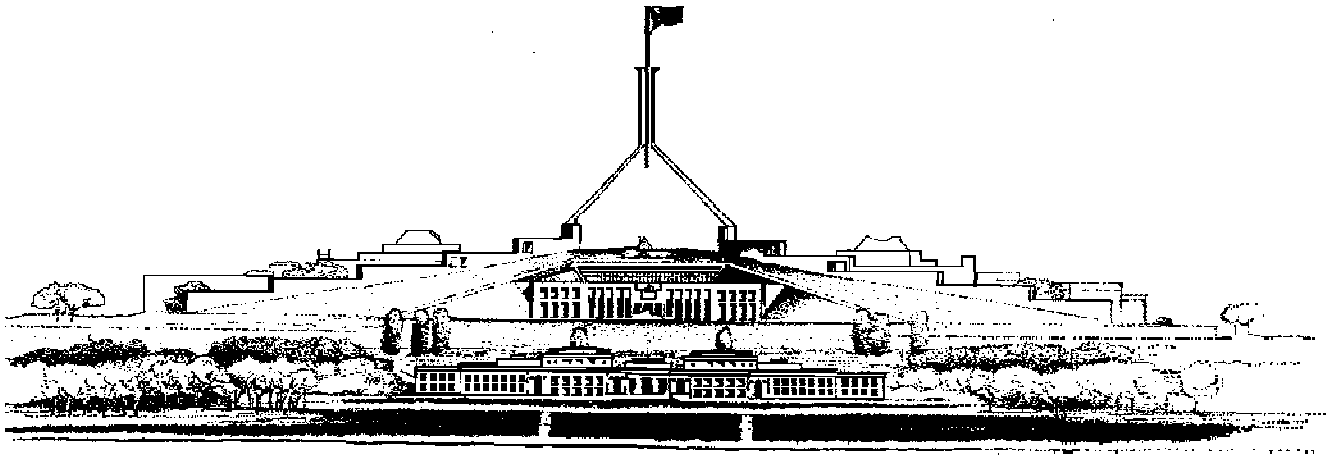
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



SENATE

Official Hansard

WEDNESDAY, 29 MAY 1996

THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—FIRST PERIOD

BY AUTHORITY OF THE SENATE
CANBERRA

CONTENTS

WEDNESDAY, 29 MAY

CONTENTS—*continued*

Wednesday, 29 May 1996

The DEPUTY PRESIDENT (Senator M.E. Reid) took the chair at 9.30 a.m., and read prayers.

PETITIONS

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

City Link Project

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

The Petition of the undersigned are concerned that the Federal Government may approve the tax concessions and foreign investment needed for the City Link tollway project without insisting on proper environmental safeguards, compliance with local government and town planning rules and consultation with affected communities.

Your Petitioners ask that the Senate call on the Federal Treasurer to use his powers to scrutinise the project and:

1. Reject any recommendations from the Foreign Investment Review Board that investment in City Link be approved unless the social, economic and environmental question marks over the project are resolved;

2. Insist that the City Link consortium submit a full environment impact statement as should be expected under the Environment Protection (Impact of Proposals) Act before obtaining any tax concessions; and

3. Support the Australian Democrats amendments to the Development Allowance Authority Act to make infrastructure tax concessions conditional on proper environmental, planning and consultative procedures.

by **Senator Kernot** (from 159 citizens).

Uranium

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

The petition of the undersigned strongly opposes any attempts by the Australian government to mine uranium at the Jabiluka and Koongara sites in the World Heritage Listed Area of the Kakadu National Park or any other proposed or current operating site.

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

by **Senator Kernot** (from 504 citizens).

Logging and Woodchipping

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

We are dismayed at the continuing destruction of old growth and wilderness forests around Australia, despite the National Forest Policy Statement jointly signed by the Commonwealth and all States except Tasmania.

Intensive logging, most often to feed a voracious woodchip industry is underway or planned for many high conservation value forests. These forests should be protected by the commitments of the Commonwealth and State Governments under the NFPS.

These forests include:

Coolangubra Wilderness and other areas of the S.E. Forests of NSW along with rainforest and other N.E. areas of NSW including Wingham, Mistake, Richmond Range, Chaelundi, North Washpool, Barrington and Dorrigo.

The Southern Highlands, Great Western Tiers and Tarkine Wilderness of Tasmania.

The Karri and Jarrah forests of S.W. Western Australia.

The Errinundra Plateau and other areas of the East Gippsland forests of Victoria.

The rainforests of the Proserpine region of Queensland.

We request that the Government act urgently to protect our precious forests by utilising the Commonwealth's legal and constitutional powers, including:

Refusal of export woodchip licences

Powers to control corporations

Protection of areas listed on the register of the National Estate

Protection and effective funding of areas identified for their World Heritage values.

Genuine and effective action by the Government to protect these and other old growth and wilderness forests is critical. A comprehensive plantation strategy rather than exploiting native forests is the way forward for a truly environmentally responsible timber industry. We further request that the Government take effective action without further delay.

by **Senator Kernot** (from 95 citizens).

Gun Control

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

The petition of certain citizens of Australia

Your petitioners request that the Senate, in Parliament assembled should legislate to establish national Gun Controls binding upon all States.

That a National Register of guns and those possessing guns be established, and that a penalty of one year imprisonment be established for any person found to be in possession of an unregistered gun.

That the private ownership, or possession of automatic and semi-automatic guns of all calibre's be made illegal and strong penalties introduced for all those found to be in breach of these provisions.

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

by **Senator Patterson** (from 892 citizens).

Petitions received.

NOTICES OF MOTION

Hazardous Chemicals

Senator BELL (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) 5 June 1996 is World Environment Day,

(ii) atrazine, a hazardous chemical, is still being used by the Forestry Commission of Tasmania in State forests,

(iii) this is in direct opposition to the repeated requests of local communities and local governments in many areas of Tasmania,

(iv) the water supplies of Scamander, Lorinna and Scottsdale are all threatened by and affected by the use of atrazine,

(v) Break O'Day municipality and Dorset municipality have regularly expressed their concerns about this, and

(vi) no government would have the courage to allow such a threat to the water supplies of Sydney or Melbourne, so the people of these Tasmanian communities should not suffer; and

(b) calls on the Government to make a real commitment to the environment by preventing the use of atrazine in water catchment areas on a national level.

Legal and Constitutional References Committee

Senator SPINDLER (Victoria)—I give notice that, on the next day of sitting, I shall move:

That the following matters be referred to the Legal and Constitutional References Committee for inquiry and report by the first sitting day of March 1997:

(1) The need to protect Australian citizens against discrimination and vilification on the grounds of their sexuality or transgender identity, as dealt with by the Sexuality Discrimination Bill 1995 [1996], with particular reference to Australia's international obligations in relation to sexuality discrimination and transgender identity and the action required to meet those obligations.

(2) Measures which need to be taken to remove any legislative and administrative provisions which are currently discriminatory on the grounds of a person's sexuality or transgender identity.

(3) The extent to which current legislation at a State level addresses discrimination on the grounds of sexuality or transgender identity and the extent to which Commonwealth legislation should take account of these provisions.

(4) The appropriate scope of Commonwealth sexuality discrimination legislation and, in particular, the need for provisions including, but not limited to, the areas of:

(a) public education;

(b) appropriate exemptions;

(c) dispute resolution;

(d) remedies;

(e) the availability of class actions; and

(f) review of the legislation.

(5) The extent to which the Sexuality Discrimination Bill 1995 [1996] effectively addresses the issues of sexuality and transgender discrimination and vilification and the nature of any amendments required to make it more effective.

Logging and Woodchipping

Senator STOTT DESPOJA (South Australia)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) 5 June 1996 is World Environment Day,

(ii) the forests of Western Australia are threatened by the voracious woodchipping industry,

(iii) the mighty jarrah and karri forests are particularly threatened, and

(iv) the 2-year moratorium agreed to by the Western Australian Government and the

previous Federal Government will probably now be reduced; and

(b) calls on the Government to show a real commitment to the environment by preventing the export of any woodchips taken from the last remaining jarrah and karri forests of Western Australia.

Fitzroy River Dam

Senator BELL (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) 5 June 1996 is World Environment Day,

(ii) the Western Australian Government is enthusiastically supporting the concept to dam the Fitzroy River,

(iii) the reason for constructing this dam is to build a large-scale cotton irrigation project,

(iv) this is an inappropriate initiative because it will contribute to degradation of the agricultural land in the area,

(v) it will reduce the flow of the Fitzroy River, resulting in unacceptable ecological impacts,

(vi) the Fitzroy River is an important place of cultural heritage for Aboriginal people and the Kimberley Land Council is very concerned at the proposal,

(vii) any dam will be subject to the heavy silt loads of the catchment, and

(viii) cotton is the most chemically-intensive crop in Australia, requiring large applications of ovicides, larvicides, insecticides, other pesticides, fertilisers and herbicides such as 24D to defoliate the plants before harvest; and

(b) calls on the Federal Government to show a real commitment to the environment by refusing to provide any subsidy or support toward this outrageous scheme.

Dumping of Jarosite at Sea

Senator BELL (Tasmania)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) 5 June 1996 is World Environment Day,

(ii) Pasminco Metals-EZ has a licence to dump 17 000 tonnes of jarosite at sea, 60 nautical miles from Hobart,

(iii) this is in contradiction of the intent of the London Sea Dumping Convention,

(iv) the company started using this unacceptable method of disposal in 1978 as an interim measure and its permit has been renewed year after year by successive environment ministers,

(v) Australia is a laughing stock internationally after ratifying the convention and then asking for an exemption from it, and

(vi) alternative technologies are available and should be developed; and

(b) calls on the Federal Government to demonstrate a real commitment to the environment by giving an undertaking it will never issue any future permit for dumping of jarosite at sea.

Environment: Water Pollution

Senator KERNOT (Queensland—Leader of the Australian Democrats)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes that:

(i) 5 June 1996 is World Environment Day,

(ii) Australia's rivers have been seriously degraded by damming, diverting, draining, straightening and changing their water flows,

(iii) Australia's rivers have become salinised and silted and invaded by exotic weeds and fauna,

(iv) the food bowls of this country and much of its biodiversity depend on the integrity of its catchment systems,

(v) Australia's coasts have been polluted and eroded, built-up or destroyed, and need attention,

(vi) the many reports on the coast have not been followed by significant action to ameliorate these effects, and

(vii) the problems with rivers and coasts demonstrate that many environmental issues in this country are a subset of similar problems throughout the nation, and

(viii) the environment requires national leadership and national responses; and

(b) calls on the Government to show a real commitment to the environment by protecting Australia's rivers and coasts from a national perspective.

ORDER OF BUSINESS

Indexed Lists of Files

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

That general business notice of motion No. 29 standing in the name of Senator Harradine for this day, proposing an order for the production of indexed lists of departmental files, be postponed till the next day of sitting.

NATIONAL RECONCILIATION WEEK

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

That the Senate—

(a) welcomes the initiative of the Council for Aboriginal Reconciliation to launch a National Reconciliation Week to be held each year from 27 May to 3 June for at least the next 5 years up to 2001, the centenary of federation;

(b) notes that the inaugural National Reconciliation Week, beginning 27 May 1996, will launch 12 months of community activities and a public awareness campaign leading up to the Australian Reconciliation Convention, which will be held during National Reconciliation Week in 1997;

(c) reaffirms its commitment to a process of reconciliation; and

(d) calls on all Australians to support the National Reconciliation Week and thereby to advance the reconciliation process.

COMMITTEES

Finance and Public Administration Legislation Committee

Report

Senator IAN MACDONALD (Queensland)—Madam Deputy President, I congratulate you on the role you are occupying today. I look forward to the time when you occupy that role permanently. I present the report of the Finance and Public Administration Legislation Committee on matters relating to the oversight of statutory bodies, non-statutory bodies, companies and incorporated associations referred to the committee during the previous parliament.

I will say just a few words on the report. When I was being briefed by the secretariat upon taking over as chairman of this committee, I was surprised to find that this list of Commonwealth bodies—the list we always get each year but which I suspect few of us look at very closely—seems to be the only collection or, if not the only collection, the only readily available collection there is of all the various bodies of the Commonwealth. It is referred to quite widely by not only researchers but various government departments.

I am surprised, just looking at this, at the enormous number of Commonwealth bodies there are. We have asked for the reference to be recommitted or readopted for the current term. I think it will be a measure of this government's success if this book can be cut by half. It will be a very interesting exercise; the committee has decided to complete it up to the time of the election. I think it will form a very good reference point then to see all of the different types of Commonwealth bodies that grew up under the previous government. Then it will be an interesting exercise to have another look in 12 months time just to see where that list has gone.

In speaking to the motion and perhaps in conclusion, I thank the staff of the committee for the enormous amount of work they have put into this. It does involve a hell of a lot of work. I understand that the committee staff do not always get the cooperation from the departments that one would expect. It has involved the committee secretariat in very intense work over a long period of time, and the efforts and commitment they have put into that should be recognised by the Senate.

Ordered that the report be adopted.

MEDICARE: REFUGEES

Senator SPINDLER (Victoria) (9.44 a.m.)—I move:

That Order HSH, No. 2, dated 27 September 1995 and made under subsection 6(2) of the Health Insurance Act 1973, be disallowed.

This order reads:

Persons who have applied for or who have been taken to apply for a protection visa but would not be eligible persons if they had not applied for or been taken to have applied for a protection visa shall be treated as an ineligible person for the purposes of qualifying for medical assistance under the health Insurance Act 1973.

The effect of this order is simply to make applicants for refugee status ineligible to receive Medicare assistance. The Democrats oppose the order because we believe that it

treats applicants for refugee status as second-class citizens.

Presently, applicants for refugee status do receive assistance through the asylum seekers assistance scheme, or ASAS. This scheme has been operational since 1992 and is administered by the Red Cross. The scheme provides financial assistance to meet basic food, clothing, shelter and health services for those applying to remain in Australia as refugees. However, the scheme provides a lower standard of service than that provided for other Australians and thus creates a two-tier system. It creates a set of rules that says Australian citizens shall be treated in one way but those who are applying for refugee status will be treated in another.

The Democrats simply do not accept this arbitrary distinction. On the contrary, we believe refugees are amongst the most vulnerable in our community and they deserve to be treated with equality and respect. Refugees have often suffered torture, trauma and other forms of mental and physical abuse. Those from the former Yugoslavia, for example, may have been subjected to pain and fear that we, in Australia, can never imagine. To deny them access to the services that we take for granted is to say to them, 'We will not give you the benefit of the doubt. We will not treat you like one of us. We will treat you as though you are of a lower order.'

To make matters worse, we now learn through a leaked cabinet submission that the government is proposing to significantly reduce funding for this assistance scheme that is administered through the Red Cross. In a quite breathtaking display of callousness, this government is proposing to abandon refugees in their time of crisis. They are proposing to pick on them for no reason other than that they are an easy target.

The Democrats will not stand idly by while the ideologues of the Liberal and National parties go on a fund cutting rampage against weak and inarticulate people. In voting against this regulation, the Democrats give effect to our belief that human rights are universal and inherent for all human beings and not just for the privileged few.

There have been suggestions that the scheme is being rorted. We have asked the government to support those allegations that the system is being rorted but, so far, they have been unable to do so. In any event, if there is evidence of systematic abuse, then the answer is to address those problems individually, rather than deny access to all people who need it.

We believe that the Senate should exercise its position in this particular case to protect those people who are amongst the most vulnerable in our society. I commend this motion to the Senate.

Senator NEAL (New South Wales) (9.49 a.m.)—The opposition is supporting this disallowance motion. I think it is worth while putting on the record the circumstances of that because, on the face of it, as Senator Woods has indicated, there has been an alteration of our previous position. This order was made by the previous Labor government through Carmen Lawrence signing that order. It was made, though, in very different circumstances from those that exist at the present time.

Senator Woods—Somersault, somersault, somersault!

Senator NEAL—I have the document here, if you wish to sight it. You are quite incorrect. The circumstances at the time that this order was signed were such that the Department of Finance saw fit to prevent a situation where asylum seekers, or those seeking protection visas, were entitled to a double dipping in terms of the services provided.

The government certainly did see that it had a responsibility to provide welfare services, including health—particularly for urgent matters—to asylum seekers but that they should not be allowed, firstly, access to a package of welfare assistance and, secondly, access directly through Medicare. That asylum seekers assistance scheme provided the level of welfare that the government believed it had a responsibility to provide. In the 1994-95 financial year, that total package amounted to $14.83 million. Of that sum, $1.38 million was provided towards health services.

The circumstances have changed since the government has changed and, of course, the minister for immigration has changed. With the various other cuts that this government is proposing to the community, the intentions of Mr Ruddock, the present minister for immigration, were clearly indicated in the 18 May 1996 *Sydney Morning Herald*:

> Mr Ruddock confirmed yesterday that he was looking at cutting government funding assistance to asylum seeks in the August budget.

The minister having indicated what his intentions are in relation to the asylum seekers welfare safety net, it certainly would be irresponsible of us to cut off one source of assistance where the welfare net that asylum seekers would normally rely on is also going to be cut in the upcoming budget. I would certainly be prepared to change our position if the minister having the carriage of this matter was prepared to give an undertaking that the asylum seekers assistance package would not be cut in the upcoming budget.

If he could possibly indicate that in speaking to the Senate today, that certainly would put a completely different complexion on the matter. I believe that that is highly unlikely to happen and, in that case, asylum seekers are entitled to some welfare safety net. In particular, they are entitled to some safety net in relation to emergency health services. This allowance, I believe, is necessary in the circumstances to bring that about.

Senator WOODS (New South Wales—Parliamentary Secretary to the Minister for Health and Family Services) (9.52 a.m.)—This order was gazetted on 11 October 1995 by the former Minister for Human Services and Health, Carmen Lawrence, after consultation with the former Minister for Immigration and Ethnic Affairs, who sits two seats away from Senator Neal, Senator Bolkus, who has notoriously been silent. Obviously the somersault imposed by the Labor Party is too embarrassing even for Senator Bolkus to contemplate—and this is the master of somersaults; 2½ somersaults with pike is what he usually does.

The coalition government agrees with the order. This is an order which focuses on the eligibility of Medicare and seeks to remedy the inadvertent inclusion of asylum seekers as a group to receive Medicare. The issue is about Medicare eligibility and whether a group of people whose claims to remain in Australia permanently are still to be assessed, still to be accepted, should be able to access the benefits of the Medicare scheme.

The former government's view on this was that clearly it was inappropriate for this group to be able to access Medicare. Now, in a classic somersault and backflip with 4½ times pike and God knows what else, they have suddenly decided that in conjunction with all the other moves in this place they want to obstruct the government's business. Let us be honest about it—there is no motive behind this other than that.

Speculation in the media purporting to have come from leaked Cabinet documents about potential cuts to the asylum seekers assistance scheme have nothing do with this order. You cannot base policy upon speculation in the media or proposed leaks or possible whispers in the corners. That is not the way you run government. I know it is the way you ran government when you were here, but you cannot run government that way. There is no evidence whatsoever, and let me say categorically to the Senate that I know of no plans whatsoever, to cut the asylum seekers assistance scheme—none whatsoever. I am not privy to being in on the dealings of Cabinet, but I am not aware of any proposals to cut that particular scheme. And they have nothing to do with this order.

The government understands the concerns of the Democrats, but the real issue here is to speed up the refugee determination process in making sure that those who have a legitimate claim, a genuine claim, to remain in Australia are identified quickly and appropriate assistance is given to them. Those who have no legitimate reason to remain in Australia should be processed quickly and arrangements made to go to whichever country is appropriate, ensuring that the limited resources available go to the groups for which it is appropriate.

We have here the Democrat party acting yet again as the 'Laborcrats'. What they are doing again is supporting the Labor Party on an

issue which is obviously contrary to the government's policy, contrary even to the previous government's policy—not that a minor detail like that would worry the Labor Party—and they are becoming an offshoot of the Labor Party, probably to the left wing of the Labor Party, I would have thought, the way they are going. We have had nine divisions in this place in this government.

Senator Knowles—They had a meeting in here this morning.

Senator WOODS—They had a meeting in here this morning. They had meetings all over the place. Senator Kernot has been seen in secret places with the Leader of the Opposition. There is no question about where their sympathies lie or what their plans are; they are to disrupt government, and this is another example of disrupting government. As I recall, we have had nine divisions under this government and in every division—nine divisions—the Democrats have voted with the Labor Party.

Senator Bolkus—You will get something right one day.

Senator WOODS—That is right; absolutely right. What we have here is clearly an extension of the process where the Democrats have decided that they are also the left wing of the Labor Party, that they are an extension of the opposition. They are not here about responsible government. They are not here about caring for individuals. They are not here about the environment, for goodness sake. If they were here about the environment we would get the Telstra bill through. What have they done? They have palmed that off to a committee—the wrong committee by everybody's estimation—delaying the whole process. In the end they are delaying the huge benefits, the $1 billion-plus package, for the environment. Talk about representing your constituency!

What is interesting is the background to this within the Democrat party. As I think most of this chamber would know, there have been divisions inside the Democrat party upon this issue. Most of the Democrat party, as I understand it, told Senator Spindler not to raise this issue; there was no issue, he was going off track yet again and he should forget about the whole issue. But Senator Spindler, as his swan song, has prevailed over the rest of the party.

This is one example of how Senator Kernot, the leader of the Democrat party, has not been able to get her way. Contrary to what is happening as I understand it with the Telstra debate, where there are major concerns within the Democrats here about the position they are taking on Telstra and, therefore, the position they are taking on a wonderful environment package, the best environment package in 50 years, there are concerns about the position she is taking. In this regard she has succumbed, if you like, to allow Senator Spindler this swan song before he goes.

Clearly there is no credibility in the whole party, certainly no credibility in the leader of the party. We used to call Bob Hawke 'jelly-bone'. Senator Kernot now must be called 'jelly-bone' in terms of not being able to take the tough decisions, the right decisions, but just to put her finger up to see which way the wind is blowing and follow it. Was it Voltaire who said: 'These are my people. I must follow where they lead me. I am their leader'? I think I may have misquoted slightly, but the principle of the quote is exactly right.

Let me point out a few other things about what the effects of your move would be, Senator Spindler, through you Madam Deputy President. The potential costs here would be something in the order of $30 million. That is derived by multiplying the number of protection visa applicants by the average annual costs, a very simple sort of arithmetical procedure. Let me point out to you that 85 per cent of those applicants are not allowed to stay in Australia because they are not valid in terms of their application status. They are not genuine refugees. They may be people with heartwarming stories who need care and attention, but they are not refugees and they are not, as you describe in your paper, part of the Australian community. They may want to be, but the fact that anybody wants to be a part of the community is not grounds for spending $30 million which can be spent elsewhere on these people. That is one of the crucial facts here.

There is a group of people who are not part of our community; 85 per cent of them will never be part of our community, and our policy is to make sure that people who are genuinely not refugees, clearly not refugees, are repatriated to their appropriate countries as soon as possible. An example of that was announced in the other place recently where Mr Ruddock, the member for Berowra, announced that he had repatriated, I think, some 300 boat people within a very short time of their arriving in Australia because there was no justification for looking at them as refugees. That is an example of how this government compared with the previous government has the guts to do the right thing and make sure that only people who are entitled to be in Australia or have good reason to be in Australia are allowed to stay in Australia.

You asked about proof of rorting and you misled this place, Senator Spindler, by saying you had asked the government for examples of this. What you did not mention was that you asked for it only this morning. You implied that you had been searching through the book for a long time. You have not approached me on this issue once. Not once have you had the courtesy to speak to me about this issue. So this statement about: 'I have approached the government for examples of rorting but I could find none, they could provide none'—let us get it into its right context—

Senator Spindler—You know—

Senator WOODS—No, you were not completely honest with this place. You misled this place. Let me tell you about the evidence of rorting. It is in two areas. For example, in the area of in-vitro fertilisation, a very high cost—

Senator Spindler—I take a point of order on Senator Woods's statement that we have not been in touch with the government on this issue. We have talked to the minister's office and have asked them to advise us whether there is any evidence to show there is wholesale rorting on this matter. It would appear that Senator Woods does not talk to his minister.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—That is a debating point. There is no point of order.

Senator WOODS—Your request for information on these rorts came with these notes this morning, asking for information. Now I am giving you the information. The first example is in the realm of in-vitro fertilisation, a very expensive procedure. In the USA it costs something like $25,000. People come to Australia and use this system. They put in an application for a visa change and get their IVF treatment paid for and subsidised by you, me and the taxpayers. That is absolutely inappropriate. I am sure you agree.

Senator Spindler—What is the evidence?

Senator WOODS—You are asking for evidence and examples, and I am giving you an example. There are numerous other examples of people coming into Australia on individual visas of one type or another, applying for a change and chipping in their $30—which is the application fee for a visa change. They come here on a health visa. I am not sure whether you know about health visas. They are very tightly controlled. The people are allowed to come in for treatment of a specific condition, under certain circumstances, and they are obliged to pay for that treatment. It is still worth while for many people, for example from the United States where the costs of health are very high, to come to Australia and get very high quality care and pay much less than they would pay back in their own countries. Those health visas are very tightly controlled and very limited.

When the people get here they put in their $30, apply for a change of visa and get their treatment under Medicare. There is no question that the system has been rorted. But that is not the main reason for doing this. The main reason is that the vast majority of the refugees we are talking about—85 per cent on the latest figures—are not entitled to access to Medicare. There is no question that that is the situation. They should not be entitled to Medicare because there is another system for them, the ASA scheme.

Senator Spindler, you have some so-called evidence that the ASA scheme may be cut, reduced or changed. What you are saying is that we will change government policy on the basis of a leak, a whisper, a few hurried words in the corridor, a paragraph in the newspaper or some supposed leak from cabinet. You are saying that we will change government policy just in case.

So what will you do? You will vote with the Labor Party. You will again make yourselves the left wing of the Labor Party, the Labor cracks in this place. That is the only way to describe you; you cannot describe yourselves as democrats. If you were, you would listen to the will of the people and to the mandate from the people about Telstra, for example. Clearly you do not listen to the people. You are not democratic Democrats, you are more like the Democratic Labor Party. In some ways, I guess we could call you the DLP of the 1990s—that is probably an appropriate description of you. Your politics may be fairly left wing compared with that bunch but, on the other hand, you are certainly not democrats and you are certainly not democratic so it seems to me to be a fair description of what you are about, which is to add yourselves on to the Labor Party and become a party in opposition. That is an inappropriate way for you to go.

The whole issue is that the decision to not allow protection to visa applicants and access to Medicare conforms substantially with government policy that only permanent residents of Australia should have access. These are not permanent residents. When they become permanent residents they have access to Medicare. Until they become permanent residents they should have access to the ASA scheme which has worked very well in the past and which gives good care. It is not, as you described it, some second-rate, two-tier system of a lower standard of service. There is no evidence that the ASA scheme is offering a lower standard of service. It offers a much better standard of care than many countries overseas offer. It is a very sound system.

You have some speculation that the system might be cut or reduced in some way. I have no information that that is the case. So you are trying to change government policy on the basis of speculation, whim and nonsense. I understand why you would want to try to go out with a flourish and try to make some impact before you leave this place, but the facts of the matter do not support your case.

As for the opposition, talk about somersaults! By Senator Neal's admission, this is their policy, it is something they supported in government, so the only possible reason for changing, as I think she indicated in her speech, was that she had concerns about the ASAS. Those concerns are based upon a few paragraphs in the paper, a few supposed leaked documents and some sort of speculation that there might be a change.

Senator Neal—Mr Ruddock confirmed he intended to cut the scheme.

Senator WOODS—Senator Neal reinforces my statement. She is basing policy upon a newspaper article. You cannot base policies on newspaper articles, Senator Neal, you must base them on substance and fact and indicate good policy. You cannot say, 'Just in case something might happen I will change the policy of the government and I will spend $30 million of taxpayers' money just on the basis of a few whims.' Let us not beat around the bush. We are talking about a huge amount of money being spent inappropriately on people who are not Australian citizens and people who can come into the country and rort the system. Under the current immigration regulations, any person visiting Australia—listen to this—will be able to gain unrestricted access to Medicare arrangements simply by paying $30 and applying for a protection visa.

Senator Spindler, is this the sort of rort you want to support? This is going to give any visitor to Australia cheap travel insurance. For $30 they can get access to Medicare. That is the cheapest insurance in the whole of Christendom, for goodness sake, yet you are supporting that sort of approach. You want to offer every citizen of the United States $30 unlimited travel insurance to cover any health costs.

For goodness sake, Senator Spindler, why don't you wake up to reality? You are part of

the fairies at the bottom of the garden party again. You are trying to spend $30 million of Australian taxpayers' money on people who have no right to it, including people who are visiting from the USA and wealthy European countries. They come here, pay their $30 and get their IVF treatment. This is what you want to support. You must be ashamed of yourselves.

That is money that could be spent on a whole range of much better and more worth while projects, for example on the health of our Aboriginal community which the other side left in the terrible mess that they should be ashamed of. Senator Crowley was part of that mess. She left the worst standards of indigenous health care almost in the whole world. You lot, between you, are going to spend $30 million, that could be spent on that Aboriginal community to their benefit, on wealthy Americans. You should be ashamed of yourselves.

Senator HARRADINE (Tasmania) (10.08 a.m.)—I will be very brief. First of all, I would like to congratulate Senator Woods for his strong defence of the indefensible. I thought he did a remarkable job.

I understand that I am the favourite senator of *Hansard* in that they can take down what I say more easily than they can what others in this place say. I guess that is because my pace is a little slow. If you asked them who is their least favoured senator, I think they might say Senator Woods because of his rapid-fire speech. They would not say that he is their least favoured because of the logic he portrays.

I like listening to Senator Woods. Of all the people who have been through this place, he would have to be one of the most rapid and most logical speakers. On this occasion I would just like to congratulate him for defending the indefensible. I say this quite seriously because I believe the previous government was at fault in its administration of the refugee system, the system of assessing the genuineness of refugee applicants.

A person is a refugee if they have a well-founded fear of persecution for a number of reasons: race, religion, national extraction and so on. It is very important for the whole of Australia to have a system which provides fairness and justice. I have a very strong feeling that a lot of those 85 per cent whose applications do not succeed are not properly dealt with anyhow.

I was glad to hear what Senator Woods said. He was indicating that Senator Bolkus was behind the delegated legislation which we are seeking to disallow at the present moment. It was Senator Bolkus, who is not here to defend his actions. He was here, but he has chosen not to defend his actions, which I find surprising.

Senator Woods—He sneaks out.

Senator HARRADINE—Yes, he has left it to another shadow minister. I invite Senator Bolkus to come back here and attempt to defend what he has been doing in that particular portfolio.

I acknowledge what Senator Woods has said. If there are rorts of the type that he has mentioned, then those rorts ought to be the subject of investigation, and action should be taken to ensure that the system is not rorted. If you do what you are trying to do in this delegated legislation with the ASAS, then you are throwing the baby out with the bathwater. You are, inevitably, going to disadvantage the people who are least able to defend themselves. Who in the world are the most vulnerable? Those people who have a well-founded fear of persecution on the grounds of race, religion, national extraction and so on. They are the ones who are most vulnerable.

I am going to support the disallowance motion that has been moved by Senator Spindler because I believe that, unless we do support this, inevitably, the most vulnerable of human beings in this world are going to be affected. I invite the government not to follow the path that was forged by Senator Bolkus and others whom I have raised questions about on estimates committees and elsewhere about their administration of the refugee system. I invite them to have a very good look at the ASA scheme, remedy the defects and rid themselves of the rorts.

I agree with what Senator Woods has said. It is unconscionable for persons to try to rort the system in the way he has mentioned. Why

should we then take the view suggested by Senator Bolkus which is now a province of the government that we should disadvantage the least advantaged of human beings and maintain this delegated legislation? I believe that, if we disallow it, it will be more of an incentive for the government to take action against the rorts. I support the motion.

Senator CHAMARETTE (Western Australia) (10.13 a.m.)—I rise to indicate that the Greens also support the disallowance motion moved by Senator Spindler. I shall not repeat the very good arguments that have been put for the motion, but I do believe that the role of government is rightfully to take responsibility for those who are not in a position to look after themselves. People who have applied for protection, people who are asylum-seekers and refugees are those that are most vulnerable.

In Western Australia we have a state government that likes quoting the *Bible* as its authority for its duties, so I am often tempted to remind them that the real role of government is to look after the widows, the fatherless, the orphans, the destitute and the sojourners. I believe that this government would be going in an entirely inappropriate direction—and I might add that there are very disturbing indications that it is going in a very wrongful direction—in relation to clamping down on those people who are least able to fight for their rights. If we do not fight for them in this place, they are vulnerable indeed.

So I am happy to be associated with this motion and to support the comments that Senator Spindler made in saying that we are not in a position in this country to treat some people as second-class citizens. We should not be able to deny the rights of citizens and their needs being attended to by those kinds of government programs that are available. With those words I indicate the Greens' support for the disallowance motion being considered at this time.

Senator SHORT (Victoria—Assistant Treasurer) (10.16 a.m.)—I do not wish to add a lot to what Senator Woods has said today because I think he has set out very well the logic of our opposition to the motion that has been put forward by Senator Spindler. The one point that I wish to make is that the motion is based on a totally false premise, and that premise is that the government has made decisions affecting the asylum seekers assistance scheme. All of that has emerged because of reports in the press—nothing more.

On behalf of the government I wish to place on record here—and I have confirmed this in the last minute with the Minister for Immigration and Multicultural Affairs (Mr Ruddock)—that he and the government have never said that the asylum seekers assistance scheme will or will not be affected. The fact is, as we have said time and time again in this chamber and will continue to do until the budget, that all decisions concerning budgetary matters are matters for the budget and not for discussion in advance. That has been a time-honoured convention on both sides of the chamber.

I say in particular to Senator Harradine, who is a very honourable senator who shares many of the views that we do on this side of the chamber in relation to the special needs of asylum seekers, that no decision has been taken in relation to this scheme one way or the other and that any decision will be taken in the budget context.

It is absolutely unconscionable for this parliament to now take a decision—on the basis of some reports in a newspaper, and in contravention of the advice of the Minister for Immigration and Multicultural Affairs—which would affect revenue by $31 million by enabling the rorting of the system. I urge the parliament and the Senate to think again about this matter and see what happens in the budget context. When decisions are taken in the budget context, then this matter can be revisited. To take a decision now on the basis of wild speculation, which is not correct, would cast great shame over the decision making ability of this Senate. I urge the Senate to reconsider.

Senator STOTT DESPOJA (South Australia) (10.19 a.m.)—I rise to restate the Democrats' support for this disallowance motion and specifically to refute claims that were put forward earlier in the chamber by Senator Woods that the Democrat position on

this disallowance is divided in some way.

Senator Woods—And has always been.

Senator STOTT DESPOJA—Not at all. For the record, I should state that not only is the Democrats' support for this disallowance unanimous but Senator Spindler certainly does not need a swan song in this parliament; he has many other fine achievements that he could proudly leave this chamber with.

Having put that on the record and having refuted that premise put forward by Senator Woods, I wish to restate our support for the disallowance and the fact that we recognise that the effect of this order is to effectively deem applicants for refugee status second-class citizens.

I am sorry that, despite our many attempts through the minister and in the chamber to find out about the extent of so-called rorts or about such systematic abuse taking place, Senator Short, and Senator Woods for that matter, have failed to put forward any examples, proof or research of such rorting of the system.

One other comment from Senator Woods earlier cannot go unchallenged. I accept that we are perhaps in some respects the de facto opposition in this parliament, but it is worth getting on record in this parliament the voting statistics since May 1994 since you are so convinced that the Australian Democrats have voted many more times with the ALP. It is worth noting that we voted alone since May 1994 in divisions 43 per cent of the time. In fact, the ALP and your coalition voted 43 per cent of the time together, when we have voted with the ALP since May 1994 only 35 per cent of the time. So, if anything, we would consider that it is the 'laborials' on the other side of the chamber and not the other way around. On that note, I add my full support for Senator Spindler's disallowance motion and restate that the Democrat support for it is unanimous.

Senator NEAL (New South Wales) (10.23 a.m.)—I seek leave to speak briefly in relation to the confusion being created by Senator Short's and Senator Woods' statements.

Leave granted.

Senator NEAL—It has been stated by Senator Short and Senator Woods that the basis of the wish of the Minister for Immigration and Multicultural Affairs, Mr Ruddock, to cut the asylum seeker assistance scheme is wild speculation in the media. I wish to clarify that. The source is an article by Michael Millett, a very senior and well respected journalist, in the *Sydney Morning Herald* on 18 May 1996. It is not wild speculation based on leaked documents; it is directly sourced to the minister himself. It says:

> The Minster for Immigration, Mr Ruddock, confirmed yesterday that he was looking at cutting government funding assistance to asylum seekers in the August Budget.

It goes on to say:

> Speaking during a meeting with State multicultural affairs ministers in Canberra, Mr Ruddock said the Asylum Seekers' Assistance Scheme was under review.

That is a little bit more than wild speculation. If that was incorrect or it incorrectly stated his views given to that committee, it might have been worth while setting the record straight. But, notwithstanding that, if it is not the government's intention to cut the asylum seeker assistance scheme, then the minister representing the immigration minister in the Senate, Senator Short, can set the record straight about whether he is prepared to give us an undertaking that that scheme will not be cut. Then we will be prepared to support the government on this disallowance motion.

Senator SHORT (Victoria—Assistant Treasurer) (10.25 a.m.)—May I respond by leave to the invitation that Senator Neal has put to me?

Leave granted.

Senator SHORT—In response to Senator Neal, it is always the case in a pre-budget situation that all programs in all departments are reviewed. That is normal budget practice. I am not suggesting to the Senate anything otherwise, nor was Mr Ruddock.

What I can assure you, though, on behalf of the government, is that no decision has been taken in relation to the asylum seeker assistance scheme. In terms of any decisions that may or may not be taken, they will be an-

nounced in the budget context. As I said to the Senate in my earlier remarks, if there were changes in the asylum seeker assistance scheme announced in the budget, then it would of course be open for the parliament to take the action that they would want to take. But that is the time. The time to take decisions is not now when, as I say, no decisions in relation to the scheme have been taken. That is why I said that the premise on which this disallowance motion is based is simply incorrect. I say that on behalf of the Minister for Immigration and Multicultural Affairs (Mr Ruddock) and the government.

Senator SPINDLER (Victoria) (10.27 a.m.)—In responding to what previous speakers have said, I express my appreciation for the support expressed by Senator Harradine, Senator Chamarette and the opposition. In particular, I wish to address some of the remarks made by Senator Woods. In effect, Senator Woods said that a person who is seeking asylum but has not yet been granted asylum is really not a human being like the rest of us. I have some difficulty with that and some regret about hearing those statements from a person who has taken the Hippocratic oath. His embarrassment must be very deep indeed, because he saw fit to resort to some slurs of both a personal and a political nature. Senator Stott Despoja has clarified that the Australian Democrats as a whole support this motion for disallowance.

I should also point out that this motion for disallowance was put on the record during the term of the previous government. When the then Labor government sought to take this action, I took the action of putting on record the motion for disallowance. It can hardly be said, then, that we are party-political in our support for this disallowance that needs to be made. Surely we must treat people who are on our shores as we would like any human being to be treated. If there are rorts, bring forth amendments to fix them. The government can expect to get Democrat support for any amendments that will get rid of non-urgent surgery that, as the government claims, is being paid for through this arrangement. That is open to the government.

I place on record once again that the Australian Democrats will very happily support any amendments, but what the government is doing is denying basic medical services to people who require them. The ASA scheme has a six-month waiting list. The Medicare provisions do not. If the government wishes to insert some provisions which exclude the possibility of rorting, let me say again on behalf of the Australian Democrats we will happily support the government. But the government should not bring in a provision which denies basic medical services to people just because they are asylum seekers and their status has not yet been clarified. I am grateful for the support that I have received for this motion and rest my case.

Question put:

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

The Senate divided. [10.34 a.m.]

(The Acting Deputy President—Senator S.C. Knowles)

Ayes	36
Noes	32
Majority	4

AYES

Bell, R. J.	Bolkus, N.
Bourne, V.	Burns, B. R.
Carr, K.	Chamarette, C.
Coates, J.	Collins, J. M. A.
Collins, R. L.	Colston, M. A.
Conroy, S.	Cooney, B.
Crowley, R. A.	Denman, K. J.
Evans, C. V.*	Faulkner, J. P.
Foreman, D. J.	Forshaw, M. G.
Harradine, B.	Jones, G. N.
Kernot, C.	Lees, M. H.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Neal, B. J.	Ray, R. F.
Reynolds, M.	Schacht, C. C.
Sherry, N.	Spindler, S.
Stott Despoja, N.	West, S. M.
Wheelwright, T. C.	Woodley, J.

NOES

Abetz, E.	Alston, R. K. R.
Baume, M. E.	Boswell, R. L. D.
Brownhill, D. G. C.	Calvert, P. H.*
Campbell, I. G.	Chapman, H. G. P.
Crane, W.	Crichton-Browne, N. A.
Ellison, C.	Ferguson, A. B.

Gibson, B. F.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
Minchin, N. H.	O'Chee, W. G.

NOES

Panizza, J. H.	Parer, W. R.
Patterson, K. C. L.	Short, J. R.
Teague, B. C.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	Woods, R. L.

PAIRS

Beahan, M. E.	Tambling, G. E. J.
Cook, P. F. S.	Herron, J.
Childs, B. K.	Reid, M. E.
Lundy, K.	Newman, J. M.

*** denotes teller**

Question so resolved in the affirmative.

SENATOR-ELECT FERRIS

Debate resumed from 28 May, on motion by **Senator Bolkus**:

That the following questions relating to the qualification of one or more senators be referred to the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918:

(a) whether there is or will be a vacancy in the representation of South Australia in the Senate for the place for which Senator-elect Jeannie Ferris was returned;

(b) if so, whether such vacancy may be filled by the further counting or recounting of ballot papers cast for candidates for election for senators for South Australia at that election;

(c) alternatively, whether in the circumstances there is a casual vacancy for one senator for the State of South Australia within the meaning of section 15 of the Constitution;

(d) whether any other senator aided, abetted, counselled or procured, or by act or omission was in any way directly or indirectly knowingly concerned in, the matters giving rise to paragraph (a);

(e) if so, whether there is a vacancy in the representation of the relevant State in the Senate for the place for which that senator was returned; and

(f) if so, whether in the circumstances there is a casual vacancy for one senator for the relevant State within the meaning of section 15 of the Constitution.

upon which **Senator Chamarette** has moved by way of amendment:

Omit paragraphs (d), (e) and (f).

Senator MINCHIN (South Australia—Parliamentary Secretary to the Prime Minister) (10.38 a.m.)—I was not going to speak on this motion, because I appear to be on trial in here. I have always taken the view that you should always get the best barristers to appear for you, and I have had Senators Hill, Alston and Abetz ably appearing on my behalf in this trial.

Senator Robert Ray—We will appeal for clemency.

Senator MINCHIN—Thank you, Senator Ray. However, I do need to respond to some of the claims made by Senators Ray and Schacht yesterday in the debate. Of course, I am used to abuse being hurled at me from many quarters. It is bemusing to listen to abuse from the ALP that is normally reserved for hurling at itself in its interminable faction fights when all sorts of allegations are made against each other within that party. The common reference to me has been that I am a dill. I am certainly used to that; my 10-year-old son calls me a dill every time I tip the Adelaide Crows to win in Melbourne.

However, I take, at the very least, strong objection to the inference that I have lied to the Senate. Senator Ray's impassioned speech about my role revealed the true tactics in this. There is an attempt to get me; I suppose I should be flattered by that. However, the Labor Party is trampling all over Ms Ferris to have a go at me, and the nature of their motion clearly reveals that. Senator Ray's comments clearly reflected that. He basically said, 'Senator Minchin has to appear in this chamber and answer these charges, or we have got him.' He is talking as if he was some mafia don, out to crucify the government and government senators.

The allegation made was that I deliberately misled the Senate about the timing of legal advice to Ms Ferris. As I understand it, the assertion was that the advice of 17 May from Wheeler QC was the only legal advice that she received and, therefore, I must have lied in my statement of 22 May, where I referred to earlier legal advice to Ms Ferris. This was what I had to come into this chamber and respond to immediately.

I refer the Senate to a letter Ms Ferris has handed to me, dated 28 May, from Josephine Kelly BA, LLb, Barrister at Law, Selborne Chambers, Sydney, in which she says:

Dear Ms Ferris,

I confirm that on or about 7 February 1996 we had a telephone discussion about whether or not you would breach s 44 of the Constitution if you accepted a position in the office of a member of Parliament after the election and until your term as a senator commenced on 1 July 1996.

In response, and without going into the matter further, I forwarded to you several pages from the authoritative work "Lane's Commentary on the Australian Constitution", including pages 63-66 inclusive which deal with s 44. I also advised during a telephone conversation that I was not aware of any decided cases dealing with the circumstances you were foreshadowing.

I referred you particularly to page 66 of Professor Lane's work where he gives his opinion about a "senator elect" in circumstances I understood to be similar to yours, and which supports the proposition that accepting the position you were considering while a "senator elect", would not constitute a breach of s 44.

Following the election, you rang me again and asked me whether accepting a position in Senator Minchin's office until your term as senator commenced would breach s 44. Again, on the authority of Professor Lane's discussion and on the basis of the circumstances you told me of, I expressed the view that it would not.

That is the advice to which I referred in my statement. I did not lie to the Senate and I would appreciate your retracting the inference that I lied or misled the Senate. I will table that letter. I will also table a fax from Josephine Kelly, Barrister at Law, dated 7 February 1996, which encloses the pages from *Lane's Commentary on the Australian Constitution* to which Ms Kelly refers in her letter, dated 28 May, to Ms Ferris.

Senator Neal—Extracts from a book do not constitute advice.

Senator MINCHIN—Thank you for that legal opinion. I would also like to table, at the request of the Clerk, his advice on this matter. It is somewhat ironic that I should be asked to do this but, apparently, I am the last speaker on this motion, and I am happy to do it. In doing so, I make some respectful comments about Mr Evans's paper. I am not aware that he is a barrister or a constitutional lawyer, but I am always interested in his views. Of course, I fundamentally agree with him on the question of a constitutional monarchy. But I have to say that I do not agree with his advice. There is a fundamental error in his advice. He asks the question:

Did she hold an office?

He refers to my employment of Senator-elect Ferris in my capacity as a senator and concludes that, as a senator, I am entitled to appoint staff without qualification. He then asks:

Was it an office under the Crown?

He then refers to my employing her in my capacity as a parliamentary secretary to the Prime Minister. He cannot have it both ways. Our whole point is, and the legal advice from Wheeler QC is, that the proposed appointment was made in my capacity as a parliamentary secretary, which was clearly subject to the approval of the minister, and the approval was not granted. That is why she concludes that there was no office of profit under the crown. So Mr Evans's opinion on this has a fundamental error of fact about the status in which I am purported to be employing Ms Ferris. I table this document, but I cast it to one side.

In speaking briefly to the motion, I do support what Senator Alston has said. The fundamental problem with this motion, as presented by the Labor Party, is its reference to section 376, because section 376 talks about the power of the Senate to refer any question respecting the qualifications of a senator or respecting a vacancy. Fundamentally, there is neither case in issue here. We are not dealing with a senator and we are not dealing with a vacancy. I do not see how this motion can then really stand up.

The motion exposes Ms Ferris to a double jeopardy. The Court of Disputed Returns may reject this petition on the grounds that the Senate is not capable of referring this matter at this stage when the person in question is a senator-elect and not a senator, and nor is there a vacancy. It poses the risk for Ms Ferris of having to go through this twice—of having to appear before the Court of Disputed Returns on this petition, having it thrown out

and then you bringing it back and proposing that it be dealt with when she is a senator. I think that is outrageous.

In relation to subparagraphs (d), (e) and (f) of the motion, this reflects the utter incompetence of the Labor Party and the naked ambition of the Labor Party simply to have a go at me and to use the machine-gun to scatter everyone in their path. They refer in subparagraph (d) to any other senator aiding, abetting, counselling or procuring, or by act or omission being concerned, et cetera. Obviously, we all know that is directed at me. I understand the minor parties, at least, are not going to wear those provisions. Those words seem to have been taken from subsection 352(2) of the Electoral Act. It states:

> For purposes of this Part, a person who aids, abets, counsels or procures, or by act or omission is . . . party to, the contravention of a provision of this Act, the *Crimes Act 1914*
>
> or the regulations under this Act shall be deemed to have contravened that provision.

That quite clearly is referring to breaches of the Electoral Act or the Crimes Act. Not even the ALP, I believe, at this stage, is accusing me of breaching the Electoral Act or the Crimes Act. If it is, I would like it to advise me. On that basis alone, this is a nonsensical motion in its reference in subparagraphs (d), (e) and (f) to section 352, which it does not indicate in this—you have to go and find it.

I really think this is a very lightweight motion. It is nothing more than a witch-hunt designed primarily to get me and, in the meantime, to trample all over Ms Ferris. I table the documents. I regret that this motion has been brought in in the way it has been brought, dealing with a senator-elect. I think it is unbelievable that the Senate, in an unprecedented fashion, is seeking to force—by the power of the Senate, one of the great institutions of this country—a senator-elect, who is not a member of this chamber and is not here to speak on her own behalf, before the High Court to defend herself at considerable cost to her. It is unwarranted behaviour.

Senator CARR (Victoria) (10.47 a.m.)—I want to foreshadow that I will be moving an amendment in the following words:

> At the end of the motion, add:
>
> (2) That this resolution take effect on 7 July 1996 should Ms Jeannie Ferris be a member of the Senate at that time.

Senator BOLKUS (South Australia) (10.48 a.m.)—in reply—In summing up, I make a couple of points. Senator Carr's proposed amendment is obviously one that is attractive to the opposition. I anticipate it would be attractive to other parties as well, because not only does it pick up concerns that the other parties might have but also it picks up the concern that the government has about the date of operation. I think this mechanism picks up the concern that Senator Alston had. It also picks up the point that Senator Minchin was making that maybe this matter should be sent off after 1 July. Having heard the words of Senator Carr's amendment, I anticipate that the government should now consider supporting this motion.

In summing up, I also pick up the point that Senator Harradine made in respect of the wording of the substantive motion. The wording will have to change given the opposition's acceptance of the amendment that has been floated by Senator Chamarette that subparagraphs (d), (e) and (f) be deleted from the substantive motion.

Senator Alston—Are you seeking leave to withdraw (d), (e) and (f) now?

Senator BOLKUS—I will seek leave if that is what you would prefer that we do.

Leave granted.

Senator BOLKUS—That covers that. My advice therefore is that the consequential effect of the deletion of subparagraphs (d), (e) and (f) will be to change the words 'one or more senators'.

The ACTING DEPUTY PRESIDENT (Senator West)—Senator Bolkus, are you wanting to amend your motion or are you advising people to vote for Senator Chamarette's amendment?

Senator BOLKUS—Senator Alston just asked me whether I sought leave to delete sections (d), (e) and (f) from my motion. I understood that is exactly what I sought leave

to do, and Senator Alston has allowed me to do that.

The ACTING DEPUTY PRESIDENT—If you are going to do that, Senator Chamarette is going to have to withdraw her motion by leave.

Senator Chamarette—In the spirit of cooperation, as Senator Bolkus has indicated that he is happy to delete sections (d), (e) and (f) from his motion, I seek leave to withdraw the amendment that I moved.

Leave granted.

The ACTING DEPUTY PRESIDENT—Senator Bolkus, leave has been granted for you to amend your motion.

Senator BOLKUS—I move:

Omit "one or more senators", substitute "a senator".

Omit paragraphs (d), (e) and (f).

The other amendment which has been asked of us by the government has been to change the date of 7 July to 14 July. I am sure Senator Harradine and the Democrats may have a view on this.

Senator Kernot—Why is it?

Senator Alston—Just to ensure that you have got time to do it.

The ACTING DEPUTY PRESIDENT—Senator Alston, if you wish to participate, would you do so from your seat. If you wish to have a private conversation, would you do so some place else.

Senator BOLKUS—Without having consulted the mover of the amendment, Senator Carr, I am sure he would consider the change of date. I do not think there is any in principle objection to that from the opposition. We are quite prepared to accept that. When Senator Carr moves his amendment we can move that in amended form.

There are a number of other things I would like to do. I seek leave to incorporate in *Hansard* the advice of the Clerk of the Senate, Mr Harry Evans, of 27 May. I think, as a formality, that should be incorporated in *Hansard*.

Leave granted.

The advice read as follows—

CONSTITUTION, SECTION 44: DISQUALIFICATION OF SENATORS: SENATOR-ELECT JEANNIE FERRIS

The question has been raised in the Senate whether senator-elect Jeannie Ferris became subject to the disqualification provisions of section 44 of the Constitution by holding office as a member of staff of the Parliamentary Secretary to the Prime Minister, Senator Minchin. Documents relating to this question were tabled in the Senate by the government on 23 May 1996.

Section 44 of the Constitution provides that a person who "[h]olds any office of profit under the Crown" "shall be incapable of being chosen or of sitting as a senator", while section 45 provides that, if a senator becomes subject to any of the disabilities mentioned in section 44, the place of the senator thereupon becomes vacant.

The questions which arise in relation to the position of senator-elect Ferris are:

. did she hold an office

. was it an office of profit

. was it an office under the Crown

. does the prohibition on being chosen and on sitting as a senator apply

. was her election void or did her place become vacant?

Did she hold an office?

The documents tabled in the Senate show that Senator Minchin signed a letter on 25 March 1996 stating that he had appointed Senator-elect Ferris to a position on his staff. An employment agreement for the employment of Senator-elect Ferris was signed by her and Senator Minchin on 18 March 1996. On 3 April 1996, however, the Minister for Administrative Services wrote to Senator Minchin advising that he had not approved the appointment and had instructed the Department of Administrative Services to cease processing papers arising from Senator Minchin's "request" that she be appointed. On 19 April 1996 Senator-elect Ferris and Senator Minchin sent letters to the Department of Administrative Services indicating that they did not wish the appointment to proceed. Money which had been paid to Senator-elect Ferris by way of salary of the position in question was repaid.

The *Members of Parliament (Staff) Act 1984* provides in sections 13 and 20 that a senator may, on behalf of the Commonwealth, employ, under an agreement in writing, a person as a member of staff of the senator. Sections 16 and 23 provide that the senator may terminate the employment of a person

employed under section 20. It is reasonably clear, therefore, that the senator is the person who actually employs a member of the senator's staff, and does so by the agreement in writing.

It is likely, therefore, that it would be held that Senator-elect Ferris was appointed to an office, notwithstanding that the Minister for Administrative Services did not approve the appointment and it was subsequently, in effect, cancelled.

Was it an office of profit?

In *Sykes v Cleary* 1992 109 ALR 577, the High Court, in relation to the relevant prohibition in section 44, made it clear that it is the remunerated character of the office which is significant, not the question of whether salary was actually received at a relevant time, so that the taking of leave without pay by a person who holds an office does not alter the character of the office.

In view of this, it would almost certainly be held that the office to which Senator-elect Ferris was appointed was an office of profit.

Was it an office under the Crown?

The expression "under the Crown" is taken to refer to an office of the government of the Commonwealth or of a state and, having regard to the reference to the Crown and to the rationale of the relevant provision in section 44, which is to eliminate or reduce executive government influence over the Parliament, it appears that the provision refers to an office of the executive government (*Sykes v Cleary* 1992 109 ALR 577 at 583).

As has been indicated, the senator is the person who actually employs a member of the senator's staff. Although the employment is on behalf of the Commonwealth, it is questionable whether an office on the staff of a senator who is not an office-holder in the executive government is an office under the Crown. Having regard to the stated rationale of the constitutional provision, it is likely that it would be held that such an office is not under the Crown and therefore does not fall within the constitutional prohibition.

At the time of his engagement of Senator-elect Ferris, however, Senator Minchin was an office-holder of the executive government, namely, Parliamentary Secretary to the Prime Minister. The documents tabled in the Senate indicate that it was in this capacity that Senator Minchin employed Senator-elect Ferris. It is likely, therefore, that the office held by Senator-elect Ferris would be taken to be an office under the Crown, that is, of the executive government.

Does the prohibition on being chosen and on sitting as a senator apply?

Section 44 of the Constitution renders incapable of being chosen or of sitting as a senator a person who holds an office of profit under the Crown.

Past judgments of the High Court have made it clear that the process of being chosen includes the whole process of election from nomination to the return of the writs. (*Vardon v O'Loghlin* 1907 5 CLR 201 at 210; *Sykes v Cleary* 1992 109 ALR 577 at 584-6) The meaning of the concept of sitting as a senator may be regarded as determined by section 42 of the Constitution, which refers to a senator making and subscribing an oath or affirmation before taking the senator's seat. A senator does not take his or her seat until the first sitting day after the term of the senator has begun.

It is therefore possible to argue that the relevant prohibition in section 44 does not apply to a senator-elect but only to the time during which a candidate is chosen, that is, during the whole process of election, and the time after the senator has taken his or her seat. Such an interpretation may be regarded as a literal reading of the constitutional provision.

Such an argument, however, assumes an appearance of absurdity when regard is had to the stated purpose of the relevant prohibition, namely, eliminating or reducing executive influence over the Parliament. Senators, and therefore the Senate, could be influenced by the granting of executive government offices to senators-elect provided that the holding of the office lasted only from the return of the writs to the commencement of the senators' terms. This would be a circumvention of the intention of the constitutional prohibition. It is therefore likely that, if the question were to be determined, it would be held that the constitutional prohibition applies to a senator-elect in the same way as it applies to a senator who has actually taken his or her seat.

In any event, this argument would appear not to be relevant to Senator-elect Ferris, because her election was not complete at the time of her appointment: the writs for the election of senators for South Australia were not certified for return until 2 April 1996.

Was her election void or did her place become vacant?

On the basis that the election of senators for South Australia was not complete until 2 April 1996, when the writs were certified for return, it could be held that Senator-elect Ferris' election was void, and that it would have to be determined who was validly elected, as in *In re Wood* 1988 167 CLR 145.

If the view is taken that the senator-elect was chosen in an election which was completed, and the disability occurred after the completion, it would

probably be held that when a senator-elect accepts an office of profit under the Crown, the place of the senator-elect in the Senate becomes vacant. When a senator-elect dies, the place of the senator-elect is treated as vacant and is filled by the State Parliament accordingly (case of Senator Barnes, 1938, SJ 78). It would seem therefore, that the vacating of the place of a senator-elect by reason of disqualification under sections 44 and 45 of the Constitution would create a casual vacancy to be filled in accordance with section 15.

The first possibility appears the more likely, on the case law so far.

(Harry Evans)
27 May 1996

Senator BOLKUS—I also seek leave to incorporate in *Hansard* the correspondence between state Government House and the Governor-General's office in terms of the return of the writs for South Australia. I think it is important to put that on the record because it shows where the confusion may have arisen between the return of the writs on a state level and the return of the writs on a Commonwealth level. Senator Hill may want to have a look at these, but they are the documents that go to the return of the writs.

Leave granted.

The correspondence read as follows—

GOVERNMENT HOUSE

ADELAIDE

11th April, 1996

Your Excellency,

I have the honour to write in further reference to Your Excellency's letter of 27th January, 1996, and now transmit herewith the writ for the election of Senators for the State of South Australia, duly endorsed and returned to me by the Australian Electoral Officer for South Australia.

In accordance with such endorsement and in pursuance of Section 7 of the Commonwealth of Australia Constitution, I hereby certify that the undermentioned persons have been duly elected to serve in the Senate of the Parliament of the Commonwealth of Australia as Senators for the State of South Australia.

1. Robert Murray HILL
2. Rosemary Anne CROWLEY
3. Natasha Jessica STOTT DESPOJA
4. Hedley Grant P. CHAPMAN
5. Christopher Cleland SCHACHT
6. Jeannie Margaret FERRIS

Yours sincerely
Roma Mitchell
GOVERNOR
His Excellency
The Honourable Sir William Deane, AC, KBE
Governor-General of the Commonwealth of Australia
Government House
CANBERRA A.C.T. 2600

Government House
Canberra ACT 2600
23 April 1996

Dear Mr Evans,

I have pleasure in forwarding to you the completed Writs for the election of Senators at the federal general election held on 2 March 1996.

The completed Writs came into the possession of the Governor-General at various times, which have been acknowledged to the Electoral Commissioner:

22 March 1996 Northern Territory
28 March 1996 Australian Capital Territory
28 March 1996 Tasmania
15 April 1996 New South Wales
15 April 1996 Victoria
16 April 1996 Queensland
19 April 1996 South Australia
16 April 1996 Western Australia

Yours sincerely
Douglas Sturkey
Official Secretary
to the Governor-General
Mr Harry Evans,
Clerk of the Senate,
Parliament House,
CANBERRA ACT 2600

Writ for the Election of Senators
Commonwealth of Australia
Her Majesty the Queen
To

Geoffrey Halsey, Esquire, the Australian Electoral Officer for the State of South Australia.

Greeting:

We command you to cause Election to be made according to law of Six Senators for our State of South Australia to serve in the Senate of the Parliament of the Commonwealth of Australia. And we appoint 5 February, 1996, as the date for the close of the electoral rolls. And we appoint 9 February, 1996 at 12 o'clock noon to be the date and time before which nominations of Senators at

and for the said election are to be made. And we appoint 2 March, 1996, to be the date on which the poll is to be taken in the event of the said election being contested. And we command you to endorse on this our writ the names of the Senators elected, and to return it so endorsed to our Governor in and over our said State on or before 8 May, 1996.

Witness—Her Excellency Dame Roma Flinders Mitchell, Companion of the Order of Australia, Dame Commander of the Most Excellent Order of the British Empire. Governor in and over the State of South Australia at Adelaide in our said State the Twenty-Ninth day of January, in the Forty-Fifth Year of our Reign in the year of Our Lord One thousand nine hundred and ninety-six.

Roma Mitchell

Governor

By Her Excellency's Command

Premier

This Writ was received by me this twenty-ninth day of January 1996.

(Sgd) Australian Electoral Officer for South Australia

I certify that in pursuance of the writ the following persons have been duly elected in the order as listed to serve in the Senate of the Parliament of the Commonwealth of Australia as Senators for the State of South Australia.

1. Robert Murray HILL
2. Rosemary Anne CROWLEY
3. Natasha Jessica STOTT DESPOJA
4. Hedley Grant P CHAPMAN
5. Christopher Cleland SCHACHT
6. Jeannie Margaret FERRIS

(Sgd) Australian Electoral Officer for South Australia

Dated this second day of April 1996.

Returned to Her Excellency the Governor of the State of South Australia this tenth day of April 1996.

(Sgd) Australian Electoral Officer for South Australia

Senator BOLKUS—At the end of this debate, I think it is fair to say, very briefly, that we maintain there is a case to answer—a case not to be determined by the Senate, but to be determined by the Court of Disputed Returns. The issues have been canvassed pretty broadly. The issues, as the Clerk of the Senate put them, are as follows. Did she hold office? We would maintain that there is evidence to suggest that she did, but, as Senator Minchin has maintained continually, there is some doubt from his side on that. Was it an office of profit? I think the government itself, in Senator Vanstone's answer to the Senate, canvassed that. She made it clear that her view, representing the Attorney-General (Mr Williams), was that the office was one of profit. Was it an office under the crown? On that particular point, Senator Vanstone's advice, together with the clerk's advice, give us at least a case to be answered that the office was an office of profit under the crown. Does section 44 of the constitution cover the position of senators-elect? There is advice on the record that needs to be addressed—advice from Senator Durack and advice that was tendered by the Minister for Administrative Services, Mr Jull, to Senator Minchin on 3 April. That is advice that can be tested by the court if this matter does go to court.

There are then consequential issues of filling the vacancy and whether Senator-elect Ferris is prohibited from being chosen and/or sitting as a senator. They are issues raised by the clerk. Given the clerk's firm view on this and other advice we have argued in the debate, those questions need to be addressed.

I say to Senator Minchin and to Senator Hill: the government's performance on this has not been satisfactory. We have asked for documents and the documents continue to dribble out. Yesterday after question time, in relation to the cabcharge documents, I made the point that our expectation was that there were more documents to come to us. It was interesting to note yesterday that when Senator Hill tabled Ms Wheeler's advice he said, 'This was the advice that Senator Minchin relied upon.' Senator Minchin comes in here today and gives us advice from another lawyer from an earlier date. They cannot get their lines right. They cannot produce the right documents. They cannot produce all the documents.

They have not produced, for instance, a letter from the Prime Minister (Mr Howard) which was referred to in Ms Wheeler's document. They have not produced a letter of 26 March, which has been referred to in the documentation tabled already. They have not produced other documentation from the Department of the Prime Minister and Cabinet.

The government's performance in this matter has not been satisfactory and I suggest to Senator Hill that next time he goes through this exercise he would maybe have to lift his game.

On the point of legal advice, Senator Minchin made it very clear that he relied on advice when he appointed Senator-elect Ferris to his office. Senator Hill yesterday made it very clear what that advice was and claimed it was the advice of Ms Wheeler QC.

Senator Hill—No, I didn't.

Senator BOLKUS—Read the *Hansard*.

Senator Hill—I know what I said, Senator.

Senator BOLKUS—That would be a bit of a change, Senator. Senator Hill said yesterday that this was the advice Senator Minchin acted on.

Senator Hill—I did not. I didn't.

Senator BOLKUS—Well, drag out the *Hansard*. But Senator Minchin comes in here today with more legal advice. You know this was a pretty important point in terms of the misleading of this place, but I make the point that the government has not approached this particular issue in a comprehensive way. Because of that, it is not looking all that good at the moment on this issue. Senator Hill, shake your head as you like, but, in respect to this, there are lessons for the government to learn.

In summing up, there are issues here that need to be addressed and there are issues here that should not be addressed by the political process. They should be addressed through the venue that is provided for by law and in the constitution—that is, the Court of Disputed Returns. If you leave these matters for politicians to address, obviously our motivations are different. We have seen that arise in the debate. The proper mechanism to deal with this matter is the Court of Disputed Returns in the High Court. That is why previous ministers have been ready to refer these matters off. That is why Senator Ray, on a number of occasions, referred a matter off—

Senator Robert Ray—Once.

Senator BOLKUS—Once, sorry, referred a matter off to the Court of Disputed Returns in the High Court. That is why we would have expected this government to have taken the same position at the start. Instead of dragging it out and stubbornly resisting and dribbling out information they could have taken the position earlier on and saved the Senate a lot of time and themselves a lot of trouble.

Senator CARR (Victoria) (10.58 a.m.)—I move:

At the end of the motion, add:

(2) That this resolution take effect on 14 July 1996 should Ms Jeannie Ferris be a member of the Senate at that time.

This is a proposition which I do not want to speak to at great length. Essentially, it is an attempt to pick up some of the points that have been made in this chamber. It is not to acknowledge or to concede the validity of those points that Senator Alston has made, but to at least attempt to get a broader consensual view on this matter. It is also to take account of the discussion that I understand is being had about the prospect of Senator-designate Ferris actually resigning before this time. It is an opportunity for the government to get its own house in order before the action is taken. I commend the amendment to the Senate.

Senator BOURNE (New South Wales) (10.59 a.m.)—I will make a remarkably short statement here to put on record that the Democrats will be supporting this amendment. It seems to us to allay some of our fears about the legitimacy of the votes of the Senate if Senator-elect Ferris, as she now is, does take her place without any action happening. I reiterate one thing I have said before: there is one thing that this chamber should be doing in relation to this—looking at section 44 of the constitution. I tell the Senate that we will be bringing that up again in the next session. We look forward to having support from all sides.

Amendment agreed to.

Question put:

That the motion (**Senator Bolkus's**)—as amended—be agreed to.

The Senate divided. [11.04 a.m.]

(The Acting Deputy President—Senator

S.M. West)

Ayes	37
Noes	33
Majority	4

AYES

Bell, R. J.	Bolkus, N.
Bourne, V.	Burns, B. R.
Carr, K.	Chamarette, C.
Childs, B. K.	Coates, J.
Collins, J. M. A.	Collins, R. L.
Colston, M. A.	Conroy, S.
Cooney, B.	Crowley, R. A.

AYES

Denman, K. J.	Evans, C. V.
Faulkner, J. P.	Foreman, D. J.*
Forshaw, M. G.	Harradine, B.
Jones, G. N.	Kernot, C.
Lees, M. H.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Neal, B. J.
Ray, R. F.	Reynolds, M.
Schacht, C. C.	Sherry, N.
Spindler, S.	Stott Despoja, N.
West, S. M.	Wheelwright, T. C.
Woodley, J.	

NOES

Abetz, E.	Baume, M. E.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.*	Campbell, I. G.
Chapman, H. G. P.	Crane, W.
Crichton-Browne, N. A.	Ellison, C.
Ferguson, A. B.	Gibson, B. F.
Herron, J.	Hill, R. M.
Kemp, R.	Knowles, S. C.
Macdonald, I.	Macdonald, S.
MacGibbon, D. J.	McGauran, J. J. J.
Minchin, N. H.	O'Chee, W. G.
Parer, W. R.	Patterson, K. C. L.
Reid, M. E.	Short, J. R.
Tambling, G. E. J.	Teague, B. C.
Tierney, J.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.
Woods, R. L.	

PAIRS

Beahan, M. E.	Newman, J. M.
Cook, P. F. S.	Panizza, J. H.
Lundy, K.	Alston, R. K. R.

*** denotes teller**

Question so resolved in the affirmative.

CONSIDERATION OF LEGISLATION

Senator KEMP (Victoria—Manager of Government Business in the Senate) (11.09 a.m.)—I move:

That the order of the Senate of 29 November 1994, relating to the consideration of legislation, not apply to the following bills:

Indigenous Education (Supplementary Assistance) Amendment Bill 1996

Airports Bill 1996

Airports (Transitional) Bill 1996

Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996.

These are four important bills. Sequentially, they are the Indigenous Education (Supplementary Assistance) Amendment Bill 1996, Airports Bill 1996, Airports (Transitional) Bill 1996 and Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996. We are seeking exemption of these bills from the order of the Senate of 29 November 1994. I will deal with each of these bills in sequence and explain to the Senate why the government is seeking the exemption.

The Indigenous Education (Supplementary Assistance) Act 1989 provides for the appropriation of funding for the Aboriginal education strategic initiatives program, also known as the AESIP. It enables grants of financial assistance to be made to state and territory governments, non-government school systems, Aboriginal and Torres Strait Islander educational institutions and education consultative bodies for the purpose of advancing the education of Aboriginal and Torres Strait Islander peoples. Funding under the act is appropriated on a triennial calendar basis, with the current triennium due to finish at the end of 1996.

The bill provides for a substantial appropriation for Aboriginal education. Following the Commonwealth's response to the national review recommendations and the positive response from the Ministerial Council on Education, Employment, Training and Youth Affairs which followed soon after, bilateral negotiations have taken place between the Department of Employment, Education, Training and Youth Affairs and senior officers of the state and territory departments of education. These negotiations have resulted in agreed understandings and a new commitment to shared responsibilities and a shared effort to further the goals of the AEP.

Indications are that the state and territories are willing to commit in excess of $40 million of additional funds to this end. There is still a great deal of work to be done before the new arrangements can take effect. It is imperative, in the government's view, that the new legislation be passed as soon as possible to cater for the long lead time that is required in such an undertaking, particularly in the context of Commonwealth-state relations.

I now turn to the next two bills: the Airports (Transitional) Bill 1996 and the Airports Bill 1996. The purpose of the Airports Bill is to establish the regulatory arrangements to apply to federal airports following leasing of the airports to private operators. The purpose of the Airports (Transitional) Bill is to implement a framework to effect the sale of federal airports under long-term leases. It is essential, from the government's point of view, that the Airports Bill, in conjunction with the Airports (Transitional) Bill, be considered in the winter parliamentary sittings to ensure that the government's airport leasing program—a significant part of the government's economic reforms and an important contributor to the government's budget strategy—is not unduly delayed.

I make the point: the sale of long-term leases for the Federal Airports Corporation provides an opportunity for the private sector to operate and manage development of a major part of Australia's strategic infrastructure. Leasing of the airports was included in this government's election commitments—and I think that is an important point to stress—subject to Sydney and Sydney West being withdrawn until there is a solution to the issues of aircraft noise, the opening of the east-west runway and a full EIS on Sydney West airport. We have taken the necessary action on these issues, with Sydney and Sydney West out of phase one sales, the east-west runway reopened and a comprehensive EIS being established. With these decisions in place, we believe that there is no reason for these bills not to be considered in this session.

Airports cannot be leased until the regulatory and sales legislation has been passed. The next stage of the sales process requires the release of information memoranda, which will need to contain full details of the post-leasing regulatory regime. To complete the leasing of phase one airports and receive proceeds 1996-97, the information memoranda will need to be ready for release well before the end of this year. Accordingly, it is essential that legislation be introduced and passed in the current sitting to facilitate the meeting of this timetable.

The Airports Bill establishes the essential regulatory framework, as I have mentioned, which will apply to federal airports post leasing. The Airports (Transitional) Bill sets out the arrangements which will apply to leasing of the airports and transfers of assets and staff as well as the financial arrangements which are critical to bidders. Potential investors and airport operators require certainty about the regulatory and leasing framework before they can commence to prepare formal bids. To delay this process is simply to add further unnecessary delays in a process which has already been going on for well over a year.

The opposition, I hope—and I highlight this point—will not take the opportunity to hold up this legislation, as it wanted to introduce and pass similar legislation last year. If there is any delay in either bill, then the current sales timetable for the first stage of the airports will not be achieved. The states and territories have also sought fast tracking of the leasing process, which will not be achieved if parliament does not pass the airport bills.

The sales are expected to make a significant contribution to the budget in 1996-97, provided a timely passage of the bills is achieved. The bottom line is that any attempt by the Senate not to deal with this legislation could simply be interpreted as a ploy to increase the budgetary hole that has been left to this government.

Finally, I turn to the fourth bill, the Social Security Legislation Amendment (Newly Arrived Residence Waiting Periods and Other Measures) Bill 1996 and state why we believe that should be introduced and passage obtained in the 1996 winter sittings. One of the election initiatives announced by the government was that newly arrived residents' wait-

ing periods that apply before a person may be paid certain social security payments was to be extended from 26 weeks to 104 weeks. As a general rule, the initiative is to apply to a person arriving in Australia on or after 1 April 1996, or who is granted a permanent visa on or after 1 April 1996, whichever is later. Legislation needs to be in place as soon as possible to give effect to that initiative.

We believe the bill would also go some way in addressing concerns expressed by employers about inefficient bureaucratic processes. Amendments to both the Social Security Act 1991 and the Student and Youth Assistance Act 1973 would facilitate a more efficient information gathering process from employers and other third parties. Amendments would be made to the Data-matching Program (Assistance and Tax) Act 1990 to ensure that income data from the two financial years immediately before the current financial year may be used as a single data-matching program. Failure to proceed with the amendments at the earliest possible opportunity potentially jeopardises realising significant savings to revenue. The policy commitment given effect by this act has received wide coverage in Australia since it was released in mid-February and, of course, this was repeated around 1 April 1996.

Information was provided by the Department of Immigration and Multicultural Affairs to its overseas posts on 19 March 1996 for forwarding to intending migrants. A leaflet was sent out to the last known address of all visa recipients who had not yet travelled to Australia. There have been few reports of mail returned and unclaimed. In late March 1996, letters were also sent to assurers of support of applicants who had not yet arrived in Australia. DSS has also arranged for information to be provided in ethnic radio broadcasts on SBS for two weeks, from 20 May 1996, and DSS staff have also been conducting briefing sessions for ethnic community representatives throughout Australia.

The coalition gave a commitment that this would apply to new residents on or after 1 April 1996. As the existing legislative provisions will operate for 26 weeks from this date, it is important that this new legislation is passed before 1 October 1996 so that there is a continuity of waiting periods from the 26 weeks to 104 weeks. I urge the Senate to grant exemptions for these four bills.

I am advised that the bills have been made available to members of the opposition and the minor parties so that they have a chance to read the provisions of the bills, ask questions of shadow ministers and get briefings from officers on these bills. They are important to the government and we urge the Senate to ensure that the exemptions are granted so that these four bills can be debated and passed this sitting.

Senator CARR (Victoria, Manager of Opposition Business in the Senate) (11.18 a.m.)—The opposition does not support this motion. However, we will not be opposing all of the bills for which exemptions are being sought. I trust that when this proposition is put it will be put separately.

Senator Kemp—Yes, it will be put separately.

Senator CARR—I would perhaps start by reminding senators of the terms of the order of continuing effect, which is commonly referred to as the Hill cut-off motion. In effect that motion says:

> The reasons referred to in paragraph (1) are as follows:
>
> —in terms of why there should be a cut-off motion in place—
>
> (a) there should be an orderly debate of bills in accordance with some of the general chronological priority based on the principle that bills introduced in one sitting, should preferably be debated in the next sittings;
>
> (b) that such a priority reflects and ensures effective use of the time available:
>
> (i) to Senators, to research the implications of the bills, consult the community, prepare speech notes and draft any necessary amendments, and
>
> (ii) to the media and to the public to become aware of the possible effects of proposed laws; and
>
> (c) where the government wishes the Senate to depart from that general chronological priority, the Government should justify each such departure in debate which concludes with a resolution of agreement by the Senate.

Quite clearly, those conditions have not been met. This government, in the opposition's view, has not demonstrated that there is sufficient reason for urgency on these proposals and that the Senate should agree to the cut-off. The opposition does not accept the justification put forward by the government, particularly with regard to the Social Security Legislation Amendment (Newly Arrived Residence Waiting Periods and Measures) Bill 1996 and the two airport bills.

In the case of the social security bill, it simply has no urgency. This legislation does not need to be passed in this session of parliament. The commencement provisions of the bill provide for commencement on the date of royal assent in most cases. From the government's point of view, royal assent is only required by 1 October so that they can keep their commitments to apply the two-year waiting period from 1 April.

Far from exempting the bill from the cut-off, it is critical for the Senate to have time to consider the consequences of the measures that the government is presenting in this bill. They include such things as retrospectivity in application; contravention of the anti-discrimination legislation and conventions; the possibility of sequential applications for the waiting period; the relationship between this legislation and reciprocal agreements between Australia and other countries made under the Social Security Act; the relationship between the proposed disallowable instrument and the provision in the Social Security Act governing special benefits; and the clear potential for the measures contained in the bill to jeopardise migrants effective settlement in Australia.

In the case of the two airport bills, the provisions of the bills also come into effect from the date of royal assent. In addition, there are compelling reasons to allow enough time for the issues surrounding the location of Sydney's second airport to be resolved before the sale of Kingsford Smith can proceed. As far as we are concerned, the government has simply not demonstrated the justification for urgency on these matters. In fact, one suspects that, given what has been going on within the government parties, there is in fact all the more need to hasten slowly. I also remind senators that we still have on the *Notice Paper* a proposed sessional order in the name of Senator Kemp which would vary the terms of the current cut-off motion.

This issue has been the subject of discussion among all the parties represented in the Senate. Indeed, Senator Kemp has put to us all a variation of his original proposal which provided for a two-week gap between the introduction of and the debate on any bill. This matter has still to be resolved by the government. Logically it should be resumed before we are asked to consider requests for the exemption of the cut-off on an ad hoc basis, as we are now doing. On behalf of the opposition, I urge the government to get its act together and try to organise and finalise matters before it makes requests such as this for an ad hoc approach to very important legislation.

If I could go to the specifics of the legislation: Senator Kemp has indicated that the bills that will be introduced into the House of Representatives in regard to the FAC are the same bills as Labor's bills. That is not the case, Senator. If I have misunderstood you I will stand corrected, but I understood you to be saying that these were essentially our proposals. These bills are not our proposals. The provisions in these bills have very important differences in terms of the restriction on cross-media ownership in Sydney and in regard to those airports in Brisbane and in Melbourne. The restrictions that were in the bills for the last government have been removed from this government's proposed bills.

The minister has also under the proposals been given the power to exempt replacement airport master plans and other environmental strategies from public comment, from the consultation process. These things are not mentioned, by the way, in the minister's second reading speech. These are matters that come about as a result of careful consideration of the legislation. I think there ought to be more careful consideration of this legislation. They are two matters that have been picked up in a preliminary reading of the matters by me. There are many others.

There are substantive issues that go to very important questions relating to airport policy in this country. These are issues in regard to the 23 airports that, on the Labor Party's side, there has been considerable debate about. These matters require careful consideration within the opposition party room. It would be incumbent upon the government to apply the same standards that they expected us to apply when they were in opposition. If it was good enough for them to carefully consider legislation—it was their duty, in fact when they were in opposition—it is also good enough for us. It is our duty to do exactly the same.

I could go to a whole range of issues concerning the FAC. These are matters that cannot and will not be resolved quickly. It would be wrong for us to seek to do so, given the matters involving the scandalous Holsworthy affair and the issues that are emerging concerning meetings about that matter.

In terms of the social security legislation, as I understand it there are substantive issues that go to breaches of election promises, that go to the questions of whether the proposals provide an adequate safety net for residents of this country, whether they provide a new administrative precedent for waiting periods for new classes of persons under the social security provisions in this country and in regard to the extension of various waiting periods to a whole series of new benefits and support payments for residents of this country. There is the whole issue of the retrospectivity of these proposals. There is the issue of the difference there appears to be on the public record about the so-called costings involved in this proposal and what appear to be the facts in the bill. These matters require careful consideration. We have in this country relied very heavily on family reunion. It is an important part of our immigration approach in terms of our population policy. It is not something that can be treated in a cavalier manner.

The Labor opposition has approached the business of the Senate in a constructive and cooperative manner. We have sought to offer the government opportunity again and again to get on with the legislative program. It is extremely difficult and frustrating from our point of view that we still do not have sessional orders in place, despite our very best efforts to offer the government opportunities to provide a general package of arrangements that would allow for the smooth running of this Senate. You have failed miserably to meet the challenge that we have proposed to you.

Still, given the frustration of dealing with a new government that has a lot to learn about the processes of running the Senate, we have managed all the same to accept 24 bills. The legislative program of this government has relied very heavily, I agree, on the old government. We can understand that there are sometimes difficulties in coming up with new ideas and new ways of approaching problems, particularly when you have so much trouble keeping your promises as to the commitments you made during the election campaign. You predicated it on one very simple presumption: everything you said in the election campaign can now be dumped. That leaves you with a great gap when it comes to actually implementing a legislative program when in government. You do not know what you are doing.

Nonetheless, some eight bills have passed in this period, despite the difficulties you have presented us with. In the equivalent period, when there was a change of government in 1983, the number of bills was only four. Senator Kemp, you have to make sure you get your dates right when you are giving those sorts of statistics. You have to make sure you get those very basic propositions right.

We suggest to the government that they think a bit more carefully about the propositions they bring in here. I ask that they consult a little more widely. We have requested that the legislation be made available earlier. The notion that somehow or another we can wander around to the minister's office and pick it up when it suits you is not on; that is not the standard that was set by Senator Faulkner when he was the Manager of Opposition Business. You should look more carefully at the standards set in the last government and try your best to come up to them.

I ask other senators to carefully consider the implications of these proposed exemptions for the reasons I have stated and, particularly, the reasons given in the motion of continuing effect. The motion states quite clearly what the purpose was. It was good enough for Senator Hill. Given the importance of this legislation and its complexity, I suggest that there is no urgency attached to it and we cannot agree to the proposition put forward by Senator Kemp.

Senator BOURNE (New South Wales) (11.30 a.m.)—As far as the Indigenous Education (Supplementary Assistance) Amendment Bill goes, it is an old bill as far as I can see and it is one we have no problem supporting through the cut-off motion for debate in this session. The second two bills, the airport bills, have similar principles to the previous government's bills, but there are very significant changes particularly in regard to competition, as Senator Carr has just explained in more detail. We do think they are very significant and bear further looking at before we debate them in the chamber.

The legislation did become available only at the end of last week so we are still looking through it. We have about two sitting weeks of this session left. We do not think there is urgency for that one—particularly, as Senator Carr says, as the government has not decided on the site of Sydney's second airport.

The social security legislation is completely new. It does have very substantial changes to the waiting period for social security arrangements for newly arrived residents. It is something we want to have a much closer look at before we consider it. We will be supporting the first bill, the indigenous education one, through the cut-off motion to be debated this session, but not the other three.

Senator CHAMARETTE (Western Australia) (11.32 a.m.)—I indicate that we will not be supporting this cut-off motion—to Senator Kemp's surprise. I want to quickly comment on something Senator Bourne mentioned. It is not my understanding that the Indigenous Education (Supplementary Assistance) Amendment Bill is an old bill. It has a lot of new material in it. I understand that the old bill she might be confusing it with was passed in the Senate last November.

In that bill, $83 million is guaranteed for the calendar year 1996. It is true that of the new measures in this bill there is an increase in the money that would be available from 1 January 1996 to June 1997, an 18-month period. There is a small increase in percentage of the total amount. On the grounds that there are new measures in the bill and it is not putting anybody in financial difficulties not to exempt this from the cut-off, we do not feel that the urgency exists.

We do not support any of the bills that have been nominated in this motion to be sufficiently urgent or to be old bills and therefore eligible for exemption from the cut-off. Senator Margetts will speak to the two airports bills but both of us are adamant that the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill definitely should be adjourned to the next session on the principle that it is utterly new and the community has not been educated to what is being proposed. There will be need for great community consultation and the need to listen to the concerns expressed. So we do not support the motion—and I await clarification on the indigenous education bill.

Senator MARGETTS (Western Australia) (11.34 a.m.)—As Senator Chamarette has indicated, I will speak briefly on why the Greens (WA) are not supporting the exemption from the cut-off of the two airports bills. As has been mentioned today, the bills are similar to those presented before by the previous government, but they are not the same. Those issues that are not the same are quite extensive. It is interesting that now the current opposition is realising that there is a need for extensive consultation on a number of these issues. At the time, we were concerned that the consultation on the original bill was very brief and was limited largely to New South Wales. There was some brief consultation with a group of councillors from Western Australia and that was about it—and they said it was a very cursory consultation at that. Basically, what we have said all along is that these issues about airport sales are im-

portant and ought to be given proper community consideration.

There are issues in this bill, such as the cross-ownership provisions, that are not just a minor change. Those provisions would have major implications. The fact that provisions for Sydney airport have been removed has major implications. The Greens believe that the sale of airports in general ought to have been considered. But the fact is that for many people the implications for Sydney, for the potential of a new airport, ought to be resolved. The fact that there is considerable community concern about this indicates that those issues are not minor. There is sufficient reason to say that this bill is not substantially the same bill and ought to be given proper consideration as per the standing orders of the Senate.

Senator KEMP (Victoria—Manager of Government Business in the Senate) (11.36 a.m.)—I thank senators for their contributions. I will be responding to some of the issues which have been raised. Let me just make a couple of general comments which I probably would not have bothered to make except for the somewhat provocative comments of Senator Carr. A response to a couple of issues he raised probably needs to go on record. If his comments were unchallenged, people might feel that Senator Carr was revealing truths.

In relation to the sessional orders, you and I, Senator Carr—and I think everyone involved—know of the extensive negotiations which have occurred. I would have hoped in your discussion about consultations you would have mentioned that there has been a great deal of consultation, more than existed under the previous government. We were not playing Labor Party rules, we have had regular meetings to consult and discuss.

For the record, Senator Carr, there is just about complete agreement on the sitting times and the routine of business. You have attempted to load a couple of other issues into that agreement, as is the wont of the socialist left, which is all right. You can play your games, that is fair enough, but we should not let the public or the press gallery be deluded into thinking that the sessional orders are not ready and that there is not universal agreement, including your agreement, for the sitting times and the routine of business.

The opposition wants to load a number of other things onto that agreement, in particular question time, and negotiations have been continuing. So the new sessional orders have not come in and we are operating under the old sessional orders, Senator Carr, quite simply because of your blocking exercise. We are hopeful, Senator Carr, because we are people who like to consult and who like to bring people on side, as we have been doing. As I said, I think the record will show that the consultation carried out by this government in order to change things, such as sessional orders, has been far more extensive than was practised by the previous government. So let us get the record straight on that issue.

Senator Carr attempted to argue that the opposition has been hugely cooperative. Eight bills so far is certainly not a magnificent record; it is a very poor record, to be quite frank. Senator Carr, after the 1993 election—and it has to be said that we probably felt as bad about losing then as you undoubtedly felt about your dreadful loss at the last election—over 10 sittings days, which is less than the number of sitting days which we have had to date, 22 bills were passed in 18 packages. This contrasts with eight bills.

So let us not believe that your performance has been any good. It might be good by your standards, but it is bad by the standards which the public would wish to apply to this chamber. I regret that and I regret that you have chosen to act in this manner. I hope that, as the weeks and months go on, a more cooperative approach will occur as you get over having been trounced in the last election. We are well used to the politics of the payback and we understand that that is part of the socialist left culture. It would be certainly helpful if we could see a more cooperative spirit taking place on your part.

The next point I wish to make—and thank you, Senator Woodley, for that useful help—is that there is a recognition by us all that the cut-off motion did not recognise what hap-

pens when a new government comes in. There have been some constructive discussions again on how we deal with that issue. In general—with a couple of exceptions, Senator Chamarette—I think there is the belief that we have to amend those standing orders to reflect what happens when a new government comes into office. Again we were pretty close to reaching agreement but, at the end of the day, because of the front-end loading practices which you have applied, that was not possible.

The fourth general point I wish to make is this. The government went to an election with specific promises and we are seeing in the Senate an attempt at times to make us break those promises and at times to frustrate the keeping of those promises. We only have to think of the Senate's reaction to the Telstra bill, to the workplace reform bill and to the export licensing arrangements. I think the Senate has adopted a process which will be condemned by the public. Where we have gone to the election with specific promises, I would think that the Australian public believe that a government should be allowed to govern and be allowed to put into effect the policies with which it got clear approval at the last election.

That applies to the three bills before the chamber—the airport bills and the bill relating to the migration waiting times. They relate to issues which were very extensively canvassed during the election which the government won handsomely. If Senator Carr and other speakers had issues, they could have been very easily dealt with in the normal course of debate and consultation.

These bills are urgent bills. They are bills that the government needs. They are bills which had endorsement at the election. We went to the election with our airports policy and the migration waiting periods so I think we are seeing here something which is out of kilter, Senator Carr. We went to the election seeking an endorsement, we won that election and then the Senate—some times through spite and some times through misunderstanding—seeks to overturn that mandate and the policies for which we had specific endorsement.

It is worth recalling that Senator Gareth Evans, not a man who is loath to make any concessions to an opposition, made very clear in statements in the Senate before the 1983 election that the Labor Party would not frustrate a bill where the government could point to a mandate it had received at an election no matter how obnoxious the Labor Party regarded such a bill to its own interests. That was a responsible statement. The Labor Party has overturned that and set a precedent which it may ultimately rue in the years ahead.

With those general comments, I now wish to turn briefly to some of the issues which have been raised in the debate. First of all, in relation to the Indigenous Education (Supplementary Assistance) Amendment Bill, the bill does contain additional funding. Once this bill is passed, the states and territories can sensibly work together on strategic initiatives to advance the education of indigenous Australians. Any delay, Senator Chamarette, will postpone work on this very high priority, a priority hopefully shared by everyone in this place.

The Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures Bill) 1996, as I have stated, does require early passage. Budget savings can be maximised in this manner. Of course, the department needs to have sufficient lead time to have computer systems developed and new migrants properly informed. I am advised that the bill is not retrospective. The provisions only apply from the date of royal assent for new measures to be covered. Government has given sufficient warning to newly arrived migrants in election commitments and other actions to advertise.

We believe that this bill is an important bill; it is an urgent bill. It was a bill widely canvassed and discussed during the election. The Australian people have voted in favour of the government's policy. I put it to you that to refuse to exempt this bill, to delay and to frustrate and ultimately possibly—we hope this is not the case—to prevent the government from filling an election commitment, for which we specifically sought a mandate, means this Senate is acting in a dangerous

way. It is, Senator Carr, quite contrary to the policies that the Labor Party has espoused for a long period of time. Senator Carr and Senator Faulkner may live to rue the day that they decided to act in this particular manner.

In relation to the two airport bills, the bills are similar to ones considered by the Senate in November last year. There was no concern about the provisions of the bills themselves last year. The Senate amended those bills to reflect the coalition's view that noise issues at Sydney West needed to be addressed. The government has indicated that Sydney and Sydney West are off the table for the time being. The government has decided to remove restrictions.

The issue of cross-ownership was raised, Senator Carr. On cross-ownership, which would have prevented Sydney, Sydney West and Brisbane, and Sydney, Sydney West and Melbourne from being owned by the one operator, removal of these restrictions allows time for the government to properly address concerns about noise issues at Sydney without creating unwarranted uncertainty about the sales processes. I conclude my remarks—

Senator Carr—Did you hear Jeffrey Kennett's comments?

Senator KEMP—I have always tried not to be provoked by you, Senator Carr, because I have been advised by many members of your party not to worry about you. For you to be standing up and defending Melbourne and Victoria is a great change. I certainly welcome that. For five or six years in this place—even during the time you were the key senior adviser to the Cain and Kirner governments when Victoria was stripped of its assets and went broke—we were imploring you to act in a more responsible way. Senator Carr, we are anxious to move the program along. I hope that the Senate will give exemptions to these bills. I ask that the questions be divided in respect of each of these bills, except for the two airport bills, which could be taken together.

The ACTING DEPUTY PRESIDENT (Senator Knowles)—I seek your clarification, Senator Kemp, that you are seeking four votes.

Senator Kemp—We are seeking three votes.

The ACTING DEPUTY PRESIDENT—Three votes. Thank you. The question is that Senator Kemp's motion relating to the Indigenous Education (Supplementary Assistance) Amendment Bill be agreed to.

Question resolved in the affirmative.

The ACTING DEPUTY PRESIDENT—The question is that Senator Kemp's motion relating to the Airports Bill 1996 and the Airports (Transitional) Bill 1996 be agreed to.

Question put.

The Senate divided. [11.54 a.m.]

(The Acting Deputy President—Senator S.C. Knowles)

Ayes	32
Noes	35
Majority	3

AYES

Abetz, E.	Baume, M. E.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Crane, W.
Ellison, C.	Ferguson, A. B.
Gibson, B. F.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.*
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tambling, G. E. J.
Teague, B. C.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	Woods, R. L.

NOES

Bell, R. J.	Bolkus, N.
Bourne, V.	Burns, B. R.
Carr, K.	Chamarette, C.
Childs, B. K.	Coates, J.
Collins, R. L.	Colston, M. A.
Conroy, S.*	Cooney, B.
Crowley, R. A.	Denman, K. J.
Evans, C. V.	Faulkner, J. P.
Foreman, D. J.	Forshaw, M. G.
Jones, G. N.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Neal, B. J.	Ray, R. F.
Reynolds, M.	Sherry, N.

Spindler, S.	Stott Despoja, N.
West, S. M.	Wheelwright, T. C.
Woodley, J.	

PAIRS

Alston, R. K. R.	Cook, P. F. S.
Crichton-Browne, N. A.	Collins, J. M. A.
Parer, W. R.	Beahan, M. E.
Panizza, J. H.	Schacht, C. C.

*** denotes teller**

Question so resolved in the negative.

The ACTING DEPUTY PRESIDENT—The question now is that Senator Kemp's motion relating to the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measurers) Bill 1996 be agreed to.

Question put.

The Senate divided. [11.59 a.m.]

(The Acting Deputy President—Senator S.C. Knowles)

Ayes	32
Noes	35
Majority	3

AYES

Abetz, E.	Baume, M. E.
Boswell, R. L. D.	Brownhill, D. G. C.
Calvert, P. H.	Campbell, I. G.
Chapman, H. G. P.	Crane, W.
Ellison, C.	Ferguson, A. B.
Gibson, B. F.	Herron, J.
Hill, R. M.	Kemp, R.
Knowles, S. C.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	Minchin, N. H.
Newman, J. M.	O'Chee, W. G.*
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Tambling, G. E. J.
Teague, B. C.	Tierney, J.
Troeth, J.	Vanstone, A. E.
Watson, J. O. W.	Woods, R. L.

NOES

Bell, R. J.	Bolkus, N.
Bourne, V.	Burns, B. R.
Carr, K.	Chamarette, C.
Childs, B. K.	Coates, J.
Collins, R. L.	Colston, M. A.
Conroy, S.*	Cooney, B.
Crowley, R. A.	Denman, K. J.
Evans, C. V.	Faulkner, J. P.
Foreman, D. J.	Forshaw, M. G.
Jones, G. N.	Kernot, C.
Lees, M. H.	Lundy, K.
Mackay, S.	Margetts, D.
McKiernan, J. P.	Murphy, S. M.
Neal, B. J.	Ray, R. F.
Reynolds, M.	Sherry, N.
Spindler, S.	Stott Despoja, N.
West, S. M.	Wheelwright, T. C.
Woodley, J.	

PAIRS

Alston, R. K. R.	Collins, J. M. A.
Crichton-Browne, N. A.	Cook, P. F. S.
Panizza, J. H.	Schacht, C. C.
Parer, W. R.	Beahan, M. E.

*** denotes teller**

Question so resolved in the negative.

COMMITTEES

Superannuation Committee

Appointment

Senator KEMP (Victoria—Manager of Government Business in the Senate) (12.01 p.m.)—I move:

That—

(1) The select committee known as the Select Committee on Superannuation, appointed by the resolution of the Senate of 5 June 1991 and reappointed on 13 May 1993, be reappointed, with the same functions and powers, except as otherwise provided in this resolution.

(2) The committee inquire into and report on the following matters referred to it in the previous Parliament:

(a) the role of superannuation funds in the governance of Australian corporations, as referred to the committee on 27 November 1995;

(b) the implications of the enormous growth in superannuation fund assets in Australia, as referred to the committee on 27 November 1995;

(c) the use of derivatives by superannuation funds in Australia, as referred to the committee on 27 November 1995; and

(d) the Investment Committee of the Reserve Bank's Officers' Superannuation Fund, as referred to the committee on 29 November 1995.

(3) The committee have power to consider and use for its purposes the minutes of evidence and records of the Select Committee on Superannuation appointed in the previous two Parliaments.

(4) The committee consist of 6 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate and 1 nomi-

nated by any minority groups or independent senators.

(5) The nomination of the minority groups or independent senators be determined by agreement between the minority groups and independent senators, and, in the absence of agreement duly notified to the President, the question of the representation on the committee of the minority groups or independent senators be determined by the Senate.

(6) The committee elect as its chair a member nominated by the Leader of the Government in the Senate.

(7) The committee report to the Senate on or before the last day of sitting in December 1996.

The government position is that we believe the Select Committee on Superannuation should be re-established. It did a lot of good work in the previous two parliaments. We see merit in its work continuing.

When the committee was first established it had a membership of three government, two opposition and one minority party senators. In the last parliament, the composition was the same. The government sees no good reason to vary the composition of the committee in this parliament. Given the number of committees of which senators are members and the fact that three select committees are already in existence, the government considers that a total of six senators—three government, two opposition and one minority party—as existed in the previous parliament, should have been the appropriate membership.

However, I note that the Australian Democrats have circulated amendments to increase the membership to seven by adding one opposition senator. This will give the committee a non-government majority. The government is opposed in principle to this committee having a non-government majority. However, in order that the committee can resume its important work we will reluctantly—I stress 'reluctantly'—accept the two amendments in order to break an impasse which has existed in its re-establishment. The committee has been essentially non-partisan in the past, and the government has the confidence that it will continue to be so.

Senator CARR (Victoria—Manager of Opposition Business in the Seante) (12.02 p.m.)—The opposition has been seeking to have this matter resolved through processes outside the chamber. Of course, we have not been successful, and we are somewhat disappointed that this matter has come here in the form that it has. The issue that really is at stake here relates to the chair. It strikes me that this is a case where the government—I presume it is the government because it is Senator Kemp who has moved this proposition—has effectively sought to move the goalposts in this matter.

If we look at the various propositions relating to committees which have come before the Senate in the past, we see there is a clear pattern of government and non-government chairs. In the last parliament the Select Committee on Superannuation was one of those committees which were allocated a chair from the non-government parties. It was said that Senator Watson should secure the chair on the basis of his expertise—a proposition that we do not dispute; that is, he has expertise—but to now suggest that he should get the chair on the basis that he is an expert instead of a non-government senator is a different proposition altogether. That is why I say there is a movement of the goalposts on this matter.

One would normally expect under the resolutions of the Senate that this committee would be chaired by a non-government senator. We have been quite prepared to enter into discussions about that matter, but those opposite have come in here with a proposition to try to preclude that option. That is a disappointment to me. Equally, we saw it with the Select Committee on Uranium Mining and Milling, which again should have had a non-government chair.

Senator Ferguson—Why?

Senator CARR—Under the resolutions of the Senate it should have had a non-government chair, but you have chosen to have a government member as chair as a result of discussions you have had with other senators. I can accept that as well. I am not complaining about it in so far as that is the nature of the political process. I accept that that is a principle.

Senator Watson—Are you aware of their

amendment—?

Senator CARR—I understand precisely what has happened between the government and the Greens in relation to the uranium committee. I understand only too well what has happened. However, suggesting that the superannuation committee should be treated exactly the same way is one thing we will complain about. We suggest that the Democrat amendment would provide for some protection on these matters—not entirely to our satisfaction but nonetheless there is protection. You cannot say that Senator Watson should have been chair of the last committee because he is a non-government senator who happened to be an expert on this committee—

Senator Ferguson—You weren't here when he was appointed, or you would know the real reason.

Senator CARR—I understand the rules only too well. What you are now saying is that in this parliament Senator Watson should be the chair because he is an expert and it just so happens that he is a government senator as well. We understand there are quite important differences in the distribution of responsibilities within this chamber. We do not seek to readily change that. We certainly do not seek to change it by the manner in which you have: by bringing the matter in here without the proper process of discussion that one should expect.

Senator FERGUSON (South Australia) (12.06 p.m.)—In response to the comments made by Senator Carr, I need to say one or two things as he needs to be acquainted with one or two facts. He talks about us shifting the goalposts. The only people who have shifted the goalposts since we have been back in parliament have been Labor Party senators. They are the ones who have shifted the goalposts. They have yet to realise that the numbers of the various parties in this chamber have changed. In the last three years that those opposite were in government, they never had more than 30 senators. We are in government with 36 senators, and we will have 37 senators after 1 July.

The other thing, Senator Carr, that you should possibly take particular notice of is that Senator Watson was appointed as chair of the Senate Select Committee on Superannuation long before any discussion took place about the change in the arrangement of chairs that was made by the Standing Committee on Procedure on 10 October 1994. Senator Watson was appointed long before any of those discussions took place and he was appointed by that committee for a number of reasons: he was expert in that field and he had shown particular bipartisanship in exercising his position as chair. It is a position that he continued to take long after the change in chair arrangements took place.

I have to say that the Select Committee on Superannuation is one of the success stories of committees in this chamber. In the past three or four years—I think it was set up in late 1991 or early 1992—it has brought down 17 or 18 reports and, almost to a report, they have been unanimous because of the amount of discussion that has taken place on a bipartisan basis. Superannuation is such an important issue that we believe that there are many areas that need bipartisan discussion and support, because the people of Australia need to know that, in the event of a change of government, there is still some certainty in the arrangements that have been put into place by previous administrations.

Senator Carr comes in here and says that the goalposts have shifted, but the only reason they have shifted is that you have shifted them, because now—with your 29 members of the Labor Party in opposition—you choose to have the same proportional representation on committees that we had when we had considerably more members in opposition: 36 in the last parliament. You would also do well to remember that when this committee was first formed there were three government senators and there was a government chair. That was your initial proposition and it was one which we rejected outright because of the numerical status of your party in this place.

Senator Watson was only appointed as chair of this committee after Senator Sherry resigned, and he was chosen by the members of that committee with the support of the Australian Democrats because they recognised the

work that he had done in the past and the particularly good work that he had done for superannuation in straightening out the whole superannuation program for Australians. No-one would doubt that the reports and the recommendations that have come from that committee have had a tremendous effect on the decisions that were made by the previous government with regard to superannuation. We were very sorry that some of the recommendations took a long time to come to fruition, particularly on things like small amounts and other matters, but eventually they did.

Let me also say one thing with regard to deciding what the numbers on any of these committees could be. In deciding the numbers on this committee in consultation with the Australian Democrats, we have agreed that Senator Woodley, as the lone Democrat on that committee, would have the casting vote in any particular votes that take place. We have done that, taking into consideration Senator Woodley's past performance on this committee where he has shown himself to have the best interests of the committee at heart and has, in fact, worked very hard to get unanimous reports. We ought to recognise the efforts that Senator Woodley put into the superannuation committee during his time of service, and I am pleased that, as I understand it, he will be continuing in that role.

I hope that the Australian Democrats will continue that principle on another matter that may be discussed in the future regarding the composition of reference committees. In this particular case, it is only right that Senator Woodley has a deciding vote on whether a report has a majority; yet we have seen in other cases that the Australian Democrats are prepared to abdicate that responsibility on reference committees and allow the opposition, with their 29 members, to have a majority in their own right on reference committees—a situation which is totally untenable.

That will be a matter for future discussion, I am quite sure; and I am quite happy for it to be a matter for future discussion. But I hope that the principle that is applied in this particular case—where Senator Woodley, as the Democrat on that committee, will have the role of deciding which way a majority will go—will continue into reference committees at some later stage when, with the support of the Australian Democrats, the opposition will, with their chairs, still have a controlling majority, but they will not be able to do it in their own right with just 29 senators out of the 76 that are in this place.

I support Senator Kemp's comments, and I understand that there will be moved by Senator Woodley an amendment which we will support. I hope this committee continues to do the work that it has done in the past. It has had members who have superannuation at heart. Sometimes, members have put their own particular political point of view; but, while they have put that point of view, at all times we have managed when we have come to drawing up reports—and Senator Evans has been a member of that committee, and a good one—to have general agreement. I hope that agreement continues so that this committee can continue to do the good work that it has done for a considerable number of years. I commend the motion moved by Senator Kemp.

Senator WOODLEY (Queensland) (12.12 p.m.)—I seek leave of the Senate to move only amendments Nos 1 and 2 standing in my name and to fall from amendment No. 3.

Leave granted.

Senator WOODLEY—I move:

1. Paragraph 4, omit "6 senators", substitute "7 senators".
2. Paragraph 4, omit "2 nominated by the Leader of the Opposition in the Senate", substitute "3 nominated by the Leader on the Opposition in the Senate".

Most of the things that needed to be said have been said. The numbers in the committee were the subject of very long negotiations. I had hoped that they would actually have been acceptable without having to go to amendments. Nevertheless, we are doing it in this form, and I hope that the Senate will accept what really is a compromise, but one that will enable us to continue the work of what I believe to be the best committee in the Sen-

ate. That committee has always sought to answer the question of what is best for Australians and good for Australia for the next 50 years. That is what we are really dealing with: retirement income for people in at least the next 50 years.

I believe that the members of the committee have all been committed to answering that question rather than to party political point scoring, and that has been very satisfying to me. Unless there is cross-party support for the committee and for the conclusions of that committee, we cannot expect the public to trust the superannuation system which we have set up. Without that trust, I fear for the future of retirement incomes in this country.

It is very important that we get it right. This committee has worked very hard in coming to recommendations which we believe governments need to take into very serious consideration. Unless we can govern with the trust of the people in these areas, the social fabric indeed begins to unravel, making it impossible to govern in the long term, which is what we are about in superannuation. We are talking about the long term and not about simply short-term political gain.

I trust that the present government will take notice of committee recommendations in the future. As Senator Ferguson has said, although the previous government did take notice of recommendations, sometimes it was a little slow. I trust that some of the legislation that has been projected may be looked at very seriously by this committee. There may be some amendments to what has been signalled that the committee will recommend to the government and that the government will again consider carefully. I commend the first two amendments to the Senate and trust that they will be acceptable.

Senator CHRIS EVANS (Western Australia) (12.16 p.m.)—It seems that this debate may have gone a bit off the track and there may have been some misunderstandings. The important point and the reason why we support the Democrats' amendments is that, while there is general recognition of the expertise of the current chairman—and I personally do not have any wish to see that changed—the committee has worked well under his leadership. That has partly been because of the creative tension on the committee that has required us to seek to come to some sort of consensus.

In terms of the balance of forces on the committee, I think it was a very healthy thing that when we were the government we did not have the numbers; in that sense it forced government members to deal positively with suggestions from other members of the committee and allowed the superannuation committee to continue to do its broad policy work in advance of the day-to-day political debate. That is not possible for all committees, and I do not advocate it as a system for all committees.

The reason we are in difficulty today is that arrangements with regard to allocation of chairs and membership of committees have been held separately from the debate around the superannuation committee or not held at all. So superannuation has been somewhat left out on a limb. We support the Democrats' amendments. Effectively, they will allow the chairman to continue as chairman because the Democrats have indicated that they are inclined to support him and their amendments will actually make that automatic.

It does mean that the government will not have an automatic majority on the committee. I think that will be a healthy thing for the committee and enable it to continue the sort of role it has played in terms of being a committee that looks at broad policy issues two to five years in front of the current political debate. I can assure the Liberal Party members of the committee that not having a majority on the committee will be to their personal advantage in the sense of the pressures that can be applied to them, and it will allow them to apply their intellectual rigour to the issues that come before them. So it is a reasonable outcome.

In terms of the section that deals with how the chair should be elected, my personal view is that that ought to have been handled as part of the general arrangements between parties in this place, as part of the overall allocation of committee chairs and divisions of responsibility. It is a shame that that has not occur-

red—I am not quite sure that is the case. As I say, we are quite comfortable with the current chairman continuing, although my preference would have been for that to be considered as part of the broader picture. For the work that this particular committee does, the balance that we arrive at today will be in the committee's best interests, if not perhaps in the political best interests of any particular party. I support the amendments.

Senator WATSON (Tasmania) (12.19 p.m.)—I thank honourable senators for their contributions to this debate and I thank Senator Woodley for the amendments, which we will be supporting. I think this is the appropriate time, as the chair of the previous committee, to thank especially one member who will not be rejoining the committee. I thank Senator Childs for his work because he is known as a meticulous worker who gives attention to detail. It is that sort of dedication that has enabled the committee to be held in such high regard. I have never known the like of Bruce Childs in terms of the fruitful way he examines reports, and his efforts have contributed to the high standard of reports that we have produced.

Senator MARGETTS (Western Australia) (12.20 p.m.)—The Greens will be supporting the motion and also Senator Woodley's amendments to the motion. This committee is in fact a reference committee, and the Senate operates by the general principle that reference committees should have a non-government majority. The uranium committee has a non-government majority, and it is important that such committees have the ability to work towards outcomes in a very cooperative way. I think the outcome will be that people will feel the necessity to work together to bring together all the information and to make sure all the issues get a proper hearing and that, in the end, it does not come down to a vote but to a working through of the issues.

These are important issues about how we work out how people will be funded in retirement and we have to make sure that all issues are taken into consideration. We support the position of a non-government majority, because that is the way the Senate is—whether it is one or two people—and I am pleased to say that. So we support the superannuation reference committee having this type of structure.

Senator IAN MACDONALD (Queensland) (12.22 p.m.)—It is obvious that this committee will work well in a fairly non-partisan way, as it has in the past. All the speakers have indicated quite clearly that Senator Watson—who is their choice as chairman—is without question the very best person in the whole of the parliament to chair the committee. It is a tribute to Senator Watson that committee decisions have been made. Those decisions have been made not only because of his expertise but because of the way he has chaired previous committees.

However, I cannot let pass the stupidity shown by the other side when they said that government and non-government issues are relevant to this. As my colleague Senator Ferguson pointed out, the Liberal and National parties—the government—will have 37 senators in this chamber after 1 July. The issue of opposition, government and who should have a majority on committees is not too relevant. It is the will of the people as to what numbers are elected to the Senate. There are 37 government senators in their own right. When all of the other parties are put together, their number is only marginally above that.

One would not have thought, as a matter of course, that the Greens are always going to be with the opposition or that Senator Harradine will always be with the opposition. I know that Senator Harradine will not be. To say that the opposition has a majority—as you did, Senator Margetts—gives an indication of where you are going. It shows that you consider yourself to be a permanent part of the opposition, a part of the Labor Party as a whole.

These facts need to be said every time this issue comes up. For as long as I am in the chamber, I will emphasise these points because we are not getting the message across. It is not a matter of government and non-government; it is simply a reflection of the numbers in this chamber. It should never be forgotten that the Liberal and National parties have 37 senators and the Labor Party has 29. For the Labor Party to claim equal representa-

tion is just ludicrous.

Senator WATSON (Tasmania) (12.24 p.m.)—by leave—In my haste to keep my earlier remarks brief, I omitted to mention another outgoing member of the committee who acted as deputy chair for quite a long time and relinquished that position to go to higher duties. Senator Sue West was a very constructive committee member who was meticulous in representing her party and her ideals. She took great interest in the poorer sections of the community, whom she had a particular empathy with, in terms of the need to get them adequate retirement benefits. So I would like to thank Sue West as well as Bruce Childs and acknowledge their contributions.

Amendments agreed to.

Motion, as amended, agreed to.

CONSIDERATION OF LEGISLATION

Debate resumed from 27 May, on motion by **Senator Herron**:

That the order of the Senate of 29 November 1994, relating to the consideration of legislation, not apply to the Aboriginal and Torres Strait Islander Commission Amendment Bill 1996.

Senator CHAMARETTE (Western Australia) (12.26 p.m.)—I rise to speak against this motion. I point out to senators that, if we allow this ATSIC Amendment Bill to be exempted from the principle 'introduce in one session, debate in the next', we are violating not only the principles of this chamber—and from time to time we agree to exempt things from those, which does not allow for adequate consultation—but a principle of the ATSIC Act which ensures that there should be adequate consultation before changes are made to the act.

There are four main measures in the bill. These four measures relate to the appointment of the chairperson of ATSIC, rather than an election process that was due to be put in place; the reduction in the number of regional councils; the appointment of a super auditor—

The ACTING DEPUTY PRESIDENT (Senator Knowles)—Senator Chamarette, it has been discovered that you have already spoken in this debate. If you are to make further remarks, you should seek the leave of the Senate.

Senator CHAMARETTE—I thought, and I may be in error, that I was in continuance, so that is why I did not seek leave. I do seek the leave of the Senate to make my remarks.

Senator Kemp—How long do you propose to speak for?

Senator CHAMARETTE—I was not intending to filibuster on this, Senator Kemp. It would be five or ten minutes at the most.

Senator Kemp—Make it five.

Senator CHAMARETTE—I will try to make it five.

Leave granted.

Senator CHAMARETTE—I thank the Senate. I hope I will not be timed for that five minutes.

The ACTING DEPUTY PRESIDENT—Yes, you will be.

Senator CHAMARETTE—I will endeavour to be brief. The point I was making is that there are four measures in the bill. The last two measures which I was referring to were the appointment of a super auditor—which is duplicating a process already in place in terms of various serious auditing responsibilities within ATSIC—and the introduction of a super administrative power, which would automatically stop the functioning of the ATSIC board under certain circumstances and possibly freeze the budget.

All those measures are very serious and deserve consultation. I understand that the reason this bill has been proposed for exemption and is being rushed through is that, if the matter in relation to the appointment of the chair is not dealt with, the timetable in relation to other election matters may be interfered with. That is not a good enough reason, and it actually puts the credibility of the Labor Party and the Democrats in doubt, because they have made public statements saying that they believe the two latter matters in the bill deserve the widest community consultation before we decide on them. Those matters are within the same bill that we are proposing to exempt from that time period

and that consultation.

As I understand it, if this motion passes, the bill we are considering now, which was introduced in this place only last week, will become the fourth on the program of debate in this chamber. It is utterly outrageous to be even proposing such a thing and I want to go on the public record as registering my strong disapproval if the opposition, the Labor Party and the Democrats are prepared to support the government in pushing this through in a disgraceful fashion.

No doubt there are Aboriginal people who have been consulted in the drafting of the bill, but this has not been extended as it should, under the ATSIC Act, to Aboriginal communities throughout Australia. I want to stress in the strongest possible terms that what we are doing is quite wrong in exempting this bill.

The government asserts that it would be in danger of having the ATSIC election timetable thrown out if this bill is not exempted, but I would put it to the government that if the measures in this bill do not receive support—and I understand on the best authority from public statements of the Labor Party and the Democrats that they will not support other measures in this bill—then, in any event, it will delay that particular ATSIC election timetable. The government would be far better advised to extract any measures that relate to that and deal with them separately and leave the bill to have the consultation and the community discussion and exposure that it deserves. As we know, Aboriginal people find the information flow within this place going out to the communities very difficult. We are not doing them any justice whatsoever to make it impossible.

My strong view, and I think I have made my point quite clear, is to oppose the exemption of this bill from the cut-off motion. I would like to know why the Democrats are not opposing this, in light of their public comments in relation to the content of this bill. I would like to know the same of the ALP. What is the basis on which they would allow this bill to be exempted from the cut-off motion and thereby deprive Aboriginal people of having the scrutiny and opportunity to discuss the measures in this bill which have such serious implications for them and their future?

Senator CHRIS EVANS (Western Australia) (12.33 p.m.)—I wish to indicate, on behalf of the shadow minister responsible, that we will be supporting the exemption of this bill. In answer to Senator Chamarette's concerns, I indicate that we will be insisting on proper scrutiny of the provisions of the bill. We share some of the concerns she has raised. In fact, at the selection of bills committee meeting this afternoon, we will be seeking a reference to one of the committees of the Senate to allow that proper consultation with Aboriginal groups and other interested parties on the provisions of the bill and to allow proper examination of the bill. But because of the reasons expressed by the parliamentary secretary in terms of the urgency, we are prepared, having looked at those arguments, to support the exemption from the cut-off. But, as I say, we will be insisting on a thorough and proper scrutiny of the bill and a proper consideration of its provisions.

Question resolved in the affirmative.

CRIMES AMENDMENT (CONTROLLED OPERATIONS) BILL 1996

In Committee

Consideration resumed from 27 May.

(Quorum formed)

The bill.

Senator SPINDLER (Victoria) (12.35 p.m.)—I seek leave to move, as a block, my revised amendments to the Crimes Amendment (Controlled Operations) Bill 1996.

Senator Vanstone—Leave is granted, but this might be the appropriate place to put forward a suggestion for the ordering of the debate, which Senator Bolkus may also have a view on. I think it would be sensible to deal with all the amendments in three parts: firstly, judicial authorisation, items 1 to 7 and 10 to 11; secondly, notification to Customs, items 8 and 9; and, thirdly, tendering of the certificate, item 12. I am interested in whether

Senator Bolkus and Senator Spindler are happy to deal with them in that order and move them in that way. I think that is just a rational splitting up of the issues.

Senator Bolkus—We do not have any problem with that. Our intention is to expedite this discussion, and I think the proposal suggested by Senator Vanstone is one that does that very well.

Leave granted.

Senator SPINDLER—I move:

1 Schedule 1, item 1, page 3 (lines 28 to 30), omit the definition of ***authorising officer,*** substitute:

senior law enforcement officer in relation to an application for a certificate authorising a controlled operation, means:

(a) the Commissioner, a Deputy Commissioner or an Assistant Commissioner; or

(b) a member of the National Crime Authority.

2 Schedule 1, item 2, page 6 (before line 3), before section 15H, insert:

15GA Interpretation

(1) In this Division:

eligible Judge means a Judge in relation to whom a consent under subsection (2) and a declaration under subsection (3) are in force.

Judge means a person who is a Judge of a court created by the Parliament.

(2) A Judge may by writing consent to be nominated by the Minister under subsection (3).

(3) The Minister may by writing declare Judges in relation to whom consents are in force under subsection (2) to be eligible Judges for the purposes of this Division.

(4) An eligible Judge has, in relation to the performance or exercise of a function or power conferred on an eligible Judge by this Act, the same protection and immunity as a Justice of the High Court has in relation to proceedings in the High Court.

3 Schedule 1, item 2, page 8 (line 1) to page 9 (line 35), omit sections 15J to 15M, substitute:

15J Application for certificate authorising a controlled operation—by whom and to whom made and on what grounds

(1) A senior law enforcement officer may apply to an eligible Judge for a certificate authorising a controlled operation on receipt of an application under section 15K or 15L from an Australian law enforcement officer (the applicant) who is in charge of a controlled operation if the senior law enforcement officer is satisfied that:

(a) the applicant has provided as much information as is available to the applicant about the nature and quantity of narcotic goods to which the controlled operation relates; and

(b) the person targeted by the controlled operation is likely to commit an offence against section 233B of the *Customs Act 1901* or an associated offence whether or not the controlled operation takes place; and

(c) the controlled operation will make it much easier to obtain evidence that may lead to the prosecution of the person for such an offence; and

(d) any narcotic goods:

(i) to which the operation relates; and

(ii) that will be in Australia at the end of the controlled operation; will be then under the control of an Australian law enforcement officer.

(2) In an application to an eligible Judge under subsection (1), a senior law enforcement officer must provide sufficient information, orally or otherwise as the Judge requires, to enable the Judge to be satisfied that:

(a) the person targeted by the controlled operation is likely to commit an offence against section 233B of the *Customs Act 1901* or an associated offence whether or not the controlled operation takes place; and

(b) the controlled operation will make it much easier to obtain evidence that may lead to the prosecution of the person for such an offence; and

(c) any narcotic goods:

(i) to which the operation relates; and

(ii) that will be in Australia at the end of the controlled operation; will be then under the control of an Australian law enforcement officer.

15JA Urgent application for a certificate authorising a controlled operation

(1) If a senior law enforcement officer receives an application under section 15L, the senior law enforcement officer may apply by telephone to an eligible Judge.

(2) The information given to an eligible Judge in connection with a telephone application to the Judge:

(a) must include particulars of the urgent cir-

cumstances because of which the senior law enforcement officer thinks it necessary to make an application by telephone;

(b) must include each matter that, if the application had been made in writing, paragraphs 15K(b), (c) and (d) would have required the application to state, contain or be accompanied by; and

(c) must be given orally or in writing, as the Judge directs.

15K Form and contents of application to a senior law enforcement officer

Subject to section 15L, an application to a senior law enforcement officer must:

(a) be in writing signed by the applicant; and

(b) state whether any previous application has been made in relation to the operation; and

(c) if any previous application has been made—state whether it was granted or refused; and

(d) contain, or be accompanied by, such information, in writing, as the senior law enforcement officer requires to decide whether or not to apply to an eligible Judge for a certificate authorising a controlled operation.

15L Urgent applications to a senior law enforcement officer

(1) An applicant may make an application under this section to a senior law enforcement officer if he or she has reason to believe that the delay caused by making an application that complies with section 15K may affect the success of the operation.

(2) The application may be made:

(a) orally in person; or

(b) by telephone; or

(c) by any other means of communication.

(3) The applicant must give to the senior law enforcement officer, either orally or otherwise, such information as the senior law enforcement officer requires to decide whether or not to apply to an eligible Judge.

(4) The applicant must tell the senior law enforcement officer:

(a) whether any previous application has been made in relation to the operation; and

(b) if any previous application has been made—whether it was granted or refused.

(5) The applicant must, as soon as practicable, prepare and give to the senior law enforcement officer an application, in writing, that complies with section 15K.

15M Issue by an eligible Judge of a certificate authorising a controlled operation

If an eligible Judge is satisfied on information on oath by a senior law enforcement officer in accordance with subsection 15J(2), the eligible Judge may, in his or her discretion, issue a certificate authorising a controlled operation.

4 Schedule 1, item 2, page 10 (line 3), omit "the authorising officer", substitute "the Judge who issues it".

5 Schedule 1, item 2, page 10 (line 23), omit "the authorising officer", substitute "the Judge who issues it".

6 Schedule 1, item 2, page 10 (lines 27 to 30), omit subsection 15N(3).

7 Schedule 1, item 2, page 11 (lines 9 to 15), omit subsections 15P(1) and (2), substitute:

(1) A certificate authorising the controlled operation comes into force at the time when it was given.

10 Schedule 1, item 2, page 12 (lines 14 to 31), omit subsections 15R(1) to (3), substitute:

(1) As soon as practicable after an eligible Judge has granted to an Australian law enforcement officer a certificate authorising a controlled operation, the Commissioner or the Chairperson of the National Crime Authority, as the case may be, must inform the Minister of that application and the reasons for that application.

(2) The reasons given in support of an application referred to in subsection (1) must include (but are not limited to) an indication of the seriousness of the criminal activities of:

(a) the person targeted by the operation; or

(b) any other person associating, or acting in concert, with that person or using, directly or indirectly, the services of that person to further his or her own purposes.

11 Schedule 1, item 2, page 14 (lines 1 to 5), omit paragraphs 15S(4)(a) and (b), substitute: "by the Commissioner or the Chairperson of the National Crime Authority, as the case may be."

These amendments on the judicial authorisation are directed towards ensuring that, when a controlled operation is to be undertaken, careful thought be given before such an operation is approved. We need to remember that what is being done through this legislation is to authorise police officers to participate in unlawful acts.

The amendments, as they are now before the Committee, seek to ensure that, before such an operation can proceed, the law enforcement officer who is in charge of the operation in the first instance approaches the relevant senior law enforcement officer—the commissioner, deputy commissioner or a member of the NCA. That officer, having satisfied himself that he supports what is being asked for—namely, the authorisation of a controlled operation—would then approach a judge to seek final approval.

A number of concerns have been raised about this procedure. It has been said that it is cumbersome. Well, so be it. As I have said, we are here in a situation where we are authorising unlawful behaviour. The Democrats feel that we need to be extremely careful in that situation.

The other concern raised was that we are running close to interfering with the principle of the separation of powers by involving judges in an operational or semi-operational decision. There are numerous examples in legislation, a couple of which have already been canvassed during the second reading debate, where this is already occurring.

I have mentioned the simple area of search warrants. We all know that intercept warrants for telephone conversations must also be given judicial approval. There are other acts which can be mentioned. The World Heritage (Properties Conservation) Act 1983 requires a judge to approve a warrant for entry and search; the AFP Act requires warrants for the use of listening devices; the Bankruptcy Act requires warrants for the seizure of property—and so on. The principle is well established.

The final comment that was made was of a practical nature: that judges are reluctant to undertake that task. There is then the question of what occurs if it is difficult to get judges to do that? I believe that is a consideration we need to test. I think we need to be told whether or not judges are, in fact, going to refuse to act in this particular manner when they are asked to do so. I believe that these amendments, taken together, are a distinct improvement to the bill that is before the committee. I commend them to the committee.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (12.44 p.m.)—There is not much time available in this debate, but I just want to flag a couple of points that Senator Spindler may have the opportunity to reflect on during the forthcoming debates before we come back to this matter. He says that there is an expectation that judges would be reluctant to do this, and he puts the case that we should put it to the test—in other words, pass some legislation and see if it works. I just invite Senator Spindler to come back and indicate to us to which judges he has spoken who have indicated to him that they would be unhappy to undertake this task. If he can do that, I think his debate will have significantly more credibility than it now does.

There is a long history of this parliament facing problems in understanding what we can give to judges to do and what we can give to other bodies that we should give to judges. We have made mistakes in the past. Senator Spindler has admitted that there is argument in this matter, and we should not be taking chances with a legislative program.

Progress reported.

MATTERS OF PUBLIC INTEREST

The ACTING DEPUTY PRESIDENT (Senator Colston)—Order! It being 12.45 p.m., we will now proceed to debate matters of public interest.

Mr P.J. Keating: Piggery

Senator MICHAEL BAUME (New South Wales) (12.46 p.m.)—Today I want to put the record straight. I do not think many members of this chamber have been subjected to the same sort of personal abuse as I have over the many years that I have been pointing out—

Senator Vanstone—I don't know!

Senator MICHAEL BAUME—Not even you, Senator Vanstone. I have been pointing out the reality, the facts, of what, I think, many of us in this chamber believe to have been the potential for conflict of interest

involving the former Prime Minister, Mr Keating, as a result of investments he made while he was Treasurer and deals he made while he was Prime Minister.

No-one objects properly to treasurers, ministers or prime ministers having investments and keeping those investments while in those positions of office. However, as I have pointed out repeatedly, many of the actions of Mr Keating and his partner raised the question of potential conflict of interest in this chamber. Honourable senators would remember that Mr Keating was the half owner of a piggery he acquired while Treasurer, and while Prime Minister he was the half owner of that piggery when it entered into a multi-million dollar joint venture with a foreign multinational company.

The question of potential for conflict of interest has been raised many times in this place. I was intrigued to note that when it was raised recently in the other chamber, Mr Beazley quite wrongly said, 'But Mr Keating sold out his interest when he became Prime Minister.' That is simply false. Apart from there being a campaign of personal vilification against me, what concerns me is that there is an attempt to rewrite history about Mr Keating's role—the real role he played in this piggery matter.

The reason why this matter has come up again is that Mr Keating has announced that he intends to go into various business enterprises in Asia, particularly in the country from which came the money that rescued Mr Keating from what was, on the face of it, a disaster in the piggery that resulted in a very handsome profit for Mr Keating while the Commonwealth Bank of Australia suffered a huge loss. This piggery is coming back to haunt him.

It is no good members of the opposition saying, 'Look, this has all ended a long time ago.' It did not end a long time ago, as evidenced by Mr Beazley's very recent attempts to rewrite history about it. I want to stress to this chamber that everything I said here was backed by documentary evidence, by searches of the Australian Securities Commission, the Land Titles Office and so on. The things that I pointed out as being improper, illegal and irregular have all been demonstrated to be exactly that. In fact, it is even worse than it appears on the surface.

Over several years I noted that the companies that Mr Keating half owned were in constant breach of the Corporations Law. Whenever I raised the matter in this parliament, I was accused of being everything that one should not say in this chamber, because the words are probably improper. I have been accused of even worse things outside this chamber, but the status and nature of the person making the accusations is such that I regarded his comments as an accolade. The reality is that Mr Keating was a half owner of these companies—while he was Prime Minister and Treasurer—while they were breaking the law. No amount of personal abuse against me can change that situation.

The reality is that there is a smell over the Keating piggery and Keating's involvement in it. That smell, that lingers still, comes not only from the effluent problem that prompted, in January of this year, the Scone Council in New South Wales to give the new owners of the ex-Keating piggery 60 days to clean it up or face closure—by the way, according to the locals, things are now less worse up there after some work has been done. Even more on the nose is Paul Keating's business partner and friend, the butcher-turned-accountant Achilles Constantinidis, who ran the piggery group for Mr Keating during their almost three-year piggery partnership.

Added to this problem is the Sydney solicitor Christopher Coudounaris, the secretary of the family company Pleuron, who has been found guilty in the Sutherland local court of three offences against the Corporations Law relating to his failure to file annual returns for three companies involved in the Keating piggery joint venture with the Danes. Four similar actions against Achilles Constantinidis have also proceeded. Mr Constantinidis has been found guilty of the very offences that I was attacked, in this chamber, for pointing out were taking place. This is on top of all the penalties imposed by the Australian Securities Commission—I think there were 13 or 14—on Mr Constantinidis and/or his

companies for failure to meet the basic requirements of the Australian Securities Commission in respect of annual reports.

The past does seem to be catching up with Mr Constantinidis. It is probably more like chickens coming home to roost than bringing home the bacon. That past includes the years of his very close involvement with Paul Keating—a relationship close enough for Paul Keating and his wife, Annita, to entrust Mr Constantinidis, together with Mr Keating's brother, Greg Keating, with their power of attorney since 1989.

Why would Mr Keating, then Treasurer, give Mr Constantinidis his power of attorney? That power of attorney, according to records at the Titles Office when I last looked, had not been officially revoked. It may well have been subsequently; I do not know. But the fact is that this power of attorney indicated a very close relationship between Mr Constantinidis and Mr Keating at a time when Mr Constantinidis was seeking to involve the Danes in a joint venture which was needed to rescue this financially unstable company from disaster.

The former Prime Minister, when he was Prime Minister, was subject to severe criticism in the Danish stock market journal just before Christmas, which featured Paul Keating on its cover under the heading 'Prime Minister involved in Danish scandal', describing the Danpork joint venture with the Keating-Constantinidis piggery group as a 'fiasco' for which the Danish chairman blamed his choice of Australian partners. In that article Mr Keating was described as having 'chaos in his money matters', his piggery group as being an 'economic morass' that was constantly behind in their payments and the Keating-Constantinidis piggery site at Scone as 'totally unsuitable' for the joint venture.

Added to these problems—and I am restating some of them because these are the matters that I have been criticised for raising; matters that go to the heart of the potential for conflict of interest—is the curious involvement in the cascading TV tender winner, Mr Albert Hadid—who, by the way, seems to have close business links with Mr Keating's sister, Anne Keating—and the New South Wales right wing Lebanese number cruncher Mr Eddie Obeid in the piggery group, along with Mr Constantinidis's business partnership, which I must say I cannot understand, with the Indonesian joint venturers Gerry Hand and Bechara Khouri. Mr Khouri, I understand, is a 'best mate' of Mr Keating's electorate officer at Bankstown who is now the candidate for Blaxland.

In any event, at best the Constantinidis mess is an embarrassment to Mr Keating and an underlining of this potential for conflict of interest. This problem has been compounded by Mr Keating's obsessive secrecy about this piggery venture, which only really came to light in its full flowering, if I can use that expression, as a result of my inquiries which had to go through the Australian Securities Commission. They certainly were not revealed properly in any declaration of interest.

What has happened to Mr Constantinidis since I raised the fact that Mr Keating's half-owned companies were being improperly run is this: Mr Constantinidis has been suspended by his professional body for unprofessional conduct. He is being sued in the Supreme Court for breach of trust. I do not want to enter into the rights and wrongs of that matter; it is before the courts. He has been found guilty of four breaches of the Corporations Law. He has been penalised repeatedly by the ASC for continual failures to meet its reporting requirements. He has been criticised by a Supreme Court judge for diverting company funds to an unauthorised bank account. He has been criticised in the Industrial Relations Court—in fact, only last month—for harshly, unjustly and unreasonably dismissing three piggery workers after their successful complaint about being paid less than the award wage while Mr Keating was a half-owner.

He has been accused by his Danish former joint venture partners of having tarnished their image in Australia and blamed by the Danes for the Danish parent company's $10 million loss last year. He was also the chief executive officer of the piggery group when legal action was taken against member companies to

recover years of unpaid workers compensation insurance premiums when workers superannuation fund payments were not made and when at least three workers were found to have been underpaid award wages for years—all while Mr Keating was the half-owner. There is not only the potential for conflict of interest; there is the potential for a Prime Minister being put in an intolerable position.

Despite my repeated suggestions for Mr Keating to dissociate himself from, let alone condemn, the improper behaviour of Mr Constantinidis in Mr Keating's piggery companies, particularly his contemptuous disregard for the Corporations Law, Mr Keating's only response to me was personal abuse. I was even described, I think, as 'parliamentary filth' at one stage for daring to raise these matters.

The closeness of their relationship has some bearing—closeness evidenced by that power of attorney—on many of the unanswered questions already posed in the parliament about Mr Keating's own role in the piggery, particularly over the nature of disposal of his half-ownership, whether he retains any existing or potential ownership rights and the role he played in establishing the joint venture with the Danes in the first place. As I said, they had been close enough since 14 December 1989, long before Treasurer Keating became Constantinidis's 50 per cent partner in the Brown and Hatton piggery and refrigeration group on 15 May 1991, for Mr Keating not only to entrust him with his power of attorney but also with the absolute control of the company in which Paul Keating had invested almost half a million dollars in what he described as 'punting the super on the future'.

So all the time that Australian government officials, particularly in Austrade, were putting an incredible effort into generating the joint venture with Denmark that was the only hope of saving then former Labor minister John Brown's piggery group from financial disaster, Paul Keating had a very close relationship with Brown's then partner Constantinidis.

Three weeks after Mr Keating bought his half-ownership of the piggery while Treasurer in May 1991, Austrade officials were warned that Keating's company's yet unnamed involvement in the Danpork joint venture was a 'sensitive matter about which we should not make inquiries'. Even worse, Austrade's then boss noted in a memo to him on 26 March 1992 when Mr Keating was Prime Minister and a half-owner of the piggery:

> What can we do for Danpork? I would like to pull all stops out.

So here were government instrumentalities doing everything they could to bring a major benefit to the Prime Minister at the time, by way of a joint venture. If the opposition would like to have this letter tabled, I would be only too happy to table it. In fact, while I regret that I did not show it to the opposition first, I seek leave to table this letter.

Senator Chris Evans—We have not seen it.

Senator MICHAEL BAUME—I know you have not seen it. If you see it and do not want it, you can reject it. Is that acceptable to you?

Senator Chris Evans—You can seek leave after we have seen it.

Senator MICHAEL BAUME—I just want to say that criticism of me seems to have been clearly misplaced. The courts have demonstrated that I was right. *(Time expired)*

Second Sydney Airport

Senator FORSHAW (New South Wales) (1.01 p.m.)—I rise today to speak on a matter of the utmost public interest. I might say that I do not intend to get down into the gutter like the previous speaker did. I do not want to deal with personalities. I want to deal with an issue that affects the lives of hundreds of thousands of people in Sydney: that is, the issue of Sydney's second airport.

This has been an issue which has vexed people and governments for over 40 years. The history of the coalition, when in government, in handling the problem of adequate airport facilities in Sydney has been nothing short of a disgrace. They were in government from 1949 until 1972, and again from 1975 to 1983, making a period of some 30 years.

In that period, they did virtually nothing at all to deal with the problems of increasing congestion and increasing levels of aircraft noise at Sydney airport.

As Sydney airport grew in size and capacity, the coalition government sat on their hands and did nothing about dealing with the siting of a new, second airport for Sydney. Obviously, they were not really too concerned about this issue that affected the lives of many hundreds of thousands of residents, because those residents largely affected lived in safe Labor seats.

It was only when the Labor government came to power—under Prime Minister Hawke and, subsequently, Prime Minister Keating—that real decisions were made to deal with this problem. As I have said, it is a very difficult problem and a vexed issue. As everyone knows, wherever you propose to locate an airport or some other major facility you will always have people who will be upset and who will object.

Nevertheless, the Hawke government and the Keating government took the issue on and dealt with it honestly and openly. After a process of site selection, commenced in 1983—there was a joint study undertaken at that time by the Commonwealth and New South Wales governments—a suitable site for a second airport for Sydney was selected. That site was at Badgerys Creek in western Sydney. An airport was to be constructed there, to be known as Sydney West Airport. Some 10 sites were considered in that process of evaluation. One of those sites was Holsworthy. At the time, Holsworthy was rejected as unsuitable, for a range of reasons which I will come back to later in my speech.

As I said, Badgerys Creek was ultimately selected as the site for Sydney's second airport. The process of land acquisition commenced and has continued. Subsequently, the decision was taken to build a third runway at Mascot. That was urged upon the Hawke government by the Liberal government in New South Wales and the interests so closely aligned with the coalition.

When that decision—albeit not necessarily a popular one with everybody—was taken, the decision also included a very firm commitment to proceed with the staged development of Badgerys Creek. Funds have been allocated, land has been acquired and the process of establishing an airport at Badgerys Creek has commenced. That decision was supported throughout by the coalition. They supported Badgerys Creek as the preferred site.

Indeed, on a number of occasions they attacked the Labor government for not moving fast enough in proceeding to construct the airport. That is an accusation that I totally reject but it nevertheless clearly highlights that the then opposition, now the coalition government, was committed to the construction of an airport at Badgerys Creek. Holsworthy, of course, had been rejected. But look what we have now.

It has come to light in recent weeks that the government has a secret agenda to reopen the possibility of an airport at Holsworthy. The Minister for Transport and Regional Development, Mr Sharp, gave the game away when he acknowledged this. Holsworthy has been put firmly back on the map as a site for Sydney's second airport. It has come to light that secret meetings were held between the then Leader of the Opposition, Mr Howard, the then shadow spokesperson on transport, Senator Parer, other representatives of the opposition, and the developers who were putting this proposal to the opposition at the time. As we understand it that was back in October 1994 and possibly at subsequent meetings. Naturally, we do not have all of the details but, as each day goes by, a bit more leaks out and we get a bit more information. It all points quite clearly to a secret agenda by the coalition to put Holsworthy firmly back on the list as a site for Sydney's second airport.

This is an absolute total breach of faith by the coalition. It is a breach of firm undertakings given by the coalition, both in opposition and in government, with respect to the issue of Sydney's second airport. It is a cruel deception on the people of Sydney, particularly those surrounding the area of Holsworthy. It is a cruel deception on the voters and the people in the electorate of Hughes.

It is a breach of faith, a breach of undertak-

ings, because the coalition—as I have said—is firmly on the record as supporting the site at Badgerys Creek for Sydney's second airport. They have done that on numerous occasions in the past. I will come shortly to the most recent instance of that which was the Senate select committee that was conducted last year into the issue of aircraft noise in Sydney. That committee included consideration of the siting of the second airport at Badgerys Creek.

As I said, a cruel deception has been played upon the people of Sydney and in particular the people of the electorate of Hughes in which the site of Holsworthy exists. It is deceptive because at the last election the coalition went to the people committed to the construction of Sydney West Airport at Badgerys Creek. At no stage during that election campaign did the then Leader of the Opposition, Mr Howard, or anyone else, tell the people of Sydney or the people of New South Wales—in particular the people of the electorate of Hughes—that they were considering Holsworthy as a possible site for Sydney's second airport. The people in that electorate who have moved into Wattle Grove, a large housing estate,—

Senator Woods—A very good one too.

Senator FORSHAW—A very good one, that is correct. Those people who have moved into Wattle Grove are now in a position where the value of their land and their houses has declined substantially. At no stage during the campaign did the then opposition ever come clean and tell the people what they had in store for them with respect to the Holsworthy site. This was not some minor issue; this was an issue of the utmost public importance to the people of Sydney.

A Senate select committee took over 5,200 submissions from people on aircraft noise. The the opposition at the time campaigned on the issue in the electorates of Lowe, Grayndler, Lindsay, Parramatta, Bennelong, Barton and Kingsford-Smith. It put up its proposal of reopening the east-west runway. I acknowledge that that was firmly on the agenda and was made known to the people. It was never made known that the government had a secret agenda in its back pocket to put Holsworthy back on the list. All the people who have bought land, built houses and achieved their dreams, in suburbs such as Wattle Grove, in the Sutherland Shire area and in areas surrounding Liverpool, have done so in the firm belief and understanding that there would be no airport in Holsworthy. They had the firm understanding that the coalition, like the Labor Party, was committed to Badgerys Creek as the site for the second airport.

During the campaign, John Howard, the Leader of the Opposition, made a lot of noise about honesty and integrity. Why did he not tell the people that this proposal of Holsworthy was in the back pocket and was going to be filtered out after the election? Why did he not come clean? Why did not the then shadow transport minister, Senator Parer, tell people about this proposal? Senator Parer chaired the Senate Select Committee on Aircraft Noise. I was a member of this committee as was Madam Acting Deputy President.

The committee took 5,200 submissions and had 14 days of detailed hearings and evidence from people. At no stage did Senator Parer tell the committee what his party had in mind with respect to Holsworthy. On one or two occasions, the issue of Holsworthy was raised by witnesses to the committee, but not a word was said by Senator Parer or any of the other coalition committee members. Mr Pickrell from the North Shore raised Holsworthy on behalf of his group. I questioned him extensively about the problems of Holsworthy; the problems of the environment; the issues as it affected the water catchment of the Woronora River; and the issues relating to the army base and the unexploded munitions. There was a whole range of issues that clearly ruled out any possibility of Holsworthy as a suitable site.

But Senator Parer and the other coalition committee members sat mute. This entire committee process was designed to take as much evidence, elicit as much information and give as much consideration as possible to this important issue. Senator Parer knew all along that the then opposition had a real proposal for Holsworthy as a site for Sydney's second airport. As I said, nothing

could be more cruel than that sort of deception on the people of the electorate of Hughes and on the wider Sydney community.

Danna Vale, the Liberal candidate who beat Robert Tickner and won the seat of Hughes, never once mentioned the fact that there was a real possibility that a coalition government would put Holsworthy back on the map. In fact, in one of her campaign brochures, she was in the electorate in a photo with members of the defence forces at the Holsworthy army base. She was quite prepared to acknowledge the presence of the Holsworthy defence base, but she was not prepared to say what the opposition had in store for the people of Holsworthy.

I actually suspect that Danna Vale did not know. And if that is the case, she could not tell the electors of Hughes. But why didn't the leader of the then opposition, Mr Howard, tell Danna Vale that that was their proposal? Why didn't Senator Parer tell the candidate that that is what they had in store? I can tell you why they would not have wanted this to filter out: they would have known what the reaction would have been from the people in Holsworthy, in Sutherland Shire and the area surrounding Liverpool if this proposal had even seen the light of day in an election campaign. There would have been absolute community outrage—and Danna Vale would not have been sitting in the House of Representatives now as the member for Hughes; Robert Tickner would still have been there.

Of course they did not want this to come out, because they knew what the reaction of the people would be. John Howard himself, as the then leader of the opposition, gave evidence to the committee and never once mentioned this. But the people will certainly remember it. *(Time expired)*

Mr P.J. Keating: Piggery

Senator CALVERT (Tasmania)—I seek leave to table documents on behalf of Senator Baume.

Leave granted.

Television Gaming

Senator TAMBLING (Northern Territory—Parliamentary Secretary to the Minister for Transport and Regional Development) (1.16 p.m.)—I would like to comment on the issue of interactive television gaming. Last month I received a report from the chairman of the Northern Territory Legislative Assembly Select Committee on Interactive Television Gaming, Mr Tim Baldwin, MLA. The report examines the future impact of broadband communication services on the Northern Territory's racing and gaming industry, with specific reference to the impact of interactive television gaming on the Northern Territory's revenue base.

The issues explored by this report will prove to be very important to every Australian state in the near future. I therefore urge interested senators to obtain a copy of the report from the Northern Territory Legislative Assembly with a view to forwarding it to their state parliamentary colleagues and to the many contacts I am sure they have in the racing industry, the gaming industry and so many other areas of interest.

If you look at the table of contents to this important report it is very interesting to read the scope of the committee's activities and the headlines under which it addressed its report, such as the introduction of broadband capacity and the effects that will obviously have on communications policy, technology development, various Australian trials and the connections to homes and businesses—in my case, in the Northern Territory.

There is a chapter in the report that addresses the racing and gaming industry, the international racing and gaming product, the Australian racing and gaming industry, gambling availability, gambling propensity, industry funding and taxation, pay television and the racing industry. There is a chapter on emerging interactive TV gaming opportunities; a very important section on the impact of broadband services and how they will affect interjurisdictional issues; and chapters on the Northern Territory TAB and racing impact, lotteries and lotto impact, casino gaming impact, community based poker machine impact, sports betting impact, the net effect

on Northern Territory revenue, and consumer lifestyles and social impacts. There is a concluding chapter on risk management and opportunity enhancement. This includes such important issues as Commonwealth government regulation, the state level of cooperation, and references to the future of racing itself and the social impact of this important issue.

I would now like to read some excerpts from the report, for the benefit of senators who are not familiar with the concept of interactive communication systems and the prospective threat they pose to existing state revenue bases. On page 25, the report says:

> Interactive television allows signals to be sent up stream (out) through a set-top box connected to a television set. This enables access to services such as banking, gambling or shopping.
>
> The user can choose what to receive and when and how to receive it. Interactive television is distinct from other on-line services, which can be accessed through a variety of mediums such as computer terminals and the telephone.

The terms of reference of the report limited the committee to examining the impact of interactive television gaming only. However, as the following excerpt from page 32 of the committee's report suggests, interactive gaming is currently available in many other forms:

> . . . the Royal Hong Kong Jockey Club introduced hand-held betting devices which are accessed through free local calls. Hong Kong has a strong wagering industry, with 10 per cent of the population holding a telephone betting account. Between 10 and 12 per cent of all betting turnover is generated through hand-held, portable personal terminals.

It is envisaged that with the rapid advent of technological development it will not be long before such gaming systems are readily available in Australia. In fact, I understand that various gaming facilities are already available on the Internet. The obvious threat posed by such gaming facilities to Australian states and territories is the flow of untaxed gaming revenue out of jurisdictions. As we know, taxes raised from gaming within each state and territory greatly contribute towards supporting the local gaming industry, our racing industry, and the provision of a range of services in the community in general and sporting groups specifically.

The committee's report anticipates that in the medium term, the expansion of interactive television gaming may cause a net leakage of revenue out of the Northern Territory. The report proceeds to examine the various advantages and disadvantages the Northern Territory may experience in relation to other larger Australian states and territories. It also examines possible future opportunities available to the Northern Territory as interactive television gaming expands within Australia—something which is inevitable.

The committee came to the conclusion that interactive television gaming will become a major recreational activity in Australia. It is therefore important that every other Australian state and territory note the work the Northern Territory has done on this issue and prepare for the advent of a technology which knows no boundaries. I am not aware of any other report either of this parliament or of any state parliament that has so seriously addressed this particular issue. Therefore, I would commend the report for the consideration of senators.

In conclusion, I urge any interested senators to obtain a copy of the committee's report from the Northern Territory Legislative Assembly. I am told that the report is also available on the Internet on the Northern Territory Legislative Assembly's home page. The address is http://www.nt.govt.au/lant/. I certainly commend this important issue and this very important report to the Senate.

National Agenda for Women Grant Program

Drought

Senator WEST (New South Wales) (1.23 p.m.)—I rise today to draw attention to another program and series of funding, which organisations and individuals are uncertain about the future of: the national agenda for women grant program, which ends on 30 June this year. This program does a number of things. It has a section of its grant portfolio set aside to assist women's organisations, and

it also has a significant part of its money set aside to give grants to individual groups, for small community groups to conduct programs as they see fit around the community and the countryside. The program has proven very popular. What the women's organisations and the community organisations have been able to do with small amounts of money has been very, very good. The program has provided the women's organisations and the women in their communities with information, with access and with education, and in rural areas it has removed feelings of isolation and of disadvantage.

But we have not heard yet what is going to happen to the national agenda for women grant programs. There are 20 women's organisations funded for small amounts of money under the grant, but that grant runs out on 30 June. As I understand it, these organisations have still not heard whether there is going to be some interim funding to take them up to the budget—when, hopefully, there will be a commitment given in the budget. It is vitally important.

We are talking about an organisation like CAPOW, the Coalition of Australian Participating Organisations of Women. This is a grouping together of 61 of the women's organisations in this country, so that they can come together and network and work together on programs. And they worked very well together in the build-up to the women's conference in Beijing. They were able to coordinate a response, and to seek information and responses from women across Australia about what the Australian position should be. They brought that to the government very well. It was included in the government's position, and they were also able to have their delegates attend the NGO forum that was conducted at Huirou, prior to the conference in Beijing. They did very well and gained a lot of credit for the women of Australia. They also had a number of official NGO delegates who were able to participate and to lobby in the conference itself, in Beijing.

The work that those women did is absolutely inestimable. It was of high quality and was valued by everybody who came in contact with the Australian women. Comments were received by those of us who were delegates to the conference, about the valuable adjunct to our work we had in the representatives of those non-government organisations. A number of us met daily with the NGO women and we were able to exchange ideas and information, and generally have a very constructive time.

What sorts of organisations am I talking about? I am not talking about radical organisations that want to overthrow society as we know it. I am talking about organisations that are dependent upon the national agenda for women grant funding. They are organisations such as: the Association of non-English Speaking Background Women of Australia; the Association of Women Educators; the Coalition of Australian Participating Organisations of Women, commonly known as CAPOW; the Catholic Women's League; the Coalition of Activist Lesbians; the Foundation of Australian Agricultural Women; the Maternity Alliance; the National Council for the Single Mother and her Child; the National Council of Women of Australia; the National Women's Justice Coalition; the National Women's Media Centre; the Network of Women in Further Education; the Nursing Mothers Association of Australia; the Older Women's Network of Australia; the Refugee Women's Network; Women in Film and Television; Women with Disabilities Australia; the Women's Electoral Lobby; the Women's International League for Peace and Freedom, and Women's Sport Australia.

These organisations represent a very good cross-section of women's organisations in this country. It is absolutely essential that these organisations know beforehand that they do not have to disrupt their programs or to spend time wondering about what they do between 30 June and the budget. If people ask this government any questions about funding, they keep being told to wait until the budget. These organisations cannot afford to wait until the budget. Either they have to be given a grant funding now for the next 12 months, or they have to be given interim funding.

I am very familiar with the work of the Nursing Mothers Association. Prior to my involvement in politics, I spent a lot of time

working as an early childhood nurse, and I know the valuable support that that organisation was able to give mothers with young children and small babies. Those mothers they had as counsellors, would be available 24 hours a day, seven days a week. Whilst many of the mothers knew where the clinical staff were and they could contact us, they felt hesitant to contact those of us in the profession. But they welcomed the ready availability of these volunteer women. The amount of money that this organisation gets, is small, but it enables them to have a network of support across this country for mothers and families with young babies. Anyone who has had a difficult young baby will certainly relish the assistance that was able to be given by that organisation.

You might wonder what CAPOW does. It is a network of all 61 participating organisations, running across a very wide range of interests and activities, from the YWCA, Unifem—the Union of Australian Women—Women in the Australian Church, and the National Women's Christian Temperance Union. That last organisation was one of the four leading organisations in the struggle for women to get franchise in this country.

The sorts of organisations that are affiliated with CAPOW rely very strongly on the ability that CAPOW provides to provide information, to facilitate communication among affiliated groups, and to lobby as necessary. 'Lobbying' is not such a terrible word; in fact it is a very vital word as far as these organisations are concerned.

CAPOW also puts out—four times a year—a bulletin that is available to all of its organisations. Some of the issues canvassed in the autumn 1996 bulletin relate to preparations for the Habitat II conference that is to be held. It talks about some of the issues that people may wish to raise at that conference and it gets women to think about the issues. They have reproduced an article from the national newspaper of the United Nations Association of Australia. There is also an item in the bulletin, in relation to the Habitat II conference, that relates to women with disabilities. It is getting women with disabilities to think about their habitat needs and that is very important. There is also an article on the ending of female genital mutilation. These are the sorts of issues that are vitally important to women. While some of these issues may not affect many women in Australia, the ability of Australian women's organisations to stand up and take a position on these issues adds strength to the lobbying, and it also adds strength to the pressure that women in other countries are placing within their own countries.

CAPOW, as the networking body, has been responsible for facilitating the dissemination of the top 12 topics at the Beijing women's conference and for a brief summary of actions recommended in the platform for action. Again, this enables Australian women to understand and know the major issues addressed in Beijing. It enables the Australian women to understand the plans of action and to support, as necessary and as they are able, the pressure, the requests, the needs that women all over the world may have.

The first topic relates to the burden of poverty on women, and the equal access to education and training. Those of us who went to Beijing were able to see very clearly, from the figures and statistics given to us, that in many developing countries the number of years that the girl child spends in education, or has access to, falls far short of what is available to her male peer. Of course, the women from those countries saw it as being vitally important that the girls in those countries had equal access. There is information for Australian organisations on how they can support their sister organisations and their sisters in other countries. This is also vitally important. It is an essential thing for women who care about what happens to other women.

I urge the government to look very earnestly at this issue and to act now to do something for these 20-odd organisations whose funding will cease on 30 June. It is something that we cannot afford to have happen. One such organisation is Women with Disabilities Australia. Their objectives are to develop a network of women, with disabilities, throughout Australia to work together for their mutual

benefit, and to advocate for every woman with a disability to have the opportunity for true involvement in all levels of society.

The organisation further states that the Australian Bureau of Statistics has revealed that women with disabilities are more often institutionalised, less likely to work for money, earn less, less likely to own a home, and less likely to receive requested personal care and household assistance than men with the same needs. Of course, it has to be said that probably the men with the same needs are being cared for by women. But when it comes to the woman's turn to require this assistance, it is often not available to her as readily as it is to males. That is not meant to be a disparaging remark in relation to males but it is certainly a comment in relation to ages and the roles that women have assumed. This is the sort of organisation that will be affected.

I turn now to another issue. On Monday I asked the question of Senator Parer on drought exceptional circumstances and asked when we could expect to see the minister's response to the RASAC report which he had commissioned on 20 March and which he has asked to be presented on 11 April. Senator Parer initially was unable to provide me with an answer but came back at the end of question time saying that a decision was going to be made soon.

I have been talking to people in the areas that have been affected, in the Wilcannia-Cobar area, and they are pleading that the decision be made quickly. They do not know, and being left not knowing whether or not they are going to be included in the exceptional circumstances area is causing them great anxiety. It means that they cannot plan. It means that they do not know whether or not they are going to get assistance. They are better off knowing that they are not going to get assistance than sitting, waiting and hoping that they are going to be eligible.

I am told that the situation out there is desperate. People are desperate to have a decision now. The minister, I think, has had plenty of time within which to make that decision. He ordered the report on 20 March. He asked for it to be delivered on 11 April. It is now 29 May. Six weeks have elapsed, and nothing has been heard. The minister was able to make a decision quite quickly about cooked chicken meat, despite giving an assurance to the producers in that industry prior to the election that no decision would be made until after the Nairn committee report had been received. That is expected in October of this year. But he appears to have made a decision quickly on that one. Why can the minister not make a decision quickly on whether there is going to be an extension of drought exceptional circumstances?

A lot of work had been done on this issue prior to the change of government. There had been submissions and requests made to the previous minister to extend the drought exceptional circumstances. The information had not been adequate, and the minister had requested further information. That information would have been coming into the department during the changeover, in the caretaker period of government. It is vitally important. That information would have been there, available for the minister on his desk, as soon as he started having briefings. He would, therefore, have been in the situation of receiving good and adequate briefings early in his reign as minister. But we still have no decision.

On behalf of the people of the Western Division areas of New South Wales who are affected by this, I urge the minister to make a decision very soon—to make it now—so that they know where they stand and they are able to make decisions for their future.

Hindmarsh Island Bridge

Senator TEAGUE (South Australia) (1.37 p.m.)—Madam Deputy President, I wish to refer to the Hindmarsh Island Bridge, in my state of South Australia, and to the two years dispute that has followed the most unfortunate and, I believe, gravely wrong decision of the then Minister for Aboriginal affairs, Mr Tickner, to apply a ban to the bridge. My first speech on this topic was to take note of his original ban, which had been made on 12 May 1994 and which came on to the agenda of the Senate on 6 June. I moved to take note

of the document. In my speech, which covers a number of pages of *Hansard*, I indicated my interest in this part of my state, my significant interest in justice for Aboriginal Australians, my involvement for six years on the Council of the Institute of Aboriginal Studies, and my knowledge of the Coorong and Lower Murray area, which I love, as an environmentalist. I visit the area, I sail in the area, I travel to see this relative wilderness, with the birds and all of the pleasures of this great heritage that is in my state.

I have enormous concern to see justice for all Australians, especially when their rights are being cut across by the unilateral action of a powerful minister in Canberra. In my first speech I said this:

> I conclude by urging Minister Tickner to tell me the reasons, even if it is on a private basis, so that I can be satisfied as one senator. But more than me, the interested parties in South Australia should be told the reasons. What is the Aboriginal heritage that is at risk in this matter which has escaped five years or more of investigation? If there is no disclosure and if this declaration is continued beyond 14 June for any reason, we will have a conclusion that can rightly be reached. We would say that this was the most intrusive power of any government or any minister to upset a development that may be to the benefit of thousands of Australians—a project that has involved many millions of dollars of work—without reasons being given to all of the parties involved.

I underline 'without reasons being given to all of the parties involved'.

As a result of my speech, the then minister, Robert Tickner, came to see me the next day in my office and we talked about this whole question for about three-quarters of an hour. I have not discussed that since that time, and I still will not break any confidence from a personal conversation. I thought that he would have been coming around to explain to me what the reasons were for his putting on the ban. He gave me no reasons whatsoever, and he heard from me my concerns.

I said to him, 'I understand that there are secret sacred stories and beliefs of the Aboriginal people in Australia and, as a minister, you may even be denied full access to some of those secrets. But as a minister of the Crown, accountable to the parliament and to the whole people of Australia, you have to have some public explanation. You must be able to gain from appropriate people a summary of what is secret if it is going to have any impact upon a public decision. Public accountability requires it.'

A couple of days after that he appointed—he had already been in the process of appointing—an eminent lawyer, Cheryl Saunders, to conduct an inquiry for him into this whole matter. I have cleared this with the Opposition Whip, Senator Evans, and I seek leave to incorporate my submission to Professor Saunders, dated 11 June 1994, and her reply to me, dated 21 June 1994.

Leave granted.

The document read as follows—

Parliament of Australia—The Senate

Senator Baden Teague

Senator for South Australia

6 Waterloo Street
Glenelg, S.A. 5045
Tel: (08) 294 9299
Fax: (08) 376 0478
Parliament House
Canberra, ACT 2600
Tel: (06) 2773760
Fax: (06) 2773759
11 June 1994
Professor Cheryl Saunders
Faculty of Law
University of Melbourne
Parkville VIC 3052

Dear Professor Saunders,

Goolwa and Hindmarsh Island

I make this submission to you regarding your current inquiry and recommendations to the Minister for Aboriginal Affairs, Robert Tickner.

First, may I bring to your attention my Senate speech on this matter of last Monday, 6 June, a copy of which is attached to this letter. In response to this speech, the Minister called to see me. Two of my main concerns, amongst others that we discussed, are these:

(1) that the A.T.S.I. Heritage Protection Act 1984 be amended as soon as practical to require this kind of Ministerial intervention be limited to the earlier stages of planning approval that require public consultation and expert heritage advice.

(2) that as a consequence of Ministerial intervention under this Act, the Minister publish a

> clear explanation of the specific heritage matters that are in need of protection. This explanation should be given both in terms of the reasons for the declaration under section 9 being made (that is, the nature of the appeals or the alleged heritage matters to be protected) and then, later, in terms of the confirmed findings of any inquiries made as a result of the Minister's intervention. In particular, I respect the fact that some aboriginal heritage matters are secret to the specific guardians of that heritage. However, it would be a failure of Ministerial accountability if such secrecy denied an appropriate and substantial explanation by the Minister of the matters involved. Appropriate, intelligible summaries (which avoid the specific secret words) would still need to be given by the Minister.

As I said in my Senate speech last Monday, I have followed this matter for several years now. However, I regard it as a matter of potentially grave injustice to intervene at the eleventh hour on a State program of public works which purports to have met years of planning requirements. Also, in all the months leading up to this Federal Ministerial intervention no clear description has been given publicly or to me, as an interested Senator for the State concerned, as to what specifically is the aboriginal heritage that requires this intervention to be protected.

I will be happy to respond in any way if you wish me to clarify or supplement this submission.

With my best wishes,

Yours sincerely,

Baden Teague

Senator for South Australia

The University of Melbourne Law School

Centre for Comparative Constitutional Studies

157 Barry Street
Carlton VIC 3053
Tel: (03) 344 5152
Fax: (03) 344 5584
21st June, 1994
Senator Baden Teague
Senator for South Australia
6 Waterloo Street
GLENELG SA 5045

Dear Senator Teague,

Goolwa and Hindmarsh Island

Thank you for your submission in relation to the report I have been asked to prepare in relation to Goolwa and Hindmarsh Island.

Your submission will be helpful to me in preparing the report. If I have any questions arising out of it, I will contact you about them.

As I am about to leave for South Australia, I will ask my secretary to sign this on my behalf.

Kind regards,

Yours sincerely

per M. Simpkins

Cheryl Saunders

Director

Senator TEAGUE—In my submission to Professor Saunders, I referred to my conversation with the minister—she was going to be reporting to him—and I set out my two main concerns. Let me concentrate on the second of them. I said:

> . . . as a consequence of Ministerial intervention under this Act, the Minister publish a clear explanation of the specific heritage matters that are in need of protection. This explanation should be given both in terms of the reasons for the declaration under section 9 being made (that is, the nature of the appeals or the alleged heritage matters to be protected) and then, later, in terms of the confirmed findings of any inquiries made as a result of the Minister's intervention. In particular, I respect the fact that some Aboriginal heritage matters are secret to the specific guardians of that heritage. However, it would be a failure of Ministerial accountability if such secrecy denied an appropriate and substantial explanation by the Minister of the matters involved. Appropriate, intelligible summaries (which avoid the specific secret words) would still need to be given by the Minister.

I have incorporated Cheryl Saunders's direct response—that she received it. I have no evidence to show that it affected her whatsoever, because the report that she gave to the minister—which eventually was published—did not meet the criteria, the suggestions, that I have just underlined.

The minister failed me. And Cheryl Saunders, who carried out the investigation, failed me—and not only failed me, but failed the Aboriginal people, all of Australia and this parliament. They did not give an explanation that was intelligible or that was accountable. The nearest we have to it I referred to in a speech in the Senate on 11 October 1994, after I had read that Saunders report, and I briefly refer to it in these terms. I have not time to outline the four principal reasons why I was moving, on 11 October 1994, for the Senate to disallow the minister's ban on the bridge, because no reasons had been given. In

six or seven pages and in that debate my views are set out, and they have been confirmed by the royal commission of last December into this whole matter. It found evidence of fabrication and that the bridge should now be built because the evidence for any ban was just not there.

In the speech on that day, I referred to Cheryl Saunders's report and to her quote from an anthropologist, Dr Fergie. It said:

. . . the problem with linking Kumarangk—

that is Hindmarsh Island—

and the mainland together by a bridge is precisely that the bridge goes above—

and the word 'above' is underlined—

the water. It is a shore to shore, direct and permanent link. It would make that link, unlike the barrage—

which is just half a mile away—

or the ferry cable—

which is right on the spot—

unmediated by water. It would . . . make the system sterile.

In that speech almost two years ago, I said:

That is the best account—

in fact it is the only account—

we have as to the reasons for blocking the bridge. Because a bridge is unmediated by water, it is somehow offensive to the spiritual significance of the lower Murray region for maybe five women. I respect the spiritual beliefs and views and anything that is dearly held by those five women, but they themselves did not know what the significance of this area was until April this year.

Even though former Minister Tickner knew, there was not one person who knew anything about this apparent significance as of May 1994. That has been admitted totally by the main witness for this anthropologist's evidence, Mrs Kartinyeri. My speech continues:

Does it mean that there is some fear amongst the four or five women there would not be live births or that their spiritual belief would somehow be obstructed or compromised? That is not being put forward. There is no logic in the explanation. If there is logic, please may we all be enlightened. The government is not being accountable and it is a failure of accountability for a minister to stop a bridge on the basis of some flimsy reference to the spiritual beliefs of some Aboriginal Australians.

I do not claim that any genuinely held belief is flimsy. I am saying that this fabrication is flimsy, as is the evidence purported by the minister at that time.

Since then, a six-month royal commission was set up by the South Australian government. Mrs Stevens, who conducted the royal commission exhaustively, found in December last year that there was a total fabrication: everyone including the minister had been conned. Unfortunately, before that December finding of the royal commission in Adelaide, former Minister Tickner set up another inquiry and he appointed Justice Jane Matthews to conduct a further inquiry into the bridge. For legal reasons, the current government, even since the election, is not able to stop that further inquiry. It is an unnecessary inquiry in my mind, and I have some concluding remarks to make about it. Of course, we must take into account whatever Justice Matthews may have to say. The report is due in June next month. I seek leave to incorporate a section of an article about this matter from this morning's *Australian* newspaper. I have shown it to Senator Evans.

Leave granted.

The article read as follows—

Ruling may affect Hindmarsh case

The head of the federal Hindmarsh Island inquiry, Justice Jane Mathews, may be forced to reveal confidential information surrounding the Ngarrindjeri secret women's business after a Full Bench Federal Court decision yesterday.

The court found it was "wrong" to deny parties affected by an Aboriginal heritage protection claim knowledge of that claim.

Lawyers for both the Hindmarsh Island marina developers and Ngarrindjeri dissident women, who claim the secret women's business was fabricated to stop the building of a $6.4 million bridge, yesterday claimed the decision had "significant" implications for the Mathews inquiry.

They claimed the decision implied all confidential information received by a federal government reporter, appointed to investigate applications for heritage protection, had to be disclosed to parties adversely affected.

The lawyer for the developers Tom and Wendy Chapman, Mr Steve Palyga, last night wrote to Justice Mathews demanding full disclosure.

The lawyer for the Ngarrindjeri dissident women,

Mr Nicholas Iles, said the decision was "powerful".

Katherine Towers

Yesterday, the full Federal Court made an important decision that, in a matter touching upon Aboriginal heritage, then Minister Tickner had denied natural justice. This is not just one federal judge; this is the full bench of the Federal Court. It was a decision in regard to the other controversial element, the only other ban that has been ordered, and that was with regard to a crocodile farm in Broome in Western Australia. The decision from this morning's *Australian* reads:

> The Full Court of the Federal Court upheld a 1995 decision of that court overturning a heritage ban applied by the then minister for Aboriginal Affairs, Mr Robert Tickner . . . The Full Court upheld the earlier determination by Federal Court judge Justice Carr that Mr Douglas—

that is, the Western Australian

> had been denied natural justice by Mr Tickner's decision.

In another part of the same article, there is the very apt remark that this ruling of yesterday may affect the Hindmarsh Bridge case. This idea is along the lines of my speech in June of last year, my discussion with Minister Tickner at the time and with investigator Saunders, and our motion of disallowance in the Senate of October 1994.

I support the words I have incorporated from the article. There must be natural justice, there must be an explanation and there must be accountability. I therefore use this forum of the Senate to directly address Justice Jane Mathews and say to her and those involved in the inquiry which is now under way and is to be reported next month that these matters must be faced. This whole inquiry of Justice Mathews is secret. There have been no public hearings. The press are not allowed to be there. I, as an interested senator, have not been asked for a submission. My colleagues asked me last week, 'Have you made a submission to Justice Mathews?' I said, 'No; it's a secret. I don't even know what the terms of reference are for this inquiry.'

Most seriously, the decision of the Federal Court yesterday directly requires the judge to ensure that all parties have natural justice. I then put the same formulas that I put to Minister Tickner at the time, that I put to Cheryl Saunders and that I have argued for here in the Senate. If Justice Mathews fails to address the question of natural justice and fails to disclose to interested parties all of the relevant documents and papers that she has before her, she will not have any credible finding—as far as it would be received by this one senator or, I believe, by the parliament or by the government of the day. Let us consider her views and her findings when the report comes to our attention. In the meantime, I make the plea as abundantly clear as I can that the question of natural justice must be directly responded to by Justice Mathews.

Second Sydney Airport

Senator CHILDS (New South Wales) (1.52 p.m.)—I would like to deal with two matters that are very serious for my city of Sydney. They are two examples of the duplicity of this government, and of the betrayal by the Howard government of the people of Sydney as far as aircraft noise and the positioning of airports in my city are concerned.

First, I would like to turn to a speech I made on the adoption of the aircraft noise in Sydney report on 30 November 1995. I said:

> I just want to draw attention to why we say that we should prohibit the take-off of planes to the north from the third runway.
>
> This week the opposition was sprung in an article in the *Financial Review* by Tom Burton, headed 'Coalition risks new airport noise protest'. He pointed out the fact that under the coalition government proposal—if they were to be in government—planes would be taking off to the north on the existing third runway. Of course, that is the secret plan. Although Senator Parer, as the shadow minister, was quick to deny it, I point out to the people of Sydney, particularly those people who will be affected, that this is just another way the opposition would, if they were ever in the government, vastly affect them in relation to activity that has been banned.

Of course, I was right and the people of Sydney were wronged, because the government of Mr Howard has gone ahead and is doing that. The major betrayal I want to refer to today is a much more serious one. It is the Holsworthy airport proposal whereby 450,000 people in various parts of south-west Sydney would be adversely affected. That is on one

reading of it. That is one possibility. It is a serious proposition.

The alternative is that this government is just putting up a smokescreen so that there will be no second airport for Sydney and so that some of the vested interests will not move out of Sydney. People in the inner city of Sydney will have to put up with extensive noise. Whereas our government was moving strongly to develop Badgerys Creek, this government now has stopped in the process and they have proposed this Holsworthy option.

I remember, as a member of this select committee looking into aircraft noise, that we had a proposal from a Mr Pickrell, from a North Shore group. He was following the tradition, I think, that people want an airport but not in their own area. I quote now from the evidence where Mr Pickrell said:

> It may well be that this has to be surrendered as a water source and used as a recreational facility instead.

He is referring there to the Woronora Reserve.

> Closeness to the Lucas Heights atomic energy installation was mentioned in the EIS and our view is that it may be necessary to move the facility, which would get a lot of cheers from the people of Sutherland. It certainly would not be accepted as a hindrance to a new airport.

So he referred to it in his proposal. Yesterday, I asked Senator Parer, the minister representing the Minister for Science and Technology, what the government would do as far as a Lucas Heights proposal was concerned. Senator Parer did not answer that question that I asked him yesterday.

This is very significant because in the 1979 report of the major airport needs of Sydney, where a careful evaluation was made, the people making that evaluation made the point that Lucas Heights was a significant issue as far as a nuclear reactor was concerned and, of course, that was not addressed by Senator Parer yesterday. It is a major problem and it seriously affects the financial probity of any proposal. But, of course, we do not know who the developers have behind them. We do not know what resources they have. We have no idea at all of how effective that proposal will be.

We certainly know that it is a problem, particularly for the people of Sutherland. As soon as Mr Pickrell presented his material to the committee, I got in touch with Mr Robert Tickner, then the member for Hughes, and he immediately took that matter up in opposition, leading the people of Sutherland against that proposal. The unfortunate thing for Mr Tickner was that the government, then the opposition, did not share that with the people. This is a devious government that we face in Australia at the present. Even though Mr Howard—'honest John Howard'- came before our committee he did not present to us what he had on his mind; in other words, the Holsworthy option was never given to the people of Sutherland.

Mr Tickner fought that issue before the election and it will be very interesting to find out whether the Liberal candidate for Sutherland—she is now, at the last minute, taking up the issue—ever raised her voice on behalf of the people of Sutherland against the Holsworthy proposal. Mr Tickner pointed out to me at the time, as did other people, the reasons why the people of Sutherland opposed the Liberal and National parties' proposal for an airport in the middle of their backyard. People who saw the proposal rejected scientifically years ago, in the MANS report, are now seeing a Liberal Party that is desperate to do something after the election that they did not have the guts, the intestinal fortitude, to put to the people before the election.

I can only say that there will be another election and those people will know the issues. We will make sure that the people know the issues. Just as Senator Forshaw said, 'We will make sure you know the issues'. The government will regret its duplicity because the people in the south-west of Sydney will oppose the government at the next election. We will make it a referendum on the sincerity of Mr Howard.

QUESTIONS WITHOUT NOTICE

Higher Education Funding

Senator McKIERNAN—I have a question

for Senator Vanstone, the Minister for Employment, Education, Training and Youth Affairs. The vice-chancellor of the University of Canberra, Don Aitkin, said last week on Canberra radio that he is appalled at your government's attitude, that your pre-election higher education policy is now simply your latest higher education policy and that we will all have to wait until the budget for your next policy. This morning on *AM* the vice-chancellor of La Trobe University, Michael Osborne, echoed these sentiments, saying:

> I'm surprised he [ie the Prime Minister] has stood by as the minister who has been appointed has simply told us that those commitments can now be safely forgotten.

Can you assure Don Aitkin, Michael Osborne and the other vice-chancellors, and those Australians who actually believed your election promises, that this is not the case and that you remain firmly committed to implementing your pre-election policy?

Senator VANSTONE—Let me answer your question by telling you what this chamber has been told before. I have discharged my duty to the higher education sector by being honest with them. I admit that it is probably a bracing change, since the previous minister was not honest. For example, he misled them into believing that he could solve the higher education salaries dispute. He gave a commitment to them that the supplementation would be forthcoming and, as you know, he was unable to deliver.

That misleading of the sector was a very damaging process and in my view not responsibly discharging his responsibilities to the sector. What I have told all the vice-chancellors is this: the government faces a very substantial savings task to bring the budget back into black. That is the budget that Senator McKiernan's government failed to bring back into black; the budget that his government left with a $8 billion hole in it.

I have told the vice-chancellors that it is unreasonable to expect that the higher education sector would make no contribution. I have said to them that the sooner we can have the specialists in higher education—which, of course, the vice-chancellors are undoubtedly a part of—shaping the savings proposal, rather than letting a savings proposal being purely fiscally driven in itself shape higher education, the better.

I am pleased to report that I have had a number of useful discussions—some verbal, some planned and some in writing—with a number of vice-chancellors who will publicly say that they do not want to see the higher education sector make any contribution whatsoever. I understand their commitment to running that position, but I also understand that they appreciate the government does have this savings task and they welcome the opportunity to have a hand in shaping the savings proposal. That is, higher education will shape the savings proposal, not the savings proposal shape higher education.

At this stage I am not aware if the vice-chancellor of La Trobe University has asked to see me or has written to me. I think not, but something could have arrived which has not come across my desk. As for Professor Aitkin, I am seeing him this afternoon and he is not the first at my door.

Senator McKIERNAN—Madam Deputy President, I ask a supplementary question. I thank the minister for her answer. My question was about your pre-election promises. From her answer, the minister is not now prepared to stand by those pre-election commitments. Does this mean that you share Mr Howard's view that:

> The mandate theory of politics . . . has always been absolutely phoney?

Senator VANSTONE—In your supplementary question you are purporting to quote Mr Howard. That is not a quote that I have seen attributed to him and therefore I decline to either join in with it or deny it. I am not at all sure that that is something that was said. If it has been, I will come back to the chamber on that matter.

I repeat what I told Senator McKiernan before. We made our commitments in the policy statements on which we were elected. I understand that people on the other side of the chamber dislike being reminded that we were elected and they were rejected. The next major policy statement will be at budget time. I want to repeat that some vice-chancellors

understand that there probably will have to be a contribution from higher education and they do want to shape the savings proposal. They have the interests of higher education at heart and they will not walk away from shaping that savings proposal simply for the opportunity to go out and campaign against any savings contribution coming from that sector.

Social Wage

Senator KNOWLES—My question is directed to the Minister for the Environment and Leader of the Government in the Senate, Senator Hill. Are you aware of the outrageous comments made by the Leader of the Opposition, Mr Beazley, at the ACOSS dinner last Thursday that one of Labor's achievements over 13 years was that workers had forgone increases in the money wage in order to create the capacity to establish the social wage? Is this correct, and what lessons can the coalition government learn from Labor's woeful record?

Senator HILL—I did note those comments. It is a continuation of Labor's peddling the myth that although it may have failed on jobs and in other areas it instead delivered benefits in its so-called social wage, it achieved on social justice. It is important that this myth be answered, that we remember Labor's record and that we learn from its mistakes.

The Hawke-Keating government not only failed miserably in job creation but also played a considerable part in the growing fear about an underclass. When Labor came into office 694,000 people were out of work and 766,000 remained unemployed when they were booted out—not a proud legacy. Labor gave Australia the highest levels of unemployment since the Great Depression—947,000 people unemployed at the peak of the recession. The unemployment rate was stuck at 11 per cent or close, the highest unemployment rate since the great recession—and it stuck at that peak for almost a year.

Senator Cook—That's rubbish.

Senator HILL—The youth unemployment rate has not dropped below 25 per cent, Senator Cook, in the last five years—your record. I remind you that social researcher Ann Harding found that 1.9 million Australians, approximately 11 per cent of the population including 592,000 children aged 14 and under, were living in poverty in May 1995, as measured by the Henderson poverty line.

I remind you also that according to World Bank figures Australia dropped from 10th to 22nd position between 1983 and 1993 on the level of per capita income. Those opposite are quietening down, I notice. I remind you also of the Business Council's report *Living standards in decline*, released in February this year, which says that real private household incomes fell by nine per cent between 1981-82 and 1993-94.

Senator Carr—The social wage is $195 a week.

Senator HILL—Do you want more statistics to tell you about how the gap between rich and poor grew? Under you, more became rich and the rich got richer, but more became poor—and the gap grew. There were fewer people in the middle—fewer earning a wage, which has been the basic strength of this country for many decades. That is your failure. The ABS data from 1984 to 1993-94 is that the bottom 20 per cent of households suffered over a 23 per cent loss in household income. Is that social justice?

It is not surprising that this government is determined not to make the same mistakes as those made in the past. It is determined to deliver better for the Australian people; better in terms of jobs and wages, and greater hope for the future. That is why we are prepared to tackle the hard issues on public expenditure, rather than continually adopting Labor's recipe of borrowing and taxing more, notwithstanding that there have been many consecutive periods of growth. The objective is to balance the books to ensure that national savings grow and private savings grow and to take pressure off the current account and interest rates, in order that business might grow and employ more Australians, and give them hope for the future.

Higher Education Funding

Senator CROWLEY—My question is to the Minister for Employment, Education, Training and Youth Affairs. Is the minister

aware of the emerging consensus in higher education that cuts proposed by the minister would force researchers and academics to leave the country? What are the implications for Australia of such a brain drain on Australia's research ability and what impact would such a reduction in research capacity have on Australia's balance of payments?

Senator VANSTONE—There is one crucial mistake in the commencement of your question: you put a proposition that I have proposed cuts. That is the problem you face; you suggest a decision has been made. I repeat what I told the senator who asked me an earlier question: we have an enormous savings task to complete. It is a consequence of your government's ineptitude in managing the budget. I have been honest with the vice-chancellors. I have told them, as it is my responsibility to do, that I do not imagine for one minute that higher education could reasonably expect to be completely immune from making a contribution to that savings task. I would be misleading them if I said that.

So what I have done is, at the first opportunity, advise them of my view in that respect, to give them the opportunity to allow their views to shape the savings proposal, rather than let it simply be fiscally driven. What you are seeing through the media and other places is a campaign by a range of people in the higher education sector to exaggerate a decision that has not yet been made.

I just want to correct the supposition you put in your question. You ought to understand, Senator, and I am sure you do—but I will repeat it for the benefit of others who might not—that the higher education sector is a very valuable piece of our social and economic infrastructure. It needs to be preserved. Any savings that come from that sector have to be made very carefully. Therefore, it is best if those savings are made with the advice of some of the most interested and informed people in that area; that is, the vice-chancellors.

I repeat what I have told this place before: a number of the vice-chancellors are now welcoming the opportunity to impact on that savings proposal. One of the key views that I will take to this task is that there are two key elements of what a university is about. One is quality teaching and the other is research. You can be sure that an understanding of those two key elements in the university's role will be borne in mind in any savings proposal.

I just want to repeat that I am grateful for and welcome the views that we already have from vice-chancellors as to how to shape the savings proposal—in other words, for higher education to do that. I just hope that the vice-chancellors who have thus far declined to take that opportunity are not walking away from an opportunity to shape the savings proposal.

Senator CROWLEY—Madam Deputy President, I ask a supplementary question. Could the minister, who failed to completely answer the question about the impact of research cuts on our balance of payments, explain how proposed savings in the department and portfolio differ from cuts? Secondly, if you are concerned about advice from people concerned, would you agree with the assessment of Dr Neville Webb that your proposed cuts would be 'a pre-frontal lobotomy on the brain of the clever country'? Are you aware that Professor Anthony Lowe of the Academy of Humanities has described the proposed cuts as 'the greatest crisis facing the academic community'?

Senator VANSTONE—Senator, I have seen a number of comments. I do not recall seeing Dr Webb's, but I recall seeing the second comment that you made. I take those comments to be a part of a very well organised campaign to ensure that the higher education sector makes no contribution whatsoever to the savings task.

There are other vice-chancellors who recognise that this is in the national interest, that bringing the budget back into black will help some of the most disadvantaged people in my portfolio and that the universities can make a contribution. I am very happily working with those vice-chancellors and those universities, and I will continue to do so.

Sale of Telstra

Senator FERGUSON—My question is directed to the Minister for Communications and the Arts, Senator Alston. I refer the minister to an article written by the Leader of the Australian Democrats, Senator Kernot, in the *Australian* on 22 May and her continued refusal to apologise publicly for misleading the Australian people regarding the British privatisation experience. Is the minister aware of any other misleading claims being peddled by the Democrats in relation to the partial privatisation of Telstra? Can the minister provide the Senate with the facts in relation to the government's Telstra partial privatisation proposal?

Senator ALSTON—I thank Senator Ferguson for a very insightful question. Let me say from the outset that there is nothing personal about this. I am not wanting in any shape or form to attack Senator Kernot in person; I am simply increasingly disturbed that she seems to be locked into an ideological position. The end result is that her statements were devastatingly repudiated by British Telecom—and one understands that they would have a highly developed sense of outrage. Nonetheless, Senator Kernot was at it again yesterday.

She stayed in this chamber for half an hour after question time and had the opportunity to make a personal explanation. She could do that at any time. She could have put out a corrective press release, but she did nothing. She sat here for half an hour and went out. What do we find? Not any signs of repentance or contrition, but rather brazenness, I would have thought.

In the *Courier-Mail* this morning we find that Senator Kernot says once again:

> For the first eight years of privatisation in the UK, from 1985 to 1993, prices increased.

I made this point yesterday: why do you stop at 1993? Have you got a four-year gap or a three-year gap—it was 1992 in your article—or is it simply that it does not suit the case?

These are the facts. They are absolutely devastating. These are the figures for average BT residential bills. They have gone down every year since 1984. It is the same for average BT business bills. They have been on a sliding scale ever since 1984. You peddle this nonsense that, because the regulator imposed a higher price cap, it somehow made a big difference. It has not. It has not made any significant difference any more than it has in this country.

Senator Kernot—It is a combination of factors.

Senator ALSTON—Combination of what? Privatisation?

Senator Kernot—It is not privatisation.

Senator ALSTON—I see. The fact is that it does make a very big difference when you introduce privatisation and increase competition. What has happened in the UK is that prices have been going down consistently over that time. We adopted their CPI-x formula, put it up to 7.5 and we still have virtually the highest local call charges in the world. The mere fact that you have a regulator does not make any difference at all.

What really does disturb me—and this ought to disturb school children around the world—is the Australian Democrats' homepage on the Internet. If you look up the Australian Democrats web site, you find it says things like 'Keeping the Senate honest' and has the Telstra logo. You say the people own Telstra. What is it doing there in your name? Have you paid copyright on it? Have you sought permission from Telstra? Of course you have not.

There are millions of school children around the world who could be quite susceptible to this sort of mindless propaganda nonsense. What do those poor unfortunate children get? We will probably have to report you to the ACCC for misleading and deceptive conduct. I am now wondering whether we need to bring in special censorship rules for the Internet to protect impressionable young school children in particular from this sort of silly propaganda. In this document you repeat precisely what you put in that leaflet.

Senator Faulkner—Make light of a serious issue, as usual.

Senator ALSTON—I will come to some very hard hitting facts for you. It says, 'Privatisation means the profit from what we now all own will end up in select private hands.' That is a travesty of the position

because, as you know, all Australian citizens will have the right to buy shares. You say that services will be cut or fees will be imposed. You know absolutely that legislation will require community service obligations to be put in place. *(Time expired)* Is there a supplementary question?

Senator FERGUSON—Madam Deputy President, I ask a supplementary question. Can the minister further enlighten the Senate on any other matters where the Democrats have misled the Senate?

Senator ALSTON—I had almost finished the script, but I will struggle on regardless. Senator Kernot also said in this very dishonest document:

> Would you trust a private company to provide a guaranteed level of access to all Australians if it affected their profits? A guarantee of equal access is essential.

You well know there is a legislative requirement for a standard telephone service.

Senator Kernot—It is your word.

Senator ALSTON—No, it is not our word at all. It is in the telecommunications act and it will remain there indefinitely. Our commitment is to have a review with the intention of upgrading that definition.

The last thing we would ever want is to deny access. You well know that. You well know that that is precisely what the Australian public would expect. Why would any consumers want to be cut off from the service? Therefore, the parliament will respond. I cannot imagine that you are going to move that we somehow eliminate the legislative obligation any more than this furphy about the private sector somehow wanting to downgrade their obligations. The fact is that since this outfit corporatised Telstra in 1991, there has been a legislative obligation on Telstra to operate commercially. We will ensure that they also operate socially. *(Time expired)*

Native Title

Senator CHRIS EVANS—My question is directed to Senator Herron, the Minister for Aboriginal and Torres Strait Islander Affairs. Do you agree with claims that the Native Title Act is 'bad law', that it creates a new form of title which is inherently racist? Do you concur with the view that the act is highly dangerous to this country and represents a profound undermining of the sovereignty of the states?

Senator HERRON—This is a very important question because the Native Title Act has not worked. The opposition is completely aware of that. We said in our policy that we would make it workable. As I mentioned previously when this matter arose, Senator Minchin—

Honourable senators interjecting—

The DEPUTY PRESIDENT—Order! There is far too much shouting across the chamber.

Senator HERRON—They may converse as much as they like. They are obviously in disarray and I am happy for the Leader of the Opposition to talk with his frontbench. That is their problem. Senator Minchin has done an enormous amount of work in producing a paper that is available for discussion. That should be obvious to everybody. Even the opposition should be aware of that.

It should be fairly obvious to you, Senator—and I do not recall whether you were here at the time that legislation was put through—that it is unworkable. Could you name me one title claim that has been agreed to? Has anything gone through the tribunal? Has there been one? No determinations whatsoever have occurred as a result of the act.

We gave an absolute commitment in our policy speech that we would make it workable. It is in terms of workability and practicability that we will approach the Native Title Act. The discussion paper will be responded to. I would expect that it would be responded to from the opposition and every interested party, because if there is one thing that we must get together it is that everybody must agree that it can only work to the betterment of everybody in this country, the wider community as a whole, if it does become workable. Otherwise, it will be caught in the whole process that is occurring now as a result of the inadequate legislation that went through during that period of time. I would appeal to everybody on both sides of the

chamber, whoever they might be, even people outside this chamber, that we work together constructively.

I had great pleasure today in launching an economic program in relation to the Aboriginal community which will work to give them economic independence. I see the Native Title Act and its workability as being part of the process to allow the Aboriginal community to achieve economic independence. Underpinning that economic independence will be the developments in infrastructure and housing, which, in turn, will underpin health and the outcome of health programs.

I think it is important that the act be made workable, that there should be constructive work done in response to the paper produced by Senator Minchin and endorsed by the government, so that we can make that process workable and so that the outcome, both for indigenous and non-indigenous people, will be for the betterment of Australia as a whole.

Senator CHRIS EVANS—Madam Deputy President, I ask a supplementary question. Minister, I note that you failed to repudiate those views. Given that those views were expressed by Senator Minchin in his contribution in the second reading debate on the Native Title Bill in December 1993, do you believe it is appropriate that Senator Minchin, given that he holds those views, should now be drafting the amendments to the Native Title Act? Further, can you tell us which member of the Executive Council in the Senate has jurisdiction and precedence in native title matters?

Senator HERRON—All of us undergo an educative process during the passage of time. If we stand still, we will go backwards in this process. I am not aware of any views that Senator Minchin may or may not have had in the past. I am sure Senator Minchin, like all of us, has learnt an enormous amount from the process that he has gone through in developing knowledge in relation to this. It is like the old wife bashing question, isn't it, when you say that I did not repudiate it? That is the process—you are asking me to repudiate something. Let us leave the past behind. Let us get on with the future and produce an equitable outcome for all Australians.

Budget Deficit

Senator KERNOT—My question is directed to the Assistant Treasurer. I asked earlier this month, in the light of a whole lot of updated Treasury figures which showed stronger growth and a lower deficit, whether the government would be adjusting its proposed $8 billion budget cut downwards. The answer then was no. But in the light of today's national accounts figures, which show growth at 4.8 per cent, wouldn't the rationale for your $8 billion cut be destroyed? Doesn't that growth number mean that somewhere between $2 billion and $3 billion can be taken off that target, while, at the same time, still meeting your deficit outcome? Will the Treasurer now direct Treasury to revise those forecasts downwards and stop the scaremongering? Don't you understand that it is not just about figures and jargon; it is about millions of Australians out there worrying about their jobs, their mortgage and their children's schooling and health care? *(Time expired)*

Senator SHORT—The government welcomes the strong result in the March quarter national accounts figures released today—1.8 per cent for the March quarter and 4.8 per cent for the year to March. That is good. The March quarter result was above market expectations, as the market has shown today. Particularly welcome is the strength of demand and the increase in business investment.

Indeed, there are some other elements there that are also to be welcome; although one quarter's figures should not be taken out of context, because there are some items that may not recur. There is the issue of stocks and there is the issue of the March quarter figures being boosted by the increase in rural production. What we would expect to see is a continuation of the confidence in the economy that has been generated by the March election result, with the election of a coalition government. That is the biggest thing going for the economy at the moment.

Let me answer the specifics of your question. The answer to your question as to whether it affects the budget bottom line for

1996-97 is no. The official forecasts for growth in the economy in 1996-97 remain at around the figure that is there—3¼ per cent. We think that is probably still in the ballpark for 1996-97. But those forecasts will be revised, as will budget estimates, in the context of the preparation of the budget. That is the normal thing that occurs.

In relation to the point that you make about the concern for millions of Australians, the whole strategy of the coalition is to achieve that budget situation which enables long-term sustainable growth. You cannot have long-term sustainable growth when you have a black hole of $8 billion in the budget, because that means you are not getting the savings in the nation that you need for future growth, investment and job creation.

The whole of the budget strategy is all about increasing national savings so that we can build an Australia in the medium and longer term that provides sustainable investment, sustainable consumption and increased job opportunities for all Australians. The great disaster of recent years came from the fact that the former government was not aware of those basic essentials for the building of sustainable economic growth.

To come back to your question again: the March quarter results, which are historical, do not affect at this stage the forecast for next year. But, of course, we will review and, if necessary, revise the figures in the course of the preparation of the budget, as is the thing that is always done. *(Time expired)*

Senator KERNOT—Minister, why can't you just stand here and say, 'We welcome the figure and we welcome the fact that it gives us a little bit of room to move away from the rigidity; it gives us an opportunity to show a bit of compassion'? Is the reason you will not revise it that you are going to use that usual trick of preparing us for a horror budget so that we will all be so terribly grateful when it is not as bad as you said? Are you doing it because you are locked into that ideological bent? You just really want to do it, don't you? That is the point. You really want to do it more than anything because that is your rigid ideology. Senator Alston talks about ideology. Why can't you just stand here and say, 'We welcome the figure because it gives us a little bit of room to move with compassion'?

Senator SHORT—I said that we welcome the figures; I said that in line one. For the Democrats to talk to us about compassion is the height of hypocrisy, when they pursue, aid and abet policies that are going to blow this economy out of the water, that are going to destroy national savings, that have destroyed jobs, that have destroyed confidence and hope in the Australian people and that have borrowed and stolen from future generations for the needs of this country.

Higher Education Funding

Senator WEST—My question is directed to the Minister for Employment, Education, Training and Youth Affairs. Minister, it was reported this morning that you were lobbied heavily by sectional interests, including the National Party, to quarantine certain areas of your higher education savings measures. Can you assure the Senate that your forthcoming higher education policy will be a national policy, not a National Party policy?

Senator VANSTONE—You invite me almost to give you a very short answer and to simply say yes; but there is more I care to add to that. Yes, I can give you that undertaking. I want to assure you of something else. If there are senators or members from whatever party—I do not care whether they are from the Democrats or the Greens—who are concerned about institutions in their electorates and they want to put proposals to me, I will listen to them. National Party and Liberal Party members have approached me. I am yet to be approached by a member from your side. In particular, if vice-chancellors want to work with their local members, then I am more than interested to meet with them together. I am quite happy to do that.

You will quite understand that, if a vice-chancellor were to say to me, 'I want to have some confidential discussions with you,' I would necessarily not have those discussions with a wide range of people. But, if vice-chancellors want to, in effect, publicly put a case and say that they would like to have their local members there, or the local mem-

bers bring the vice-chancellors along, I am more than happy for them to do so.

You should not get into too much of a fuss because a few National Party people came yesterday with some people from the University of the Southern Cross. I would think they were not doing their job if they did not do that. Because I am meeting with some Liberal members this afternoon with a vice-chancellor from the University of Western Sydney, will you be asking me to ensure then that the policy will not assist Western Sydney? Is that what you will be asking? Do you want to take the opportunity to respond to that, Senator? I think not.

So let me come back to your original question. Can I assure the Senate that any budgetary package with respect to the higher education sector will be in the national interest? Yes. Will it be in higher education's interest? Yes.

Senator WEST—Madam Deputy President, I ask a supplementary question. Minister, do you agree that, as soon as you publicly indicate you might cut funds for so-called wealthy universities to shield regional universities, you are starting to evolve two inherently separate funding structures for the higher education system? Don't you acknowledge that, as minister for education, you should be an advocate and a defender of the entire higher education system?

Senator VANSTONE—Yes, Senator, I certainly do accept that, as minister for higher education, I should be responsible for and an advocate for the entire system. I gather the remarks you are referring to are some remarks that were made last week which did nothing more than state the facts.

One of the vice-chancellors of one of the so-called sandstone universities has in fact written to me raising a number of issues. He highlighted that he did at least understand what was said, as I am sure other people did too, and that is that there are some older, more established universities who have significant reserves from endowments and other areas and who are better placed to make any savings, better placed to be able to cope.

That is simply, Senator, a statement of facts. I am sure you understand that, within the higher education sector, there are universities who are more able to cope with change than others. The new, struggling universities obviously are in a different position to the older, well established universities. I have simply stated that case. *(Time expired)*

Taxation of Award Transport Payments

Senator McGAURAN—My question is directed to the Assistant Treasurer. Is the minister aware of industrial action being taken today by building workers to protest about the Treasurer's decision concerning the taxation of award transport payments made to on-site building workers? Can the minister advise the Senate of the rationale for the decision and whether the action being taken today will influence the government to change its position?

Senator SHORT—I thank Senator McGauran for his question. Yes, I am fully aware of the industrial action being taken today. It is totally unwarranted action. I welcome this opportunity to give the Senate the background to the matter.

Senator Faulkner—Oh, yes! Page one.

Senator SHORT—Yes, it is a very important question, and it deserves a considered and responsible answer. The Treasurer announced on 2 May that this government would not be proceeding with the announcement of his Labor predecessor—that is, Mr Willis—in December 1995 to change the tax act to give tax exempt status of $7.60 a day to award transport payments for construction workers. I have to say to Senator McGauran and the Senate that that announcement by the former Treasurer, Mr Willis, was not only rash but also cowardly. It was rash because it could not be justified on the grounds of rationality or equity. It gave building workers special tax treatment not offered to any other workers who also receive award transport payments. A range of other employees receive award transport payments, including engine drivers and firemen, aircraft engineers and pilots, bank staff, insurance industry employees and employees in the television and timber industries.

Senator Burns—Give it to them as well.

Senator SHORT—I pick that one up. 'Give it to them as well,' says Senator Burns. Give them a free kick against every other Australian is what he is saying. The headlines in the media at the time of the announcement said things such as 'Building workers win big tax breaks'. In other words, the media was quite correctly highlighting that the building workers were getting a tax break not available to any other workers, including others who received award transport payments.

Mr Willis's announcement, as I said, was cowardly as well. It caved in to pressure from some of his union mates. At the time of the announcement, in December last year, the unions claimed Labor's decision as a major victory. Not only was it a special deal; it was a special deal stitched up to buy votes. It was all about the forthcoming election. A report in the *Australian Financial Review* of 5 December—I think the day after the Willis announcement—quoted a union official as saying, 'A victory for commonsense leading up to the forthcoming federal election.'

The rationale for our decision is very straightforward: under us all workers receiving award transport payments will be taxed in exactly the same way. The payments will be taxable, but workers can claim for deductible travel expenses. There will be equity; there will be no special treatment for union mates. We will stick by the law as it has always been. It says that those amounts are taxable. We are not changing the law.

I stress that we are not changing the law. Our decision is to maintain that part of the taxation law which has been there for very many years. Under that law, award transport allowances are and have always been taxable. Whether the tax was ever actually paid on the amounts is a separate issue that has to do with—

Senator Bolkus—Do you want some more time?

Senator SHORT—Yes, I would like some, actually. Perhaps Senator McGauran could give me a supplementary question. That has to do with the administration of the taxation law. Treasurer Costello announced on 2 May—*(Time expired)*

Senator McGAURAN—Minister, do you have any further comment to make on the government's rationale in making its decision?

Senator SHORT—I thank Senator McGauran. That is a very perceptive supplementary question. As I was saying, Treasurer Costello announced on 2 May that we are keeping the current law. We are not proposing to change the law, which is what the unions seem to be implying. The former Treasurer's, Willis's, special deal for building workers—it disadvantaged, I must point out, each and every other worker in Australia, including in particular those who received award transport payments—required a change in the law. Willis wanted to change the law. He never got around to doing it. The suggestion that we are changing the law, that we are doing something to affect the longstanding situation, is simply incorrect. Our decision is to maintain the law as it has always been. It has always been accepted as fair and equitable by the overwhelming majority of Australia.

The DEPUTY PRESIDENT—Order! Senator, your time has expired, and you should refer to Mr Willis as 'Mr Willis'.

Higher Education Funding

Senator CARR—My question is to the Minister for Employment, Education, Training and Youth Affairs. I refer the minister to last week's report of the Bureau of Immigration, Population and Multicultural Research which documented that higher education exports, particularly in Asia, are worth some $1.76 billion per annum to the Australian economy. I ask the minister: are you concerned that your 'bull in a china shop' approach, as referred to by Professor Mal Logan, Vice-Chancellor of Monash University, has led to his getting a clear message—'loud and clear'—from all his alumni in the Asian region, 'What the hell are you doing to one of the most successful parts of the Australian economy?' What strategy do you have to repair the damage that your incompetence has caused?

Senator VANSTONE—Senator, I have not

seen the report of last week that you refer to, although $1.76 billion is not that far off the most recent figure that I am aware of. It is a figure of $1.3 billion, depending, of course, on what is included in the basket that might shift it up to $1.76 billion. Senator, there was a recent report—I have no doubt you saw it as well—in the *Herald-Sun*, querying the impact of higher education savings and discussing a reported strike for next Thursday on the export of higher education.

There are a number of things I want to say to you with respect to this. You should understand, as you probably do, that it is not just the university sector that contributes to the tertiary exports of education; the TAFE sector does as well. I am sure you know that. The figure I have is that it is $1.3 billion for the universities in particular. Let's not argue about the basket. I think you and I agree that there is a very significant export industry here and it needs to be protected. I think that much at least we can agree on.

I want to assure you that the government has absolutely no intention whatsoever of endangering that very valuable export revenue. The government is committed to improving the quality of higher education and nothing in this year's budget will undermine that commitment whatsoever. There is no question of education export markets being damaged by any contribution that higher education might make to fiscal policy.

I come to the question of the strike action planned for this Thursday. You will well understand, because of your involvement with the unions, Senator, that the strike action planned for Thursday was not initiated as a response to the question of whether higher education would have to make a contribution to the savings proposal. You know that. The strike action on Thursday was initiated and planned long ago as part of a campaign vis-a-vis the higher education salaries dispute. You know that; don't shake your head!

Get up on the record and say if you don't believe it to be true. You know it is true.

The higher education sector that wants to quarantine higher education completely and say, 'Not us; we are not making a contribution,' is in fact piggybacking on the back of that strike. Nonetheless, I refer to the strike action. It is, as you know, being initiated because of the higher education salaries dispute. Why is that still going on? It is because the previous minister misled the higher education sector; went along and said, 'I will do a deal. I will get it through cabinet,' and was unable to deliver. By raising expectations, he let people down and he made that dispute go even longer. Let's have no misunderstanding about what the dispute is about on Thursday.

I am sure you probably understand that overseas students do not contribute to government funding. There is a very real, in my view, and imminent threat to Australia's share of the international market for education because of this strike on Thursday and any implication by unions and other people involved that this strike will be repeated in the future. It is clearly premature. No decisions have been made. The higher education sector has been invited to make a contribution to shaping the savings proposal. All this does is reinforce stereotypes about Australia's industrial relations system. Universities and people interested in this matter must understand the higher education sector is a part of the global market and is at risk if people play with it at will

Senator CARR—Minister, you keep saying that some vice-chancellors are agreeing that they can help you make the cuts. Who are these vice-chancellors and what are the savings that they are proposing? Further, how do your statements fit with the statements by Mr Frank Hambly, the director—

Senator Hill—I raise a point of order. That has no relationship to the first question that was asked. It is not a supplementary. It is in fact a new question. It is therefore out of order.

Senator Faulkner—On the point of order, Madam Deputy President: it is quite clearly a supplementary question. The question that Senator Carr has directed to Senator Vanstone goes to a range of issues in the higher education area, including that particular issue. The supplementary Senator Carr has asked in three parts is clearly in order and ought to be ruled

in order by you, Madam Deputy President.

Senator Vanstone—Madam Deputy President, I agree with my leader that it is not in order but I am happy to answer the question, if that will save wasting the Senate's time.

The DEPUTY PRESIDENT—Senator Carr to date has spent 22 seconds asking a question. He has another 44 seconds and he may develop it better as it goes on.

Senator CARR—Thank you very much. I ask the minister: how do your remarks fit with the statement by Frank Hambly, executive director of the Australian Vice-Chancellors Committee, that the AVCC's policy was to oppose differentiated cuts and it remained unwilling to nominate areas for savings? As he said, 'We are not going to do the government's work for them.'

Senator VANSTONE—Senator, you asked me to nominate who the vice-chancellors are who have contacted me and with whom I have had discussions or am going to have discussions, yet you have been parading yourself in the place as knowing the higher education sector far better than I do.

If you have such good contacts, Senator, if you get on with these people so well, if you know so much about what they want and what they do, you ought to have the list. You ought to already know. If you are so close to these people, you ought to know. In relation to your question as to who these people are, I say this to you: if people want to have a confidential discussion with me or put views to me in confidence, I will keep them in confidence. I was looking at a letter yesterday afternoon which had typed across the front of it 'confidential'. But where someone has not indicated that, I have been perfectly open and honest with the media and anyone else and have said who has come. If someone wants to have a confidential discussion with me, I will keep it confidential. *(Time expired)*

Violence in the Media

Senator HARRADINE—My question is directed to the Minister for Communications and the Arts. I ask him to comment on statements made by Ms Barbara Biggins, the chair of the film board of review, which indicate that the committee on violence in the media established by Mr Howard was looking at easy solutions. I quote from an article in today's *Australian* under the heading 'V-chip only part of the solution' in which Ms Biggins is quoted as saying:

> "The V-chip has been touted as a remedy by some but. . . it's very much a long-term and what I would call a middle-class solution for those able to buy a new set and to keep the control devices away from their kids who can probably program it far more easily,". . .

She is also quoted as saying:

> "I'm certainly concerned about the statements they're making in the press that there is no evidence of a link between media violence and violence in society. . .

Could the minister comment? *(Time expired)*

Senator ALSTON—It is certainly correct to say that there are no simple solutions in this area. What I think is required is a mix of solutions—multi-level solutions. There can be no doubt that sociology and criminology are not exact sciences. I can understand people jumping to conclusions and saying, 'Therefore, you haven't proved that there's a link.'

What I think can be said is that you certainly cannot prove that violence on cinema, video or other electronic forms causes any particular level of violence. But you can certainly say there are a number of ways in which violence can have a deleterious impact on certain groups. It is very easy to generalise and also very dangerous. We certainly do not take the view that there is no link between any violence on video and subsequent behaviour.

I think you also have to say it is a minefield if you are wanting to look at establishing those sorts of propositions on a balance of probabilities, because what research inevitably shows you is that certain violence may cause certain disturbed people to act in a particular way. Young people may be more affected than others. The converse of that, to any lawyer, is to say, 'Yes, and they may not, either.' So you have to be very careful in interpreting that research.

The majority of studies conclude that there are a number of adverse effects from watching violence on television. It obviously depends on the quantity, the frequency, the

people who are watching it, the context in which that violence is portrayed. I certainly would not argue that V-chip technology is a single solution or even the most effective probable solution, any more than I would say that simply putting back violence on television until 9.30 p.m. is somehow the answer. There are a number of ways in which you can address the problem. In some respects it is a health problem. It may have a lot to do with people having a lot of time on their hands and wasting it, in effect, by trying to escape from the real world.

I can recall recently talking to a Supreme Court judge who said he had been presiding over a number of murder trials. He was very concerned that what we might call serial killers are found to be in possession of violent videos. He said that we do not ever have any evidence establishing any sort of a link but you have to ask yourself whether that might be a contributing factor. I think it may well be a contributing factor.

Senator Bob Collins—Whether they wouldn't be serial killers without it.

Senator ALSTON—We can have violence in this chamber, Bob, on a regular basis.

Senator Bob Collins—I am agreeing with what you are saying.

Senator ALSTON—I know you are. That is why I think in trying to tackle this problem in a sensible way we have to have regard for community expectations and not simply the extent to which you can demonstrate proven links. I have seen a number of extracts from what are generally regarded as the top 10 violent videos in the community. It seems to me that not many of them have got much going for them. In the same breath, I am very surprised that they seem to be remarkably popular. Maybe you blokes are watching far too much of it. If I could send you some *Lion King* clips, you might find that a lot more educational.

I say in conclusion that we will be looking at every aspect of this very important and complex issue. There are a number of potential ways forward. Certainly, there are some gaps in existing legislation. But no one should pretend for a moment there is any single solution, any more than they should pretend that the mix of solutions will deliver a dramatically better outcome. I doubt very much whether you can ever say that anything in society is caused by any particular event. What you can say is that, to the extent there is an unnecessary climate of violence and that that is not in the community's interests, we ought to be doing something sensible about it. The committee which will report to the Prime Minister by the end of June will be looking at all those matters. *(Time expired)*

Senator HARRADINE—I have a supplementary question. How could the Attorney-General get it so wrong when it was claimed that, on a study of violent computer games, there was no effect, when, as Ms Biggins points out, that was a study over a 10-year period of largely the Pacman video games, which are nothing like the type of video games that are available nowadays? Can you give the Senate a guarantee that people who may well be desensitised in the OFLC, people who may well be adopting the culture of deregulation in your own department, are not running the show? Can you give an undertaking to the Senate that you will hire competent people who are independent of those two groups so that you will be able to be given both independent and accurate advice? *(Time expired)*

Senator ALSTON—I can understand Senator Harradine's concerns because, quite clearly, you have to take account of changes in technology and the impact of new and ever-more violent forms of video presentation. What we may regard as violent in one year may not be regarded as violent five years later. That may itself be a very bad thing because it means the level of desensitisation has risen.

In your terms, perhaps, the principal culprit is the Institute of Criminology because they come up with some, I think, fairly waffly assessments on this issue. That may not be their fault in the sense that it is very difficult to actually get hard evidence on a number of these things.

Certainly, when it comes to video games the tentative evidence I have seen suggests that, because particularly young people realise

that this is not a real life situation, they are more interested in the competition on the games than they are in the level of violence. Indeed, what I think seems to be more impactful on young people is news and current affairs, which they do recognise as real life. If they do see bodies being carted around, they think it can happen in their own backyard.*(Time expired)*

Australian Defence Force Academy

Senator CONROY—My question is directed to the Minister representing the Minister for Defence, and I ask: could you please explain the nature of the financial relationship between ADFA and the University of New South Wales? Will ADFA funding be reduced at the same rate as other tertiary institutions? Will you guarantee that ADFA resources will not be used to cross-subsidise the University of New South Wales?

Senator NEWMAN—I think that is a very good question, Senator, if I am not deemed to be patronising you—and I do not have all the details. I understand full well the relationship between the two organisations. You may or may not be aware of the fact that our defence policy gave a commitment to maintain ADFA in the face of a parliamentary committee report which I think was pretty dense. However, having said that, I am no longer the person responsible for Defence.

Senator Faulkner—It must be a relief for them.

Senator NEWMAN—It may be a relief to them, Senator. It is a shame, though; I could have had a bit of great interest there.

Senator Faulkner—But you have the job in here.

Senator NEWMAN—Yes, I have a job here—trying to keep you quiet. But, Senator, I will take the detail of that from Mr McLachlan and bring you back an answer, because it is not unreasonable for there to be concern on the issues you have raised. I am sure the minister will be able to give you an answer that will be of help.

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

Sale of Telstra

Senator SHORT—Yesterday, Senator Schacht asked me a question on a scoping study for Telstra and I undertook to provide further information. As I said, I think, yesterday, the Telstra scoping studies business advisors, CS First Boston, are providing specialist strategic advice to the Commonwealth in planning the best approach to the one-third sale of the Commonwealth's equity in Telstra.

The Minister for Finance has advised me, Senator Schacht, that the terms of reference for the scoping study do not address the issues involved in a partial sale of Telstra without legislation as set out in your question and, therefore, the detailed further questions, of course, have no relevance.

Recycled Paper

Senator SHORT—Yesterday, Senator Margetts asked me in a supplementary question for some additional information, which I have. I notice Senator Margetts is not here, so I seek leave to incorporate the answer in *Hansard*.

Leave granted.

The answer read as follows—

Administrative Services

Senate

Senator Margetts asked the Assistant Treasurer/Minister representing the Minister for Administrative Services in the Senate, without notice, on 28 May 1996 a supplementary question requesting information about how environmental costs are taken into account in Government purchasing policy and how these environmental costs are calculated:

Senator Short—The answer to the honourable Senator's question is as follows:

. Suppliers provide information on their goods and their range of products is considered on a value for money basis, including the number and price of recycled items produced—an environmentally friendly product will not be purchased simply because of its environmental merits if its price is not competitive.

. Suppliers' claims regarding the resource sustainability (including recycled content) of their product and reduced energy requirements and pollution are provided to purchasers to allow them to make informed purchasing decisions.

. The Government, through its policy of purchasing goods with the least harmful environmental effects has been the catalyst in influencing the price of recycled paper products, with recycled paper (100 per cent and 80 per cent) now costing approximately 5 per cent less than virgin paper.

Family Court in Launceston

Senator VANSTONE—On 7 May, Senator Murphy asked me a question as Minister representing the Attorney-General and I seek leave to incorporate the answer in *Hansard*.

Leave granted.

The answer read as follows—

Attorney-General

Senate Question Without Notice

Senator Amanda Vanstone—On 7 May 1996 (*Hansard* Page 401) Senator Murphy asked me as the Minister representing the Attorney-General the following question without notice:

Will you end the speculation and concern in northern Tasmania about the future of the Family Court in Launceston by giving a commitment now to keep the Court open.

Will you also ensure that, when you seek your advice from the Attorney-General, you will take note of what Senator Alston said, your policy commitment and also a commitment by your colleague, Warwick Smith, the new member for Bass, that he would guarantee the future of the Court.

The Attorney-General has provided the following answer to the honourable senator's question:

The Parliament has made the Family Court a self-administering agency where decisions about the management of its administrative, including financial, affairs rest with the Court.

All government departments and agencies are expected to shoulder their share of the burden of reducing public sector outlays. In common with other public sector organisations the Family Court will need to reduce its spending. How the Family Court reduces its spending is, therefore, a matter for the Court.

Although specific budgetary targets have been set for the Court no direction has been given, or could be given, to the Court on how to achieve the efficiencies necessary to meet these targets. In this respect the Court is treated in the same way as other public sector organisations and, like other departments and agencies, the Court will need to develop strategic plans to meet the targeted cuts, tailored to meet its individual requirements.

I am advised that it is proposed to close the Launceston sub-registry except as a circuit location. This is, of course, a matter for the Court. However, the Government appreciates that the impact of the closure will extend well beyond the Launceston vicinity and that the matter is a sensitive issue to those people resident in Northern Tasmania. Alternative suggestions have been put to the Attorney-General, which he is currently examining. Should any of these prove viable they will be discussed further with the Chief Justice.

The Court has advised that Court resources in the Tasmanian region are higher than the average resources in mainland regions. There are currently two judges resident in Hobart—one judge, at his own request, relocated from Launceston to Hobart last year. Should either of them choose to retire then the matter of a replacement judge would be considered. I am further advised that in considering a replacement, the Attorney-General would, of course, seek the advice of the Chief Justice to ascertain the judicial resourcing needs of the Court in Tasmania at that time.

With regard to the remarks attributed to my colleague, the Honourable Member for Bass, concerning the future of the Court, I am advised that what he said was that he supports the continuation of a Family Court in Northern Tasmania so as to meet court times and counselling requirements. He also rigorously put the position that the regional courts should continue and the prospect of a strong resident judicial capacity for Tasmania was vitally important. These views have been communicated to the Family Court and to myself as Attorney-General.

Senator-elect Ferris

Senator HERRON—Yesterday, Senator Robert Ray asked me a question and I have a further supplementary answer to the answer that I gave then.

Senator Ray, earlier this year I did attend several meetings and engagements in the Northern Territory and Western Australia. I visited Alice Springs, Hermannsburg, Tangentyere, Yuendumu, Anmatjere, Darwin, Port Keats, Daly River, Jabiru, Perth and Fremantle. And, yes, I was accompanied by a woman who might have stood beside me at doorstep interviews.

But, Senator Ray, you will be pleased to know that I did not have to call on the Australian Federal Police, Hercules Poirot or

Inspector Clouseau to have this 'impersonation', as you called it, of Ms Ferris investigated.

As Senator Grant Tambling from the Northern Territory pointed out after your embarrassing question yesterday, the woman standing behind me, in fact, in the interview was my wife. As Senator Bob Collins would be aware, it is very useful in Aboriginal communities to have one's wife with one because they can talk to the Aboriginal women in the community.

It happens that my wife is about the same height as Senator-elect Ferris. Senator-elect Ferris did not attend any of those meetings. I suggest that you and your colleagues get your eyes tested. As you said yesterday—and I quote you, Senator Ray—most of you 'thought' you saw her standing behind me. You should check your facts, Senator Ray, before launching into preposterous accusations that are paranoid in the extreme. It is the old Labor Party conspiracy theory—and does not apply here, I am afraid, Senator Ray. There has simply been an error on your part.

If this opposition has already resorted to wasting time with outrageous accusations such as this one, I would suggest the government is doing a good job—unlike our predecessors! As I said yesterday, I did have my photograph taken with Senator-elect Ferris and that was at a campaign school for female candidates on 21 and 22 October in Brisbane last year.

So, Senator Ray, I have saved the Federal Police a lot of trouble. The mystery was quite easily solved and I suggest, Senator Ray, that you apologise to Senator-elect Ferris and withdraw your allegations. Would it not be better, Senator Ray, if you tried to get more women into parliament rather than one out.

Budget Deficit

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate) (3.07 p.m.)—I move:

That the Senate take note of the answer given by the Assistant Treasurer (Senator Short), to a question without notice asked by Senator Kernot today, relating to the economy.

The economic growth rate figure released today for the March quarter of 1995-96 was 4.8 per cent. Did we hear about black holes today from Senator Short? The 4.8 per cent growth rate released today shoots one very big black hole in the black hole assertion we have heard coming from those opposite over the last three or four months. In fact, the only hole Senator Short can find now is a rabbit hole to run down to try to avoid the government's earlier comments about black holes.

What does this 4.8 per cent figure mean to the budget? For every one per cent improvement in economic growth in this country, there is an improvement of about $1½ billion in the budget bottom line. What could Senator Short talk about today? As I said earlier, he did not mention a black hole at all today, not once. All he could say today was that the budget may be subject to some revision. He would not go any further and specify what the revisions would be—after the last two or three months of scaremongering about this alleged huge black hole of $8 billion based on budget projections.

Senator Short, I suggest that, after today's figures, you go back to Treasury and ask them what their projections for the next two years are going to be; go back to Treasury and ask them what the budget bottom line is going to be over the next two financial years. If we look at the press release of the Treasurer (Mr Costello) about this so-called black hole, it states:

The current budget estimates for 1996-97 are based on Treasury economic forecasts (discussed below) and incorporate the impact in that year of spending and other decisions taken since the May 1995 budget but excluding election commitments. On a no policy change scenario, there has been a deterioration in the underlying deficit from $0.6 billion (0.1 per cent of GDP) at the time of the budget to $7.6 billion (1.5 per cent of GDP) now. The latest estimates, obviously, are based on more information than was available for the May 1995 budget. Nevertheless, the data base for 1996-97 estimates is entirely forecast and hence subject to substantial revision: that said, the figures here are the current best available estimates.

Today we have some new figures for the March quarter and we have new figures for the year 1995-96.

Incidentally, the March quarter figures were 1.8 per cent of economic growth. I am not going to suggest that we multiply that by four and maintain that economic growth for the next three quarters, because that would give us 7.2 per cent. I do not believe that we will sustain 7.2 per cent over the coming financial year. But what we do have today is a substantial change, a substantial improvement, in a real figure way beyond what was expected by any, I think, economic forecasts.

If we look at the other figures we have had on the economy over the last few months, I think we should take up a number of these issues. There is the issue of inflation. If we look at inflation in Australia for the last quarter—we have figures available—we find it was 0.4 per cent.

If we look at the issues of research and development and of labour productivity—I do not think those figures have had a lot of discussion in the current economic debate—we find that in 1981-82 the figure for expenditure on business R&D increased at an average annual rate of 11 per cent in real terms; that was well above the OECD average. R&D expenditures represented 1.6 per cent of gross domestic product in 1992-93, up from one per cent of gross domestic product in the early 1980s. If we look at the issue of labour productivity over the period form 1970 to 1989, Australia's labour and total factor productivity rates—*(Time expired)*

Senator HILL (South Australia—Minister for the Environment) (3.12 p.m.)—I am pleased to contribute briefly to this debate. I do find it astonishing that Senator Sherry feigns anger here and now after questions, yet the matter was of so little consequence to the Labor Party, apparently, that he relied on Senator Kernot of the Australian Democrats to ask the question for him. I know questions get shared out at the broad caucus meetings, but I would have thought, if the Labor Party were interested in this subject, they would have at least asked their own question.

The second point is that Senator Sherry, in fact, is demonstrating that the Australian Labor Party has learnt nothing from its economic mistakes of the past. The legacy that the Australian Labor Party has left us with is one of continuing budget deficits and their consequences—and that is what it seems to be advocating again. Just because we get one better figure—and we all accept that these figures jump around a bit—he wants this new government to abandon its policies of reducing public expenditure and go back to the Labor Party's recipe of hoping that it will all work out. And if it does not work out, you just borrow more. And, if that does not work out, you tax more. They are the recipes that have got this country into the awful mess that it is in.

Labor's record for the last three years has come about despite 19 successive quarters of growth—and what benefit have the community got from that? Despite 19 successive quarters of growth, if you look at the last three years you will find total budget deficits under Labor in excess of $40 billion. So it had the opportunity for growth, and it squandered that growth.

Now what should we be doing? Senator Sherry is suggesting, of course, we should not be looking at the expenditure side. We should go back to the course of action of the previous government. But his advocacy is extremely out of touch with that of other economic commentators. I remind him simply—

Senator Sherry—You conned the Australian people.

Senator HILL—Before I get to the economic commentators, Senator Sherry, I will tell you of the part in the national accounts that should have concerned you most today—and we are pleased to see hopeful signs for increased growth because that can give us a greater chance of more jobs, which is what we want and you abandoned. But this is the part of the national accounts that should have concerned you most today:

> . . . the December quarter national accounts contained significant downward revisions to the household savings ratio in recent years. Data for the March quarter suggests a further fall in the household savings ratio from 1.4 per cent in the December quarter to 0.1 per cent in the March quarter following sharp declines over recent years.

This is the problem: both at the public and personal level we are not building on the growth of recent years and establishing a

savings base from which this country can be economically competitive. That is why we have got these awful current account figures; that is why we get continuing pressure on interest rates; and that is why it is so difficult for Australian business to compete, to grow and to employ.

As I said, you only need to look at the advice of commentators such as the Governor of the Reserve Bank. What did he say recently about any increase in growth occurring? He said:

> Any dividend from faster growth should go straight back to improving the budget's bottom line, not to reducing the fiscal consolidation task. Next year will mark the sixth year of economic recovery in terms of the economic cycle. We should already be in underlying surplus and, in terms of our large current account deficit and low private savings, a sustainable surplus at that.

Of course, what he is reciting is the failure of Labor's economic policies, but Senator Sherry comes in here after question time to say that we should go down that same path: that path that gave us $180 billion of debt in this country, that path that has given us forecast budget deficits of $8,000 million, that path that has given us about the highest real interest rates in the developed world, that path that has shown our country becoming less and less competitive as the years go by.

The latest statistics that have come out in only the last few days in the 1996 *World Competitiveness Report* show Australia's ranking down from 21st position to 16th position in the last year. *(Time expired)*

Senator WHEELWRIGHT (New South Wales) (3.17 p.m.)—On the same matter, I wish to take note of Senator Short's answer to Senator Kernot's question. Of course, in answer to Senator Hill, there is no point in asking the same question twice, Senator.

By way of preamble, it is worth bringing up a point that I know Senator Murphy would back me up on. I well remember the first time I came into a taking note debate. Senator Baume, who was then in the opposition, admonished government Senate backbenchers for taking up time during debates to take note of answers. He gave a great speech about how it was there for the benefit of the opposition; they were the ones who had wanted it brought in and that was the purpose of it all. I draw the attention of the Senate to the minister hanging around in the taking note debate when he has had plenty of opportunity, one would hope, in questions from his own side, from the other side and from the minor parties, to answer a question. Yet he is still here to try and dig himself out of a hole in this debate.

Let us look at the sort of hole he is in. I was mystified last week when Senator Short told the Senate that 'the $8 billion black hole is not a creation of the government or its imagination; it is in fact the best available forecast of the Treasury.' Why would he say that? I was puzzled, and I am sure any other economic forecaster or commentator would be puzzled by that sort of statement. Surely, at the very least, the numbers that we have had today in the national accounts would leave grave doubts as to this $8 billion number.

Why would it be that he would persist? Why would there be this dogmatic insistence that this $8 billion number exists? There are two reasons for that: he does not understand the forecasting process, which is quite possible, or, which is far more serious, he is deliberately trying to mislead the Senate in terms of the fiscal position of the Commonwealth.

Let us look at why he might not understand. Under the last government, some major reforms were brought in in terms of fiscal responsibility. When Senator Short was working in Treasury there was only one go per year at what the fiscal position was and that was in the budget—no forward estimates, no forecasting round, no midyear review, nothing. Under the previous government, the Labor government, you had the budget, the forward estimates, four rounds per year of JEFGA to estimate the fiscal position and you had a midyear review. All of those things were brought in by the Labor government.

The report that was given to the incoming government after the last election was based on the normal forecasting round and the midyear review, which the Labor government brought in and which the previous Treasurer, Ralph Willis, brought forward for the pur-

poses of the election campaign. They brought forward the forecasting from the normal period of January to November and December in order that the fiscal position for 1995-96 could be known. The midyear review had been completed and there would therefore be no dispute during the election campaign about the state of the budget for that year.

That approach could be contrasted with the sort of position we have now. There have been other forecasting rounds—and one wonders what they might have said—but it was never the case that anybody was going to attach any other meaning to the $8 billion number that this government received when it came in, other than that it was a projection and nothing more. Everything that has happened since then has moved against that projection being in any way reliable.

The Reserve Bank has said that growth is going to improve through the year, the housing cycle has bottomed, the terms of trade have started to improve and the world economy is improving, which leaves better a light for exports, so every sort of indicator for the growth in the out years is actually better. One would wonder why you would stick with a number of 3¼ per cent for the next financial year when you are coming off a base of what is now 4.8 per cent. Despite all that the Reserve Bank has said, all that other commentators have said about the fact that growth is going to be stronger, why would you still stick with a number which suggests it is actually going to fall? It is absolutely bizarre.

The real reason is this: Fightback had $10 billion in cuts over three years; now they want to have $8 billion in cuts over two years. Four billion dollars is one per cent in GDP growth. Anybody knows you need at least four per cent to do anything about employment because you have got two per cent for productivity and two per cent in natural growth in the work force. In other words, they want to take one per cent off growth, which will reduce the current figure below the level required to reduce unemployment. That is what Senator Kernot has been trying to point out. She gets nothing but abuse from the other side; nobody is prepared to listen to this. If that is not an ideological bent, nothing else is. That is the real reason for their answer. *(Time expired)*

Senator GIBSON (Tasmania—Parliamentary Secretary to the Treasurer) (3.22 p.m.)—I rise to take note of Senator Short's answer to Senator Kernot's question about the national account figures and also to discuss the comments that have come from the other side. The first point that needs to be made is that these are the seasonally adjusted figures that have been put out. For some time now the Bureau of Statistics has been endeavouring to educate people to rely more on the trend figures than the seasonally adjusted figures. The trend figures for the last quarter are one per cent, as compared with the 1.8. Hence the trend figure for the year for the quarter just ended is 4.1, as opposed to 4.8. So let us not get too carried away about the 1.8 figure for one particular quarter. As Senator Short said, the government welcomes the increase economic growth.

Senator Sherry—A pretty begrudging welcome.

Senator GIBSON—Of course we welcome the economic growth. We are not silly. But the economic growth numbers are to do with the total economy. Our budget numbers are to do with the Commonwealth government's part of that, which is about a quarter of it. What I want to point out is the absolute fiscally irresponsible way that the Keating government spent up taxpayers' money, particularly over the last four years. Let me quote the numbers. In the 1992-93 financial year the government's income from tax and charges was $95 billion. This current financial year, 1995-96, four years later, the budget estimate last May was $124.4 billion, an increase of over 30 per cent in income by the Commonwealth from all taxpayers over that four-year period.

If you go and talk to businesses—small businesses, medium-sized businesses, large businesses—anywhere in Australia and ask anybody to put up their hand who has had revenue increases of 30 per cent or more over the last four years, it is very hard to find one. But the Labor government in its last four years, particularly under Prime Minister Keating, took in all that income increase of

30 per cent over that four-year period and spent it. Not only did they spend all that increase in income but they also borrowed heavily over the same period. At 30 June 1991 Commonwealth own debt was $32 billion. Today the estimate is that the Commonwealth's own debt is about $100 billion.

Senator Sherry—What is the debt service ratio?

Senator GIBSON—It does not matter about the debt service ratio. You increased your income over the last four years by an enormous amount, aided and abetted by the Democrats in raising taxes. You went out and borrowed over $60 billion extra and spent all that. Then you also sold off a fair bit of the silver: Qantas, part of the Commonwealth Bank, CSL, some other bits and pieces—$8.6 billion worth of silver has been sold over that same four-year period. That has been spent also.

Worse than that again is infrastructure investment by the Commonwealth. In the early days of the Hawke government over 8 per cent of outlays of the Commonwealth went into infrastructure investment by the Commonwealth. By the time Mr Keating became Prime Minister, that figure was down to 4.7 per cent and this year it is down to minus 2.3. So not only has there been this huge increase in income, but the government went out and borrowed a huge amount, sold off the silver and stopped investing in infrastructure. The fiscal stance of the previous government was an absolute mess. No wonder we have to turn that around and live within our real income. That is where the $8 billion commitment has come from. We welcome increased economic growth, but the mess was left by you.

Senator COONEY (Victoria) (3.27 p.m.)—It is probably worthwhile in this debate to come back to what I understood was the original purpose of Senator Kernot's question and the answer we have had since. At the moment there is debate about what is the actual situation regarding the economy and how that is to be handled in terms of the priorities that the government sets. The government is setting priorities and proposes to cut services on the basis that there is going to be an $8 billion black hole. The people of Australia have to make up their minds whether or not there is an $8 billion black hole or whether the proposition that there is going to be such a hole is put forward as a smokescreen or as an excuse for making cuts that need not necessarily be made for the purposes as stated. It is a question of credibility. Is this a genuine figure that is put forward? Is the government genuinely of the belief that there is an $8 billion deficit or is it putting that forward as an excuse for making cuts for some other purpose?

In deciding that question—whether it is a genuine black hole or whether it is an excuse for cutting—it is fair and reasonable for the people of Australia to see how the government handles that $8 billion figure. If there are changes—and Senator Kernot has pointed this out today—in the figures that the government has to use to make a prediction upon, then the fair presumption would be that there ought to be at least some reconsideration of that $8 billion figure. But when you have changes in the predictions and the adherence by the government to the figure of $8 billion then it is reasonable for the people of Australia to say that $8 billion is an excuse for other things and is not a genuine figure put forward to justify a necessary cut in expenditure.

In other words, when the government makes absolutely no change in the approach it takes to the running of the economy, when it goes ahead with these cuts which are going to be quite severe on very many people and makes no change to the prediction it gives, it is a fair conclusion that the $8 billion is just a smokescreen and that there ought to be, in the interests of the welfare of Australians generally, a rethinking by government as to the cuts it proposes to make. It would seem, given this figure, that the extent to which the cuts were made was not justified. That is what I understood to be Senator Kernot's proposition. To date, it has not been replied to.

Senator McGAURAN (Victoria) (3.31 p.m.)—I would have thought the previous speaker, Senator Barney Cooney, would have learnt the lessons from the last election, particularly coming from the state of Victoria.

We can tell from listening to speakers from the other side of the chamber that they have not learnt the lessons; they just want to run up the debt. Not one of them mentioned balancing the budget or bringing the budget into surplus. For heaven's sake, you either do not know, or you do not acknowledge, exactly why you lost the last election and why we were put in government—to bring responsible and disciplined government to Canberra.

Even the disgraced Victorian Labor Party opposition under Mr Brumby have admitted their error and have written into their platform the need for a balanced budget. Even they have had to admit before the Victorian people—for whatever good it did them—that they need to put into their platform a balanced budget. Those on that side of the House have stuck to their old ways. They continually want to run up debt.

The truth is that the government does have a strategy. Regardless of the hostility and obstruction of those on the other side of the Senate, we are going to stick to that. Whatever can be gleaned from today's national account figures—as my colleague Senator Gibson said, there really is only one quarter to be focused on and encouraged by—has to be built on and secured by this government. The strategy is for disciplined government expenditure and fiscal responsibility.

Senator Sherry—What do the farmers think of that?

Senator McGAURAN—What will follow from that, Senator Sherry, is what your government was never able to achieve on the boom and bust roller-coaster you put the Australian people on. What will follow is downward pressure on interest rates. To this day, the Australian economy is facing the second highest real prime interest rates in the world—second highest to Italy, and that is nothing to be proud of. Australia's real prime interest rates are 6.8 per cent, compared with other OECD countries such as Britain with 4.6 per cent and the US with 5.35 per cent.

Our interest rates are putting pressures on Australian households. That was conceded by the Reserve Bank only a day or two ago, but there is now tremendous pressure on Australian households and their mortgage repayments. The front page of Monday's *Australian Financial Review*, in an article by Andrew Cornell, states:

> Increasing household debt and growing signs of repayment problems for many Australians are triggering concern in the banks and the Reserve Bank of Australia.
>
> Personal credit has been growing steadily on a monthly basis since July 1994, and the latest RBA figures showed it standing at $47.1 billion in March—a rise of more than 10 per cent in a year.

So our strategy is to bring the budget into surplus so as to put downward pressure on interest rates. That is a relief for all Australians who have a mortgage and it will bring confidence to Australian business. There is no doubt that the $8 billion cuts are going to be hard. Ministers do have a task ahead of them.

Senator Sherry—When are you going to stand up for the country; when are you going to stand up for the farmers?

Senator McGAURAN—Read the front page of the *Australian*, Senator Sherry—that will answer that question. It is worth noting that this government by good administration has already tightened its belt in many different areas, even before we get to the hard cuts—and there will be hard cuts. Its own ministers have taken a $10,000 cut in their pay. They have reduced staff numbers by one. They have less luxury than your ministers ever had. We have reduced the number of consultancies from the 42 hanger-onners that you had to one hanger-onner?

Opposition Senators—Ha, ha!

Senator McGAURAN—A bit of humour in this place does not hurt, from time to time. You had 42 hanger-onners and we have reduced the number to one.

Senator Sherry—I take a point of order, Mr Acting Deputy President. When is Senator McGauran going to stop defending the banks and the Liberal Party and start defending farmers?

The ACTING DEPUTY PRESIDENT (Senator Colston)—That is not a point of order.

Senator Kemp—I take a point of order. We have listened with great interest to my colleague. I think his has been a very power-

ful and important contribution to this debate but it is exceedingly difficult to hear him because of the amount of abuse coming from the other side of the chamber. I wonder, Mr Acting Deputy President, whether you might care to take some action to get some order back into this place?

The ACTING DEPUTY PRESIDENT—I will take your comments under consideration.

Senator McGAURAN—In the short time I have I just want to make the point about the hard cuts, which no-one wants to make. When we came into government we found rorts galore.

Senator Kernot—Mr Acting Deputy President, I want to take note of a different answer. How much more time is there, please?

The ACTING DEPUTY PRESIDENT (**Senator Colston**)—None, virtually.

Senator Kernot—I might have to wait till the adjournment. Is that it? Thank you, because I had more than one minute's worth.

Question resolved in the affirmative.

Senator Kernot—We need to look at getting a better share of taking note.

The ACTING DEPUTY PRESIDENT—The time had expired at 3.37 p.m.

Senator KERNOT (Queensland—Leader of the Australian Democrats)—by leave—I would like to make a general point. For two days I have wanted to take note of an answer. I understand how it works, but I would like to point out that those of us down here hardly ever get the call first to choose the answer that we want to take note of. I would hope the procedure committee might look at that. It simply means that we hardly ever get an opportunity.

The ACTING DEPUTY PRESIDENT—I will pass your comment on to the President.

Senator SHERRY (Tasmania—Deputy Leader of the Opposition in the Senate)—by leave—The tradition in the chamber is well recognised and well understood. Taking note is the opposition's time. It is a regret to us that the government has seen fit to waste time and speak on this issue.

Senator Murphy—According to Senator Baume it is.

Senator SHERRY—Senator Baume used to get up time and time again on points of order in taking note and criticise us when we were in government.

Senator PANIZZA (Western Australia)—by leave—Senator Wheelwright mentioned during his delivery that when he first came here the taking note of answers given in question time was mainly for the opposition. When in opposition we took that to be it. That was our chance to respond to the answers or the mudslinging we got from the ministers. But it soon got away from that. The first person to abuse the system—and I told him across the chamber—was Senator Schacht when he was the minister for customs. Senator McKiernan got on board quite regularly as well.

Senator Kernot—Is this a short statement?

Senator PANIZZA—Yes, it is a short statement. When it ceases being short, Senator Kernot, the Acting Deputy President will tell me, not you. That was the situation. It was started by Senator Schacht, then Senator McKiernan and others continued. It got back to the situation where it was virtually from one side to the other. That is how it evolved and that is how it is going to remain as far as I am concerned, because you are the ones who started it.

Senator Murphy—What a load of rubbish.

Senator PANIZZA—Senator Murphy, you are always on it. I am glad you reminded me. Senator Schacht, Senator McKiernan and Senator Murphy were the chief ones. So it evolved to go from one side to the other. That is as much as I am going to say, and it will stay that way until the procedure committee changes it.

If Senator Kernot feels she misses out on this, I suggest she go through the same procedures as everyone else. If she wants to take note of an answer, she should put her hand up.

Senator McKiernan—On a point of order, Mr Acting Deputy President: if this arrogance that we are seeing from the other side continues, there will be other points of order called in this place to ensure that that side is forced to listen to the arrogance and witness

it in the same way as we are witnessing it now. I am referring, of course, to quorum calls.

The ACTING DEPUTY PRESIDENT (Senator Colston)—I am hopeful that this will be the last request for leave.

Senator PANIZZA—If Senator Kernot wants to take part in taking note of answers, she should remain in the chamber, use the same procedures as everyone else, hand up her request to the President like we on both sides always do and she will get the call like everybody else.

The ACTING DEPUTY PRESIDENT—As I indicated, I will see that Senator Kernot's remarks are passed on to the President.

COMMITTEES

Legal and Constitutional References Committee

Report

Senator McKIERNAN (Western Australia)—I present the report of the Legal and Constitutional References Committee on outstanding matters referred to the committee during the previous parliament.

Ordered that the report be adopted.

Scrutiny of Bills Committee

Report

Senator COONEY (Victoria)—I present the second report of 1996 of the Senate Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills *Alert Digest* No. 2 of 1996, dated 29 May 1996.

Ordered that the report be printed.

Membership

The ACTING DEPUTY PRESIDENT—The Deputy President has received letters nominating senators to be members of various committees.

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

That senators be appointed as members to committees as follows:

Community Standards Relevant to the Supply of Services Utilising Electronic Technologies—Select Committee—

Senators Denman and Reynolds

Economics References Committee—

Participating members: Senators Cook and Murphy

Substitute member: Senator Crane to replace Senator Panizza on industrial relations matters

Environment, Recreation, Communications and the Arts References Committee—

Participating member: Senator Lundy

Rural and Regional Affairs and Transport References Committee—

Participating member: Senator Murphy.

Community Standards Relevant to the Supply of Services Utilising Electronic Technologies: Senators Denman and Reynolds.

HOUSING ASSISTANCE BILL 1996

First Reading

Bill received from the House of Representatives.

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

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

Bill read a first time.

Second Reading

Senator KEMP (Victoria—Parliamentary Secretary to the Minister for Social Security) (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—

This bill authorises the commonwealth to formulate and enter into a new Commonwealth State Housing Agreement (CSHA) with the states and the territories, for the purpose of providing housing assistance so that people may achieve housing that is affordable, secure and appropriate to their needs.

Through this bill, the government is demonstrating its stated commitment to the CSHA as an important instrument in guiding national housing policy. We also wish to signal clearly our commitment to a process for further reform of the commonwealth and state roles and responsibilities in the housing area. The government is keen to implement longer term reforms as soon as possible to build on improvements in the efficiency and effectiveness of government housing assistance commenced in the new CSHA.

The government believes that housing is not simply about bricks and mortar. As a policy goal, we are interested in providing people with greater choice in housing which is appropriate to their needs. We will be seeking to offer low income Australians a real choice between different forms of assistance and different providers of assistance. In achieving our aims, we will encourage private sector involvement in the supply of affordable rental housing for people on low incomes.

Continuing changes in lifestyle, household and family structures and demographic shifts in Australia call for innovative housing responses. Such changes set a challenging agenda for housing reform.

In tackling the agenda for housing reform, it is necessary to take a national, strategic approach to meeting the future housing needs of Australians in partnership with state, territory and local governments and the private sector.

The intention of the new CSHA is to enable the states and territories to get on with the job of delivering quality housing programs and enable the commonwealth to clearly monitor performance.

This is a direction which is strongly supported by the Council of Australian Governments' (COAG) micro-economic reform agenda. COAG has agreed that the "overriding objective" of the reform of commonwealth and state roles and responsibilities should be to "improve outcomes for clients and value for money to taxpayers". To this end, COAG has endorsed the need for clearer delineation of roles and responsibilities for housing provision and has noted that significant progress has been made with respect to these reforms in the housing area.

Indeed, the agreement enabled by this legislation will lead the way in measuring the effectiveness and efficiency of government programs by rigorously measuring program outcomes.

Let me now turn to some of the key features of the new agreement being negotiated.

It is intended that the next Commonwealth State Housing Agreement will operate from 1 July 1996 and will continue to be targeted to meet the needs of people who are most at risk of housing related poverty. It will be an interim agreement for up to 3 years aimed at achieving a number of fundamental reforms. As such, it will provide a basis for further significant longer term reform to achieve even greater improvements in the efficiency and effectiveness of government housing assistance.

The agreement will be funded by a special appropriation in 1996-97 of approximately $1,068 million. Funding for subsequent years will be determined as part of the commonwealth budgetary process and in light of progress in implementing longer term reforms and the report of the National Commission of Audit.

The new CSHA will acknowledge that the states and territories will be responsible for managing both the delivery of services and the assets and resources associated with service delivery. It will also offer states and territories greater flexibility in the provision of housing assistance and make them better able to exercise a broader range of options in ensuring a target level of housing stock. Ultimately, this will provide for greater housing choice, better-performing housing assistance programs and a greater focus on the quality of the housing assistance products provided to the consumer.

It is intended that the new CSHA will set out a number of broad principles in relation to the rights and responsibilities of consumers, and will address consumer expectations about consultation in relation to planning and service delivery. It is the government's intention to encourage the development by states and territories of Codes of Practice, in line with agreed national Guidelines, which will set out in a clear and consistent manner the respective rights and responsibilities of service providers and consumers.

While conferring increased flexibility on the states, the new agreement will also acknowledge that the commonwealth has strategic national policy interests in relation to housing assistance. It will be the commonwealth's responsibility to ensure that the agreement is part of a coherent housing policy which is supported by, and responsive to, the commonwealth government's overall policies.

The commonwealth's primary roles will be to specify the national housing objectives of the commonwealth government and to evaluate the performance and outcomes achieved by states and territories which are to be funded under the new CSHA.

It is intended that the new CSHA will introduce nationally agreed measures of performance in relation to the achievement of consumer outcomes and administrative efficiency outcomes. states will be required under the agreement to report annually on their performance against key performance measures, thus providing an unprecedented level of accountability and transparency in housing operations.

I would like to turn now to an overview of the legislation before us today.

The Housing Assistance Bill provides a new framework for the provision of housing assistance by enabling the commonwealth to enter into common-form agreements with states and territories for the purposes of providing housing assistance.

The bill is based on two basic premises:

- that the Australian community holds housing and shelter to be a fundamental human need; and

- that the majority of Australians are able to secure housing of an appropriate standard within their means.

This bill is based on the principle that all Australians, regardless of their economic or social status have the right to affordable, secure and appropriate housing. This government is concerned with building an Australia that is fair, that offers all its citizens opportunities to prosper, to enjoy fulfilling lives, to participate in their communities—in short, to exercise the rights of citizens and to fulfil the responsibilities which go with those rights.

However, it must also be borne in mind that a significant number of Australians do not have the means to secure adequate housing or to exercise a choice in their accommodation. Nor is affordability the only barrier to achieving an appropriate standard of secure and affordable housing.

People who experience, or who are at risk of, housing related poverty are more likely to experience economic and social disadvantage. They are also more likely to experience discrimination in their efforts to obtain housing and to experience adverse effects of inadequate or inappropriate housing. These include adverse effects on health, employment prospects, quality of life and life opportunities. Discrimination in housing markets affects many in the Australian community, in particular, Aborigines and Torres Strait Islanders, women, single parents and their children, young people, people with a disability, people with a mental illness, people from non-English speaking backgrounds and people who are homeless.

The bill acknowledges that the commonwealth should work in cooperation with the states and territories to assist people to access appropriate and affordable housing stock in accordance with their needs.

It also acknowledges that the commonwealth and the states and territories should work cooperatively with local government, in view of its regulatory and other functions, as well as with non government providers of housing assistance.

The Preamble to the bill also highlights the importance of encouraging private sector involvement in the provision of appropriate and affordable housing.

In giving effect to these intentions, housing assistance funded under this legislation should be planned and delivered so as to take full account of the range of factors which contribute to the quality of life of the people receiving assistance, including the liveability of communities, the promotion of opportunity and choice, and respect for the dignity and self-esteem of people receiving assistance.

The legislation also includes an authority to make payments for research, development, demonstration and evaluation activities in relation to housing. The bill enables these payments to be made to organisations which possess relevant expertise.

The commonwealth government is committed to improving housing access for people on low incomes and to working with states and territories through a new commonwealth State Housing Agreement that is authorised by the bill. Public housing and other forms of housing assistance provided under current arrangements meet real needs. They contribute to a fairer society by addressing a basic human need.

The reforms embodied in the new interim agreement will significantly enhance our public housing effort and position the commonwealth, with the states and territories, to perform even better in the future.

I commend the bill to the Senate and present the Explanatory Memorandum.

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

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1996

First Reading

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

That the following bill be introduced: a bill for an act to amend the Federal Police Act 1979.

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

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

Bill read a first time.

Second Reading

Senator KEMP (Victoria—Parliamentary Secretary to the Minister for Social Security) (3.46 p.m.)—I table the explanatory memorandum and move:

That this bill now read a second time.

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

Leave granted.

The speech read as follows—

Vigilance against police corruption is an ongoing issue for Australian governments and the public at large. The more important provisions of this bill are focused on ensuring that the Australian Federal Police remains corruption free. A similar bill lapsed earlier this year due to the federal election. The government has decided to introduce a bill in a similar form to provide the necessary armoury to combat corruption within the Australian Federal Police.

Senators will be aware that the Royal Commission into the New South Wales Police Service has uncovered distressing instances of corruption and other serious misconduct. Such abuse of power and of the community's trust can never be tolerated in any police service. I know all senators were distressed to hear that serving and former members of the Australian Federal Police have been implicated in corruption and other reprehensible behaviour.

The government and the administration of the Australian Federal Police are strongly committed to ensuring that it is never debilitated by a culture of corruption and misconduct. The institutional culture of a police force is of vital importance to a community. A police force stands at the threshold of the criminal justice system and is in effective control of the enforcement of the criminal law. Each police officer has an extensive authority over all other citizens, coupled with a wide discretion over its exercise. Subsequent stages in the criminal justice process, including courts and prisons, are largely dependent on the activities of police services, and will inevitably be affected by their deficiencies.

The Commonwealth is, of course, particularly dependent on the integrity and efficiency of the Australian Federal Police. First, it is the principal agency for the general enforcement of the Commonwealth's criminal laws. It provides a vital link in effective cooperation with international law enforcement bodies. It is essential that the Australian Federal Police maintain the confidence of these bodies as well as the public's confidence.

In 1989 the parliament, with the support of all parties, substantially amended the Australian Federal Police Act 1979. The reforms were designed, in part, to introduce a new and unique employment scheme which would inhibit the occurrence of patterns of corruption uncovered in other police services. One aspect of these reforms was the replacement of tenure with a system of fixed term appointments. Another aspect was providing the Commissioner with chief executive powers in relation to appointments within the Australian Federal Police, including the power to end the appointment of any police member or civilian staff member. One of the principles underlying this employment scheme is that the Commissioner should have a clear and specific responsibility for the integrity and operational efficiency of the Australian Federal Police. Naturally, the scheme also envisaged that the Commissioner should have the powers and authority necessary to fulfil these responsibilities.

At present the Commissioner's power to terminate the appointment of members or staff members of the Australian Federal Police is subject only to two exceptions. The current legislation states that the Commissioner must not make use of this power merely because a disciplinary charge has been or could be laid or a court has convicted, or found the person guilty, of a criminal offence. These exceptions were provided in order to separate the Australian Federal Police's disciplinary processes which can result in dismissal as a penalty for a disciplinary offence from the Commissioner's general power to end a person's appointment.

In practice, the limitations on the Commissioner's power of dismissal can lead to situations which are clearly inconsistent with the policy aims of the AFP employment scheme. For example, it is not clear that the Commissioner can terminate the appointment of a member of the Australian Federal Police even if the member admits publicly that he or she is guilty of corruption or other serious reprehensible behaviour. To dismiss that person from the Australian Federal Police, it might be necessary for the Commissioner either to invite the member to resign voluntarily or to initiate disciplinary proceedings. The Commissioner's hands could be equally tied if the person were to be convicted of serious criminal offences by a court.

The government believes this situation to be unsatisfactory. Corruption in a police service can seriously undermine the professional self respect and morale of the decent and honest police who comprise the majority of members. It can also seriously diminish public confidence in the affected police service, something that may now be apparent in respect of the New South Wales Police Service. Immediate and effective action may be the only way to minimise the harm. On occasions it will not be desirable to wait for lengthy disciplinary or court proceedings to be finally resolved before taking action.

The proposed amendments will remove the limitations on the Commissioner's powers of dismissal which relate to disciplinary offences and criminal convictions. The intention is to give the Commissioner a broader and more effective power to end an appointment where the Commissioner has lost confidence in a person's suitability for continued employment in the Australian Federal Police. The amendment will, in particular, permit the Commissioner to act quickly and decisively to end the appointment of a person where the Commissioner believes on reasonable grounds that there has been corruption, serious abuse of power or serious dereliction of duty.

While the government believes it is necessary in the public interest for the Commissioner to have a wide discretion to end appointments, it also recognises that the employment rights of individual members and staff members within the Australian Federal Police should also be protected. Currently members and staff members are protected in two ways in the event that they are retired by the

Commissioner before the end of their term of appointment. First, the person who is retired may seek judicial review by the Federal Court of the Commissioner's decision to end their appointment. Second, the retired person is entitled to compensation for the lost part of their appointment.

As this bill will widen the scope of the Commissioner's powers to end appointments, the government believes it is also reasonable to extend to members and staff members additional remedies against the possibility that the Commissioner's power might be exercised unfairly or unreasonably. The government has been at pains to find an appropriate balance between the public interest in maintaining a corruption free Australian Federal Police and the rights of the individual member of staff member who may be retired early either because of allegations of corruption or for other reasons such as inefficiency.

In particular, in reconsidering this bill the Attorney-General has focused on the need for appropriate safeguards to protect innocent members and staff members. The government has decided that, in addition to the existing protective measures I have outlined, individual members and staff members who have their appointments terminated early will also have access to merits review before the Industrial Relations Commission and the Industrial Relations Court. At present the Australian Federal Police is excluded from those unlawful termination provisions by the Industrial Relations Regulations. The relevant regulations will be repealed once these amendments come into force.

The bill makes one exception to the opening of the unfair dismissal remedies to the Australian Federal Police. This is where serious misconduct is involved. The bill provides that where a person's appointment has been ended because of their conduct or behaviour, the Commissioner may make a declaration that the conduct or behaviour amounts to serious misconduct and that the serious misconduct is having, or is likely to have, a damaging effect on professional self-respect or morale within the Australian Federal Police or on its reputation with the public or with an Australian or overseas government or law enforcement agency. Serious misconduct is defined in the bill to mean corruption, serious abuse of power, serious dereliction of duty or any other serious reprehensible behaviour. Where a declaration of this kind is made, the person who has been retired will be excluded from the operation of the Industrial Relations Act provisions concerning unlawful dismissal and will not be able to obtain merits review. Such persons, however, will retain the present rights to compensation for their early retirement and to seek judicial review of the Commissioner's declaration, as well as the decision to end their appointment. Also a person subject to a declaration of serious misconduct will be able to seek a statement of reasons in relation to the Commissioner's decision to make the declaration. However, where the reasons would disclose information that it would not be in the public interest to disclose (eg operationally sensitive information such as the identity of informants or current investigations) the Attorney-General may, in the public interest, issue a certificate under subsection 14(1) of the Administrative Decision (Judicial Review) Act 1977 preventing disclosure of that information. This solution reaches an appropriate balance between the public interest in maintaining a corruption free Australian Federal Police and the rights of the individual.

As I have indicated, the Commissioner will be able to make a declaration only where the Commissioner believes, on reasonable grounds, that there has been serious misconduct by the person who is retired. It is also necessary that the Commissioner believe that the serious misconduct is actually damaging, or is likely to damage, the Australian Federal Police in one of the ways I have described.

Clearly these are special circumstances. They are circumstances in which immediate action by the Commissioner is needed to maintain the internal integrity or the public reputation of the Australian Federal Police and where it is not appropriate that an outside tribunal should be able to remake the Commissioner's decision.

The amendment will permit the Commissioner to make a declaration either before or after the behaviour or conduct in question becomes widely known. This is to allow the Commissioner to act to pre-empt the threatened damage to the morale or reputation of the Australian Federal Police.

The bill also contains several minor amendments concerning two separate matters. One group of amendments is intended to give the Governor-General the power to authorise the Commissioner and the Deputy Commissioners to appoint or promote persons as commissioned officers with the Australian Federal Police. At present the legislation permits the Governor-General to give this authority only to the Commissioner. The new arrangements are administratively more convenient. The amendments allows for appropriate safeguards.

The second group of amendments deals with the disciplinary obligations of staff members when granted special leave of absence for service with an industrial association. The effect is to extend the existing provisions which deal with members to staff members as well.

I commend the bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned until the first day of sitting in the Spring sittings,

in accordance with the order agreed to on 29 November 1994.

COMMITTEES

Joint Committees

Appointment

Consideration resumed from 21 May and 22 May of House of Representatives message Nos. 6, 7, 8, 9, 10, 11, 12 and 13 relating to the appointment of parliamentary joint committees.

The House of Representatives messages read as follows—

Message No. 6

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives this day and requests the concurrence of the Senate therein:

That, in accordance with section 242 of the Australian Securities Commission Act 1989, matters relating to the powers and proceedings of the Parliamentary Joint Committee on Corporations and Securities shall be as follows:

(a) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority groups or independent Senators.

(b) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(c) That the committee elect a member nominated by the Government Whips or the Leader of the Government in the Senate as its chair.

(d) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(e) That, in the event of the votes on a question before the committee being equally divided, the chair, or the deputy chair when acting as chair, have a casting vote.

(f) That 3 members of the committee constitute a quorum of the committee.

(g) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(h) That the committee appoint the chair of each subcommittee who shall have a casting vote only, and at any time when the chair of a subcommittee is not present at a meeting of a subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(i) That the quorum of a subcommittee be 2 members of that subcommittee.

(j) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(k) That the committee and any subcommittee have power to send for persons, papers and records.

(l) That the committee and any subcommittee have power to move from place to place.

(m) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(n) That the committee have leave to report from time to time.

(o) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 7

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

(1) That a Joint Standing Committee on Electoral Matters be appointed to inquire into and report on such matters relating to electoral laws and practices and their administration as may be referred to it by either House of the Parliament or a Minister.

(2) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 2 Senators to be nominated by any minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, shall have a casting vote.

(8) That 3 members of the committee constitute a quorum of the committee.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That the committee appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(11) That the quorum of a subcommittee be 2 members of that subcommittee.

(12) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(13) That the committee or any subcommittee have power to send for persons, papers and records.

(14) That the committee or any subcommittee have power to move from place to place.

(15) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(16) That the committee have leave to report from time to time.

(17) That the committee or any subcommittee have power to consider and make use of:

(a) submissions lodged with the Clerk of the Senate in response to public advertisements placed in accordance with the resolution of the Senate of 26 November 1981 relating to a proposed Joint Select Committee on the Electoral System, and

(b) the evidence and records of the Joint Committees on Electoral Reform and Electoral Matters appointed during previous Parliaments.

(18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 8

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

(1) That a Joint Standing Committee on Foreign Affairs, Defence and Trade be appointed to consider and report on such matters relating to foreign affairs, defence and trade as may be referred to it by:

(a) either House of the Parliament;

(b) the Minister for Foreign Affairs;

(c) the Minister for Defence; or

(d) the Minister for Trade.

(2) That the committee consist of 32 members, 13 Members of the House of Representatives to be nominated by the Government Whip or Whips, 7 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 5 Senators to be nominated by the Leader of the Government in the Senate, 4 Senators to be nominated by the Leader of the Opposition in the Senate and 3 Senators to be nominated by any

minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That in the event of an equality of voting, the chair, or the deputy chair when acting as chair, shall have a casting vote.

(8) That 6 members of the committee constitute a quorum of the committee.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That, in addition to the members appointed pursuant to paragraph (9), the chair and deputy chair of the committee be ex officio members of each subcommittee appointed.

(11) That the committee appoint the chair of each subcommittee who shall have a casting vote only, and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(12) That the quorum of a subcommittee be 2 members of that subcommittee.

(13) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(14) That the committee or any subcommittee have power to send for persons, papers and records.

(15) That the committee or any subcommittee have power to move from place to place.

(16) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(17) That the committee have leave to report from time to time.

(18) That the committee or any subcommittee have power to consider and make use of the evidence and records of the Joint Committees on Foreign Affairs and Defence and Foreign Affairs, Defence and Trade appointed during previous Parliaments.

(19) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 9

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

That, in accordance with section 204 of the Native Title Act 1993, matters relating to the powers and proceedings of the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund shall be as follows:

(a) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority groups or independent Senators.

(b) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(c) That the committee elect a Government member as its chair.

(d) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(e) That, in the event of the votes on a question before the committee being equally divided, the chair, or the deputy chair when acting as chair, have a casting vote.

(f) That 3 members of the committee constitute a quorum of the committee.

(g) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(h) That the committee appoint the chair of each subcommittee who shall have a casting vote only, and at any time when the chair of a subcommittee is not present at a meeting of a subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(i) That the quorum of a subcommittee be 2 members of that subcommittee.

(j) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(k) That the committee and any subcommittee have power to send for persons, papers and records.

(l) That the committee and any subcommittee have power to move from place to place.

(m) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(n) That the committee have leave to report from time to time.

(o) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 10

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

That, in accordance with section 54 of the National Crime Authority Act 1984, matters relating to the powers and proceedings of the Parliamentary Joint Committee on the National Crime Authority shall be as follows:

(a) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

(b) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(c) That the committee elect a Government member as its chair.

(d) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(e) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, have a casting vote.

(f) That 3 members of the committee constitute a quorum of the committee.

(g) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(h) That the committee appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(i) That the quorum of a subcommittee be 2 members of that subcommittee.

(j) That members of the committee who are not members of a subcommittee may participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(k) That the committee or any subcommittee have power to send for persons, papers and records.

(l) That the committee or any subcommittee have power to move from place to place.

(m) That a subcommittee have power to adjourn from time to time and to sit during any

adjournment of the Senate and the House of Representatives.

(n) That the committee have leave to report from time to time.

(o) That the committee or any subcommittee have power to consider and make use of the evidence and records of the committee appointed during previous Parliaments.

(p) That, in carrying out its duties, the committee or any subcommittee, ensure that the operational methods and results of investigations of law enforcement agencies, as far as possible, be protected from disclosure where that would be against the public interest.

(q) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 11

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

(1) That a Joint Standing Committee on the National Capital and External Territories be appointed to inquire into and report on:

(a) matters coming within the terms of section 5 of the Parliament Act 1974 as may be referred to it by:

(i) either House of the Parliament; or

(ii) the Minister responsible for administering the Parliament Act 1974; or

(iii) the President of the Senate and the Speaker of the House of Representatives;

(b) such other matters relating to the parliamentary zone as may be referred to it by the President of the Senate and the Speaker of the House of Representatives;

(c) such amendments to the National Capital Plan as are referred to it by a Minister responsible for administering the Australian Capital Territory (Planning and Land Management) Act 1988;

(d) such other matters relating to the National Capital as may be referred to it by:

(i) either House of the Parliament; or

(ii) the Minister responsible for administering the Australian Capital Territory (Self-Government) Act 1988; and

(e) such matters relating to Australia's territories as may be referred to it by:

(i) either House of Parliament; or

(ii) the Minister responsible for the administration of the Territory of Cocos (Keeling) Islands; the Territory of Christmas Island; the Coral Sea Islands Territory; the Territory of Ashmore and Cartier Islands; the Australian Antarctic Territory, and the Territory of Heard Island and McDonald Islands, and of Commonwealth responsibilities on Norfolk Island.

(2) That the committee consist of 10 members, the Deputy Speaker, 2 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, the Deputy President and Chairman of Committees, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the Speaker of the House of Representatives and the President of the Senate.

(4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equality of voting, the chair or the deputy chair when acting as chair, shall have a casting vote.

(8) That 3 members of the committee (of whom one is the Deputy President or the Deputy Speaker when matters affecting the parliamentary zone are under consideration) constitute a quorum of the committee.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That the committee appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(11) That the quorum of a subcommittee be 2 members of that subcommittee.

(12) That members of the committee who are not members of a subcommittee may participate in the public proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(13) That the committee or any subcommittee have power to send for persons, papers and records.

(14) That the committee or any subcommittee have power to move from place to place.

(15) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(16) That the committee have leave to report from time to time.

(17) That the committee or any subcommittee have power to consider and make use of the evidence and records of the Joint Standing Committee on the National Capital and External Territories, the Joint Committees on the Australian Capital Territory, the Joint Standing Committees on the New Parliament House, the Joint Standing Committee on the Parliamentary Zone and the Joint Committee on the National Capital appointed during previous Parliaments and of the House of Representatives and Senate Standing Committees on Transport, Communications and Infrastructure when sitting as a joint committee on matters relating to the Australian Capital Territory.

(18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 12

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

(1) That a Joint Standing Committee on Migration be appointed to inquire into and report upon:

(a) regulations made or proposed to be made under the Migration Act 1958;

(b) all proposed changes to the Migration Act 1958 and any related acts; and

(c) such other matters relating to migration as may be referred to it by the Minister for Immigration and Ethnic Affairs.

(2) That the committee consist of 10 members, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 3 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 1 Senator to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint standing committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a deputy chair who shall act as chair of the committee at any time when the chair is not present at a meeting of the committee, and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, shall have a casting vote.

(8) That 3 members of the committee constitute a quorum of the committee.

(9) That the committee have power to appoint subcommittees consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That the committee appoint the chair of each subcommittee who shall have a casting vote only and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the

members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(11) That the quorum of a subcommittee be 2 members of that subcommittee.

(12) That members of the committee who are not members of a subcommittee may participate in the public proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(13) That the committee or any subcommittee have power to send for persons, papers and records.

(14) That the committee or any subcommittee have power to move from place to place.

(15) That the committee have leave to report from time to time.

(16) That the committee or any subcommittee have power to consider and make use of the evidence and records of the Joint Committees on Migration Regulations and the Joint Standing Committee on Migration appointed in previous Parliaments.

(17) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Message No. 13

The House of Representatives acquaints the Senate of the following resolution which was agreed to by the House of Representatives on 21 May 1996 and requests the concurrence of the Senate therein:

(1) That a Joint Standing Committee on Treaties be appointed to inquire into and report upon:

(a) matters arising from treaties and related National Interest Analyses and proposed treaty actions presented or deemed to be presented to the Parliament;

(b) any question relating to a treaty or other international instrument, whether or not negotiated to completion, referred to the committee by:

(i) either House of the Parliament, or

(ii) a Minister; and

(c) such other matters as may be referred to the committee by the Minister for Foreign Affairs and on such conditions as the Minister may prescribe.

(2) That the committee consist of 13 members, 5 members of the House of Representatives to be nominated by the Government Whip or Whips, 3 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority groups or independent Senators.

(3) That every nomination of a member of the committee be forthwith notified in writing to the President of the Senate and the Speaker of the House of Representatives.

(4) That the members of the committee hold office as a joint committee until the House of Representatives is dissolved or expires by effluxion of time.

(5) That the committee elect a Government member as its chair.

(6) That the committee elect a non-Government member as its deputy chair to act as chair of the committee at any time when the chair is not present at a meeting of the committee and at any time when the chair and deputy chair are not present at a meeting of the committee the members present shall elect another member to act as chair at that meeting.

(7) That, in the event of an equality of voting, the chair, or the deputy chair when acting as chair, shall have a casting vote.

(8) That 4 members of the committee constitute a quorum of the committee.

(9) That the committee have power to appoint not more than 3 subcommittees each consisting of 3 or more of its members and to refer to any subcommittee any matter which the committee is empowered to examine.

(10) That, in addition to the members appointed pursuant to paragraph (9), the chair and deputy chair of the committee be ex officio members of each subcommittee appointed.

(11) That the committee appoint the chair of each subcommittee who shall have a casting vote only, and at any time when the chair of a subcommittee is not present at a meeting of the subcommittee the members of the subcommittee present shall elect another member of that subcommittee to act as chair at that meeting.

(12) That the quorum of a subcommittee be a majority of the members of that subcommittee.

(13) That members of the committee who are not members of a subcommittee may

participate in the proceedings of that subcommittee but shall not vote, move any motion or be counted for the purpose of a quorum.

(14) That the committee or any subcommittee have power to send for persons, papers and records.

(15) That the committee or any subcommittee have power to move from place to place.

(16) That a subcommittee have power to adjourn from time to time and to sit during any adjournment of the Senate and the House of Representatives.

(17) That the committee have leave to report from time to time.

(18) That the foregoing provisions of this resolution, so far as they are inconsistent with the standing orders, have effect notwithstanding anything contained in the standing orders.

Senator KEMP (Victoria—Manager of Government Business in the Senate) (3.47 p.m.)—On the basis of the amendments which have been circulated, could I suggest a process which might expedite consideration of the messages in respect of joint committees which have been received from the House of Representatives. Rather than move an individual motion in respect of each message, I propose to move a general motion concurring with the resolutions but with two modifications. Any non-government amendments could then be moved to this motion. I move:

That the Senate concurs with the resolutions of the House of Representatives contained in messages nos 6 to 13 relating to the appointment of certain joint committees, with the following modifications:

(1) In respect of House of Representatives message no. 11 relating to the Joint Standing Committee on the National Capital and External Territories, omit paragraph (2), substitute the following paragraph:

(2) That the committee consist of 12 members, the Deputy Speaker, 3 Members of the House of Representatives to be nominated by the Government Whip or Whips, 2 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, the Deputy President and Chairman of Committees, 2 Senators to be nominated by the Leader of the Government in the Senate, 2 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

(2) In respect of House of Representatives message no. 13 relating to the establishment of the Joint Standing Committee on Treaties, omit paragraph (2), substitute the following paragraph:

(2) That the committee consist of 16 members, 6 Members of the House of Representatives to be nominated by the Government Whip or Whips, 3 Members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent Member, 3 Senators to be nominated by the Leader of the Government in the Senate, 3 Senators to be nominated by the Leader of the Opposition in the Senate and 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

There has been a period of extensive consultation on this motion with the opposition and the other parties in this chamber. On many areas we have reached agreement, but we have not reached agreement on all areas. However, a process was carried through so that, when this motion came to the floor of this chamber, we could maximise the areas of agreement and, in that way, cut down on the debate and proceed with other government business and legislation.

The amendments that we have moved are twofold. The first relates to the Joint Standing Committee on the National Capital and External Territories. The view expressed to us by the non-government parties in this Senate was that they were more comfortable with the previous arrangement which existed. Our initial proposal was to reduce membership numbers from 12 to 10 in order to look at providing some uniformity of membership numbers between the joint standing committees. But a different view was expressed to us, and we have responded to it. People prefer the larger size committees, and this amendment restores the committee's numbers to those which operated under the last parliament.

The second amendment relates to the Joint Standing Committee on Treaties, which is a very popular committee and which quite a few senators wish to join. This was an area which I had a particular interest in, as did

Senator Bourne. Senator Brian Harradine also had an interest in it many years ago. The debate on treaties which has taken place over quite some time has reached its fulfilment in this committee. Our amendment would have the initial number of committee members increased by three to 16, with one position to be filled by a government member in the House of Representatives, one to be filled by a government senator and one to be filled by an opposition senator.

The coalition government regards Australia's signing of international treaties as very important and we must ensure that the treaties serve Australia's interests. The establishment of the joint treaties committee will provide an opportunity for MPs to be fully involved in considering the implications of signing international treaties that Australia will enter into. The amendment will allow the treaties committee to enhance the effectiveness of its work by ensuring that there are enough members to effectively operate what will probably turn out to be an effective subcommittee system.

I understand that the Democrats will also be moving an amendment to the messages and to my motion. Those amendments will require that a member of the opposition and a member of the coalition be present at deliberative committee and subcommittee meetings to constitute a quorum. I would have to say that, while we understand some of the concerns which have been raised, we are still not convinced of the arguments that have been put forward. On the one hand, there is the fear that committee meetings could be set in a way which did not suit non-government members. On the other hand, there is the dilemma that properly established committee meetings could be sabotaged by non-government members not appearing.

That is a very real dilemma. I have to say that if it reaches that stage you would really wonder whether our committee system will operate anyway. There may be some favourite stories that a few senators may have on this issue, but in my six years it is an issue which has very rarely emerged—you could count on a couple of fingers the number of times it did emerge. The reality is that if the committee system reached this stage—where one side was attempting to gazump another side—both chambers would take action to resolve that difficulty. These committees do work, one would hope, out of a modicum of goodwill, and often a lot of goodwill. It is our hope that this amendment, on reflection, will not be supported.

I note that Senator Bourne has moved to indicate that the proposed amendment would apply to deliberative decisions of committees. That is certainly an improvement on the original motion. As I said, the government is not disposed to support it. We recognise there is this dilemma. It relates to whether, on the one hand, a meeting can be set without the involvement of opposition members, or can be set in a way which would prevent the involvement of opposition members. On the other hand, opposition members may very well, for strategic reasons, decide to prevent a committee meeting taking place.

This motion does not resolve that dilemma. It tackles what is perceived to be one side of that dilemma. It is something we may turn our minds to in the future, but we do not feel that this motion, itself, deals with that dilemma in a sufficiently effective manner. I point out that there have been extensive consultations in this area. I hope that we have reached a reasonable degree of agreement. I look forward to hearing contributions from other senators.

Senator CARR (Victoria—Manager of Opposition Business in the Senate) (3.54 p.m.)—I rise to speak to the amendments that have been proposed concerning matters relating to quorum provisions in subcommittees, matters relating to the Joint Standing Committee on the National Capital and External Territories, and matters relating to the Joint Standing Committee on Treaties. In doing so, I propose to amend the circulated amendment to the effect that it will say 'either House of a non-government party' rather than 'opposition party'. I do so as a result of consultation a few moments ago with other senators. I have not had the opportunity to have those changes circulated.

Senator Kemp—Where do you mention that?

Senator CARR—I am referring to line 4 of the proposed amendments. On line 5 under paragraph (1), it should say 'either House of a non-government party', and in the last line of paragraph (2), it should read 'either House of the non-government parties' instead of 'opposition parties'. I move:

(1) In respect of the committee quorum provisions of House of Representatives messages nos 6 to 13, the provisions be amended by adding at the end the following words: ", with at least one member of either house of the Government parties and one member of either house of the non-Government parties.".

(2) In respect of the subcommittee quorum provisions of House of Representatives messages nos 6 to 13, the provisions be omitted and the following provision substituted in each message:

That the quorum of a subcommittee in a deliberative meeting be 2 members of that subcommittee, with one member of either house of the Government parties and one member of either house of the non-Government parties.

(3) In respect of House of Representatives message no. 13, relating to the Joint Standing Committee on Treaties, omit paragraph (2), substitute the following paragraph:

(2) That the committee consist of 16 members, 5 members of the House of Representatives to be nominated by the Government Whip or Whips, 3 members of the House of Representatives to be nominated by the Opposition Whip or Whips or by any independent member, 3 senators to be nominated by the Leader of the Government in the Senate, 3 senators to be nominated by the Leader of the Opposition in the Senate and 2 senators to be nominated by any minority group or groups or independent senator or independent senators.

The matter of the joint house committees is a particularly important issue for this parliament to consider. I know that in some people's minds it is a matter that can be dismissed easily and lightly because it is just something that goes to the routine of business and we should somehow or other, in a casual way, say, 'Look, a message has been sent over from the House of Representatives. There's been a change of government. We automatically should fall out with that and just accept that without further demure.' That is not a view that I take. In fact, it is a view that I strongly oppose, particularly given the extraordinary behaviour of the government in the House of Representatives when these issues were raised.

I turn to the question of quorums for subcommittees of joint house committees. Under these proposals, it was proposed in a number of committees that the subcommittee be reduced to two, theoretically made up of members of the same party. That could mean that you have a subcommittee made up of two members of the Liberal Party. That, in my mind, is not an appropriate course of action to follow.

Senator McKiernan—Or, worse still, a Lib and a Nat.

Senator CARR—There would be the possibility of some dispute and debate on that matter, particularly as they fight so much amongst themselves these days. Nonetheless, I would say there are substantive issues that would need to be protected and can be protected only when both sides of this parliament are represented in the committee system.

This is a particularly interesting proposition that has been moved by the government given that in the notices of motion in the *Notice Paper* we see on our desk every morning there is a proposition under the name of Senator Hill which recommends that this Senate accepts the recommendations from the Procedure Committee on the question of subcommittee membership, and particularly on the question of quorums. The recommendation said that there ought be representations from both sides of this chamber.

It seems to me to be quite an extraordinary proposition in that it is good enough for the Leader of the Government (Senator Hill) to put down a proposition like this that allows for representations on subcommittees from both sides of the chamber, but it is not good enough for Mr Howard, and members of the government in the other place, to follow the same line of argument. It seems to me that, at the very least, this a gross dose of hypocrisy, and one this chamber should not accept.

Frankly, given what we have experienced ourselves in this chamber with regard to a number of committees in the last parliament, the advice of the Procedure Committee, which

the government so rightly puts, should be accepted when it comes to joint house committees as well. If it is good enough for the Senate in regard to fairness and balance, it is good enough for the House of Representatives when it comes to operations of the joint house committees. It is my belief that it should also apply to committees of the House of Representatives. It seems to me to be a logically consistent practice that there be representations on the subcommittees in such a way as to ensure that the different sides of the chamber are reflected on those subcommittees.

Why is that so important? Because we understand that a subcommittee has all the powers of the full committee. Out of session that is quite an important issue and one that cannot be lightly skated over without very serious questions being raised about the intention of the government in this regard. Why do you need to do this? Why is it so important for you to do this? It seems to me an extraordinary proposition for this government to come in here and say, 'We rammed it through in the House of Representatives without debate and, having gagged this matter, guillotined the matter, in such a way as to prevent proper debate and discussion and to prevent the proper consideration of opposition amendments in the House of Representatives, we suggest that the opposition should fall about and accept that without question.' That is clearly not going to be the case.

In terms of the substantive issues going to the broader questions of the particular committees under consideration, I understand that many of these committees are covered by various statutory protections and therefore they cannot be changed. One would have to ask: what would be the case if they were not covered by various statutory protections? Would an attempt be made to reduce the role of the opposition on these committees, as we have seen in the original proposal put forward from the National Capital and External Territories Committee? As I read Senator Kemp's amendment, I understand that matter has effectively been redressed. I am pleased that has the same effect as the amendment that I am proposing in regard to the National Capital and External Territories Committee.

The other issues concern the Joint Standing Committee on Treaties and we have to place considerable importance upon these issues. This parliament has considered this matter at length and I congratulate Senator Kemp because he has raised the matter day in and day out. He has done an extraordinarily competent job in drawing the importance of treaties to the attention of the Australian public. Day in and day out he came in here and explained to us how wrong it was that this parliament did not adequately consider treaties. But then what happened? When the government is sworn in they roll over yet again and suddenly there is a change in position. Suddenly they do not really want to have proper consideration of treaties, because that is the sort of thing they only talk about when in opposition.

Senator Sherry interjecting—

Senator CARR—It seemed to me to be an extraordinary change of heart. I would have to wonder whether or not the National Party had been at him on that matter as well. This is a matter that this parliament has taken seriously and quite rightly so. I do congratulate Senator Kemp on the role he has played over time in these matters. However, I pay particular attention to the report of the Senate Legal and Constitutional Reference Committee. Senator Cooney was the longstanding chairman of that committee, but I understand he did not chair this particular inquiry. Senator Ellison chaired the inquiry and they brought down a report in November 1995. It was widely applauded throughout the community. It is a substantive document and one that has drawn considerable public acclaim, and quite rightly.

Senator McKiernan—Even mentioned in the House of Lords.

Senator CARR—It was even mentioned in the House of Lords—that clinches the argument. I suggest that we all ought to have a look at this document. I find it very odd indeed that the government should propose that this committee should be treated in such a cavalier way, particularly because of the

extraordinary attention that has been paid to these matters in recent times.

Most of the joint committees are mainly concerned with external matters, particularly the Joint Standing Committee on Foreign Affairs, Defence and Trade. It is said that that committee is different from other committees and it should not be treated on the same basis. It is said that the issue of parity—that is, the relationship between the House of Representatives and the Senate—should be put to one side because that committee is involved in a lot of overseas trips and delegations and very unseemly matters like that. Great attention is paid to participation on that committee and I can understand that such issues are involved.

However, on a more substantive level there are concerns that that committee is involved with the geopolitical forces at work within our society and our relations with the rest of the world. However, that is not the same argument I would put concerning the question of the treaties committee. Substantially it goes to the issue of the powers of this parliament, particularly those relating to the foreign affairs power in section 51(xxix) of the constitution. That section concerns the legislative power of this parliament and the capacity of this parliament to make laws based upon foreign treaties which have an impact on our society at large, and in particular it goes to the scope of the legislative authority of this parliament to make such laws.

Why is that important? Senator Kemp has drawn the concerns that he has with these issues to our attention on a daily basis. I also draw to his attention the importance that it has for many members of our society particularly concerning issues involving the International Labour Organisation. These are very fundamental rights; the right to work, the right to organise and the right to defend one's living conditions. These are fundamental industrial concerns which go to the very heart of our obligations under those conventions. It also concerns the rights of unions to operate, unfair dismissal, freedom from exploitation, freedom from discrimination, the right to equal pay and the right to family leave and other great family values which I know this government is so concerned about. That is why they are bringing in legislation to slash wages and conditions and undermine family values.

It may be the case that we might have to look at our international treaty obligations very carefully. When we look at these issues we cannot simply and idly say that it does not really matter whether or not there are X number of senators or Y number of members of the House of Representatives. There are fundamental issues at stake here. The question of parity and the relationship between the houses of parliament is of fundamental importance. To say otherwise is to suggest that amendments could be moved on various other pieces of legislation on the basis of whether or not you have the numbers in one place or the other, and that the Senate should in some way be limited to the number of amendments it could move on any piece of legislation. Quite clearly that would be a ridiculous proposition.

In essence what the government is saying is that there should be more members of the House of Representatives on this important committee which goes to the legislative power of this parliament, and that somehow or other the role of the Senate should be reduced because there are not as many senators as there are members of the House of Representatives. That is clearly not an argument that I accept.

There are essential principles concerning the rights of the houses of parliament on these constitutional matters. There is no question about the rights of senators to participate in debates on important legislative matters and the rights of members of the House of Representatives. To argue any other proposition would be silly. It is not a proposition in terms of the brake on parity that is put forward on a whole range of other committees in this package of messages from the House of Representatives. It is not the position with the Joint Standing Committee on Electoral Matters, the Parliamentary Joint Committee on the National Crime Authority and the Joint Standing Committee on the National Capital and External Territories even under your new proposal. Therefore, it seems to me to be quite an extraordinary thing that you would

argue a different case with this very important committee concerning international treaties.

It seems to me that the committee's proposal is something that the government has brought forward and it cannot be sustained and is totally untenable. It raises very basic questions about what this government intends to do with these committees. I cannot accept that this is just a simple little mistake. I cannot accept, given the amount of trouble and energy you have put into this discussion in recent times—I might be flattered by the energy you have placed on these issues—that you do not have something in mind when you come forward with such a proposition. The role that Australia plays in international treaties and the effect that those treaties have on our legislative capacity ought to properly concern the Senate, as it certainly did in terms of the report handed down by the Senate Legal and Constitutional References Committee.

In terms of the criticisms raised about whether or not there has been proper scrutiny and proper accountability, it is proper that we have a decent Senate committee which is based on parity, based on equal numbers. That is essentially what this committee recommended. This is what I find so odd; why have you turned your back on recommendation 9 and recommendation 10 of this committee that examines the whole implications for treaty making for our legislative powers? These are fundamental constitutional issues and cannot be simply dismissed in the way these messages would suggest, in the way these messages were considered in the House of Representatives and in the ruthless way numbers were used in such a cavalier way to enforce the government's position on very basic constitutional considerations.

A committee which has the function to inquire into and to report on proposed treaties and on the legislative impact of such treaties, to scrutinise treaty statements, to hold public hearings and to ensure that criticisms of treaties can be fairly assessed ought be based on the proper constitutional arrangement that ensures there is parity between the Houses on this matter. This is not simply a committee which looks terrific in terms of foreign delegations and which looks wonderful in terms of the curriculum vitaes of the members of this committee. This will be a committee that involves a great deal of hard work.

This is a matter that goes far beyond the normal protocols of international parliamentary delegations, as much as we appreciate all of those. This goes to very basic questions which cannot be ignored, should not be ignored nor treated in the cavalier manner in which this government is proposing that we treat them.

Senator BOURNE (New South Wales) (4.10 p.m.)—I must congratulate both the Manager of Government Business in the Senate (Senator Kemp) and the Manager of Opposition Business in the Senate (Senator Carr) for the considerable effort they have put into discussing this with me and, I take it, with each other. I certainly hope they have extended that to others as well. I am sure they have.

Despite that, we still have some small confusion; but that is not surprising, considering what else has been going on in the parliament over the last couple of weeks. I have circulated some amendments. My second amendment, which has been taken up by Senator Carr, is that, when any subcommittee is deliberating, the quorum should include a member of the government and a member of the opposition parties. I take his amendment there and accept it.

I have looked at his first amendment on quorums. It leaves out the part which says that, when a committee is deliberating, you should have a quorum that has one on each side. I still think that it is probably a good idea to have that when a committee is deliberating. The way committees work—at least in relation to the one joint committee that I have been on in the past, the Joint Committee on Foreign Affairs, Defence and Trade—you do not need it for main committee meetings and you do not need it for briefings and for hearings. We work very well without that. I have not heard that there is a problem with it for any other committee in a main committee hearing. I move:

Omit the words proposed to be added, substitute ", provided that in a deliberative meeting the

quorum shall include 1 member of either House of the Government parties and 1 member of either House of the non-Government parties".

This is an amendment to Senator Carr's first amendment. It puts in place the substance of my first amendment. In regard to the other two committees where there is some confusion, I see the point that Senator Carr has made about the treaties committee and we should all keep that point in mind. However, I also see Senator Kemp's point and how he has come to those figures—a committee of 16 members: six from the government side of the House of Representatives and three from the opposition side of the House of Representatives. What the House of Representatives does is up to it.

As far as the Senate is concerned, the figure is three government senators, three opposition senators and one Democrat or independent. That is almost an exact reflection of half of the Joint Foreign Affairs, Defence and Trade Committee, to which this treaties committee is most closely related as far as joint committees are concerned. We can see that, on the basis of tradition, for it to be exactly half is a reasonable way to do it. That has been accepted as a reasonable way of doing it in this place for many years now. So we will accept the government's point of view on that and accept that amendment.

We understand that the government has returned to the last committee system's membership for the other committee we are discussing—the external territories committee. We accept that as well. We accept what the government is saying in relation to both those committees. We accept what the opposition is saying on quorums of deliberative meetings of subcommittees and also on quorums of main committee meetings but only with the amendment I have moved.

Senator COONEY (Victoria) (4.16 p.m.)—I have listened, as I always do, to Senator Bourne, Senator Kemp and Senator Carr. It seems to me that there ought to be parity. I hear what Senator Bourne and Senator Kemp have said, but I am not sure that this sort of exercise should be about reflecting numbers in the two houses as much as trying to get creative debate going. It seems to me that what we have to create here is a situation where the debate that takes place will be of most use to the parliament in the deliberations it undertakes. What we have to establish is a creative tension. I am not sure we will create such a tension if we simply go about this as some sort of exercise in having a body which reflects the numbers in the houses.

I hope a lot of the discussions that take place in the party room would pre-date the discussions in committees. The situation that ought to be present in committees is that which Senator Carr has raised: there should be an equality between the parties so that the debate in these committees can be as productive as possible. Members from each party would discuss in their party room the position that party takes up. The consideration that then takes place in the formal committee, the parliamentary committee, would be between the two parties, as far as the lower house is concerned, that are represented.

The other issue relates to quorums. In my view, there should always be a mixture of parties no matter what the quorum is for—whether it be for a deliberative or another committee. If we do not make a distinction between parties in a quorum, what is the point of having a meeting in any event? Members would have had their discussion in the party room and, if two members of the same party turned up and simply went through what the party room had already discussed, when would we get an example of creative tension that can forward the deliberations that ought take place about matters as serious as treaties?

I am not sure what Senator Bourne is talking about when she says 'a non-deliberative meeting'. I take it she means informal discussion which does not lead to any conclusion about any matter at all. It seems to me that that sort of meeting can be held without any formality at all. Two people of the same party discussing a matter should not need any formality. But, if the treaty committee is going to get somewhere in a meeting, we should have, as it were, two opposing sides so that they can come to some agreement—

Senator Margetts—I think she is talking about hearings where there might be only two

people left and everyone else has caught their flight.

Senator COONEY—I see. I understand that. Senator Margetts has said the situation Senator Bourne is thinking of is where a committee which starts with a full committee has, because of people needing to go elsewhere, only two people left. I can see no problems with that. If two people from the same party are left, they can go ahead and discuss things. There is nothing to stop them doing that. But, as I understand it, Senator Bourne's position is that the two remaining members cannot make a decision that binds the committee or the subcommittee in any way. I think that hardly becomes a meeting because the meeting is not able to produce anything that is of any force.

Senator Margetts—It can hear evidence.

Senator COONEY—True. Yes, it can hear evidence. I see what you mean. If those two people are there, they can take and listen to evidence. That might be a position that can be accommodated. The only problem we then might face is that the sorts of questions that are asked of witnesses could tend to be confined to one side. What concerns me about that proposition is that, if the witnesses are left to be examined by two people from the same party, we will then not get the sort of examination we might have got had two people from a range of parties—or, as in this case, two separate parties—been present.

Upon reflection, the point she raises ought to be taken into consideration. In the event that only two are required to be there when examining witnesses, I think it would be proper for at least a member from separate parties to be present. Having heard the debate, probably Senator Carr's position on the quorum is the correct one.

Senator McKIERNAN (Western Australia) (4.23 p.m.)—I want to add a few brief remarks to the debate on the message from the House of Representatives regarding the establishment of joint parliamentary committees. I am very pleased that we are discussing this matter because the government seems to be getting its act together. We are into the fourth week of the parliamentary sittings and we are actually getting around to establishing one of the most important parts of the work of parliamentarians—that is, committee work. One hopes that from today the committees will be able to get under way and get some work done. That work might replicate the work in which Senator Kemp participated last year on the report that Senator Carr referred to, *Trick or treaty?*, a report which was the work of the Senate Legal and Constitutional References Committee, of which Senator Kemp was a participating member.

I want to associate myself with all of those very kind remarks that Senator Carr made about Senator Kemp's remarks on treaties. His name was almost changed for a time to Senator 'Treaties' Kemp because of his continual raising of the matter of treaties in this place. Not only did he do so practically every day, but on some occasions he did it twice and three times on the same day. The culmination of his work was the reference to what was then Senator Cooney's committee—the Legal and Constitutional References Committee—which later became Senator Ellison's committee and which produced this magnificent report which has had such an impact—

Senator Carr—The House of Lords!

Senator McKIERNAN—An even larger impact than that, Senator Carr. The newly established government, which is only now getting around to establishing the joint parliamentary committees, has already responded to this report. We have already congratulated them on the speed of their response to the report. Let us hope this type of response will be continued and that the very sensible amendments moved by Senator Carr on behalf of the opposition, together with the amendments moved by Senator Bourne on behalf of the Democrats, will be taken into consideration and the standing orders associated with the committees will be implemented properly. Knowing Senator Kemp's interest in all of this, particularly the treaties committee, I hope this will be done. I hope that when he responds to the remarks that have been made in the debate this afternoon, he will be able to give an assurance on behalf of the government that he will accept the amendments.

One other matter that I want to refer to in all seriousness is to pick up the remarks by Senator Cooney and the interchange between him and Senator Margetts. In my time in this place I have participated in the work of a large number of committees—far more than I care to remember. On all the committees—and I say this without exception—there has been on the part of all members of the committee a will to address the matters that the parliament has asked it to address. I believe that on all occasions great efforts were made to ensure that the views of all political parties, where they were properly represented on the committee, were taken into consideration. There was a willingness to ensure that their views could be heard and could be taken into consideration as the respective committees progressed about their work.

I am aware of only one occasion on which the quorum rule, as it stood, was used or, dare I say it, abused. That occurred in November last year, to my recollection—I have not searched the records—during a Legal and Constitutional Legislation Committee hearing which was scrutinising the estimates of a particular government department.

One former opposition senator got somewhat upset about the line of questioning or, more properly, it might have been the line of response from the minister at the table, and spat the dummy. She absented herself from the hearing and informed the committee there was no quorum because the opposition was not represented. Of course, the committee had to adjourn. It was quite an extraordinary performance because the estimates hearing had to be adjourned until a then opposition senator and member of the committee could be found to sit at the table and get the hearing back under way, so that the opposition could continue their series of questions to the minister at the table and the whole scrutiny process could continue.

I assure Senator Kemp that performances like that will not happen from this opposition. None of us on this side of the chamber would be silly enough to toss away opportunities like that, on behalf of constituents, on behalf of the political party, on behalf of the people, to put government expenditure under scrutiny. Were we to make the errors that were made, we would not expect to be rewarded by a spot in the cabinet at $10,000 more than some other ministers. But that is the way of things. It is not for us to say how those on the other side should operate their business. That is one of the things I place on the record as having happened. It was an extraordinary occurrence. It will not happen from opposition senators as we go into the estimates scrutiny process.

In conclusion, I want to implore Senator Kemp, because of his deep interest in the issue of treaties—which we all recognise and have recognised in the past, with the reference of the treaties matter to the Legal and Constitutional References Committee and the quite magnificent report that it put forward, to which he made a contribution—that on behalf of the government he responds in a very positive manner and accepts those amendments that have been moved by my colleague Senator Carr and by Senator Bourne on behalf of the Democrats.

Senator MARGETTS (Western Australia) (4.30 p.m.)—This is an interesting and complex issue to which everybody brings their own particular experiences. Senator Cooney said he could cite no instances where a committee would meet when no decision was to be made. I interjected to give examples of occasions when I have been in a place where the last plane has left at a certain time, one or two people were left, somebody has travelled a long way to give evidence and a decision has been made on whether or not the two people who are left constitute a quorum. On such an occasion it could be considered reasonable to hear the evidence of a person who has travelled a long way. Such an example gives weight to leaving the word 'deliberative' in describing the actions of a subcommittee, because the quorum of a full committee can decide that a subcommittee can act in such a way.

I am yet to be convinced that the word 'deliberative' needs to be used in respect to a full committee, although, of course, there are occasions when briefings and other such issues come before a committee when a decision is not actually required to be made. At this stage, however, unless otherwise

convinced, we are falling on the side of supporting the opposition's amendments and not supporting the word 'deliberative' in the full quorum. If somebody has arguments that would lead us a little further in the other direction, we would be happy to hear them.

Senator KEMP (Victoria—Manager of Government Business in the Senate) (4.32 p.m.)—I thank the senators for their contributions. This is an important debate. I doubted whether I would ever live to see the day where I would receive such lavish praise from so many Labor senators. It has not happened before and I dare say, Mr Acting Deputy President, it will not happen again. But if you could persuade me with kindness rather than logic, I would be persuaded, I think.

Let me tackle a couple of the remarks made. Firstly, in relation to Senator Carr: in reality, Senator, you have not tackled the fundamental dilemma we have with this quorum. Whereas you are worried—I think unduly—that the government may seek to gazump an opposition, you have not actually dealt with the problem where an opposition refuses to attend a meeting in order to prevent a meeting which may be properly constituted occurring. It is a real problem.

Senator Carr—You have not worked out that you are in government; that is your problem.

Senator KEMP—The reality is that this motion does not deal with that. We operated, Senator Carr, under Labor rules for 13 years and never at any stage can I recall any of your colleagues—I may well be wrong—believing that the joint committees should have this particular provision.

We can all go round day after day saying, 'Hey, you've all changed your position.' The rules which you were content to operate under, and which I think generally worked pretty well—I do not think too many arguments have been adduced in this debate that those rules have not worked well—show that you are indeed seeking to impose a position on the government which you yourself are unwilling to accept in opposition. So that is the first dilemma.

I listened very carefully to your arguments on the size of the treaties committee. I was not convinced on that. The reality is that this is a larger committee. You sought a larger committee and it is not unreasonable that a larger committee, in the first instance, more accurately reflects numbers in the chambers. Secondly, as Senator Bourne so accurately put it, it is directly and intimately linked with the nature of our foreign affairs arrangements.

Senator Carr, at no stage did any member of your party complain that the ratio on the foreign affairs committee was 20 government and 12 non-government. It is all very well to seek to distinguish that from this particular committee. I think that distinction failed. Like the foreign affairs, defence and trade committee, this committee is also intimately linked with Australia's foreign relations. Those rules were perfectly acceptable to you. I will have to check the history book, but no-one has recalled in this chamber that we ever complained about the ratio on that committee and sought to campaign against it.

Again, by analogy, you are attempting to produce arguments in opposition which you certainly were not prepared to accept in government. Fair enough. No-one doubts that people change their position. But, if you are going to change your position so dramatically, do not complain about other people changing their positions. That is all I am saying. That is the logical fallacy there.

On the issue of quorums, we are opposed to the motions presented to this chamber. However, we prefer the motion proposed by Senator Bourne and her amendment to the motion which was originally proposed by you on full committees. We welcome the consensus which emerged before this debate and which is reflected in the consensus acceptance of the amendment on the territories. I note that there seems to be some divergence of opinion in relation to the treaties committee. But we welcome the support we have received from the Democrats on this issue, and we hope that this is but the first of many occasions where the Democrats will be prepared to offer support for important principles and well argued arguments which have been put forward. That concludes my remarks, and

I urge the non-government parties to support the government amendments.

Question put:

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

The Senate divided. [4.42 p.m.]

(The Acting Deputy President—Senator B.K. Childs)

Ayes	40
Noes	29
Majority	11

AYES

Abetz, E.	Alston, R. K. R.
Baume, M. E.	Bell, R. J.
Boswell, R. L. D.	Bourne, V.
Brownhill, D. G. C.	Calvert, P. H.*
Campbell, I. G.	Chapman, H. G. P.
Crane, W.	Ellison, C.
Ferguson, A. B.	Gibson, B. F.
Harradine, B.	Herron, J.
Hill, R. M.	Kemp, R.
Kernot, C.	Knowles, S. C.
Lees, M. H.	Macdonald, I.
Macdonald, S.	MacGibbon, D. J.
McGauran, J. J. J.	Minchin, N. H.
O'Chee, W. G.	Panizza, J. H.
Patterson, K. C. L.	Reid, M. E.
Short, J. R.	Spindler, S.
Stott Despoja, N.	Tambling, G. E. J.
Teague, B. C.	Troeth, J.
Vanstone, A. E.	Watson, J. O. W.
Woodley, J.	Woods, R. L.

NOES

Bolkus, N.	Burns, B. R.
Carr, K.	Chamarette, C.
Childs, B. K.	Coates, J.
Collins, J. M. A.	Collins, R. L.
Colston, M. A.	Conroy, S.
Cook, P. F. S.	Cooney, B.
Denman, K. J.	Evans, C. V.*
Faulkner, J. P.	Foreman, D. J.
Forshaw, M. G.	Jones, G. N.
Lundy, K.	Mackay, S.
Margetts, D.	McKiernan, J. P.
Murphy, S. M.	Neal, B. J.
Ray, R. F.	Reynolds, M.
Sherry, N.	West, S. M.
Wheelwright, T. C.	

PAIRS

Parer, W. R.	Schacht, C. C.
Newman, J. M.	Crowley, R. A.
Tierney, J.	Beahan, M. E.

*** denotes teller**

Question so resolved in the affirmative.

Amendment No. 1 (**Senator Carr's**), and amendment No. 2 (**Senator Carr's**) agreed to.

Amendment No. 3 (**Senator Carr's**) negatived.

Motion, as amended, agreed to.

CRIMES AMENDMENT (CONTROLLED OPERATIONS) BILL 1996

In Committee

Consideration resumed.

The bill.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Order. The committee is considering amendments 1 to 7 and 10 to 11, moved by Senator Spindler, relating to judicial approval of certificates. The question is that the amendments be agreed to.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (4.48 p.m.)—I want to take up from the point where we left off prior to the matters of public interest being dealt with at 12.45 p.m. Perhaps I can canvass a number of views the government has and invite Senator Spindler and opposition senators to consider these points.

I understand from the debate a few days ago that opposition members were raising the issue that the Attorney-General, Mr Williams, had in a previous debate suggested that a judicial officer should take on this role. Apparently they have taken some comfort from that with respect to the amendments they now want to move. In other words, they are saying, 'The Attorney-General, in a previous incarnation, indicated this was not a problem. We think there is some political opportunism in this change of heart and we do not see any risk in proceeding down this path.' I think that is not an unfair summary of the view that you can have confidence in Mr Williams's view and, therefore, you can with confidence move these amendments.

As I am informed, his remarks were made on 22 August. The Grollo case, the case that primarily made clear the concerns we might have in this area, was in September. That is

not a change of view on the facts that existed at the time. It is a change of view by Mr Williams because of the very significant case expressing concern about these matters. Mr Williams, being the very eminent lawyer that he is, has modified his view to take into account the Grollo case.

Let us not have any further wasting of time, pointing out that that was Mr Williams's view in August. That is true. Mr Williams does not walk away from that. He does say that the Grollo case in September occasions him now to have very serious concern about that proposal. That is the case which raised for the first time the issues vis-a-vis the legality of a decision by a judge relating to investigative matters. That is the first point. I want to just dispose of that problem.

I want to come back to the point that I raised with Senator Spindler. That was whether judicial officers actually want to take on this role. I do not raise that question, Senator Spindler, in the sense of saying, 'Why don't we let judicial officers indicate what they are and are not prepared to do, and we will simply say, "Yes, okay," or, "No, if you do not want to do that, that is fine,"' but to simply indicate that, in terms of both workload and cross-examination, there is some concern about this.

I asked you, Senator Spindler, if you could tell us which judicial officers you had spoken to who had given you assurances that this was not a problem. I put that question to you simply because you chose to say—pretty clearly this morning; it might have been early afternoon—'Look, I know there is some concern about this, but let's give it a go.' Therefore, rather than taking your flippant suggestion—I am sure you did not mean it flippantly—I invite you to outline the arguments on the other side. Who are the judicial officers who are happy to undertake this task?

Senator Bolkus—Who are the ones who are unhappy, Senator?

Senator VANSTONE—You have put the reverse question. The government is confident—as, Senator Bolkus, your government was, when it was in government—that the path we are advocating is constitutionally sound. We are confident of that. We are not at all confident that the path subsequent to Grollo of using a judicial officer is constitutionally sound. So I am not in a position of needing to say that there are people who would or would not want to accept the burden that Senator Spindler would want to put on them—not at all. We are offering you a constitutionally sound way of dealing with these proposed operations. We are confident that it cannot be successfully challenged and we are confident that drug dealers can, therefore, be dealt with. But there is doubt cast by Grollo as to the constitutionality of the proposals that Senator Spindler is putting.

The previous government was well aware of those doubts and, when Mr Williams raised the issue, in response made arguments. It may not have been in response but certainly it made arguments at that time as to why a judicial officer was not an appropriate person to use. They certainly made those arguments at the time and those arguments still stand. They are not changed by anything. I welcome hearing from Senator Bolkus what has happened that makes a judicial officer now the appropriate person to go to.

I just wanted to highlight that what is being offered is a constitutionally sound way of dealing with these controlled operations. That is what is being offered by the government. It was what was offered by the previous government in that sense. People on the other side now in opposition understood these arguments at the time and actually argued the case that it was inappropriate to use a judicial officer. So we believe this is the constitutionally sound way to go, and that there are risks in going the way Senator Spindler wants to go.

Senator Spindler, I think you did agree that there are arguments vis-a-vis this position. With the experience that you have, and it is extensive, you have made—I was about to sound patronising by saying 'a significant contribution'. But you know how hard longstanding members of the legal and constitutional affairs committee of this place have worked on the cost of justice reference, and you know full well by all the meetings you attended with respect to that, that one of the significant contributors to the cost of justice

is parliament making legislation that then has to be undone because it is unconstitutional. Why, with all the knowledge of the consequent costs of parliament not being sure, you would come into this place and say, 'Give it a go', I do not know.

Senator SPINDLER (Victoria) (4.55 p.m.)—I would like to address the two points that Senator Vanstone raised—first of all the Grollo case. The decision was made on a six to one judgment. It was the minority decision. One judge out of seven raised these concerns. In that situation I am happy to be with the majority, if you like, rather than the minority that has raised concerns.

In terms of whether the judges are prepared or not, it was not me who raised concern. I raised it in the debate because the comment had been made to us by the government that there could be concern. I would answer Senator Vanstone's question with a question: who are the judges who refuse to act in this capacity? Who are the judges who have indicated that they might refuse to act in this capacity? It seems to me that it is up to the government which has raised that concern to identify the judges that are not prepared to act in this way. Even if one or two judges are in this category, is the government prepared to say that no judge is prepared to act in this situation? It seems to me that it is for the government to bring forth evidence that this is so.

Senator BOLKUS (South Australia) (4.57 p.m.)—We are in a curious situation here because there are two sides to this argument and you could say that both major parties have taken both positions on these arguments. Before the election, shadow Attorney-General Williams advocated the course of action that Senator Spindler is now advocating. We opposed it. After the election we have taken a closer look at that and, given the final product before us today, we feel that we can support Senator Spindler's motion. It is probably fair to say that the only parties in this place which have taken a consistent approach have been the Democrats and the Greens, who have consistently opposed this measure.

The objective of this legislation is one that we are very deeply committed to. As I said at the start of my contribution, the principle, the objectives and much of the structure of this bill we want to see in place. The only question is which is the best way to go and what accountability mechanisms are appropriate and can be appropriately invoked for this.

There has been a lot of concern in the community about the extra power given in these circumstances and how that power as it has been claimed can be abused by enforcement officers. There is always a chance of that. We have to rely on the basis that police do an honest job. We also work with the knowledge that, for instance, in the Woods royal commission there have been quite a number of incidences of behaviour which is not in conformity with that description of an honest job. A continual balance has to be struck in these matters.

Not only are we committed to the legislation; we feel it is important to go ahead. We feel it is also important to rely on the police force acting in the overwhelmingly honest way that they have over time acted in these sorts of matters.

As I say, the question is not whether we grant the extra capacity to operate in these controlled operations and go further than previous arrangements have allowed for and further than previous ministerial agreements, in some respects, have allowed for; it is a question of what accountability mechanism we put in place. We are keen to ensure that it is not a burdensome one. Senator Spindler's approach of invoking the mechanism of the interception act is one we are attracted to. Senator Vanstone says it is constitutionally unsound—and I will go to that argument in a few moments.

The other argument that has been put before us today is that judges may or may not be happy with having to conduct this function. For me that is not the critical point. I think the responsibility on us in this place is to get the accountability mechanisms right. The judges have the responsibility to act within the law and have a duty to perform their functions and exercise their discretion according to the law.

Some judges do not like putting people away but in the course of their duties they have to do that. Their obligation is to implement the law and our obligation is to try to get the balance right in this place. When we talk about workload, how many applications are we talking about per annum? How many times a year do we anticipate an application?

Senator Spindler—About a dozen.

Senator BOLKUS—Senator Spindler says about one a month. That may or may not be right but I would not think there would be many more than that. In fact, there might be fewer. We are not talking about a heavy workload, given the number of Federal Court judges we have.

Senator Cooney—Family Court judges as well.

Senator BOLKUS—As Senator Cooney says, they are available. If you bring in the Industrial Court judges as well, you have a broader spread of judges to do the work.

The concern is about constitutionality. That is basically the issue that we all have to address. It has, in fact, been addressed by the parliament, by the committee to which Senator Vanstone earlier referred Senator Spindler to—the eminent Senate Legal and Constitutional Legislation Committee. We are concerned to put in place mechanisms that are sustainable. That is a concern of ours, Senator Vanstone. We are not doing this for any reason other than that we think there should be an accountability mechanism to act as an oversight and surveillance mechanism on the system.

The issue of constitutionality is one we have looked at very closely. Not only do we invoke Senator Spindler's reference to the Grollo decision, a decision which by a majority of six to one upheld the mechanism that Senator Spindler now wants to introduce into this legislation—the mechanism from the interception act. There is a unanimous report from a committee of this parliament which also fortifies us in our support for the Democrats amendment. That committee was chaired by Senator Barney Cooney. It reported on this bill before the election. The members of the committee were Senator Cooney, Senator Spindler, Senator Chris Ellison, Senator Jim McKiernan, Senator Neal and Senator O'Chee, with a list of some 14 participating members not all of whom signed the report, but some did.

There is always the question of different legal advice that we have to take into account. It is interesting to note with respect to this issue that on pages 22 and 23 of the Senate Legal and Constitutional Legislation Committee report, the committee said in paragraph 1.98:

> Mr Rozenes was critical of the suggestion that the power to issue a section 15M certificate be conferred on a judicial officer, on the basis that it might infringe the doctrine of the separation of powers. At the time Mr Rozenes' comments were made, there was unresolved litigation in the High Court concerning the constitutionality of the Federal Court's involvement in the issue of telecommunication interception warrants under the *Telecommunications (Interception) Act* 1979. The High Court has now delivered its judgment in *Bruno Grollo v Michael John Palmer* and by a majority of six to one found the procedures used in the *Telecommunications (Interception) Act* 1979 for issuing warrants constitutional. It would therefore be unlikely that there is a constitutional impediment to transferring the issue of section 15M certificates to a judicial officer.

That is a unanimous recommendation of that committee. I must go on and say that the committee did not advocate that—and I recognise that. But it is matter of judgment whether or not we put in the accountability mechanism—it is a policy decision, one which, on reflection, we now support. On the constitutional question, the constitutional point that has been raised by the government was of concern to the committee and the committee had a unanimous position on that.

With that committee's recommendation and looking at the situation, in the knowledge that some concern has been raised on constitutional grounds, knowing that the High Court on a vote of six to one upheld the constitutional aspect of the identical provisions in the interception act, we feel the constitutional risk that the minister talks about is something that the overwhelming legal advice runs counter to.

On the basis of that overwhelming counter advice, we are prepared to support the provi-

sion. But I say to you, Senator Vanstone, that the committee made a judgment before the election that the accountability mechanism was not necessary. On reflection, I do agree with the then shadow Attorney-General, Mr Daryl Williams, who before the election advocated this.

Senator CHAMARETTE (Western Australia) (5.07 p.m.)—I will just put the position of the Greens (WA) on the record and then defer to the much more eminent legal opinions in this committee discussion. I was glad to hear that Senator Vanstone listened to the concerns expressed by at least one member of the judiciary in the Grollo case, in this instance, in relation to Senator Spindler's amendments. I wish the government had given equivalent attention to the concerns in the community, the legal community in particular, regarding the negative and draconian powers being bestowed by this Crimes Amendment (Controlled Operations) Bill that we are currently considering. In my speech on the second reading debate I made it quite clear that the Greens in no way support this legislation.

Granting police the power to engage in illegal activities even under specific conditions is an extremely undesirable step. These amendments, as I understand it, are a way of at least providing some kind of ameliorating or accountability mechanism for that and ensuring that police are not conferring those extraordinary powers on each other but are incorporating at least some other authority. But that, specifically, is not what we are perturbed about; we are perturbed about this bill being yet another example of the battle between the judiciary and the executive—regrettably, in this case the executive supported by the parliament, as it seems that the Greens are the only ones opposing the bill.

Because the court's decision in Ridgeway was not to the liking of the police force, the previous government produced this highly questionable piece of legislation. It is very regrettable that we are pursuing this at a moment in time when members of the previous government who are now in opposition appear to be developing a conscience. I am sad to see the opposition also supporting the bill, but I will support them in their support of Senator Spindler's amendments to the bill because, as I said before, those amendments may in some way ameliorate what we believe to be the highly undesirable powers granted by the legislation.

I just raise that position. I indicate that we will be supporting all of the Democrats' amendments, not because we support the principal of the bill—we don't; we are utterly opposed to it—but because we want to see a piece of bad legislation marginally improved. We will not walk away from that, so to that end we are supporting these amendments.

Senator COONEY (Victoria) (5.10 p.m.)—If I can just say something apropos of what Senator Chamarette said. This crimes bill has been considered quite comprehensively by a whole series of people. It is an attempt to enable the police and investigating authorities to carry out operations that do not do violence to the rule of law but enable the investigating body—the Federal Police or the National Crime Authority—to obtain evidence that can be put before a court and which may be accepted by that court.

Senator Chamarette—By entrapment.

Senator COONEY—You say, Senator Chamarette, 'by entrapment'. There was a specific recommendation—I am not sure whether it is in the bill—that entrapment be not a part of this.

Senator Spindler—It is there.

Senator COONEY—Senator Spindler, thank you for assuring me that it is there. This is not a matter of entrapment; it is a matter of obtaining evidence that can be put before a court.

You have raised an issue about how we are to go about authorising the police or the NCA to take this action. As I said in my speech at the second reading stage, it is proper to point out that the Federal Police and the NCA have a very high reputation. Those at the head of the Federal Police—the commissioner, the assistant commissioners and the deputy commissioners—all have high reputations, as do members of the NCA. Be that as it may, in a thing like this you certainly cannot have, as it were, too many checks.

The issue of whether the judges would undertake this task is an interesting one. In the amendments put forward by Senator Spindler, a judge is 'a Judge of a court created by the Parliament'. So that would be either somebody from the Federal Court, the Family Court, the industrial court or the Magistrate's Court if Magistrate's Courts are created as the Attorney-General (Mr Williams) is considering.

What may give judges concern—and I would like the minister to check this—is new subsection 15J(2) proposed by Senator Spindler, which says:

> In an application to an eligible Judge under subsection (1), a senior law enforcement officer must provide sufficient information, orally or otherwise as the Judge requires, to enable the Judge to be satisfied that:
>
> (a) the person targeted by the controlled operation is likely to commit an offence against section 233B of the *Customs Act 1901* or an associated offence whether or not the controlled operation takes place . . .

I would be interested to know whether that is a straight take from the Telecommunications (Interception) Act. I have some concern that a judge has to decide whether or not a particular person who is targeted is likely to commit an offence. I would like to know whether that is a direct take from any other act or whether there is any precedent for that because that might be a problem. If the certificate given by the judge becomes evidence in some way and that certificate contains the expression of the opinion that the person was likely to commit an offence, that evidence could be quite prejudicial to the accused.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (5.14 p.m.)—Senator Cooney, I thank you because you have gone to the heart of what I now understand to be the difference between what Senator Spindler and Senator Bolkus would have us say are the consequences of the Grollo case and whether you can transfer that to this one. I make my first point. The distinction there is that that related to the telecommunications interception matters.

The similarity is that you are asking a judicial officer to approve something. I can agree in that sense. But what you are asking them to approve involves qualitatively different things. In one case—the telecommunications interception—what you are asking a judicial officer to do is to weigh up a balance between the invasion of someone's liberty and the good that is done. In this case, if Senator Spindler's amendment is successful, you are asking a judge to make an operational decision—not weighing up the good or bad.

There is a similarity of judicial officers involved and they need to give a tick, but that is about as close as it gets. There are very substantial differences between making a judicial decision, of balancing rights and responsibilities, and entering into an operational matter. You asked specifically for the wording. Section 45 of the Telecommunications (Interception) Amendment Act states:

> Where an agency applies to an eligible Judge for a warrant in respect of a telecommunications service and the Judge is satisfied, on the basis of the information given to the Judge under this Part in connection with the application, that:
>
> . . . . . .
>
> (c) there are reasonable grounds for suspecting that a particular person is using, or is likely to use, the service;
>
> (d) information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to assist . . .

So he has to have reasonable grounds for suspecting. But under the particular proposal being put to us, the decision the judge would be asked to make would be quite different. He would have to be satisfied, with respect to a number of things, that the person targeted by the controlled operation is likely to commit an offence.

So we shift from being satisfied that there are reasonable grounds for suspecting to being satisfied that the person targeted by the operation is likely to commit an offence. Therefore, a judicial officer signing off on that does exactly, in our view, Senator Cooney, as you suggest—that is, provide an inference with respect to the likely guilt or otherwise of the person involved. That is a very serious problem.

I want to draw that to Senator Spindler's attention. I ask Senator Spindler and Senator Bolkus whether they see the distinction. The wording is not the same; it is different. What the judge is required to be satisfied about is different. Let us not pretend there is a similarity just because a judge is ticking off. You are asking them to make decisions with respect to different matters and also to come to a different level of decision—that is, to be satisfied not only that there are reasonable grounds for suspecting but also that the person is likely to commit an offence. They are qualitatively different things.

Senator SPINDLER (Victoria) (5.19 p.m.)—I would just like to address briefly the intervention made by Senator Cooney. It seems to me that although the words are different—and I would appreciate Senator Cooney's opinion on that—in substance, there is very little difference. I wonder whether, in substance, there is a great deal of weight to be attached to the difference between saying that a judge must have reasonable grounds for suspecting and saying that the judge must be satisfied that the person targeted is likely to commit an offence—which is in the future.

The other point to be made about that is: would we be agreeable to the proposition that a police officer should be allowed to engage in unlawful conduct unless there was some impartial judgment made on whether or not the targeted person is likely to commit an offence? If that is not a prospect, and if it is not done on objective grounds, why should we allow the police to engage in unlawful conduct?

The problem that I had with these provisions was that we were asking law enforcement officers to make that judgment, to arrive at that conclusion. The whole bill is fraught with this particular difficulty—that we are asking the police to engage in unlawful conduct. On balance, I remain of the view that I would like to be satisfied that there is an objective judgment being brought to bear rather than the opinion formed by law enforcement officers.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (5.21 p.m.)—Senator Spindler, I understand the concern you raise about the desire to have some objectivity. In any event, but particularly following the Wood royal commission, there is concern. There is no pretence on the part of the government that that concern is not there. But that concern is not adequately met. I presume, Senator Spindler, from the remarks you have made, that you also share the government's concern to get at these people who are nothing more than merchants of death. That is what they are on about.

We have to make some policy decisions here. In a sense, what you are doing is saying that this is a difficult decision and you want some objectivity. What we are saying to you is that we understand that. We believe that path is open to you in the sense of providing a bill that is constitutional, that will stand up. We believe that we will see, as a consequence of your amendment being accepted, a number of these merchants of death being tried and walking free because we took a risk with the constitutionality of the bill when we were able to make the decision that we could proceed. I have no doubt that there are others as well as you, Senator Spindler, who are apprehensive about not having an independent view.

What you get by trusting the senior police involved is a constitutionally certain bill to get at these people. You can take the chance, if that is what you want to do but, without putting it at too high a level, it is on your shoulders if more of these people walk free because this bill is struck down for unconstitutionality. It will not be on the government's shoulders.

We accepted the arguments put by the previous government. What Senator Cooney raises is a very important point because the proposed new section 15I(2)(a) requires a judge to be satisfied, amongst other things, that the person targeted by the controlled operation is likely to commit an offence against section 233B of the Customs Act or other associated offences. The certificate issued by the judge is then required to be tendered in evidence in resulting proceedings.

Even with respect to these merchants of death, we have not got to the stage where we

want to set up a system where people are presumed guilty by virtue of the charge that is laid against them. We still want to maintain the view that you are innocent until proven guilty. So even these people that you can refer to as merchants of death are entitled to be treated fairly by the courts—that is, put the ones that really are guilty away, not others.

If your amendment is accepted, Senator Spindler, the result will be that a magistrate considering a committal proceeding under the Customs Act will be faced with a certificate issued by a judge, that is, someone higher up the pecking order, indicating that the judge has pre-judged that the person was likely to commit an offence. If that does not in some way contribute to a view that the person has committed an offence, I do not know what higher level you need. A committal proceeding is started before a magistrate and what do we give? We give a certificate that says that a judge has decided, has pre-judged, that this person is likely to commit the offence. That is a very serious way to start off the innocent until proved guilty process.

Senator Chamarette—That's the whole problem with this legislation.

Senator VANSTONE—Senator, I acknowledge your interjection. I understand your concern. It is not that any of these issues are without concern anywhere in the government or in the opposition. I am just highlighting that if you want to make an appropriate change, you have to understand what you are doing. That is what you are doing: putting a situation where a magistrate will be faced with a certificate signed by a judge indicating that the judge has properly considered this matter and has concluded that the person is likely to commit an offence.

Equally, Senator Spindler, while I say 'Lock these people up and put them away', you go and look in the face of someone who has been found guilty because of this, hear the case of the defence that this is prejudicial in one way or another and see if you believe that, without a clear indication from a judge before that they were likely to commit an offence, they would have been put away. And you tell them that you argued for this change because you will not find us there arguing that at all.

You are in a double-barrelled situation: you have to answer to people who may be improperly convicted and you will also have to answer to the fact that people might walk away because you wanted to take a chance with a constitutional risk. Take a chance. Forget the costs of justice arguments just for the moment. You will have to answer to people with respect to that. I would not want to be in your shoes for all the tea in China.

Perhaps I can come back to what Minister Kerr said. I understand that apparently there were differing views on this matter—that Senator Bolkus was often keen on judicial authorisation and Mr Kerr and others preferred the police. But Mr Kerr did understand this. He said that in his view it was appropriately balanced broad questions about law enforcement, accountability, preventing abuse of powers by police and maintaining the rule of law. He went on to point out that there was a difference between police authorising telecommunications intercepts, that is, a balancing of rights and responsibilities—judiciary doing that—and, on the other hand, being satisfied that someone was likely to commit an offence.

The previous justice minister understood these issues. He went on and said:

> For that reason and the issue of separation of powers, there are real constitutional reasons why operations should not be authorised by judges and magistrates.

With respect to this argument, I might touch on another couple of points. A non-judicial power conferred on judges can only be exercised by consent. It is not and cannot be mandatory. In that respect, it may be important for people to know two things: there are at the moment a significant number of Federal Court judges who are currently respondents in proceedings in their own court for judicial review for warrants issued under the Telecommunications (Interception) Act. There is a significant number. So you have got judges appearing in their own court with respect to those matters. So let us not pretend that this is one or two judges and it is not going to happen. The advisers advise me that the

Attorney advises them that there are a significant number in this matter.

Further, if you are not satisfied, Senator Spindler, that there is any reluctance in this respect, you should know that so many Federal Court judges have declined to issue telecommunications interceptions warrants that applicants have had to turn to Family Court judges for the warrants. So there is a reluctance. This is not a mandatory conferring of a task; it is to be done by consent. With respect to the telecommunications intercepts, which I have indicated the government believes are a qualitatively different matter in any event, they are reluctant to the extent that people are turning to the Family Court. This is a higher task you are asking—of involvement in an operation and a conclusion to be satisfied that someone is likely to commit an offence. On that basis, I think it is very reasonable to conclude that an even more significant number will decline. So you will have these things being done by Family Court judges. I mean no disrespect to Family Court judges, but it is not your intention, Senator Spindler, that this be a Family Court matter.

It is not up to me to read the minds of Family Court judges. But, if it continues that Federal Court judges decline to exercise this, it will not be long before Family Court judges are in the same position. So I come back to the point that, if you think there are judges happy to do this and who welcome not so much an extension of what is being asked of them in telecommunication intercepts—because we know a significant number are not happy—but taking an even more serious decision, then you should let us know. You might not want to name them publicly; come and tell us privately. But we do not believe that that is the case. We believe this is a very significantly different matter from the telecommunications intercept things.

The risks are serious. I want to remind you that there are two risks you are looking at if you make this change. Firstly, you prejudice the principle of innocent until proven guilty. When crimes as serious as dealing in drugs come up, people want something done. There is a real temptation to jump over the principle of innocent until proven guilty. But that is the whole purpose of criminal law. The whole purpose of that portion of the legal system is to maintain confidence that you are innocent until proven guilty.

What you are doing is giving a magistrate in a committal proceeding a certificate signed by a judge which says that the person was satisfied that the then defendant was likely to commit an offence. That is a very serious step for you to be asking anyone to take, irrespective of the constitutionality, and you will have to argue with the people who might tell you later that they were wrongly convicted because of that.

The second string to our argument—not in this order; it is an equally put case—is that you have the option to take a constitutionally sound path. You know the previous government was satisfied that this was a constitutionally sound path to take. You know, the government knows and we know that there are cases lined up waiting to go through. If more people go free because the bill is passed in the form that you want, and it is then discarded as unconstitutional, then it will be on your shoulders and not on ours. I think that goes to the very guts of what this is about.

Senator SPINDLER (Victoria) (5.33 p.m.)—I have a couple of points to make in response to what Senator Vanstone has said. I wonder whether she can refer me to any cases or any claims made in cases in any of the bills that have similar provisions—and I named about half a dozen of them, apart from the intercept act—where it was suggested that a judge's involvement had in any way affected the final judgment of whether a person was guilty or not guilty.

Another matter is the availability of judges. I do not know how many intercept cases are dealt with per year. I venture to say that there are at least several hundred, possibly thousands; whereas here we are dealing with about 12 cases. So I think the order of magnitude is considerably different. If the minister can provide some information on that, that would be enlightening.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (5.34 p.m.)—As I under-

stand it, Senator Spindler, you are right; the order of magnitude is different and we hope that it would be different. Because we are not doubling the task, if you like, but simply adding to it, it does not take away from the point that we can see, from the involvement of the telecommunications intercept cases, which are going to be significantly higher than these, that there is a follow-on workload.

It is not just finding a judge who is prepared to exercise this power by consent. That is not the end of it. We know that, even with the intercept approvals, there are a significant number of judges who are required to be respondents in proceedings in their own courts with respect to telecommunications intercept matters. We add to that the argument that they are qualitatively different. That is a balance of judgment about interference in your rights to privacy and the public good. In this case, what you are asking a judge to do is not to balance that judgment but to draw a conclusion that he or she is satisfied that someone is likely to commit an offence. So they are qualitatively different things.

You could therefore expect, because what you are asking in this respect is a much more serious judgment to be taken by the judicial officer, that they are going to be contested perhaps to a greater proportion than the others. So, yes, there are fewer numbers. But, because you are asking for a much more serious task, you could expect every one of them to be much more seriously contested than, say, the telecommunications intercept ones.

Senator COONEY (Victoria) (5.35 p.m.)—What has come from the minister is a matter that should give us pause. As I understand it, there is no provision in the Telecommunications (Interception) Act or indeed in any act where a judge, to issue a certificate, has to be satisfied that a person is likely to commit an offence. As I understand it, in the intercept act the model for this provision is one which requires a judge to be satisfied that a person might use particular equipment.

I would have thought that being satisfied that a person might use particular equipment is quite qualitatively different—the minister is right in relation to this—from asking a judge to be satisfied that somebody is likely to commit an offence. I put up for discussion that one way to overcome this may be that we ask a judge to satisfy himself or herself that the officer who is applying for the certificate is satisfied that the person targeted by the controlled operation is likely to commit the offence.

I think no judge should be brought before a court and cross-examined as to why he or she believes a person was likely to commit an offence. He or she being asked to explain why they were satisfied that the officer who is making the application was satisfied that a person was likely to commit an offence is a much easier and better position for a judge to be in. In other words, what the amendment would do is not ask a judge to be satisfied that an offence was to be committed but ask a judge to be satisfied that the person applying for the certificate was satisfied that an offence was to be committed. I am not sure what Senator Spindler would say about that.

Senator BOLKUS (South Australia) (5.38 p.m.)—Having talked to Senator Cooney and Senator Spindler, I suggest that could be done very easily. I am working on page 2 of the revised amendments that were circulated as of 9 a.m. today. Clause 15J(2) could easily be amended to include something else at the beginning of subclause (a). I will read clause 15J(2) and insert the words I am suggesting:

> In an application to an eligible Judge under subsection (1), a senior law enforcement officer must provide sufficient information, orally or otherwise as the Judge requires, to enable the Judge to be satisfied that:
>
> (a) [the officer is satisfied that] the person targeted by the controlled operation . . .

By the addition of the words ‘the officer is satisfied that’ I think we can pick up the point that Senator Cooney is making and accommodate the concern that Senator Vanstone has. I suggest that we could proceed with Senator Spindler’s amendment as amended in the way I suggest. I do not know what Senator Spindler thinks of that, but I think it picks up the concern that at least this side of the parliament has, still leaves the accountability mechanism in place but ensures Senator Vanstone’s point about how the removal from decision making can be achieved.

Senator SPINDLER (Victoria) (5.40 p.m.)—I think the suggestion made by Senator Cooney has merit. I have a high opinion of Senator Cooney's concerns about court proceedings and that they be conducted in as impartial and valid way as possible. Subject to what the minister says, I believe this addition would satisfy some of her concerns.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (5.41 p.m.)—While the officers are considering the remarks made by Senator Bolkus, let me respond to what Senator Cooney suggested. I was working on what he suggested, and this may well be the same point. It seems to me that, in not allowing a certificate to be presented that says to a magistrate a judge has satisfied himself that a person was to commit an offence, you are suggesting the certificate should say that a judge was satisfied that the policeman was satisfied, which does not seem to me to be a very substantial improvement at all.

In fact, if you want to put it in the words of someone who might be wanting to point the bone and accuse—bearing in mind you are now thinking of this from the position of an innocent person—they might say to a jury, 'Look. You've heard what the police have told you. They were involved in this controlled operation. You've heard that this was all about being satisfied that someone had committed an offence. The police went along and this judge, a judicial officer, was satisfied that they were telling the truth.' That is incontestable. The judge could not satisfy himself that the police were satisfied if he thought they were lying. That is what I would say. I would be on my feet quick as a whip and saying, 'This is what the situation is: a judicial officer has listened to the police and is satisfied that the police were telling the truth—this person was likely to commit an offence.' Too right I would be.

So I do not think you help yourselves with that proposition. I understand what you are looking for. I just do not think you can find a mechanism which will both be constitutionally sound and protect parties who may be innocent. I could turn around the Wood royal commission evidence and ask whether you in your heart of hearts believe that every person charged with an offence is guilty. If you do believe that, you could scrap the criminal law. You would not need the defence of the innocent. But, presumably, you do not believe that.

Sadly, there are cases where—I am not sure that they have been reported in the Wood royal commission but we have all had anecdotal evidence about this and have read about it in the papers—people have been set up by the police. So we do need to have adequate protections for the innocent as well—and that was the balance that former minister Kerr was talking about. We have people peddling these drugs around out there and we want to get at them. We want to make sure they are locked away. But, in the rush to do that, do not forget people are innocent until proven guilty; do not forget that sometimes people are set up; and do not forget that sometimes things are not as they seem and that the wrong person can be charged. There are two things to balance in this respect.

I also make this point: the dual approval process that you are seeking will ensure that urgent certificates—these crooks do not ring up and say, 'Listen, it's happening next week; you've got seven days to organise yourselves,'—will rarely be available. It is apparently a frequent occurrence that the customs service or the AFP will detect at the barrier a person carrying narcotics who will advise—often enough, I suppose—that he or she is to deliver the drugs to a person at a particular place. That is when we might want to move into a controlled operation. The window of opportunity for conducting such a controlled operation in these circumstances is not likely to be large. They are not going to detect someone at an airport with a bucket load of drugs who says, 'By the way, I'm delivering these in a fortnight's time. Take all the time you want to find someone suitable to approve this.' It is not going to happen like that.

It may well be the case that someone is coming in with a significant quantity of drugs and going out the next day or that afternoon. There is not a lot of time here, and the need to involve both a senior official and a judge

will probably ensure that in these instances a controlled operation is unlikely to be possible.

What will be the consequences of that? And we add on the burden that you are taking upon yourselves. I have already indicated the burden about an innocent person being affected by the process that you want and perhaps improperly convicted, and that is by having the judicial officer come to the conclusion, in your modified version, that the judicial officer is satisfied that the police were satisfied, which means the judicial officer believed the police were telling the truth. If that is not against an accused, I am at a loss to imagine what that, other than a confession, would be. You have got that burden; you have got the constitutional burden that people might be walking free because you are prepared to take a risk, because you wanted the balance to go the other way.

Then you have got this burden, too: where things do happen, there is a short space of time available and you do want to get a controlled operation in, what will happen by the dual process being required is that, yes, the courier will be arrested. I do not have any sympathy for couriers. But you and I know, Senator Spindler, that they are not the ones. You know that, Senator Bolkus knows that, Duncan Kerr knows that and Michael Lavarch knows that. So what will happen? The courier, probably some unemployed person who has been sucked in by these creeps and given what they think is a fortune in money, has taken a chance. You will catch that person, sure. They will be arrested and will probably go to gaol. But what will happen? The importer will go free. So you can add that on to the burden.

The other point I want to make with respect to this suggestion is this: the decision to authorise a controlled operation will be an administrative decision which will come under attack at a subsequent trial. That is the case irrespective of your change. It is still an administrative decision that is going to come under attack at a subsequent trial. The decision by the judge really would seem to duplicate that of the authorising officer, but it is the final decision authorising the conduct of a controlled operation—not making an on-balance decision as to rights and liberties. Accordingly, it is almost certain that the judge will be subject to cross-examination to ascertain how it is that he or she was satisfied of the requirements set out in proposed section 15M, which would include under the modified version how he or she was satisfied that the police were telling the truth, that they were genuinely satisfied that this person was likely to commit an offence.

We say that is clearly an inappropriate position in which to put a judge and is a position which no judge is likely to accept. You have to understand that what you are asking of them is qualitatively different from that which is asked of them in a telecommunications intercept. What you are asking is several steps up the ladder. We do not believe judges will be likely to accept this task. We point out there are already problems with respect to telecommunications interception matters. If you do not think those problems will be multiplied with respect to this, again, I say: on your shoulders.

Senator BOLKUS (South Australia) (5.48 p.m.)—We have heard Senator Vanstone arguing against herself in the last few minutes. I do not want to get into a wide ranging debate on this matter, but the last point she made was right. The amendments which Senator Spindler has put forward leave in the legislation the initial process, and the rights that people had to question that process are also left in. How you can argue that that is already there and then say earlier on in your speech that by bringing in this judicial review you are actually taking away rights people have got and those who might be innocent may find themselves entrapped because of the judicial review and the deprivation it may have on their pre-existing rights in the bill is a case of your arguing against yourself.

Senator Vanstone—No, I am not saying that.

Senator BOLKUS—You did, Senator.

Senator Vanstone—I will clarify that.

Senator BOLKUS—You may very well. The argument there is that the existing rights in your legislation stay. But what we are

talking about is a capacity for an external assessment before the authority is given. I do not think that is too much of an ask.

In terms of time, you have the same imperatives regarding the interception act requirements as well. Things happen very quickly. That is why in 1979 we worked through this issue in the parliament and that is why in subsequent legislation there was a mechanism put in place to ensure quick access to an issuing officer for warrants under the interception act. In similar circumstances we are conscious of the need for urgency, but we maintain that the provisions that will apply here under Senator Spindler's amendments will cover that. In responding to you on those two points, it is important to know that we recognise that, but we maintain that the mechanism is flexible and accommodating enough.

We, like you, do not want the culprits to go free. We, like you, want to keep an honest system. But the only way we think we can do it is to do what Senator Spindler suggested, with the amendment that Senator Cooney has suggested as well. It allows for that external review but it removes it from the judge.

You may read the functions which a judge has to perform under the Telecommunications (Interception) Act 1979 in terms of warrants. There are quite a number of things that they have to address their minds to in terms of the processes of issuing a warrant in respect of telephone interception. There must be urgency; there must be reasonable grounds for suspecting that a particular person is using, or is likely to use, the service; there must be an awareness of the fact that information that would be likely to be obtained by intercepting under a warrant communications made to or from the service would be likely to assist in connection with the investigation by the agency of a class 1 offence, or class 1 offences, in which the person is involved. I can go on. You must have regard to the extent to which methods of investigating the offence or offences that do not involve so intercepting communications have been used by, or are available to, the agency. A judge must be satisfied about all these things, including how much of the information referred to in paragraph (d) would be likely to be obtained by such methods, and how much the use of such methods would be likely to prejudice the investigation by the agency.

These are all important operational considerations that have to be taken into account by the judge. In the context of Senator Cooney's suggested amendment to Senator Spindler's amendment, those operational matters are the sorts of things that the judge would have to take into account. Qualitatively, it is very much the same. I have spoken for too long as it is. I do not want to speak any more about this issue. I think we have got the balance right at this stage.

Senator SPINDLER (Victoria) (5.52 p.m.)—I just wish to address the one point specifically directed towards Senator Cooney's suggested amendment that the Minister for Employment, Education, Training and Youth Affairs (Senator Vanstone) addressed. I believe there is a qualitative difference between saying that the judge is being asked to decide whether the officer spoke the truth and saying that the judge is being asked to decide whether, as the amendment suggests, the officer is satisfied that the person targeted is likely to commit an offence—that is, the officer believes that the person may commit an offence. That need not be the truth, and the judge is not being asked to decide that. The judge is simply being asked to decide whether the officer genuinely believes that the person is likely to commit an offence. So there is a qualitative difference between what Senator Vanstone was putting forward and the thrust of the amendment that Senator Cooney is proposing, which I am happy to accept.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (5.53 p.m.)—In response to that point, I put it to you this way, Senator Spindler. I understand the difference between satisfying yourself that someone else is satisfied of something, and being actually satisfied yourself. There is a slight distancing. I did not say there was no difference at all. In fact, I said I do not think it gets you very far at all. I mean that—it does not get you very far at all.

You are saying that the judicial officer simply has to satisfy himself or herself that the police genuinely believe that in their heart of hearts. What are you doing when you tell the truth? You are putting forward that which you genuinely believe. By signing a certificate in the form presented by yourselves, a judicial officer is basically saying, 'This person is obviously qualified to put this view to me.' The judicial officer is certainly not going to sign such a certificate if he or she believes the person has no competence and expertise. I think you would agree with that, Senator Spindler—you could save a bit of time in the debate if you could just give a nod or something to indicate that you understand a judicial officer is not going to sign a certificate, in the form you are now suggesting, if they believe the police officer before them has no competence to come to a conclusion. You accept that.

Equally, you would accept that another decision the judicial officer would have to make in order to sign the certificate is not only the question of whether the person has the competence to make such a conclusion but whether the police officer believes the person is likely to commit an offence. You have ended up with a certificate from a judge that says, 'I was satisfied that a competent person, professional in this area of law enforcement, came to the conclusion that this person was likely to commit an offence.' Basically, you could say to the jury that this certificate does not say a judge has listened to this and he has concluded it himself—that is, he has become the investigating officer and has concluded it. What you would be entitled to say, if you, the accuser, are there pointing the finger towards an innocent person, is: a judge has heard this matter; he has listened to what the police have to say; he was satisfied that the policeman was a competent person to make such a decision, and he was satisfied the policeman was telling the truth. As I said, there is a very slight shift, but I think it is inconsequential.

There are a couple of extra points to make because I believe that if the Senate is of a mind to proceed with this, it is about to make a very serious mistake. These decisions by a judge are fundamentally operational decisions that judicial officers should not be required to make. I am yet to hear an argument that this is not an operational decision. It gives the tick to a controlled operation to go ahead. That is an operational decision. You have got to listen to what people say, to listen to people involved in the operation, to put the case about why it is appropriate to do this and to make a decision—yes.

It is still quite likely that judges would be asked at a subsequent trial to explain how they were satisfied that the prerequisites for the issue of the certificate had been complied with by the applicant and the authorising officers. One can imagine the difficulty which will arise as a judge is cross-examined about how he or she was satisfied that the law enforcement officer was satisfied of certain things. You are not going to evade that point.

There are issues which go to the heart of the expertise of a trained investigator. There is a very strong possibility that judges would decline to exercise the function and that the state and territory governments would refuse to make their judicial officers available for the purpose. This is made even more likely by reason of the burden of numbers that is likely. It is expected that there will be a significant number of applications for certificates each year.

Senator Spindler, I think you made a guess at around 12 applications. It is important to understand the difference between the number that might be engaged in involving some sort of overseas operation and those that might come from just the start up point at the barrier, where it is all domestic. As I understand it, that would be a significantly more significant number.

If judges refuse to accept this function, as is quite possible, the legislation will be absolutely crippled from its inception. The opposition must know that judges will decline to perform this function. If the opposition does support—

Senator Bolkus—We also know they don't make the law, Senator.

Senator VANSTONE—You will get a chance to have another say in a minute,

Senator. I am sorry I was actually speaking and did not therefore take in what you were saying. Your support for the Democrat amendment is, in my view, tantamount to intentional sabotage of the bill.

Senator Bolkus—That is outrageous.

Senator VANSTONE—You may say it is outrageous but that is my view.

The TEMPORARY CHAIRMAN (Senator Ferguson)—Senator Cooney, before you start, I point out that we are debating proposed amendments that have not been formally moved yet. I understand they are Senator Spindler's amendments. I wondered if you would formally move them.

Senator COONEY (Victoria) (5.59 p.m.)—No, I will not, because as I listen to the debate I tend to shift. I am genuinely impressed by the argument.

I think there is a great difference between a judge being satisfied that a person is likely to commit an offence and a judge being satisfied that an investigative officer is of a genuine belief that an offence is going to be committed. By nature, investigative officers must be suspicious. My experience of the Australian Federal Police and the National Crime Authority is that they are people of outstanding ability and integrity and are good investigative officers. The fact that you have an investigative officer believing something, is the sort of thing that a jury or a judge who was hearing the case would expect, because the officer's function is to look around and see what looks suspicious and investigate that.

It is a different function altogether from a judge who must decide, in a balanced way, on all the evidence before him or her, whether a person is likely to commit an offence, or has committed an offence or whatever. Whatever decision he or she makes, it must be made on the basis of a considered approach. The judge's function is entirely different and, therefore, the impact that a decision made by a judge would have on a jury or another judge is going to be different from the impact of a similar decision made by an investigative officer.

As I was listening to the debate, what concerned me was section 15J(2), which says:

> (2) In an application to an eligible Judge under subsection (1), a senior law enforcement officer must provide sufficient information, orally or otherwise as the Judge requires, to enable the Judge to be satisfied that:
>
> (a) the person targeted by the controlled operation is likely to commit an offence—

We have discussed that. Then he has to be satisfied that:

> (b) the controlled operation will make it much easier to obtain evidence that may lead to the prosecution of the person for such an offence;

I do not think that the judge should be asked to make that decision either because, as Senator Vanstone said, it is an operational decision. It is not for the judge to think about how to obtain evidence. It is for the judge, in his or her normal capacity, to decide the effect of evidence that is brought before him or her, rather than how it ought to be obtained.

I do not think a judge should be asked to make the last decision either. I do not think he or she should be asked to be satisfied that any narcotic goods to which the operation relates in Australia will then be under the control of an Australian law enforcement officer. A judge should be divorced from that decision as well. The introduction to (2) should read:

> In an application to an eligible judge under section (1), a senior law enforcement officer must provide sufficient information orally or otherwise as the judge requires to enable a judge to be satisfied that the senior law enforcement officer has a genuine belief that:

And then (a), (b) and (c) would follow. I would like to hear some discussion about this.

I think that Senator Spindler wants some sort of control over what the investigative agencies do in this respect, and that would be consistent with getting warrants to search, intercept and what have you. What is being asked of the judge here is simply to be satisfied that the investigating forces have a genuine belief in what they are on about and that they do what they do in a responsible way to obtain evidence. I think there is an argument for that. So perhaps an amendment along the lines I have suggested, but perhaps

more eloquently expressed, may get over the problem.

Senator SPINDLER (Victoria) (6.04 p.m.)—I will be happy to support an amendment as suggested by Senator Cooney.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.05 p.m.)—I understand the goodwill of Senator Spindler. I do not attribute any bad faith at all to your position. But I would just come back to the point I made to you a few minutes ago: I do not think what you are suggesting gets over the problems. I understand the problem you want to get over. It has been a problem for everyone; no doubt it was for the government, as it then was, a difficult decision to make. But, in the end, there has to be a balance about accountability, effectiveness and constitutionality. Otherwise we are engaged in a debating exercise that is going to make no difference at all to putting these creeps away.

I understand that Senator Cooney's suggestion may be an even further improvement; but I still say that it is very marginal. Because what were the key evils we wanted to get at? Firstly, the problem that judicial officers will decline to do this. They will decline to take on this task. Presumably, no-one here is disputing the advice that I have been offered by the Attorney-General's officers, that these judicial officers are already declining to exercise the power given to them with respect to telephone intercepts. You understand that this is a much more serious task you are asking them to do, and we expect therefore—it is axiomatic—that they will decline to do this. So you pass a bill through parliament that has all the intentions of getting at these creeps, these peddlers in drugs, to find that the judiciary, not out of any bad faith but out of their belief as to what is appropriate, decline to take on these tasks.

What will you have? You will have a bill that is going nowhere fast and a whole lot of drug runners who still get away. That is one point. You do not, Senator Spindler, address the question by the amendments. The amendments proposed by Senator Cooney may be very sensible, they may sound good. You might think, 'Oh well, that's made it better'—you might think a lot better, and I would say not much better. But in the end whether it is better or not is irrelevant to the question of whether or not you get over the key problem.

The key problem is: at the moment judicial officers are declining to exercise their powers with respect to telephone intercepts. This is a much more serious matter and, therefore, you can conclude that they will decline to exercise these powers. So, where there is an operation that could be effective and catch one of these people rather than just the courier, that opportunity may be lost because of timing—which is, in fact, the second point. But because you require this and there will be judicial officers who will decline, you will run into the timing problem. I would say that, even if you were able to find a judge immediately, you may well on occasions face that extra timing problem when you get a courier who comes in—and that is where the controlled operation is seeking to start.

So you have not fixed the problem of judicial officers perhaps declining. Even if those judicial officers did not decline, you would still face a timing problem with those matters that suddenly arise in association with an intercept at an airport. Not all of these things are a consequence of law enforcement intelligence through, for example, Asia, where we think we know what will happen in advance and we can put someone in there to be a part of it. They are not all like that.

So you have not fixed the declining of judicial officers problem; you have not fixed the timing problem in that the drug runners may get away and you will end up only with the couriers; and, in our view, you still have not fixed the constitutional problem because you are still asking a judicial officer to exercise what we believe is a decision that can be challenged constitutionally. I am interested to hear an argument as to why you think you have got around it. Have you made it better? Yes, maybe. But have you got over each or any of those hurdles? No.

Senator COONEY (Victoria) (6.09 p.m.)—I will persist with the amendment. I understand what Senator Vanstone says, but I think there is an entirely different function to be performed by the judge in terms of the

amendment that I will put. I will have to put this in writing for you, but my amendment will be to add at the end of the introduction to clause 15J(2) the words 'the senior law enforcement officer is satisfied that'. I have thought about the words 'genuine belief' and I will say something about your proposition of 'a genuine belief'. I think that requires an inquiry that may prove to be a problem. What the test of a genuine belief is, is a matter that may prove difficult. The way that I would like to express it is the way perhaps suggested by Senator Bolkus—'enabled a judge to be satisfied that a senior law enforcement officer is satisfied that'. Therefore, I move:

Proposed section 15J, subsection (2), after "satisfied that", insert "the senior law enforcement officer is satisfied that".

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.12 p.m.)—With respect, Senator Cooney, I do not think it does get over the problem. How will a judicial officer satisfy himself as to the reasonable belief of the senior law enforcement officer? He will not do so by saying, 'I see Joe Blow in this court every couple of weeks; he's a nice bloke and I do not think he has ever lied to me before'—in which case he could give Joe Blow a stamp of his signature. He will have to make some inquiries. The inquiries will have to be more than 'Do you believe this to be true?' If all you are asking for, the only extra check you want, the only objectivity, is for the judicial officer to ask the senior law enforcement officer—and we are not talking about a junior officer here—'Are you telling the truth?', then let me follow through with the consequences, if I can, Senator Cooney. I know you are trying to do two things at once and it is not easy, so I will try to slow down.

What you are asking for, I think, Senator Cooney, is to get the adequate distance in there to get over one of the hurdles we have raised. But I do not think you can. Why do you want that distance in there? As I have understood you, you have concerns about the police force, it is not that you want to run them down completely, but these are serious matters and you want an objective view. I think that is the case you have put. In other words, you are concerned that there may be occasions where there are corrupt police officers, and you want an independent person to look at it.

Now, Senator Cooney, you can help me by indicating whether you think that is the correct assessment of what you are trying to get at. Could somebody perhaps indicate? Is that what you are trying to say—that you are concerned that there may be occasions when there is a corrupt officer, that you do not think you can take that view and you want an independent and objective view?

Senator Cooney—No.

Senator VANSTONE—You are saying no, and I understand there is a reluctance to say that there is corruption in the police force, but if you are not concluding that there is any problem in the police force then—

Senator Bolkus—Well, can I answer?

Senator VANSTONE—I will just try to indicate to you and Senator Cooney why I do not think you have achieved the end that I understand you want to achieve. You do not want the judicial officer to simply say, 'Are you telling the truth?' For whatever reason you want the judicial officer there—put aside what I have put to you as the reason that you do—you want some objectivity. That objectivity is not achieved by the judicial officer simply saying, 'Are you telling the truth?'

Let me go to the argument I raised with you a few minutes ago. The judicial officer could give the policeman he trusted a stamp and say, 'When you are telling the truth, put my signature on this.' Now that is not what you are suggesting. You know that the judicial officer is going to have to make inquiries as to how the senior police officer formed the reasonable view, came to a conclusion, that the suspect was likely to commit an offence. That is going to involve the judicial officer weighing up the arguments put by the police officer as to why he believes this. He may say, 'Look, there are five factors I have taken into account. Three go on balance this way. There are two other points. I am telling you the truth because I think three to two and that is how I have formed my reasonable view.'

A judicial officer is going to have to do more in order to have reasonable grounds to sign the certificate. They are never going to get away with simply saying, 'Are you telling the truth?' They are going to have to go into those matters and make a second guess, if you like. Senator Cooney was quite right when he said in his summing up that 'a genuine belief' is a difficult matter to ascertain. I do not see how you can do it by saying, 'Are you telling the truth?'

If that is all you are asking, frankly, you are adding that time difficulty in, and for the sake of that question it is pathetic. You are letting people go at the gate. They will end up in gaol as couriers and we will not get on to the drug runners. I can see Senator Spindler nodding his head. In other words, I think Senator Spindler agrees that you are asking for more than the simple question, 'Are you telling the truth?' What other questions do you think a judicial officer is going to ask to satisfy himself that the relevant police officer has genuinely satisfied himself? What other questions are there that do not go to the operational matters, that do not involve a judge in the things that we say will taint the bill? Tell me what those questions are that would allow a judicial officer to come to that conclusion.

Senator BOLKUS (South Australia) (6.17 p.m.)—The test that Senator Cooney is suggesting here is the one that is already in the Telecommunications (Intercept) Act. The judicial officer has to be satisfied about certain things. That is what he or she has to do there and that is what we are invoking here. They have to be satisfied about certain things, which are provided to them by the senior law enforcement officer. The senior law enforcement officer has an obligation—under threat of contempt or other proceedings if he or she was to lie—to the judge. You could ask very much the same sorts of questions that you are asking now about this provision as you could ask about the telephone interception act or any warrant that has been sought from a judicial officer.

I think it is a very spurious argument that Senator Vanstone is running here, with all respect to her. Whatever the warrant is that is sought from a judicial officer, a person seeking that warrant has always got to satisfy the officer of certain things. In the way that that is ordinarily done, you would have it done here as well. That is what we are saying in respect of this. I do not believe there is much more to be said on this particular issue. I think Senator Cooney, in embracing in his amendment the whole aspect of factors that need to be taken into account by the judge, covers all of the points that you were making earlier. In essence, you have a situation here which is very close to the issuing of warrants. I think your arguments are just spurious.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.19 p.m.)—Just to respond to that point: I come back to labour it because I have obviously not made it clear enough.

Senator Bolkus—You have made it very clear, Senator.

Senator VANSTONE—I have obviously not made it clear enough that there is a substantial difference between those matters that you are asking a judge to consider in the Telecommunications (Intercept) Act and those that you are asking them to consider here. Senator Bolkus does not discharge his duty to this place by coming in and saying, 'Look, on both of these occasions, you are asking a judge to consider things and, by a whole range of questions, they come to conclusions on certain things.' That is true, but it does not answer the point. One of the things that you would be asking them to do under this particular bill is qualitatively different from all of the things that you ask them to do under the Telecommunications (Intercept) Act. Nowhere in the telecommunications intercept legislation does a judge have to satisfy himself or herself that a person is likely to commit an offence.

Let us not pretend that we are simply talking about the issue of how a judge looks at certain things. Every time a judge makes a decision he looks at certain things. To say that that does not contribute, with respect, is not right. I come back to Senator Cooney, who I think understands and is trying to draw a line, and say that I do not think it is pos-

sible to draw the line. We are saying that, yes, in both cases judges would be asked to make certain conclusions but that in this particular bill you are asking for them to make a much more serious conclusion. Nowhere in the telecommunications intercept legislation do they need to draw a conclusion that someone is likely to commit an offence. They have to have reasonable grounds for suspecting that someone is going to use a particular service and that the information that would be likely to be obtained by intercept would be likely to assist. I mean, big deal! Under this, you could authorise a tap on a phone that was not the phone of the person whom you thought in the end you were going to catch. It might not be the phone of the guilty party.

I think it is correct that there would be a number of intercepts, and Senator Spindler would probably be aware of this from the previous committee experience he has had. There would be a number of intercepts—quite a lot—that you would ask a judicial officer to authorise. They are not intercepts that have anything to do, other than gathering evidence for an offence, with the person who is likely to be charged—that is, the targeted person. Even in those circumstances you have judges refusing to exercise their discretion and exercise the power that they could, by consent.

But in this case, inevitably—not just every now and then—there has to be the involvement of a person where conclusions need to be drawn by a range of people that that person is likely to commit an offence. So it is qualitatively different. To say judges decide certain things and take things into account all the time is irrelevant. This is qualitatively different. It is not possible that they can, as I understand it, authorise an operation where there is not a conclusion that someone is likely to commit an offence. So it is qualitatively different from the telecommunications intercept example.

I raised the point, as I put to you before, that you say, 'We can fix part of this'—certainly not the speed problem and certainly not the declining problem, but I think you think you are going to fix the constitutional problem by saying that a judicial officer will not have to be satisfied that someone is likely to commit an offence but they will have to be satisfied that someone else is satisfied. You are just shifting the barrier back. The judge is still going to have to ask more than, 'Are you telling the truth?' of the police officer. That was the point that I raised.

I am not trying to be difficult here. Senator Cooney may be able to help. How else can a judicial officer satisfy himself or herself that a police officer is telling the truth and believes that someone is likely to commit an offence without inquiring into those matters?

Senator COONEY (Victoria) (6.24 p.m.)—I think what is being said is this. This will probably come before the judges—let us work this through—by way of affidavit or by way of other evidence which will be uncontradicted by anybody else, which is normally the situation with applications for warrants. The judge will satisfy himself or herself on that material that the applicant, the senior law enforcement officer, has that belief or is satisfied of the matters that are there. That process of being satisfied that the investigating authority is going about his or her task in the appropriate way is an exercise that judges have been carrying out for centuries—or for a long time, in any event—in terms of applications for warrants for arrests, warrants for breaking into premises, and search warrants.

It is not a question of deciding whether or not the investigating officer is honest. The presumption we make here—and I am sure it is the presumption of everyone on this side of the chamber, including Senator Bolkus, Senator Spindler and myself—is that clearly the vast majority of investigating officers are honest. As far as the Federal Police and the NCA go, there is no reason for us to believe that they are not all honest. Certainly the leadership is honest and of the highest reputation. That is what we keep saying.

But I understand what concerns people is that there ought to be—no matter how much integrity any of us have we are all subject to this—some sort of discipline. The executive, the ministers in this chamber, are people of outstanding reputation, outstanding integrity. But they are brought here and tested, not as

to their truth but as to the way they go about their task and about whether there cannot be some better way they can go about their task.

It is the same with the investigating authorities here. It is always good to have some sort of audit outside the group that you come from. So, just as the ministry comes here every day to answer in question time questions that are put to them by the legislature, in the same way it is appropriate that investigating officers go before a judge simply in the sense of having somebody to be responsible to in a very serious matter.

This is a serious matter. The issues raised by Ridgeway are serious issues. All that is being said, and as I understand what Senator Spindler and Senator Bolkus are saying, is that this is a check, this is a balance that we all have to go through as responsible people. No matter what our walk of life there has to be some sort of check upon us. This is the balance that is brought into play in respect of these very good and great forces. Things are going to be better if there is this check. Certainly things will not deteriorate because there will always be this check, perhaps not as good as it might be but at least there will be some sort of check on the investigating officers.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.28 p.m.)—I thank Senator Cooney for that contribution. As I understood what he has said, there is a range of people in different walks of life who are frequently subject to some testing and some of them ascertain that there is a better way to go about it.

I put it to you this way: what is the senior law enforcement officer going about—an operational matter? If you are asking the police to put views before a judge and the judge to conclude whether there is a better way to go about it, you have by your own mouth admitted that you are asking a judicial officer to make a conclusion about an operational matter. That is the task that the law enforcement officer is seeking approval of. If you say to me that all you want is someone independent to make an assessment as to whether there is a better way to go about it, you are admitting that that is what you are asking a judicial officer to do; to make a decision about whether or not there is a better way to go about this operational matter. In other words, will they give a tick to this way or not?

I see some merit in what you say, but I think it condemns your argument. Equally, you put the point which I think again damages your argument, with great respect, that what will happen is that an officer will go before a judicial officer, if I understood you correctly, Senator Cooney, with a set of alleged facts that are largely uncontested. If that is the case, it begs the question of the purpose of this extra approval. If the facts are not going to be tested, if they are largely uncontested, we must come back to the point that you are either asking the judicial officers just to say yes on the basis of the fact that they trust the person or you are asking them to go to those facts and make a conclusion.

Either way you lose because if you are asking them to go to the uncontested facts and make a conclusion, you are asking them to make an operational decision one way or another. If you are not asking them to go to those facts, just to accept the uncontested facts, you are just putting a rubber stamp in the process. In that sense, you are losing some of those people that we did not know about in advance and are picked up at the barrier, who fall apart at the prospect of being caught and start openly yapping about where they were to take the drugs, whom they dealt with and so on.

I just do not think you can win with this argument, Senator Cooney. I notice you are nodding. I do not infer from that that you necessarily agree but I see that you can see the merit in the argument I am putting. At least you can say that. I understand what you are trying to get at. I know you want extra accountability. You say we need this because the senior law enforcement officer has to be accountable to someone, as if, if your amendment was not accepted, we would be proposing a situation where a senior law enforcement officer could give a tick and that would be the end of it.

Can I just take you briefly through the following steps. The authorisation by a senior law enforcement officer is central to the accountability measures in this bill. These officers will be accountable for their decisions to the minister, the parliament and, through it, the public. Do not forget the mechanism that we have provided in the bill. The senior law enforcement officers do not just make the decision and be accountable to no-one. They have to report to the minister, to the parliament and, through it, to the public.

That is not the end of the process that is already in what we say is a sure, constitutional bill, one that you are taking a risk with. The authorising officers will also be accountable to the courts, to judicial officers. Where an authorised, controlled operation results in a prosecution, the authorising officer is likely to be called to testify to justify the granting of the certificate. We do not deny that that is a good thing and, presumably, you think it is a good thing. So someone has the opportunity to challenge and say, 'This should not have happened. The certificate should not have been granted,' and the authorising officer will be called and cross-examined.

So it is not in the interests of the authorising officer, as we would have it, to just give things a tick without giving consideration because, as a later and appropriate step, we provide that judicial scrutiny. That step is removed from the making of an operational decision before you go into the operation but allows judicial approval where defence counsel think it appropriate to put it to the test. You will get your judicial officer, but at an appropriate point where you are not putting the bill at risk.

If it is decided that the certificate was granted without a proper basis, and it is a judicial officer who will make that decision, a court may exclude the resulting evidence. We think that is the most sensible way of providing judicial scrutiny of a certificate for a controlled operation. If I can put it at its most simplistic, I understand the good faith you bring to this task but you are getting a judicial officer to give something a tick prior to the operation going into effect and becoming operational.

We are arguing that you cannot possibly achieve that without involving the judicial officer in the operational matters. It follows that the operation does not go ahead without the judicial officer's approval. You can in one way or another extend it inch by inch or millimetre by millimetre—or, as Senator Cook would say, by a nano-millimetre or a nano-distance—but you will not get away from it. You are asking for the judicial officer to give approval to an operation before it goes into effect.

I want to make it abundantly clear and have it on the record that the government thinks you are therefore putting the bill at risk. I just want to make sure that everyone understands that the choice is not between judicial officer and non-judicial officer approval; the choice is between putting the bill and prosecutions at risk, letting people get away because of the timing problems and sticking with sure-fire, absolutely certain constitutionality with respect to this matter, where the judicial officer is there to say yea or nay when the matter comes to trial.

Let us not pretend that we do not have faith in judicial officers assessing these matters. We want to keep them out of the operational end of it and leave them exercising their proper duties in courts. That, I think, is the distinction.

Senator COONEY (Victoria) (6.36 p.m.)—What the minister understood me to say led to the comments she made. If I said what she understood me to say, there would be a lot of merit in what she said. But what I meant to say, if I did not say it, is that the discipline comes from the presentation of the material to the judge, just as the judge's discipline comes from writing the judgment. I am not suggesting that the judge should in any way interfere with the operations of the investigating officers but what I am saying and what I understand Senator Spindler and Senator Bolkus to be saying is that the discipline of presenting a case to the judge gives that added element to making sure that this very interesting exercise is done in accordance with the public interest.

When an investigating officer goes to get a warrant, the judge does not tell him or her

how to make the arrest or how to carry out the search. All they are saying is, 'You have come to me. You have told me the basis on which you want to make that search and I will sign the warrant off.' We do not want the judge to go any further in this case than to simply say, 'Yes, I am satisfied that you have got this belief. Now you go around and do your investigating in the way that you best feel advised.'

Senator SPINDLER (Victoria) (6.38 p.m.)—In support of what Senator Cooney is saying, I do believe that we are not asking the judge to make a determination on the truth of the matter, as Senator Vanstone keeps saying; we are simply asking him to be a check on the law enforcement officer and to determine whether or not the law enforcement officer is satisfied. There is a world of difference between making that determination and determining whether or not there is truth in the matter which he is putting forward.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.39 p.m.)—I understand what you are saying, Senator Cooney. The judge obviously has to be satisfied that the police officer is speaking the truth, believe what he is saying, but you are indicating that the judicial officer does not have to conclude that he would come to the same view. Is that what you are saying? On the basis of the facts presented, he does not have to conclude that he would come to the same view.

If the view the police officer has come to is that this person is likely to commit an offence and the judicial officer does not come to the view, should he still then sign the certificate? I see Senator Spindler nodding yes and Senator Cooney nodding no.

Senator COONEY (Victoria) (6.40 p.m.)—If the judge is not satisfied that the investigating officer is satisfied, then he would not issue the certificate in the same way that, if the judge is not satisfied that the investigating officer thinks there ought to be a search and that there is a basis for that search, he would not issue the certificate. But I would have thought that in the vast majority of cases the judge would act on the material that the investigating officer put before him or her because that is the evidence that is produced. I would not have thought that the application would be made unless the investigating officer thought there was a general basis for it.

All we are asking for is that there be a discipline—an extra discipline, that is true—upon the investigating force before it goes ahead with this very dramatic step. If you look at the Ridgeway case, the High Court obviously thought it was a dramatic step. All that has been asked for is that the judge exercise an additional discipline. It might not be a very great discipline in the sense that the material that is supplied to the judge comes from one side but, nevertheless, it is a discipline and doing that is in the tradition of the law as it has so far been administered in this society.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.42 p.m.)—There is, with respect, a ludicrousness in the proposition that you are putting. I think we all agree that judicial officers would not sign certificates if they thought the relevant police officer was lying to them. I think we agree on that. But you are saying that the judicial officer does not have to conclude on the set of facts presented to him that he would come to the same conclusion as the law enforcement officer.

You are saying to me that you think the judicial officer has to make a conclusion that the police officer has this genuine belief, but you think he can do that without having that genuine belief himself. In other words, when he looks at the facts—and he is going to have to look at the facts presented, uncontested as they are—how is he going to decide whether he thinks the police officer has the genuine belief?

If he is going to do more than just ask, 'Are you telling the truth?'—which is one option, and that would be ludicrous; presumably, you would agree that that would be ludicrous—then he has to look at the facts and say, 'Would a reasonable person come to this conclusion?' You are telling me that, if he makes a conclusion that a reasonable person would not come to that conclusion, he can

still say that the officer has drawn that conclusion.

In the circumstances where a judicial officer looks at a set of facts and says, 'A reasonable man would not come to that conclusion,' how does that judicial officer conclude that, nonetheless, this senior law enforcement officer holds that view reasonably? How does he come to that conclusion? He cannot do it other than by simply asking, 'Are you telling the truth?' You just cannot get out of this. In order to conclude that the police officer has that view, the judicial officer has to go into those details. If judicial officers do not have to go into those details and make a conclusion themselves, then the only other way they can be this extra tick is just by being a rubber stamp.

You just do not address the point that I am making. You do not answer that point. There is no other way they can do it. I understand what you are saying. With respect, I know you do not mean to be in any way diminishing the role of the judiciary, but to say you just want the judicial officers to be an extra check, an extra tick—send them down to the schoolmaster and the schoolmaster will say, 'Flick,' or, 'No flick'—is demeaning what you are asking.

The opposition is not asking for just a tick; you are asking judicial officers to give their time and consideration to something. You are asking them to give time and proper judicial consideration to a set of uncontested facts and to draw a conclusion from that. You cannot tell me that the judicial officer could draw one conclusion and still believe that the police officer had come to another one. You cannot possibly be suggesting that. I make the point that, in any event, you are taking a risk because you have got the judicial check at a later stage.

Senator COONEY (Victoria) (6.45 p.m.)—I am saying no more than this: the judge performs the function in respect of this particular exercise the same way as he or she does when issuing warrants. There is a lot of merit in what the minister said. When judges issue warrants, to a large extent they go through the exercise of having to endorse what the investigating officer said because that is the only evidence they have got.

That sort of problem and situation has existed for decades. It has existed from the time there has been common law in Australia, and it existed in England before that. The issue that Senator Vanstone raised—about how effective the issuing of warrants is—is one that ought to be looked at from time to time. But that is how warrants are issued. All that has been asked now is that that tradition and history be continued in respect of this matter.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.47 p.m.)—It may be appropriate at this point to move that the committee report progress. There are only a few minutes left. The government does—

Senator Bolkus—Do you have much more to say at this stage on this particular issue?

Senator VANSTONE—I understand that there is not time to proceed, in any event. The government takes this matter seriously, and I will talk to 6.50 if I need to. I really want opposition senators to consider overnight the seriousness of what they are suggesting.

We have canvassed the issues; I do not deny that. All the issues relating to whether we should give this extra judicial authorisation at an earlier point, rather than keeping what already exists, have been canvassed. The risks have been canvassed. I have no intention of going on and repeating them again. I am sure Senators Spindler and Cooney understand. With great respect, Senator Bolkus, I think you probably understand but have made up your mind. I just ask you to consider overnight the seriousness of the decision you are, at this stage, intent on making. With that in mind, I will move that the committee report progress.

Senator BOLKUS (South Australia) (6.48 p.m.)—Before the committee reports progress, I wish to speak for 60 seconds because Senator Vanstone just made some implications. The point I want to make is that we do understand, and we do share a commitment to the same objective. It is quite unfair of Senator Vanstone to suggest otherwise.

The implication that Senator Vanstone made is that the government has the moral high ground on this issue. We would assert that your objective is important, but so is the objective of ensuring external accountability in situations like this. We figure that the best way to provide that external accountability is to invoke the provisions of the interception act. It is not new and not radical; it is quite fair in these circumstances. We understand what you are trying to say, but we maintain that we have the same objective.

The TEMPORARY CHAIRMAN (Senator Childs)—Order! I will have to put the question.

Progress reported.

COMMITTEES

Membership

The ACTING DEPUTY PRESIDENT (Senator Colston)—The Deputy President has received letters from party leaders nominating senators to be members of committees.

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

That senators be appointed to various committees as follows:

Broadcasting of Parliamentary Proceedings—Joint Statutory Committee—

Senators Knowles and West

Public Accounts—Joint Statutory Committee—

Senators Baume, Crowley, Mackay, Watson and Woods

Public Works—Joint Statutory Committee—

Senators Calvert, Ferguson and Murphy

Superannuation—Select Committee—

Senators Conroy, Evans, Ferguson, McGauran, Sherry, Watson and Woodley.

NOTICES OF MOTION

Employment, Education and Training References Committee

The Deputy Clerk—Pursuant to standing order 25, earlier today the chair of the Employment, Education and Training References Committee, Senator Crowley, delivered a notice of motion referring a matter to the Employment, Education and Training References Committee to the Clerk. The notice will be listed on the *Notice Paper* for tomorrow.

The notice of motion read as follows—

That the following matter be referred to the Employment, Education and Training Reference Committee for inquiry and report by 17 October 1996:

The private and commercial funding aspects of government schools, which particular reference to:

(a) the nature and extent of fundraising mechanisms—such as voluntary contributions, levies, sponsorships and other marketing arrangements—used by government schools and their associated organisations;

(b) State and Territory policies and regulations regarding the collection and use of private funds received by government schools, the adequacy of existing State and Territory legislation regulating such practices, and the implications, if any, for the role of the Commonwealth;

(c) the purposes for which government schools raise and expend private funds, and the impact of private revenue on the curriculum and teaching resources deployed in those schools;

(d) the extent to which private funds contribute to differences in the quality of curriculum and services between government schools, and the implications of this for equity and access;

(e) the implications of expanded private funding of government schools for the implementation of the National Equity Strategy for Schools and for the achievement of the National Goals for Schooling; and

(f) the implications of increase private funding of government schools on Australia's obligations under relevant international agreements such as the Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights.

DOCUMENTS

The ACTING DEPUTY PRESIDENT—Order! It being 6.50 p.m., the Senate will proceed to consideration of government documents tabled earlier today pursuant to order.

National Board of Employment, Education and Training

Higher Education Council

Senator MARGETTS (Western Australia)—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

National Board of Employment, Education and Training

Australian Language and Literacy Council

Senator MARGETTS (Western Australia)—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

National Board of Employment, Education and Training

Australian Research Council

Senator MARGETTS (Western Australia)—I move:

That the Senate take note of the document.

I seek leave to continue my remarks later.

Leave granted; debate adjourned.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Colston)—Order! I propose the question:

That the Senate do now adjourn.

Sale of Telstra

Senator KERNOT (Queensland—Leader of the Australian Democrats) (6.53 p.m.)—For two days I have sought to take note of Senator Alston's answers to several questions in question time but in both cases, unfortunately, the time for taking note ran out before I could speak. Senator Alston said today that the fact that I have not claimed to have been misrepresented served as some kind of evidence that I accepted what he said about what I had said in my article in the *Australian*. I did not seek to claim misrepresentation because you cannot get to debate the issue. I do not believe that that was the most appropriate avenue.

With the amount of time the government, both here in the Senate and down in the House of Representatives, has devoted to responding to my comments, I believe they are starting to sound increasingly hysterical about this particular issue rather than winning a debate on context. In the last two days, Senator Alston has made much of alleged conflicting figures on the privatisation experience in Britain. Senator Alston chooses to quote from a copy of a letter written to me by British Telecom. I need to deal with this letter. I need to get a few facts on the record here.

Last Friday, British Telecom faxed a letter to my Canberra office. There was no customary indication that that letter was copied to anyone else. On Sunday, we read in the New South Wales *Sunday Telegraph* that British Telecom has a possible financial interest in the sale of Telstra. The headline in fact is, 'British giant eyes Telstra'. The first paragraph states:

The telecommunications giant British Telecom has emerged as the likely buyer of a slice of Telstra.

On Monday, two business days later, the Prime Minister (Mr Howard) referred in the parliament to this letter to me from British Telecom. The point of this chronology is simply this: clearly, British Telecom is not a disinterested observer but a player with a possible financial interest in the outcome of the Senate vote. Their actions, in my opinion, should be viewed accordingly. They are not a disinterested observer. Yet Senator Alston, interestingly enough, continues to rely almost exclusively on information from British Telecom as the source with which to refute figures which other people might raise in the debate. I prefer to rely on more independent sources, such as the National Consumer Council of the United Kingdom and Oftel, the British telecommunications regulator, and the Australian Consumers' Association.

Senator Campbell—Can any communications companies have anything to say in this debate? Are they all going to be interested?

Senator KERNOT—Yes, they can. Let's just get on the record the role of British Telecom in this debate.

Senator Campbell—What about any telecom that wants to comment?

Senator KERNOT—Senator Alston did not quote from any other letter—through you, Mr Acting Deputy President. The National Consumer Council of the United Kingdom, which reported that between 1985 and 1993, domes-

tic consumers fared far worse than business consumers, is one source that I think we should turn to. I quote from their report:

> As far as we can judge, the trends in charges for telephone services important to domestic customers have risen over the years relative to the charges for services used mainly by business customers. This especially applies to the cost of local calls.

Since 1993, the position has improved. I have always acknowledged that. It has been because of a range of changes by Oftel, the British telecommunications regulator. Price capping was an important factor. So too was the exclusion of volume discounts from the price capping formula, which had benefited business customers at the expense of residential consumers. Oftel reports that the degree of variation between business and residential consumers has now reduced. It also notes that regulation has played a key role. I quote from the Oftel report:

> UK prices have significantly reduced during the last five years, largely through the use of the price cap on the dominant operator and significant competition in the long distance mobile markets, and growing competition in the local loop—

It is not just Oftel. NUS International, in their worldwide survey of phone prices, also says that it is regulation rather than competition that is causing price falls in the United Kingdom. I quote from their survey:

> NUS has seen enough telecommunication deregulation around the world to say that market forces will not automatically send telephone costs lower.
>
> . . . . . .
>
> . Price reductions in the UK result from Government regulation rather than competition;

I do accept that in recent years British Telecom's charges regime has improved. I have said that before. It is regulation which has had the significant impact on this. That is why we have so much in common in this parliament in seeking to strengthen the regulatory regime for telecommunications. I think we know full well that a privatised Telstra, without price caps, would increase prices. Price caps and regulation are an essential precondition to consumer benefits, but privatisation alone is not. That is why the Australian Consumers' Association has called on the minister for communications to get the regulatory regime right. I quote:

> The new government needs to put the interests of consumers first by delivering
>
> appropriate consumer safeguards and effective conditions for competition before turning a third of Telstra's equity over to private interests.

I note an article on the AAP wires that states:

> The Telecommunications Industry Ombudsman . . . today criticised the federal government's plan for an open telecommunications market, saying parts of it were not in the best interests of consumers.

It is those kinds of concerns which have motivated the majority of this Senate to send the bill off to a references committee. I think the Australian Consumers' Association, representing the consumers of this nation, is actually grateful that the Senate has had the sense to do this.

In conclusion, Senator Alston can bluster all he likes about British Telecom information. The fact of the matter is that Australian consumers have had a decade of privatisation. They know what they were promised on banking—lower fees, for one. They know what has been delivered.

Senator Campbell—What's that got to do with privatisation, for God's sake?

Senator KERNOT—Because you and the previous Labor government told them that privatisation leads to efficiencies, lower prices and lower fees.

Senator Campbell—What's that got to do with the Commonwealth Bank?

Senator KERNOT—It has a great deal to do with the theories that you are continually imposing on this nation. For 10 years now Australians have said, 'We listened when you talked about the sale of publicly-owned assets and we are not convinced that what you promised to consumers has turned out at all.' That is one of the major issues in the Telstra debate.

One-third may not sound like much to some people. But let us not be complacent, because one-third leads to two-thirds which leads to total privatisation and, in my view, a disregard for consumer interests first. So let Senator Alston come in here and quote from something else other than British Telecom's

figures, because what we need to point out is that reliance on one source like that forms a very small part of the story.

Taxation of Award Transport Payments

Senator LUNDY (Australian Capital Territory) (7.02 p.m.)—I rise to talk about the issue of building construction workers having their take-home pay reduced as a direct result of a decision by the coalition government not to proceed with the formalisation of a legitimate tax deductibility on a component of the workers' travel allowance. This decision makes yet another mockery of the commitment given by John Howard. On 8 January he gave the commitment that workers had his rock solid guarantee that they would not be worse off.

Senator Short responded to a dorothy dixer today in question time which, as usual, gave a very narrow and biased perspective of the background of this issue. I want to set the record straight. The building industry is an itinerate one. The work is generally one of daily hire and one which requires workers to follow that work. The tax deductible allowance to which we are referring has existed for more than three decades and has its origins in the unusual itinerate nature of the building industry.

There was an agreement between the tax office, the then government and the workers' representatives—the unions—to the effect that on-site building construction workers' travel allowance would be exempt from tax. I am sure, if the government of today looked hard enough, that it would find that John Howard, as Treasurer in the Fraser government, was part of such an agreement.

In 1989 the tax department challenged this agreement, saying that as the allowance had increased over the years the tax exemption was becoming increasingly significant. As a result of this, the tax deductibility of that allowance was restricted to the allowance as it stood at that time. At that time it was $7.60 per day and the deductibility of this allowance was cordoned off at this point. It is important to note that this allowance has grown since then. It has grown to the degree that this tax deductibility component of this allowance now stands at around two-thirds of that complete award allowance.

In 1995 the tax department again attempted to renege on this agreement and put in place taxation ruling 95/22, which effectively excluded building workers from qualifying for that deductible component of two-thirds of their travel allowance by putting in place two tests. By and large, the first of these tests related to requiring the workers to carry bulky tools. It even went so far as to define these bulky tools, being wheelbarrows and ladders. Also, it was contingent upon there not being a lock-up on site. Given that a tools lock-up is now part of the award, that requirement is very difficult to fulfil.

The second part of the test put in place required building workers to be eligible to work on more than one site in any one day. But this particular aspect was quite ambiguous and there were situations where building workers could work on one site for one day, provided they moved around. So there was a lot of ambiguity there.

So, as you can see, the strict application of this ruling is administratively very difficult for all in the industry and not just the workers themselves, including the tax department and employers. Hence, in itself, this fact shows that this agreement was a very sensible thing to do.

On 8 December 1995, Mr Willis, in his capacity as Treasurer at the time, moved to formalise this existing agreement and instructed the tax department not to expect employers to tax their employees the full travel allowance in anticipation of moves on his behalf to resolve once and for all the ambiguity surrounding this issue. The tax department subsequently wrote to everyone to this effect.

It is this course of action that was set in train which this government has now decided to stop. In taking this action, it will actively be denying building workers between $12 and $28 in take-home pay, which is the weekly pay implication of the decision to apply taxation ruling 95/22.

Also, the application of this ruling, as it stood in 1995, raises the frightening spectre of retrospectivity. The coalition government,

in stating that they will not be proceeding with this exemption, have implied and have not refuted that it will apply retrospectively to the financial year of 1995-96.

If this is the case, this represents a very serious circumstance, firstly, because the taxation department has advised to the contrary in this current financial year and, secondly, this could mean that building workers stand to receive a huge bill in the vicinity of $1,200 come tax time this year. I cannot think of a more unreasonable, unfair or even spiteful decision by a government.

Needless to say, this action has provoked an understandably angry response from thousands of workers right around the country, and it begs the question: what is motivating this government to axe a longstanding agreement—an agreement that is bipartisan in nature and has stood for some 30 years? Not only is it an agreement that has attracted bipartisan support, but it is an agreement that is grounded in commonsense, that recognises the itinerant nature of building and construction work, and that makes a lot of administrative sense. It is a practical agreement.

To answer the question of what is motivating those opposite we need only look at the coalition's whole approach to working people. We can see by the workplace relations bill that any noises this government has made about no worker being worse off have been totally disregarded. It is no wonder that the many thousands of building and construction workers who protested today have taken a very strong stand. They stand to lose some of their take-home pay and will be faced with a massive taxation bill because of the retrospective application of this decision.

The coalition has, by their action, provoked an industrial campaign that has reinforced the fact that they have embarked upon a road of industrial confrontation. I say in closing that the words 'no worker will be worse off' are echoing in the same streets where thousands of building workers gathered today. Thanks to Mr Costello and this decision, workers will now be worse off.

Forests

Senator CHAMARETTE (Western Australia) (7.10 p.m.)—I rise tonight to speak about the plight of the forests, particularly those of the south-west of Western Australia. The continued adherence to the national forest policy statement and the concept of the regional forest agreement might sound like some kind of commitment to the protection of our high conservation value and old-growth forests. However, it is instead an unfettered commitment to unfettered woodchipping in this country.

The export control regulations relating to woodchipping which were tabled in this place on 30 April 1996 are a reflection of this commitment to unchecked woodchipping. The regulations do not and never have reflected a real terms drop in the woodchip quota. Any reduction in quota granted by the previous government is in place only up until the regional forest agreements are signed. Unfortunately, once regional forest agreements are in place, there will be no national ceiling on the woodchip quota. So export control regulations do nothing to protect the old-growth forests of Australia.

The national forest policy statement proposed phasing out woodchipping from old-growth forests by the year 2000. Both major parties claimed their support for this statement, yet the regulations that I mentioned earlier have conveniently avoided any mention of a phase-out by the year 2000 and instead legislate for what might sound quite innocuous by its title—a regional forest agreement. But that agreement has no intention of phasing out logging in our old-growth and high conservation forests by the year 2000, no transition to a plantation base, no genuine protection for our environment in Australia and no respect for the needs of the planet or for the conservation of our last remaining old growth native forests.

I believe that this is a further example of the government's regrettable eagerness to exempt themselves from any control over protection of the environment in this country. The RFAs, the regional forest agreements, will eventually do away with the yearly export licence renewals. The previous govern-

ment was criticised by the now government for merely mounting a stratagem to make it look as though the forests were being protected. I have to agree with them. They are quite right. But I regret that they are following that same stratagem.

Yearly export controls are specifically designed to assess industry and state agency adherence to environmental conditions placed upon the granting of woodchip export licences. Until 1994, it was very clear that very little or probably no monitoring of export licence conditions was occurring. Senator Bob Collins might remember—it is certainly memorable to me—the estimates committee at which we discovered exactly how much, or how little, monitoring was happening of the conditions under which the export of woodchips occurred.

In the south-west of Western Australia logging of Giblett coupes 7 and 8, two pristine forest blocks supposedly protected by woodchip licence conditions, led to them being logged 'by accident' last year. No action has been taken by either government. The Bunnings woodchip licence for Western Australia's forests is in fact a 15-year licence, but yearly licence renewal is specifically to address adherence to conditions. We do not see a satisfactory monitoring of those conditions.

We have had no commitment from the present government that they will improve on the shoddy record of the previous government. The regional forest agreements will do away with even that essential intent and yet again emasculate the government to prevent it honouring its environmental responsibilities and its responsibilities to rural forestry workers and future generations.

Further, we have still no indication of this government's position on the protection of national estate forests in the south-west of Western Australia. Senator Hill gave a less than helpful response to my question of last week regarding this issue. In Western Australia and other places there is the very real spectre of this and other woodchip licence conditions being waived before regional forest agreements are signed, and as early as 30 June of the given quota year if 'significant progress' has been made towards RFAs in any given region.

Who determines what this 'significant progress' is? Western Australian RFAs may be in place by the end of 1997. Under these regulations, the much acclaimed 20 per cent reduction, or 40 per cent off 1995 levels by 1997, will be abolished by June next year. It sounds much more like a department store fire sale than a forest policy. Maybe it is a forest fire policy.

What is it that promotes this insane and extraordinarily counterproductive situation where the concrete protection of areas eventually contributes to their ultimate downfall to woodchipping? In effect, we are saying, 'Tell us which areas you propose to protect and we will give you an unquotaed licence to woodchip them.'

There are other questions of very real urgency regarding the government's intentions in relation to the export control regulations. Will the DFA woodchip licence condition coupe exclusions of last year be adhered to? If the government increases the woodchip quota, and in so doing further puts the lie to its commitment to a phase-out of woodchipping by 2000, where will these woodchips come from? Will we see the areas of old-growth forest not protected within the DFA conditions logged with even greater voracity, further cementing unsustainable logging practices; or will the government take the disastrous armchair approach of simply revoking those conditions and reversing any short-term protection afforded Australia's most magnificent old-growth forests under the DFAs?

I would like to support the Dutch government's action whereby the Dutch public works department found that karri forest logging was less environmentally acceptable than tropical logging. We are actually in danger of disgracing ourselves in the international community. It is true that CALM in Western Australia is fighting this. Certainly, we want to commend the Netherlands for being far more thorough than Western Australia and the Department of Conservation and Land Management.

The point of raising this issue at this stage is that behind closed doors the agreements are being made to sell out our last remaining old-growth forests. The people of Western Australia were lulled into a false sense of security by the Conservation and Land Management Department in Western Australia requesting last year a moratorium of two years before putting the RFAs into action.

What we see now is that it was really a moratorium to wait for a change of government. Now we see that it is going ahead and we must be very, very careful that this government takes up the opportunities which the former government lost and denied the people of this country in relation to preserving our old-growth forests. They are precious and they are incalculable in their value to future generations. The indifference that has been shown by major political parties towards this devastation will be looked upon by the next generation with scorn, disbelief and an enormous feeling of sadness for what has been lost.

Importation of Cooked Chicken Meat

Senator BOB COLLINS (Northern Territory) (7.19 p.m.)—I rise on the adjournment tonight to draw the attention of the Senate to the unbelievably ham-fisted performance of the new Minister for Primary Industries and Energy, Mr Anderson, on the question of the importation of cooked chicken meat. In his attempts to squirm out of an impossible situation—I might add, one entirely of his own making—he has allowed both chambers of this parliament to be misled in recent days. I am very pleased that Senator Boswell is in the chamber tonight because he knows—and I know he knows—just how bad the minister's performance has been on this matter.

In terms of the discussion paper which the minister circulated to his government backbench—and I have a copy of it—if he thinks his backbench are mugs, he is foolish indeed if he thinks the chicken industry are mugs. It is the industry to which he provided a written assurance two weeks before polling day that he would not be allowing the importation of cooked chicken meat into Australia before the completion of the Nairn review and 'the implementation of its recommendations in full'. That is something which is at least a year away.

I read that discussion paper with disgust, I inform Senator Boswell, because some spin doctor in the minister's office, some bush lawyer, has tried to put this spin on it now. The chicken industry in Australia—and Senator Boswell knows it—was in no doubt about what the minister meant when he handed them that letter two weeks before polling day. He was not talking about uncooked chicken meat at all, which was not even on the table for discussion at that time. It was cooked chicken meat that was the order of the day. The minister's behaviour on this casts no credit on him at all. Senators would recall my colleague Senator Burns asking the junior minister in here, Senator Parer, a question last week. That question was about an article in the *Australian Financial Review*—a very interesting article. The article stated that the newspaper had been told by Mr Anderson's office that the minister had signed off on a decision to allow the importation of cooked chicken meat into Australia from the United States, Thailand and Denmark, only to be told in a panic-stricken call the journalist received half an hour later that this was wrong and a decision, although it was imminent, had not been made pending further consultation with industry.

Given that the decision is made by delegated authority, Senator Burns asked whether Senator Parer could, on behalf of his senior minister, advise the Senate if the delegated officer—that is normally the director of AQIS—had signed off on this approval and, if so, when. Senator Parer then provided to the Senate a detailed response, obviously prepared by Mr Anderson's office in anticipation of the question. During this response he said that AQIS had conducted a quarantine risk assessment and considered the importation of cooked chicken meat from the USA, Thailand and Denmark under specified conditions would not represent a disease risk. He added—this was in question time—and I quote:

AQIS will publish a statement within a few days—

this is a week ago—

setting out detailed arrangements under which the importation of cooked chicken meat from these countries will be allowed.

This was widely and accurately reported in the media, as one would expect, as a decision by the government to allow the importation of cooked chicken meat into Australia. In fact, the AAP story was headlined, accurately, that—'Government allows importation of cooked chicken meat'.

As senators may also recall, I raised this matter in this chamber again in question time on Wednesday last week. I asked Senator Parer why this decision had been taken in complete breach of specific, written undertakings given to the chicken and salmon industries in a letter from Mr Anderson two weeks before the election when this issue, I might add, was red-hot in regional seats. That was the issue of importing cooked chicken meat, not uncooked chicken meat, as the minister is now trying to slide out of this mess that he made by saying.

I read out the final paragraph of the letter which stated:

A coalition government will suspend the approval of all proposed new import protocols—

which, I might add, includes cooked chicken meat, because we have not had those protocols published yet so they are new protocols—

. . . until such time as the scientific review . . . has been completed and its recommendations acted upon in full.

And the letter was signed 'Yours sincerely, John Anderson'. Senator Parer was totally nonplussed by this information, said he had nothing to add to his original answer but was quite happy to read back the answer to Senator Burns into the *Hansard*. The junior minister clearly had no idea what a hornet's nest Mr Anderson had created and what a complete lack of attention he had given to the detail of this issue that he had then stirred up in the rural community.

But things got worse. Within an hour of Senator Parer telling the Senate that he had nothing to add, Senator Woodley's urgency motion was brought on on the same issue straight after question time. During this debate, Senator Brownhill, the minister's parliamentary secretary, said, 'No decision had been made.'

What was even more interesting was what Senator Crane said. Senator Crane is, of course, the newly elected chair of the coalition's primary industries and energy committee—and I have got a fair idea why Senator Crane got to be chair of that committee. Senator Crane informed the Senate that he had been so concerned about the original answer Senator Parer had given the Senate—and I am quoting Senator Crane—that he had 'gone to see the minister'. He had been told by the minister that 'no final decision had been made', the matter was 'under review' and 'the review would be very ruthless, very rigorous and would take some time'. Have a look at the *Hansard*, Senator Boswell; those are Senator Crane's words straight from the minister. I understand that Mr Anderson had some answers to give to his backbench, not unreasonably, following this affair.

An information paper, which I have a copy of, was then distributed to the government's backbench. When I read that information paper, I was astonished and disgusted at the minister's attempt to squirm out of the commitment that he had given the chicken industry by claiming he had been talking about uncooked chicken meat, not cooked chicken meat. I can tell you the reaction from the industry on that: I spoke to two industry representatives only two days ago, and they were disgusted. I am reliably informed that this information paper was actually the PPQ, the brief for question time, with the question taken off the top—and I have very good information about that. I am reliably informed that some of the backbench were not complete mugs on this issue either, as none of the chicken industry people were mugs and not very impressed by it.

The problem for the government was that we had an answer given by Senator Parer here in question time, a statement made by Senator Crane 24 hours later directly from the minister and an information paper issued to the minister, all of which absolutely contradicted each other. The briefing paper states:

Minister Anderson has no powers to intervene.

That was not a problem apparently two weeks before election day. It says:

> The decision needs to be taken by AQIS on a scientific basis having regard to the requirements of the Quarantine Act.

It then goes on to say:

> A further meeting of industry representatives will be convened to present the final AQIS statement on this access request.

You can understand my reaction to these three absolutely conflicting explanations from the government on this issue. Had the minister not signed off on a letter to the chicken meat and salmon industries just weeks before the election pledging no action on this issue until after the Nairn review recommendations had been implemented? That was the intention he meant to give the industry, and that is the intention that they accepted: there would be no cooked chicken meat coming in for at least a year. Was he really suggesting that he did not know the requirements of the Quarantine Act?

I refer you, Senator Boswell, to the four dot points on that information paper where the minister said that these were the things he did not find out till he got into government and that he did not know while he was in opposition. The first dot point was the requirements of the Quarantine Act. Was he seriously suggesting that he had to get into government to find that out? The next two dot points talked about the AQIS process, which had recommended—and you know they did, Senator Boswell; it was a matter for a Senate committee—that the cooked chicken meat be allowed in. That was a public process. Both the draft risk analysis and their final report were public documents available to everybody including, I assume, the shadow minister for primary industry. He did not have to wait to get into government to find that out either.

According to Mr Anderson, I took a decision. To my astonishment, he said in the House of Representatives today that I took a decision to allow the importation of cooked chicken meat last year; I approved that decision and then sat on it and did nothing. Well, can I ask the Senate a very commonsense question? If, as Mr Anderson said, I approved this action last year, which I did not, why are we not up to our ears now in imported cooked chicken meat?

It is an absolute nonsense and sheer duplicity on the part of the minister—and there is no question that that is what it is: his attempt to dupe his own backbench and his attempt to dupe the chicken industry as well. I have to say that he may have succeeded with his own backbench, although I do not think they are that stupid, but he certainly has not succeeded with the chicken industry. At a later point in time, I will table these documents for everybody to make their own assessments and compare them. In fact, if the minister had done the slightest research, he would have discovered—and he could have asked Senator Brownhill—that his own parliamentary secretary, Senator Brownhill, was still arguing about the rigour of the scientific assessment conducted by AQIS on cooked chicken meat before a Senate committee in November last year and he was doing so on behalf of the Chicken Growers Council of Australia. Mr Anderson did not even bother asking. *(Time expired)*

The ACTING DEPUTY PRESIDENT (Senator Colston)—I call Senator Murphy, but point out that there are only two or three minutes left. Forty minutes is set aside for the adjournment debate.

Senator Murphy—Senator Collins can use up the final three minutes if he wants to. What I have got to say is too important, in terms of this government's policies, to be said in only two or three minutes.

Senate adjourned at 7.30 p.m.

DOCUMENTS

Tabling

The Parliamentary Secretary to the Minister for Social Security (Senator Kemp) tabled the following government documents:

Albury-Wodonga Development Act—Albury-Wodonga Development Corporation—Reports—

1993-94.

1994-95.

Employment, Education and Training Act—National Board of Employment, Education and Training—Reports—

Australian Language and Literacy Council—Language teachers: The pivot of policy—The supply and quality of teachers of languages other than English, May 1996.

Australian Research Council—Review of the Institute of Advanced Studies, May 1996.

Higher Education Council—Equality, diversity and excellence: Advancing the national higher education equity framework, April 1996.

The following documents were tabled by the Clerk:

Acts Interpretation Act—Statement pursuant to subsection 34C(7) relating to the delay in presentation of a report—Albury-Wodonga Development Corporation Report for 1993-94.

Radiocommunications Act—Radiocommunications Class Licence (Spread Spectrum Devices).

Radiocommunications Act, Radiocommunications (Receiver Licence Tax) Act and Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Definitions) Determination No. 2 of 1993 (Amendment No. 5).

Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Transmitter Licence Tax) Determination No. 2 of 1995 (Amendment No. 15).

UNPROCLAIMED LEGISLATION

Return to Order

A return to order relating to details of all provisions of acts which come into effect on proclamation and which have not been proclaimed, together with a statement of reasons for their non-proclamation and a timetable for their operation, is tabled pursuant to Order of the Senate of 29 November 1988.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Welfare Rights Centres

(Question No. 10)

Senator Woodley asked the Attorney-General and Minister for Justice, upon notice, on 28 March 1996:

(1) What level of Commonwealth funding has been provided to the network of Welfare Rights Centres each year for the past five years.

(2) If available, what amount has gone to each individual centre.

(3) If available, what amounts are projected to go to the network of Welfare Rights Centres in the future.

Senator Vanstone—The Attorney-General and Minister for Justice has provided the following answer to the honourable senator's question:

(1) Following the 1992-93 budget, new funding was provided to 14 Welfare Rights Centres. Services received funding from January 1993. Funds are administered as part of the Commonwealth Community Legal Centre program in the Attorney-General's Department. Total funding since January 1993 is as follows:

1992/93—$499,999 (half-year funding only); 1993/94—$1,030,997; 1994/95—$1,053,680; 1995/96—$1,069,482

(2)—

Name of Centre	Funding 1992/93	Funding 1993/94	Funding 1994/95	Funding 1995/96
Welfare Rights Centre (NSW)	68,181	70,294	143,682	145,837
Illawarra Legal Centre (NSW)	34,090	140,589	71,840	72,918
Welfare Rights Unit (Vic)	68,181	140,589	143,682	145,837
Geelong Community Legal Service	34,090	70,294	71,840	72,918
Welfare Rights Centre (Qld)	42,181	86,977	88,891	90,224
Townsville Community Legal Service Inc	26,000	53,612	54,791	55,613
Welfare Rights Centre (SA)	68,181	140,589	143,682	145,837
Sussex Street Community Law Services (WA)	22,729	46,867	47,898	48,616
Community Legal and Advocacy Centre (WA)	22,729	46,867	47,898	48,616
Welfare Rights and Advocacy Service (WA)	22,729	46,867	47,898	48,616
Hobart Community Legal Service	22,727	46,863	47,894	48,612
Northern Community Legal Service (Tas)	22,727	46,863	47,894	48,612
Darwin Community Legal Centre Inc	22,727	46,863	47,894	48,612
Canberra Welfare Rights and Legal Centre	22,727	46,863	47,894	48,612

(3) Details of funding for the next financial year will be available in the budget context.

Cocos Island: Painters

(Question No. 30)

Senator Chris Evans asked the Minister representing the Minister for Administrative Services, upon notice, on 2 May 1996:

With reference to Asset Services flying a painter to the Cocos Islands in March 1996 to return on 6 April 1996, then recently dismissing 3 painters on the Island:

(1) Why was local labour not used on this occasion.

(2) What was the cost of flying the employee to the Cocos Islands, and what was his or her total remuneration.

(3) What was the cost differential between that and employing a local person.

(4) Does Asset Services intend to use local labour in the future.

Senator Short—The Minister for Administrative Services has provided the following answer to the honourable senator's question:

(1) Asset Services, acting in the capacity of a contractor to the Department of Primary Industries, was required by the customer to provide the services of a trade-qualified painter to ensure that industry standards were maintained. Painters on Cocos Island are not formally trade-qualified and would be classified as "brush-hands" within the painting industry. The provision of a mainland tradesperson not only ensured that the industry standard was maintained but also provided training to local workers who were also employed on the project under the supervision of this tradesperson.

(2) The return air fare to Cocos Island was $899.00 and the total cost of supplying the tradesperson, inclusive of this cost, was included in the price contracted to the customer.

(3) The actual cost differential is unable to be quantified since, as detailed above, there are no local employees with equivalent trade qualifications and also because of the variance in oncosts allocated to local (Cocos Island) employees and mainland employees. The base loaded wage of the tradesperson was however markedly lower than that charged for Island workers and this, allied to the reduced supervision necessary on the project and productivity gains made would together ensure that any overall differential in costs would be minimal.

(4) Yes. Asset Services have employed many of the local people in previous years and still have 22 local staff employed on a continuing employee basis.

Premarin

(Question No. 42)

Senator Woodley asked the Minister representing the Minister for Health and Family Services, upon notice, on 7 May 1996:

(1) How many prescriptions for the drug Premarin were issued in Australia in 1995.

(2) Is Premarin manufactured in Australia, or is it fully imported.

(3) Is it the case that an essential component of Premarin is derived by 'milking' oestrogen-rich urine from pregnant mares.

(4) Are there effective alternatives to Premarin available in Australia.

Senator Newman—The Minister for Health and Family Services has provided the following answer to the honourable senator's question:

(1) 'Premarin' is marketed in Australia as three strengths of tablets, injection and cream. However, only two of the tablet strengths are listed on the pharmaceutical benefits scheme (PBS) and the dispensed prices of these are below the upper limit of the general patient contribution (which means they are not counted as PBS prescriptions). The only figures available are for prescriptions dispensed under the PBS and for 1995 the figures are:

300 microgram—192,072; 625 microgram—536,071

(2) The formulated products (e.g. tablets) are imported but there may be some packaging in Australia.

(3) The active ingredient, conjugated oestrogens, is extracted from pregnant mares' urine (and purified). The urine is collected as the mares urinate naturally, it is not 'milked'.

(4) There are alternative oestrogen tablets and topical formulations available in Australia. The Schedule of Pharmaceutical Benefits includes formulations of the following oestrogens:

ethinyloestradiol; oestradiol; oestradiol valerate; oestriol; oestrone; piperazine oestrone sulfate; dienoestrol.