and other procedures will be set out in regulations.

**TRANSPORT AND REGIONAL SERVICES
LEGISLATION (APPLICATION OF
CRIMINAL CODE) BILL 2001**

The Transport and Regional Services Legislation Amendment (Application of Criminal Code) Bill 2001 amends certain offence provisions, in legislation within the Transport and Regional Services portfolio, to reflect the application of Chapter 2 of the Criminal Code Act 1995 (the Criminal Code) to all Commonwealth offences from 15 December 2001.

For reasons of convenience, the bill also includes proposed amendments to the Australian Antarctic Territory Act 1954 and the Heard Island and McDonald Islands Act 1953 administered by the Minister for the Environment and Heritage.

Subject to several exceptions, where the penalty attached to existing offences of strict liability is reduced in order to comply with Criminal Code policy, the bill does not affect the current operation of existing criminal offences. Rather, it seeks to ensure that the existing criminal offences are not altered following the application of the Criminal Code.

The bill provides for amendments that specify whether an offence is one of strict liability. In the absence of such an amendment, offences that were previously interpreted as strict liability, would be interpreted as not being of strict liability. In addition, the bill provides for amendments that restate any defences to an offence separately from the physical elements of the offence. This amendment is necessary to ensure that the defence is not mistakenly interpreted to be an element of the offence that must be proved by the prosecution. The bill also provides for amendments to:

1. recognise that the Criminal Code does not apply to applied State and Territory offence provisions;
2. recognise the application (in whole or in part) of the Criminal Code;
3. clarify the physical elements of an offence and the corresponding fault elements;
4. identify the evidential or legal burden in relation to a defence;
5. repeal offence provisions that are general offences in the Criminal Code;
6. ensure that the meaning of the phrase engage in conduct includes omissions; and
7. replace references to provisions in the Crimes Act 1914 with references to corresponding provisions in the Criminal Code.

The bill also exempts the Road Transport Reform (Dangerous Goods) Act 1995, the Road Transport Reform (Heavy Vehicles Registration) Act 1997, and the Road Transport Reform (Vehicles and Traffic) Act 1993 from the application of the Criminal Code. These Acts have been exempted because they were passed under a cooperative scheme relating to road transport existing between the Commonwealth and the States and Territories. As a consequence of the terms of the scheme these Acts can only be amended on the basis of a recommendation from the National Road Transport Commission (NRTC) and subsequent approval from the Australian Transport Council (ATC). The exemption is not to be permanent. The Commonwealth will refer the question of amending the legislation so that it is Criminal Code compliant to the NRTC immediately to be pursued through the workings of the ATC.

The bill does not change the existing criminal law. Rather, it ensures that the current law is maintained following application of the Criminal Code to Commonwealth legislation.

**ABOLITION OF COMPULSORY AGE
RETIREMENT (STATUTORY
OFFICEHOLDERS) BILL 2001**

The Abolition of Compulsory Age Retirement (Statutory Officeholders) Bill 2001 proposes to abolish legislative provisions in Commonwealth Acts that set compulsory retirement age limits, commonly 65 years, for statutory office holders.

If enacted, it will significantly enhance the ability of statutory appointees to continue to serve the community beyond the usual retirement age.

One of the most important challenges facing Australia in the coming years will be retaining the experience and expertise of older Australians in the workforce.

This Government places great importance upon the economic and social contribution that older

Australians can play in our community in a wide range of activities.

It is also committed to ensuring that the expertise of older Australians is not unnecessarily lost to the community.

A large part of this contribution will depend upon ensuring that older Australians are able to participate or continue to participate in the workforce.

Statutory office holders are selected on the basis of their specialist expertise or knowledge of a particular issue.

If this Bill is passed, it will mean that people above the age of 65 will be able to be considered for appointment to Commonwealth statutory positions or will be able to continue their important contribution to the Australian community past that age.

These amendments will provide greater flexibility and choice not only to the Government in selecting potential appointees but also to the office-holders themselves.

It will assist in changing attitudes about the abilities of older workers and will remove artificial and archaic boundaries between work and retirement.

The repeal of retirement age limit provisions also brings statutory office holders into line with staff in the Australian Public Service.

Following the enactment of the Public Service Act 1999, there is no longer a compulsory retirement age for public servants.

Constitutional limitations prevent the abolition of retirement age provisions for High Court judges (currently 70 years).

It is not proposed to amend the retirement age provision for judges of other federal courts.

Furthermore, the Bill does not propose to alter a range of age based restrictions relating to Australian Defence Force personnel.

These restrictions are primarily based on considerations of operational effectiveness.

The Bill will also not affect those few office holders appointed with tenure until a certain age, as to remove age limits on these office holders would, inappropriately, create positions with life tenure.

The Bill will have little, if any, financial impact.

The Bill reflects this Government's commitment to providing greater flexibility and choice to older Australians.

It is also an important recognition of the valuable role older Australians can play in serving the

Australian community through a variety of statutory positions.

CYBERCRIME BILL 2001

More than 3 million Australian households and over 1 billion people worldwide are connected to the Internet. With the exponential growth in the Internet population and in electronic commerce over the last decade, the integrity, security and reliability of computer data and electronic communication is becoming increasingly important. Cybercrime activities, including hacking, virus propagation, denial of service attacks and website vandalism, pose a significant threat to the integrity and security of computer data. Indeed, according to recent estimates, cybercrime is costing companies worldwide approximately 3 trillion dollars a year.

Updated laws are vital if authorities are to effectively detect, investigate and prosecute cybercrime activities. The proposed new computer offences and investigation powers in this bill are a significant development in the fight against these activities and will place Australia at the forefront of international efforts to address the issue of cybercrime.

Computer Offences

The Cybercrime Bill 2001 proposes the enactment of seven new computer offences. The offences are based on the recommendations of the January 2001 Model Criminal Code Damage and Computer Offences Report developed with the cooperation of the Commonwealth, States and Territories. Implementation of the Model Criminal Code offences is an important step toward achieving national consistency and remedying deficiencies in the existing laws. The new updated offences would replace the existing offences in the Crimes Act, which, although only 10 years old, are already seriously outdated.

All the proposed offences are supported by extended extra-territorial jurisdiction in recognition of the fact that computer crime is often perpetrated remotely from where it has effect. The proposed offences have been drafted in technology-neutral terms. The offences also dovetail with the terminology of the Electronic Transactions Act 1999, which has been an important vehicle for expanding electronic commerce.

The first offence in the bill targets those who access or modify computer data or impair electronic communications to or from a computer that they are not authorised to access, modify or impair and who do so with the intention of committing a serious offence punishable by 5 or more years imprisonment. The offence would attract a

maximum penalty equal to the maximum penalty for the serious offence. For example, if a person hacked into a bank computer and accessed credit card details with the intention of using them to obtain money, the penalty would be equivalent to the fraud offence the person was intending to commit (10 years imprisonment).

It would be an offence for a person to cause any unauthorised modification of data in a computer where the person is reckless as to whether that modification will impair data. A maximum penalty of 10 years imprisonment would apply. The offence covers a range of situations including a hacker who obtains unauthorised access to a computer system and impairs data and a person who circulates a disk containing a computer virus which infects a Commonwealth computer.

The bill proposes an offence of causing unauthorised impairment of electronic communications to or from a computer, carrying a maximum penalty of 10 years imprisonment. This offence is particularly designed to prohibit tactics such as 'denial of service attacks', where a web site is inundated with a large volume of unwanted messages thus crashing the computer server. The penalty for this offence recognises the importance of computer-facilitated communication and the considerable damage that can result if that communication is impaired.

The proposed offence of causing unauthorised access to or modification of restricted data held in a computer carries a maximum penalty of 2 years imprisonment. The offence relates only to unauthorised access or modification of data that is protected by a password or other security feature rather than any data. The offence will target those who hack into a password-protected computer system in order to access personal or commercial information or alter that information.

The bill proposes an offence of causing unauthorised impairment of the reliability, security or operation of any data held on a Commonwealth computer disk or credit card or other device. A maximum penalty of 2 years imprisonment would apply. This offence is particularly designed to cover impairment of data caused by actions such as passing a magnet over a credit card or cutting a computer disk in half.

Lastly, the bill proposes two offences relating to the possession and supply of data or programs that are intended for use in the commission of a computer offence. Each offence would attract a maximum penalty of 3 years imprisonment. These offences are designed to cover persons who possess or trade in programs and technology designed to hack into or damage other people's computer systems. For example, a person will

commit an offence if he or she possesses a hacking program or a disk containing a computer virus with the intention of using it to access or damage data.

Investigation Powers

The bill will enhance the criminal investigation powers in the Crimes Act 1914 and Customs Act 1901 relating to the search, seizure and copying of electronically stored data. The large amounts of data which can be stored on computer drives and disks and the complex security measures, such as encryption and passwords, which can be used to protect that information present particular problems for investigators. The proposed enhancement of search and seizure powers will assist law enforcement officers in surmounting those problems.

The proposed amendments would clarify that a search warrant can be used to access data that is accessible from, but not held on, electronic equipment at the search premises. As most business computers are networked to other desktop computers and to central storage computers, it is critical that law enforcement officers executing a search warrant are able to search not only material on computers located on the search premises but also material accessible from those computers but located elsewhere.

Computer equipment and disks would be able to be examined and processed off-site if this is significantly more practicable than processing them on-site. The proposed amendment recognises that searching computers and disks can be a difficult and time-consuming exercise because of the large amount of information they can store and the application of security measures such as encryption. A further proposed amendment would permit officers to copy all data held on a computer hard drive or data storage device where some of the data is evidential material or if there are reasonable grounds to suspect the data contains evidential material.

A magistrate would be able to order a person with knowledge of a computer system to provide such information or assistance as is necessary and reasonable to enable the officer to access, copy or print data. Such a power is contained in the draft Council of Europe Convention on Cybercrime and will assist officers in gaining access to encrypted information.

Conclusion

The high speed and broad reach of computer technology offers new means, methods and possibilities for crime. The measures contained in the Cybercrime Bill are vital to protecting the security, reliability and integrity of computer data and

electronic communications and remedying the deficiencies in existing laws. By addressing the threats posed by cybercrime activities, the bill will strengthen community confidence in the use of new technology and provide a means of ensuring that the benefits of that technology are not comprised by crime.

TAXATION LAWS AMENDMENT BILL
(No. 5) 2001

This bill makes amendments to the income tax law and fringe benefits tax law to give effect to the following measures.

Firstly, taxation treatment of religious practitioners under the new tax system will be clarified. Under the existing law, the tax treatment of religious practitioners has been unclear because the Courts have reached different conclusions about whether different religious practitioners are common law employees or not.

To remove this uncertainty, religious practitioners who are performing activities in pursuit of a vocation as a religious practitioner, and as a member of a religious institution, will not need to apply for an ABN or to register for GST for these activities. They will not be subject to withholding for failure to provide an ABN. The normal PAYG withholding arrangements that apply to employees and office holders will apply to religious practitioners.

Benefits provided to religious practitioners by a religious institution for the performance of pastoral or related duties will continue to be exempt from fringe benefits tax.

Secondly, this bill amends the income tax law and the superannuation surcharge legislation to facilitate the change in status of constitutionally protected superannuation funds that elect to become taxed superannuation funds. The amendments will ensure that members of constitutionally protected superannuation funds which have changed status are treated similarly for income tax and superannuation surcharge purposes with members who roll-over benefits from an untaxed source to a taxed source.

The third measure amends the income tax law to provide broadly comparable capital gains tax outcomes for investors in managed funds as that given to investors who choose to invest directly, when it comes to the treatment of the capital gains tax discount under the capital gains tax law. The Government is introducing this measure to remove a tax distortion in investment choices for investors, and to allow these investors to receive the full benefits of the capital gains tax discount.

The amendments include a transitional measure to ensure that the capital gains tax provisions do not adversely affect investments through a chain of trusts. The amendments apply to payments made on or after 1 July 2001, with the transitional measures applying from the commencement of the capital gains tax discount rules, 21 September 1999.

Similarly, direct investors who receive building allowance deductions will be subject to the same capital gains tax rules as beneficiaries who receive building allowance deductions via a trust.

The bill will ensure that non-profit societies and associations established to develop Australian information and communications technology resources are exempt from income tax and also qualify for a fringe benefits tax rebate.

A rebate from fringe benefits tax will also be provided to employers who are non-profit societies or associations established to develop Australian aquaculture and fishing resources.

The bill will also give deductible gift recipient status to a number of organisations. This will ensure an income tax deduction is allowed to the donor for certain gifts to the value of \$2 or more.

Full details of the measures in the bill are contained in the explanatory memorandum.

I commend the bill.

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

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

Ordered that the resumption of the debate be made an order of the day for a later hour of the day.

**MIGRATION AGENTS
REGISTRATION APPLICATION
CHARGE AMENDMENT BILL 2001
REGIONAL FOREST AGREEMENTS
BILL 2001**

First Reading

Bills received from the House of Representatives.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.29 p.m.)—I indicate to the Senate that those bills which have just been announced are being introduced together. After debate on the motion for the second reading has been adjourned, I will be moving a motion to have the bills listed separately on the *Notice Paper*. I move:

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

Question resolved in the affirmative.

Bills read a first time.

Second Reading

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.29 p.m.)—I move:

That these bills be now read a second time.

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

Leave granted.

The speeches read as follows—

MIGRATION AGENTS REGISTRATION APPLICATION CHARGE AMENDMENT BILL 2001

This bill amends the Migration Agents Registration Application Charge Act 1997 to increase the amount of the charge limit for registration applications by migration agents.

A migration agent is someone who uses or purports to use his or her knowledge or experience in migration procedure to give immigration assistance to a visa applicant.

Under the Migration Act 1958, such a person must be registered with the Migration Agents Registration Authority.

The Migration Agents Registration Application Charge Act 1997 imposes a charge on an individual who makes a registration application.

However, the amount of charge that is actually payable is set out in the Migration Agents Registration Application Charge Regulations 1998.

The regulations prescribe different charge amounts depending on whether an individual acts on a commercial or a non-commercial basis and whether the individual is applying for initial or repeat registration.

At present, some of the charges set out in the regulations are close to the maximum charge limit permitted by the act.

The new charge limit included in the bill will provide a clearer indication that the charges payable as set by the regulations are within the charge limit authorised by the act.

The amendments in the bill will not increase the charge payable – this is done by regulation.

The charges in the regulations are set at a level appropriate to provide adequate resources to the

Migration Agents Registration Authority to carry out its statutory responsibilities.

The Migration Agents Registration Authority is funded by an appropriation equivalent to the sum of registration application fees that have been collected under the charge act and regulations.

I commend the bill to the chamber.

REGIONAL FOREST AGREEMENTS BILL 2001

It is with great pleasure that I introduce The Regional Forest Agreements Bill 2001 that commits the Commonwealth unequivocally to the outcomes achieved in the Regional Forest Agreement process and provides the basis for an internationally competitive and sustainable forest and wood products industry.

For too long conflict and division characterised the so-called debate on the management, use and conservation of Australian forests. Conflict engendered an uncertain investment climate and community doubt as to whether environmental values were being adequately protected.

In 1992, the Resource Assessment Commission reported the outcome of a three-year Forest and Timber Inquiry. The Commission found an overriding national need for improved intergovernmental institutions and decision processes that would support comprehensive forward planning for forest use. This finding, and the Commission's recommendations, was the basis for the National Forest Policy Statement of 1992.

The National Forest Policy Statement provided a nationally agreed policy framework for a long-term and lasting resolution of forest industry, conservation and community interests and expectations concerning our nation's forest. It set in motion the Regional Forest Agreement (RFA) process. The statement committed the Commonwealth and all States to the ecologically sustainable management of forests and a balanced return from all forest uses.

The RFA process saw Commonwealth and State Government jointly conduct comprehensive regional assessments of the environmental, heritage, economic and social value of our forests. These then formed the basis for the negotiation of RFAs between the Commonwealth and individual State Governments.

This Government recognised the need to increase our wood resources through plantation development and took action by funding value adding projects across the entire native forest hardwood sector that will result in security for forest work-

ers and a substantial improvement in Australia's economic circumstances.

Clear evidence of this Government's commitment to the long-term future of the native forest industry is the continuation of the Commonwealth Government's Forest Industry Structural Adjustment Program (FISAP). The Government has facilitated value-adding investment in the native forest industry through targeted FISAP grants in RFA regions. Around \$70 million remains to be spent to underpin hundreds of millions of dollars of investment in the native hardwood timber industry.

Our target from the growth and extension of the pulp and paper sector under the Forest and Wood Products Action Agenda includes adequate protection for this developing sector from any unfair trading practices arising from competitor nations.

The Government has now published the discussion draft of the National Forestry Standard that will improve community confidence in forest management domestically and overseas.

Above all our policies have been consistent and not party politically motivated with good science and the practical advice of long time industry participants prevailing in our decision making process.

This stands in stark contrast to the ever-changing position of our opponents in the Labor Party. Notwithstanding their authorship of the bipartisan National Forest Policy Statement in 1992 they quickly abandoned any pretence of proceeding to the formal protection of forests and industry available through Regional Forest Agreements and by 1996 when they lost office not one RFA was signed. This task has been concluded by the Howard Government and our commitment reinforced by the introduction of this legislation.

Their State colleagues in Queensland refused to comply with the basic RFA arrangements, choosing instead their own deal which includes the legislated phase out of ALL native forest activity over 20 years. The only Government to do so. They paid large sawmillers to close resulting in massive and unnecessary job losses. Promised compensation and assistance from the Queensland Government to small sawmillers is yet to materialise, while the Howard Government has distributed funding offers in line with its original promise but without the RFA it expected. Queensland's promise of 100 extra jobs in forest management in fact materialised as 97 redundancies of existing forest department employees.

In NSW the Carr Government has constantly unilaterally legislated for over-representation of reserve areas resulting in reduced resource. Only

in the Southern Region when it became apparent I would not release Federal funding without adequate sustainable resource was a sensible outcome achieved. Now they have turned upon the private sector resource.

In Victoria, where all RFAs produced paper results guaranteeing adequate resource, the Bracks Labor Government has commenced a fear campaign to sustain a review of the resource available with threats of a 20 per cent reduction. No compensatory proposals to resource log supply from over-represented reserves appears to be being considered.

In WA, the newly elected Gallop Government has completely turned its back on the principles of the RFA signed with that State. The result is a further 60 per cent reduction in wood supply and over 400 jobs lost already with thousands more to come. That Government has also refused to pay redundancy to the employees who have lost their jobs purely as the result of a political decision.

This Government has delivered on its commitment to the forest industries and achieved balanced outcomes for the sustainable use and conservation of Australia's native forests for all Australians.

RFAs now cover 11 regions in Victoria, Tasmania, New South Wales and Western Australia. Taken together, they have produced:

- Nearly 10.4 million hectares of Comprehensive, Adequate and Representative (CAR) reserves, adding 2.9 million hectares to existing reserves or around 40 per cent.
- An increase of around 41 per cent in the area of old growth forest in reserves, to 3.4 million hectares, representing some 68 per cent of the total area of old-growth forest.
- Increased employment in the plantations industry.
- Improved resource stability (20-year certainty in resource supply) and a more secure future for some 80,000 people directly employed in the forest industry.
- Provided Commonwealth funding under the Forest Industry Structural Adjustment Program (FISAP) to assist business development and create regional employment opportunities.
- Improved prospects for further investment in domestic processing.

Let me highlight some of the new investment flowing from RFAs:

In Victoria, an estimated \$358 million of investment is directly or partially linked to the signing of two RFAs. In Tasmania, Neville Smith &

Company has spent \$1.5 million on high-tech kilns, new moulders and other equipment at its Mowbray mill. The security provided by the Eden RFA in NSW was responsible for the opening of the Blue Ridge Hardwood sawmill development on the outskirts of the NSW coastal town. We have recently received applications for FISAP support to underpin \$75 million in investment and over 180 jobs in NSW. These investments in rural areas, where there are often few other skilled job opportunities, are vital to the well being of communities.

Honourable members will recall that an earlier version of the bill was debated extensively in this place in 1999. A lot of water has flowed under the bridge since then. The number of RFAs has increased from three to ten. New environmental legislation has come into force. The Forest and Wood Products Agenda has been launched. The Forest and Wood Products Council has been established and has held two meetings. The bill I bring forward today recognises these developments.

“What is to stop future Commonwealth Governments from just walking away from these exhaustively and comprehensively negotiated Agreements?” This is certainly the question I’d be asking and it is clear that industry and timber communities are concerned about this as well.

There are three main objectives of the bill. The first is to give effect to certain obligations on the Commonwealth under the RFAs. These obligations involve ensuring that forestry operations in regions subject to RFAs are excluded from Commonwealth legislation relating to export controls, the environment and heritage.

The reason for this obligation is simply that environmental, heritage and economic values of these regions have been comprehensively assessed through the RFA process and State legislation governing sustainable forest management, environmental protection and endangered species still applies. An RFA is signed when the Commonwealth has satisfied itself that State regimes adequately address these interests. There is no need for further assessment at the Commonwealth level, nor further debate or conflict. The bill also binds the Commonwealth to the termination and compensation provisions in RFAs.

The second objective is to provide legislative commitment and support to the National Forest Policy Statement and the Forest and Wood Products Action Agenda.

The third objective of the bill is that it will legislate for the continuation of the Forest and Wood Products Council.

These objectives continue our national commitment to build an internationally competitive, sustainable forest industry based on increased value-adding and continuous improvement.

In 1999-2000, Australian imports worth \$3.8 billion consisted of mainly paper and high value products. In the same year we exported \$1.6 billion of forest and wood products, mainly wood-chips and roundwood. Yet with our extensive forest resources, Australia should be in a position to export a wide range of high value products to redress this imbalance.

Rather than consuming wood harvested from other countries where there are concerns about sustainability, we should be consuming our own wood and exporting it to the rest of the world. We should be promoting Australian wood for the global good and advertising the fact that Australia is a world leader in sustainable forest management.

The RFAs have secured for us a native forest resource base for the next 20 years, some essential structural adjustment and value adding funded in part by the Forest Industry Structural Adjustment Program (FISAP) and new processing and manufacturing investment in RFA regions. We are also getting substantial new investment in plantations. Last year Australia’s plantation base expanded by over 100,000 hectares. We are committed to achieving the 2020 vision of trebling the area of plantations to three million hectares by the year 2020.

We now have the resource base. We are building on our processing and manufacturing base. What more do we need to do to maximise sustainable and profitable activity for tree growing, value-adding and marketing of Australia’s forest and wood products?

In November 2000 the Government announced the Forest and Wood Products Action Agenda - Forest and Wood Futures. A number of actions in that agenda have been implemented:

- In July 2001, the Commonwealth increased its contributions to the Forest and Wood Products Research and Development Corporation (FWPRDC), to match industry contributions dollar for dollar.
- The Commonwealth also established the Forest and Wood Products Council. The Council has met twice to date and outcomes of this meeting are published on the Department of Agriculture, Fisheries and Forestry website.
- The Australian Forestry Standard Steering Committee has published a draft Australian Forestry Standard for comment. The AFS

will provide a basis for independent, third party certification of forest management.

Industry should now be able to benefit from the competitive advantages offered by Australia's reputation as a manager of highly sustainable forests.

The Forest and Wood Products Council is creating a sustainable, long-term and competitive forest industry, through its work progressing the Action Agenda. Committing to the continued existence of the Forest and Wood Products Council and the Action Agenda is important in order to progress the future vision of the Australian forest industry.

In summary, we have made a substantial difference to the forest industry in Australia through the RFA process, the Vision 2020 and the Forest and Wood Products Action Agenda. We now have world-class forest reserves, an increasingly secure forest industry looking to expand into value adding opportunities, an expanding plantation resource base, extensive research and development commissioned by the Forest and Wood Products Research and Development Corporation, and a Government and industry partnership driving an Action Agenda. The Australian forest industry is well placed to tackle future challenges and to begin reversing the trade imbalance in forest and wood products.

The passing of The Regional Forest Agreements bill 2001 will be a demonstration of Commonwealth support and signals our continued commitment to the future of the forest and wood products sector in Australia.

I commend the bill to the Senate.

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (9.30 p.m.)—by leave—I thank the Senate. I want to make a brief statement on the Regional Forest Agreements Bill 2001 before the automatic adjournment and the application of standing order 111. I have sought to do so because this bill is subject to the provisions of standing order 111, and the formal position adopted by the federal parliamentary Labor Party is not to apply the provisions of that standing order on this bill and to exempt this bill from that standing order.

I address this issue now because I am concerned about a press release that Senator Abetz has put out. Normally I would not deal with such a matter in this way but Senator Abetz is a minister in the government so this

has a different status than otherwise would be the case. I will be seeking leave to table it. I have shown the press release to Senator Hill—I did not indicate to him at the time that I would be seeking leave to table it but I can get you another copy. Senator Abetz has tried to make political capital out of the passage of an amendment moved earlier today to exempt 21 bills—

Senator Watson—Senator Brown put out a press release too.

Senator FAULKNER—He may have. You may be right, Senator Watson. I only know of the press release from Senator Abetz.

Senator O'Brien—They are the same.

Senator FAULKNER—That may be the case too. Senator Abetz's press release has been handed to me. Senator Brown is not a minister in the Howard government; Senator Abetz is. This press release contains a very unfair and outrageous slur about what occurred in this chamber earlier this morning where neither government nor opposition—for a reason unknown to me—called a division on a matter where, as I understand it, both government and opposition did not support an amendment to apply the provisions of standing order 111, the cut-off motion, to this bill. The FPLP's clear position is to exempt this bill from the provisions of the cut-off motion. That did not occur. I am sorry about that. It should have occurred, but it did not. I suspect there was a foul-up in this chamber by government and opposition as no-one called for a division. If there had been a division, as all senators appreciate, the amendments that stood in Senator Bartlett's name would have—

Senator Watson interjecting—

Senator FAULKNER—No, Senator Watson, there was a notice of motion in Senator Tambling's name to exempt this bill from the provisions of standing order 111. Notice was given by Senator Tambling as the duty government minister. That notice of motion was later withdrawn by Senator Ellison, as the duty minister, on behalf of the government. My concern—and I want to put this on the public record—is that it needs to be done as soon as possible. Unfortunately, an amend-

ment was carried where the clear view of the chamber—

Senator Watson—It was carried—

Senator FAULKNER—On the voices, yes, because no-one, government or opposition—

Senator Carr—No-one voted; that's the truth.

Senator FAULKNER—No-one voted but neither the government nor the opposition called a division and they should have.

Senator Watson interjecting—

Senator FAULKNER—You have got to vote against it to call the division and the government did not vote against it. There were not any voices. I am not being critical here; I am just outlining the facts and no opposition senator voted no.

Senator Watson interjecting—

Senator Carr—That is not the case.

Senator FAULKNER—That is not the case. Regardless of that, the situation is that Senator Abetz has put out a press release which clearly states—

Senator Carr—Scurrilous!

Senator FAULKNER—No, it clearly states that the Labor Party has joined with the Democrat senators to scuttle the consideration of the RFA legislation. I have made it clear in this chamber—and I repeat it—that the reason there are no plans to deal with the RFA legislation is that the government developed a package in consultation with all the parties in the chamber that did not include the RFA legislation, because the Australian Democrats, as is their right, and Senator Brown, as is his right, indicated that this was absolutely unacceptable.

The Labor Party—and I made a number of public statements about this and clear private statements in the roundtables that were convened by Senator Hill—had a different view about this legislation; a clear view. My concern here is that our position has been grievously misrepresented to try and make political advantage out of a situation I am sure Senator Hill would have to acknowledge does not bear any relation to the reality that has occurred here. I think I have been very clear on behalf of the opposition—as have

my colleagues in the various forums—in putting our position. Our position is that we supported the RFA bill; we do support the RFA bill. That is the position of the Labor caucus. I have made it categorically clear that we have not moved from that position at all. And we will not.

Everyone knows what has happened in relation to the agreements in the chamber. The Democrats and the Greens senators have said they do not want to debate this bill; if we do debate it, it blows out. I also ought to acknowledge, because everyone knows it, that the opposition has made a similar point about another bill, the Commonwealth Electoral Amendment Bill 2001. We have said we do not want that on the government's legislation list because it is not a priority and it is politically motivated. We do not think it needs to be dealt with. I have said this so many times I am sick of saying it.

But we have a situation now where a government minister deliberately, very mischievously and very seriously misrepresents the situation. I think it is incumbent in this situation on Senator Hill to address this issue. I know that Senator Hill is aware of this situation because I have spoken to Senator Hill across the table here and on my feet in the Senate. And I have made the opposition's position very clear in meetings which have been attended by senators from other political parties that have been convened—as we always do, as you know, Mr Acting Deputy President Lightfoot—in this chamber to try and sort things out. Our position is clear and it has been misrepresented. I say—through you as you are about to report to the Senate in relation to the application of the provisions of standing order 111—that Senator Hill will have to address this matter. Ordinarily, we might lift the bat on press releases that criticise the Labor Party. This is extraordinarily unfair in the circumstances. Senator Hill knows that. But this is a press release—one that misrepresents our position—put out by a government minister. This has to be addressed. That is what is not acceptable in this situation. I make those comments through you, Acting Deputy President, to the Leader of the Government in this difficult circumstance.

Senator HILL (South Australia—Minister for the Environment and Heritage) (9.42 p.m.)—by leave—The RFA agreements, as I recall them, provided for legislation to in effect enforce them in the interests of a third party. The objective was to avoid governments in effect reneging upon the agreement to the loss of, in particular, timber companies that may have invested a large sum of money pursuant to the agreements. It has been the government's wish to put that legislation in place for a very long period of time and the bills have been before—

Senator Faulkner—As you know, it was a Labor initiative.

Senator HILL—I will take you back a few steps previously, if that is what I have to do, to say that the national forest strategy or program—

Senator Faulkner—NFPS, I always used to call it for short: national forest policy statement.

Senator HILL—The national forest policy statement was an initiative of the last Labor government and it was adopted by this government when we came to office. We thought it was a sound principle. It was designed to try and settle the longstanding disputes that have existed between commercial interests and conservationists with regard to Australian native forests. It was designed to do it on the basis of setting in place comprehensive, adequate and representative reserve systems and then to allow for the balance of the forest to be harvested, provided that it was harvested on both an ecologically and economically sustainable basis. When we came to office, we thought that was sound policy. Unfortunately, the Labor Party, although it had set in place the strategy, had been unable to negotiate any regional forest agreement.

Senator Faulkner—That is not right.

Senator HILL—There were no regional forest agreements completed at the time the Labor Party went out of office. We proceeded to seek—

Senator Faulkner—That is very unfair. It does not recognise how much progress had been made.

Senator HILL—Senator Faulkner says that, although he agrees that what I said is correct, he believes that significant progress towards agreements had been made. We proceeded to seek to reach those agreements and have been able to in most forest regions in Australia. The Tasmanian agreement—I am not sure if they all do but the Tasmanian one does—provides for a legislative enforcement provision, as I said some time ago. This government has sought to have such a legislative provision passed and the bill was in this chamber some years ago and it did not receive support of the Australian—

Senator Faulkner—But this one just came in now.

Senator HILL—No, I am giving you the context.

Senator Faulkner—I do not need a history lesson.

Senator HILL—A moment ago, you invited me to go back even further.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Perhaps I can invite you, Senator Hill, to direct your comments to the chair.

Senator HILL—I am trying to put it in context. All I am saying is that this is not a new bill. There have been some amendments passed as late as today, as I understand it, in the House of Representatives, so they are new. But the bill has been around a long time and it failed in the Senate on previous occasions because the Labor Party wished to exempt at least one state from it. From memory, it was Western Australia.

Moving to the present, the government has sought to amend the bill to bring it up to date. There have been some developments, which are not of any political consequence, concerning various forestry organisations and the like that needed to be incorporated within the bill. The bill has been back in the House of Representatives to have those amendments passed. The government obviously supports the bill, otherwise we would not be pursuing it. Senator Faulkner has said to me that on this occasion the Labor Party supports the bill also.

Senator Faulkner—I've said that on a number of occasions, anyway. Be honest. You know that.

Senator HILL—I am being honest. I do not know whether the Labor Party had amendments. Last time they in effect turned it into an unacceptable bill by means of amendments. I am told by Senator Faulkner that this time the Labor Party were going to support it, and I have no reason to dispute that. The bill came up this morning to be exempted from the Senate cut-off. I was not in the chamber but, for some reason, it failed in that cut-off. Senator Abetz has attributed that failure to the Labor Party and drawn certain political conclusions from that. Senator Faulkner has said that that is unfair, that it was not the intention of the Labor Party to exempt the bill—

Senator Faulkner—I didn't say that.

Senator HILL—To object to the bill being exempted.

Senator Faulkner—Or the government.

Senator HILL—Nor the government.

Senator Faulkner—That is the point I am making.

Senator Bartlett—Did you all abstain or something?

Senator Faulkner—I actually think that is what happened.

The ACTING DEPUTY PRESIDENT (Senator Lightfoot)—Could the minister proceed please. He has the call.

Senator HILL—I was not here either. I accept what Senator Faulkner says. He has now clarified that matter, and I accept what he has said.

Senator Faulkner—No, I don't have to clarify. You've got to clarify Senator Abetz's press release.

Senator HILL—I have just tried to explain that Senator Abetz clearly attributed the failure of the bill to be exempted in the Senate to the Labor Party.

Senator Mackay—Incorrectly.

Senator HILL—You have told me it was incorrect.

Senator Faulkner—He could have called a division.

Senator HILL—He believed that it was done for the purpose of avoiding the legislation.

Senator Mackay—So he was wrong.

Senator HILL—Senator Faulkner has told me that that was not the case.

The ACTING DEPUTY PRESIDENT—Senator Mackay, you will have your turn if you wish.

Senator HILL—Of course, Senator Faulkner, as an honourable senator, I accept as such, and I am not disputing that. The bill has not been exempted and therefore it cannot be debated in the Senate without first the passage of an exemption motion. In relation to debating the bill, it is the government's wish that the bill be debated as soon as possible. Senator Faulkner tells me that the Labor Party wishes for the bill to be debated and the Labor Party would vote for it. However, with the weight of legislation before the Senate in these last two days and the urgency of much of the legislation that is before the Senate, because this bill is strongly contested by other parties and Independents in the Senate, it was the view of the government that the other legislation should take precedence and that this bill—and, we regret to say, the very important electoral bill that was before the Senate—would therefore have to wait for the first day of the next sittings of the Senate. These are difficult decisions that have to be made when there is a large volume of work before the Senate in the dying stages. That is what everybody is saying. I am of course assuming that we will be back here in three weeks time, but everybody else is saying that that is unlikely.

In these circumstances, difficult decisions have to be made. The passage of 29 other bills was obviously of great importance to the government. We accept that the government is a minority in the Senate and that cooperation is needed to get a reasonable program through. I think it is in the public interest that a reasonable program does get through the Senate. In achieving those compromises, there is disappointment to all parties. It is disappointing to us that it would seem that we are not going to get the RFA Bill passed on this occasion. Certainly we

hope that we will be re-elected to government. I can assure the Senate that, if we are, at the beginning of the next sitting of parliament the RFA Bill will be brought forward for the third time. It will be our intention to pursue it until we successfully have it enacted, as was always the intention under the regional forest agreement.

Senator WATSON (Tasmania) (9.50 p.m.)—by leave—I have listened very carefully to the comments made by the Leader of the Government in the Senate, Senator Hill and by the Leader of the Opposition in the Senate, Senator Faulkner, in relation to the statement by Senator Abetz. I wish to remind the Senate that large investments have been made in Tasmania—bold, imaginative investments—in the belief that this RFA Bill was going to proceed. The tactics that have been employed in this place have the potential to severely depress the share price of the largest timber company in Australia. That is indeed regrettable. All too often we have seen Tasmanian forestry investments and Tasmanian forestry jobs put in jeopardy because of the power play of politics. This is indeed unfortunate. There has been a long history of that, and I think that because of the events in this last day and perhaps tomorrow we will see a continuation of that episode. That does not bode well for Tasmania, where we need jobs, where we need employment and where we need security, particularly if we are going to proceed and eventually have a pulp mill.

If there is goodwill on the part of both major parties at the conclusion of these so-called important bills that there has been agreement to put through, there would still be time, by the application of the guillotine and the gag, to get this legislation through. You might say that is somewhat abhorrent, but debates have taken place and committee hearings have taken place. It is disappointing that a number of people who wanted those committee hearings, et cetera, did not even participate. So I put it to you: if there is goodwill and if you say you want this legislation, tomorrow at the end of the other business there would still be time to put it through, provided that you are prepared to

use the gag and the guillotine. I will leave it at that.

Senator BARTLETT (Queensland) (9.53 p.m.)—by leave—I thank the Senate for their indulgence. There is always a lot of work done in this place to try to get cooperation across parties—particularly at this time of a session—to get as many bills through as possible. A lot of negotiation has happened today including one negotiation I was particularly unhappy with, which was to gag debate on seven extremely important pieces of legislation that had incredibly far-reaching ramifications and—without dismissing the importance of the issues of all the other bills left—were much more significant than any of the 10 bills left on the list tonight. We were gagged on that. I was not too thrilled about that, and I was particularly not thrilled about not being given leave by the Leader of the Government in the Senate to make a final short statement in relation to those bills, which is something that I will not forget.

Senator Faulkner—With due respect, Senator, you were actually guillotined, not gagged.

Senator BARTLETT—I was guillotined retrospectively—

Senator Faulkner—I don't know about the Leader of the Government, but the migration package was guillotined.

Senator BARTLETT—It was guillotined with 35 minutes remaining on the debate, and I was refused leave by the Leader of the Government to make a brief comment—which, as I said, I will not forget. In that context and given that we have all worked hard—whips, leaders and others, across all parties—to try to ensure that we stick to the bills, do not expand our comments and incorporate our speeches, we now have this political stunt from the government to try to make a wedge against the Labor Party on the RFAs. They cannot resist it; they have to keep wedging right to the end. There is no need to draw a wedge; we have it on the record. Senator Hill says that the coalition supports the bill; Senator Faulkner says that Labor supports the bill. You both support it—that is good. I think it is important to note that.

We have one person in the gallery for this historic moment. It seems to be the first time in the history of the Senate that the Democrats have won a vote over both the major parties. When I moved an amendment, none of you supported it, but I still won. I think that is worth celebrating, I really do. I just had to note that fact. You all opposed it, but I still won. I wish the same thing applied in relation to the migration bills. I think it is a real shame that it only applies to this one. But it is nonetheless worth noting that, however it happened, the Senate did agree to not exempt the RFA Bill from the cut-off. That has occurred and it means that the bill should not come on for debate.

I noted that the government this afternoon—in a disrespectful move, probably reflecting on a vote of the Senate and the will of the Senate that the bill not be exempt from the cut-off—gave notice again to try to exempt it, despite all the work that has been done in drawing up the lists of all the bills we have left so that we can have a planned program and be disciplined and all that sort of stuff. They still slipped that one in—I presume it was because there are a few forestry interests running around the building at the moment and the government are trying to say, ‘It’s not our fault, it’s their fault. Blame the ALP, go and beat them up—please leave us alone.’ If the motion to try to exempt it comes on tomorrow—I am not suggesting that there is ill will or bad faith on the part of the government, but if they are going to bring it on and make us go through this whole thing again tomorrow and make us debate RFAs—

Senator Faulkner—They’ve withdrawn their notice of motion.

Senator BARTLETT—They have? I am glad to hear it. Well! There is a show from the government—they have withdrawn their notice of motion. They are not serious about bringing it on, either. Despite Senator Watson saying, ‘Bring it on; bring the gag, bring the chainsaw, bring the guillotines,’ the government are actually not serious about it, either. They have withdrawn their notice of motion, I understand. No-one in the chamber is dissenting on that.

Senator Faulkner—It stood in Senator Tambling’s name and it was withdrawn by Senator Ellison. It was done for political advantage.

Senator BARTLETT—Indeed. Given that the motion has been withdrawn, I guess that all of Senator Watson’s fine words—talking about the tactics employed in this place—were unnecessary. The tactics employed have meant that we are chewing up more time going through this issue again—time that is eating into these bills that were apparently so important that we should all be disciplining ourselves—but the government cannot resist trying to make wedges. I hope we get the same outcome when the bill does come on for a vote—that, despite both major parties supporting it, the Democrats will prevail. We will see if that can be made to work; perhaps we can try to arrange the same circumstances in terms of people sitting in particular places at that time, and we might get the same just outcome.

It is important to put on the record, given the other statements that have been made and the bill being introduced now, that the Democrats continue our opposition to this bill, whether it is brought on tomorrow through some evil act—I am sure that will not happen—or whether it is brought on again after the election. We would prefer that it be brought on after the election because we think that more information will have come to light by that stage which would show even more clearly how inappropriate it would be to support such legislation. With a bit of luck, by then there may be changes in the position of one or other of the larger parties. Once again, right may prevail, which would be a nice thing. It is important to put on the record the Democrats’ continued opposition to this and to put on the record the statements here tonight that both Labor and Liberal support this bill. But the Senate has voted to not exempt this bill from the cut-off, so I trust we shall not be debating this issue any more this side of the election.

Senator MACKAY (Tasmania) (9.59 p.m.)—by leave—I want to put on record, certainly on behalf of Labor senators from Tasmania, appreciation for the Leader of the Government in the Senate clarifying the

situation with regard to this legislation. We accept the government's effective apology for the press release issued by Senator Eric Abetz and also inter alia comments by Senator Paul Calvert. As for the press release of Senator Abetz, there are two things I would like to indicate.

Senator Hill—This is a bit unfair. It is an explanation.

Senator MACKAY—I listened to you in silence, thank you. The first paragraph was:

In another federal Labor backflip today, the Labor Party joined with the Democrat senators to scuttle the consideration of the RFA legislation.

Senator Paul Calvert, the Government Whip in the Senate, is also quoted as saying that he was 'outraged at Labor's support for the Democrats' proposal that betrayed thousands of Tasmanian forest workers'.

Senator West interjecting—

Senator MACKAY—Absolutely, Senator West. I want to clarify the situation that the leader of the government has indicated—that is, the government chose to ensure that this bill was not debated this side of the election and the government, having given notice via Senator Tambling, within a very short period of time—so short that the Democrats were not aware of it—withdrew it again. I would like to pass on my thanks on behalf of Tasmanian Labor senators to Senator Hill—

Senator Faulkner—Why not thanks to me?

Senator MACKAY—And to Senator Faulkner—for clarifying the situation and effectively repudiating and, I would say, potentially contradicting a very mischievous press release that was issued by Senator Abetz for clear political gain. The situation is now clarified and I appreciate that very much, and I hope that Senator Abetz will see fit at some point to come into the chamber and indicate that this ought not to have happened—otherwise the Senate would be unworkable. I offer those few comments. Hopefully, they reflect the view of my Tasmanian colleagues.

Senator Sherry—Yes, they do.

Senator MACKAY—I conclude.

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

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

**AIR PASSENGER TICKET LEVY
(IMPOSITION) BILL 2001**

**AIR PASSENGER TICKET LEVY
(COLLECTION) BILL 2001**

Second Reading

Debate resumed.

Senator MACKAY (Tasmania) (10.04 p.m.)—I rise to speak on these bills, the Air Passenger Ticket Levy (Collection) Bill 2001 and the Air Passenger Ticket Levy (Imposition) Bill 2001, which were introduced to mitigate the drastic consequences of the sudden collapse of Ansett on the entitlements of Ansett workers. The government announced that Ansett employees' entitlements for wages and annual and long service leave and pay in lieu of notice were to be met in full, except for redundancy, for which they will be funded only up to eight weeks. The government has established a special employees entitlements scheme for that purpose, and it will be funded by a \$10 levy on airline tickets.

These bills impose that levy and make arrangement for its collection on certain air passenger tickets. In the House of Representatives the government introduced a range of amendments to the original legislation that change the definitions and principles that were set out in the original bill. We welcome those amendments as they make the operation of the bill a bit clearer. The levy which is the subject of these bills will be payable on each ticket on or after 1 October 2001 for an Australian regular public transport flight that originates in Australia.

The opposition is supporting these bills but I wish to make it clear to the Senate that it is only as a last resort. The fact is that there are some aspects of these bills that Labor does not fully support, and I would like, as my colleague Mr Martin Ferguson did in the House of Representatives, to outline these reservations. Firstly, and let us not make no mistake about this, this is a new tax on the

Australian community and on jobs. The Prime Minister has broken yet again his promise about taxes by imposing another tax on the community to add to the very long list. Secondly, the tax is being imposed to pay for the incompetence of this government. Thirdly, this is a tax on tourism, the very industry that has been hit by the collapse of Ansett and the decline of international aviation following the US terrorist crisis. Fourthly, this government is prepared to raise \$500 million to pay entitlements in the event that the company becomes insolvent but has ridiculed Labor's calls to put in \$200 million to help get the airline back in the air and steadfastly refuses our calls to provide this assistance and help out.

Fifthly, we firmly believe that the government saw this coming and sat idly by and therefore failed to protect the jobs and interests of Australian workers. We will support this bill because we do not want to cause any further uncertainty for the workers employed by Ansett in the event that they lose their jobs, but I would like to make it clear that we do not think that this levy is the best solution that could have been found to fix the problems that the government allowed to develop following the collapse of Ansett.

The entitlements package proposed by the Minister for Employment, Workplace Relations and Small Business is inadequate because it does not provide 100 per cent of the entitlements due to the workers. These are entitlements that have been legitimately and legally accrued. The government has arbitrarily decided that these entitlements and conditions are not normal, that they are not legitimate and that they should not be funded under the scheme. Instead, they have come up with the term 'statutory entitlements' to put a limit on the legitimate entitlements of the Ansett workers. We have said that our scheme will cover 100 per cent of the entitlements, and the government has failed to match that. The government's inaction on the Ansett ownership issue and its failure to ensure sustainable competition has now caused another slug on family and businesses, higher air fares, fewer services to regional areas and between key regions, the collapse

of yet another icon, job cuts and the failure of small businesses.

Labor acknowledge the role of Air New Zealand's mismanagement of Ansett as a factor in this crisis, but it is blatantly obvious that it is also a consequence of negligent government. The government has announced a number of examples where small amounts, usually loans of \$3 million, are being offered to regional operators. Whilst those amounts are making some difference, we simply say that it is not enough to counter our preference to see the airline operating again. The loans to regional areas are helpful, but they will not see the full resumption of services and all the jobs returned. But it is a start, though the resumption of a proper aviation system with sustainable competition, I have to say, seems beyond the reach of this government. The Labor Party, the administrator and this government know that there are at least a couple of groups out there willing to take a broader stake in returning the airline to the skies. A modest investment by the government, as Mr Kim Beazley has already called for of \$150 million to \$200-odd million, whether in equity or in loans, easily recoverable from the final sale of KSA, is an option which could have been considered. But the government seems indifferent as to whether or not Ansett keeps operating. Basically it is interested in bandaid interim solutions, not broader and more self-sustaining ones.

This collapse has spread inconvenience, hurt and uncertainty for people and communities right across Australia. In my home state of Tasmania, interstate guest speakers and delegates have been unable to attend local conventions. Conferences have been cancelled, teams were unable to attend the veteran hockey tournament in Hobart, accommodation bookings and the tourist trade have collapsed. Tourists and residents alike have been hard-pressed to get in or out of the state as 85 per cent of passenger traffic across Bass Strait is by air. This is obviously not confined simply to Tasmania, but we do have particular problems. Clearly, there is Bass Strait—it is pretty difficult to drive across that! Similar effects have been felt across the entire country. It should be

enough, I believe, to jolt any decent government into action. It is clear that as Ansett was imploding the Howard-Anderson government was prepared to walk away from the many thousands of people caught in this crisis: Ansett employees, their families and the travelling public. The government's complicity in the destruction of this great Australian icon, and with it the potential loss of up to 16,000 direct jobs and tens of thousands of indirect jobs, will not easily be forgotten. The plain fact is that the ramifications of the Ansett collapse will be felt across Australia for many years to come. Not only has it hurt the thousands of direct employees of Ansett but it will hurt many, many others who work for companies related to Ansett in catering, security, cleaning, clothing manufacturing and many other industries.

Probably most importantly from my portfolio's perspective, it is another blow to regional Australia, a huge blow—and I see my colleagues here in the Senate will be making contributions in relation to this. Before this collapse Ansett played a key role in the operation of air services in regional Australia. Ansett formerly operated almost 100 regional routes, including servicing over 70 sites or routes exclusively. Regional Australia has just witnessed what it regards, I believe, as the final blow in the long list of failures by the coalition government to maintain basic services in regional Australia. Regional Australia needs access to these services so that distance from capital cities does not become an obstacle to prosperity, growth and economic development. Why should people be penalised because they do not live in a capital city? The collapse of Ansett lays to rest once and for all—if it had not already been lain to rest—the now infamous Nyngan agreement by the Prime Minister that there would be no more cuts to regional services, that there would be a red flashing light in every minister's office and that there would be a line drawn in the sand in relation to cuts to regional services. I recall, ironically, within two weeks of making the famous Nyngan declaration, Dr Ziggy Switkowski announced that 10,000 jobs would be cut from Telstra in regional Australia.

Now the red light is flashing again, Prime Minister! In tourism the nation is facing a crisis of a magnitude not seen since the late 1980s, with hotels and motels across the nation bracing themselves for a massive downturn. The tourism industry has already been hit by a ticket tax that the government increased from \$30 to \$38 early this year, plus, as always, the job-destroying GST, which we witnessed was a factor in the redundancies of Coles Myer and the decision of Daimaru yesterday to withdraw from Australia. Labor showed at the time that the government was already collecting about \$50 million more than it cost to pay for those services. We showed earlier this year that the government was also overcollecting aviation fuel taxes intended to subsidise regional control towers and aviation services.

Tourism is a \$60 billion a year business for Australia, an estimated one-third of which is generated in regional areas in Australia. Labor recognises that regional tourism faces a crisis and needs an investment now to save regional jobs and businesses now. Whilst the government does nothing, Labor has outlined a tourism rescue plan announced by the Leader of the Opposition, Mr Kim Beazley, today. This plan will aim to get Ansett back in the air, protect jobs, boost airline seating capacity, revitalise regional tourism infrastructure, provide interim protection measures for tourism businesses and stimulate tourist demand. We have announced that Labor would invest \$50 million for tourism business in concessional loans, give an immediate boost of \$10 million to the Australian Tourist Commission's budget and double funding for regional tourism infrastructure through the Commonwealth regional tourism program. This is a responsible package. It is a rapid response to the extraordinary situation facing the Australian tourism industry, an industry which many regions in Australia rely on totally.

People should not have to suffer because the Minister for Transport and Regional Services was, as they say, asleep at the wheel. People should not have to suffer because he seemingly cannot cope with the impost of the job he has. Ansett did not need to fall over, and the transport minister could

have acted and—as my colleague Martin Ferguson pointed out in the other place—should have acted to save it. Instead the government, under the guidance of the transport minister, did nothing and attempted to blame everybody else for its inaction. What an outrage when the transport minister allowed the travelling public, Ansett workers and their families to go to bed last night not knowing their future, even though he knew the company was about to collapse—and he knew the company was about to collapse.

Senator Watson—What would Labor have done?

Senator MACKAY—I think you should go back to trying to get the RFA bill back in, Senator Watson. What an outrage that the minister allowed Ansett to continue to sell tickets on Thursday. He was unwilling to stand up and be honest and tell people exactly what state Ansett was in. And it is not as though he and the government did not know what the true state of Ansett was. There is no doubt that he did know. Despite the minister's denials, the evidence is overwhelming that he knew as long ago as late June and again in mid-August that Ansett was in diabolical trouble. There will be a Senate hearing tomorrow where I, together with my colleagues Senator O'Brien and Senator Forshaw, will have a look at this, to see to what extent the government was involved and to attempt to ascertain what information the government had prior to the collapse of Ansett. The Senate inquiry into that will commence tomorrow. We will not be giving up on this issue.

Come the next federal election—and it cannot come soon enough for people in regional Australia, might I say—people will get the chance to vent their anger at the dishonesty and disdain that has been heaped upon them by the transport minister by his calling Ansett a 'carcass', which was a total insult to everybody. People know, in regional Australia particularly, that the nation needs a proper aviation plan that serves the best interests of the whole community. But, after this debacle, I think many people are questioning whether the current transport minister is up to it.

Friday, 14 September was a black day in Australian aviation history. It was a day when the Howard government showed us that they believed there was one rule for their own and another rule for ordinary Australians. The government's role in the fall of Ansett will be uncovered through the scrutiny processes of the Senate and in other ways, and as far as I can see it will come back to haunt it, at the next federal election, in regional Australia. Regional Australia is already hurting because of many of the measures that have been introduced by this government—something which I am sure will be amply expanded upon by my colleagues here in the Senate.

Senator GREIG (Western Australia) (10.18 p.m.)—Tonight I rise on behalf of the Australian Democrats to support the Air Passenger Ticket Levy (Imposition) Bill 2001 and the Air Passenger Ticket Levy (Collection) Bill 2001. We do so on the basis that ensuring entitlements are paid to terminated Ansett workers is an immediate concern—not on the basis that this bill is necessarily the best way of doing that, nor on the basis that this bill addresses any of the underlying issues that have led to this debacle in the first place. Some 16,000 jobs have been lost as a result of the collapse of Ansett; over 72,000 other employees have been affected through related companies that have suffered losses of business as a result.

There are two related bills being considered here now. The first is the Air Passenger Ticket Levy (Imposition) Bill 2001. This bill will impose a levy on each ticket used for flights originating in Australia in order to ensure that some entitlements of Ansett employees are paid. The government will establish a special employees entitlements scheme for Ansett group employees, and this is the fund that will distribute the entitlements. The actual system for implementing the levy has not been determined and will, apparently, be determined in consultation with the airlines. Airlines will bear the cost of administration.

The second bill, which also comes into effect on 1 October, is the Air Passenger Ticket Levy (Collection) Bill 2001. The purpose of this bill is to collect the \$10 levy charged to

each ticket until some percentage of Ansett employee entitlements are satisfied, up to a limit of \$500 million. It is with some concern that we note that the levy does not apply to inbound international visitors. According to the explanatory memorandum, the bill seeks to 'minimise the impact of the levy on international inbound tourism'. Australian tourists and businesspeople travelling to Australian destinations or even to overseas destinations are effectively being told by this government that they are less important than the overseas visitor. This is doubly concerning because the overseas visitor is arriving in this country to a dollar devalued to the benefit of many overseas visitors. The bill will impose a certain level of regional disadvantage. Short haul, low cost flights will bear a disproportionate effect, and the impact on regional tourism and travel is likely to be greater.

Part 4 of the bill sets out the offence, inspection and enforcement provisions of the bill, including the penalties that attach to the failure of an operator to lodge a monthly levy return. Proposed section 22 limits the total amount of the scheme to \$500 million. Should the total entitlements requirement exceed that amount, the discretion for distribution of the entitlements will rest with the Minister for Employment, Workplace Relations and Small Business. The minister may determine which companies are eligible for entitlements and which entitlements are eligible for the scheme. There is no guidance in this bill as to which companies will be selected as eligible for the scheme, which entitlements will be eligible, how distributions will be made, when they should be made and in what amounts. Proposed section 22(2) permits the minister to determine the 'entitlements to be covered by the scheme' and the 'terms on which payments under the scheme are to be made'. The discretion in the distribution of the funds has the potential to cause additional pain to Ansett employees unless clear, accountable and equitable distribution guidelines are implemented.

We Democrats understand the need to cap the scheme—it cannot operate in perpetuity or without limit. That would benefit neither the government nor the employees. But if

there is to be a cap, then the discretion given to the minister as to the entitlements is completely unacceptable. This bill needs to be far clearer regarding who gets paid, when and how much.

The Democrats originally drafted two amendments to section 22 making any determination under subsection (1) a disallowable instrument and ensuring that the basis for selecting or excluding companies from eligibility was clear. This would have ensured that the parliament had oversight in relation to any determination and would have ensured that the process of selecting eligible companies and eligible entitlements would not be politicised. The Democrats have decided, however, not to move one of those amendments simply because of timing. The amendment seeking to make determinations disallowable would require further sittings of parliament. Further sittings are unlikely, which means that the entire scheme would then have been delayed as a result. This simply points again to the chronic haphazard nature of the government, particularly in their recent lack of legislative process and accountability.

The scheme, while more generous than the situation that has traditionally faced Australian workers who have lost their jobs and entitlements through no fault of their own, will still fall far short of satisfying the actual entitlements of so many Ansett employees. Many Ansett employees are longstanding and have great loyalty to their employer. A high proportion have many years of service in the company and the offer to underwrite their entitlements to the limit of eight weeks redundancy will represent a loss of thousands of dollars to their actual legal entitlements. This is regrettable. Loyalty should have its rewards and to deny so many longstanding employees their entitlements implies a penalty for such loyalty.

It is also the case that many Ansett employees share a family loyalty and affiliation with the company. There are many examples of intergenerational employment with Ansett and of couples who both worked with the company. This means that many families and extended families are now reeling from the loss of their jobs and the loss of their legiti-

mate entitlement to much larger redundancy pay. Of course the great majority of these employees do not want redundancy at all; they want their jobs. Our highest priority must remain getting Ansett back into the air one way or another.

Our other main priority must be to ensure that entitlements of Ansett employees are met to the greatest extent possible by their employers, Ansett companies. We must not lose sight of what these entitlements largely are. They are the earned income of employees. They are payment for services already rendered—for holidays and long service that have already been accumulated. They should be paid by the Ansett group of companies, not by the flying public or the taxpayer, as is the case in the government's other stopgap measure, the Employee Entitlements Support Scheme, which offers some protection to employee entitlements for non-Ansett workers.

We note that the government has upgraded the terms of that scheme of late to come close to those available to Ansett workers. But make no mistake: many non-Ansett workers out there are very angry because they have faced long waits in getting their entitlements paid out of this scheme and resent the government's knee-jerk response, in a highly politicised environment, to the needs of those working in a big company like Ansett when many, many employees in smaller companies, in less dramatic circumstances, have also lost.

I note the advice of the *Bills Digest* that points out that the entitlement payment available to Ansett workers is superior to those available to other workers who are made redundant and apply for assistance under the government's new scheme, the General Employee Entitlement Redundancy Scheme, GEERS. I ask the government to please clarify what appears to be straightforward inequity between the two schemes. Is it the case that under EESS employees are paid their entitlements at the usual weekly pay rate without any cap while under GEERS the pay rate is capped at \$75,200? If this is the case, what is the rationale for the cap for one and not for the other? If this is correct, it seems straightforwardly discrimi-

natory against non-Ansett workers and will inflame those already aware of the quick action that the government has taken in a pre-election climate for one set of workers while others face long delays and worse terms.

In some of the non-Ansett cases that have been drawn to the attention of the Democrats in recent days, employees have lost much more than their wages, long service, annual leave, pay in lieu of notice and redundancy pay. Some have lost their superannuation. In one case a group of employees discovered that their bankrupt employer had not made contributions to their superannuation fund for some years. This has understandably devastated employees and it requires very substantial legal and financial resources from these devastated employees to take action to pursue their legitimate entitlements.

All of these experiences are a powerful action for a systematic national approach to the protection of employee entitlements in Australia. We cannot have companies dipping into employees' wages and entitlements and, more than that, they should not be able to dip into their actual bank accounts. Even long established national icons like Ansett cannot, under some management regimes at least, be trusted to preserve employees' entitlements. The temptation to dip into them, when companies come under financial pressure, is too great for too many managers. We need a national scheme and we need it as soon as possible. Employers must be required to establish separate trusts for earned entitlements or to undertake appropriate insurance measures, and it is clear that we need to legislate to establish these requirements. Many European countries already do so, and we are way behind the pack.

Instead, we are establishing real expertise in the knee-jerk response. We may be feeding a corporate dependence or expectation of government bail-out in such circumstances. If companies know that the government will step into the breach when things go wrong, then some may well be encouraged to clean out the coffers before calling in the administrators. This is bad policy: it is bad for the taxpayers and, in the case of Ansett, it is bad for future travellers, regional communities

and the tourism and travel industries. They are paying the price for the mismanagement of the Ansett group of companies and their failure to face up to obligations.

The first priority of the government must be to pursue these companies so that they meet as much of the debt of entitlements of their employees as possibly can be extracted. We Democrats certainly hope that the \$500 million cap is sufficient to cover all entitlements that are part of the scheme, but no-one really knows how far \$500 million will go. That is a massive amount of money. Employees of Ansett estimated before the company went into receivership that they would need significantly less than this in order to purchase the company and have an employee owned airline. Unfortunately, the government failed dismally to respond to opportunities to keep Ansett in the air. They failed to respond to these warnings. If they had, we may have found that this debacle cost the taxpayer nothing in the long term. Instead, the government has tried to make a virtue of their failures by agreeing to pay entitlements.

We must remember that this scheme does not find jobs for the 16,000 former employees. It does not retrain them. It does not cover the cost of mortgages, school expenses or commitments made in the expectation by many employees that they would be with the company for the long haul. It does not protect them during any period they may have to wait in order to receive their entitlements.

The response of the government has been better than nothing, but we should be under no illusion that the response has been a good one or an intelligent one. In fact, one does not have to be too cynical to say that, if Ansett employees have had any good luck in the last three weeks, it is in the fact that we are close to an election. Had an election not been on the horizon, one legitimately could have expected the government's response to be a little different.

We might remember too that the flying Australian public will be paying the earned entitlements: the past obligations of a corporate entity. This bill does not constitute a solution to the wrong people paying this particular debt. It is clear that longer term changes are needed. The government cannot

continue to protect workers' rights because of corporate collapse, corporate incompetence or corporate asset stripping. A national systematic response to employer provision of entitlements is sorely needed, and we are yet to see a policy on that from either the ALP or the coalition.

After the collapse of One.Tel, the Prime Minister foreshadowed legislation that would allow bonuses paid to company directors to be reclaimed if companies failed. We have seen nothing since, and the bonuses paid to Air New Zealand directors while 16,000 workers struggle to receive earned entitlements should be haunting this government.

On three occasions since 1998, the Democrats have put forward amendments to Corporations Law to make related companies liable for the debts, including entitlements debts, of insolvent companies. Those amendments were in accordance with a recommendation of the Australian Law Reform Commission in 1988. On every occasion, the government has rejected those amendments.

How many more companies are going to collapse? How many more publicly funded rescue packages will there be, while company directors run home with large bonuses, before this government actually tackles the root of the issue? This bill is a product of exactly the sort of poll driven legislation that has produced the appalling and antidemocratic migration bills we have been debating this week.

The Democrats support this bill, with amendments, because the employees of Ansett should not be the ones made to suffer for the failures of the corporation and its parent companies and the failures of the Australian government in its determination that the best government is no government. The government's failure to face up to the long-term challenge of employee entitlements means that the Australian community is paying a high price for its policy failure.

Senator WEST (New South Wales) (10.32 p.m.)—I join in this debate tonight on the Air Passenger Ticket Levy (Imposition) Bill 2001 and Air Passenger Ticket Levy (Collection) Bill 2001 to continue to express my concerns about what is happening—or,

probably more to the point, what is not happening—in regional and rural New South Wales, the state I represent, and in the rest of regional Australia, I suspect, in terms of the ramifications of the Ansett crash. We are having here a ticket levy applied so that the workers at least can get some—and ‘some’ must be the word underlined—of their entitlements. These people, who have worked for Ansett, many of them for many decades, and given valuable service—and, of course, those who have worked for and given valuable service to the subsidiaries of Ansett—face a very uncertain future, and that has to be addressed.

If this government had been fair dinkum about this issue, it would have addressed this several years ago when we, as an opposition, moved numerous private members bills to address the issue of workers’ entitlements. This is not the first company to go belly up, to go into receivership or to go into administration. We have had a whole litany of them this year and, I suspect, there are more to come—some of them because of the GST, but that is not the case here. This is an issue that we all should be concerned about. I am sorry that we are here tonight debating this issue because, if the government had agreed with our legislation, we would not be debating this legislation.

We keep hearing about how the planes are flying. They are flying in regional areas to some ports—some ports only. Qantas has maintained its flights to its ports in rural and regional Australia. But what of Hazelton and Kendell? We have not seen Kendell back in the air in or into New South Wales yet, but Hazelton is flying to some ports. It used to fly to Wagga, Griffith, Narrandera, Parkes, Bathurst, Merimbula and Moruya, just to name a few. How many of those flights, may I ask, have been resuscitated? I will tell you: not too many. Bathurst is still waiting, Parkes is still waiting, Narrandera is still waiting and the South Coast, I think, is still waiting. Flights are going into Orange—that is fine. Orange now has three flights a day. It used to have four flights of its own, but it now has to service the much larger area of Bathurst, Orange, Parkes and Cudal, just to name a few. But the interesting thing is that there are re-

strictions on being able to purchase a ticket. No longer will the airlines take MCOs and no longer are account holders able to use their accounts; it is cash up front. That is rather an imposition on many people. But that is okay, we can get over that.

I went through some old tickets I had in my drawer and discovered that in June of this year I took a flight from Orange to Sydney and it cost me about \$156 or \$158 one way. When I fly home on Friday—and because of the initial restrictions they had on, I have had to pay for the ticket already with my credit card and will have to claim the money back from DOFA, which is a bit of a nuisance—that flight will cost me \$210.55. That is an increase of over \$50 on a \$150-odd ticket. Professor Fels makes a great thing about competition and price. I sure as hell hope he starts looking at this, because I think it is nothing more than blatant rip-off.

Let us look at Broken Hill. My state colleague there flew in early September, a few days before the crash. The return air flight cost \$877.80. I am trying to visit Broken Hill next week. I will not be flying to get there; I will be travelling on the Indian Pacific. Coming home, the ticket is going to cost \$466.20 just one way. That adds up to a total, in my maths, of \$932.40. I might be wrong, but it is in the vicinity of again being close to \$60 dearer for that return flight.

Senator Calvert—Who pays for it?

Senator WEST—In my case, the taxpayer pays for it, but what about the people out there who do not have the same access to travel entitlements that my state colleague and I do. This is the only flight in and out of Broken Hill at this stage. People wait with bated breath to see if the Adelaide flight with Kendell gets resumed. They hope and they pray, but they have already lost a large conference on mining at the beginning of next week. Add to that the fact that Pasmenco is in voluntary administration. They are not feeling very happy with the world and are not very happy with this government. They are suffering and struggling very hard.

Today I just wanted to bring to people’s attention the fact that we might have some planes flying, we might have some services,

but the flights are reduced in number and they are more expensive. That is going to have a major impact on regional Australia and on industry in regional Australia. I think, for example, of Bathurst, with a population of 30,000-plus. It has quite a diversified infrastructure and economic base. It has a number of private boarding schools where the kids are about to start school holidays. There are a number of children there who board at those schools and whose parents are Australian expats working in overseas countries. Those children are going to have great difficulty actually getting out of Bathurst to go to Sydney to catch their connecting flights.

We have Uncle Ben's, Devro and Simplot. Uncle Ben's have their own aircraft and use charters, because they have an Albury plant and there is a lot of communication between the two plants and a charter that runs regularly there. But what about the other industries? People from Simplot may wish to visit and have meetings in that group of companies. The meeting could be in Manly, in Brisbane, in Tasmania or in New Zealand. How are they going to get there? If they had a meeting in Brisbane, Adelaide or Melbourne, they could do the flight in one day. Not any more. They will have to get up at 4 o'clock in the morning to travel up to Orange to get a flight out—if they are lucky enough to get on a flight.

In Orange we have the state headquarters of the department of agriculture. People there use aircraft travel quite a bit to move around the state. They use regular passenger transport services. The airline crash will have an impact on the running and the efficiency of those departments. It will also do terrible things to their budgets. There will be an increased cost of administration for all the Commonwealth and state departments that are registered in Orange.

Not this weekend but the following weekend we have the Bathurst car races. That is a major tourism event in Australia—and internationally if you are a car racing fan. Normally Hazelton or whichever airline runs into Bathurst runs a number of additional flights, and many charter aircraft come in. The crash of Ansett will mean a reduction in

the availability of charter aircraft. It will have an impact on the race and on Bathurst's income from that race—on the tourism and the tourists that go to the area.

I know the vast majority of those people drive, but a significant number fly. We cannot afford to be missing out on even a couple of hundred people not flying, because they tend to be the biggest spenders—they are the ones who can afford to charter. They are often the companies or the racing syndicates. This will inconvenience them. One has to ask what will be the long-term impact. Those that can get seats will find that they are up for additional money. That has an impact on their bottom line and their budget. It is very important that we not lose sight of the fact that people are saying that there are flights. The number of flights is down and the costs are up—and significantly up. I would be fascinated to know why the costs seem to have risen by about \$50 to \$60 a return ticket. That is of concern to me.

Yesterday my staff went to Harvey World Travel in Orange to seek flight costs. For Orange to Sydney they were quoted \$421 return. But when they asked what was the previous cost, they were told that was confidential. They would not tell them the previous cost of the tickets prior to the Ansett crash. That is very interesting. It is puzzling. I might ask some more questions about that at a later date.

If you want to fly in and out of Dubbo now with Hazelton, it will cost you \$488.16. For Broken Hill, the figure is \$900-odd. For Griffith it is \$586.74. The poor old people from Narrandera drive up the road to Griffith or down to Wagga and pay nearly \$600 return. That is big money. We are talking about something that is not accessible to the ordinary person becoming even more inaccessible.

It is very hard to find out when these flights are available and bookings can be made only about one week in advance. There are no cheap flights, because they are all booked out. The planes are full of people who are desperate to fly, and they have to pay the full fare. Those who want to take the cheaper flights are certainly having great difficulty accessing them. In fact, I doubt

there would be any available. The impact of this is of major concern to me, and I think we need to keep this issue in our sights. It is not just an issue of availability on the trunk routes; it is an issue about the impact that this is having on regional Australia. When you go to regional Australia you have the issue of employment, and consequently tourism, and the whole economy of these regional and rural areas stands to be battered quite severely by this particular occurrence.

Senator HARRIS (Queensland) (10.46 p.m.)—I rise to speak on the Air Passenger Ticket Levy (Imposition) Bill 2001 and the Air Passenger Ticket Levy (Collection) Bill 2001. To get the correct perspective on this issue relating to Ansett, I believe we need to go back and look at a series of incidents that occurred approximately in the early 1980s. At that time, Qantas was allowed to take over Australian Airlines. An international carrier, effectively government owned, was allowed to consume a domestic carrier—again, a primarily government backed function. This allowed Qantas to operate overseas on the more lucrative international runs while it upgraded its domestic fleet over some period of years. At the same time, Ansett applied for an international licence and was knocked back. That is significant because, for the two operators operating within Australia, we had two vastly different sets of circumstances. Basically, we had the government backed airline, Qantas, flying both internationally and domestically—and it was unrestricted—while its free enterprise competition, Ansett, was effectively muzzled from being able to access those more lucrative overseas routes.

As a result of those events, along with a series of incidents over the 1990s and coming forward into 2000 and 2001, we are now seeing Australian's icons—that is, our well-established, profitable Australian based companies—gradually being taken over by larger international corporations so that the decisions relating to those companies and their operations within Australia are being made in boardrooms in New Zealand, Singapore and London. There is no fallout in the economies of those countries, whereas the economy within Australia can suffer poten-

tially dangerous and disastrous effects. Very sadly, there is no greater example of that than Ansett itself.

This shocking collapse of Ansett, basically overnight, should be a lesson to the government that you cannot have your essential services deregulated or controlled by foreign companies. The Ansett crisis means massive job losses and the slashing of more services to rural Australia, and that will have an untold effect on our tourist markets. The small companies—the motels and the private hotels—around Australia that have been participating in airline package sales, in some cases for up to 60 days and in a few cases up to 90 days, will be providing services that they no longer will be paid for. The impact of that alone will drive an unknown number to the wall.

The collapse of Ansett is a serious blow to rural and regional Australia. Up to 30 regional destinations will be affected. In some cases, Ansett was the only service to those provincial cities, and our rural heartland cannot be denied the right to air services. Like all other senators, I have been receiving a copious amount of correspondence and emails on this issue. I would like to quote from one communication that was sent to me today. The subject is the Ansett update, and it comes from ansett.news@hotmail.com. It states:

The wet-leasing of jets to QANTAS has fallen through. Indications are that this is due to the lack of rotables (spares) which are reported to have been repatriated to New Zealand.

If this is the case, there are substantial issues that the liquidator or the administrator will need to look into. The email went on to refer to a second issue. It said:

Information reaching the newsletter desk is that the A320 simulator was transferred (purchased) for a nominal sum by Air NZ from Ansett one week before the collapse and the asset moved onto the Air NZ books. It was then leased back to Ansett!!

If we have seen transfers of assets from Ansett to Air New Zealand within that short period, I believe that should be seen in the same light as a preferential payment to a creditor in a bankruptcy issue, and the value of any such assets should, I believe, be re-

deemed back to the Ansett administrator. The email went on to say:

On an equally serious note we have received information that union and sickness payments (ie: insurance) have not been paid to relevant bodies since June. It is reported that the deductions were made from salary but not paid through. We understand that claims on health insurance have not been honoured because of failed payments.

That is another serious issue and I believe we need to go to this type of correspondence from the people who are being affected by this collapse to have a real understanding of the issues. Quoting once again from the update, it says:

Since the Ansett collapse this newsletter has been calling on the government to consider bridging or long term loans—not a bail out—to enable Ansett core operations to resume flying. By sequestering debt, enabling non-core asset sell off and providing for core flight operations to resume at least there is a chance for some staff to retain employment and for creditors to obtain payment. The whole is greater than the sum of the parts and its integral operation delivers service and competition to the Australian market as well as cash flow to the company ...

The heads of ASIC, APRA (Australian Prudential Regulatory Authority) and ACCC are conspicuous by their absence at this time. Not surprising. This newsletter has been advocating that these heads roll and we do not move from that position ...

And our concern continues regarding the ACTU, TWU and ASU's continuing stance against contract employment for Ansett staff. Their belligerence and self interest is causing realistic options for Ansett to resume flying or to be purchased to be scuttled. They are supposed to represent the interests of their members, us. Not the interests of a small group of organizers and power seekers ...

It is likely that even with pick up from Virgin Blue and QANTAS that any new version of Ansett would require no more than 6-8,000 people to operate the entire group. Ansett was overstaffed before and suffering under entrenched salary and perquisite demands from certain sectors. Any new Ansett will not be sustainable under those conditions and the union movement needs to understand that. We would all like to get on with our lives so we appeal to our so called representatives to make a deal or get out of the way.

I believe that is the important issue. Personal, political and economic issues need to be put out of the way and we need to look at this

issue on its merits, and those merits include the competition that is needed within the Australian aviation industry, the secondary companies that are going to suffer as a result of this and, more importantly, the rights of employees.

Senator LUDWIG (Queensland) (10.58 p.m.)—I seek leave to incorporate the speeches of Senators Crossin, Hutchins and Gibbs in *Hansard*.

Leave granted.

Senator Crossin's speech read as follows—

The objective of these bills is to alleviate the consequences of the failure of the Howard government to attempt to keep Ansett flying.

Under this bill the levy will be payable on each ticket issued on or after 1 October 2001 for an Australian regular public transport flight that originates in Australia.

Once again the Australian taxpayer has to pay for this Government's incompetence.

There is no doubt that Australia's \$60 billion dollar tourism industry has been shocked by a Howard Government plan to impose a new airline ticket tax to help fund the unpaid entitlements of Ansett employees.

The Ansett collapse and the government's proposed response to partially meet the entitlements of the sacked Ansett workers will impact disproportionately on regional Australia, by imposing this new tax on tourism.

The Howard Government has imposed a GST on the industry, increased the departure tax and cut funding to the Australian Tourist Commission. Now, having been grossly negligent in its handling of the Ansett issue and failing to put in place an effective scheme for protecting employee entitlements, the Howard Government wants to hit Australia's tourism sector yet again.

By doing so, the Government is putting at risk tens of thousands of jobs in the tourism sector which has already been rocked by Ansett's collapse and the crisis in the United States. Many of those jobs will be lost in rural and regional Australia where the Ansett collapse will be felt most.

In the wake of the U.S. crisis and the collapse of Ansett, Australia's tourism industry was looking for assistance from the Government. Instead, it will get a new job destroying tax.

This is clearly the case for the Northern Territory which, because of its distance from the Eastern cities, relies heavily on airline travel.

I want to begin by highlighting the impact on the Territory but also on Ansett workers and people involved in doing business with Ansett.

Ansett was responsible for around 48 per cent of passenger movements in and out of the Northern Territory. One million people were carried by Ansett in the Northern Territory in the 12 months to June this year.

With Ansett's domestic and intrastate flights, inbound and outbound there were 52 movements each day in and out of the Northern Territory, and Ansett served 22 Territory destinations.

While Ansett had 144 direct employees in the Northern Territory there are another 700 jobs just in the Northern Territory that will be directly affected as a result of the collapse of Ansett.

People in mining, tourism, fresh seafood, early mango harvesting, catering, fresh herbs, cut flowers, cleaning, entire communities in regional Northern Territory, are all on the record as having been seriously affected by the Ansett collapse, as these businesses rely on air transport to supply and move these goods

No cheap fares available, which had been a major incentive to attracting tourists to the Northern Territory and in fact there are very limited flights now that there is only one major airline coming into the NT.

The salaries of Ansett workers contributed about \$ 10 million per year to the Territory economy.

Nearly 2000 tonnes of perishables, 42 tonnes of livestock, 34 tonnes of mail, 8 tonnes of newspapers and another 7000 tonnes of other goods made up Ansett freight exports over the same period.

Ansett contribution to direct tourism amounted to 49,490 room nights in the Territory, or \$7.3 million dollars into the Territory economy.

Tourism is one of the Territory's most important industries - being worth \$1.5 billion annually - either directly or indirectly - to the NT's economy, and employing over 11,600 people.

However the tourism industry in the Territory, and Australia generally, has already been hit hard by the collapse of Ansett, the reduction in international tourism resulting from the recent terrorist attacks in the United States, the implementation of the GST, and now it is faced with the imposition of a \$ 10 levy on air tickets.

However as most of us realise this levy is really a new tax - a tax on tourism.

For example in Central Australia where tourism represents about 50% of the local economy, air capacity to Ayers Rock Resort and Alice Springs has dropped from 5,500 to 3,625 a week.

However I am pleased that Labor leader, Kim Beazley has announced Labor's plans for a rescue package for the tourism industry.

Coupled with the impact of the US terrorist attacks, Ansett's demise has brought into sharp focus the importance of the tourism industry to jobs and job security, particularly in regional Australia.

With 87,700 full-time jobs lost since the GST was introduced; up to 73,000 jobs at risk from the Ansett collapse; and large-scale job losses being announced around the country, an immediate response to this crisis is vital.

Given Ansett's domination of the regional market, regional tourism markets have been particularly adversely affected by the airline's collapse.

Some in the Howard Government ministry would have us believe this disaster is nothing more than a little blip on our national radar.

Labor knows the net effect of these crises on our tourism industry is unparalleled in the industry's history.

The current situation has exposed serious deficiencies in the Howard Government's approach to our tourism industry.

Labor is ready to take on the challenges posed by the combined effect of the Ansett collapse and the US crisis. We need to make an investment now, or pay much more later.

When major industries are hit by a crisis, Australian Governments have traditionally responded - drought assistance to rural industries; adjustment assistance to manufacturers; recent packages for the dairy and sugar industries. Labor believes that an industry employing around 1 million Australians merits a response now.

That is why Labor today outlined a plan to rescue the tourism industry.

This plan will aim to get Ansett back in the air, protect jobs, boost airline-seating capacity, revitalise regional tourism infrastructure, provide interim protection measures for tourism businesses, and stimulate tourist demand.

This package is a responsible and rapid response to the extraordinary situation facing the Australian tourism industry, especially in rural and regional Australia.

While Federal Tourism Minister, Jackie Kelly has simply responded to the impact of the Ansett collapse on tourism by describing it as a 'blip', Labor has come up with a concrete plan to help Australia's struggling tourism industry.

Labor's rescue plan for the tourism industry includes 50 million for concessional loans for tour-

ism businesses, an additional \$ 10 million funding for tourism marketing and to double funding for the Regional Tourism Program

As I have mentioned as a result of this Government's incompetence, passengers are being asked to pay an additional ten dollars of each ticket.

What we have not been told is whether the GST will apply on the new tax as well - knowing this Howard Government, I think it probably will.

The \$10 levy will be incorporated in the price of the ticket you will then pay for the GST on top of that.

Last week I called on the Howard Government to reimburse the 10% GST to those Territorians who paid for dishonoured Ansett tickets by means other than credit cards.

The Federal Treasurer, Peter Costello has confirmed the Howard Government would keep the GST paid on Ansett tickets for flights after September 13, despite the fact the tax was paid for a service that was never delivered.

Many Territorians who paid for their tickets up-front by cash or cheque will lose the whole amount. The GST alone can be over \$ 100 on a full price fare.

For the business sector there is a double whammy, with the Australian Tax Office confirming last week that businesses that have already claimed a GST credit on unused Ansett tickets would be to repay the tax, even though they never got to take the flight.

"GST-registered businesses which have paid the airline for cancelled supplies are not entitled to a GST credit and should not claim the credits if they are sure the supply will not be made regardless of whether they have received an adjustment note. If they have already claimed a GST credit on a Business Activity Statement (BAS) they will need to make an increasing adjustment. "

ATO Media Release 21/9/2001

Now we know what Mr Costello really meant when he promised Australians a new tax system - he meant a tax system where even when the airlines is grounded and your ticket is dishonoured, you still pay the GST on the flight you never got to take.

As I have mentioned, Australians are being asked to pay for this Federal Government's incompetence in its lack of competence in dealing with this matter.

The Prime Minister and the Deputy Prime Minister were warned back in June that Ansett would go under unless the Singapore option was allowed to be pursued.

And what has this Government done? Very little - They have simply sat on their hands and watch jobs disappear as the airline collapsed.

Where is the national rescue package for the airline industry or a contingency plan for other industries who may be looking at picking up this business in whatever way is possible.

Minister Anderson is only talking of the short-term fixes, not of the things that will permanently get Ansett up and running.

Right around this country now, and certainly in the Northern Territory, people are starting to understand how difficult life is without sufficient flights with available seats.

The SMH reported today (Wednesday 26th September) that there are no full economy seats available from Sydney to Darwin at least until next Tuesday. This is untenable situation and will cripple a wide range of businesses in the Northern Territory.

And when seats are available, people can't afford the prices. A full economy return airfare from Darwin to Canberra is over \$1400 and now there is a ticket levy on top of that.

As a result tourism in the Territory, which relies on availability and affordability has taken a nose-dive.

From the day this crisis began, Labor has been making constructive suggestions and have been mocked and criticised for it.

As every day passes, it is more and more obvious that we were right and that if the Howard Government had acted earlier the situation might not be so drastic and urgent.

Overseas experience after deregulation has shown that when airlines start cutting down on their maintenance costs, it's usually because they are in trouble.

We all remember vividly the grounding of Ansett planes back in Easter.

Instead of getting planes back in the air, they have ensured that we have now a total monopoly in the Northern Territory. While Virgin has made noises about starting a service to the NT, there is currently no competition.

What will be the result for Territorians?

As we know there is a new \$ 10 tax and there will probably be increased airfares.

It will be interesting to see how many cheap airfares will be made available.

And what does need clarifying is whether the \$10 levy will apply to frequent flyer redemption tickets.

And the winners out of all of this will be Qantas (with a higher market share and the ability to either charge higher prices or offer less discount fares) and the Federal Government which stands to collect more in GST as a result of the higher airfares.

The government has announced that Ansett employees' entitlements for wages, annual or long service leave and pay in lieu of notice are to be met in full except with respect to redundancy, which will only be funded up to eight weeks.

I personally don't believe that is good enough. I believe that they should receive the full entitlements of workers should be paid. If it was good enough for the company of Stan Howard, the Prime Minister's brother, than ANSETT employees deserve just the same treatment.

Labor introduced legislation to guarantee 100% of workers entitlements but this legislation was blocked by the Howard Government.

The unwillingness of the Federal Government to guarantee 100% of workers entitlements means many Ansett workers will lose substantial amounts of money - money that is due to them and money they will need in the future.

I want to illustrate the impact the Government's failure to guarantee all of the workers entitlements will have with the following two examples.

One Ansett employee with 14 years of service will end up under the Federal Government's scheme with only \$23,040 in entitlements (made up of unpaid wages, annual leave, lieu in notice, redundancy and long service leave) as opposed to \$45,840 that he is owed.

Another employee with 16 years of service will get \$20,955.00 instead of the \$42,075 owed to them.

In conclusion let me say that Labor is supporting this bill but only as a last resort.

Labor will support the bill because we do not want to cause any further grief or uncertainty for the workers employed by Ansett if they lose their jobs.

However we are under no illusions, the Federal government is inadequate because it does not provide 100% of the entitlements due to workers.

We should also be clear the \$ 10 levy is a tax on tourism.

It is yet another broken promise by this Howard Government not to introduce any new taxes.

We should not forget that this tax is being imposed as a result of the incompetence of the Howard government.

Ansett collapsed because of the failure of the Howard Government to take action to ensure Ansett kept flying and now their actions will have a major impact on the tourism industry.

Senator Gibbs's speech read as follows—

I rise today to speak on the Air Passenger Ticket Levy (Collection) Bill 2001 and the Air Passenger Ticket Levy (Imposition) Bill 2001. I must say, at the outset, that this bill is one that we shall support. It is one we shall support; but only as a last resort. The government has forced the taxpayers of Australia, the air passengers of Australia and the former employees of Ansett into this position.

And none of them want to be here in this position. Neither do we.

There are a number of reasons we are discussing this bill at this time. The first and most obvious of which, is the collapse of Ansett. There has been good news this evening about some Ansett planes getting back up in the air. At this point let me say that I hope even more of the once-proud air carrier can be up and flying as soon as possible. So when I refer to the collapse of Ansett I don't mean to suggest that some of its planes and some of its staff won't be used again. But I hold little hope that there is any chance the entire company will be resurrected in its pre-collapse form.

Ansett is gone. We won't see it back in Australian skies in the exact form we are used to.

We are also discussing these bills at this time because of the Government's failure to put into place any scheme that effectively guaranteed workers' entitlements. The Government has had to scramble to get these provisions into place rather than spend time on actually getting planes back in the air.

The most distressing element of the Ansett collapse is the loss of employment for more than 16,000 workers. Everyone from pilots to caterers; from engineers to check-in counter operators has lost their job because of the collapse of Ansett. And that doesn't take into account the impact on the entire Australian workforce, which I will return to later. On top of that we saw thousands and thousands of people left stranded because of the collapse. We saw thousands and thousands of people who had to scramble for refunds and to book alternate travel.

Two weeks ago the Labor Party said the pressure was on the Deputy Prime Minister John Anderson to determine the fate of workers entitlements and the immediate fate of hundreds of small and medium-sized businesses that were major Ansett suppliers. The pressure was on the Deputy Prime Minister John Anderson to make the difference

between economic and aviation chaos or an orderly resolution of Ansett's problems. He failed that test. He made the decision to abandon workers, abandon small businesses, abandon critical services for movement of passengers and freight.

But they already have form. The Howard Government long ago made a decision to abandon Australian workers and Australia's regions. The Prime Minister, Mr Howard, and Deputy Prime Minister John Anderson have refused Labor's attempts to put in place legislation to stop asset stripping like we have seen with Air New Zealand's gutting of Ansett. The Prime Minister, Mr Howard, and Deputy Prime Minister John Anderson have refused Opposition attempts to put in place Kim Beazley's sensible system to guarantee worker entitlements. The Prime Minister, Mr Howard, and Deputy Prime Minister John Anderson have boasted about aviation competition that is now confirmed as unsustainable. The Prime Minister, Mr Howard, and Deputy Prime Minister John Anderson were told what was coming with Air New Zealand and did nothing - they left it to the market and the dire consequences are before us now.

After the collapse of Ansett, the Government announced employees' entitlements for wages, annual and long service leave and pay in lieu of notice were to be met in full, with redundancies paid out to only eight weeks. The Government set up a Special Employees' Entitlements Scheme for that purpose. The scheme is to be funded by a \$ 10 levy on airline tickets.

The two bills we are discussing here impose the levy and make arrangements for its collection on a certain range of air passenger tickets. The levy will be payable on each air ticket issued from October 1 this year onwards for an Australian regular public transport flight that originates in Australia.

The Labor Party supports this bill; but only insofar as we support the full payment of entitlements to workers whose employment is terminated as a result of insolvency. The Labor Party is calling on the Prime Minister, Mr Howard, to give Ansett employees the same support he gave his brother, Stan. The Howard Government has again shown that it believes it is one rule for its own and one rule for ordinary Australians. The Prime Minister, Mr Howard, was happy to bail out his brother's company, but not Ansett workers.

Labor supported assistance to the dairy industry when they were in trouble and other rural industries—now the Deputy Prime Minister John Anderson must concede that the aviation industry has the same needs. Fundamentally, Air New Zealand is responsible and they should be pur-

sued. But in the meantime, the Australian Government must show some compassion to the workers employed by Ansett, its subsidiaries and the related support industries.

We have stated publicly that we will support the levy as a last resort. But Labor is calling on the Government to fix aviation policy. The Deputy Prime Minister John Anderson has made a terrible mess of the whole thing. He has insulted thousands of former workers by this week referring Ansett as a 'carcass'.

There are so many victims of this aviation disaster brought on by the Howard/Anderson Government that one hardly knows where to start. The employees are victims. The tourism industry is a victim. And air travellers are victims. All of these groups are victims because this Government has wasted time and countless of opportunities in putting into place an employee entitlement scheme that guarantees 100% of workers' entitlements, so now they need to slug an extra charge on travellers.

There are two other aspects of this disaster that I would like to focus my speech on tonight and they are tourism and jobs. The crisis in America had already destabilised the tourism industry. The Ansett collapse on top of that means the tourism industry is in a lot of trouble.

I shouldn't have to explain to anyone here the importance tourism plays in Queensland. But given the Deputy Prime Minister John Anderson's approach to Ansett's problems in the leadup to the collapse, perhaps I should. Minister Anderson has totally bungled his handling of this issue for the past six months. That bungling will have a disastrous effect on tourism in Australia.

That bungling will have a terrible effect on the hundreds of thousands of jobs in Queensland that depend on tourism.

Maybe I should also take the time out to explain some things to Tourism Minister Jackie Kelly. Today, Labor announced a \$60 million rescue package to help the tourist industry recover from the collapse of Ansett and the downturn in numbers following the American crisis. What has the Tourism Minister been doing at the same time - not much. Not much except saying that the collapse of Ansett was a 'blip' on the tourism industry. Today the minister stood up in question time and told us that 90% of Ansett's passenger capacity would be restored by tomorrow. We'll be waiting to see if she is right.

I do not believe the tourism industry will collapse because of Ansett's demise. It won't. Queensland is a great place for both international and domestic travellers to visit and it will remain so. The

sun will keep shining. We'll keep staging world-class events. But on top of the American crisis this is one thing the industry did not need. It is one thing the Government should have done more to stop from happening.

It's a double blow because Queensland is such a decentralised state- you can't drive from the top of it to the bottom in under a day, like you can in some other states.

The respected economic forecaster Dr Peter Brain released data last week that showed 53,000 jobs would be lost in Australia as a direct result of the Ansett collapse. That does not include tourism-related jobs. 53,000 jobs. 53,000 people out of work and Mr Howard and Mr Anderson say the Government did as much as it could do. But that's not all. In addition to that Alan Midwood of Midwood Tourism and Development stated that an extra 20,000 jobs will be lost on top of this in the tourism sector.

That's a total of 73,000 jobs - 73,000 jobs on top of the ones lost when HIH went under, 73,000 jobs lost on top of the ones lost when OneTel went under. I support this bill but with reluctance.

I support it because Ansett workers deserve something in return for the years they spent working for the air-carrier.

But for that reason I also support our amendment that condemns the Government for the following:

- Total incompetence and mismanagement of the Ansett ownership issue;
- An employee entitlement scheme that does not meet 100% of workers' entitlements;
- Imposing another new tax on the Australian community that will hurt the tourist industry and therefore the economy and cost jobs;
- Failing to protect the jobs and interests of Australian workers;
- Leaving Australian communities without aviation services; jeopardising health and living standards;
- Totally destroying the integrity of Australia's aviation policy;
- Announcing that future unspecified levies may be imposed in order to ensure greater entitlement are paid than currently provided under the Government's flawed entitlements scheme; and
- Not brokering a solution to the Ansett crisis that would save jobs, regional services and aviation competition".

Senator Hutchins's speech read as follows—

I rise to speak on the Air Passenger Ticket Levy Bills.

My Labor colleagues have already indicated to the Senate that we will be supporting this Bill, but I would like to convey to the chamber tonight my absolute disgust with the Government's handling of the whole Ansett crisis.

I would in particular like to single out the poor performance of the Minister for Sport and Tourism, the Hon Jackie Kelly, in handling this crisis.

This Bill is nothing short of an attempt by the Government to stem the tide of resentment that is coming from ordinary Australians who are angry about the Government's failure to do anything to help workers suffering at the hands of these corporate collapses.

It is policy on the run, a quick fix solution, and a cynical attempt to control the ever-growing amount of damage that the Government is suffering from this issue.

This Bill will provide for sacked Ansett workers full entitlements for wages, annual or long service leave and pay in lieu of notice.

But it will, however, only partially fund Ansett workers' entitlements in respect of long service leave, which will only be funded up to eight weeks. What this means is that every Ansett worker who has worked for Ansett for more than four years is going to miss out on some of his or her entitlements.

Imagine if you were a loyal employee of Ansett who had worked for the company for thirty years, and then suddenly you're told that your job's gone. Then, to add insult to injury, you were told you'd only be getting paid out for 8 weeks of long service leave you had accrued over the years.

Imagine being left out in the cold like that by this heartless, opportunistic government.

What's more, this Bill will provide no money for workers employed in companies dependent upon Ansett for business that are going to lose or who have already lost their jobs.

Workers from companies like Gate Gourmet, who used to provide catering services to Ansett, aren't going to get anything from this Bill.

They've lost their jobs, and have probably acquired masses of entitlements for wages, annual or long service leave, and pay in lieu of notice.

And under this Government, they're not going to see a cent of it. Not yet anyway. They too, are being left out in the cold by this government.

And there are going to be a lot of people out there who are going to find themselves in this situation. There are 17,000 employees of Ansett who are now in the dole queue.

And it's estimated that there are potentially up to 50,000 more jobs that could be lost in the fallout from the Ansett collapse. That's up to almost 70,000 hard-working

Australians who are going to find themselves jobless and missing out on their full entitlements.

And the Minister for Sport and Tourism has the audacity to get up in the House of Representatives and tell all those Australians that this crisis, this mess is just a 'blip.'

17 000 jobs lost? Just a blip.

50 000 more at risk? Just a blip.

Thousands upon thousands of workers missing out on their full entitlements? Just a blip.

I often wonder with the Minister for Sport and Tourism if it is heartlessness, meanness and trickiness that steers her in the direction of these sorts of comments, or if it's just plain incompetence.

Perhaps it is just an unfortunate mixture of both. I don't know.

But one thing I do know is that it is these sort of gaffes that are fast revealing to the Australian people just how out of her depth the Minister for Sport and Tourism is when it comes looking after her portfolio, let alone as a member of this parliament.

Earlier this year, a newspaper article by Fia Cumming appeared in the Sun Herald entitled "Jumping Jackie Flash now the invisible woman."

In the article the question of "Has anybody seen Jackie Kelly?" is posed, and the Minister for Sport and Tourism's performance is described as "the Case of the Dissappearing Minister."

Allow me to quote from the article:

"In the whole month of March, the official Hansard record shows she (Kelly) said just a dozen words in three short interjections."

For an entire month, the Minister responsible for an area that is one of Australia's leading industries said just twelve words - all of them interjections.

In fact, since becoming the Minister for Sport and Tourism, the Hon Jackie Kelly has only made eleven speeches on her own initiative about her portfolio in the House of Representatives. She made none last year, and has made only one this year.

The article also says that:

"She claimed she had not been seen much at national events this year because she had been focussing on her marginal electorate of Lindsay."

But if you look through the Hansard records, you will note that since the last Federal election, the Minister for Sport and Tourism has not made one single speech about her electorate of Lindsay in the House of Representatives.

It has thus now been almost 1200 days since the Minister raised any issues of concern in her electorate in the parliament.

One such issue might be the recent job losses resulting from her Government's disastrous handling of the Ansett collapse.

This week, the Penrith City Star reported in an article entitled "Not Happy Jackie" that bus loads of sacked Ansett workers last week protested outside the Minister for Sport and Tourism's electorate office in Penrith.

The Minister for Sport and Tourism was invited to come and address the workers.

But in a remarkable display of contempt, the Minister for Sport and Tourism failed to even show up.

Given the gravity of the Ansett issue, and the level of anger that is being directed at the Minister for Sport and Tourism about her outrageous and contemptuous handling of it, you would think that the Minister would be making some sort of attempt to defend herself or her government, or perhaps even put out some sort of spin on the issue.

But if you log on to the Minister's web page, you'll notice that there is nothing at all about the current crisis facing Australia's tourism industry. Not one article. Not one press release. Not one piece of information about what the Minister for Sport and Tourism might be doing to fix the problem or the work she might be doing to try and secure the entitlements due to workers sacked because of the Ansett collapse.

Nothing.

This again just illustrates what an uncaring and lazy member of parliament the Minister for Sport and Tourism really is.

She's done nothing to alleviate this crisis.

More jobs are going to be lost, and the best answer this Government can give to those losses is a partial payment of sacked Ansett workers' entitlements.

What an outrage this Bill is, and what a heartless Government it is that's introduced it.

Senator RIDGEWAY (New South Wales—Deputy Leader of the Australian Democrats) (10.58 p.m.)—My apologies for my enthusiasm: it is probably because it is getting close to the last hour. Like my colleague, Senator Greig, I would like to speak on the Air Passenger Ticket Levy (Collection) Bill 2001 and the Air Passenger Ticket Levy (Imposition) Bill 2001, and to give them my support. Primarily, I call on the government to put in place a comprehensive, long-term policy to support the growth of the Australian tourism industry, because I think there is a need for that. I state at the outset that the Australian Democrats do not want to stand in the way of any lawful measures that will see some or most of the 16,500 Ansett workers receive their entitlements. We believe this has to happen for the simple reason that these entitlements are the right of those who have worked so hard over so many years to accrue them.

It is also hard to understand why the tourism industry is being targeted once again as a source of funds, when the government finds itself in another critical situation and in need of large amounts of money. As senators would recall, almost three months ago to the day this chamber was debating the Passenger Movement Charge Amendment Bill 2001. At that time we saw an increase of some 30 per cent in the cost of departure tax on all airline and cruise ship tickets. That tax hike was essentially to fund the government's measures to guard against a foot-and-mouth disease outbreak in this country. All parties in this chamber, and the tourism industry itself, recognised the seriousness of that threat. I think we also recognised that we needed to keep our clean and green image, particularly as it concerned tourism and how we projected ourselves abroad to international tourists contemplating a visit to this country. We all supported the increase in the PMC at that time, even though the Democrats questioned the appropriateness in policy terms of requiring the tourism industry to fund, single-handedly, what was in the first instance an agricultural problem. It was for that reason that I sought on that occasion to move amendments to the bill which would have had the effect of increasing the cost of the departure tax on each ticket by only \$2.

Had that amendment been supported by either the ALP or the government, essentially it would have enabled \$15 million of the passenger movement charge to be allocated to the Australian Tourist Commission to fund its international promotional and marketing budget, as well as over \$56 million per annum to be allocated to the government's foot-and-mouth disease prevention measures. I recall that at the time of that debate Senator Schacht explained that the ALP did not trust the government to allocate the extra \$2 of the passenger movement charge we proposed to the ATC; and nor did the opposition want to be seen to be supporting what, at that time, was regarded as an additional tax increase.

Tonight we find ourselves in an unusual predicament, but a position that is very much similar. However, instead of foot-and-mouth disease, we are given the option of blocking the only option this government has been prepared to put on the table to give some relief and some justice to the workers of Ansett. It seems to me that this is hardly a choice, because I do not think anyone in this chamber wants to see any of these Australians subjected to further financial insecurity and hardship. That is the only reason the Australian Democrats are supporting these bills—not because we think that they are a good idea, and certainly not because we think they are good law. It seems to me to be a reaction to circumstances beyond the control of the parliament and, for that reason alone, it is poor quality legislation.

As my colleague Senator Greig pointed out earlier, the two bills are another example of poor quality legislation that the government is putting before the Senate. It is overly complex and, in my view, it will be discriminatory against travellers in more remote parts of the country who need to travel more than one sector to reach their final destination. I find myself in agreement with many of the comments by Senator West in relation to the financial hardship that also has to be borne by regional and rural Australia.

To use the example of my own state of New South Wales, someone travelling from Bourke to Sydney has to travel via Dubbo. The round trip will now cost them \$20 more and that is just for their air passenger ticket

levy. It is not just a simple \$10 increase that we are talking about for each ticket. We are talking about a \$10 increase, as I understand it, in relation to each sector that is travelled by any person using air travel to get to their destination. I do not think that it will come as any surprise to fellow senators that airlines are not in the habit of discounting air tickets to destinations in regional Australia. Towns like Bourke, Brewarrina and Walgett in north-western New South Wales are fairly reliant on air transport as a link to centres like Dubbo and Sydney and they already pay some of the highest prices for air travel in this country. Now they are being asked to pay more—probably, on average, \$20 for a return trip, or \$60 per person per trip if they travel across three sectors to reach their destination.

For a government that regularly trumpets what it is doing to boost regional tourism in this country, I do not think that these two bills are a high watermark. The kind of policy making on the run that has become a hallmark of this government is, in my view, not in the best interests of tourism in this country, nor is it in the best interests of those in regional Australia that continue to rely upon air transport as a means of conducting their business. There is a need for a comprehensive strategy to deal with the Ansett crisis and to support the tourism industry and regional Australia and it is long overdue.

As I said in my opening remarks this evening, the Australian Democrats again call on the government to work with the tourism industry to put in place a long-term and comprehensive tourism industry strategy. We have been asking for this for over two years now and, in light of recent events in the United States, such a strategy has to be of utmost priority, because I do not believe that the full effects of what is happening in the US have quite been felt here at home and there is perhaps more to come.

We look forward to the outcomes of the Prime Minister's tourism industry working group which will report over the next month. We think that this is a step in the right direction and give credit where credit is due. But why did it take a crisis of the sort that has now been perpetrated upon Ansett for the

government to even consider establishing such a body? Why was there not such a body already in place as a matter of course when these issues have been highlighted over a long period? I think we are also on record in recent weeks as having called on the government to develop a comprehensive response to the crisis to ensure that the whole question of meeting workers' entitlements when companies like Ansett go under is resolved once and for all.

Today the Treasurer announced that there is an underlying budget surplus for 2000-01 of \$5.6 billion. Maybe the government would consider using one-tenth of those funds to provide a guaranteed interest free loan to Ansett as part of a wider strategy to stabilise the airline industry. We believe that at the least this would keep Ansett in the air for at least two months, during which time some of the other stabilising measures could be put in place. I acknowledge the announcement earlier this evening about the indemnity, if you like, that the government has undertaken in relation to at least putting planes in the air from this coming Saturday for the next 12 weeks.

I also mention today that Senator Murray has circulated two amendments to the Bankruptcy Legislation Amendment Bill 2001 which would force company directors to return performance related bonuses paid to them if the company collapses and would make related companies liable for those debts. This is the fourth time that Senator Murray has circulated these amendments since 1998 to give effect to the Australian Law Reform Commission recommendations of the same year. On every occasion the government has rejected those amendments. It will be interesting to see what it does with those amendments on this occasion, particularly if it has already secured the Senate's consent to the air passenger ticket levy legislation.

I think that I also ought to point out in relation to the bills that we are dealing with that there is a need for a sunset clause. If the tourism industry is to be hit with yet another levy, that levy should only apply for the period necessary to fulfil the purpose for which it was created—in this case, to be able to

meet the costs associated with the special employee entitlements schemes for Ansett group employees. Yet here we have another piece of legislation that puts in place a levy that is to apply indefinitely, or until the minister identifies a month after which no levy will be payable. And it gets better than that.

Even when the minister is satisfied that the purpose of the bill has been met, he or she can direct the levy to be paid to 'a scheme prescribed by the regulations' of the legislation. And—surprise, surprise—the bill states in clause 23(2) that consolidated revenue is an appropriate scheme for the minister to nominate. Here we have it again that money is being collected for an indefinite period of time and the minister can make a decision that it can go into consolidated revenue. The Democrats appreciate that the government is not in a position to pinpoint a date by which time enough money will have been collected to meet the workers' entitlements. But certainly it is in a position to state in the legislation that once the purpose of the bill is achieved it ceases to charge the levy on future tickets.

I want to ask this question of government: why is the tourism industry again being singled out as a milking cow for the government on these particular issues? Why is regional Australia being singled out in having to pay proportionally higher fares to meet workers' entitlements when, quite frankly, we all have a responsibility to deal with what the government should have dealt with long ago? If the reason is that the government might have to meet the cost of paying other workers' entitlements, then it should take other legislative steps now to amend the Bankruptcy Act as the Democrats have suggested.

The passenger movement charge itself has been going into consolidated revenue for years. We are aware that the government has already been using the departure tax, or passenger movement charge, in a similar way to generate vast amounts of money for consolidated revenue. We only have to look at a recent report from the Australian National Audit Office from last year which states that the passenger movement charge is applied partly as a general revenue raising source

and is no longer solely linked to cost recovery or customs, immigration and quarantine services. This has been confirmed by the Attorney-General in his answer to a question on notice, and indeed the Attorney-General stated that he is not considering any proposal to change those existing arrangements.

Furthermore, the Board of Airline Representatives recently went on the public record with the accusation that about \$20 million in revenue from the passenger movement charge is not being spent on border control services. This is an accusation that does warrant further detailed investigation and a matter that the Australian Democrats want to see resolved to the satisfaction of all Australians, and most of all to the satisfaction of the tourism industry.

I want to call on the government to particularly take note of clause 23 in the bill and to perhaps give serious consideration to amending that clause to create a sunset clause in this bill. If this request is not met, we indicate now our intention yet again to disallow any regulation which tries to direct the levy into consolidated revenue. It seems the only fair outcome, given that so many—yet not everyone—seem to be footing the bill for entitlements without due consideration to trying to create some sustainability in the financial sense for the tourism industry and trying to give people in rural and regional Australia a fair go.

Senator McLUCAS (Queensland) (11.11 p.m.)—I also rise to contribute on behalf of Queensland—in particular, North Queensland—to the debate this evening on the Air Passenger Ticket Levy (Imposition) Bill 2001 and the Air Passenger Ticket Levy (Collection) Bill 2001. The purpose of these bills is to implement a levy on tickets purchased in Australia on or after 1 October 2001 to fund a special employees' entitlements scheme for those Ansett workers who may lose their jobs as a result of what I believe is government inaction. It is proposed to offset costs to the Commonwealth of paying out Ansett employees' entitlements pending action against Air New Zealand to recover those workers' entitlements.

The first question I need to ask is: why are we in this situation? I want to remind the

government that nobody at all doubts the responsibility of the government in this whole event: the potential demise of our second airline in this country. It is now clear that the government have known of the problems of Ansett and Air New Zealand since early this year. They still protest loudly that they did not know that Ansett was in trouble. But I ask the question: why did I know? Why did I know as a backbencher in a regional centre? Why did the business people of Cairns and Townsville know that Ansett was in trouble? Why did people in the aviation sector who have spoken to me about this matter since early this year know that Ansett was facing difficulties? Why did people in the tourism industry know that there were significant issues that Ansett was facing?

No-one doubts responsibility of Air New Zealand directors for the situation that we face in Australia: the loss of our second airline—such an important asset to our transport infrastructure in the vast continent that we have. But the government's response has been to repeatedly completely wash their hands of any responsibility in this matter. Their message has been, 'Ansett was a private enterprise and there was little we could do.' I am sorry: that is just not good enough. It is not good enough for the workers of Ansett, who prefer Ansett keep flying; it is not good enough for the tourism industry; it is not good enough for people who live in regional, rural and remote Australia, who rely on Ansett to do their ordinary business, just like people in the city rely on their car.

Labor has a strong commitment to these Ansett workers. In my own city of Cairns, we have lost the jobs of between 250 and 280 direct employees of Ansett: flight attendants, pilots, ground staff and service staff. We have lost the jobs of 25 to 30 Gate Gourmet workers. These people are important people in our community: they have made a financial commitment to our community, they are families with kids in our schools, they have mortgages and they want a future in North Queensland. Many of them are facing a shift.

I would like to provide the Senate with part of an email that was sent to me by one

of the flight attendants from Cairns recently. Part of her email says:

It both saddens and angers me that the Federal Government wants to quickly sweep this under the carpet. It makes me wonder what they are trying to hide? Whilst I believe the Air NZ board have to accept the majority of responsibility of Ansett's demise, Mr Farmer and Mr Toomey have insisted that "in no uncertain terms" the Government was informed of Ansett's true financial position in June. John Anderson now defensively says "Singapore Airlines couldn't save it". I agree. It didn't have a chance with the Government effectively blocking their bid, serving the best interests of Qantas.

While I recognise that ASIC is launching an investigation into this situation, I believe a Royal Commission is essential. The Government had no hesitation in implementing this in the HIH collapse, why not now? It seems to me that they are hoping that this will go away, preferably before the next election. WE WON'T!!!

Her postscript is quite charming. It says:

I am the Flight Attendant you commented on about my big smile at the rally on Friday. As this drags on, I am finding it increasingly difficult to find things to smile about. Please help me to get it back.

It is signed 'Stood Down Flight Attendant'. We have lost about 300 direct jobs in the city of Cairns, but that is just the start of it. These are real people who have real futures who want to stay in our city. Many of them, I am afraid, are looking to move away. The message that they gave me last Friday in Cairns was, 'Entitlements are important, but essentially we want to fly, we want to do what we do best.' I agree with them. I want Ansett to fly. As a person who lives in a regional centre, I know the value of the second airline in our city. The reality is that we have to deal with the issues of entitlements.

Labor will support this bill, but we do that only as a last resort. We have some major concerns with the legislation. Firstly, we recognise that this is a new tax on the Australian community and on jobs. We note that the Prime Minister has broken another promise by imposing another tax on our community. Secondly, the tax is being imposed to pay for the incompetence of the Howard government. Thirdly, this is a tax on tourism, the very industry that has been hit by the col-

lapse of Ansett and the decline of international aviation following the US terrorist crisis. Fourthly, this government is prepared to raise \$500 million to pay for entitlements in the event that the company becomes insolvent but has mocked Labor's calls to put in up to \$200 million to help get the airline back in the air, and it steadfastly refuses to back our call to help out. Fifthly, Labor firmly believes that the government saw this coming and sat idle, thereby failing to protect the jobs and interests of Australian workers.

Labor does have an approach to workers' entitlements. The former Labor government recognised the vulnerable position of work employees who not only lost their jobs but also lost their wages and other entitlements when their employers failed. In 1993 we regulated the Commissioner of Taxation to the status of unsecured creditor in such situations, and therefore below that of these employees. This gave workers' entitlements the highest priority of all non-secured creditors and made more funds available for employees when they had lost their jobs because of their employers' insolvency. Since 1996, in response to a series of company failures that have left many thousands of employees being owed many millions of dollars through unpaid wages and other entitlements, the Labor Party has sought to provide protection for employees' entitlements in a series of private members bills.

These bills proposed a system in which employers would take out insurance to protect their employees' entitlements in the event of insolvency. They also claim to strengthen the Corporations Law and the Workplace Relations Act to prevent corporate entities seeking to avoid their responsibilities for their employees' entitlements by asset stripping to associated companies, as occurred in the case of Patrick Stevedores. Instead of debating these bills and instead of engaging in a serious matter of dealing with workers' entitlements, the Liberal and National parties have avoided this issue and now we find ourselves in this crisis.

Over the last 10 days I have spent a lot of time talking with tourism operators in North Queensland—in Cairns, Port Douglas,

Townsville and the Whitsundays. I would like to relay some messages that have obviously not got through to the Howard government about the tourism industry and about the potential impact that the demise of Ansett will have in those regions. I want to remind the government about the importance of the tourism industry to Australia and to Queensland. The tourism industry in Australia is worth about \$16 billion to the economy every year. It directly employs a total of 700,000 people, with a further 300,000 associated jobs. The industry is worth a total of around \$7.7 billion to the Queensland economy. It is Queensland's second largest industry and employs 122,000 people. We are not talking about a small industry here; we are talking about Queensland's second largest industry. The year 2000 was not the best year for Queensland in respect of tourism. The Olympics were great for Australia, but the flow-on effect in Queensland did not occur in any real way. The year 2001 had a slow start. April and May, according to the tourism industry, were flat. I think that was essentially a result of the lack of disposable income in the community, directly as a result of the GST.

These are essentially good months—usually the better months for domestic tourism, because people tend to travel away from the peak season—but, because people do not have that cash in their pockets, they have preferred not to travel. June, July and August saw a return to expected levels, and the tourism industry in North Queensland was basically powering. We were back to usual. Streets were busy and the flights were full—I tried and could not get a seat out to the Great Barrier Reef. It is in that context that I want to relate these messages to the government.

The Howard government, and especially their tourism minister, have very little understanding of the value of tourism in our economy. The absolutely offensive comments of Jackie Kelly, the Minister for Sport and Tourism, equating the demise of Ansett with a blip were received with absolute horror by the industry in Queensland. She has no understanding of the need for a second airline in delivering passengers to tourist destinations and in providing competition in the

tourism sector, nor any understanding of the role of a second airline in marketing and promotion. Ansett was very good at that, and Ansett was particularly good at providing holiday packages, especially to North Queensland destinations. As with their current response to so many foreseeable events, the government have responded retrospectively. They have said that it is not their problem and that market forces will rule. It is simply not good enough to leave our second airline with the answer 'it is not our fault'.

There are a number of issues of concern to the North Queensland tourism industry, to the aviation sector and to the community. Firstly, I want to talk about the unfair impact of the Air Passenger Ticket Levy (Collection) Bill and the Air Passenger Ticket Levy (Imposition) Bill on small airlines. Skytrans is a small airline that operates in Cape York Peninsula. As Senator West said earlier, this is a small airline providing services to very isolated places. Its passengers rely on air transport for their day-to-day activities. It is not discretionary expenditure that provides the money for these people to get on the plane; they get on the plane for health reasons, for legal reasons or for business reasons—usually in Cairns—or to visit their mum in hospital. There is very little tourism use of Skytrans. The company is a very good company, and it operates a sensible, community focused pricing policy. It recognises the need and the financial capability of its community, and it prices accordingly.

Ansett did not operate any of the legs operated by Skytrans, so it is very sensible and reasonable to ask why these mostly poor people, who rely on air transport for basic needs, have to subsidise the government's failure to respond to the Ansett demise through a levy of \$10 on the \$99 fare from, say, Cooktown to Cairns. Where is the equity in charging the same levy to a child travelling from, say, the Aboriginal community of Lockhart River to Cairns to see their grandmother who is in hospital, and to a wealthy business person who is travelling from Sydney to Cairns for a holiday? The answer to that question is that there is no equity.

Maybe a more equitable approach to funding these employee entitlements might

have been to apply an income tax surcharge, such as that used by the government for its gun buy-back scheme in 1996. In this way, those who have the capacity to pay, rather than those who have to travel, would have funded the entitlements of the Ansett workers. But the government—acting in retrospect, responding to crisis—has seized on the scheme we are debating tonight. It is interesting to note the number of amendments to the legislation that were made in the House of Representatives when it was debated in that place. I think it shows a lack of thought in and consultation on this legislation. I believe that people in rural and remote Australia will unfairly pay for this government's inaction and its lack of an early response to the demise of Ansett. It is appalling to people in rural and remote Australia, and to the small aviation industry, that they are going to fund incompetence in a government.

Secondly, the message that I want to give to the government tonight is that these bills are in fact a tax on tourism. Remember, this is the tourism industry that is still accepting the increase in the last budget of \$8 on the departure tax. I was talking today to operators in Far North Queensland. Down Under Dive is one of the largest privately owned dive companies in Australia and potentially the world. It has 90 employees who are basically all qualified people—skippers, engineers and dive instructors. They are experienced and talented people. In the last 10 days, Down Under Dive has removed one vessel from its fleet—a SuperCat—and it has lost nine jobs. The owner of the company is a very good employer, and they have a sound record in the tourism industry over many years. It is only one example of the hurt that this government's inaction has caused.

Moving to the restaurant industry, I understand that today Red Ochre Grill was recognised in Mietta's guide as one of the best eating houses in Queensland. It is an innovative restaurant, a very enjoyable restaurant, and it is involved in hospitality training and the promotion of Cairns as an interesting destination. It is the sort of establishment that every regional centre would want to have in their locality. Red Ochre has not laid off staff but it has suffered a downturn of 30

per cent in the last 10 days. It has lost 450 booked seats in those 10 days. The causes the owner attributes that to are twofold: the demise of Ansett but also the terrorism in the United States. It was doing very well in July and August; it was back to expected levels, following the year 2000. Since the demise of Ansett—or since the potential demise of Ansett—it has not let any of its full-time staff go but has had to cut all casual staff hours by 60 per cent.

The owner of the business said to me today, 'These staff will not appear on the unemployment lists. Because they are not terminated, they will not get support for any lost entitlements; the business is still viable and very much functioning.' These businesses and their employees have been disregarded by the government. They are the forgotten victims of government inaction in the whole Ansett debacle. I also spoke with the owners of an opal shop which is totally dependent on tourism sales. They report that they have been down 50 per cent on their takings in the last 10 days compared to a similar period last year. It is a small operation with, up till recently, 11 employees. They now have nine employees, and the owners are working longer so that they have a person on the shop floor.

Cairns is a growing market for conventions. Its industry is reliant on frequency of flights, availability of seats and competitive costs of travel. We know that industry is going to be affected if we do not have a second airline in this country. The government needs to understand that tourism is big business in Queensland. It is an important business. It is a major employer of Queenslanders, and it is an extremely important part of our economy.

I welcome Labor's tourism industry rescue plan because that plan actually acknowledges the role of the tourism industry in our state. The plan recognises the need for a second airline, the role of small tourism enterprises and their need for support, the need to promote overseas, and the need to assist regional promotion and infrastructure development. Labor will work with the tourism business to develop destinations and to market products. (*Time expired*)

Senator O'BRIEN (Tasmania) (11.32 p.m.)—There are a great many things I could say this evening, but I will not. The Air Passenger Ticket Levy (Collection) Bill 2001 and the Air Passenger Ticket Levy (Imposition) Bill 2001 are the subject of a procedure this evening whereby it is intended that we curtail our contributions in the interests of passing a package of measures which the government have asked the Senate to pass expeditiously, to enable the Senate to adjourn tomorrow evening and to facilitate the opportunity for the government to avoid coming back here on these bills in three weeks.

The comments I want to make tonight—and, as I say, there are many things I could say and many of them have already been said by other speakers—are prompted in part by a telephone conversation I had this evening with the Mayor of Flinders Island, Mrs Lyn Mason. She is a very dynamic mayor of a small island community in Bass Strait with a small population that is substantially dependent on aviation services for access for the community. There is a vessel that sails across there regularly. I think it is a 23-hour trip, now that it leaves from Launceston and not Bridport. The vessel is a vehicular ferry, and I think there is a little room downstairs where you can sit around on some very nice but not, I imagine, very comfortable chairs over a 23-hour trip. They are plastic garden type chairs to travel across to Lady Barron on Flinders Island. The airport at Whitemark is the main point of departure for most of the residents and arrival for most of the visitors, and of course in the context of that this legislation is extremely relevant. Lyn Mason was saying to me this evening that she was extremely angry that the residents of Flinders Island would be required to pay this \$11—that is, \$10 plus GST—for their trips to the main island of Tasmania or across to Victoria on the Chieftains that are flying across there at the moment—because over the last few years Flinders Island has had some problems with aviation services.

Apart from the fuel contamination crisis which isolated the island at a critical time over the last December-January period, there have been a number of occasions when aviation operations have ceased and the island

has been left with inadequate services or no services, and residents of the island have been left without their entitlements because of the financial failure of airline operations. Mayor Mason was quick to point out that on those occasions there was no move by the federal government to provide assistance to the employees of the failed airlines, there was no move from the Commonwealth to provide special assistance for Flinders Island occasioned by its isolation during the fuel contamination crisis and there was no move to provide any financial assistance to the airlines which struggled and ultimately failed in trying to provide a service to that remote—if I could put it that way in terms of the difficulty accessing it—part of Australia and that part of Tasmania, Flinders Island.

Mayor Mason was keen to note that there was a debate this evening about this legislation and keen for the predicament of Flinders Island to be placed before the chamber. Mayor Mason was quite alarmed by some of the comments which had been made to her by other senators—she did not identify them, but I can probably guess who they are. It is up to Mayor Mason to identify those if she wishes but she was quite alarmed by the sorts of responses that she was receiving from other senators about this matter. I have asked my colleagues and she has not spoken to them. Flinders Island would not be alone in feeling that this move is something which bewilders them, given the lack of attention to the needs of regional Australia by this administration in terms of aviation services.

As other Labor senators have indicated, Labor will be supporting this measure because it would be unconscionable for us to place a barrier in the way of Ansett employees receiving compensation for non-payment of their entitlements. They are suffering significantly at the moment. They are not officially out of a job but they are not being paid in the main. They are not entitled to apply for government assistance in the main and so some people are on the verge of losing their houses. They do not think the government is being generous but the opposition will be supporting this measure because it would be unconscionable to leave these people with nothing while there is an attempt to recover

moneys from Air New Zealand or out of the assets of Ansett.

There are a great many things that could be said this evening. I will not be taking my contribution any further tonight because there is still legislation to be discussed before we conclude. I may make comments in the committee stage of this legislation.

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

NOTICES

Presentation

Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate) (11.39 p.m.)—I take this opportunity in this interregnum to seek leave to move a notice of motion in relation to the Electoral and Referendum Amendment Regulations 2000, No. 1, as contained in Statutory Rules 2000, No. 248 and made under the Commonwealth Electoral Act 1918.

Leave not granted.

FUEL LEGISLATION AMENDMENT (GRANT AND REBATE SCHEMES) BILL 2001

Second Reading

Debate resumed.

Senator MACKAY (Tasmania) (11.40 p.m.)—I rise to speak on the Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001. It is a bill that will extend the sunset provisions of the Diesel Alternative Fuel Grant Scheme and the Diesel Fuel Rebate Scheme for 12 months to 30 June 2003. This scheme provides a rebate for the excise or customs duty which has been paid on locally produced or imported diesel and like fuels for certain eligible business activity such as mining, primary production, marine and rail transport, hospitals and nursing homes. It provides a rebate for the on-road use of diesel alternative fuels in vehicles over 20 tonnes and vehicles of between 4.5 and 20 tonnes in non-metropolitan areas. There are amendments to the scheme which allow for a grant to be payable when fuel is used in an emergency vehicle weighing 4.5 tonnes or more.

The opposition supports this bill—in some ways reluctantly because, if we had a competent, honest and efficient government, this bill would be unnecessary. What we have with the extensions of these schemes is a government acknowledging that they have not done what they promised. When the deal was done with the Democrats to sunset these schemes on 30 June 2001, it was promised that the new Energy Credit Scheme would be ready and in place. The fact is that the Energy Credit Scheme is not ready and we have been calling on the government to get the work done. The trucking industry has been pushing for answers but it has not happened and it is not likely to be done by June next year. It has been the Labor Party's policy to extend the sunset date if the government could not give an assurance that the new Energy Credit Scheme would be ready in time for that sunset.

The bill before us today is the answer to our question. The answer is clearly that the government does not have the Energy Credit Scheme ready for the June 2002 sunset date. The answer is that the government with all the resources available to it has not done the work it promised to do two years ago when it made the commitment to the Democrats. In that respect, with the admission of a broken promise and incompetence, the government has conceded they will not have the Energy Credit Scheme ready. What we have before us is effectively Labor policy being implemented. It shows a government that is out of touch with what the community expects of responsible governments. They are content to stand by, gloss over mistakes for as long as they can until they are forced to admit them and then unashamedly shoot the bill off to the taxpayer and the community.

If the new Energy Grants Credit Scheme that is supposed to replace the current Diesel Grants Scheme can still be finalised by June 2002, that is a good thing. But, as my colleague Mr Ferguson pointed out in the other place, we believe the government is conceding that this is unlikely. We were virtually convinced of this when the government said the fuel tax inquiry would not report until March and would look at the Energy Credit Scheme. We did not oppose the Diesel Grant Scheme when it was introduced because it

constituted a way to help transport and primary industries to mitigate the impact of the goods and services tax, and we will not oppose this bill.

The reason for the extension required in this bill is that the government must start giving some idea about what it wants in an energy credit scheme. The time extension will take the pressure off finalisation of the scheme and give certainty to the industry. The government fuel tax inquiry may give some clues on what might be in an energy credit scheme but we do not have the slightest clue about what may be in an energy credit scheme now, something that was committed to the Democrats two years ago. Given it was two years ago, surely the government must have some idea. We believe it is time their thoughts were put forward on what sort of energy credit scheme the government might be interested in.

My colleague in the other place shed some light on why we have seen inaction and why we have seen no proposal on an energy credit scheme. I have a copy of a government memo that clearly shows that the government ministers simply cannot agree on what the nature of an energy credit scheme should be. The memo is headed 'Environment Australia' and it is to the parliamentary secretary. As I understand it, it was to be used by her in a presentation to the Australian Trucking Association at a meeting on 8 March. Inter alia, the notes provided to the parliamentary secretary for this meeting state under the heading 'The Energy Grants (Credit) Scheme':

The Department of Transport and Regional Services, in consultation with Environment Australia and the Greenhouse Office, is preparing a Cabinet memorandum on this proposal. The Cabinet memorandum aims to develop the Government's position on the proposal for reform under the Energy Grants (Credit) Scheme and the process to be followed in developing the scheme. The Cabinet memorandum is at an early stage—

this is advice from the department to the government—

of development and it is not possible to provide any details of departmental thinking to the public or the ATA, particularly as there is no agreement between the Ministers at this stage.

This was issued on 8 March this year. Two years down the track, and the ministers cannot agree. That is probably a bit of an indication as to why there has not been any action. There it is in black and white. I would argue that that is still the case today. It is several months later on and the ministers still cannot agree—and if that is not the case we would appreciate some clarification by the government.

A further note from the briefing shows that the government knew back in March that the industry was anxious to ensure continued entitlements, but it took a long time to ease that anxiety. The government did not talk to the opposition about the terms or arrangements for the diesel grants scheme. We were not in the loop on this issue. We therefore had nothing to do with the original condition that the scheme would terminate mid-2002 or with its replacement with the energy credit scheme. Since the middle of 1999 again, as I state, for over two years we heard nothing from the government on the energy credit scheme. I think that the memo to the parliamentary secretary explains why.

When the Labor Party promised to introduce the legislative changes necessary to extend the Diesel and Alternative Fuel Grants Scheme for an extra 12 months, we promised not to sit on our hands as this government had done; we said that we would need to finalise by 30 June 2003 an energy grants credit scheme or arrangements that would maintain the equivalent benefits to the trucking industry.

We will support that bill with that intent. It is time, from our perspective, that the government gave a genuine commitment on this issue and stopped playing the game that it has been playing for the last two years. We believe the Energy Grants (Credits) Scheme will include incentives and measures to improve the environmental performance of the transport industry. If pressure had been put on the government to that end, then we all would have had a much better idea in the first place of what lay ahead.

It is a matter of fact that the fuel tax inquiry will examine the whole issue of fuel taxes, including the Energy Grants (Credits) Scheme. It is due to report in March 2002.

With the extension of the diesel grants schemes, the government now has more time to devise, consult, consider, debate, negotiate, resolve and legislate, if need be, an energy credit scheme to meet the new sunset date. But this extension does not remove the imperative to get cracking on finalising that scheme.

Whoever is in government next year must treat this with high priority. I conclude by confirming that if we are, we will also support the changes with respect to emergency vehicles—and we do now in opposition. It was a nonsense that organisations like rural fire brigades had to distinguish between fuel used on-road and fuel used when they went off-road into the bush fighting fires. That seemed to be a fairly odd situation. We are pleased to see this resolved now. The other minor changes assist the administration of the scheme, and Labor welcomes the government's roll-back of the provisions. It is consistent with our policy of making the GST and its related schemes fairer and easier to administer. We are pleased that the government is also adopting that part of the policy of the Labor Party with respect to the ongoing roll-back of aspects of the goods and services tax.

Senator ALLISON (Victoria) (11.49 p.m.)—The Fuel Legislation Amendment (Grant and Rebate Schemes) Bill 2001 seeks to delay the start-up date of the Energy Grants (Credits) Scheme by 12 months to 1 July 2003 as well as to extend the scope of the Diesel and Alternative Fuels Grants Scheme to include the fuel used by emergency vehicles and to make various administrative amendments to DAFGS. The Energy Grants (Credits) Scheme is proposed to replace the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme. The Diesel Fuel Rebate Scheme is a longstanding one, as senators will know, and has provided off-road rebates for primary production, mining and forestry for many years. Last year it was extended to include rail, marine, residential premises, hospitals, aged care persons homes and other medical institutions.

The rebate is worth around \$2 billion a year and around \$800 million for mining and

\$600 million for agriculture. The Democrats are disappointed with this delay and with the way in which the government has failed to act or to consult. In his letter of 28 May 1999, the Prime Minister agreed to an energy credit scheme to replace from 30 June 2002 two existing schemes, as I have already said. He said:

This scheme will be developed jointly by the Government and the Australian Democrats. It will ... provide price incentives and funding for conversion from the dirtiest fuels to the most appropriate and cleanest fuels.

The government has had nearly 2½ years to prepare for this changeover, but to date it has done very little other than to refer the scheme to the fuel tax inquiry. It did not even have the courtesy, as a matter of fact, of letting us know that it was making this referral to that inquiry. The inclusion of the Energy Grants (Credits) Scheme in the terms of reference for the fuel tax inquiry has perhaps conveniently created a situation where it will be very difficult to implement the scheme by the due date—because the inquiry of course will not report until March next year.

I pointed this out to the Minister for Transport and Regional Services earlier this year and said that three months was too short a time frame in our view in which to draft legislation and to get it through the parliament. So we have a bill which seeks to delay the introduction of the energy credit scheme by 12 months. Why does the government need an extra year to develop the scheme, when the inquiry will report in May next year? We would argue that extending the start-up date to October 2002 would give the government enough time, especially considering that the government will by then have had nearly 3½ years to put up a proposal.

I think the answer is that there is not the political will in the Department of Transport and Regional Services to deliver on this agreement. I guess we should not be surprised that the minister for transport has difficulty in responding to a brief which seeks to improve greenhouse emissions by putting in place incentives for change. A minister who is so willing to fund the useless Scoresby Freeway in Melbourne and ignore the needs of public transport and even freight

rail obviously has great difficulty in seeing the bigger greenhouse picture.

The interstate rail network audit, undertaken by the Australian Rail Track Corporation at the request of the federal minister for transport, recommends investing \$507 million in upgrading the interstate rail network, saying that inadequate investment in rail has resulted in speed and load restrictions, limitations on efficient operating practices and excessive fuel consumption and maintenance costs, which have caused modal shift to road.

For a government said to be interested in lower costs of transport for rural Australia, this is obviously a major problem. It will not be addressed by the Adelaide to Darwin rail link, and there does not appear to be any commitment forthcoming from either of the major parties to provide this investment. I do not suggest that the energy credit scheme should fund the repair of our dilapidated rail network on the busiest route in the country, but it does put the \$2 billion worth of diesel rebates somewhat into context.

To return to the energy credit scheme, the Democrats have upheld their end of the bargain and, for more than a year, have been diligently reminding the minister of the need to get moving on this scheme. In the interests of getting the scheme up and running, we put out a discussion paper asking interested groups and individuals for their input on the opportunities that the energy credit scheme might offer in improving air quality and reducing greenhouse emissions. The Diesel and Alternative Fuels Grants Act 1999 states:

The purpose of the Energy Grants (Credits) Scheme will be to provide active encouragement for the move to the use of cleaner fuels by measures additional to those under this Act, while at the same time maintaining entitlements that are equivalent to those under this Act and the DFRS, including for use of alternative fuels ... In the case of diesel fuel the Commonwealth intends to restrict entitlements available under the Energy Grants (Credits) Scheme to ultra low sulphur diesel from 1 January 2006 when a mandatory standard of 50 parts per million of sulphur will come into effect.

We are very proud of having negotiated fuel and emission standards that will bring Australia into line with Europe by 2005-06 in-

stead of lagging years behind. Under Labor, of course, we had diesel with 1300 parts per million of sulphur and no sign of tighter controls. Labor also did not see fit to introduce on-road vehicle emission testing, and we have one of the oldest vehicle fleets in the OECD. That all adds up to a lot of pollution and, understandably, high rates of asthma and respiratory illness.

Responses to the discussion paper on the Energy Grants (Credits) Scheme have made the following points. We need to emphasise perhaps the additional measures provision of the act rather than falling back just on maintaining entitlements. Farmers want rebates protected, and civil contractors and mining, exploration and CNG industries want the scheme extended and anomalies removed. It might be possible to convert rebates and grants to a lump sum so that borrowings could be made against entitlements over, say, five years to fund specified capital investments to increase energy efficiency of operations. Perhaps the energy credit scheme could be used to fund a more rapid development of natural gas refuelling stations around Australia.

Respondents said that the energy credit scheme could encourage the cleanest fuels and the cleanest technology; hence, they said, there was a need to conduct a full life cycle analysis of petroleum and non-petroleum based fuels. So we could have a rebate that varies with fuel and engine; provides energy efficiency of existing diesel engines; brings forward the ultra low sulphur diesel fuels since this would give the most significant greenhouse gas reduction; allows government to subsidise catalytic converters, for instance, for existing engines; and applies international standards for off-road mobile machinery and stationary sources across the whole economy and not be sector, region or vehicle weight specific. Perhaps there should be an excise incentive on premium unleaded petrol. Perhaps there is a need to introduce standards for after-market conversions for CNG and LPG, including dual fuelled vehicles. Some responses to the discussion paper suggested subsidising alternative fuels, and doing so for off-road, on-road and medium sized vehicles.

It was suggested that all passenger buses—urban, regional, diesel and alternative fuelled—should be eligible for DFAGS as long as they were Euro 2, 3 or better. The issue of indexation needs to be addressed, and the Commissioner of Taxation should perhaps have the power to make determinations on the scheme. There were numerous other suggestions made in response to our discussion paper. Hopefully, these were also made to the fuel tax inquiry, submissions to which close on 30 September. I seek leave to incorporate the rest of my speech in *Hansard*.

Leave granted.

The speech read as follows—

So to wrap up, the Democrats can see why the Government wants to extend the operation of the Diesel Fuel Rebate Scheme and the Diesel and Alternative Fuels Grants Scheme and delay the startup of the Energy Credits Scheme but it has no one to blame but itself for running out of time. I am sure it is a lot easier for the Minister to shift this off to an inquiry and not have to think about a cleaner greener outcome.

The Democrats remain committed to the objectives of our agreement which is to provide price incentives and funding for conversion from the dirtiest fuels to the most appropriate and cleanest fuels.

We have not had an answer to our question as to why this extension needs to be 12 months. The Democrats will be putting up amendments to bring this time frame back to a more reasonable one and if the Government and the opposition cannot support those, I would appreciate some answers as to why.

We will support the amendment that will benefit emergency services vehicles although I think it would be preferable for these services to be properly funded in the first place.

We also support the other administrative amendments although I will be interested to hear from the minister the circumstances that gave rise to these changes, particularly the authorisation of third party claimants.

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

**REGIONAL FOREST AGREEMENTS
BILL 2001**

**Report of Rural and Regional Affairs and
Transport Legislation Committee**

Senator LIGHTFOOT (Western Australia) (11.58 p.m.)—On behalf of Senator Crane, I present the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Regional Forest Agreements Bill 2001, together with the *Hansard* record of the committee's proceedings and documents presented to the committee.

Ordered that the report be printed.

**MIGRATION LEGISLATION
AMENDMENT BILL (NO. 1) 2001**

**Consideration of House of Representatives
Message**

Message received from the House of Representatives acquainting the Senate that it had agreed to the amendments requested by the Senate to the bill.

ADJOURNMENT

The DEPUTY PRESIDENT—Order! It being midnight, I propose the question:

That the Senate do now adjourn.

**Bradbury, Mr David: Access to
Residential House Plans**

Senator HEFFERNAN (New South Wales—Parliamentary Secretary to Cabinet) (12.00 a.m.)—Less than a year ago David Bradbury, the Labor candidate for Lindsay, lied to and misled the people of Penrith when he vowed that side issues such as federal politics would never distract him from the job of being Mayor of Penrith. The Penrith press of 19 September 2000 said:

Side issues such as federal politics would never distract him from the job of being Mayor of Penrith if he was elected to that position this month. That vow was made by Penrith Councillor David Bradbury, ALP, who confirmed he would stand for the office in the September 29 ballot for Mayor.

Later on in the same article he is quoted as saying:

'Being the Mayor of Penrith is a great honour and if elected I will spend my every waking hour working at the task.'

It did not take long for David Bradbury to break his vow. I have here a memo from the general manager of the City Council of Penrith which details how Mayor Bradbury, who has since become the Labor candidate while continuing to work part time for Senator Steve Hutchins, abused his position of mayor by seeking copies of Jackie Kelly's house floor plans from council files. According to this memo, on 24 January 2001 Mayor Bradbury asked the director of city planning, Mr Alan Stoneham, if any person could look at plans relating to a residential building in the city. Mr Stoneham replied that he thought so and referred him to the council's Building Approvals and Environmental Protection Department. When the council's records officer to whom Mayor Bradbury's request had been referred looked up the owner of the property, it is understood that they established it was owned by Ms Jackie Kelly, the federal member for Lindsay. The officer at that point contacted the legal officer who immediately contacted the council's general manager. The general manager then contacted Mayor Bradbury and advised him that he could not access that information unless it related to business of the council.

This was not the end of the matter: the aspiring Labor federal candidate, then mayor, handed the director of city planning, Mr Stoneham, a letter from Senator Steve Hutchins, on whose staff Mayor Bradbury was working part time—a great example of Labor incest at its best. The letter asked whether records held by Penrith City Council regarding two properties could be accessed by the public and how this could be achieved. One of the properties was Jackie Kelly's.

On 9 February Mayor Bradbury responded to Senator Hutchins, his employer, advising him that approval could be accessed under section 12 of the Local Government Act but pointing out that the proposed layout of the residential parts of the building could not be viewed under this section. This clumsy attempt at a cover-up added that a freedom of information order could be made, but there would be need for consultation with the owner occupiers of the house.

What has been exposed here is a grubby exercise cooked up between Mayor Bradbury and Senator Hutchins to gain personal information about a political opponent, the member for Lindsay. Mayor Bradbury has abused his position as mayor and has broken his vow to devote himself to the people of Penrith and not to be distracted by federal politics. In their clumsy attempt at political dirt digging, he and Senator Hutchins have been caught in the sewer.

The DEPUTY PRESIDENT—Senator Heffernan, I would urge caution in how you reflect upon a member in this place, the other place or any other parliament.

Senator HEFFERNAN—I withdraw any reflection. I commend the Penrith City Council officers who stood firm in the face of Mayor Bradbury's efforts to snoop into Jackie Kelly's house plans. I would like to know whether Kim Beazley approved of this contemptible behaviour by Senator Hutchins, his party's New South Wales president and his party's endorsed candidate for Lindsay, Mayor Bradbury. The opposition leader talks a lot about standards of political behaviour; what is he going to do on this occasion? I seek leave to table the memo from Alan Travers, general manager of Penrith City Council.

Senator Faulkner—It has not been shown to us. If you show it to us we will have a look at it.

Senator Forshaw—Madam Deputy Speaker, I raise a point of order: we have not seen the document that Senator Heffernan intends to table. He has been on his feet now for five minutes. This is the second speech Senator Heffernan has made in about two years. He ought to have had plenty of time to prepare himself to table this document. He would have had plenty of time to provide it to us.

Leave granted.

Regional Forest Agreements: Legislation

Senator FORSHAW (New South Wales) (12.05 a.m.)—Rather than crawl around in the sewer like Senator Alston did recently, or indeed work my way up through the flooring and under the beds like Senator Heffernan has just done, I would like to go to some real

issues that relate to the business of this parliament. In particular, I want to go to a media release—an actual document, not some scurrilous innuendo dragged up by a member of the government—put out today by Senator Abetz, a Liberal senator for Tasmania.

A few moments ago the report of the Senate Rural and Regional Affairs and Transport Legislation Committee on the Regional Forest Agreements Bill 2001 was tabled in the Senate. I am sure that Senator Abetz will have a look at that report, which is now available, and he will find in that report that there is a clear statement by the Australian Labor Party opposition senators, Senator O'Brien and I, indicating that the ALP supports the passage of that legislation. Indeed, the bill was introduced today in the House of Representatives, as honourable senators would know, and during the debate today the shadow minister for forestry, my colleague Mr Laurie Ferguson, made it very clear that the Labor Party would support the legislation. That is a position that has been known for some time, and known to the government.

But what happened today? I understand that this issue, with respect to the scurrilous falsehoods and lies that were perpetrated in a media release put out today by Senator Abetz, has already been canvassed in earlier proceedings this evening, but I would like to add some further information to this issue. Senator Abetz put out a media release today which contained a number of false statements. I understand that in the world outside this building they are referred to as lies.

The DEPUTY PRESIDENT—Senator Forshaw, I would urge caution.

Senator FORSHAW—In this building I am not allowed to use that terminology. I could say that this was sophistry, but sophistry is a clever but false accusation and Senator Abetz is always guilty of making false accusations, but he is never guilty of making clever ones. So what we have here is a collection of false statements. First of all, Senator Abetz, in his media release, stated: Federal Labor failed to support the RFA legislation last time it was before the parliament in 1999.

Senator Abetz—That is right—you amended the hell out of it.

Senator FORSHAW—Senator Abetz, that is not right. What we did, Senator Abetz—

The DEPUTY PRESIDENT—Address the chair please, Senator Forshaw.

Senator FORSHAW—We supported the legislation and we moved amendments which were supported by the Senate. It is a sad fact that Minister Tuckey in the other place declined to accept the amendments that were passed by the Senate on that occasion. On that occasion we moved amendments relating to a number of very important areas. For instance, we amended the legislation to insert an objects clause. We amended the legislation to provide for parliamentary oversight of regional forest agreements.

Senator Abetz—What did the Labor Premier of Tasmania say?

Senator FORSHAW—Senator Abetz continues to object. What happened after that was that Minister Tuckey said he would in no way accept the Senate's amendments and he buried the legislation. He buried it for two years. In that time, state Labor governments around Australia have finalised regional forest agreements, notwithstanding the belligerence, insults and abuse coming from the Minister for Forestry and Conservation, Mr Tuckey. Indeed, the last one of those agreements, which completed the full set of agreements, was signed in April 2000—almost a year and a half ago. So by April last year all of the RFAs had been signed.

In this media release Senator Abetz claims that this legislation is now back on the agenda because we have been pressured into supporting it. Of course that is another falsehood, because what has happened is that, now that all of the state governments—all of which are Labor state governments—have negotiated regional forest agreements, it is appropriate that the legislation be once again considered by this parliament. But that could have happened any time after April 2000. Mr Tuckey has had the opportunity since at least April last year to bring this legislation back before this parliament, but he did not. He waited until the last week of sittings of this

parliament before the next federal election to introduce the bill again. Because he waited for so long, the bill has become subject to the cut-off motion in the Senate. We all know what happened in the debate this morning about the cut-off motion—Senator Abetz misrepresented the very processes that occurred in this Senate on the cut-off motion for this bill and Senator Hill had to correct the record and, in so doing, embarrassed Senator Abetz.

If this government were so serious about and so committed to getting this Regional Forest Agreements Bill through the parliament, why did it introduce it in the last sittings of parliament? Why didn't it introduce it last year? Why didn't it re-introduce this bill after it was first dealt with by the Senate in 1999? Minister Tuckey has had all those years to do it. But, no, the government waited until the last minute, trying to play some clever tactical political game, which of course blew up in the face of Senator Abetz. It blew up in the face of Senator Abetz because he could not contain himself—he rushed and put out a media release claiming that today the Labor Party prevented debate on this bill. The Labor Party did not prevent debate on this bill today. Debate on this bill was prevented by Minister Tuckey's negligence in not bringing this bill on much sooner, which would have avoided the cut-off. Senator Abetz, as you know, if this bill had been introduced into the Senate in the last sittings of parliament, it would have been on the *Notice Paper* to be debated this evening. So we have a situation where this government will stoop to any means to try to distort the true picture.

I return to the report that has been presented by the Senate Rural and Regional Affairs and Transport Legislation Committee. The Senate Rural and Regional Affairs and Transport Legislation Committee worked tirelessly last week and this week to ensure that the bill was considered by the committee. We met on Monday evening till nearly midnight to hear evidence from the public in an inquiry that considered this legislation. That was by agreement between the opposition and the government, yet Senator Abetz, Senator 'Six-Pack' Abetz—

The DEPUTY PRESIDENT—Order! Senator Forshaw, I would like you to withdraw that please. I find it unnecessary.

Senator FORSHAW—I withdraw that.

The DEPUTY PRESIDENT—Thank you.

Senator FORSHAW—Senator Abetz could not contain himself. He had to rush into print accusations that the Labor Party had dudded the workers. I tell Senator Abetz that the workers know the real truth. If you read the report, you will see that in that report the government and the opposition are unanimously supporting this bill. The only one who is out of step is you. The reason you, Minister Abetz, are out of step is that you, unfortunately, do not understand the real issues that are facing this parliament with respect to this bill. (*Time expired*)

Victims of Institutionalised Cruelty, Exploitation and Supporters

Senator MURRAY (Western Australia) (12.15 a.m.)—I wish to refer again to the recent Senate report on child migration, *Lost innocents: righting the record*. This report is a very well documented one, and I believe it makes an important contribution to Australia's historical and social record, but there is an oversight I want to deal with tonight. Oversights can occur when committees are faced with such vast amounts of material to work through. The child migrant committee is no exception. However, what does set it apart was the mainly distressing nature of the material. Although the sheer weight and nature of the material does not justify any errors, it does go some way to explaining them.

The oversights I wish to raise concern Mr Bruce Blyth and the child migrant support group VOICES, which stands for the Victims of Institutionalised Cruelty, Exploitation and Supporters. Before addressing these though, I think it appropriate to outline the contribution of Mr Blyth and VOICES to child migrants. VOICES is a Western Australian based organisation recognised across Australia as the champion for hundreds of men who were abused, assaulted, exploited and terrorised as children in Western Australian orphanages run by the Christian Brothers. Mr

Blyth was a foundation member of VOICES and a director for 10 years. On behalf of VOICES, he sent a submission to the inquiry and he gave evidence at the Perth hearings on 15 February 2001. His connection with former child migrants occurred literally by chance, when he stumbled across a manuscript by a survivor of Bindoon Boys Town. So moved was he by the stories of cruelty and the present day plight of the survivors, he felt compelled to join them in their struggle for justice. Out of this, VOICES was formed in 1991, and Mr Blyth has obviously been assisted in that by many others.

A six-year campaign against those Christian Brothers who were offenders then began. In this time, 277 men registered with VOICES. These were men motivated by a desire to see the truth revealed and those who had abused and assaulted them brought to justice. Three notable events occurred during this campaign. First, in 1994 a petition with 30,000 signatures—I repeat, 30,000—was tabled in the Western Australian parliament demanding a judicial inquiry into the sexual and physical assaults that occurred in the Christian Brothers run institutions of Bindoon, Castledare, Clontarf and Tardun. Although a judicial inquiry did not eventuate, valuable media coverage and publicity did result in the Western Australian government and parliament establishing a parliamentary select committee to investigate child migration into Western Australia.

Secondly, and of great symbolic significance, a VOICES campaign to pull down the imposing statue of the monster Brother Keaney with his hand on an orphan boy's shoulder was successful. Erected in 1957 at the front of Keaney College in Bindoon, this statue was a bizarre travesty of the reality of just how evil this brute of a man was. The statue now stands banished to a small courtyard at the back of the building.

The third event concerns legal action taken on behalf of VOICES. In 1994 the well-known Melbourne law firm Slater and Gordon agreed to mount a class action against the Christian Brothers. On 31 August of that year, Slater and Gordon applied to the New South Wales Supreme Court seeking leave to file 250 writs on behalf of men

claiming damages against the Brothers. On filing the application, Mr John Gordon claimed it could well be one of the largest class actions in Australian legal history.

Until this time, VOICES was no more than an irritant to the Christian Brothers and their backers. However, with the entry of a law firm with an impressive record, VOICES was now seen as a force to be reckoned with. The case was heard in New South Wales, because at the time the offences were committed the Christian Brothers orphanages in Western Australia were ruled from a Brothers headquarters in that state. When Justice Levine ruled this a valid reason, he commented that, if the case were sent back to Western Australia, it would be 'dead in the water' and that the complainants could forever be deprived of the chance to seek a remedy. These remarks are fundamentally directed towards the rigidity of Western Australia's statutes compared to the more benevolent approach taken by the courts in New South Wales. In short, VOICES thought it had won a great victory but disappointment was just around the corner.

On appeal the case was in fact sent back to Western Australia and, just as Justice Levine had predicted, the case never got off the ground—in my view to the undying discredit of that jurisdiction. Western Australia's statute of limitations was always the Christian Brothers' trump card and, with their battery of high powered QCs, they played it to the limit. One journalist wrote in the Western Australian *Sunday Times* on 11 December 1994:

While the Brothers have a technical right to play by the legal book to prevent possible massive compensation payments, they must know that what they are doing in the courts now is morally bankrupt.

The men were essentially forced to accept an out of court settlement. For those men thought to have been raped and brutally assaulted, they received only \$25,000. But the majority received a paltry \$4,000 for years of abuse and exploitation as vulnerable children. The Senate report claimed on page 224:

The West Australian VOICES organisation encouraged its members to accept the settlement but without any sense of gratitude.

This is the first oversight I wish to rectify. The choice of words is unfortunate. In this instance, though, it is an error. In saying that, I do not think that it reflects on the quality and probity of the rest of the report. Mr Blyth had gone to great lengths to explain to the men that the decision was an individual one and that VOICES would not influence them one way or the other, a fact clearly set out in his book *In the Shadow of the Cross*. The second oversight concerns the claim on page 253 of the report that Mr Blyth is a former child migrant. This is not so and was clearly stated to the committee before proceeding with his evidence at the Perth hearing. However, in the report it is merely a listing and I do not consider there to be any clear intention to misrepresent.

The third unfortunate oversight is the failure to acknowledge Mr Blyth's evidence concerning the numbers of child migrants sent to Australia. Although subject to wide disagreement, he felt that his evidence was just as reliable as those quoted by other witnesses. Again, I do not feel that this is a major issue. It is the first oversight, rather than the second or third, which is important. The fourth oversight—for which I feel partly responsible and is one of the reasons I am addressing you tonight—is the failure to acknowledge in the bibliography of the report Mr Blyth's extensive work and his two authoritative books on the issue of child migrants and their struggle for justice in Western Australia. Those books are *In the Shadow of the Cross*, published in 1997, and *Counting the Cost*, published in 1999—I understand both were published at Mr Blyth's cost. Mr Blyth had given me copies of those books and, as I assumed they were for my own use—I did read them and use them for research—I did not forward them to the committee.

For all these oversights or errors, especially the last one, I apologise. Certainly no disrespect was intended as I consider Mr Blyth a man who has worked hard in an area which is extremely difficult to deal with. He seems to me to have acted with great credit

to himself. I would like to conclude with a quote taken from the foreword to his book *In the Shadow of the Cross*. Written by Mr Haydn Stephens, an associate of Slater and Gordon, it eloquently summarises what a fine and honourable man Mr Blyth is. The forward states that he is:

... a man of courage compassion and dignity who took up the cause of these dispossessed men after reading of one man's plight. For many of these men, he and his VOICES colleagues served as a beacon of light in a world which had otherwise betrayed them.

Victoria: Port of Portland

Senator COONEY (Victoria) (12.22 a.m.)—In many instances, private enterprise can make a great contribution to the common good. In many instances, cooperative ventures can do so. In many instances, public undertakings, whether by local, state or federal government are needed to obtain the best outcome for a community or for a section of the community. These differing means of providing goods and services need to work sensibly together to deliver what is best for a society or for a group within society. Looking to one of them to produce a result when it is unable or unwilling to do so in misguided. Failing to utilise another when it could achieve what is sought shows a lack of wisdom and will.

In 1996, the port of Portland in south-west Victoria was privatised. Up until then it was operated by the state government. Now it is in the hands of North West Shipping, a private company related to Brambles. There are two slipways within the port, one of 100-tonne capacity and one of 300-tonne capacity. The one of 100-tonne capacity is much needed by the local fishing industry but cannot be used because it is out of repair. Trawlers of over 200 tonnes cannot use either slipway.

The present proprietor of the port declines to update, repair and maintain the facilities needed by the fishing folk of Portland and this has caused them great and unnecessary hardship. This state of affairs will continue until the owner or some public authority carries out the work needed to make available proper infrastructure for their industry. This is a tragedy for the economy and social dy-

namics of Portland, the south west and Victoria generally and, because of that, for Australia. Boat building at Portland is a considerable business and requires better facilities at this port. The fishermen have approached the Glenelg Shire Council and are looking for understanding and help from that body. Unfortunately, to date it has not been forthcoming.

Portland was the first town founded in Victoria. It was settled from Tasmania and has a long and honourable history. Included in that history is the fishing community which has also played a long and honourable part in that part of Victoria, and in Victoria and Australia generally. The fishermen of Portland struggled in the early days and have continued to struggle. They have built up infrastructure from their grit and their wit, without the sort of help that might have been hoped for from government coffers—they have done it on their own, but they do need help now. These facilities, having been privatised, have fallen into disrepair and that needs to be remedied. The proprietor of the port says that this particular slipway especially is not to be repaired because it would not give a return to the proprietor that the proprietor would desire. One can understand that people are in private business to make a profit—and, as has often been said in these chambers and it is true, 'profit' is not a dirty word—but, on the other hand, there is a need to keep a vital industry alive in this area, and alive in the best way possible.

To give some understanding of that, today Portland's fishing fleet is estimated to contribute up to \$60 million to the local economy. It supplies about 30 per cent of the Victorian fish at the Melbourne fish market. Portland's export of about 250 tonnes of live rock lobster, giant crab and abalone contribute significantly to bringing export earnings to Australia. This contribution has come for a long time at very moderate cost to the taxpayer, and the industry still employs about 160 people in Portland directly and another 240 indirectly.

The port of Portland is in a beautiful area of Victoria—all Victoria is beautiful, but this is a particularly beautiful area of that state. The port itself is one of the few sheltered, all

weather, natural deepwater ports in southern Australia. Although it has adapted to service ships for bulk cargo very well, for many years it has, sadly, lacked any care or development of the facilities that the fishing industry needs. That is a tragedy for not only the industry but also that area.

Fishing in this area covers a very broad range—it includes deep sea trawling, squid gigging and shark catching. It is an industry that has a long history in the port. It is essential to the economy of the port and could well be a tourist attraction in that area. This is an industry that is important but, unfortunately, it has not been supported as it should have been by either the private owners, the local council or indeed any level of government. It is a shame that that situation should continue.

I should not, as a senator of the federal parliament, have to speak for these fishermen because they should be looked after by those who are local to them. It is necessary to bring this up because it is becoming a national issue. Unless we, as senators of states, stress matters that arise in this area then apparently they are going to be left lamenting. I have spoken to Robert Davis, the secretary of the Portland Professional Fishermen's Association. He took me to the port and showed me the facilities. It seems to me that very little money, comparatively, is needed to fix up the facilities they need. It is a matter that has now gone beyond what is tolerable and it is a matter that should be raised not only in this chamber but wherever any impression might be made on those who should be doing something about the situation there.

There is considerable use of the port—that is true. It is used for the export of logs, aluminium, livestock and woodchips. They are important exports but, in the end, that traditional industry, that industry that has done so much for Portland and continues to do so much for Portland—the professional fishing industry—must be given the weight that it is entitled to, and the facilities in that port should be made available in a manner that this industry is entitled to have.

Senate adjourned at 12.35 a.m.

DOCUMENTS

Tabling

The following government documents were tabled:

Commonwealth Grants Commission—Report for 2000-01.

National Industrial Chemicals Notification and Assessment Scheme—Report for 2000-01 on the operation of the *Industrial Chemicals (Notification and Assessment) Act 1989*.

United Nations—

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—Committee against Torture—Communications—

No. 148/1999—Outline.

No. 151/1999—Outline.

No. 152/1999—Outline.

No. 153/2000—Outline.

No. 154/2000—Outline.

No. 162/2000—Outline.

No. 167/2000 and 168/2000—Outline.

No. 177/2001—Outline.

Optional Protocol to the International Covenant on Civil and Political Rights—Human Rights Committee—Communications—

No. 762/1997—Decision.

No. 772/1997—Decision.

No. 880/1999—Outline.

No. 881/1999—Outline.

No. 900/1999—Outline.

No. 901/1999—Outline.

No. 920/2000—Outline.

No. 930/2000—Outcome.

No. 937/2000—Outline.

No. 941/2000—Outline.

No. 954/2000—Outline.

No. 963/2001—Decision.

No. 983/2001—Outline.

Tabling

The following documents were tabled by the Clerk:

Australian Bureau of Statistics Act—Proposal No. 12 of 2001.

Australian Meat and Live-stock Industry Act—Australian Meat and Live-stock Industry (Live Sheep Exports to Saudi Arabia) Amendment Order 2001 (No. 3).

Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].

Parliamentary Entitlements Act—Parliamentary Entitlements Regulations—Consolidated statement of expenditure under paragraph 18(b), dated 24 September 2001.

Sydney Airport Curfew Act—Dispensations granted under section 20—Dispensations Nos 15/01-17/01.

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