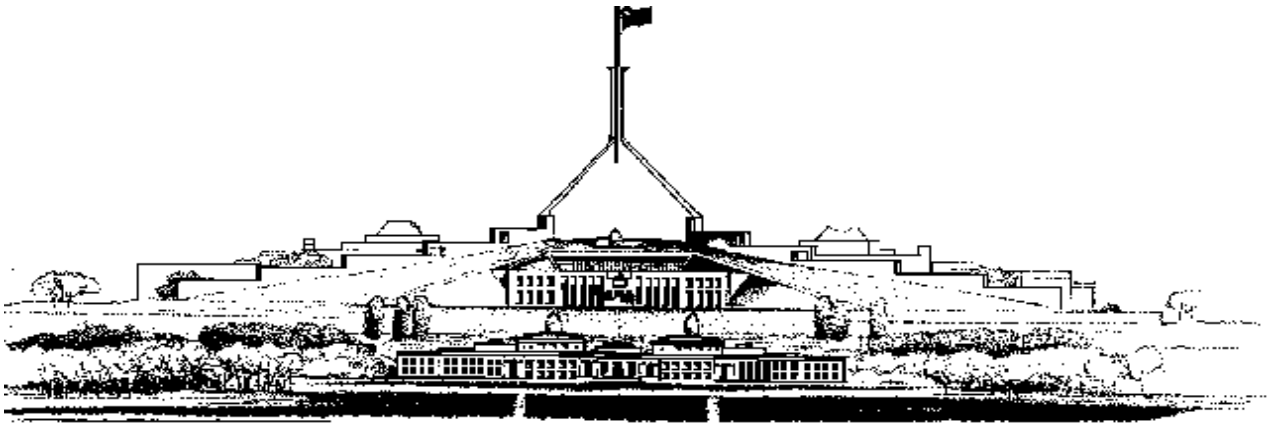




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 5, 2002**

**TUESDAY, 18 JUNE 2002**

**FORTIETH PARLIAMENT  
FIRST SESSION—SECOND PERIOD**

**BY AUTHORITY OF THE SENATE**

### INTERNET

The Journals for the Senate are available at:

<http://www.aph.gov.au/senate/work/journals/index.htm>

Proof and Official Hansards for the House of Representatives,  
the Senate and committee hearings are available at:

<http://www.aph.gov.au/hansard>

### SITTING DAYS—2002

Month	Date
February	12, 13, 14
March	11, 12, 13, 14, 19, 20, 21
May	14, 15, 16
June	17, 18, 19, 20, 24, 25, 26, 27
August	19, 20, 21, 22, 26, 27, 28, 29
September	16, 17, 18, 19, 23, 24, 25, 26
October	14, 15, 16, 17, 21, 22, 23, 24
November	11, 12, 13, 14, 18, 19, 20, 21
December	2, 3, 4, 5, 9, 10, 11, 12

### RADIO BROADCASTS

Broadcasts of proceedings of the Parliament can be heard on the following  
Parliamentary and News Network radio stations, in the areas identified.

<i>CANBERRA</i>	1440 AM
<i>SYDNEY</i>	630 AM
<i>NEWCASTLE</i>	1458 AM
<i>BRISBANE</i>	936 AM
<i>MELBOURNE</i>	1026 AM
<i>ADELAIDE</i>	972 AM
<i>PERTH</i>	585 AM
<i>HOBART</i>	729 AM
<i>DARWIN</i>	102.5 FM

## SENATE CONTENTS

TUESDAY, 18 JUNE

Questions Without Notice—	
Health: Cairns Doctors After-Hours Service .....	1991
Immigration: Border Protection.....	1992
Border Protection.....	1993
Distinguished Visitors.....	1993
Questions Without Notice—	
Pharmaceutical Benefits .....	1993
Health and Ageing: Departmental System Access .....	1994
Immigration: Refugees .....	1995
International Criminal Court .....	1996
Tasmania: Commonwealth Law Courts Library.....	1996
Superannuation: Contractors .....	1997
Economy: Performance .....	1998
Superannuation: Contractors .....	1999
International Criminal Court .....	2000
Superannuation: Contractors .....	2000
Superannuation: Policy.....	2001
Budget: Disability Services .....	2002
Questions Without Notice: Take Note of Answers—	
Superannuation: Contractors .....	2003
International Criminal Court .....	2008
Superannuation: Commercial Nominees of Australia Ltd—	
Return to Order.....	2009
Petitions—	
Immigration: Asylum Seekers.....	2010
Immigration: Asylum Seekers.....	2010
Health: Goldfields Medical Fund .....	2010
Notices—	
Withdrawal .....	2010
Presentation .....	2010
Withdrawal .....	2013
Committees—	
Rural and Regional and Transport Legislation Committee—Meeting .....	2013
Notices—	
Postponement .....	2013
Health: Animal Research .....	2013
Military Detention: Australian Citizens.....	2013
Documents—	
Tabling.....	2014
Budget—	
Portfolio Budget Statements.....	2018
Committees—	
Community Affairs Legislation Committee—Additional Information .....	2019
Australian Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002—	
Report of Legal and Constitutional Legislation Committee.....	2019
Report of ASIO, ASIS and DSD Committee.....	2019
Committees—	

## SENATE CONTENTS—*continued*

Rural and Regional Affairs and Transport Legislation Committee—Report	2026
Delegation Reports—	
Parliamentary Delegation to the 10th Annual Meeting of the Asia Pacific Parliamentary Forum .....	2028
Migration Amendment Regulations 2002 (No. 4) .....	2028
Adjournment—	
Trade: United States Beef Quota .....	2053
Trade: Banana Imports .....	2053
Gorton, Rt Hon. Sir John Grey, GCMG, AC, CH.....	2054
Thomas, Mr Ted .....	2055
Estimates Committees .....	2057
Documents—	
Tabling.....	2059
Tabling.....	2060
Proclamations.....	2064
Questions on Notice—	
Electorate Offices: Computers—(Question No. 246).....	2065
Kennedy Electorate: Program Funding—(Question No. 248 and 267).....	2066
Environment: Christmas Island Detention Centre—(Question No. 296) .....	2075
Environment: Christmas Island Detention Centre—(Question No. 315) .....	2076
Insolvency and Trustee Service Australia—(Question No. 316).....	2076

*Tuesday, 18 June 2002*

**The PRESIDENT (Senator the Hon. Margaret Reid)** took the chair at 2.00 p.m., and read prayers.

**QUESTIONS WITHOUT NOTICE**

**Health: Cairns Doctors After-Hours Service**

**Senator McLUCAS** (2.01 p.m.)—My question is directed to Senator Patterson, the Minister for Health and Ageing. Is the minister aware that the Cairns Doctors After-Hours Service has had to close their doors after 15 years of operation? Is the minister also aware that the GPs had been providing their services for as little as \$10 an hour? What action will the minister take to ensure Cairns again has an after-hours GP service? In light of this withdrawal of service, why does the minister insist on pursuing a policy where after-hours services have to be self funded?

**Senator PATTERSON**—The issue of after-hours services and access to GPs is an area which was totally neglected by the Labor Party. After-hours services were not a focus of the Labor government. In fact, services of GPs in outer metropolitan areas, services of GPs in rural areas and services of GPs after hours were not issues and were not addressed by the Labor Party. We have brought in a significant range of initiatives to ensure that we have more doctors in rural areas, and I have been through those ad infinitum in the chamber. I have been through issues relating to the election promise that we gave in the last election for millions of dollars to enable us to have doctors in outer metropolitan areas. Those sorts of initiatives will reduce the pressure on doctor shortages in those areas. We also have an after-hours program which is being rolled out—a program which was never, ever available under Labor—to enable doctors in rural areas, doctors in outer metropolitan areas and doctors in the city areas to have access to after-hours services. Those programs are there. We have seen an increase in doctors in rural areas, we will see the roll-out of doctors in outer metropolitan areas beginning early in the new year and we have seen the beginning

of the roll-out of the after-hours doctors programs.

Senator McLucas ought to go back and look at the Labor Party record on GPs—and look at the fact that there were no incentive programs for chronic diseases and there were no incentive programs for doctors to work together in divisions of general practice. We have had enormous reforms and an enormous number of programs to encourage GPs in delivering services at primary care level. They are the front line of our primary care. We have seen programs initiated under this government which have given much better access to better and more comprehensive care by GPs for the Australian community.

**Senator McLUCAS**—That was very interesting, but it did not in any way address the substance of the question. I ask a supplementary question. Is the minister aware that, on average, 15 patients used to attend the Cairns after-hours clinic each night and 60 to 70 patients each weekend? What suggestion does the minister have for what these patients should do now if they cannot afford the \$150 up front to see a doctor after hours? Isn't the minister's failure to support after-hours services putting enormous pressure on public hospitals like Cairns Base Hospital and, in effect, cost shifting to the states? Again, Minister, I ask: in light of this withdrawal of service, why do you insist on pursuing a policy where after-hours services are to be self funded?

**Senator PATTERSON**—I do not think Senator McLucas listened to the answer that I gave in the first place, that we do not have a policy of not having after-hours services. We have a policy of having after-hours services. There are programs in place. Senator McLucas needs to understand that, under Labor, there were none of these initiatives to ensure that the Australian public had better access to GPs after hours, GPs in rural areas and GPs in outer metropolitan areas. There were none of those programs. We did not have young people who were training in specialties being able to use a provider number in outer metropolitan areas and to deliver after-hours services. Young residents who were training to be surgeons, training to be ophthalmologists or training to be psychia-

trists were not able to have a provider number. They will now be able to have a provider number in outer metropolitan areas and they will be able to deliver those sorts of services after hours. So we have a number of programs. I am happy to give Senator McLucas a very detailed briefing on all the initiatives we have brought in to increase access to GPs.

#### **Immigration: Border Protection**

**Senator FERGUSON** (2.05 p.m.)—My question is directed to the Minister for Justice and Customs, Senator Ellison. Will the minister provide the Senate with information about actions being taken by the government to combat people smuggling and protect Australia's borders, and how new initiatives being promoted by the government will further enhance the protection of Australia's borders? Is the minister aware of other policies that could undermine the government's initiatives to combat people smuggling and make Australia a soft target for people smugglers?

**Senator ELLISON**—Senator Ferguson asked an excellent question in relation to border protection. The Howard government remains totally committed to border protection. We will not let Australia become a soft target for people smugglers, unlike the Labor opposition. In the run-up to the last election, it was all very well for Labor to proclaim that it was shoulder to shoulder with the government on border protection. It was all right then to agree with the government's excision of Christmas Island and the Cocos Islands in relation to the Migration Act. It was all right then to bring in legislation which gave the immigration minister the power to bring in regulations to excise territories to protect Australia from illegal entrants taking advantage of the Migration Act. But, of course, what we have now seen is a total roll-back in relation to their position on border protection; a total flip-flop and going soft on border protection.

Senator Ferguson asked about what new initiatives this government has brought in, in relation to border protection. We have introduced regulations which will excise islands of the northern half of this continent in order to protect Australia from illegal entrants.

That came about as the result of intelligence and advice given to this government by the People Smuggling Task Force. I can say that, last week, this government, via the Australian Federal Police, signed a memorandum of understanding with the Indonesian police in relation to closer cooperation in measures to fight people-smuggling. I note that the Leader of the Opposition was extolling the virtues of working more closely with Indonesia—well, he should be taking notice of what we are doing in relation to the memorandum of understanding that we have now signed with Indonesia.

We are also working more closely with our local neighbours, and I can announce to the Senate today that Mr Ali Hassan Abdolomia Alginabi, an alleged people smuggler of Iraqi nationality, is presently in detention in Thailand for possession of a false passport. He is wanted in Australia to face prosecution for 11 people-smuggling offences against our Migration Act. The department has lodged a request with Thailand for his provisional arrest pending a request for his extradition to Australia. Thailand has today executed a provisional arrest warrant in relation to Mr Alginabi. That is the sort of cooperation we are getting from our neighbours in the region, and the sort of thing that we are working on in order to fight the people-smuggling problem. The Labor opposition does not want to hear this because we are being successful with our policies. In fact, we have not had an illegal boat arrival on the mainland of Australia since August last year. That is how our policy is working.

**Senator Sherry**—What has this got to do with off-shore islands?

**The PRESIDENT**—Order! Senator Sherry, I call you to order. You should cease interjection and certainly cease shouting.

**Senator ELLISON**—The Labor opposition is clearly embarrassed by its soft stance in relation to border protection and its soft stance in relation to people-smuggling. We are getting runs on the board in relation to our policies and to how we are dealing with this issue. The excision of these islands off the northern half of the Australian continent is essential to send a clear message of deterrence to people smugglers. We are saying,

'Don't come to the mainland; just don't get in the boat.' That is something the Labor opposition needs to take note of because the Australian people want a strong policy on border protection and that is what we are delivering.

#### **Border Protection**

**Senator FAULKNER** (2.10 p.m.)—My question is directed to Senator Ellison, representing the Minister for Immigration and Multicultural and Indigenous Affairs. If the government is so confident that excising islands is the answer to the people-smuggling problem, why is it that the regulations that enable that are not being tabled in the Senate today? When does the government propose to table the Migration Amendment Regulations 2002 No. 4, relating to the excision of Australian islands from the migration zone and which were notified in *Gazette* No. S189 on Friday 7 June?

**Senator ELLISON**—Senator Faulkner knows full well that the government does not have to table those regulations today. In fact, that is a matter under consideration by the minister for immigration. The standing orders provide that those regulations can be tabled within 15 sitting days of the Senate. It is also free for other senators to seek to have those regulations tabled. This government is totally committed to border protection. We are not going soft on border protection, like the Labor opposition.

In fact, what we have seen from them is a total backflip. Pre-election, in order to get votes, they were strong on excision of Christmas Island and Cocos Island. They supported the government in relation to legislation which gave the minister for immigration the power to bring in the regulations that we have. We saw a very different stand from the Labor opposition in the run-up to the election, when it meant votes and the fact that the Australian people were right behind those measures. But what do we see now? Their true colours—where they are going soft on border protection and soft on people-smuggling. We remain totally committed to introducing these and other measures which are necessary for the protection of Australia's borders. These regulations will be tabled at the appropriate time.

**Senator FAULKNER**—Madam President, I ask a supplementary question. Given that the minister either would not or could not answer the question I asked in relation to why the regulations are not being tabled today, will the minister undertake to find out why the government is delaying the tabling of its own regulations and report back to the Senate immediately after question time today?

**Senator ELLISON**—Madam President, I will take that question on notice. I will take it up with the minister and I will get back to the Senate.

#### **DISTINGUISHED VISITORS**

**The PRESIDENT**—Order! I draw honourable senators attention to the presence in the President's gallery of former New South Wales Australian Democrats senator, Mr Colin Mason. I welcome you to the chamber.

**Honourable senators**—Hear, hear!

#### **QUESTIONS WITHOUT NOTICE**

##### **Pharmaceutical Benefits**

**Senator TCHEN** (2.13 p.m.)—My question is to the Minister for Health and Ageing, Senator Kay Patterson, an outstanding Victorian. Will the minister update the Senate on the government's strategies to secure the future of the Pharmaceutical Benefits Scheme? Is the minister aware of statements critical of the government's decision to encourage the quality use of medicines?

**Senator PATTERSON**—I thank Senator Tchen for his interest in this issue, which is a major issue for all Australians. In 1990, the Pharmaceutical Benefits Scheme cost \$1 billion, and this financial year it will be almost \$5 billion. So we have seen about a \$4 billion increase in the Pharmaceutical Benefits Scheme. That is not sustainable, if I am to be able to put on new medication which is coming online. One medication sitting in the pipeline looking to be put onto the PBS costs \$20,000 per person per year. We have just put one on that cost approximately \$50,000 per person per year.

If we are going to be able to sustain putting on those sorts of medications then we need to do something about it. In the budget was a range of measures to encourage the

quality use of medicines. Twenty million dollars has been committed over four years for the National Prescribing Service to provide doctors with information on appropriate prescribing guidelines, as set down by the Pharmaceutical Benefits Advisory Committee, before a medicine is listed on the PBS. When they list a medicine they put down guidelines, and we need to provide doctors with better information. We have had agreement from the pharmaceutical industry that they will put the PBAC guidelines on their advertising and also that their medical representatives will work to inform doctors of the PBS prescribing guidelines. If these are not adhered to, that is when we see blowouts in the budgeting for particular medicines.

We have increased resources for the Health Insurance Commission to enhance its ability to ensure compliance with PBS prescribing guidelines and we have also provided funding for a community awareness campaign to educate all Australians about the PBS. In some research done recently, it was found that most people have no comprehension at all about the way in which their medication is subsidised. The fact is that the most commonly prescribed medication on the PBS costs, on average, \$80 per script per person. When we sought information from people about how much they thought they were benefiting from the PBS, it was not anything near that. Discussions are already under way with stakeholders to show the true price of medicines on scripts and possibly on pharmacy labels.

Since becoming minister, I have identified the need to adopt a whole of community approach to securing the future of the PBS by encouraging the quality use of medicines. This is not just an issue for the pharmaceutical industry, it is not just an issue for doctors and it is not just an issue for pharmacists; it is also an issue for the community that they use those medications wisely and they do not demand them when they are not necessary. That is what has precipitated the National Prescribing Service's Common Colds Need Common Sense Campaign to reduce the inappropriate use of antibiotics, because we think that about 30 per cent of antibiotics prescribed for upper respiratory infections

are not necessary or have been prescribed inappropriately.

I think even the most cynical of senators would agree that we need to have a whole of community approach and we need to address this issue, which is one of very great concern. We have seen in the Intergenerational Report that, if we keep going the way we are, subsidisation of pharmaceuticals will chew up significant proportions of the budget.

These measures that I have just outlined complement those already in place such as, for example, improving the monitoring of entitlements by having people swipe their Medicare cards to ensure that only those people who are eligible for benefits under the PBS get them and the Home Medicines Review, which I have reported to the Senate before, where accredited pharmacists go into people's homes and work through what they are taking on scripts, what they are taking over the counter and any herbal preparations they are taking as well. We have 15,000 pharmacists who are accredited for this and we have invested \$114 million over four years to see better use of medications. Every year 80,000 people go into hospital as a result of adverse reactions to medications. *(Time expired)*

#### **Health and Ageing: Departmental System Access**

**Senator FAULKNER** (2.18 p.m.)—My question is also directed to Senator Patterson, the Minister for Health and Ageing. Is it true, as reported in the *Australian Financial Review* on 8 June, that the minister's predecessor, Dr Wooldridge, was caught logging onto a departmental computer in the minister's office in Melbourne two months after he had ceased to be a minister? Is this what prompted the minister to order that his email and Internet access be stopped? Wouldn't the former minister have had access to shared drives by logging on in the minister's office? Wouldn't this have given him at least some access to current departmental documents?

**Senator PATTERSON**—As Senator Faulkner knows, there is a departmental investigation in progress regarding the use of Health email by the former minister. The secretary of the department has given me an



interim report on that investigation. The investigation involved a number of interviews with a number of people, including departmental staff, former staff of Dr Wooldridge and employees of the department's IT provider, IBM GSA. Dr Wooldridge was interviewed yesterday, 17 June. The investigation has shown—with close scrutiny of the records relating to Dr Wooldridge's access to departmental computer systems—the material on the computer system accessible to and accessed by Dr Wooldridge and the use by Dr Wooldridge of other departmental resources after he ceased to be minister.

I just want to make this very clear: in the interim report there is no indication that Dr Wooldridge accessed confidential or commercially sensitive information. The investigation is continuing and I expect to receive that report. When I do, I will table it. As for Dr Wooldridge's access to the computer in my Clayton office, which was reported in the *Financial Review*, early in January I was out of the office and Dr Wooldridge visited my office to bring something—I do not know what it was that he brought, I cannot remember. He asked one of my staff if he could use the computer. I can understand this, and I am sure that some people on the other side may have had someone ask if they could use a computer.

When it was thought that Dr Wooldridge had accessed the health department email, that day I asked that, if he had access, it should be cut off. The documents show that he did not access the Health records from my office. One of my staff thinks that Dr Wooldridge may have come in twice—I cannot remember—but he would have only been to my office twice, or possibly once, since he stopped being minister. As one of my constituents, he has every right to come into my office. I did not think it was appropriate that he have access to Health email, so I asked for it to be cut off. In point of fact, on that occasion he did not actually access the Health email network in my office.

**Senator FAULKNER**—Madam President, I ask a supplementary question. I appreciate that the minister has indicated that Ms Halton has provided her with a copy of the interim report. I ask: who is conducting

the investigation into Dr Wooldridge's continued access to his email account? Is it Ms Halton or someone else? I ask also if that interim report has been provided to the Prime Minister yet or are there plans to provide that interim report to the Prime Minister? I ask if the minister is able to indicate to the Senate when she believes the report will be completed.

**Senator PATTERSON**—The investigation is being undertaken by the department's audit and fraud control branch, which is appropriate. The interim report has not gone to the Prime Minister. I received it at the weekend. The full report will go to the Prime Minister and will be tabled when it is available. I have been advised that that is next week, but we have had a tragic situation in our office, where one of my DLOs has suffered a bereavement, and that may delay the tabling of the report. We are hoping to have it by the end of next week. I understand that Senator Faulkner was advised at estimates that we had that issue and that we also had one DLO on holiday, who has now returned. That has meant that we did not get the information as quickly as possible. I hope the Senate will understand that we have had a tragedy in the office. I extend my sympathy to Rose and her family.

#### **Immigration: Refugees**

**Senator BARTLETT** (2.22 p.m.)—My question is addressed to the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs. I draw the minister's attention to figures produced by the immigration department, which show that on 8 April this year 311 people in Nauru and on Manus Island were assessed as refugees. Of those 311, 176—well over half—have family already in Australia. How many of these 176 people have been accepted into Australia since that time and how many people, two months after being assessed as refugees and with immediate family in Australia, are still being kept in detention offshore? Will the minister give a commitment to ensure that these families are no longer kept separated and will he immediately enable these refugees to enter Australia?

**Senator ELLISON**—I do not have those precise figures with me and I undertake to

get them to Senator Bartlett. A high percentage of people were found not to be refugees and I remind the Senate of that. I think that is a significant factor in relation to those people in Nauru and on Manus Island. But I will get the precise figures for Senator Bartlett.

**Senator BARTLETT**—Madam President, I ask a supplementary question. I have the figures; I have quoted them to the minister. They are from his department. I am asking how much longer the people are going to be kept locked up when they have already been assessed as refugees. I also note that prior to the most recent assessment 757 out of 1,129 people were assessed as refugees, so a clear majority and a very high percentage of people have been assessed as refugees. How does the minister justify continuing to detain hundreds of people since they have been assessed as genuine refugees?

**Senator ELLISON**—If Senator Bartlett has the figures, he should not have asked me. But he did ask how many people had come to Australia and that was something that I was taking on notice. I think that he should reassess his comment in relation to that. As a result of the finding that determined these people to be refugees, there are processes that the department still has to go through. They will be gone through as expeditiously as possible.

#### **International Criminal Court**

**Senator CHRIS EVANS** (2.24 p.m.)—My question is directed to Senator Hill, the Minister for Defence. In light of arguments advanced by opponents of the International Criminal Court, is the Minister for Defence aware of any negative impact the ICC would have on Australian defence personnel or any of the operations of the ADF? Has the minister sought or received any briefings from the ADF on this matter and have the ADF raised any issues of concern regarding Australian ratification of the ICC statute? Have the ADF informed the minister of any possible situation where Australian defence personnel might be subject to the International Criminal Court's jurisdiction and where those personnel would not be subject to Australian military or civil legal jurisdiction?

**Senator HILL**—There were a number of questions there. I have received some briefings on the matter. I sought those briefings to respond to matters of concern being raised by the RSL. The defence department has not found any threat to ADF personnel within the convention. In fact, on balance, the Chief of the Defence Force has been supportive because it would offer a degree of protection to ADF personnel on peacekeeping missions by making attacks on humanitarian and peacekeeping missions a crime under international law. Rather than being a threat to ADF personnel, it could to some extent be something of an advantage. The defence department, as I understand it, has provided public evidence to the parliament's Joint Standing Committee on Treaties to the effect of what I have just said. I think that basically covers the matters raised in the questions.

**Senator CHRIS EVANS**—Madam President, I ask a supplementary question. I thank the minister for his answer. Has the minister responded to the RSL concerns, which have also been put to me, and does he think there is any basis for those RSL concerns or is he satisfied that their concerns are not justified? Has he conveyed that information to the RSL or, more generally, to the Australian public?

**Senator HILL**—I have conveyed that information whenever I have been asked. Furthermore, as I said, the defence department has conveyed its attitude on the matter publicly through the parliamentary process. My recollection is that I responded to early representations from the RSL. I then sought further advice, which I now have, and a suggested response to that more recent correspondence, which I intend to get to the RSL in the not too distant future.

#### **Tasmania: Commonwealth Law Courts Library**

**Senator HARRADINE** (2.28 p.m.)—My question is addressed to the Minister representing the Attorney-General and it refers to the proposed closure of the Commonwealth Law Courts Library in Hobart. Is it not a fact that this library houses the most comprehensive collection of Commonwealth law material in Tasmania? Its loss would be immeasurable to those who have or need access to it. Has not the Attorney-General received high-

level representations from both Commonwealth and state judiciaries to keep the library open? What plans does the Attorney-General have to ensure that this library remains open and available as a valuable resource for not only the judiciary but also the AAT, the DPP, the Auditor-General, the legal fraternity and the people of Tasmania generally?

**Senator ELLISON**—I can advise Senator Harradine that the Administrative Appeals Tribunal has advised the government that it wishes to withdraw from its management role for the joint Law Courts Library in Hobart and, as a result of that, there will be changes. There have been representations made to the government. The Tasmanian division of the Australian Law Librarians Group and the Tasmanian Bar Association have made representations to the government about the closure of the library, and I think Senator Abetz has also made contact with the Attorney-General about this issue.

This library is one that is run by the AAT and it has indicated that it wishes to withdraw from the management of that joint Law Courts Library in Hobart. The primary purpose of the library is to serve the needs of the Federal Courts and the AAT in Tasmania. The AAT, I understand, is now moving to online provision of library resources and, therefore, has no continuing need for the library. The Federal and Family Courts make limited use of the library, as I understand. I also understand that the existing collection has been offered to the Federal and Family Courts and the AAT. These bodies will decide as to what subscriptions and other materials they wish to maintain.

It is the government's view that the taxpayers' money in this instance has to be used as efficiently as possible and, in view of the decision by the AAT, that the government's course of action is appropriate. It appreciates that the closure of the library is a matter of concern and disappointment for organisations, such as the Tasmanian division of the Australian Law Librarians Group and also the Tasmanian Bar Association. But, in the circumstances, it is a more efficient use of resources to embark on the course of action that the government has decided on. I do

understand that there are other users of the library. In fact, I think that the library is not one which is open to the public but does have limited access to the legal profession, the DPP, the judiciary and court officers; and that the use, I am advised, by other users is not as great as it would seem.

**Senator HARRADINE**—Madam President, I ask a supplementary question. Can I get a clarification from the minister? Surely this is not finished and done with. Hasn't the Federal Court made a proposition that it would continue with the library? Didn't the Federal Court offer to take over the management responsibility for the library, provided that a relatively small amount of appropriate funding was made available? Could not the minister have regard to that and also to the fact that, at a very high level—at the highest level, in fact—the Federal Court was urging the retention of the library?

**Senator ELLISON**—I do understand that Chief Justice Black from the Federal Court corresponded with the Attorney-General on this matter. I am not aware of the detail of that, and I will take that on notice and advise Senator Harradine.

#### **Superannuation: Contractors**

**Senator O'BRIEN** (2.33 p.m.)—My question is addressed to Senator Macdonald representing the Minister for Agriculture, Fisheries and Forestry. Can the minister confirm that, in 1998, the Australian Quarantine and Inspection Service tried to deliberately avoid paying any superannuation for over 300 of its meat inspectors and vets by forcing them onto individual contracts? Can the minister also confirm that AQIS told contractors in writing on 23 May that, following advice, they—that is, AQIS—had acted illegally and not only had to start paying them superannuation but also owed them back-payments for the last 3¾ years, including interest? Does the minister for primary industries, as minister responsible for AQIS, again have egg on his face?

**Senator IAN MACDONALD**—Certainly the minister responsible for AQIS does not have egg on his face. He is a very effective minister and one who deals very carefully with AQIS and biosecurity matters. Unfortu-

nately, as to the specifics of Senator O'Brien's question, I do not have any independent knowledge of that; I am not briefed with that at the moment. I will refer that to Mr Truss for an appropriate answer.

But perhaps I might say that the government does have great confidence in the AQIS staff: they do a great job for Australia in these very difficult times—times where their resources are being called upon and their expertise is being called upon quite often. They do a marvellous job in protecting Australia's borders. In another way, of course, that is something that the Australian government is very keen to do, and we will continue to support AQIS and the people who work for it. But I will take the specifics on notice and get an answer from Mr Truss.

**Senator O'BRIEN**—Madam President, I ask a supplementary question. I thank the minister for his answer and his undertaking to supply further information. Whilst he is at it, I wonder whether he could ask the minister to outline the following: how many meat inspectors and vets will be affected by this backdown; what rate of interest will apply to backpayments; what is the total cost of this government backflip; and how will AQIS pay for the backpayments and its ongoing obligations? Can the minister also outline whether AQIS intends to reduce the hourly rate it pays to meat inspectors and vets, now that it is required to pay them superannuation?

**Senator IAN MACDONALD**—Again, obviously I have no details to answer those questions, and I will refer them to Mr Truss. I might say, fresh from two weeks of exhaustive estimates committee hearings that, in the case of Senator Carr, cost the taxpayer some \$3 million in order to answer questions, I would have thought—

*Government senators interjecting—*

**Senator IAN MACDONALD**—It cost Victoria more than that. I appreciate that, and Senator Conroy knows all about that. But, after having gone through that exhaustive process, I would have thought these were the sorts of questions that Senator O'Brien—who very clinically questioned officials at the time—should have asked, having been

given that opportunity to get this information from the officials while they were there. But, as he did not do that, I will get the information for him and respond to him as soon as—

**Senator Conroy**—That is why we have question time.

**Senator IAN MACDONALD**—It might be why you have question time, but why then do we have estimates questions—except to cost the Australian taxpayer some \$3 million to ask a series of silly questions that Senator Carr would never look at. (*Time expired*)

**Senator Crowley**—Good Australian drongo you are.

**The PRESIDENT**—That is unacceptable language and the level of sledging that is going on is unacceptable.

#### **Economy: Performance**

**Senator WATSON** (2.38 p.m.)—My question is directed to the Minister for Finance and Administration, Senator Minchin. Will the minister inform the Senate of the benefits of the government's strong economic management. Is the minister aware of any alternative policies that would harm the continued growth and strength of the economy?

**Senator MINCHIN**—Australians are continuing to benefit from our very strong economic management. In the month just completed, the month of May, 44,000 new jobs were created and the unemployment rate remained at 6.3 per cent. Overall, we have had almost a million jobs created in the Australian economy since we were elected to government in 1996. I remind the Senate that when we inherited government from Labor, the unemployment rate was 8.2 per cent and, indeed, during their period of office there was a period of nearly 2½ years when unemployment was continuously in double digit figures.

We have an overriding objective to create jobs, to continue to create jobs, particularly for young Australians. Of course, if we are going to do that there are three things that we really have to do. We have to maintain sustainable economic growth. We have to have growth at 3½ per cent or above—that is what our budget is about. We are budgeting for growth of 3¾ per cent. That is why our

budget strategy is critical and that is why it is outrageous for this Senate to be trying to undermine the whole budget strategy.

We do need further labour market reform to ensure that we create jobs for young Australians. We do need the Senate to support reform of unfair dismissal legislation in particular. We do need reform in our tax and welfare system to ensure that we continue to encourage Australians to move from welfare to work. This is where Senator Vanstone, in particular, is doing so much good work. Australia is going to have, and will continue to have, the fastest growing economy in the Western world into the next financial year. This is something which was underscored by a poll of economists that showed that, in 2002 and 2003, Australia will have the fastest growing economy in the Western world. Of course, much of that growth is going to be underwritten by capital investment by the private sector in Australia.

Both the budget and the Australian Bureau of Statistics show that the capital investment figures for the coming financial year are at least 12 per cent, sometimes 16 per cent. We are seeing major projects all over Australia, particularly in the resources sector. I refer to the Comalco project, the Alice to Darwin railway, expansion of the LNG project on the North West Shelf and the Australian Magnesium Corporation project in Queensland. We are seeking to underwrite that sort of big, billion dollar investment with our reforms to the effective life arrangements for depreciation on such major capital projects.

We are determined to keep Australia internationally competitive when it comes to attracting investment. That is why a number of us were staggered to note that the shadow Treasurer, Mr McMullan, is actually going to take a proposition to his own party that they oppose the introduction of those effective life caps for depreciation. I do not know what happened in the caucus or the shadow cabinet today. I hope for the sake of Australia that the senators for Western Australia and Queensland stood up to Mr McMullan and rolled this outrageous proposal which will do so much damage to the capital investment figures. Even the Labor Treasurer in Western Australia, Eric Ripper, attacked this proposi-

tion by Mr McMullan, saying how much it would disadvantage his state of Western Australia, in particular, and that it would also damage the whole nation if Mr McMullan did attack these very important, internationally competitive moves on capital depreciation.

The strong economic management that we are delivering is continuing to deliver record low interest rates for Australians. They are now four per cent lower than when Labor left office. They are saving the average Australian family with a \$100,000 mortgage over \$320 every month in relation to their mortgage. This is compared to the outrageous interest rates we suffered under the former Labor government. Our economic management remains strong but to continue that economic management we do need the cooperation of the Labor Party, the so-called alternative government in this place. We do need support for our budget strategy to continue to provide jobs. (*Time expired*)

#### **Superannuation: Contractors**

**Senator SHERRY** (2.42 p.m.)—My question is directed to the Minister for Finance and Administration, Senator Minchin. Can the minister outline what role, if any, the former Minister for Finance, Mr Fahey, or his department—the department responsible for public sector superannuation—played in a decision by AQIS in 1998 to force over 300 meat inspectors and vets onto individual contracts in what is now admitted to be an illegal attempt to avoid paying them any superannuation? Did the former minister or his department provide any advice to AQIS on its responsibility to pay superannuation guarantee?

**Senator MINCHIN**—I am prepared to treat that question seriously and take it on notice. I have no knowledge of what Mr Fahey's particular activities were in relation to that matter and I am happy to find out what I can and report back to the Senate.

**Senator SHERRY**—I ask a supplementary question, Madam President. Now that AQIS's illegal superannuation avoidance scheme has been exposed—

**Senator Abetz**—You have not got the answer yet.

**Senator SHERRY**—It is in writing.

**The PRESIDENT**—Order!

**Senator SHERRY**—Now that AQIS's illegal superannuation avoidance scheme has been exposed in writing—they have actually written to them—and given there are thousands of such contractors throughout the public service, can the minister outline how many other government agencies are in breach of their superannuation guarantee obligations? What does he propose to do about it?

**Senator MINCHIN**—I am not the minister responsible for AQIS but I find that an extraordinary proposition and an extraordinary attack on an outstanding organisation which is doing such a great job for Australia. I will refer that matter to the responsible minister and I will see what further information I can find out in relation to the rest of his question.

#### **International Criminal Court**

**Senator GREIG** (2.44 p.m.)—My question is to the Minister representing the Attorney-General and is in relation to the International Criminal Court. If the government does decide not to ratify the ICC, and given that Australia has no comprehensive domestic legislation to allow for the investigation or prosecution of those suspected of crimes against humanity, is it the case that Australia would then be in the position of having no adequate sovereign, domestic or international approach to bringing those suspected of the most heinous crimes to justice?

**Senator Abetz**—Madam President, I have a point of order. Standing order 73(1)(g) says:

The following rules shall apply to questions:

questions shall not contain:

(g) hypothetical matter.

**The PRESIDENT**—I was just about to mention that. There are two aspects of the question. To the extent that it is hypothetical, the minister should ignore it. If it did, it should not be that he is being asked to give a legal opinion.

**Senator ELLISON**—Madam President, all I can say is that Australia has a long-standing record in its approach to war crimi-

nals—and that is to bring them to justice. In relation to the International Criminal Court, that is a matter which is under consideration by the government, and the Prime Minister has made that very clear. In relation to war criminals and offences in relation to war crimes, this country stands by its record of prosecution and investigation of people responsible. We have seen that just recently in relation to evidence which has been given to the Australian Federal Police and which is currently under investigation.

**Senator GREIG**—I thank the minister for his answer and ask a supplementary question. If, as he says, the government is committed to responding to crimes against humanity, why did the government oppose all attempts by the Australian Democrats just 14 months ago to introduce domestic legislation to provide for that? Would the government perhaps now consider revisiting that?

**Senator ELLISON**—We have had the International Criminal Court under consideration for some time. There was a process: the Joint Standing Committee on Treaties was having a look at this very issue and we were awaiting their report. That report was handed down last month, I believe. There is a proper process which we have to follow, and that is what we are doing.

#### **Superannuation: Contractors**

**Senator BUCKLAND** (2.47 p.m.)—My question is to the Assistant Treasurer and Minister for Revenue, Senator Coonan. Was the Australian Taxation Office, the agency responsible for enforcing the superannuation guarantee, consulted when in 1998 AQIS set up a dodgy scheme to avoid paying superannuation to meat inspectors and vets by forcing them to become contractors? If not, why not? If the tax office was consulted, what was the ATO's advice to AQIS?

**Senator COONAN**—I thank Senator Buckland for the question, although I do not consider it appropriate that he makes an allegation without appropriate proof.

**Senator Sherry**—They have admitted it!

**The PRESIDENT**—Order! Senator Sherry, you are out of order.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! Senators on my left know that there is an appropriate time to debate this matter. The question has been put to the Assistant Treasurer and I have called her.

**Senator COONAN**—But the part of the question that relates to whether the ATO was consulted is of course something that I will take on notice and get back to Senator Buckland about as soon as I have a response.

**Senator BUCKLAND**—When the minister gets back to us, would she also get back to us as to when she was first informed that the Commonwealth government was in breach of superannuation guarantee legislation? What action did the minister take when she was first informed, and how has she acted since then to protect the superannuation of these Commonwealth government workers?

**Senator COONAN**—I have indicated to Senator Buckland and to the Senate that I will get some information about when the ATO may have been consulted in relation to the AQIS matter. But Senator Buckland's supplementary question seemed to be a bit broader than that and seemed to request that I find out if ever there was a breach notified to the ATO. Obviously I cannot do that but, as I have said, I will find out when the ATO was consulted, if it was, in relation to the AQIS matter.

#### **Superannuation: Policy**

**Senator CHAPMAN** (2.50 p.m.)—I also direct my question to the Minister for Revenue and the Assistant Treasurer. Would the minister advise the Senate of the federal government's plan to make superannuation more attractive, accessible and secure for Australian workers? Is the minister aware of any alternative policies?

**Senator COONAN**—Thank you, Senator Chapman, for that question and for your continuing interest in this most important matter. As all Australians know, superannuation is a key priority for this government and a very important part of the coalition's policy for improving retirement incomes. Our objective as a government is to achieve a higher standard of living in retirement than could be achieved by the age pension alone.

After housing, superannuation is the most valuable asset owned by most Australians. The government believe that superannuation and financial self-reliance should be the right of every Australian. To that end, we have put in place policies to ensure that superannuation is an attractive and tax-effective way for all Australians to save. The concessions that this government already provide to superannuation as a form of savings are already worth in the order of \$9.5 billion this financial year.

But I can tell the Senate that we are not content of course to leave it at that. This government want to do even more to encourage Australians to save for their futures. Before the last federal election, we put a comprehensive package of further reforms to the people and outlined very clearly what we wanted to do when we were re-elected. I am sad to say that some of those measures are now opposed. But some of the very best ones were about co-contributions, where we said we wanted to introduce superannuation co-contributions for low-income earners, with the government paying up to \$1,000 a year directly into their superannuation accounts to improve the retirement savings of low-income earners. This measure will not only improve the level of savings for low income earners but also provide greater incentives for Australians to save for their retirements when they are able to do so.

We are going to introduce quarterly payments because the move from the system of annual superannuation guarantee payments will of course enable quarterly payments to be made in a way where employees get a higher superannuation benefit and their superannuation is more secure. We wish to introduce, and have introduced, splitting of contributions. We are committed to changing the system so that couples can split their contributions. This is particularly important for women who often have very fragmented life histories in work forces and have very fractured work patterns. And of course contribution for children is very important. Last, but not least, the superannuation surcharge reduction is a matter that most Australians paying this surcharge will welcome.

The government announced that it would reduce the superannuation and termination payment surcharge from 15 per cent to 10.5 per cent over the next three years. Despite the government having taken the superannuation package to the election and then delivering in full on the package, senators opposite plan to oppose our measures. As usual, the ALP does not put any store in election commitments. After the people have voted and after the government has brought down a budget that delivers in full on its election commitments, the ALP suddenly decides, opportunistically, that it will try to pick the eyes out of the most significant reforms to superannuation in the past five years.

While the opposition leader is desperately scratching around for some kind of policy in the 48 hours after the budget, he decides to oppose the reduction of the super surcharge and to oppose splitting of super for couples. We know that Labor have no policy to speak of and we know that after their failure at the last election everything was up for grabs. So where did this poor excuse for superannuation policy appear from overnight? (*Time expired*)

**Senator CHAPMAN**—Madam President, I ask a supplementary question. I did ask the minister whether she was aware of any alternative policies and I again ask her that question.

**Senator COONAN**—I was asking the Senate, rhetorically, and those opposite where the ALP's poor policy or excuse for a superannuation policy came from overnight. It seems that the mandatory 60 per cent of it came straight from the union masters in the ACTU. Senator Sherry's promised options paper, which he said would be delivered in March, never surfaced. What has surfaced is the ACTU's submission to the Senate inquiry into superannuation and standards of living in retirement and it gives Labor its riding instructions on the issue. The ACTU surprisingly opposes the government's policy of reducing the super surcharge. Despite the fact that reducing the surcharge will encourage those with the capacity to save to do so and become more self-reliant in retirement, the ACTU has told the Labor party to oppose

it because it simply does not suit their union mates.

#### **Budget: Disability Services**

**Senator WEST** (2.56 p.m.)—My question is to Senator Vanstone, the Minister for Family and Community Services. I ask whether the minister is aware that after the budget was brought down the Prime Minister said:

I saw some correspondence ... suggesting that somebody who was clearly working in the circumstances of a sheltered workshop ... were affected by the Government's changes they are not, because when award wages are not paid they are clearly not affected.

Given that the budget related papers from the minister's own department make it clear that this group is affected, when did the minister become aware of this and why did she not take action before the budget was brought down to protect people who are already working in sheltered workshops?

**Senator VANSTONE**—I thank the senator for the question because it does give me the opportunity to clarify something. Before I do that, I suggest, Senator, that you use the newer terminology which is preferred by the disability sector, which is 'business services'. Perhaps it is inappropriate, but for reasons beyond your or my control that particular group does regard the earlier term as a pejorative.

The reforms that we have announced we wish to proceed with I can simply recap for you. From 1 July next year we will have a new definition of disability which will be closer to that which New Zealand has, namely, instead of saying, 'Oh, if you can't work 30 hours or more we will pay you more to stay home,' we would say, 'If you can't work 15 hours or more you do deserve the disability support pension; if not, we want you to be more active in one way or another.' I did answer a question in this place the first day after the budget—

**Senator West**—Answer this question.

**Senator VANSTONE**—I am coming to the answer, Senator. In that answer I indicated that that of course means at award rates. That is also clear in the budget papers. The vast majority—I am almost tempted to



say all—of the people working in business services are not working at award rates.

**Senator Jacinta Collins**—That is not the point and you know it.

**Senator VANSTONE**—I was there at estimates, Senator. Senator Collins has an interest in this area and I listened very carefully to what she said. It is clear that some people in my department have the view that anybody in business services now not working at award rates but who could should be encouraged to do so. But I have the view, and the Prime Minister has the view, as indicated in the very beginning, that we are not interested in making things any more difficult for people who already have a more difficult life than anybody here, and those people who are not working at award rates would not be affected. It is also not my intention to proceed with legislation that affects people who are working at under award rates, people who could work at higher award rates but who, for the reasons Senator Collins pointed out in estimates, prefer the sense of community or family or whatever that comes from being in a business service, the old sheltered workshops. That is the situation.

**Senator WEST**—Madam President, I ask a supplementary question. I take the minister's advice about the use of the correct name and the fact that it has changed. Is she going to give that advice to the Prime Minister, who made the original statement? Will the minister's promise of changes to the budget package for people with disabilities, which she outlined on the ABC program on Sunday as 'ameliorating transitions', meet the Prime Minister's guarantee before the election that 'nobody's benefit will be cut as a result of changes to the social security system'? Isn't this another broken promise in the budget?

**Senator VANSTONE**—I think that is an assessment that the Senate will be entitled to make at the conclusion of the debate on this issue. I have indicated that the policy door is not shut. I have yet to hear one constructive suggestion from the Australian Labor Party in relation to this matter. There are two separate questions here: the first is do we agree that there should be a new definition of disability; and the second is what happens with

people who are already on the disability pension who, therefore, would need some transitional arrangements. I hear lots of complaints from the Labor Party, and I hear and read lots of misstatements of fact in relation to an area in which I hoped we could have avoided that, but I do not hear any constructive suggestions about what to do.

**The PRESIDENT**—Order! I point out to the Senate that there have been today a number of breaches of standing order 185, and I invite senators to acquaint themselves with and abide by it. In particular, there have been people walking across the chamber without acknowledging the chair. I draw your attention to standing order 185.

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

#### QUESTIONS WITHOUT NOTICE: TAKE NOTE OF ANSWERS

##### Superannuation: Contractors

**Senator SHERRY (Tasmania)** (3.02 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Forestry and Conservation (Senator Ian Macdonald), the Minister for Finance and Administration (Senator Minchin) and the Minister for Revenue and Assistant Treasurer (Senator Coonan), to questions without notice asked by Senators O'Brien, Sherry and Buckland today relating to the Australian Quarantine Inspection Service and superannuation guarantee.

The Liberal government has been scheming illegally not to pay the superannuation guarantee to thousands of employees who are contractors within the Public Service—its own employees. Thousands of contractors who have worked in the Commonwealth Public Service since 1998 have not been paid their basic superannuation entitlement, the superannuation guarantee. How do we know about this? The Australian Quarantine and Inspection Service entered into so-called contractual agreements with some 300 of its meat and veterinary inspectors in 1998—and the number has increased over time—and specifically excluded those alleged contractors from the payment of the superannuation guarantee. The superannuation guarantee in this country requires a payment at the present

time of eight per cent into superannuation. That increases to nine per cent on 1 July.

The Liberal government of Australia has been contriving illegally to avoid paying superannuation contributions for many thousands of members of its own work force. This is an issue that is not simply confined to meat inspectors and veterinary contractors, because there are literally thousands of such arrangements across the public sector. What is frightening about this issue is that none of the three ministers had any idea about what has been going on, and I find that particularly surprising when the quarantine service has actually admitted that it acted illegally. The Australian Quarantine and Inspection Service issued a letter to these workers, I understand, about a week and a half to two weeks ago. I have a copy of the letter, so I know what has taken place. In the letter, the quarantine service admits that, as the employer, it acted illegally—that the Liberal government of Australia acted illegally—in not paying superannuation guarantee payments to this particular class of workers.

It would take only a reasonably knowledgeable person to read the Superannuation Guarantee (Administration) Act 1992 to know that this is the case. In section 12, the act defines employees and employers for superannuation purposes. Section 12(3) reads:

If a person works under a contract that is wholly or principally for the labour of the person, the person is an employee of the other party to the contract.

It is very clear that, under the act, this class of individuals should have been paid their superannuation guarantee. The consequence is that the quarantine service have to not only start paying the superannuation guarantee for government workers in this area but also back pay the superannuation contributions for 3¾ years and pay interest. They admit this in their letter to the meat inspectors and veterinary contractors.

I pose the question: how widespread is this in the public sector in general? There are thousands of individuals on these types of contracting arrangements who apparently have been denied their legal entitlement of the superannuation guarantee. How can you

trust the Liberal government to protect the superannuation entitlements of Australian workers when they illegally schemed to deny superannuation guarantee payments to thousands in their own work force? Their own work force has been denied basic superannuation guarantee payments. It is an appalling situation that three ministers apparently know nothing about. (*Time expired*)

**Senator WATSON (Tasmania)** (3.07 p.m.)—The Liberal-National coalition went to the last election with one of the most comprehensive and far-reaching superannuation agendas ever presented to the parliament. Part of today's motion to take note of answers to questions covered that very wide agenda of about seven major initiatives which are going to be of great assistance to the Australian community. What is interesting to note, of course, is that the opposition spokesman on superannuation, Senator Sherry—

**Senator Sherry**—Madam Deputy President, I rise on a point of order. My point of order goes to relevance. I took note of the three questions relating to the non-payment by the government of the superannuation guarantee—nothing else. Whilst I respect Senator Watson's knowledge and contributions from time to time, he is not speaking to the relevant motion before the chair, which is the superannuation guarantee and the failure of this government, a Liberal government, to pay the superannuation guarantee—nothing else.

**The DEPUTY PRESIDENT**—This is always a wide-ranging debate, and I am sure that Senator Watson is about to draw his remarks to the answers.

**Senator WATSON**—The issue of paying the superannuation guarantee is on the basis of an employer-employee type relationship. All honourable members of this Senate know, for example, that when you employ an independent contractor there is no superannuation guarantee, but there is often a fine line between a contractor and an employee. This question as to when a person is an employee and when a person is an independent contractor has been debated at great length, especially by the Australian Taxation Office in relation to this and other matters. In recent

years the Australian Taxation Office, in particular, has tried to narrow that difference to bring a lot of employment that would essentially be in the nature of a contractor type relationship into the scope of being an employer-employee relationship. Those cases are well documented. Following the narrowing of that definition and bringing many contractors within the scope of an employer-employee relationship, the question, naturally, of a number of people who are employed as independent contractors came within the ambit of scrutiny.

Following recent advice, the Australian Quarantine and Inspection Service has taken steps to meet its responsibility under the Superannuation (Productivity Benefit) Act 1988. As a result, a retrospective liability of something like \$2.75 million was calculated independently and audited by Ernst and Young. That was an acknowledgment of this focus of bringing so many people who were previously under contracts within the scope of the employer-employee relationship. That was something that emerged over time. It was not the illegality that Senator Sherry referred to; it was a changing recognition of what the law was meant to espouse. Individual contractors were formally advised of their entitlements and, as a result, they will shortly be contacted by the Australian Government Employees Superannuation Trust with the details. I would point out that AGEST is the body responsible for handling the superannuation arrangements for these particular people.

AQIS, the employer body, is making arrangements to retrospectively contribute its superannuation liabilities to the Australian Government Employees Superannuation Trust in accordance with normal procedures, whereby an employer is required to meet certain superannuation obligations on behalf of their employees. Efficiencies from the contractor arrangements and the government's 40 per cent export assistance funding will assist in ensuring that this particular cost will not impact on AQIS fee levels for the meat processing sector for 2002-03. This is good news for the industry. Because this is a cost that could impact on export prices and export returns, it is very important for the

industry to know that those costs will not and cannot be passed on. (*Time expired*)

**Senator O'BRIEN (Tasmania)** (3.13 p.m.)—It is amazing that in this debate Senator Watson attempts to categorise the actions of the Australian Quarantine and Inspection Service, AQIS, as some misunderstanding of the intricacies of whether a contractor is an employee or a contractor. This is not a matter that is determined in the ordinary course of the law. In fact—and this not what I say; this is what AQIS says—under the Superannuation Guarantee (Administration) Act 1992, certain independent contractors are deemed to be employees for the purposes of the act. One of the exclusions is an independent contractor who is incorporated. I understand that what these so-called independent contractors are doing is providing labour—providing their professional services personally, not in any other form. So it was not a case of misunderstanding the intricacies of case law; it was a case of not understanding the government's own legislation. Probably more to the point, it was a case of seeking to skate around it so that these employees would not be paid their superannuation entitlements.

I asked a question of Senator Macdonald today as he had answered a question on notice for me in May this year, through the questions on notice process, where he adverted to AQIS taking advice on this matter, but he did not advise me in response to my question that AQIS knew as late as last year that there was—this is the term AQIS use—'potential liability'. In fact, what I believe happened is they were told they were liable and they decided to have that matter checked by the tax office and by the Department of Finance and Administration. So both Senator Minchin's department and Senator Coonan's department have been involved in this matter since last year. But what did we see today in the Senate? Senator Macdonald apparently did not have a brief on the matter, Senator Minchin did not know about the matter and Senator Coonan did not apparently know about the matter in answer to questions in question time today. Does that mean that they have not been briefed by their department? I suspect not. But in relation to this

matter, where the government has denied their employees—

*Government senators interjecting—*

**Senator O'BRIEN**—It is very interesting that Senator Ferguson and Senator Watson and Senator Hill are saying this matter is not important. I thought that Senator Coonan answered a Dorothy Dixier in the chamber today about how important superannuation was, praising the government for its actions but ignoring the fact that it was trying to dud its own employees. And Senator Minchin could not fess up to the fact that this has actually been policy of the previous minister in relation to the department of finance advising other departments on how they could avoid their obligations—obviously badly, because in this case AQIS mucked up to the extent they are going to have to pay these people, or pay their superannuation contributions into AGEST. And they are going to have to pay interest on those contributions. That is shoddy administration, and the fact of the matter is that it was deliberately shoddy in an attempt to avoid paying these people their rightful superannuation contributions.

Another point of my question which I am anxious to receive an answer on is whether AQIS will now try and reduce the pay of these inspectors. AQIS allege that they took the superannuation payments into account when they set the hourly rate. The implication is that they are now going to try and, in the next negotiation, ratchet down the payments for these officers who are responsible for protecting our borders—one of this government's claims to the so-called high moral ground. But they are going to in this process, I suspect, try and take pay away from—

**Senator Watson**—But they have not.

**Senator O'BRIEN**—Well, we will see the answer, Senator Watson. (*Time expired*)

**Senator FERGUSON (South Australia)** (3.18 p.m.)—Once again the Labor Party are on the big pictures: they are raising the major issues in the Senate chamber when we only have a couple of weeks of sitting before we finish. And the one issue they can raise is brought up by Senator Sherry, the opposition's major nitpicker in superannuation, who I see is not here now anyway, having

made his small contribution. I am also disappointed, of course, that Senator Conroy is not here, because he was always going to make a major play in relation to superannuation comment. But I can understand why he is not here: because the three-million-dollar man, Senator Carr, is back—the man who cost the government \$3 million when it comes to answering questions on notice at estimates. I thought Senator Conroy would be here so he could keep in close consultation with his new leader, Senator Carr, from the Victorian Socialist Left, now that Senator Conroy no longer controls—

**The DEPUTY PRESIDENT**—Would you like to address the question, please?

**Senator FERGUSON**—Madam Deputy President, as you well know, Senator Conroy has a very keen interest in superannuation and I was quite sure that he would be here to hear this debate. In relation to all matters relating to superannuation, the Labor Party now continues to nitpick and run second. They never come up with any new ideas. As a matter of fact, the last major opposition that I saw from the Labor Party in relation to superannuation was when the government, in 1996, introduced a superannuation surcharge. And do you know that, for all of that time, Senator Sherry completely opposed the imposition of a superannuation surcharge? Now that the government intends to reduce that superannuation surcharge by a small percentage, an incremental percentage, where do we find Senator Sherry? Opposing the reduction. He did not want a surcharge in the first place and now he opposes any incremental reduction in the surcharge, which is the government's policy. Our policy is to have lower taxation, which will benefit the Australian people. But not Senator Sherry; he only opposes things for the sake of opposition. He opposed the introduction of a surcharge and, now that the surcharge has been introduced, he opposes the incremental reduction of the surcharge.

One wonders what Labor Party policy on superannuation in general will be at any stage. I am quite sure that they do not know. They have no idea what their policy on superannuation is, or will be in the future, because they have never presented a complete

superannuation policy package to the Australian people whenever we have had an election. So we have got to the situation where they feel they have found one discrepancy. When Senator Sherry asked the question, the minister said he would take it on notice. Senator Sherry has not waited for the answer; he has decided he is going to bore in full steam ahead, regardless of what answer might come from Senator Minchin in response to his question. The senator quite rightly took the question on notice because, if he did not have brief on this particular matter, then it was only right and proper that he should wait until he has a full answer before he can respond to Senator Sherry's concern.

The one thing we know about the Labor Party is that they will criticise this government for not keeping its election promises and commitments. The real problem is that they will not let us keep our election promises. They are trying to stop us from making good our election promises, and one of those promises was to make an incremental reduction in the surcharge. The Labor Party needs to make its mind up: does it support us keeping the election promise or does it wish us to be unable to go forward with the promise we made to the electors who overwhelmingly re-elected our government?

I notice Senator Greig is sitting in the chamber. I am quite sure he is not going to talk on superannuation; I am sure he has something else in mind. Senator Greig's party does not want us to keep our promises either. I do not know whether that is because of pressure from his leader, whether it is a decision that they have made jointly or whether they have decided that for pure cheap political populism they will say, 'I don't think the people would like us to do that.'

*Senator Watson interjecting—*

**Senator FERGUSON**—I take your point, Senator Watson. They are now described as an opposition party. In the paper today, it talks about the opposition 'parties' opposing things. I always thought that the official opposition sits on that side of the chamber and the party that sits in that far corner is something different. (*Time expired*)

**Senator BUCKLAND (South Australia)** (3.23 p.m.)—I am not too sure where Senator Ferguson was going there, but he certainly was not addressing the question of the disgrace that has occurred relating to AQIS employees, albeit under the guise of contractors. He seemed to be more interested in what other parties were doing or what they were called, so I do not think we can count on any part of his contribution. Along with my colleagues, I asked questions of the minister today relating to the payment or non-payment of superannuation for AQIS employees. Senator Coonan was unable to answer. I take it in good faith that she will, indeed, get us a response. Given the age of this issue, I am surprised that she did not have a brief or at least understand the enormity of the problem that exists.

In an answer to Senator Chapman, Senator Coonan made the comment that the government is committed to an effective way for Australians to save for their future, and that, indeed, superannuation was that effective way. If that is correct, why is it that the government has denied superannuation to employees of AQIS who are employed as meat inspectors and vets? It appears to me that, on putting this group of workers under contract—this new, you-beaut way of ridding yourself of workers, but still having them there and reducing wages in the general sense—the government used people who were not very experienced to draw up those employment agreements. In my years of dealing with industrial agreements and awards, there was never an occasion when a new provision was made without thorough scrutiny of that provision to ensure that no illegality was involved. But here we are with a government department negotiating with its workers and including an illegal clause within the agreement.

The agreements that these workers are provided with have a number of components that are quite offensive—the fact that they provide their own steel and their own knives. That may seem trivial, but that is how far AQIS went to look at ways of cost cutting. The other way was that they made it very clear that AQIS meat inspectors would make their own arrangements for taxation, super-

annuation, insurance and all other overheads. It is offensive to Australian workers that we should be doing that. It is more offensive that it is occurring at the direction of the federal government to its own employees. It is sending a terrible message to industry at large in relation to superannuation.

The Australian Labor Party, unlike as suggested in the comments that were made by Senator Ferguson, has a proud history in relation to superannuation. Indeed, we are the ones who introduced this scheme for Australian workers. We can stand on our history as being those who are most concerned for those who are most at risk. We did it so that people could rightly have a way of saving for their future and for their retirement, so that they would not be totally dependent on handouts in the future. Senator Coonan was right, too, when she made the comments about it being an effective way for Australians to save for their future. However, she was wrong to think that, after the time that this issue has been around, as Senator O'Brien said— (*Time expired*)

Question agreed to.

#### **International Criminal Court**

**Senator GREIG (Western Australia)**  
(3.28 p.m.)—I move:

That the Senate take note of the answers given by the Minister for Defence (Senator Hill) and the Minister for Justice and Customs (Senator Ellison), to questions without notice asked by Senators Evans and Greig today relating to the International Criminal Court.

I welcome the announcement from Senator Ferguson just now when he argued strongly that he and his government were committed to implementing all of their election policies given at the last election, because one of them was the ratification of the International Criminal Court. I understand that the government has not yet made a decision on that. To the extent that he was able, the minister gave an answer to my question today, when, in essence, he said that, regardless of what may or may not happen on the issue of the ICC, the government was committed to addressing crimes against humanity and committed to responding to the issue of war criminals and suspected war criminals.

My challenge in response to that answer is that, if that is so, we have to do some serious legislative reform domestically. For example, we have a War Crimes Act, but it is clearly inadequate. It is structured in such a way that it can only address issues of alleged war crimes between the years 1939 and 1945, it is strictly limited to European theatres of war. The Special Investigations Unit, which was established to facilitate the operation of the War Crimes Act, was disbanded only a few years after the War Crimes Act was established.

I take the example of the issue surrounding Mr Conrad Kalejs, now deceased. The allegations against his apparent criminal behaviour during wartime in Latvia were such that he was twice subject to investigations under the War Crimes Act, but it was found that there was not enough evidence to proceed. It was argued at the time that that was due more to the limitations of the act than to Mr Kalejs's alleged guilt. However, anti-genocide legislation would have provided for much broader investigation into the allegations surrounding him and much better opportunities, should they be available, for prosecution. The collapse of communism throughout eastern Europe over the last decade or so has provided the opportunity to uncover vast amounts of documentation that was not available at the time of the original investigation. In summary, anti-genocide legislation is far more effective, comprehensive and accessible than the existing War Crimes Act.

To that extent, we Democrats tried to introduce such legislation only 1½ years ago. The report into that legislation was published in June 2000, so it was two years ago to the month. Yet, despite the committee finding comprehensively that genocide ought to be legislatively addressed in this nation, nothing was done and the private member's bill remains on the *Notice Paper*. Not satisfied with that, in April 2001, through means of a contingent notice, I attempted to force debate and a vote on that particular piece of legislation. It was defeated when it did not attract the support of either the opposition or the government. Curiously, one of the key arguments that the government presented, both

publicly and I think in *Hansard* fashion, to oppose my attempts to progress that legislation was that these crimes—crimes against humanity, genocide and perhaps, depending on the definition, gross acts of terrorism—would be better addressed with an international criminal court.

We are now in the position of having—should the government maintain its not signing on to that statute—no international or, for that matter, domestic response. I find that intriguing, because the strongest argument coming from protagonists of the ICC is that we ought to have not an international response but a domestic—that is, a sovereign—response, in which case I would point to the Democrats' attempt to bring that about with the Anti-Genocide Bill of just 14 months ago which was defeated. So you have this hypocrisy where the government is, on the one hand, arguing against the ICC on the grounds that we need domestic legislation but, on the other hand, defeating all domestic attempts to make that a reality.

My argument then is that, if the government is remotely serious, it must ratify the International Criminal Court and it must not be persuaded by what I would argue are irrational, largely troglodyte arguments against ratification which I think are reminiscent of Ms Pauline Hanson's conspiratorial arguments against all international treaties. I think we deserve better. (*Time expired*)

Question agreed to.

#### **SUPERANNUATION: COMMERCIAL NOMINEES OF AUSTRALIA LTD**

##### **Return to Order**

**Senator IAN CAMPBELL** (*Western Australia—Manager of Government Business in the Senate*) (3.33 p.m.)—by leave—I have a response to a return to order and would like to table a response and incorporate a brief tabling statement.

**Senator Brown**—Madam Deputy President, I raise a point of order. Could the Senate have notice as to what that return to order was, please?

**Senator IAN CAMPBELL**—It is a tabling on behalf of Senator Helen Coonan. It is a return to order dated 16 May 2002 seeking a copy of a KPMG report in relation to

an investigation into the affairs of certain small APRA superannuation funds, of which Commercial Nominees of Australia Ltd was the former trustee.

*The statement read as follows—*

I present to the Senate a report by Mr Tony McGrath of KPMG, as the APRA appointed inspector, into the Small APRA Superannuation Funds that had invested in a unit trust known as the Enhanced Cash Management Trust (ECMT), formerly under the trusteeship of Commercial Nominees of Australia Limited (CNAL).

Mr McGrath was appointed by APRA on 19 March 2001, as an Inspector for the purposes of the conduct of investigations under Division 4 of Part 25 of the Superannuation Industry (Supervision) Act 1993 (SIS Act). Mr McGrath was asked to investigate the affairs of 227 Small APRA Funds (SAF), specifically as to whether there was sufficient evidence to establish fraudulent conduct or theft for the purposes of section 229 of the SIS Act.

Mr McGrath concentrated his report on 17 of the SAFs with the largest exposure to the ECMT as the conduct of CNAL in those 17 cases can be taken as indicative of all its conduct in the context of SAFs and the ECMT.

Mr McGrath concluded that there was sufficient evidence to establish fraudulent conduct or theft for the purposes of section 229 of the SIS Act on the part of CNAL and its officers. The Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan, will have regard to these findings to assist in consideration of the applications for financial assistance under Part 23 of the SIS Act.

The Government would not ordinarily agree to the tabling of a report of this kind in the Parliament. This is because the report contains some information that would in normal circumstances give rise to privacy concerns. In particular the report contains the specific names of superannuation funds and the amount of superannuation savings contained in those funds. However, in this circumstance, the Government has determined that the report can be released as these details will be tabled when determinations are made for financial assistance to certain funds formerly under the trusteeship of CNAL with an exposure to the ECMT.

#### **PETITIONS**

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

### **Immigration: Asylum Seekers**

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

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

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

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

We, therefore, the individual, undersigned attendees at the Suburban World Action Group meeting at St Alfred's Anglican Church, Blackburn North, Victoria 3130, petition the Senate in support of the abovementioned motion.

And we, as in duty bound will every pray.

by **Senator Carr** (from 55 citizens)

### **Immigration: Asylum Seekers**

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

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

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

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

We, therefore, the individual, undersigned attendees and members of St Joseph's Catholic Church, Chelsea, Victoria 3196, petition the Senate in support of the abovementioned motion.

And we, as in duty bound will every pray.

by **Senator Kemp** (from 63 citizens)

### **Health: Goldfields Medical Fund**

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

The Petition of the undersigned shows we the undersigned residents of Western Australia respectfully oppose the merger of the Goldfields Medical Fund (GMF Health) with another Health Fund which will result in the loss of identity of a Goldfields icon, local services and operational headquarters to the City of Kalgoorlie-Boulder causing a loss of jobs and associated reduction of economic activity as well as reduced access for members.

Your Petitioners request that the Senate should ensure GMF Health continue to operate as a separate identity in regional Western Australia.

by **Senator Lightfoot** (from 1,259 citizens)

Petitions received.

### **NOTICES**

#### **Withdrawal**

**Senator TCHEN (Victoria)** (3.35 p.m.)—Pursuant to notice given on 16 May 2002, on behalf of the Regulations and Ordinances Committee, I now withdraw business of the Senate notice of motion No. 1 standing in my name for nine sitting days after today for the disallowance of the Fuel Quality Standards Regulations 2001, as contained in Statutory Rules 2001 No. 236 and made under the Fuel Quality Standards Act 2000.

#### **Presentation**

**Senator Sherry** to move on the next day of sitting:

That there be laid on the table, on the last sitting day of the winter sittings 2002, the revised costings document, including the correct phasing-in arrangements, of the Australian Labor Party's plan for a fairer superannuation system, prepared by Phil Gallagher (Manager, Retirement and Income Modelling Unit, Treasury) which was sent to the Treasurer's office in the week beginning 20 May 2002 and identified in Mr Gallagher's evidence before the Economics Legislation Committee on 4 June 2002.

**Senator Stott Despoja** to move on the next day of sitting:

That there be laid on the table, immediately after the passage of this resolution, the Migration Amendment Regulations 2002 (No. 4), as contained in Statutory Rules 2002 No. 129 and made under the Migration Act 1958.



**Senator Greig** to move on the next day of sitting:

That the Senate—

- (a) notes that:
  - (i) Australia was among the leading advocates of the Rome Statute, which created the legal basis for the International Criminal Court (ICC) in 1998,
  - (ii) the ICC will provide an avenue for the prosecution of war crimes, crimes against humanity and genocide, where domestic legal systems are unable to deliver justice,
  - (iii) the Rome Statute will enter into force on 1 July 2002, having been ratified by more than 60 nations, and
  - (iv) Australia will be excluded from participation in the first Assembly of States Parties if it does not ratify by 2 July 2002; and
- (b) calls on the Government to ratify the Rome Statute for the ICC before 2 July 2002.

**Senators Mark Bishop and Bartlett** to move on the next day of sitting:

- (1) That the following matters be referred to the Community Affairs References Committee for inquiry and report by 13 September 2002:
  - (a) consideration of the adequacy, effectiveness and fairness of proposed legislative participation requirements for parents and mature-age unemployed Australians; and
  - (b) the Family and Community Services Legislation Amendment (Australians Working Together and other 2001 Budget Measures) Bill 2002, with particular reference to:
    - (i) the nature of the participation requirements proposed in the bills for parents and older unemployed people, including how they compare to existing requirements for other workforce-age income support recipients,
    - (ii) the nature of penalty (breaching) provisions provided in the bill for parents and older unemployed people, including how they compare to existing requirements for other workforce-age income support recipients, and

(iii) the fairness, efficiency and effectiveness of proposed legislative social security penalty provisions.

- (2) That in undertaking this reference, the committee will consider the report of the Independent Review of Breaches and Penalties in the Social Security System (the Pearce Review) to determine whether implementation of its recommendations would improve the capacity of the participation requirement regime to provide effective and efficient support to workforce-age income support payment recipients while improving rates of compliance.

**Senator Sandy Macdonald** to move on the next day of sitting:

That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Legislation Committee on the 2002-03 Budget estimates be extended to 26 June 2002.

**Senator Conroy** to move nine sitting days after today:

- (1) That regulations 7.9.10 and 7.9.11 of the Corporations Amendment Regulations 2001 (No. 4), as contained in Statutory Rules 2001 No. 319 and made under the Corporations Act 2001, be disallowed.
- (2) That regulations 7.9.10, 7.9.11(1), 7.9.11(1)(a), 7.9.11(1)(b) and 7.9.11(2) of the Corporations Amendment Regulations 2002 (No. 2), as contained in Statutory Rules 2002 No. 16 and made under the Corporations Act 2001, be disallowed.
- (3) That regulation 7.8.22 of the Corporations Amendment Regulations 2002 (No. 3), as contained in Statutory Rules 2002 No. 41 and made under the Corporations Act 2001, be disallowed.

**Senator Ferris** to move on the next day of sitting:

That the Parliamentary Joint Committee on the National Crime Authority be authorised to hold a public meeting during the sitting of the Senate on Monday, 24 June 2002, from 8 pm, to take evidence for the committee's inquiry into the National Crime Authority annual report 2000-01.

**Senator Ferris** to move on the next day of sitting:

That the Parliamentary Joint Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund be authorised to hold a public meeting during the sitting of the Senate on

Tuesday, 25 June 2002, from 4 pm, to take evidence for the committee's inquiry into the National Native Title Tribunal annual report 2000-01.

**Senator Brown** to move on the next day of sitting:

That the Migration Amendment Regulations 2002 (No. 4), as contained in Statutory Rules 2002 No. 129 and made under the Migration Act 1958, be disallowed.

**Senator Ian Campbell** to move on the next day of sitting:

That the following bill be introduced: A Bill for an Act to amend the Torres Strait Fisheries Act 1984, and for related purposes. **Torres Strait Fisheries Amendment Bill 2002.**

**Senator Tierney** to move on the next day of sitting:

That the time for the presentation of the report of the Employment, Workplace Relations and Education Legislation Committee on the 2002-03 Budget estimates be extended to 27 June 2002.

**Senator Payne** to move on the next day of sitting:

That the time for the presentation of the report of the Legal and Constitutional Legislation Committee on the 2002-03 Budget estimates be extended to 25 June 2002.

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

That the following matters be referred to the Rural and Regional Affairs and Transport References Committee for inquiry and report by 28 August 2002:

- (a) the administration of the Plantations for Australia—The 2020 Vision Strategy;
- (b) whether or not the imperatives, goals and actions have been proceeded with or met in accordance with the aforementioned strategy;
- (c) whether or not the practices employed to implement the strategy thus far have been consistent with the stated intentions of the said strategy;
- (d) whether or not the current and proposed taxation structures are suitable and/or adequate for the purpose of achieving the 2020 Vision Strategy;
- (e) whether or not the states are employing world's best practice in sustainability and environmental applications for plantation development;

(f) whether or not the review process conducted through December 2001 and January 2002 allowed for adequate public input; and

(g) what the long-term strategies are for companies currently involved in the plantation industry.

**Senator Bartlett** to move on the next day of sitting:

That there be laid on the table, no later than 4 pm on Tuesday, 25 June 2002, the following documents:

- (a) the current mine lease or leases on Christmas Island held by Phosphate Resource Ltd (PRL), including all conditions;
- (b) the Environment Management Plan for the lease or leases;
- (c) any Environment Australia (EA) documents relating to compliance, oversight and enforcement of the lease or leases and conditions;
- (d) all materials relating to breaches of conditions, including claims, investigations and actions;
- (e) any audits of PRL's rehabilitation program;
- (f) any new mining proposals for Christmas Island;
- (g) a current tenure map of all blocks that have been mined;
- (h) any documents relating to the transfer of any lots to or from PRL;
- (i) any documents relating to the current mine rehabilitation budget for EA on Christmas Island;
- (j) any documents relating to the current status of rehabilitation on lease block 138;
- (k) any documents relating to the payment or non-payment of power bills by PRL;
- (l) any documents relating to alternative locations for the proposed detention centre on Christmas Island
- (m) any documents containing responses of EA to the detention centre proposal; and
- (n) current funds held for purposes of mine rehabilitation on Christmas Island.

**Senator Harris** to move seven sitting days after today:

That the Motor Vehicle Standards Amendment Regulations 2001 (No. 1), as contained in

Statutory Rules 2001 No. 350 and made under the Motor Vehicle Standards Act 1989, be disallowed.

**Senator Bartlett** to move 10 sitting days after today:

That the Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 3), as contained in Statutory Rules 2001 No. 327 and made under the Environment Protection and Biodiversity Conservation Act 1999 and the Environment Protection and Biodiversity Conservation Amendment (Wildlife Protection) Act 2001, be disallowed.

#### Withdrawal

**Senator CALVERT (Tasmania)** (3.36 p.m.)—On behalf of the Chair of the Parliamentary Joint Committee on Corporations and Financial Services, Senator Chapman, I withdraw general business notice of motion No. 81 standing in the name of Senator Chapman for today, relating to an authorisation for the committee to meet.

#### COMMITTEES

##### Rural and Regional and Transport Legislation Committee

##### Meeting

**Senator CALVERT (Tasmania)** (3.36 p.m.)—by leave—I move:

That the Rural and Regional Affairs and Transport Legislation Committee be authorised to hold a public meeting during the sitting of the Senate today, from 6 pm, to take evidence for the committee's inquiry into the administration of Airservices Australia in relation to matters arising from consideration of additional estimates 2001-02.

Question agreed to.

#### NOTICES

##### Postponement

Items of business were postponed as follows:

Business of the Senate notice of motion no. 1 standing in the name of Senator Bartlett for today, relating to the reference of matters to the Legal and Constitutional References Committee, postponed till 25 June 2002.

Business of the Senate notice of motion no. 2 standing in the name of Senator Murray for today, relating to the reference of matters to the Community Affairs References Committee, postponed till 25 June 2002.

Business of the Senate notice of motion no. 3 standing in the name of Senator Bartlett for today, relating to the disallowance of the Environment Protection and Biodiversity Conservation Amendment Regulations 2001 (No. 2), postponed till 24 June 2002.

Business of the Senate notice of motion no. 5 standing in the name of Senator O'Brien for today, relating to the reference of a matter to the Rural and Regional Affairs and Transport References Committee, postponed till 19 June 2002.

General business notice of motion no. 10 standing in the name of Senator Murphy for today, relating to the establishment of a select committee on forestry and plantation matters, postponed till 25 June 2002.

General business notice of motion no. 16 standing in the name of Senator Brown for today, relating to the introduction of the Parliamentary Commission of Inquiry into Forestry Tasmania Bill 2002, postponed till 20 June 2002.

General business notice of motion no. 53 standing in the name of Senator Greig for today, relating to the introduction of the Sexuality Anti-Vilification Bill 2002, postponed till 26 June 2002.

General business notice of motion no. 80 standing in the name of Senator Bartlett for today, proposing an order for the production of documents by the Minister representing the Minister for the Environment and Heritage (Senator Hill), postponed till 15 October 2002.

#### HEALTH: ANIMAL RESEARCH

**Senator BARTLETT (Queensland)** (3.38 p.m.)—I move:

That there be laid on the table, no later than 3.30 pm on Monday 24 June 2002, by the Minister for Health and Ageing, a copy of the colony visit reports written relating to the recent visits of the Animal Welfare Committee to the National Health and Medical Research Council primate colonies.

Question agreed to.

#### MILITARY DETENTION: AUSTRALIAN CITIZENS

**Senator BROWN (Tasmania)** (3.38 p.m.)—I move:

That the Senate—

- (a) notes the recent return to the United States of America (US) of another of its

citizens from detention in the military prison at Guantanamo Bay in Cuba; and

- (b) calls for the immediate repatriation to Australia of Mamadouh Habib and David Hicks, the two Australian citizens being held by the US in the same military prison.

Question negatived.

## DOCUMENTS

### Tabling

**The DEPUTY PRESIDENT** (3.39 p.m.)—Pursuant to standing orders 38 and 166, I present documents listed on today's *Order of Business* at items 11(a) to (e) which were presented to me, the President and temporary chairmen of committees since the Senate last sat. In accordance with the terms of the standing orders, the publication of the documents was authorised. I also table a corrigendum to the portfolio budget statements 2002-03 from the Department of the Senate. Copies are available from the Senate Table Office. In accordance with the usual practice and with the concurrence of the Senate, I ask that the government responses be incorporated in *Hansard*.

*The list read as follows—*

### COMMITTEE REPORTS PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

Standing Committee on Appropriations and Staffing—36th Report—Estimates for the Department of the Senate 2002-2003 (*certified by the President on 22 May 2002*).

Legal and Constitutional Legislation Committee—Interim report—Provisions of the Migration Legislation Amendment (Procedural Fairness) Bill 2002 (*presented to temporary chair of committees, Senator Cook, on 22 May 2002*).

Legal and Constitutional Legislation Committee—Interim report—Provisions of the Migration Legislation Amendment Bill (No. 1) 2002 (*presented to temporary chair of committees, Senator Cook, on 22 May 2002*).

Legal and Constitutional Legislation Committee—Report, together with the transcript of the committee's hearings and documents presented to the committee, on the inquiry into the provisions of the Migration Legislation Amendment (Procedural Fairness) Bill 2002 (*presented to the Deputy President on 5 June 2002*).

Legal and Constitutional Legislation Committee—Report, together with the transcript of the

committee's hearings and documents presented to the committee, on the inquiry into the provisions of the Migration Legislation Amendment Bill (No. 1) 2002 (*presented to the Deputy President, on 5 June 2002*).

Legal and Constitutional Legislation Committee—Report, together with the transcript of the committee's hearings and submissions received by the committee, on the inquiry into the provisions of the Australian Protective Service Amendment Bill 2002 (*presented to the Deputy President on 13 June 2002*).

### GOVERNMENT RESPONSE TO PARLIAMENTARY COMMITTEE REPORT PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

Finance and Public Administration References Committee—Report—Commonwealth contracts: A new framework for accountability (*presented to the Deputy President on 5 June 2002*).

### GOVERNMENT DOCUMENT PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

Annual Report of the Advisory Panel of the Marketing in Australia of Infant Formula—July 2000-June 2001 (*presented to the Deputy President on 3 June 2002*).

### REPORTS OF THE AUDITOR-GENERAL PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE

No. 51 of 2001-2002—Performance Audit—Research Project Management: Commonwealth Scientific and Industrial Research Organisation (CSIRO) (*presented to the President on 23 May 2002*).

No. 52 of 2001-2002—Financial Control and Administration Audit—Internal Budgeting (*presented to the Deputy President on 24 May 2002*).

No. 53 of 2001-2002—Assurance and Control Assessment Audit—Goods and Services Tax Administration by Commonwealth Organisations (*presented to the President on 29 May 2002*).

No. 54 of 2001-2002—Performance Audit—Drug detention in air and containerised sea cargo and small craft: Australian Customs Service (*presented to the President on 6 June 2002*).

No. 55 of 2001-2002—Performance Audit—Administration of tobacco excise: Australian Taxation Office (*presented to temporary chair of committees, Senator McKiernan, on 7 June 2002*).

No. 56 of 2001-2002—Performance Audit—Workplace planning in the Department of Immigration and Multicultural and Indigenous Affairs (*presented to the President on 13 June 2002*).

No. 57 of 2001-2002—Performance Audit—Management framework for preventing unlawful entry into Australian territory: Department of Immigration and Multicultural and Indigenous Affairs (*presented to the Deputy President on 14 June 2002*).

No. 58 of 2001-2002—Performance Audit—Defence Property Management: Department of Defence (*presented to the President on 17 June 2002*).

#### **RETURNS TO ORDER PRESENTED TO THE PRESIDENT SINCE THE LAST SITTING OF THE SENATE**

Statement of compliance with the continuing order of the Senate of 30 May 1996, as amended on 3 December 1998, **relating to indexed lists of files** received from:

- Agencies within the Communications, Information Technology and the Arts portfolio (*presented to the President on 13 June 2002*).

Health—Nuclear testing—Documents received from the Minister Assisting the Minister for Defence (Mrs Vale) in response to a resolution of the Senate agreed to on 20 March 2002 (*presented to temporary chair of committees, Senator Forshaw, on 28 May 2002*).

*The government response read as follows—*

#### **GOVERNMENT RESPONSE TO SENATE FINANCE AND PUBLIC ADMINISTRATION REFERENCES COMMITTEE REPORT: COMMONWEALTH CONTRACTS: A NEW FRAMEWORK FOR ACCOUNTABILITY WHOLE OF GOVERNMENT RESPONSE TO RECOMMENDATIONS 1-4**

The Senate Finance and Public Administration References Committee report—Commonwealth Contracts: A New Framework for Accountability was tabled in the Senate on 26 September 2001. The report was the conclusion of an inquiry into the mechanism for providing accountability to the Senate in relation to government contracts that commenced on 12 April 2000. The key objective of the inquiry was to analyse the “mechanism contained in general business notice of motion no. 489, standing in the name of Senator Murray, providing for accountability to the Senate in relation to government contracts”.

The Government is keenly aware of the importance of transparency and accountability when managing Government contracts.

Accordingly, Financial Management and Accountability Act 1997 (FMA) agencies operate under a robust accountability framework that

enables detailed scrutiny of any contracts that they may enter into. The legislative and policy framework governing FMA agencies includes the:

- Financial Management and Accountability Act 1997
- Financial Management and Accountability Regulations
- Commonwealth Procurement Guidelines and Best Practice Guidance;
- Chief Executive’s Instructions;
- Freedom of Information Act 1982
- Ombudsman Act 1976
- Auditor-General Act 1997;
- Public Accounts and Audit Committee Act 1951;
- Public Works Committee Act 1969; and
- Mandatory Reporting of Commonwealth Contracts.

The current legislative and policy framework aims to provide an environment of accountability and transparency while also ensuring the positive economic benefits of contract management are not lost through excessive administrative requirements.

#### **Recommendation 1: Amendments to the Senate Order**

The committee recommends that the order passed by the Senate on 20 June 2001 be amended to read:

#### **LISTS OF DEPARTMENTAL AND AGENCY CONTRACTS—ORDER FOR PRODUCTION OF DOCUMENTS**

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

- (c) whether each such contract contains provisions requiring the parties to maintain confidentiality of any of its provisions, or whether there are any other requirements of confidentiality, and a statement of the reasons for the confidentiality; and
- (d) an estimate of the cost of complying with this order and a statement of the method used to make the estimate.
- (2A) If a list under paragraph (1) does not fully comply with the requirements of paragraph (2), the letter under paragraph (1) indicate the extent of, and reasons for, non-compliance, and when full compliance is expected to be achieved. Examples of non-compliance may include:
- i) the list is not up to date
  - ii) not all relevant agencies are included
  - ii) contracts all of which are confidential are not included.
- (2B) Where no contracts have been entered into by a department or agency, the letter under paragraph (1) is to advise accordingly.
- (3) In respect of contracts identified as containing provisions of the kind referred to in paragraph (2)(c), the Auditor-General be requested to provide to the Senate, within 6 months after each day mentioned in paragraph (1), a report indicating that the Auditor-General has examined a number of such contracts selected by the Auditor-General, and indicating whether any inappropriate use of such provisions was detected in that examination.
- (3A) In respect of letters including matter under paragraph (2A), the Auditor-General be requested to indicate in a report under paragraph (3) that the Auditor-General has examined a number of contracts, selected by the Auditor-General, which have not been included in a list, and to indicate whether the contracts should be listed.
- (4) The Finance and Public Administration References Committee consider and report on the first year of operation of this order.
- (5) This order has effect on and after 1 July 2001.
- (6) In this order:  
 “agency” means an agency within the meaning of the *Financial Management and Accountability Act 1997*;

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

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

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

**Response: Agree in principle**

On Thursday, 27 September 2001 Senator George Campbell moved, and the Senate passed, a motion that the Senate order on departmental and agency contracts be amended in line with this recommendation.

The Government will comply with the spirit of the amended order on the same terms as the original order.

The amended Senate order clarifies that agencies’ lists of contracts are to cover the period of 12 months ending on the day before the first day of sitting of the autumn or spring sittings (as the case may be).

As ministers are required, under the Senate order, to table letters of advice in the Senate by not later than the tenth day of the relevant sittings, this clarification means that there is a relatively small ‘window’ for agencies to bring their lists up to date, brief their ministers on the lists, including sensitivities, and for ministers to table their letters of advice.

The Government notes that it will be challenging for agencies, particularly those with large numbers of contracts to be listed, to complete their preparations in sufficient time to enable the tabling deadline to be met.

As material assessed as Commercial in Confidence (CIC) can change over time, agencies may need to periodically reassess their classification of contractual material.

The Government notes that the Auditor-General is examining a selection of the contracts listed on the Internet to assess whether there was any inappropriate use of confidentiality provisions, as requested in the Senate order.

**Recommendation 2: Changes to the Gazette Publishing System (GaPS)**

- a) The committee recommends that GaPS be amended to provide:
  - An extra field, or another additional facility to record data, that can be used to notify the public of the existence of each confidentiality clause;

- A set of codes that specifically indicate the reason for each restriction, for example, national security, personal privacy or commercial sensitivity (including the relevant ANAO criterion);
- Information about the end date, renewal, extension of and amendment to, contracts listed; and
- The capacity to sort information in GaPS by agency, contract value and whether the fields notifying confidentiality is filled.

**Response: Noted**

- a) The Department of Finance and Administration recently undertook a strategic and technical review of the Gazette Publishing System (GaPS). The aims of the review were to examine the current objectives of the gazettal of Government procurement information to determine the ongoing relevance of the objectives against emerging demands and stakeholder needs and to undertake an assessment of the capacity of the system to meet these needs.

The amendments to GaPS recommended by the Senate Finance and Public Administration References Committee have been considered as part of this review.

The Committee will be advised of the Government's decisions on changes to the GaPS system once they are finalised.

**Recommendation 2: Changes to the Gazette Publishing System (GaPS)**

- b) The committee also recommends that where the secretary of a department or agency head has decided to exclude a contract from notification in GaPS the reasons should be documented and made available to the Auditor-General on request.

**Response: Agree**

- b) The recommendation that reasons for excluding a contract from notification in GaPS should be documented and made available to the Auditor-General on request is consistent with current policy.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that Chief Executives can issue a direction, in writing, not to gazette contracts or standing orders that are exempt matters under the *Freedom of Information Act 1982*. This direction should include the reason for non-gazettal and be kept on file for audit purposes.

**Recommendation 3: Changes to annual reporting requirements**

The committee recommends that annual reports of Financial Management and Accountability Act agencies provide the following information:

- The web address of lists of contracts of \$100 000 more;
- A report on compliance with the Senate order;
- A report on training completed by officers undertaking procurement functions;
- A report on the inclusion in RFTs and contracts of advice about public and parliamentary accountability responsibilities; and
- A report on the agency's compliance with mandatory reporting requirements and steps taken to improve the integrity of its data in GaPS.

**Response: Disagree**

The recommendations are already largely accommodated by existing measures. Relevant agencies report against guidelines, called the *Requirements for Annual Reports* (the Requirements), approved on behalf of the Parliament by the Joint Committee of Public Accounts and Audit under subsections 63(2) and 70(2) of the *Public Service Act 1999*.

The aim of the Requirements is to provide a clear and concise framework for annual reports which is consistent with standards of accountability but which also minimises duplication with other annual whole-of-government reporting, the availability of information through the Internet, and other reporting regimes such as applies under the amended Senate order.

The Government has provided additional clarification for each sub point of the recommendation below.

- The web address of lists of contracts of \$100 000 more;

In line with the amended Senate order, lists of appropriate contracts are posted on departmental and agency homepages. Department's are required to include their homepage addresses in annual reports under existing agency annual reporting requirements.

- A report on compliance with the Senate order;

The requirement of the amended Senate order for letters of compliance to be tabled in the Senate twice a year provides transparency of agency compliance, exclusive of being included in the annual report requirements. This process would

duplicate the tabling requirement and information already available in Hansard.

- A report on training completed by officers undertaking procurement functions.

Many agencies have devolved procurement functions throughout the organisation. Therefore, under the broad scope of “training completed by officers undertaking procurement functions”, some agencies would be required to report the training undertaken by the majority of their staff.

While the Government does not support a separate reporting requirement on training, it notes that the Requirements detail that agencies must provide an assessment of their effectiveness in managing and developing staff to achieve objectives. This extends to key training and development strategies, the outcomes of training and development, and evaluation of effectiveness. Reporting on this training separately would duplicate effort.

- A report on the inclusion in RFTs and contracts of advice about public and parliamentary accountability responsibilities.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that “Agencies should include provisions in tender documentation and contracts that alert prospective providers to the public accountability requirements of the Commonwealth, including disclosure to Parliament and its Committees.”

Under *Financial Management and Accountability Regulation 8* “an official who takes action that is not consistent with the Guidelines must make a written record of his or her reasons for doing so”.

- A report on the agency’s compliance with mandatory reporting requirements and steps taken to improve the integrity of its data in GaPS.

Reporting requirements are mandatory, therefore compliance is non-discretionary. As a result all agencies would be required to report full compliance.

The recently completed Strategic and Technical Review of GaPS conducted by the Department of Finance and Administration examined data integrity issues. The Committee will be advised of the Government’s decisions on changes to the GaPS system once they are finalised.

#### **Recommendation 4: Accountability to the Senate**

The committee recommends that potential and actual partners to a government contract be informed that contracts and contract related material may be requested by Parliament and ‘that there are no areas in connection with the expen-

diture of public funds where any person has a discretion to withhold details or explanations from the parliament or its committee unless the Parliament has expressly provided otherwise’.

#### **Response: Agree in principle**

The Government is supportive of making suppliers to Government aware that contracts and contract related material may be requested by and provided to Parliament and its Committees, recognising, where appropriate, the application of public interest immunity.

The Whole-of-Government response to ANAO report No.38: *The Use of Confidentiality Provisions in Government Contracts*, supported the recommendation that “agencies should include provisions in tender documentation that alert prospective tenderers or contractors to the implications of the public accountability responsibilities of agencies”.

The *Commonwealth Procurement Guidelines and Best Practice Guidance—February 2002* require that “Agencies should include provisions in tender documentation and contracts that alert prospective providers to the public accountability requirements of the Commonwealth, including disclosure to Parliament and its Committees.”

Ordered that the reports of the Standing Committee on Appropriations and Staffing and the Legal and Constitutional Legislation Committee be printed.

Ordered that consideration of the report of the Standing Committee on Appropriations and Staffing and the government response to a parliamentary committee report be listed on the *Notice Paper* as separate orders of the day.

## **BUDGET**

### **Portfolio Budget Statements**

**Senator IAN CAMPBELL** (*Western Australia—Manager of Government Business in the Senate*) (3.40 p.m.)—I table corrigenda to the portfolio budget statements 2002-03 for the Education, Science and Training portfolio and the Employment and Workplace Relations portfolio. I advise senators that copies are available from the Senate Table Office.



## COMMITTEES

### Community Affairs Legislation Committee

#### Additional Information

**Senator CALVERT (Tasmania)** (3.40 p.m.)—On behalf of Senator Knowles, I present additional information received by the committee relating to the hearings on the additional estimates for 2001-02.

### AUSTRALIAN SECURITY INTELLIGENCE ORGANISATION LEGISLATION AMENDMENT (TERRORISM) BILL 2002

#### Report of Legal and Constitutional Legislation Committee

**Senator CALVERT (Tasmania)** (3.41 p.m.)—On behalf of Senator Payne, I present the report of the Legal and Constitutional Legislation Committee on the [Australian Security Intelligence Organisation Legislation Amendment \(Terrorism\) Bill 2002](#).

Ordered that the report be printed.

#### Report of ASIO, ASIS and DSD Committee

**Senator CALVERT (Tasmania)** (3.41 p.m.)—On behalf of the chair of the parliamentary Joint Committee on ASIO, ASIS and DSD, I present an advisory report [Australian Security Intelligence Organisation Legislation Amendment \(Terrorism\) Bill 2002](#). I seek leave to move a motion in relation to the report.

Leave granted.

**Senator CALVERT**—I move:

That the Senate take note of the report and the report of the Legal and Constitutional Legislation Committee on the same bill tabled earlier today.

I seek leave to have the tabling statement incorporated in *Hansard*.

Leave granted.

*The speech read as follows—*

The ASIO (Terrorism) Bill represents part of the Government's legislative response to the tragic events of 11 September. The Bill is part of suite of legislation introduced by the Government to counter the threat of terrorism.

The Bill is one of the most controversial pieces of legislation considered by the Parliament in recent times. In its original form, it will provide for a

person to be detained for up to 48 hours incommunicado, without legal representation and the right to silence removed. If further warrants were issued, a person could be detained indefinitely. The Committee received over 160 submissions. Most of these submission raised concerns in relation to these aspects of the Bill.

The Committee in considering the proposed legislation has been confronted with the challenging task of balancing the proposals in the Bill with the need to ensure that the civil liberties and rights under the law that Australia provides as a modern democracy are not compromised. The proposed legislation, in its original form, would undermine key legal rights and erode the civil liberties that make Australia a leading democracy.

It is the view of the Committee that the recommendations contained in this report will enhance the ASIO (Terrorism) Bill and provide greater confidence to the Australian Public.

Madam President, I shall discuss individually the key sections of the Bill which require amendment.

#### Section 34B Prescribed Authorities

The amendments contained in section 34B of the Bill will empower ASIO to seek a warrant from a prescribed authority (PA). A PA can be either a Federal Magistrate, Deputy President of a legally qualified member of the Administrative Appeals Tribunal. The warrant provides for the detention and questioning before the PA of persons who may have information that may assist in preventing terrorist attacks or in prosecuting those who have committed terrorism offences.

The use of members of the Administrative Appeals Tribunal (AAT) as PAs was heavily criticised in relation to their suitability to issue warrants. At public hearings and in submissions it was argued by organisations and interested individuals that the AAT was not independent enough to be suitable for the role of PA.

Madam President, the status and role of the prescribed authority (PA) is a critical part of the Bill. It is the belief of the Committee that the PA must be of a certain status which ensures transparency, accountability and provides confidence to the public. It is the belief of the Committee that this can only be achieved if the authority for issuing a warrant is judicial.

It is essential that the judiciary be responsible for issuing warrants under this Bill, but, in view of the *Grollo v Palmer* case, the issuer of the warrant may not be able to undertake the responsibilities of the PA as set out in the Bill.

In view of this, the Committee proposes a regime in which a Federal magistrate would issue all initial warrants. A Federal Court Judge would be requested to issue all warrants where detention exceeds 96 hours.

AAT members, with qualifications currently set out in the Bill, would perform all the functions of the PA as set out in the Bill excluding the responsibility for issuing warrants.

The Committee has tested this regime with expert witnesses and considers it the only possible approach to maintaining judicial control over detention and at the same time seeking to ensure consistency with previous High Court rulings.

As a further safeguard, the Inspector-General of Intelligence and Security has indicated that at the start of the operation of the Bill he will attend the first series of interviews. He suggested a procedure be put in place, whereby he is made aware of any impending activity at the earliest possible time thus ensuring that questioning would not begin before his arrival.

Madam President, the Committee recommends that the Inspector-General of Intelligence and Security Act 1986 be amended to provide the Inspector-General of Intelligence and Security with the power to suspend, on the basis of non-compliance with the law or an impropriety occurring, an interview being conducted under the warrant procedures in the ASIO (Terrorism) Bill. The Inspector-General of Intelligence and Security should immediately report the nature of such cases to the Committee.

#### Section 34C and 34D Warrants—Duration of Detention

Sections 34C and 34 D of the Bill, make provision for the issuing of two types of warrants, a questioning and/or a detention warrant. If detained under a warrant a person may be held for up to 48 hours unless a further warrant is issued.

Under the proposed legislation there is no limit to the number of warrants that may be issued hence it is conceivable that a person could be detained indefinitely without a criminal charge being brought against them.

Madam President, it is the view of the Committee that this is not acceptable.

The Committee therefore proposes to introduce a maximum limit for detention of 7 days. At the expiry of that period a person must be either charged or released.

#### Section 34F Detention of persons—Legal Representation

One of the most contentious issues of the Bill is detention of persons incommunicado. It is pro-

posed by the legislation that a person under a warrant will be refused the right to contact any one not specified in the warrant.

Thus a person may not be able to contact their family or have access to legal representation.

Evidence to the inquiry was opposed to this arrangement particularly as the person would have no right to silence.

The Attorney-General's Department suggests that access to a lawyer could lead to information about the person in detention being made public.

The Committee notes however that there is no such concern in relation to the provision of interpreters under proposed section 34H and the provision of a medical practitioner under proposed subsection 34M(3).

Madam President, the Committee recommends the creation of a pool of legal representatives, possibly selected by the Law Council of Australia. The legal representatives could be security cleared, if need be.

This will enable a person detained for questioning under the provisions in the Bill to have access to a legal representative from a list supplied by the prescribed authority under proposed section 34E.

Further to this, the Committee suggests that it would be appropriate for some of the lawyers to be representative of Muslim and other communities.

Madam President, it became evident during hearings that little consideration had been given to the development of protocols or a code of conduct that would help ensure the protection of the rights of persons subject to a warrant.

The Bill sets out the framework for the issuing of a warrant for the custody, detention and interviewing of a person. However, the actual operation of performing these functions is administratively complex and contains numerous parts. It was widely agreed during hearings that there is a need for an enforceable protocol or code of conduct that would provide a detailed guide to the custody, detention and interviewing stages set out in the Bill.

Madam President, the Committee proposes that ASIO should develop a protocol, which guides the operations of the Bill, in consultation with the Inspector-General of Intelligence and Security, the Australian Federal Police and the Administrative Appeals Tribunal.

The protocol should be approved by the Attorney-General. The Committee should be briefed on the protocol as soon as it is developed and then subsequently it should be tabled in the Parliament.

The Bill should not commence until the protocol is developed and is in place.

In addition, the Inspector-General of Intelligence and Security should monitor the use and application of the protocols. A breach should be reported to the Committee immediately.

#### Section 34G—Protection Against Self-Incrimination

The purpose of the proposed legislation is to gather intelligence relating to a possible terrorist or terrorist activity. Therefore, the powers under section 34G that relate to giving information and producing things are considerable in scope.

Scrutiny at public hearings of proposed section 34G focused on the combined issues of the refusal of the right to silence and no protection against self incrimination for information relating to a terrorism offence provided at an interview.

Terrorism offences are punishable by life imprisonment. Under proposed subsection 34G(3) a person does not have the right to silence. The penalty for failure to comply is imprisonment for five years. Therefore, a person who provides incriminating evidence relating to a terrorism offence could get life imprisonment or alternatively if the person fails to provide information they could get five years imprisonment.

The inadequacy of this arrangement was identified during hearings. In addition, the evidence indicated that it was incompatible for a person to have their right to silence removed and, at the same time, have no protection against self-incrimination for information relating to a terrorism offence which is provided during an interview.

It was made clear during hearings that protection against self-incrimination for information provided at an interview was not the same as immunity from prosecution. If a law enforcement agency could collect alternative evidence to a person's statement then they could prosecute on the basis of the alternative evidence.

The main objective of the Bill is the collection of intelligence that could assist ASIO in preventing a terrorist attack. The lesser objective is the collection of evidence for the purpose of prosecution.

The Committee believes that amending the Bill to provide protection against self-incrimination will assist in the collection of intelligence.

#### Section 34J—Human Treatment

Proposed sections 34J of the Bill provides that a person being detained under a warrant must be treated with humanity and not subject to cruel, inhuman or degrading treatment.

The Committee is concerned, however, that there are no penalty clauses attached for actions by officials who do not comply with the legislation. It is, therefore, recommended that proposed section 34J have a note attached indicating that penalties apply if officials breach this requirement.

#### Detention of Children

Madam President, as the Bill stands, it is possible that children could be detained under the legislation. The only reference to children in the Bill comes under proposed subparagraph 34M(1)(e) which places an age restriction of under ten years on strip searches.

The legislation as it currently stands would allow for the detention of a child without the parents' knowledge. The Bill would also provide for strip searches to be undertaken on children 10 and over.

Many protections could be put into the legislation with regard to children under the age of 18. However, it is the view of the Committee that it would be simpler and safer to have the legislation not apply to anyone under 18 year of age.

#### Sunset Clause

Madam President, considering the concern that has been expressed by the public in regard to this Bill, the Committee recommends that a three year sunset clause be put in place. This will enable the parliament to review the merits of the Act after it has been operational for a number of years.

In conclusion, Madam President, I would like to express the Committee's appreciation for the efforts of those who gave evidence to our inquiry.

I would also like to thank the members of the Committee for their time and dedication in conducting this inquiry.

I commend the report to the Senate.

**Senator ROBERT RAY (Victoria)** (3.43 p.m.)—I wish to speak only on that aspect of it which has been tabled as looking at the ASIO legislation by the joint intelligence committee. I think the timing as laid out by the Attorney-General for this hearing was unfortunate, and I congratulate the committee for ignoring it totally. This particular inquiry was required to be done at record pace without proper opportunity for public submission. The committee made the decision to extend the time for public hearings and for public submission, and to report now to the Senate chamber rather than by, I think, 3 May this year. This ASIO legislation has yet to be considered in the Labor Party party

room, and I also understand it is yet to be considered in the coalition party room. Therefore, it may well be that it does not jump the hurdle in either party room—it may get defeated.

The committee did not look at whether this legislation should or should not be passed; that is a decision for the party rooms. On the assumption that the legislation would go through, the committee looked at how well it could be improved. That was the way that we approached things. I am pleased to say that the 15 recommendations here are the unanimous view of the committee. It is fairly hard to get a unanimous view through the committee, but these recommendations dramatically change the bill and have the unanimous support of members of the committee. I would have to say that I do not think this parliament could possibly support the ASIO legislation as it currently stands. I know that the Attorney-General has described critics of this as naive. I ask anyone to go back and read the original legislation to see who in fact is naive. In the next few minutes I will go to some of the recommendations.

I want to go to the key recommendation, which is recommendation 12. This recommends a sunset clause: that, from proclamation, this legislation will have a life of only three years. It is absolutely critical that this sunset clause be accepted. I am not much of a one for sunset clauses—I certainly do not support its application to the other five pieces of security legislation that we will debate on Thursday—but for this piece of legislation, which really does take us into dramatically new areas in terms of people balancing security matters with civil liberties, a sunset clause is absolutely essential.

The second aspect I want to comment on is that the amount of warrants sought and granted under this legislation will, if our report is accepted, be notified in the annual report of ASIO. If necessary, we could up that and say that it could be reported to the joint intelligence committee or elsewhere. That is absolutely crucial because we have to know how often this legislation is used. If we do not know that, when the sunset clause cuts in we will not be in a position to know

whether it should be renewed or not. The general view is that this legislation will not be required to be used many times, if at all, in the future. The general assessment might be two, three or four times a year. We need to know that. It is a different argument to the one that is put forward about whether we need to know how many telephone intercepts are done each year, which is often argued. The very answer to that question will often tell the people who are targets that there is either an enormous amount of intercepts out there, and therefore they should never use the phone, or that there are hardly any, and therefore it is safe to use the phone. There is a different argument in this case. We as a parliament must know how many warrants are issued each year.

The third major aspect of this report which is absolutely critical is that, as the legislation currently stands, there will often be circumstances where people are detained without legal representation. It is the unanimous view of the committee that that is not on. We understand that, in these sorts of terrorist situations, the very act of seeking legal representation can tip off other people. But there is nothing to prevent someone like the Law Council of Australia, who seem very willing to assist in this way—I am not saying that they are endorsing the legislation—to provide a panel of senior counsel that can be drawn on and that people detained under warrant under this legislation can be fully and properly represented by. Without that, I am afraid the legislation will sink like a rock.

One of the other things that is totally lacking in the bill is any prescription as to what happens when someone is detained. Where are they detained? How long can they be questioned? There is absolutely nothing in the bill. I think the presumption by Mr 'I am not naive' Williams is that the prescribed authority would have laid all of this out. That is not good enough. ASIO must be required to develop protocols that cover the entire detention period, and those protocols have to be ratified by at least the Inspector-General of Intelligence and Security and at least have the joint intelligence committee go over them to make suggestions, because as it stands at the moment there is absolutely

nothing to say that you could not question someone for 40 hours on end. You cannot question a murderer for 40 hours on end. There is nothing to say whether they are detained in a hotel, in a jail et cetera. So that has to come in.

Recommendation 8 says that you cannot have legislation that allows self-incrimination. The whole purpose of this legislation is to get information. So, if you are a potential terrorist, here is your choice: you can say, 'Here is all of the information; I am a terrorist,' and get 25 years jail by incriminating yourself or you can be absolutely quiet, not answer the questions and get a maximum of five years jail. Of course you will not answer questions if you may incriminate yourself. So that is an essential element that must be placed within the bill.

The committee also was very unsympathetic to the legislation saying that it applies to under-18-year-olds. As it currently applies, you can take a 10-year-old girl, detain her indefinitely and strip search her, and the parents are not even notified. That is just not on. There may be occasions when someone under the age of 18 years has information, although it is very unlikely. The committee simply says that, rather than try to write a whole range of legislation and regulations to apply to under-18-year-olds, do not have it apply to them at all—and so it does not.

There are other problems with the legislation. Who issues the warrants? At the moment it is either federal magistrates or AAT members. Most AAT members have no permanency; some do but very few. They are actually replaceable, after a five-year period, by the government. So it is our strong view that any such warrants can be issued only by federal magistrates, chapter 3 appointments. In fact, we know that, if they then go on to become the prescribed authority, it is strong odds on that the High Court will intervene and strike down the proceedings because it is an administrative role, not a judicial one. So we recommend what is a rather complex regime. We recommend that magistrates issue the initial warrant, that senior members of the AAT become the prescribed authority for the questioning period and that if you are to seek a third extension of the warrant—that

is, beyond 96 hours—it must be before a Federal Court judge. It must be someone that senior. I know Federal Court judges are not keen to get into these administrative areas, but I think we as a parliament are required to ask them, with their high degree of independence and judicial authority, to come in at this particular time.

I urge people to read this report and to look at the 15 recommendations that drastically rewrite the legislation. I cannot give a guarantee that anyone in the end will support this legislation, because it may be too high a hurdle to jump, but the one thing I can guarantee is that if the 15 recommendations that are in this report are put in the legislation it will be a far better, far more decent piece of legislation than exists at the moment.

**Senator BROWN (Tasmania)** (3.53 p.m.)—The recommendations that are in the report from the Joint Committee on ASIO, ASIS and DSD on the ASIO antiterrorism legislation may ameliorate some components of that legislation, but they still leave it draconian and standing against basic freedoms and rights of the Australian people. This is a historic breach of the common law and accepted practice in this country that people are not held for extended periods of time without charge, without their own legal representation and without there even being suspicion of them being involved in a crime, let alone an act of terrorism.

Remember that this committee did not even seek evidence, let alone give the parliament direction, on the fact that for the first time people who are innocent, who do not have suspicion over their heads, can be taken off the street and interrogated to get information on matters pertaining to other citizens who may be suspected of those things. They have their rights suspended. They have no access to their own lawyer. Even under the recommendations of this report they can be held for seven days. Senator Ray said the recommendation is that this not apply to minors, whereas under the legislation the Howard government has brought forward, as it is, a 10-year-old could be strip searched and interrogated without any recourse to other adjudication. Even with the amendments, an 18-year-old can be taken off the streets, strip

searched, interrogated without her or his lawyers present, not charged with any crime or even suspicion of any crime and then, if they refuse to answer questions, they face five years in jail.

This legislation should play no part and should have no chance in any Australian jurisdiction. This is draconian legislation that might be appropriate in a police state but has no place in a democracy. This legislation cuts right across the freedoms and democratic rights—the civil rights—of Australian citizens in a way that we have never seen before in this country since Federation. And who will be the adjudicators as to when this legislation is used? Will it be the faceless people of ASIO and the other security organisations? I reiterate that this can happen and this will happen to totally innocent citizens and to people that those organisations know are innocent. This is an open invitation for the security organisations stripping people of their rights to go fishing for information. It is police state legislation, and this committee has failed in its duty to the Australian people to uphold basic tenets of the law which we as citizens in a democracy have taken for granted until now.

The contradiction is enormous between what President Bush and Prime Minister Howard say in their defence of democracy and freedom against terrorism and what this law brings into this country. This law in itself is terrorising and will terrorise people. This law in itself takes away the freedoms and the democratic expectations of Australian citizens. And it threatens all of us—not just some of us, all of us—because, without our being in any way involved in a terrorist activity, if it comes into the head of some faceless security organisation bureaucrat that any of us have information which could possibly help their investigations then we have our legal rights suspended until that person is finished with us. These recommendations do not remove that basic difficulty.

What if you are sitting down there at ASIO and you do know that somebody is plotting terrorism in this country—you not only suspect but also have evidence that will nail them, that will bring them into a court and have them convicted? If this legislation

is passed by this parliament, I would not charge them. I would first haul them in under the provisions of this legislation without charge, and you can interrogate such people without their legal rights for as long as you want to under the threat that, if they do not answer, they will face up to five years in jail. This legislation in itself has a component of coercion and terror which is not available under the existing law.

In my books, this committee has failed in its duty to the Australian people. It has failed to look at the sweep of ramifications of these draconian laws. It has failed to even adequately consider the suspension of rights of innocents in our democracy. It is almost unthinkable that this legislation could have been brought forward in a democracy such as ours, let alone with relatively minor caveats and changes recommended being adopted by a parliamentary joint committee.

The Greens are totally opposed to this legislation. There is provision under the existing law to nail terrorists or people plotting terrorism in this country. Why should 20 million Australians have police state legislation, such as the government is contemplating, foisted on them when those laws are already there? It is up to the government to see that the organisations charged with the duty of keeping terrorism out of this country use the law which is there at the moment. And no amount of draconian law like this is going to do that job for them. What it will do is undermine the rights of the people of this country, and we oppose it.

**Senator GREIG (Western Australia)** (4.02 p.m.)—On behalf of the Australian Democrats I, too, would like to comment on the report before us this afternoon. I do not think there has been any one issue, certainly not in my three years thus far in the Senate, on which I have experienced so much anxiety in terms of correspondence from constituents, mostly by email but nonetheless genuine. Of the approximately 500 emails I would have received on ASIO legislation and antiterrorism legislation, I have yet to receive but one in support. It is not unusual to receive overwhelming correspondence either in writing or email on a particular issue but, in my experience, it is unprece-

dented that on such a campaign, not one has been in support.

It is fair to say, as Senator Ray did, that the proposals, the recommendations in this report are light years from the original legislation. There is no question that the proposed amendments go a considerable way to making a bad bill better, but it does not make the bill a good bill. I note, for example, the proposal to detain people for up to seven days, as opposed to the original 48 hours—albeit the 48 hours was a situation of incommunicado detention without access to legal representation. I note, for example, the committee is proposing that legal representation ought to be a right. I, too, would argue that strongly.

While I do have a little discomfort around the notion of lawyers, legal representation being provided in the form of a pool from which detained people could choose as opposed to selecting their own legal representation, I can understand in part the arguments around that. There is an expressed concern about ensuring that the lawyers are appropriately qualified in terms of their security clearances. But I also feel a sense of anxiety in the same way I do about those people on welfare, for example, who might be prescribed a pool of doctors, or directed to a particular doctor in terms of their own medical examination, which can leave the perception of bias to government.

I certainly applaud the proposal for a three-year sunset clause at the end of this legislation, as I welcome the notion that nobody under the age of 18 ought to be subject to this legislation or detained by ASIO in the way that it was proposed. But the sticking point for the Democrats is the fact, as articulated by Dr Greg Carne recently in the *Canberra Times* where he said:

Even if the Committee's amendments are accepted, this means that a detainee could disappear from the community for up to one week. There is no right for a detainee to notify a friend, relative or other interested person, such as an employer, of their whereabouts.

In other words, even if all of the recommendations from the Parliamentary Joint Committee on ASIO, ASIS and DST were to be adopted—and there appears to be bipartisan

support for that from both the government and opposition—the fact remains that people, who are not suspected of any particular crime, can be subject to these laws, detained for up to seven days, and in a way in which would see them effectively disappear from the community.

The Democrats do not share the committee's view therefore that the bill should proceed, if the government were to accept the PJC recommendations. We certainly do believe that the PJC's recommendations, if adopted, would significantly improve the bill. The report was critical and comprehensive. However, the shortcomings of the PJC's recommendations have not been fully explored. Furthermore, it should be noted that the government has yet to resolve problems in relation to the [Security Legislation Amendment \(Terrorism\) Bill 2002 \[No. 2\]](#) and related bills, and no amendments have been released on that for public scrutiny. Although that is separate legislation, it is nonetheless, I would argue, framed in such a way as to form the foundation of the subsequent and ASIO legislation, which we have subject before us today.

In summary, I certainly find many of the proposed amendments acceptable. There is no question that they strongly ameliorate the more harsh and draconian measures contained within the original legislation. But, while the proposed legislation or the amendments to it continue to argue in favour of detaining people not suspected of any criminal offence but being purely peripheral to the subject matter of ASIO in terms of terrorism, it will not have the support of the Australian Democrats. Therefore, we remain strongly inclined to oppose the legislation, even if it were to be amended in the form advocated by the committee.

**Senator COONEY (Victoria)** (4.07 p.m.)—The [Australian Security Intelligence Organisation Legislation Amendment \(Terrorism\) Bill 2002](#) is legislation that should give us concern. It is very radical legislation and is the sort of legislation that somebody with a conservative soul like mine is rather shocked by. I am sure that we will talk about this anon, because this legislation changes the very culture and the very climate that

have prevailed in this community until now. For example, under sections 23A to 23W of the Crimes Act, there is a series of provisions that protect our most precious rights, the most precious of those attributes that make us citizens of Australia and that identify us as such.

Mr Acting Deputy President, over the years I have heard you speak in favour of the democracy that prevails in Australia. This legislation seeks to change the whole fabric of our society. One great illustration of that is that until now we could not be taken from the streets simply to be questioned so that information could be gained from us. We could not be taken from the streets, detained and put into custody for that purpose. This legislation will take away that sacred right that we enjoy as a community. This is well expressed by Robert John Clark, an Australian poet and a solicitor, in his poem *The Nameless Men*, which was published in the 1960s, and in which he said:

Once in there seemed no mousehole out—  
in other words, once we go down this passage there is no way out—  
The cause of righteousness became  
a juggernaut as frightful as  
the monster he'd set out to tame.

This sums up the situation. What Robert Clark said has been said again and again and when we return to this debate perhaps I will quote some others. But I would like now to quote Joseph Story, a justice of the Supreme Court of the United States, who told the Suffolk Bar in 1821:

Under the pressure of temporary evils, or the misguided impulses of party, or plausible alarms for public liberty, it is not difficult to persuade ourselves, that what is established is wrong; that what bounds the popular wish is oppressive; and that what is untried will give permanent relief and safety.

That is what is happening here. This radical legislation is coming in to change around the sort of society that we have, until now, enjoyed. This is a debate about the sort of society we belong to. This is a debate about giving powers to ASIO, a body that collects intelligence, that are really police powers, that will change the very nature of those in-

stitutions that underpin our society. It will change ASIO from an intelligence gathering body to one which will be able to impinge upon our liberties.

I think Senator Harris wants to say a few words, so I will surrender the call to him. We will return to this debate anon.

**Senator HARRIS (Queensland)** (4.11 p.m.)—I rise to take note of the report by the Parliamentary Joint Committee on ASIO, ASIS and DSD and to raise some other issues in relation to the [Australian Security Intelligence Organisation Legislation Amendment \(Terrorism\) Bill 2002](#). When we are considering the ASIO bill, we also have to take into account the other bills that it interacts with. We cannot take a single bill out of this group of bills and debate it in isolation because they are intricately woven and one has enormous impact on the other.

We have had issues raised by other senators relating to the impact of this bill. I would also like to raise the issue that this bill ought not to impact on an Australian citizen. I would support the government's bill if the government supported an amendment that would exclude all Australian citizens. I say 'citizens', not 'residents'—they must be citizens of Australia. If we look at the Attorney-General's statement, he says that ASIO's information to date has not raised any issue that would lead them to believe there is any—

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—Order! The time set aside for the debate has expired.

**Senator HARRIS**—I seek leave to continue my remarks later.

Leave granted; debate adjourned.

#### COMMITTEES

#### Rural and Regional Affairs and Transport Legislation Committee

##### Report

**Senator ELLISON (Western Australia—Minister for Justice and Customs)** (4.13 p.m.)—On behalf of the Chair of the Rural and Regional Affairs and Transport Legislation Committee, I present the report of the committee on the administration by the Department of Transport and Regional Services



of Australian Motor Vehicle Standards under the Motor Vehicle Standards Act 1989 and regulations, together with the *Hansard* record of the committee's proceedings and submissions received by the committee.

Ordered that the report be printed.

**Senator HARRIS (Queensland)** (4.15 p.m.)—I have a point of clarification, Mr Acting Deputy President. When the minister introduced the report and sought leave for its printing, I rose in my place to take note of the report. You did not acknowledge me.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—You spoke, Senator Harris, and as a result I must say that I gave you the call.

**Senator HARRIS**—That was in relation to the ASIO bill. I rose to seek to take note of the report of the Rural and Regional and Transport Legislation Committee on the administration by the Department of Transport and Regional Services of motor vehicle standards under the Motor Vehicle Standards Act. I seek leave to move a motion to take note of the report.

Leave granted.

**Senator HARRIS**—I move:

That the Senate take note of the report.

I seek leave to continue my remarks later.

**The ACTING DEPUTY PRESIDENT**—Is leave granted?

**Senator Faulkner**—Mr Acting Deputy President, I take a further point of order which goes to another matter. I will certainly grant leave if the situation is as the senator has described it. I think you take those things at face value if a senator says they were seeking the call and no-one in the chamber was aware of that being the case. I want to take a separate point of order.

**The ACTING DEPUTY PRESIDENT**—Shall we deal with the matter first. You are taking a separate point of order, Senator Faulkner.

**Senator Faulkner**—He sought leave, which I am not objecting to. I am taking a separate point of order.

**The ACTING DEPUTY PRESIDENT**—Senator Harris, you have moved to

take note and that debate will be adjourned till the next day of sitting.

**Senator HARRIS**—Thank you.

**Senator Faulkner**—My question only goes to seeking some advice from you. It is a minor matter, but I want to be clear on it for future reference. I thought it was unusual that the duty minister presented this report on behalf of a committee, and not the whip, another member of the committee or another senator in the chamber. I wanted to seek advice as to whether that was the case. I do not think it affects the status of such a report. This is not a report that goes to the minister's direct responsibility or representational responsibility. I think that is right, Senator Ellison, but I was seeking advice in relation to procedure. I did note it at the time, but because another senator was on his feet taking a point of order I did not rise on that point. But I now seek your advice in relation to that matter. It is a minor matter, but I want to be clear for the future about where we stand in this regard.

**The ACTING DEPUTY PRESIDENT**—You are right, Senator Faulkner: it is not usual. But I understand that it is not contrary to standing orders either.

**Senator Faulkner**—I am not suggesting it is contrary to the standing orders—there is clearly no standing order that says a minister cannot present a committee report—but it is unusual. I assume it was just a matter of circumstances. I wonder whether there is any intention by the government to change the normal procedures where the whip or the whip's representative present reports. If that is the case, we will get into problems if we are dealing with matters which go to ministers' responsibilities. I accept that it is not the case here; I accept that it is unusual. I do not want to create a precedent that may cause problems at a later stage.

**The ACTING DEPUTY PRESIDENT**—Would you care to clarify that, Senator Ellison?

**Senator Ellison**—It was presented by me in order for the matter to be put to the Senate, and it is by no means a precedent. There is nothing untoward in what I did. It was to facilitate the business of the day.

## DELEGATION REPORTS

### Parliamentary Delegation to the 10th Annual Meeting of the Asia Pacific Parliamentary Forum

**Senator FERRIS (South Australia)** (4.19 p.m.)—by leave—I present the report of the Australian parliamentary delegation to the 10th annual meeting of the Asia Pacific Parliamentary Forum, which took place at Honolulu, United States from 6 to 9 January 2002.

### MIGRATION AMENDMENT REGULATIONS 2002 (NO. 4)

**Senator FAULKNER (New South Wales—Leader of the Opposition in the Senate)** (4.19 p.m.)—I seek leave to move a motion relating to a document missing from the documents which have just been tabled by the Clerk.

Leave granted.

**Senator FAULKNER**—I think it is better in relation to these matters to have a substantive debate than a suspension of standing orders debate. Let me indicate the reason that I have proposed to move the motion and the terms of the motion. I move:

That the Senate—

- (a) notes that the Government has delayed the tabling of the Migration Amendment Regulations 2002 (No. 4) contained in Statutory Rules 2002 No. 129 and made under the Migration Act 1958; and
- (b) calls on the Government to table these regulations on the next day of sitting.

In speaking to the motion, I indicate to the Senate that the list of legislation which the Clerk has circulated today is in fact more notable for an omission than it is for its contents. That omission is an important one and a serious one. That omission is the regulation excising thousands of Australian islands from the Australian migration zone.

The government published the Migration Amendment Regulations 2002 (No. 4) in Commonwealth *Gazette* No. S189 11 days ago on 7 June. But for some reason you do not find those regulations among the numerous regulations which have been tabled in the Senate today. I would go so far as to say that a cursory examination of the numeration of that list leads us to the conclusion that

these regulations have been deliberately omitted.

When I asked the Minister representing the Minister for Immigration and Multicultural and Indigenous Affairs in question time today for an explanation of the omission, there was no explanation forthcoming. The minister either would not or could not give the Senate a reason and when asked, in a supplementary question—given that he could not give the Senate a reason and an answer to my question as to why these regulations had not been tabled—whether he could find out and report back to the Senate after question time, no explanation was forthcoming. The only conclusion that can be drawn in relation to this fact is that the government lacks confidence in its own proposed solution to the problem they face posed by people smugglers.

The government will not bring one of its own measures for debate into the parliament. The government will not explain its own measure, its own regulation. The government will not front up about its own measure, its own regulation. Of course, we say in the Labor Party that, if the government were serious about trying to achieve a bipartisan solution to the problem posed by people smugglers, it would not have acted in this way. What we have with this regulation missing from the list of delegated legislation today is a deliberate debate avoidance scheme from the government.

This is a very complex problem. The opposition has always acknowledged that it is a complex problem. A strong but compassionate border protection policy is not something that can be thrown together in a press release in time for the evening news. The opposition has always recognised that. But the government does not seem to recognise that. What we have from the government in relation to this regulation is yet another hasty and ill-considered attempt to respond to a problem that the government just cannot seem to get a grip on. As we have discovered in the Senate Select Committee into a Certain Maritime Incident, the government has used suspected illegal entry vessels as political distractions. As the minutes of the People Smuggling Task Force in the Department of the Prime

Minister and Cabinet show, the government was monitoring every boat that was heading our way—every boat. The heading ‘potential arrivals’ is one that you read throughout those documents during the period of the last election campaign. In fact, I point out one extraordinary entry on 13 September. Dot point 5 reads:

Update on possible arrivals—poison pill boat on its way.

Whatever that might mean. I suppose we will get to the bottom of that at some stage in the future. Now we have a new potential arrival, a boat presumed to be of Vietnamese origin and presumed to have 50 or so on board. That boat has spurred the government to excise every island around Australia from Townsville to Broome from the Australian migration zone.

The feared boat has not arrived. We find out that it was identified through newspaper reports in Indonesia on, I think, 22 May. Yet the government took no action apparently until frantically cobbling together this ridiculous response to the situation a couple of weeks ago, just as the government took no action in relation to the 213 boats which arrived unauthorised in Australia until the 214th boat, the *Palapa*. Those on board that boat were picked up by the *Tampa*. The government took no action in relation to all those boats. But of course what did happen is that the 214th boat, the numbered SIEVs since and this boat have given the government an opportunity to take political action to try to make some political capital out of the situation. After spending more than \$500 million on the Pacific solution, here comes another boat, just in time for the government to have another distraction—to stage another distraction. In case the mysterious boat runs into a reef in the Torres Strait, the Migration Act has been revamped yet again.

The warnings about this alleged Vietnamese boat, which have sparked Mr Ruddock’s emergency measure, seem even more bizarre to me because of all the additional bureaucratic resources and all the additional intelligence apparatus that have been set up in the past few months by the Department of Immigration and Multicultural and Indigenous Affairs and the Federal Police—all set up to

keep a close eye on people-smuggling activities. We know that DIMIA has around 19 intelligence analysts to scrutinise border protection and people-smuggling. On top of that there is the people-smuggling strike team, with 30 personnel drawn from DIMIA and the AFP. That is funded to the tune of at least \$2 million.

I am happy on behalf of the opposition to applaud any measure that is put in place to stop people-smuggling. We say and we have said consistently that people-smuggling is a scourge. We know that people-smuggling cost the lives of over 350 people on the so-called SIEVX. Who knows how many other lives may have been lost? But, with all the strike forces, all the international agreements, all the MOUs, all the intelligence capacity we can bring to bear to highlight a Vietnamese vessel which promptly disappears, is that an excuse to excise inner islands and fringing reefs in the whole of northern Australia? That is politics, not policy. We need to identify it as such. This has nothing to do with being tough on people smugglers. It has nothing to do with being tough on border protection. It is about being tough for opinion polls, to distract people from other events in relation to the political environment in this country. The government takes a useless posture on diminishing our national borders to disguise the fact that it is being tough on pensioners, tough on the sick and tough on the disabled. We say the government is not responding appropriately and certainly cannot stand up on the problem of illegal immigration—particularly when it seems to be perfectly able to kick those with disabilities in our community.

Minister Ruddock has been forced to admit that the government’s policies have had no effect on illegal immigration. He says there has been no significant change in unlawful arrivals. The minister has admitted that. It must have galled him to do so. That is his admission since the Howard government was elected. This government certainly cannot stand scrutiny on the broader problem of Australian security. The Auditor-General has just reported that as far as airport scrutiny is concerned—and we have all become aware of how important that is—this government

has been exposed as hopelessly inadequate. Cutting 3,000 islands out of the migration zone is not going to do anything about Australia's security. Not only is that the case, but the government is unwilling to have that matter debated properly in this chamber.

A serious response to the problems we face would be to work towards a multilateral regional solution to international population movements. A serious response to some of the challenges we face would be to seek agreements with transit countries like Indonesia, to process people in countries of first asylum and to enter into global burden sharing. That is burden sharing, not burden shifting, which this government has become absolutely expert at. Instead of surrendering such an important part of our sovereignty over these 3,000 islands right up against the Australian mainland, instead of saying, 'We cannot defend our borders so we had better diminish them,' the opposition's view is that a serious response would be to set a cop on the beat out there, a coastguard to patrol our territorial waters 52 weeks of the year—and not a couple of repainted marine survey ships sent off to patrol our north, with 50-millimetre cannons in floating laboratories to protect our shores, which is what the government is doing.

When the government sought to excise Christmas Island, Ashmore Reef and the Cocos islands last year the Labor Party supported that measure and supported the government on the grounds of logical argument. Those islands are geographically closer to Indonesia than they are to mainland Australia. We thought there were good reasons to have those islands outside our migration zone. Mr Crean and the opposition were provided a briefing by DIMIA about the current excision. Although Mr Ruddock tries to make out there was sensible and logical advice to carry out this measure, from what I have heard there is no persuasive argument to be had on the matter. There are no good reasons to have these islands outside our migration zone.

The logical course from putting this policy into action would now be for the boats to aim for the mainland. That is the logical response. The government knows that this

measure will not prevent boats from leaving Indonesia and it knows that it will not prevent asylum seekers from reaching Australia. Instead it will encourage them to bypass smaller islands and head straight for the mainland, where in terms of health and quarantine there is immediately a more significant and substantial problem. For a damaged boat filled with desperate people, a decision to balance the risk against the reward for crossing those extra two or three kilometres may not be made on the most sensible or rational grounds. Do we really want a situation that encourages people smugglers and a wretched cargo to take yet one more dangerous gamble?

What is the government going to do if people smugglers start bringing their human cargo past those islands that are only a few kilometres from the mainland? Excise the coastline? The Prime Minister says it would be ludicrous to excise parts of the mainland. With these regulations, the government is attempting to do something equally ludicrous. As far as the government is concerned, just because it is a ludicrous policy does not mean that there is no reason it will not try it on.

We in the Labor Party have offered the government bipartisan support to protect our borders and combat people smuggling, and we continue to offer support for measures that will achieve those aims. But bipartisan support is not about mindless agreement; it is not about obediently following the government down one blind alley of bad policy after another. The Australian Labor Party has always been willing to offer the government support on good policy. We are never willing to offer the government support on bad policy. We say these regulations that the government will not even table in this chamber do not strengthen border control. They are not designed to strengthen border control; they are designed to strengthen the government's political position.

We believe that the government should bring these regulations on for debate in this chamber. We believe they should be tabled. That is the way it works with such delegated legislation. It is extraordinarily unusual not to have those regulations tabled today. We do

not want Senator Brown to be forced into a position of which he has given notice, in proposing to table the regulations himself and then to propose disallowance. What ought to be done is that the government should table the regulations. The motion that I have moved today in the Senate will allow that to occur. That is the proper process: table the regulations that have been made some time ago, that have been gazetted some time ago, and then the Senate can give proper consideration to them.

If the government believes excision is a serious response to a serious problem, then it will table its own regulations. If that is the answer, why hasn't it put these regulations before the parliament? Why hasn't it opened this up for parliamentary scrutiny and debate? It is because this is a political exercise in its entirety, and it stands exposed because we do not have these regulations tabled. This will give the government the opportunity to do so. (*Time expired*)

**Senator BROWN (Tasmania)** (4.39 p.m.)—I agree with Senator Faulkner that the government is behaving extremely badly in this matter. The regulations were gazetted a long while ago. For people who may not understand the process, where an act is brought into law, it passes through the parliament and very often, with respect to regulations, it is then left to the minister to determine the administrative side of that act—the small adjustments that are required. But the parliament has the opportunity of overseeing those adjustments that the minister might make, and that is proper in a democracy. So the regulations sooner or later have to be brought before the parliament, and then either house of parliament may disallow them within 15 sitting days of those regulations being tabled.

The normal course is that, on the first day after regulations are gazetted, the regulations are tabled in both houses of parliament. But this is the second day on which the regulations could have been tabled in the House of Representatives and they have not been tabled. There has been an opportunity here this afternoon in the Senate and the regulations have not been tabled. So what is the government doing on a matter that has an extraordinarily high profile with the Australian public

and in the media? For reasons best known to itself, it wants to circumvent the parliament—the democratic form of this country. Once again, the Howard government is undermining democratic forms and procedures, long accepted democratic processes, to push a political end, as Senator Faulkner noted.

It is absolutely wrong of this government—it is cheating on democracy—not to have tabled these regulations for parliamentary scrutiny. The process, obviously, is one whereby the government wants to avoid the parliament on this matter. People should know that when a government starts to avoid their elected representatives, we have an effort by the executive to get around the people themselves. When they try to get around the parliament, they are trying to get around the people themselves. And that is what the Howard government is doing in this matter: the executive is avoiding parliamentary scrutiny and debate on an extraordinarily important matter—in this case, the excision of some 3,000 islands, and a large populace to go with it, from the migration laws of this country.

As I will be explaining later in the day, this is not an isolated case. The government is into serially changing laws, getting around laws and dividing our country as to where laws pertain and where they do not. If the government had the gumption and the real feeling that these regulations were the right thing, then they should be put before the parliament. I have here a copy of the regulations. They have been gazetted. The question is: what is the political motivation of a government in not putting them before the parliament? Let me read them to the Senate:

**1 Name of Regulations**

These Regulations are the *Migration Amendment Regulations 2002 (No. 4)*.

**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of *Migration Regulations 1994***

Schedule 1 amends the *Migration Regulations 1994*.

**Schedule 1 Amendment**

(regulation 3)

## [1] After regulation 5.15A

*insert***5.15B Excised offshore places**

- (1) For paragraph (d) of the definition of *excised offshore place* in subsection 5(1) of the Act, the Coral Sea Islands Territory is prescribed.
- (2) For paragraph (e) of the definition of *excised offshore place* in subsection 5(1) of the Act, the following islands are prescribed:
  - (a) all islands that:
    - (i) form part of Queensland; and
  - (ii) are north of latitude 12° south;
    - (b) all islands that:
      - (i) form part of Western Australia; and
      - (ii) are north of latitude 23° south;
    - (c) all islands that:
      - (i) form part of the Northern Territory; and
      - (ii) are north of latitude 16° south.

Then there are notes about the amendment of certain statutory rules and a second note that says 'Notified in the *Commonwealth of Australia Gazette* on 7 June 2002'. It is up to the government to table these regulations. They should have done it today. The opposition is wanting to accord them 24 hours in which to table the regulations. I inform the Senate that, if the regulations are not tabled by tomorrow, then I will table them and move a motion for disallowance. This is not unprecedented. This is me, as a Greens senator, doing the job of the government in upholding the right process in this parliament in ensuring that this government does not circumvent parliamentary procedure, does not undermine decades of proper process in our democracy, does not have the executive rule the country without the proper overview of the elected people through both houses of parliament. That is what the government is trying to do here and it is our duty to see that it does not extend this process and does not get away with it.

These are very serious matters—both the matters at hand in these regulations and the

subverting of the process by the Prime Minister, Mr Howard, and the Minister for Immigration and Multicultural and Indigenous Affairs, Mr Ruddock, in not bringing these regulations before the parliament. It is up to them to give an explanation, if there is a good one, but they are avoiding that. They are, as Senator Faulkner said, putting their own personal politics in front of the proper democratic form and the proper democratic process. That is an insult to the people of Australia. It has to be watched very carefully. If there is one thing that we in this Senate must do in this circumstance, it is to fulfil that role of watchdog on the excesses of the executive of government. The government now has to make up its mind as to whether it will do the right thing in the next 24 hours or have the Senate do it for it.

**Senator McLUCAS (Queensland)** (4.49 p.m.)—I also rise to support the motion to request the government to table the regulations that propose to exclude certain islands from Australia's migration zone. I wish to speak in this debate particularly on behalf of the people of the Torres Strait—people with whom I have had a lot of association over many years and people who are totally and wholly affected by the proposed measures.

Let us briefly remember the events that have brought us to this point in time. On Thursday, 6 June—which, I might remind the Senate, was a parliamentary sitting day—the government gazetted the regulations at midnight to exclude up to 3,000 islands from Australia's migration zone. There was no reference to the parliament about this matter and the government has said that it was an urgent response to an urgent situation. The following day, Friday, 7 June at 8.15 a.m., the regulations got royal assent; the Governor-General signed off on them. It is now obvious and extremely evident that this haste, this rush, obviously had another set of motivations. It was some two weeks earlier that the government had received information about this threat to our sovereignty, to our migration situation—a small, wooden hulled boat. The government says that the regulations were introduced in this way in response to a serious threat. I have got to say that the evidence does not support it.

The motion is about asking the government to bring on a discussion and a debate about their proposed regulations that would exclude certain islands from Australia's migration zone. It is only fair and proper for the people of Australia to have a proper debate about these proposed regulations. It is only fair and proper that the people of the Torres Strait—people who will be totally affected by these regulations—have an opportunity to understand their implications. As I said, it was on Friday, 7 June that the regulations received royal assent. It was later in the day that Friday that the people of the Torres Strait found out about them. I think that that is one of the most disrespectful things that this government has ever done to the people of the Torres Strait.

There was no formal consultation, there was no opportunity to receive information, and there was no opportunity for the people of the Torres Strait or their leaders to ask any questions about what the implications of these regulations might be. There has been no public debate to flesh out the issues and explain to the people of the Torres Strait the effect of these regulations on their community. That is why we should have the debate on these regulations: so that the people of the Torres Strait can have their questions answered. I would like to read to the Senate the words of Torres Shire Councillor Pedro Stephen. In a press release dated 11 June, Councillor Stephen says:

New people-smuggling regulations released by the federal government have the people of the Torres Strait concerned for their freedom.

He goes on to say:

The government at no stage has made any contact with my council or any other peak Torres Strait organisation to discuss this matter in detail.

Further on the press release says:

Mayor Stephen is now calling on the immigration department to meet with island councils and the Torres Strait Regional Authority to discuss the many sensitive issues that surround boat movement in and around the Western Province of Papua New Guinea and the Torres Strait.

Finally, Councillor Stephen says:

It is fine and well that he—

referring to the Minister for Immigration and Multicultural and Indigenous Affairs—

says it won't have any negative effect on us but the government has made a decision without consulting the people first. We are willing to assist the government but we also want the opportunity to clarify the ramifications of the legislation.

The government says that these migration exclusion regulations will be a deterrent to asylum seekers. People in the Torres Strait, who can see from Horn Island to the mainland, might find that a little bit funny. You can see the mainland from Horn Island, one of the excluded islands. The people of the Torres Strait will laugh at the notion that the regulations would be a deterrent. Why wouldn't people go that extra little way to Seisia or Bamaga? Why wouldn't they go a little way down to Weipa, as they have done in the past, or around the eastern side to Lockart River? This is no deterrent; this is a wedge. This is a government proposal that is designed to divide people, not to bring people together. The Prime Minister said it was a ludicrous idea to excise any of the mainland. I say to him: it is ludicrous to excise the Torres Strait Islands.

I recognise that the people of Torres Strait have significant issues with quarantine. I recognise that the people of Torres Strait are vigilant in monitoring and reporting movements of traffic in the Torres Strait. They are also vigilant in inspecting vessels—both sea vessels and aircraft that come to each of the outer islands. They do that work well. But I do not believe it can be possible to say that this is a quarantine measure. If it is not a deterrent then it cannot be a quarantine measure. I think it is unfair to mix those two messages in a discussion about immigration.

I question the respect of this government for the people of the Torres Strait. Ministers Ruddock and Macdonald travelled to Christmas Island at the gazettal of the regulations which excised that island from our migration zone. I think it is unfortunate that the same level of respect has not been shown to the people of the Torres Strait. There was no visit by a minister or a member of the department; there was not even a phone call before the gazettal of this legislation. I think

that shows a level of disrespect that is felt by many in the Torres Strait.

Finally, I want to go to the issue of sovereignty. The people of the Torres Strait have debated sovereignty in the current leaders' lifetime. It was only some years ago, during the discussion of independence for Papua New Guinea, that the decision was made to include all of the Torres Strait islands in Australian territory. That is in current history, and there has been an extensive debate in the Torres Strait about what it means to be Australian. This legislation calls into question that debate about Australianness. The Torres Strait Treaty was designed to allow freedom of movement between traditional people of the Western Province of Papua New Guinea and people of the outer islands of the Torres Strait. The minister has assured people of the Torres Strait that these regulations do not affect it. We need more information so that we can be absolutely clear, because there is concern in the Torres Strait about this changed level of sovereignty.

As Councillor Stephen said in his press release, the people of the Torres Strait are willing to assist the government but they also want the opportunity to clarify the ramifications of the legislation. Torres Strait Islanders want to work with the government, just as the Australian Labor Party does; they want to work for a real solution to the dreadful issue of people-trafficking. We want a real solution that recognises the special quarantine needs of the Torres Strait. We want a real solution that recognises the Torres Strait Treaty and the need for movement between Papua New Guinea and the outer islands of the Torres Strait. We want a real solution that recognises the special sovereignty that the people of the Torres Strait have. And we want a real solution that does not come by simply chopping off bits of Australia at whim. I look forward to working with the people of the Torres Strait, and, hopefully, with the government, in finding a real solution to the global problem of refugees and asylum seekers.

**Senator BARTLETT (Queensland)** (4.58 p.m.)—I would like to speak in support of this motion, which notes an absent regulation that, by all normal means, would have been

tabled today. Like Senator McLucas, as a senator for Queensland I have particular interest in this regulation, because it does affect many constituents of mine in the Torres Strait. It is a bizarre scenario to many Australians—regardless of their views more broadly about how best to deal with the issue of asylum seekers—that Australian law can apply in one part of Queensland and not in another part of Queensland, or in one part of Australia and not in another part. These are not external territories; these are parts of Australia where parts of the law are being deemed not to operate. It is a very dangerous principle to accept.

The process being used is also worth noting. Many people perhaps are not aware of the distinction between regulations and legislation. Regulations are not normally debated in this place unless somebody specifically raises an objection to them or to part of them, and many regulations regularly are tabled in this chamber. In practice, the regulation itself is not tabled but a list that is circulated to senators is. So, unless they specifically chase them up, senators do not get a full copy of the regulation. The missing regulation ironically is missing at a time when the government is tabling on one day 125—on my count—different regulations, ordinances, determinations and instruments of various types. That is a large number of different instruments and potential law changing devices to be scrutinised by this place. Of course, the reality is that many of them are not fully scrutinised by most senators but are left to the Regulations and Ordinances Committee, which does that for them.

It is bizarre that the government has found itself unable to table this regulation, the Migration Amendment Regulations 2002 (No. 4). It is the fourth time already this year that the migration regulations have been amended—and Senator McLucas outlined the time line in relation to that. The government suggests that it could not table this one when, in amongst the 120-odd other ordinances and instruments that were tabled, there was another migration amendment regulation made the same day as the one excising thousands of islands from the migration zone. Somehow or other, the govern-



ment was able to table Migration Amendment Regulations 2002 (No. 3)—which was rather larger and more substantial in content if not in effect than Migration Amendment Regulations 2002 (No. 4)—but not Migration Amendment Regulations 2002 (No. 4), even though they were both signed off by the Governor-General on the same day. Somehow or other, one could make it to the chamber today but the other could not. One has to wonder why the government seems to want to hold off introducing this.

It is clear that, on this issue, the government will lose when the regulations are finally tabled. It is clear that the Democrats, in conjunction with the ALP, Senator Brown and Senator Harradine—who has made public statements, although not in this chamber, that he is opposed to these regulations—will disallow them. They will not come into effect. Any effect that they have now will cease from the moment they are disallowed. It seems pointless for the government to simply try to put off the inevitable. It again demonstrates that this issue, from the government's point of view, is not about border protection or national sovereignty but about politics. That is all that is driving this. They think they are on a winner, and they are going to continue pushing it further and further to more and more absurd extremes—and excising parts of our nation from some of our laws is as absurd and extreme as you can get.

The principle of being able to do that is something that I think most Australians would reject. The practice of doing it would not have any practical impact on either reducing boat arrivals or getting a better outcome in terms of asylum seekers. But the government think they are on a political winner and, presumably, want to delay tabling these so they can continue to press home their supposed political advantage and make the Labor Party squirm. On this issue I do not see from the ALP any sign of squirming, for once, and I congratulate them for it. They seem to be quite clear and firm on this issue, and I hope that signals a significant shift in their approach to the broader issue. It is clear the government's approach is not sustainable in the long term, and it is time we acknowledged there are other ways

of doing things that do not cause such immense suffering to people, that do not put so many lives at risk, that do not cost hundreds of millions of dollars extra but that can get an outcome which maintains our national sovereignty and the so-called validity of our borders.

It is ironic that a measure that the government suggests is about protecting our borders is, in effect, shrinking our borders and that a measure that the government suggests is about protecting our sovereignty is, in effect, giving away an aspect of our sovereignty by removing legislative application to parts of Australia. It is also interesting to look at the context surrounding the regulations being brought in or gazetted—although, as we know, they have not been brought into this chamber yet. They can be downloaded off the Internet; they are not a secret. They were in the *Gazette* but, for some reason, were not tabled in this chamber. The rationale used was that there was a boat on its way and that we had to get this in place straightaway in case it arrived on an island in the Torres Strait. Why you would go all the way to the Torres Strait when there is plenty of mainland on the way—seeing that it was reputedly coming from Indonesia—I do not know, but that was the rationale.

Again, you have to look at and wonder about exactly what all the expense is being used for with our intelligence gathering and surveillance. I am a member of the Senate Select Committee on a Certain Maritime Incident—also known as the 'kids overboard' committee—and we have looked in quite a lot of detail at the surveillance procedures that are occurring and at some of the intelligence information, and we have still more exploring to do. It is costing a lot of money. Some of the witnesses before the committee from Coastwatch and the defence forces have said that we have the most comprehensive surveillance operation in place in peacetime in our history. Somehow or other a boat has appeared that we know sufficient detail about for the minister to tell us how many people are on it and where they are from and that it is sufficiently rickety that a

propeller has fallen off, but the next minute we do not know where it is.

It still baffles me how we can know enough about a boat to know how many people are on it and that its propeller has fallen off somewhere but we do not know where it is. We still, in fact, do not know the full details about that mystery boat. There were reports that it may have sunk, and that is possible. Of course, we do have the precedent of a boat having sunk, with the loss of hundreds of lives. That tragedy shows people's great desperation and the lengths they will go to. Those who like calling them 'queue jumpers' should be made aware that that boat included many people who had applied through the UNHCR, had been assessed as refugees and were waiting for an opportunity to resettle and re-establish their lives. But that opportunity did not appear to them, despite the fact that they had gone through the so-called proper channels. Many of them had family in Australia, and they took the desperate step of risking their lives. Sadly, for many hundreds of them, the risk they took meant they paid the ultimate price.

It is clear that there is plenty of information that is provided to the government about boat movements. Information from the high level task force—the people-smuggling task force—was tabled in the Senate inquiry. The minutes of that task force regularly talk about reports of further boats on the way and other information such as that. The minutes also regularly note the dilapidated state of the boats that do come. Three of the vessels that were in the lagoon at Ashmore Reef were in such poor condition that it was likely that they would all have to be destroyed; they could not even be salvaged as boats. Coastwatch was, of course, specifically brought in to be part of the surveillance operation. The minutes of the task force from 24 September say that the impact on the national program is not sustainable in the long term. Their own task force minutes indicate that this is not an approach that can be continued into the future without significant operational impacts and significant extra costs. Of course, that is what the Australian people are having to pay the price of nowadays. The minutes also talk about intelligence of fur-

ther boat arrivals. Around the time of the boat that sank, there are some interesting references about there being no confirmed sightings but multisource information with high confidence level. One minute we can have high confidence levels about a boat appearing and the next minute there is no idea what happened to it—not sure if it even left; didn't even know it sank until we heard about it on the TV news.

Somehow or other we have to get a clearer picture of exactly what sort of information is being provided and how much of the truth the government is telling us. We need to have a clear picture of how much they are embellishing the information and how often they are not providing the information that they have. As with the so-called SIEVX, the boat that sank with such an enormous loss of life, you have to wonder how we could have such detailed information, such that we knew very precisely that there were around 400 people on board, that the boat was grossly overcrowded, way more even than the usual boats, all of which are overcrowded and in poor condition—this boat was even more overcrowded and in even worse condition. We knew that people were being forcibly pushed onto it, but we still did not really know where the boat was. Apparently, even after all this time, there is still uncertainty amongst the government about where it sank, which again I find extraordinary at a time when we supposedly have the most comprehensive surveillance operation in our history.

There are some questions that arise out of those task force minutes that need to be further explored, but now is not necessarily the time for doing that. There are a number of issues and questions that arise about this. I think there is an ongoing pattern of misinformation from the government about many aspects of this issue. I guess after the 'children overboard' fiasco, it is not unreasonable for people to feel fairly dubious about many pronouncements on this issue from the government. The fact that, for whatever reason, the government could not table a set of regulations today, even though they could table other migration regulations that were made on the same day and even though they have tabled 120-odd other different bits and

pieces, again raises queries about how much of this is genuine policy and how much of this is politics. It really appears to the Democrats to be yet another indication of the flawed nature of this whole policy.

Hundreds of millions of extra dollars are being spent to get people assessed in Pacific islands instead of in Australia for the same outcome: they are still assessed as refugees, the same as they would have been in Australia. We now have the outrage of that money continuing to be spent for hundreds of people who have been assessed as refugees, many of whom have been there for more than two months. Many of these people have immediate family—that means spouses or children—here in Australia, yet they have been imprisoned on Pacific islands for two months after being recognised as genuine refugees, at the expense of the taxpayers. How we can call that a sustainable, workable, long-term solution is beyond me. The only thing that is being sustained is the suffering of the people who are caught up in this net. Unfortunately, it appears more and more a net that has been put there for political reasons rather than anything else.

This is an important issue. The fact that these regulations, out of the 120-odd, somehow or other have not been tabled in the Senate is just one more piece in an ongoing picture that is being made clearer and clearer all the time of a continual campaign over months and years by this government to misinform the Australian community about the reality of refugee issues and about the reality that there is no threat to our national sovereignty through the arrival of asylum seekers. It is an issue of how we deal with those people—and that should be a matter for us—but that is nothing to do with our national sovereignty being under threat. The fact that that fiction has been created by so many years of deliberate misinformation by this government is compounded by this latest piece of manoeuvring on their part—obviously, purely for political ends.

I support the motion and urge the government to follow what they suggest and table these regulations so that we can proceed with the inevitable and disallow them, dispense with them, and get on with other proposed

legislation which, hopefully, will actually be in the national interest rather than simply in the short-term political interests of Mr Howard and some of his extremist supporters in the cabinet.

**Senator SCULLION (Northern Territory)** (5.15 p.m.)—I rise to speak to the regulations that affect the migration zone around Australia and particularly to deal with what I consider the very important impact that that will have on the north of Australia. We have suffered the direct impact of over 250 vessels landing across the north of Australia since 1985. I thought that the original process to excise some areas of the migration zone that included Christmas Island, the Cocos Islands and Ashmore Reef was debated thoroughly in September. I understood the principle that was established was that this was a very effective way to ensure that those people who trafficked in the lives of others were not able to deliver a migration outcome to their clients. I understood very clearly that this was supported on both sides of the house. I have heard much discussion over the last few hours that leaves me a bit unclear about why it was supported back in September and yet today it seems to be a bit of a challenge.

I will certainly support the regulations when they come to the Senate—and I have been instructed that they will—for a number of reasons. Those reasons are not as much about immigration as they are about a number of social, economic and environmental issues that can potentially impact on the north of Australia. The major thrust of these amendments will clearly reinforce a series of regulations that will put in place, in a business environment, some changes that will send a very clear signal. And when I say a clear signal, people need to understand very clearly the very sophisticated intelligence network that these people smugglers enjoy. They know that their clients would like to have a migration outcome in Australia, and by that I mean an outcome where they are allowed a temporary protection visa in Australia rather than a suite of countries that may be offered to them through the UNHCR process that would be available to them in any number of the countries they have visited on their way to Indonesia and then Australia.

When we changed the migration zone back in September, there were some very interesting changes to the behaviour of the smugglers. They used to come to Ashmore Reef, place their clients on Ashmore Reef and run away back to Indonesia. Ashmore Reef is a very difficult place to protect. It has a lagoon in the centre; it is surrounded by fringing reef. The Australian Customs Service actually had a presence right in the centre of the reef area. It was very interesting that the smugglers thought that it was still worth doing that because they had a migration outcome. As soon as we excised that reef from the Australian migration zone, that was the time at which that activity ceased. So, quite clearly, we sent a very clear signal that if you come to Ashmore Reef seeking a migration outcome, you will not get it. And what happened? They stopped coming to Ashmore Reef.

I think it is important that we send a continuing signal to this environment. As they can no longer come to Ashmore Reef, they will obviously, as I understand it, continue to attempt to ply their trade and they may attempt to come to some other place that will give them that migration outcome. Around September last year, I understand as well, there were some amendments with regard to a minimum sentencing regime that was to apply to those people who were involved in the trafficking of other humans to Australia. Clearly, the further towards Australia, the higher the compliance and the higher the risk. So if you come all the way to the mainland you are risking being apprehended; and the closer you come, the higher the risk. All the islands above Australia that are currently inside the migration zone will allow people to do two things in the marketplace: first, give the client what they want, which is a migration outcome, by dropping them somewhere in Australia; and, second, be able to leave the scene of the drop-off point without being apprehended. It is clearly an environment that would very much still suit the people smugglers. So I think it is a very practical approach to excise the remainder of these islands to ensure that the marketplace is no longer able to deliver a migration outcome.

I have heard the previous speakers, particularly those who have been speaking about the Torres Strait and speaking very passionately about the people's connection there with the land and the sea and how concerned they are about their sovereignty. I also have some very strong connections with the people of the Torres Strait and I am very pleased that their response has mirrored mine. They certainly think that the exclusion of the Torres Strait would be a good thing. In fact, a recent press statement said:

The Torres Strait Regional Authority (TSRA) today welcomed the news that the Commonwealth Government intends to extend the definition of "excised offshore place" in the Migration Act 1958 to include the islands of the Torres Strait.

It seems pretty clear to me that that was very much in support of what the government has done.

The Torres Strait, which is one of the most wonderful parts of the world, also enjoys the position of being the western entrance to the Pacific. It is an area that has challenged seamen since people started plying the area way back in history. It is an area that you have to pass through to go to the Pacific. As a master I have worked in the area and I know it very well. And I can tell you that it is second to none as a dangerous area to operate a vessel, particularly if you do not have a great deal of knowledge of the area.

There are a number of reasons that this area is particularly dangerous. It is not only because of the obvious islands and reefs that surround the area—there are over 100 islands, heaps of coral cays, sandbars and reefs—but also because of a tidal range that results in tidal rips of up to 3½ knots. That is bit over seven kilometres an hour and it makes for some very dangerous boating. If we make the supposition that somebody might attempt to travel through that area—as people have done before—to gain access to areas in the Pacific, and since the general trend of the movement is now further and further east, one would reasonably expect that to be an outcome. We need to be prepared. If these vessels and the people who are trafficking in humans go to the Torres Strait, and if the almost inevitable happens

and they go aground and founder, we need to make sure that that is not also a benefit. If they founder somewhere where they can get a migration outcome then, in a business sense, we are still allowing the traffic to continue. Each one of the steps that the Australian government has made in regard to these matters has been a deliberate step to provide a disadvantage to people who are smuggling asylum seekers. Certainly, the inclusion of the Torres Strait Islands and other islands is a very sensible step in this direction.

There is another area of concern that unfortunately does not appear to have been discussed much, and that is the issue of the environment. There are self-evident issues in the Torres Strait that I have spoken about. We have had a number of craft in that area, manned by people who are very experienced, which have run aground. We have all heard of the Great Barrier Reef; the area around the Torres Strait is not dissimilar. It has a magnificent richness in marine biodiversity, as it does in Indigenous culture. The cultures of those islands and of the 6,000 Indigenous people who live in that area are very closely tied to the marine environment. You can imagine the tragedy of a major fuel spill; it would be absolutely horrendous. There would be no disagreement with that.

The real tragedy is that these people not only traffic in human lives; they also bring with them other unwanted pests. I will just clarify that: I did not mean to imply that the refugees would necessarily be unwanted. But the pests that lie on the bottoms of these ships are going to be far worse than a fuel spill because the problems will be there forever. We know for sure—this is not a maybe or what might happen—that the vessels that ply these people carry two types of specific marine pests that are of the utmost concern to Australians. One is *Congerina sallei* and the other is a nonendemic green Asian mussel. They have already been found on vessels carrying people at Ashmore Reef and on those that have come into Darwin Harbour. To give you an understanding of just how bad these pests are, in North America the *Congerina* species has cost the United States government \$600 million since the mid-

1980s and they have just maintained its level, not eradicated it. The Indian navy, before they realised that they had this endemic pest, started to have huge maintenance bills for their shipyards, because these creatures have the capacity to clog pipes of up to a metre across. This has cost them huge amounts of money and, for a long period of time, it actually almost immobilised the navy.

These animals are around 2.5 centimetres in length. Imagine something that is capable of growing from a microscopic spat to 2.5 centimetres every four weeks and then breeding again and having 50,000 offspring each. Those 50,000 offspring create a mat that weighs around 100 kilograms. You need a pretty big calculator to sort this out, but I can tell you that the net impact on the environment is that it smooths it all off. You can imagine something about 150 centimetres deep coating the environment, coating the insides of pipes and coating the coral. Principally because of its very swift turnover and because it gets to adulthood so swiftly, it has the innate capacity to outstrip other marine organisms, particularly crayfish. It works in a way that between the instars of the crayfish, which is when the crayfish sheds its shell, it is able to colonise the crayfish during one shell growth to such an extent that it will starve the crayfish and the crayfish will die.

We speak about protecting the Torres Strait Islanders, their culture and their expectations for employment and for food from the ocean, and you can imagine the huge impact this sort of creature is going to have on their lives and on the lives of people across north Australia. A very good friend of mine who is probably well known to the house and whom Senator McLucas mentioned earlier, Pedro Stephen, has been the mayor of Thursday Island and is also the longest serving quarantine officer on Thursday Island. I have had many discussions with Pedro about the concern we have with marine benthos, particularly nonendemic marine pests like the black striped mussel coming into the Torres Strait and the huge impact that that is going to have not only on the lifestyle and culture of the Torres Strait Island-

ers but also on their economy and their capacity for employment.

With these regulations, people need to consider that we have already put them in place. We thought it was okay for Christmas Island, Cocos Island and Ashmore Reef. The inhabitants of those areas have not had their sovereignty impacted on. They have not had any special things happen to them that were not happening before; there has been absolutely no impact whatsoever. The message is this: these regulations only have an impact on those people who seek to traffic in the lives of others. They have absolutely no impact whatsoever on Australians, on the sovereignty of our islands or on those people who choose to live there. I am surprised that members in this place and others would choose to support the arguments against putting these very practical regulations in place.

**Senator CROSSIN (Northern Territory)** (5.29 p.m.)—I will be as brief as I can this afternoon because I am sure we will have an opportunity to debate these regulations at some stage in the future, perhaps at greater length. As Senator Bartlett mentioned in his contribution, these regulations will be disallowed when they come into this chamber. It is now public knowledge that the Greens, the Democrats, Senator Harradine and, after our caucus meeting this morning, the Labor Party have moved to endorse the disallowance of these regulations. There are a number of very good reasons for that. These regulations and this move to excise more than 3,000 islands off Australia's mainland, ranging from Western Australia right around to Queensland, make absolutely no public policy sense. This is purely and simply an exercise in politics on the part of the federal government. It is not an exercise in good immigration policy.

On 6 June, we saw this government draft and sign off on regulations—signed off on by the Governor-General early on the morning of 7 June—that excise these islands out of Australia's migration zone. These regulations were mentioned after two weeks of sittings. This government had two weeks—eight days—to mention this in the House of Representatives in questions, a speech or some public announcement. This govern-

ment could have taken the opportunity to raise this issue during the last sitting fortnight of the House of Representatives or when the Senate committees had their estimates process. But this government did not take those opportunities. They decided to do it on the Friday, when most people are busy wending their way home after two weeks of sittings. They decided to do it not when most of us concerned would be around to debate the issue but when we were on our way home after two weeks of sittings.

When the Labor shadow ministers concerned sought a briefing on this, it did not occur until quite a number of days later. They may well have been told about it initially, the day before the regulations were signed off on, but the briefing did not occur until some days later. I understand, from talking to the Chief Minister in the Northern Territory, Clare Martin, that she obtained a cursory phone call from the minister concerned, not asking her opinion about this exercise or seeking to elicit her view about this but simply telling her it was going to happen. She had the opportunity to make a one-minute reply, and that was the end of the conversation. I think she said at the time that the Northern Territory government, in her words, 'found that these regulations were offensive and that there was no sound reason as to why it should occur'.

This is an exercise by a government who are pretending to be tough on border protection but who have, in actual fact, softened their stance on this and are trying to shrink Australia's border. Australia's border will now be around only the main island of this country. One of the reasons that is given to us for this—and I remember that Minister Downer raised this in an interview on *Late-line* last Monday week—is a boat carrying Vietnamese people wending its way here via Indonesia. Of course, the boat has never materialised, it is not on the horizon, it cannot be found, it is off the radar scale; one has to wonder whether there was ever any boat in the first place or whether this is just another exercise in beating up the plight of asylum seekers to continue to elicit concern and angst amongst the wider community.

If the government are serious about being what they call tough on border protection, if they want these regulations so badly and if they want to excise these islands so much, why is it that these regulations are not before the two houses of parliament this very day with a suspension of standing orders to deal with them immediately so that they come into force straightaway? Why is this government going to wait for the 15 sitting days? The regulations may well be tabled tomorrow or next week, but one would assume that this government is going to hold out until August. Why would that be? There is probably a bunch of them out the back hoping and praying that those boats will materialise over the horizon, that the mistruths they continue to peddle about some of these incidents will become a reality and that their rationale for this irrational policy decision will be realised. If we do not table the regulations in either house until August and if we hope hard enough, maybe *Tampa* No. 2 will come rolling over the horizon or this boat from Vietnam that Minister Downer alluded to might suddenly materialise and then all of this will be justified in the eyes of the Australian people.

But, from the discussions I have had with people—certainly those in Northern Australia and Darwin—there seems to be no sense in this policy. People have now come to realise that it is politics this government is about, not good immigration policy. The Auditor-General's report that was produced two days ago will probably confirm that for people who are wondering what is happening with the strategic approach the government alleges it has. If people analyse what is happening here, there is quite clearly no strategy in this. This government lurches from lily pad to lily pad like a frog, trying to grasp that elusive concern that they have built up in people's minds that this is not a good thing.

**Senator Ferris**—Would you like another election?

**Senator CROSSIN**—Senator Ferris, that is right; you did win an election on it. But people have now realised that that election was built on lies, mistruths and fear, and they will no longer be deceived into playing your games. People out there know that this is an

exercise in politics and political mastery, and that it is not an exercise in good, strategic immigration policy. People are asking questions. If you are going to be so tough on the borders and excise 3,000 islands, what about the 60,000 illegal people who seek to gain status in this country and become citizens by entering through airports or other means—those people who come here on a tourist or a working visa and stay beyond that visa and seek asylum? What is the government doing about those 60,000 people? Where is the government's policy to try and make sure that those people are being dealt with and those matters are being processed as quickly as possible?

Let us just go to what the detail of this decision means. Let us look along the coastline of the Northern Territory to Bickerton Island, Groote Eylandt, Elcho Island, the Wessels Islands, Mililingimbi, Croker Island, Bathurst and Melville islands, and let us ask the question that I have heard asked many times over the last week: if you are sailing to this country, why would you stop at those islands? Why wouldn't you keep going the couple of kilometres further and get to the mainland? We have not had in many number of years, boatloads of asylum seekers landing at any of the islands I am aware of north or east of the Northern Territory. If you were going to Mililingimbi, why wouldn't you go the extra kilometre to the mainland? If you were heading towards Bathurst and Melville islands, why wouldn't you go the extra 10 kilometres or less to Darwin? On clear days you can see those islands to the north of Darwin.

This is not about protecting our borders; this is about shrinking the borders. This is a decision that was made without consultation with those people who live on the islands. I am aghast to think that the minister for immigration and ethnic affairs is also the minister for Indigenous affairs. The very same minister controls both portfolios yet he seeks to make a substantive policy decision that affects the land of those Indigenous people and he does not talk to them about this decision. He does not seek to consult with them about this decision. We know that those Indigenous Australians will not, technically, be

impacted by this decision because they are not migrants—they are not seeking to be immigrants. They have no need to because they own that land. They are the Indigenous peoples of these lands. It is for that very reason that you would expect that this minister would consult with these people—or at least inform them that this is a decision that the government is about to make, even if he does not necessarily seek their consent. That would be ideal, of course, but that is not the way this government chooses to operate. He should at least have informed them that this is a decision that this government has made.

One minute we talk about practical reconciliation by this government and then in the next minute we seek to excise their very land, these very islands, from the migration zone. They have no knowledge and no understanding of this and they do not know the implications of the action. They have not been consulted about what this means for them. Consultation has not happened at all, let alone in their own Indigenous language—a language in which they can understand it. No groups of people from DIMIA or from the minister's office embarked on a process of going to these islands to explain what this decision would mean. There has been a significant lack of consultation from this government, from this minister who holds these dual portfolios, about this matter. It is the same lack of consultation that occurred with my constituents on Christmas and Cocos islands when that decision was made last September. Those people were not consulted about that matter then, and we have exactly the same situation occurring now in the islands off Northern Australia.

Let me turn to another matter that has come to light over the last six months in relation to this government's scattergun approach to this whole policy matter, and that is the temporary detention centre that has been built in Darwin on the corner of the Stuart Highway and Amy Johnson Avenue. The decision to erect this temporary processing centre was made last August and it was built in September. Through my questioning of the department, I understand that \$7.2 million has been set aside to erect this temporary processing centre. To date, \$5.4

million has been spent on it. It is situated inside the grounds of the Coonawarra Naval Base. It consists of about 50 or so demountable buildings, and has never ever been used. Not one person seeking asylum, seeking to be a refugee in this country, has been processed at this centre—not one. A number of illegal fishermen may have been processed in the show grounds at Darwin—at the very same time that this processing centre was up and running—but not one person has been processed through that detention centre. So we have a \$5.4 million facility, with the capacity to spend up to \$7.2 million on it, sitting in the heart of Darwin that has never been used.

What does this decision about excising the islands say about this government's policy? It says: we do not want people seeking asylum to come to this mainland. In fact, we are going to make it so hard for them that without any rational reason whatsoever we will excise the islands from the migration zone. Let us say we get a boat over the horizon and it heads towards Darwin. One of the questions I would like this government to answer for me is: will the people be processed in the temporary processing centre at Darwin? I bet they will not, because this government does not want any asylum seekers on the mainland prior to their initial processing, and they ought to be honest about this. What this government will do is ship them across to Christmas Island. This is the place where a new \$225 million detention centre is going to be built, and this is the place where these people will be processed. They will be taken to another area of this country that has been excised from the migration zone.

So let us be honest about this. If we are going to have a debate about it, let us get the government to tell us whether or not any people seeking asylum who enter the waters of Northern Australia would actually be processed in Darwin or whether they would be shipped to Christmas Island. I bet that for the very first boatload of people that comes over the horizon that is exactly what would happen. This government has no intention whatsoever of processing people in Darwin, particularly now that this decision is on the books.



So why has the temporary processing centre been built? Why has this government wasted \$5.4 million of taxpayers' money building a processing centre it knew it was never ever going to use and never wanted to use? The government has continually had a policy of trying to incite concern within people's minds that this is an issue that it is on top of and has control of, but it is a scatter-gun approach, it is an illogical approach. One minute it is building temporary processing centres in the middle of Darwin saying, 'The next load of boat people that come we will process there.' Then the next minute it is excising the islands off the north of Darwin from the migration zone in case any boat people come over the horizon. If a boatload of asylum seekers land on Bathurst Island they will be whipped across to Christmas Island for processing. This has been an absolute waste of taxpayers' money and it has caused a lot of angst and concern in the city of Darwin, particularly among multicultural groups. It is an issue that we will continue to pursue until we get some answers out of this government about exactly what its policy is in relation to asylum seekers in Northern Australia, because it is not clear at all that there is any strategic or sensible approach.

Finally, I would like to say that my colleague Senator Scullion went to great lengths talking about particular sea creatures that may not be wanted in this country. He talked about the sort of marine life that can be brought in unexpectedly by these boats and went on at great length about the quarantine issue, which is sometimes a major issue associated with these boats as they come into our waters. I did find it a bit hard to follow the logic of that in relation to the migration zone, because this will not stop these ships coming in; what it will simply do is say to the people steering these ships, 'Go past the islands to the mainland.' I am not sure whether Senator Scullion was suggesting that we have excised these islands out of the migration zone because it is somehow linked to a quarantine issue. Perhaps the government might want to clarify that for us as well.

It seems a fairly illogical argument because nothing is going to stop these boats trying to get to Australia; it simply means

that they will come to the mainland, as they have always tried to. Take that boat which went right around the east coast of Australia some years ago and landed near Newcastle. The government has not yet extended the line to Newcastle—but, then, there is always tomorrow and that might well happen. I do not see any logic at all in trying to use quarantine issues to explain excising these islands. This process will not stop those boats entering Australian waters and certainly will not limit the quarantine issues we have in relation to these boats.

I am sure we will have a chance to go over many of these issues again and again in this debate, but let me say that this is not an exercise in strategic policy planning. This is not an exercise that has been well thought out in terms of dealing in any sense with the issue of asylum seekers. This is not a well mapped out policy on the part of this government as to how this is going to be handled in the long term. This is a government that lurches from reaction to reaction. This reaction comes at a time when the government wants the heat taken out of the budget, what this government is going to do to people with disabilities and the increase in the family budget when it comes to paying for medicines—another debate for another time. This is a policy that makes no sense. There has been no sound justification for this policy. This is an exercise in politics, not an exercise in good policy. It has affected many people who are yet to understand the rationale and the reasons behind this. We should seek to disallow these regulations. (*Time expired*)

**Senator EGGLESTON** (*Western Australia*) (5.49 p.m.)—I must say that it is very interesting to listen to what is being said on the other side of the chamber about this issue, because the fact remains that last year the ALP agreed to the excision of Christmas Island, Cocos Island and Ashmore Reef. It is very hard to understand what the difference in principle is between agreeing to the excision from the migration zone of those island territories and the proposal to excise these other islands north of the Tropic of Capricorn, along the west coast, through the Torres Strait and off the Queensland coast. The purpose in all cases is exactly the same; that

is, to ensure that people who land on those islands do not have access to Australian immigration law and facilities and cannot claim asylum.

The ALP agreed to these laws last year in the heat of the election. Of course, that was the second time around. When the border protection laws were first proposed, we all sat in this chamber and watched the ALP not support them and, thereby, vote against the national interests of Australia. When it came around a second time, somehow or other the ALP had worked out that these laws were a good thing and were in the national interest of this country, so they supported them. That was a very curious flip and now we have another flip. We explained the flip last year. The then leader, Mr Kim Beazley, was known as 'Mr Flip Flop'. He could not make up his mind about anything, as he flipped from one decision to another. Now we have Mr Crean leading the ALP who is supposed to be a decisive leader—a man of decision who can give clarity and purpose to ALP policy. But what do we find? He has flipped and flopped just as Kim Beazley did. So we now have two Mr Flip Flops. He is Mr Flip Flop mark 2.

This decision to excise islands certainly affects a lot more islands than the three island territories which were the subject of legislation at the end of last year. In a rough count there are something like 4,200 islands north of the Tropic of Capricorn off the western coast, the northern coast and the eastern coast of Australia. The purpose, as I have said, is to ensure that people who land on these islands do not get access to Australian migration law and facilities and cannot claim asylum.

As explained earlier by our colleague from the Northern Territory, another purpose is to dissuade the people smugglers who are at risk of losing their vessels if they are apprehended close to the Australian coast. They have developed a technique of running the people they are smuggling to a piece of Australian territory off the coast of the mainland. There they can land the people in the darkness, perhaps, and quietly slip away without any risk of their boats being impounded, their being imprisoned or their

boats being burned later on. That is what this is all about—discouraging people smugglers by excising the islands.

Off the north-west coast of the Pilbara, where I come from, there are a number of islands which would provide ideal locations for people smugglers to drop people if they had the opportunity. There is Barrow Island off the North West Cape. Off the Pilbara coast, there are the Monte Bello Islands, where atomic tests were carried out in the 1950s, and the Mackerel Islands. There are a number of islands used by people for fishing. Boat people could be dropped there. There are huts, water and so on, and people smugglers could slip away into the darkness, over the horizon and out of Australia's zone of legal jurisdiction. Two hundred kilometres north of Port Hedland and west of Broome are the Rowley Shoals, which provide an ideal place for people smugglers to drop illegal migrants, without any risk of apprehension or loss of their vessels under Australian law.

The proposal today to excise further islands is consistent with the border protection legislation which was introduced last year and was so strongly supported by the Australian people in the federal election. That is an important point for the ALP to bear in mind. The Howard government's position on border protection and the excision of the islands last year was very strongly supported by the Australian public. I am sure the Australian public will equally strongly support these decisions of the Howard government. The Australian public expects the government to provide secure borders of this country. As it happens, our borders are ocean borders, but the Australian people expect the government to strongly protect our borders and they strongly support the Howard government for their policies in this area.

The issue of the detention centre in Darwin has been raised by Senator Crossin. She has questioned whether or not the expenditure on that facility is justified, given that the number of boat people now coming into Australian waters has dramatically reduced. Of course the number has reduced. The policies of the Howard government have been so effective that, for the moment at least, the

flow of illegal immigrants is much less than it was. While it was thought necessary a year or so ago to plan facilities to house large numbers of boat people, it is now apparent that the flow of boat people has been substantially reduced and that the centre which is proposed for Darwin may not be required for the purposes for which it was originally intended. One cannot be sure that it will not be required in the future, but there are many other purposes for which I am sure this centre could be used.

The important thing, as I said earlier, for us all to understand is that the Australian people have strongly supported the Howard government's border protection policies. This proposal to excise islands north of the Tropic of Capricorn—the 26th parallel—in Western Australia, the Torres Strait and North Queensland is very strongly supported by the Australian people. Instead of carrying on in the way they are, the ALP would be wiser to listen to the Australian people. They should not forget the results of the election last year and not obstruct this legislation, which the Australian people are quite clearly in favour of. It is very indicative that the new leader of the ALP, Simon Crean, is proving as indecisive, weak and incapable of providing consistent policy and decision making as the previous leader Kim Beazley was.

**Senator LUDWIG (Queensland)** (5.58 p.m.)—I want to bring this debate back to where it started from. Senator Eggleston, to his credit, went to the substance of the issue. In fact, going to the substance of the issue really undermines the government's position, because that is what the opposition, the Labor Party, has sought from the government—in other words, the tabling of the regulations. We have asked for leave and called for those regulations to be tabled. Just to remind people—because most have strayed from it—the substantive issue currently before this chamber is that Senator Faulkner has moved that the Senate 'notes that the government has delayed the tabling of the Migration Amendment Regulations 2002 (No. 4)' and 'calls on the government to table these regulations on the next day of sitting'. That is what the opposition has sought from the government.

Senator Eggleston, in his remarks, clearly has tried to defend the regulations themselves, and the government seems to want to defend the regulations. It wants to be able to provide its reasoning and engage in debate with the Labor Party about the regulations. But what the government will not do is table the regulations so that we can have the substantive debate. During this debate calling for the tabling of the regulations, a successive number of government speakers have been justifying the regulations themselves—justifying support for the regulations. I remind them that the regulations are not here—they are not in the House and, the last time I checked, they were not in the Senate. They may have been tabled today in the House whilst I have been in this chamber but at approximately 3 o'clock today the advice given to me was that they had not been tabled in the House.

Yesterday we had quite an interesting occurrence: effectively we had almost a policy statement and support for regulations that have not been tabled. In a question by Mr Cadman to Mr Ruddock, the substantive issue was gone to again. This government wants to go to the substantive issue but is not able to then say, 'Well, here are the regulations; they're tabled.' The government made the regulations, gazetted them on the 7th and then said, 'Well, the regulations have full force and effect.' But the government is not prepared to allow them to have full scrutiny by this House. It also has not allowed them to be examined by the very old Regulation and Ordinances Committee to see whether they pass the relevant tests. Until the regulations are tabled, the Regulation and Ordinances Committee, as I understand it, cannot examine and test them against the relevant points and principles it tests regulations against.

It is quite remiss of this government to stand here in this debate and defend the substantive issue. We want the government to table the regulations so that we can have the substantive debate. Mr Cadman, as I said, asked a question which effectively allowed Mr Ruddock to put his case—and quite wrongly, I suggest. Mr Cadman asked:

Would the minister advise the House of the impact on people-smuggling operations of the decision to excise further islands from the migration zone? What role does the decision play in the government's wide ranging strategy to protect Australia's borders?

So, in other words, the questioner put the substantive reasons for the regulations. Then, in the reply, Mr Ruddock goes on to outline the reasons. Of course, Mr Swan, the Manager of Opposition Business in the House, quite rightly took the point and said:

Mr Speaker, I rise on a point of order: the minister has been going for over six minutes. If he wants to make a ministerial statement, he should do it after question time.

That is, in fact, what Mr Ruddock was doing: making a ministerial statement about regulations—but regulations that he had failed to bring into either this house or the House of Representatives thereby enabling us to have the substantive debate. We then find that the government, in its justification for the regulations, almost says, 'We needed regulations, we dropped them in, we gazetted them by the 7th and then we have let them sit there.' Senator Scullion picks up that point and says, 'Well, the government will table the regulations.' Of course they will, Senator Scullion—through you, Chair—because the regulations have to be tabled within 15 days. That is the point.

The government does not have sufficient conviction to table the regulations and defend them as being appropriate and to test them, both in the Regulation and Ordinances Committee and in this Senate. If these are regulations that have been designed for the purpose which has been stated, that is what the government should do, But of course they have not been designed for that purpose. That is the point. Mr Ruddock is trying to progress a political issue in the other place and not a substantive one.

Labor is strong on coastguard. Labor is strong on border protection. Labor offered its hand to progress this issue in a bipartisan way. And what has the government done? It has said, 'We'll make regulations, but we won't tell you about it. We'll tell you about it after we've gazetted them'. Also, 'The minister will not'—and did not, for no reason

that I can ascertain—'go to the briefing when called on to have one in relation to the regulations,' That briefing was requested so we could see what the regulations will do. When we peel the onion and have a look at what the regulations do, they take on a different perspective. The regulations go a lot further, a lot wider than what would really be required to meet the exigencies of the circumstances that are being presented.

You sometimes find the answer to that in strange places. Criticism of the department can be found of the management framework for preventing unlawful entry into Australian territory. That really goes to the heart of this issue. In referring to DIMIA's risk management framework, paragraph 2.13 sums up very well the reason why we are having this debate about the inability of the government to strategically deal with these issues in a bipartisan way. It says that the department 'does not yet have a formal risk identification and common monitoring and management process in place at the corporate or operational level'. The department advises that 'risk is assessed regularly in terms of reviewing approaches to various countries in the context of defining objectives for engagement by senior officials and the minister'. So it is ad hoc. There is no strategic direction. It does it intuitively, as that 2.13 seems to suggest, and there is no systematic or proactive approach. No wonder we find the government taking a role such as this.

What do the regulations then purport to do? Rather than take a strategic view, rather than deal with them a practical pragmatic way, we find the government saying, 'Let's take a straw man reasoning approach.' In introducing the regulations, the government has done exactly that. It has said, 'We will take the regulations, we will find a reason to substantiate why the regulations need to be put before parliament, but we will not then tell parliament about them because we want them to have full effect until such time as they will be dealt with'—or until such time as the government thinks it worth while for them to be brought on and debated. That is not an appropriate way of dealing with legislation in this chamber. Legislation and regulations are dealt with as set out by proto-

cols and precedents. They do go to the Regulation and Ordinances Committee; they do get proper scrutiny; and they do come before this House and get tabled and debated, if they have a need for debate. They get dealt with in that fashion—not in the fashion in which this government has chosen to deal with them.

In their straw man reasoning, the government have said in the explanatory statement to the regulations:

The regulations address indications that people smugglers are likely to change the focus of their operations to target landing on islands close to the Australian mainland. In combating these new threats it is necessary to extend—

I will freeze-frame that for a second. Firstly, it says 'indications that people-smugglers are likely to change'. So there is no concrete, substantive issue put before us in relation to that because, of course, the regulations are not tabled, we have not heard from the minister about them and we have not heard from the spokesperson in the Senate in relation to what those indications might be. That is then used in the second sentence, where it says 'In combating these new threats'. We have not been told about what these new threats are because we have only got an indication in the top paragraph. If that is not straw man reasoning, I do not know what is. That is exactly what this department has put up: straw man reasoning to justify regulations which are nothing short of a political position that has been adopted. It is not good enough. In almost the final statement, it says the Commonwealth will continue to ensure that while unauthorised arrivals:

... at excised offshore places cannot apply for visas, appropriate arrangements will ensure that Australia continues to fulfil its obligations.

We heard Minister Ruddock say in the House that he has 'convention plus'. But we find, in truth, 'appropriate arrangements will ensure', but we do not know what they are and how they are going to be dealt with. All that we find in the explanatory statement is a shorthand way of saying 'we do not know'. It says 'appropriate arrangements will ensure that'. When you see that phrase you can only jump to one conclusion: the government does not know what appropriate arrange-

ments it has and what appropriate arrangements it will put in place.

If this government is hell-bent on rejecting the 1951 convention and the protocols, why doesn't it say that? Why doesn't it stand up and say that is the position that it wants to adopt, rather than use euphemisms in explanatory statements in regulations and then not table them? Why doesn't it come forward and clearly say, 'This is our position,' so people can set their jib according to what this government really wants to do?

Labor is prepared to go down the path of ensuring that our mainland, our coast and our islands are protected and there is strong border protection in place. Let me make that absolutely clear; Labor is dedicated to that task. When you look at the mechanism employed by this government to try to achieve that you wonder whether or not this government is serious about that or whether it is simply rolling political balls at the opposition to try and catch it off guard. The government has other problems on its plate. It has a budget that looks like it is in deficit rather than in surplus. It is split on what it is going to do in relation to the International Criminal Court. It is unsure in a range of areas of what its strategies and its path will be. That is no more clearly stated than in the ANAO report. If you look at it, you will find it stated both where I said earlier, in section 2.13, and in the two recommendations.

That report deals with just one part of this government's work, which is multicultural and Indigenous affairs. But you can apply it to the overall operation of this government; it reflects upon this government more broadly. It reflects upon this government to the extent that it does not have an overarching strategy. It does not have a clear direction in which to go on a range of issues. So the way it deals with it is in an ad hoc and reactive way, not in a proactive way. We find that the government has got caught out. The ANAO report said that there was no strategic direction, and it clearly indicated that. I think it not only reflects on the Department of Immigration and Multicultural and Indigenous Affairs and the minister but, by analogy, it can be drawn across to the government as a whole because you can say that, in this instance, the de-

partment agreed with those recommendations.

We have spent some considerable time this afternoon talking not about the regulations or the substantive issue but about the necessity for the government to table the regulations. From our perspective time is valuable and we have less than two weeks left before the recess. Obviously, we need to deal with a whole range of issues before parliament breaks for what is traditionally called the winter recess. Instead we find we are calling on the government to provide its regulations so we can deal with them in a more substantive way. Rather than spending our time calling on the government, it would have been far preferable for the government to simply, in this debate, reply much earlier, table the document and get on with business rather than taking up the valuable time of both sides in dealing with a motion that calls on the government to act.

**Senator ELLISON (Western Australia—Minister for Justice and Customs)** (6.13 p.m.)—At the outset, can I say there has been the mistaken impression conveyed to the Senate that in some way there is something untoward in the government not tabling its legislation today—that is, today being the first available sitting day for such tabling. I refer the Senate to section 48 of the Acts Interpretation Act, which provides that all regulations shall be notified in the *Gazette*. That has been done; it was done on 7 June this year. Subject to this section, those regulations shall take effect from a specified date, a specified time on that date, and the section goes on to make other requirements. This government has complied with that.

When you look at this section further, you find it says that regulations ‘shall be laid before each House of the Parliament within 15 sitting days of that House after the making of the regulations’. There is no requirement at law or otherwise that the government has to table regulations on the first available sitting day. Let me make that quite clear. Any suggestion that to not do so is a denial of democracy, as Senator Brown put it, is nonsense. Any suggestion by Senator Faulkner that not having tabled these regulations on the first available day shows some lack of

confidence by the government in those regulations is equally nonsense, because the fact is that there are 15 sitting days available for the government to table these regulations. That is the law. There is no law which says that these regulations have to be tabled at the first instance.

For the Labor opposition to come in and attack that is sheer hypocrisy. Let us look at Labor when it was in government. Of course, we see that private senators have tabled regulations on other occasions. On 14 December 1989, Senator Patterson tabled certain regulations made under the National Health (Pharmaceutical Benefits) Act. In 1994 Senator Bell tabled certain regulations under the Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act. So, under the prior Labor government, individual senators from the opposition and other parties tabled regulations themselves because the then Labor government did not table them itself. So you have precedent, form, on the part of the Labor opposition when it was in government of not tabling regulations on the first available day. Indeed, when you look at precedent you see that an individual senator is able to table regulations. Of course, that is open to any senator in this chamber. So what we have here is a complete furphy that by not tabling these regulations the government in some way has something to hide or is denying democracy.

Let us now turn to these regulations. The government decided to extend the coverage of islands to be included as excised offshore places for the purposes of the Migration Act as a result of intelligence that the government had received from the People Smuggling Task Force. In fact, it has taken this action on the advice of that task force, a task force which even Senator Faulkner recognised as being a valuable tool in fighting people smugglers. The effect of the regulations is to include as excised offshore places solely for the purposes of the Migration Act all islands of Queensland north of latitude 12 degrees south, all islands of Western Australia north of latitude 23 degrees south, all islands of the Northern Territory north of lati-

tude 16 degrees south and all islands of the Coral Sea Islands Territory.

The provisions of the Migration Act continue to apply to these islands. The legislative changes made by the regulations do not affect Australian sovereignty over these islands. The islands remain integral parts of Australia. That is important to remember. What has been excised is the ability of a person arriving without authority at an excised offshore place to apply for a visa to enter and remain lawfully in Australia. In short, these people have no right to make any application for the grant of a visa under the Migration Act. That is the reason for the excision of these islands: it is to strengthen border protection. It is clearly in the interests of this country.

As I said earlier, the provisions of the Migration Act continue to apply in excised offshore places with the result that there are no restrictions in the act on any Australian citizen or valid visa holder moving about within Australia, including to or from these islands. Visa holders can also make any visa application permitted by the act. Much was made of the Torres Strait Islands by Senator Bartlett and Senator Crossin. Of course, they conveniently overlooked the fact that the Torres Strait Regional Authority issued a press release welcoming the news that the Commonwealth government intended to extend the definition of 'excised offshore place' in the Migration Act to include the islands of the Torres Strait. In fact, Mr Terry Waia, the TSRA chairman, said:

The change to the Act will not affect current traditional activities but will give greater protection against illegal immigrants infiltrating the Australian border into Torres Strait waters.

That was a clear commendation of the action taken by the Australian government from the Torres Strait Regional Authority. When you listen to what Senators Bartlett, Crossin and McLucas said in relation to the Torres Strait, you have a very different and distorted picture. I would also point out that the Torres Strait Regional Authority was advised of this measure prior to its coming into force.

While I am on that point, can I also say that the opposition was briefed via its opposition spokeswoman, the member for Lalor,

prior to these regulations coming into force. In fact, on the day that they came into force, a briefing was given to the member for Lalor. The opposition has received a full briefing. That is indicative of the open-handed approach that this government has had to this very issue. That briefing took place on Friday, 14 June and went over some hours. Indeed, as I understand it, it included Senator Faulkner, who has taken part in this debate.

What we have here is an excision which has taken effect through legislative power given to the Minister for Immigration and Multicultural and Indigenous Affairs as a result of measures which were put in place last year with the support of Labor. In fact, last year we saw Christmas Island, Cocos (Keeling) Islands and other territories excised with the support of the Labor opposition. But, as Senator Eggleston pointed out eloquently, that of course was in an election environment. It raises the question as to why the Labor opposition saw fit then to support the excision of Christmas Island, Cocos Islands and other territories and to support the government in the legislative power of the minister to make these excisions but does not see its way clear to do that now.

To merely say that the excision of these islands will invite people to come to the mainland is facile. As Senator Eggleston pointed out, many of these islands which have been excised are over the horizon—Rowley Shoals is several hundred kilometres offshore. We have given a disincentive to people smugglers in relation to their activities, and we have added to the measures that we have already put in place for border protection. The Australian people could well ask 'Why?' if we had not taken these measures, because it makes perfect sense to use every means available to strengthen Australia's borders and the border protection of this country.

There have been other measures, which I mentioned earlier today, which are relevant to this debate: the people-smuggling conference that we co-chaired with Indonesia and the MOU that we signed last week with the Indonesian police in relation to increased cooperation in fighting not only transnational crime but also people smugglers. Today we

have seen the arrest by the Thai authorities, on a provisional warrant and at the request of Australia, of Mr Al Jenabi, a person suspected of being involved in people smuggling. As a result of the efforts of this government, we have seen increased cooperation with overseas countries, and they with us, in relation to people smuggling. We have seen the placement of departmental officers in key overseas airports where they train airline check-in staff to identify bogus documentation. They advise airlines on Australia's entry requirements, thus preventing the illegal travel of thousands of people to this country. We have seen the posting of specialist liaison officers to key overseas posts for bilateral and multilateral liaison on readmission and resettlement, technical and border management capacity, processing of the humanitarian caseload and government identity, character and security checking.

Many measures taken by this government have put runs on the board and have seen results. I reiterate that since August last year there has not been a landing on mainland Australia by an unauthorised boat. That in itself is proof in the pudding of this government's policies in relation to border protection. We have had Minister Ruddock travelling overseas talking to source countries in an effort to prevent this flow of people coming down to Australia in this fashion. We have seen an agreement with Afghanistan in relation to the voluntary return of those people who are not found to be refugees. We have seen other efforts by the Minister for Immigration and Multicultural and Indigenous Affairs in relation to intergovernmental consultations on asylum, refugee and migration policies in Europe, North America and Australia and we have seen Asia-Pacific consultations on refugees, displaced persons and migrants.

So we have had a whole of government approach in a comprehensive way to this issue. This excision is just part of that. It is part of a package of strong border protection measures taken by this government in protecting Australia's interests. Of course we cannot be complacent and, as our intelligence has indicated, there are still people smugglers active in our region and they are

exploring ways to continue their trade either to Australia or to other countries. Senator Bartlett referred to a lot of sensationalist press in relation to particular vessels and what they may or may not be doing or whom they may or may not have had on board. I can tell the Senate that, as a result of intelligence received by this government—and briefings have been made available to and have been conducted with the opposition in this regard—the government's People Smuggling Task Force recommended that excised offshore places be extended to include the offshore islands between Exmouth and the Torres Strait and into the Coral Sea. The government has approached this on a rational basis. It has not been a knee-jerk reaction; it has been based solely on what is best for Australia.

We have credible information that people smugglers are still operating in Indonesia. There are several thousand people seeking movement by people smugglers. These smugglers are still actively seeking to put together boats to travel either to Australia or through the Torres Strait to other destinations in the Pacific. That is a crucial aspect of the decision to make these excisions. Senators, in particular Senators McLucas and Bartlett, should remember the strategic importance of the Torres Strait to people smugglers. I remind them yet again that the Torres Strait Regional Authority welcomed these measures.

These activities by people smugglers must be stopped. We have seen reports in the Indonesian press in relation to various activities of people who are intending to travel either to Australia or to the region of the southern Pacific. These excisions make it significantly harder for people smugglers to get to an area where visa applications can be made—where they can simply dump their human cargo and escape without detection. These measures enhance border protection for this country.

You have to ask why it was good enough last year for Labor to support the legislation which could put these measures in place. Why did the Australian Labor Party do that then, in an election environment, where the Australian people were saying very clearly



that this is what they want, and today make a complete backflip by saying that it will move to disallow these regulations? All it can point to is that these excisions will encourage people to come to the mainland of Australia. It has no evidence for that; it has no basis for that. In fact, what it is doing is going soft on people smugglers. We have had advice from our People Smuggling Task Force that these are appropriate measures to strengthen border protection and to provide a disincentive to people smugglers. If the Labor Party were serious about working with this government shoulder to shoulder on border protection, as it said during the election campaign, it would be supporting the government in these regulations.

Finally, it is facile to say that, by not tabling these regulations today, we have no confidence in our measures. The government have absolute confidence that we have taken the right course of action, and I believe that the Australian people are of the same view. The people of Australia want every possible measure that is lawful taken to protect Australia's interests, and that is precisely what these excisions do. To do otherwise is to diminish border protection for this country and to soften any approach to deterring people smugglers from what is a callous and illegal activity.

**Senator FAULKNER** (New South Wales—Leader of the Opposition in the Senate) (6.30 p.m.)—This is an important motion before the Senate. It asks the government to do the right thing: it asks the government to take the opportunity during the next 24 hours to table these important regulations that excise over 3,000 offshore islands from the Australian migration zone. I propose this course of action because today there was an opportunity for the government to table those regulations. The government deliberately decided it would not do so. When asked a question in question time today, the minister who has just spoken in this debate was unable to explain to the Senate why the regulations had not been tabled, when they were gazetted on 7 June—11 days ago. In all normal circumstances, the regulations would be amongst those that the Clerk tabled today. Today is the first available sitting day after

the gazettal for these regulations to be tabled. The regulations have not been tabled, so it is quite proper to ask for an explanation of why that is the case. None was forthcoming from the minister. In that circumstance it is quite proper for the Senate to ask the government to take the appropriate course of action and table the regulations. That is precisely what this motion does: it calls on the government to table the regulations within 24 hours.

If you asked yourself, Mr Acting Deputy President, why the regulations were not tabled today, I fear the answer would be very clear. These regulations are not a sensible policy response to the problem of people-smuggling. They were not designed as a policy response to combat people-smuggling. It is all about politics; it is not about policy. These regulations are another attempt by the Howard government to use the plight of desperate people to bolster its standing in the polls. We know all about this. We have had the 'children not thrown overboard' saga, we have had the 'asylum seekers who didn't set their boat on fire' and now we have possibly a phantom boat that may or may not have left Indonesia at some time bound for somewhere. It is all so deliberately vague.

The response of the government is very clear. It says to us that excision of these 3,000 islands is warranted and that that is the solution to the problem that no-one can quite put their finger on—the boat that is supposed to be coming. If it is so confident that it has the answer to the problem of the boat—if there is a problem—and that it has the solution, it should put these regulations before the parliament so the parliament can judge. That is what we believe should happen.

It is true that a non-government senator has the option of introducing the regulations and then moving to disallow them. It is true that that course of action could be adopted. But proper process is for the government to do the right thing, for the government to table the regulations, and for the chamber to then give consideration to whether or not those regulations should be disallowed. It is not our preferred option to see a non-government senator take that initiative. They are the government's regulations; they are regulations that have been gazetted; they are

regulations that have been trumpeted time and time again as essential by the Prime Minister and the Minister for Immigration and Multicultural and Indigenous Affairs; they are regulations that have been trumpeted time and time again by this government as absolutely urgent; and they are regulations that have been trumpeted by the government as a solution to the people-smuggling problem.

If that is the case, surely the government should have the courage of their convictions and bring these regulations before the parliament. Table these regulations and let us judge them. At least have the guts to have a debate on this issue. At least have the guts to put forward your arguments. But, of course, that is not the way this government does business. The government are not going to bring these measures before the parliament. They do not want to debate them. They do not want to explain the regulations. They do not want to front up on this important issue. As I said before, if the government were serious about trying to achieve a bipartisan response on this issue, they would not have regulated in this manner at all; they would have consulted the opposition before these regulations were made and before these regulations were gazetted. But that is not the case, and it is not the way the government are determined to handle this issue. They have made it absolutely, categorically clear that the policy implications and issues here are not important—what is important here is politics; what is important here is an effort to wedge the Labor Party.

The Labor Party has said that, for a whole range of good reasons, we do not support these regulations. We did, of course, support the government's proposals when it sought to excise Christmas Island, Ashmore Reef and the Cocos Islands last year. We supported that legislation on the basis of good and logical argument and made the point very strongly that those particular places are much closer to Indonesia than they are to mainland Australia. So many of these islands that have been excised in these regulations that the government does not want us to pass judgment on are literally a stone's throw from the Australian mainland. We are concerned that

the people smugglers will try to go the extra few hundred metres or the extra half a kilometre or one or two kilometres to try to find the Australian mainland. It is a serious concern—even though at the moment we do not know about the status of the vessel that has led the government to make these regulations and have them gazetted; even though the government is not willing to have these regulations tabled in the Senate so they can be properly debated here.

This is the chance for the government to put up or shut up. This is the chance for the government to put its arguments, to put its regulations down, to table them as it should before both houses of the Australian parliament and let us have the proper debate and have proper process whereby the government tables the regulations and the chambers of the Australian parliament make decisions about whether those regulations should be allowed or whether they should be disallowed. The government does not seem to want to adopt proper process; the Labor Party, as always, is consistent on these issues: we say, 'Let's accept proper process.'

Here is the chance for the government: table those regulations. They have been made. Senator Brown has been brandishing a copy of them and, of course, I have a copy of them. Most senators in the chamber have a copy of these regulations. They have been gazetted. We all have them. Table them in the parliament and then let the Senate make a decision about whether or not they should be disallowed. That is what I call proper process. Here is an opportunity, just for once, for the government to put principle above politics, to do the right thing and have a debate on the substantive issues. I commend this approach and I commend this motion to the Senate.

Question put:

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

The Senate divided. [6.47 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes.....	37
Noes.....	<u>33</u>
Majority.....	4

AYES

Allison, L.F.	Bartlett, A.J.J.
Bishop, T.M.	Bourne, V.W.
Brown, B.J.	Buckland, G.
Campbell, G.	Carr, K.J.
Cherry, J.C.	Collins, J.M.A.
Conroy, S.M.	Cook, P.F.S.
Cooney, B.C.	Crossin, P.M.
Crowley, R.A.	Denman, K.J.
Evans, C.V.	Forshaw, M.G.
Gibbs, B.	Greig, B.
Harradine, B.	Hogg, J.J.
Hutchins, S.P.	Lees, M.H.
Ludwig, J.W.	Lundy, K.A.
Mackay, S.M. *	McLucas, J.E.
Murphy, S.M.	Murray, A.J.M.
O'Brien, K.W.K.	Ray, R.F.
Ridgeway, A.D.	Schacht, C.C.
Sherry, N.J.	Stott Despoja, N.
West, S.M.	

NOES

Abetz, E.	Alston, R.K.R.
Barnett, G.	Boswell, R.L.D.
Brandis, G.H.	Calvert, P.H.
Campbell, I.G.	Chapman, H.G.P.
Colbeck, R.	Coonan, H.L.
Eggleston, A.	Ellison, C.M.
Ferguson, A.B.	Ferris, J.M. *
Harris, L.	Heffernan, W.
Herron, J.J.	Kemp, C.R.
Knowles, S.C.	Lightfoot, P.R.
Macdonald, I.	Macdonald, J.A.L.
Mason, B.J.	Minchin, N.H.
Patterson, K.C.	Payne, M.A.
Reid, M.E.	Scullion, N.G.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Vanstone, A.E.
Watson, J.O.W.	

PAIRS

McKiernan, J.P.	McGauran, J.J.J.
-----------------	------------------

\* denotes teller

Question agreed to.

**ADJOURNMENT**

**The PRESIDENT**—There being no consideration of committee and other documents, I propose the question:

That the Senate do now adjourn.

**Trade: United States Beef Quota**

**Trade: Banana Imports**

**Senator O'BRIEN (Tasmania)** (6.54 p.m.)—Yesterday the Rural and Regional Affairs and Transport Legislation Committee took evidence from a large number of witnesses as part of its inquiry into the management of the United States beef quota issue. I must say that during my time in this place I have not witnessed such an intensity of feeling against a minister as that directed at the Minister for Agriculture, Fisheries and Forestry, Mr Truss, yesterday, and that intensity of feeling came across from such a large section of a major rural industry. This view was highlighted by the formal submission from the Australian Lot Feeders Association. In that submission, the association described claims by Mr Truss about his decision on the quota scheme as 'deceitful'. The submission claimed:

The blatant political interference by the Minister in fiddling with the allocation percentages has prostituted his position as Minister.

Those statements were not made in the heat of the debate but in a formal, considered written submission to the committee. A number of processors laid out for the committee the extent of the job losses they were concerned would flow if Mr Truss pushed on with his model. The tally is in the order of 5,700 direct jobs, many concentrated in small communities where meatworks are the major employers.

It was clear from these hearings that not only is there widespread anger within the beef sector directed at Mr Truss but additionally the relationships between some sectors of the industry have also been strained by the minister's management of this matter. I find it difficult to understand how the minister could make such a mess and alienate almost everyone in the process. We are, after all, talking about an industry worth billions of dollars and an export market that accounts for 40 per cent of the beef we export.

It is vital that this major industry now develop a strategy to move on from the chaos induced by the minister. What is required is not only a strategy to best manage the US quota—and the Rural and Regional Affairs

and Transport Legislation Committee will report on its views on that point some time, I hope early next week—but also a strategy to rebuild the focus of all beef sectors on our total export effort. That focus has been all but destroyed by Mr Truss. What is required is a plan to rebuild that focus, and I will be writing to all industry organisations proposing that a group be established that is representative of all industry interests. That group may need only to have a limited life and may be built around the existing Red Meat Advisory Council structure or some amended version of that structure. This industry is too important to simply allow the existing structures in place to continue to provide the basis for consultation where those structures are simply ignored by Mr Truss. All sectors of the industry must now review these structures. The new industry group that I hope will emerge from this process should develop strategies to build our global export effort. Its first task should be to address the issue of quotas.

The second issue that I want to touch upon tonight is the application by the Philippines to import bananas into Australia. The minister, Mr Truss, has refused to provide Australian banana growers an extension of time to consider and comment on a 391-page technical information paper. That paper, entitled *Importation of fresh bananas from the Philippines*, details possible pest and disease threats from imports to local industry and its farmers. The 30 days that the minister, Mr Truss, gave the banana industry to respond to the technical report expired on 5 June.

During the recent estimates hearings, I asked the Parliamentary Secretary to the Minister for Agriculture, Fisheries and Forestry, Senator Troeth, to ask the minister to grant Australian banana growers adequate time to consider this important report. That was a request from the industry and, in my view, not an unreasonable request. I then wrote to Senator Troeth on 11 June to follow up my earlier request. Senator Troeth has not bothered to provide the Senate committee or Australian banana growers with the courtesy of a response to my direct request to her, nor has she bothered to reply to my letter. It is clear why Australian banana growers are

dirty on this government, given the level of indifference to their concerns about the impact imported fruit might have on them, their families and their industry.

In providing growers with just 30 days to comment on what is a detailed technical document, in my opinion Mr Truss is in breach of his own guidelines. The latest administrative guidelines issued by the government state that stakeholders 'will have 60 days to submit comments' on technical information papers. The guidelines quite rightly state: 'This will be their'—that is, the stakeholders—'first opportunity for detailed input into the import risk assessment.' In fact, the technical report on the importation of Philippine bananas states that the risk assessment panel will take stakeholder comments on the report into account in the preparation of the import risk assessment: that is, this technical report will be the foundation upon which the import risk assessment is built. If there are flaws in the technical paper, it follows that there will be flaws in the import risk assessment. It is clear that Mr Truss and Senator Troeth are continuing to treat Australian banana growers like second-class citizens. I think that this key rural industry deserves better.

**Gorton, Rt Hon. Sir John Grey, GCMG,  
AC, CH**

**Senator ALSTON** (Victoria—Minister for Communications, Information Technology and the Arts) (7.02 p.m.)—I wish to make a few remarks about the late Sir John Gorton. Sir John Gorton would have to be Victoria's most illustrious senator, given his unique achievement in being leader not only in this house but in the other place as well. To have attained the rank of Prime Minister for a period in excess of three years is in itself sufficient to demonstrate that his contribution to Australian public life was immense. I want to pay particular tribute in areas where I have a special interest. His role and involvement in the precursor to the Australia Council for the Arts and the National Film and Television Training School were clearly major achievements that reflected the changing culture of the time, but they were also in many respects ahead of the main debate.

I had the privilege of presiding over the lecture series, *Prime Ministers on Prime Ministers*. It was a particular privilege on the evening of 12 November 1997 when Sir John delivered his address. Yesterday I heard Senator Faulkner referring to some elements of that address, particularly those qualities which Sir John believed were critically important to a Prime Minister. He paid tribute to both Sir Robert Menzies and Harold Holt as people of enormous integrity and decency but also of great political fibre and character. I think it was quite significant that Sir John was able to discuss not only some of his own achievements but also his insights into what it was that posed particular challenges for Australia. In a character sense, I found it quite enlightening to see the humility that he displayed. He made it plain then, and I think elsewhere, that he understood the precarious nature of political life. Although he stayed in the parliament for some years after he ceased to be Prime Minister, he understood that that particular role was one that was likely to be fairly limited by any measure. He concluded that lecture series address by saying:

It was both an honour and a privilege to have held the baton for a while as Prime Minister of this magnificent country. I would like to say how fondly I look back upon my years as Prime Minister. It was a humbling experience that my party colleagues saw me as a worthy occupant of the position.

And then he paused and said, 'For a time at least.' I think that is one of the great characteristics of the man. He always had a twinkle in his eye. He understood the importance of the issues, but he could also see the lighter side. I remember asking him on that evening—he was in his late 80s at that point—whether he still followed current affairs closely. He turned and looked at me in a way that made me wonder why I had ever thought of asking the question, because he said, 'Of course I do: I listen to the news, I read the newspapers, I have views on every issue.' It was as though he had never left. I found that a bit intimidating in a sense, because some of us might like to think that we will eventually slow down a bit. But he was someone who had been around politics for probably 50 years or more and who still could not get enough of it. That was what so impressed me

about him—that he still had that great sense of the public interest and he was still passionately concerned about improving the quality of life on so many fronts.

He had strong views and he was not afraid to express them. The way in which he lived his political life demonstrated that he was not inclined to talk around an issue. He was very forthright, he saw great virtue in being a risk taker and, as we all know, he was a rugged individualist—probably the archetypal one. In fact, when I heard about his magnificent war record and all that he had been through—particularly the physical disfigurement but also effectively defying death on several occasions—it seemed to me to be the perfect CV for an aspiring political candidate. I am sure that was the last thing that would have gone through his mind when he thought he was only inches away from death. Yet that is the very sort of person that you want to see go into politics—someone who has been a great risk taker, someone who has been prepared to put his life on the line for his country, someone who has an ongoing passion to improve the lot of those around him.

I think many have paid tribute to Sir John in the context of his formal achievements but I simply wanted to say that, in my dealings with him, I found him to be an immensely warm and human individual—someone who had all of the best characteristics, particularly post politics, which is when I came to know him. I have had the opportunity to exchange views with him on a number of occasions over recent years, and on every occasion I felt uplifted. I think we should be eternally grateful that someone such as Sir John strode the political stage in the way that he did.

#### **Thomas, Mr Ted**

**Senator RIDGEWAY** (*New South Wales—Deputy Leader of the Australian Democrats*) (7.08 p.m.)—I would like to speak tonight to honour the memory of a great man who passed away at the end of last month in my home state of NSW. His name was Ted Thomas, and he was known to many as Guboo. He lived to the extraordinary age of 93. He was the oldest lawyer on the South Coast of NSW, and a revered Elder of the Yuin Nation. I had the privilege of

knowing Guboo when I was a young boy and also in later years as the result of his dedicated campaign over many decades to protect the sites and culture of the Yuin Nation.

From the early 1970s till the end of his life, Guboo stood up to the combined forces of the then New South Wales Forestry Commission, the timber industry and property developers who were making dramatic inroads into the forests and coastland of his traditional country. He helped the Aboriginal communities on the South Coast to rediscover their political voices and, through their combined efforts, to take on those who denied the existence of Aboriginal cultures and Aboriginal people more generally. Sadly, there were a lot of people who publicly argued that there were no Aboriginal people on the South Coast of New South Wales in the 1970s so not only did Guboo educate others about the history of Aboriginal people in their own backyards but also he explained that the land they shared held ancient stories and wisdom that had been handed down from generation to generation over millennia.

As a man from the Yuin Nation, born in 1909, Guboo had grown up at a time when a number of the initiated men were alive, and Yuin cultural practices remained an integral part of people's daily lives. As a boy, he recalled Kooris coming to Wallaga Lake near Bermagui, where he spent much of his childhood, as they walked from Mallacoota in Victoria, right up the coast to the Hawkesbury River on the outskirts of Sydney. On reflection, Guboo recognised that he had been singled out as a young man to carry on the traditions and the knowledge of his Elders. At the age of about 17 or 18, the old people took him on what he referred to as his first walkabout from Wallaga Lake up to Nowra. They told him about the Dreaming stories, the Great Spirit known as Darama, the locations of the places of significance and the responsibilities attached to these places. He retraced those tracks many times over his life—even in his 80s he walked 350 kilometres from Wallaga up the coast with a group of Aboriginal children from broken homes and 50 other supporters to commemorate Australia's Bicentennial year.

This journey was indicative of the philosophy that guided Guboo throughout his life. He was a leader who recognised the importance of taking people with him, rather than remaining in opposing corners. He also recognised that Aboriginal culture was a unifying force that could bridge the divide between black and white by helping to foster understanding and mutual respect. In one interview Guboo remarked:

I would like to see more white people enter the Dreaming so that we can come together and be one voice and do something about the environment and about the destruction of this land from mining and sand mining and cutting down the forests. We should be one voice, but not one race. It is most important that Aboriginal people can have an identity. I am an Aboriginal and proud to be one.

The last 20 years of Guboo's life were dedicated to sharing his knowledge and his Dreaming stories with others. He travelled around Australia and overseas holding what he called Dreaming camps in the belief that others could learn from his experiences and change the way they treated their own environment or Indigenous peoples in their local community. In this sense, Uncle Ted Thomas was most deserving of the title 'Guboo', which many understand as an Aboriginal word for teacher. He imparted a wealth of knowledge to his own community and to many who came in contact with him over his life.

There are a number of milestones that stand out in Guboo's time and his courageous battle to protect the environment of the South Coast and to revive respect for the Aboriginal people and culture of the area. I want to make mention of some of those which I think are of significance. To start with, Guboo was born under a gum tree at Braidwood in NSW in 1909 to Yuin Elder Bill Thomas and his wife Linno Ahoy who was of Aboriginal and Chinese descent. Guboo left school at the age of eight, equipped only with the skills to knit, crochet, sew and cook Johnnycakes. The Aboriginal Protection Board at the time was taking children away from the Aboriginal community at Wallaga Lake but, thanks to the determination of his mother, he managed to evade the authorities.

A lot of Guboo's real learning in life came from his Elders and his experience in the work force. Like many Aboriginal people, his career path was not a smooth or conventional one. He worked very hard to eke out a living for himself and his family, relying mostly on his common sense and tenacity to get by. In fact, in the 1920s, as one example, he started out touring with an Hawaiian performing troupe and then later with a gumleaf dance band. This mobile lifestyle gave him the ability to visit Aboriginal missions and communities from the Eden-Monaro region in New South Wales and Victoria, up to the Queensland border. He took advantage of the opportunity to speak with the old people he met about their way of doing things, their traditions and cultures. Guboo also had stints in dairy farming, jackarooing, cutting railway sleepers, collecting shellac, and professional fishing in and around Jervis Bay in New South Wales.

One of the significant things that he did was stand up to what he saw as almost a desecration of a sacred site on the South Coast. That was a campaign with Percy Mumbler and Jack Campbell to end logging on Mumbulla Mountain, one of the most significant places to Aboriginal people on the New South Wales South Coast. These three men were a powerful force for change on the South Coast. Not only did they have to take on many of the local non-indigenous community, who disputed their identity as traditional owners, but also the Forestry Commission and the Harris Daishowa woodchip company, who required anthropological proof that could substantiate their cultural beliefs. He was able to succeed in making sure that the summit of the mountain was quarantined from logging. That area, which is now known as Biamanga, was gazetted as an Aboriginal place under the New South Wales National Parks and Wildlife Act in 1980. Unfortunately Guboo did not live to see Biamanga being handed back to the traditional owners under New South Wales law, but he knew that the final negotiations are under way to enable that to occur, and I think that is a testimony to the work that he had undertaken.

One of his last battles, right up until the day that he died, was about his old dreaming track at Sandon Point, near Wollongong. He had camped there as a young boy, he had been there on many occasions and he called it the best dreaming camp he had ever been to. For many people it is also the last sizeable piece of undeveloped land in the northern Illawarra area. In the past 20 years Aboriginal skeletons have been uncovered on the site and removed. The most recent skeleton found was of an Aboriginal man up to 6,000 years old. It is in many respects like trying to build a new French airport on sacred ground; each story has relevance. After years of community protest work has begun on the site; the developers did not even wait until Guboo's body had gone cold before they continued with the bulldozers.

On this occasion I want to extend my sincere condolences to the family of Guboo and to remember them this evening. In particular, I would like to acknowledge Anne Thomas and Guboo's children. I also acknowledge Guboo's sister, Auntie Eileen Morgan and his brother Cecil, as well as the many grandchildren, great-grandchildren and great-great-grandchildren who survive him. I think he symbolises all of the struggles for indigenous people about the need to sustain a connection back to the Dreaming. Most of all, he showed us how to protect, nurture and feel something about those things that inspire and give sustenance to the idea of the Dreaming and what it means to be able to protect that in the contemporary world.

#### **Estimates Committees**

**Senator SCHACHT (South Australia)** (7.17 p.m.)—I wish to make a couple of comments about the operations of the Senate estimates committees. I think this will be my last chance to do so. I did make some remarks about another aspect of a Senate estimates committee yesterday in the adjournment debate after the Senate suspended for condolence resolutions for Sir John Gorton, and I notice that some people objected. I apologise; in no way was I being disrespectful to Sir John Gorton, but I thought that the issue I raised then—which is now on the record—was an important one.

I understand that Senator Brandis, as Chair of the Economics Legislation Committee, has now written to you on those matters and drawn attention to my remarks at the Senate estimates committee about issues of quorum, issues of voting and, above all, the issue of privilege being in doubt. I say to you, Madam President, that, though the Clerk has proactively written to the committee members, I believe this is a very important issue and I appeal to you, when you receive Senator Brandis's letter, to refer it, if necessary, to the Procedure Committee. I think there are a couple of issues to deal with there; otherwise some doubt is going to creep in on the issue of privilege, which will put witnesses under considerable pressure. I suppose, as members of parliament, we senators can take our lumps and work out how to do it, but for witnesses, who have to tell the truth, finding that privilege is under doubt will be a significant problem for the effective use of estimates committees in this place.

I have had the opportunity to be both in government and in opposition on estimates committees; I have sat on both sides of the table. I still believe that, of all procedures of the Senate, the one most worthwhile to the people of Australia is the Senate estimates process. Those who started the Senate estimates process, long before I was here, deserve credit for having courage; the government of the day had to have courage to put the process in place because it meant that the government would be under more scrutiny. I think that governments on both sides have now accepted that scrutiny, even though there may be some very robust discussions between opposition senators, ministers and witnesses. It is a process that I would defend strongly. In years ahead, if I am asked what was the most effective process of the Senate, I will be able to say that I believe the Senate estimates committees have done more to benefit the people of Australia, who elect us, than any other process in the Senate. We can argue about passing legislation from the government and the lower house, question time and debate on all sorts of resolutions, but, when I look back at the success of the Senate estimates committees at exposing and bringing to the public's attention maladmin-

istration, mistakes and bad policy, I do not think there is a better forum.

I want to put on record three examples where I believe my case for the success of Senate estimates committees is proven. One example, from some time ago now, was where Senator Boswell, in particular, and I raised questions about the so-called Casualties of Telstra, the CoT cases. They had been fighting Telstra for nearly a decade to get compensation for their loss of income due to faulty equipment. They had been delayed in getting access because Telstra had deep pockets to employ law firms—I think at one stage Telstra said that 40 law firms were held on retainer. When we asked in estimates how much money they had spent, we found out that they had spent nearly \$25 million defending themselves and fighting off the so-called CoT cases. They could have settled for a much smaller amount of money than that, and settled everybody successfully.

It took nearly a year and a half of endless hearings, of questions that were at times tedious and of people lobbying saying that we were all being too obsessed about it. In the end, a settlement was reached and those casualties of Telstra were given successful and reasonable compensation. In some cases, individuals got between \$2 million and \$3 million, which they deserved. The CoT case was a success for the Senate estimates; it was not a success for Telstra. I trust in the future that Telstra will not spend \$25 million of public money using law firms to fight off individuals who have a reasonable claim.

In recent times, I have been involved in two other cases in Senate estimates which I believe have justified the Senate estimates process. One of them was the question of the National Gallery of Australia and its administration of the airconditioning system. It took Senator Lundy and me nearly two years of asking endless questions and at times being accused of being obsessive, of wasting time and of putting too many questions on notice that were expensive to answer. I did it mainly because a former employee of the National Gallery came to me with a complaint that he had lost his job because he had the temerity to complain that the airconditioning system was a threat to occupational health and



safety. Over a period of time and despite the many efforts by the gallery to say that everything was okay, we have reached an agreement in the last couple of estimates hearings where the gallery has finally agreed to spend nearly \$3 million dollars upgrading the airconditioning. I wish that had been spent four or five years ago.

Above all, an independent investigation found that Mr Cropp, the individual who had lost his job, had been sacked in breach of the occupational health and safety legislation of this country. He is now negotiating compensation. Had it not been raised consistently at estimates by Senator Lundy and me, I have no doubt that Mr Cropp would not have got justice. The right of an ordinary individual to seek the Senate estimates as the place of last resort to get justice against a bureaucracy, a government or anyone else, is a paramount issue that we should never forget. I congratulate Mr Cropp on his courage in being a whistleblower. In the end, he has done the gallery and the people of Australia a great service because the airconditioning has been improved. They are no longer using peroxide in the system, which could damage the paintings. There is no longer a threat to the occupational health of the workers and the visitors. All in all it has been a very good outcome.

As a result of the investigation and the questions that we asked Comcare regarding this matter, Comcare admitted at estimates that they got the investigation wrong several times. They have now instituted new procedures for investigation so that what happened to Mr Cropp and others will not happen in the future. Again, that is an outstanding and excellent outcome that would not have occurred. I asked Mr Leahy, the head of Comcare, whether had Senator Lundy and I not asked questions for two years the way we did this would have occurred. He agreed that, had they taken notice of what we had said two years ago, much of this would not have been necessary.

I want to mention a final issue about estimates in recent times. About 12 months ago, some people of the south-east of South Australia approached me about the loss of government money in the Green Phone saga. I

will not go into all the details, but they gave me a lot of information. I started asking questions last year at the estimates in February, and I asked the government what they were doing. It came out at estimates this year, only two weeks ago, that the department's own internal review of a report by KPMG which was tabled at the estimates committee showed that there had been deficiencies in the process as to how the money had been granted. As a result, the Networking the Nation fund in the future will adopt new procedures to protect the public money. Again, I do not believe that we would have got that information or that change had the estimates committee not been available as a forum for questioning. Again, on this issue, I congratulate many people in the south-east of South Australia for raising the issue, not letting it drop and, ultimately, and sometimes in frustration, for coming to see me to get it raised in the Senate or in Senate estimates as the place of last resort. That is why Senate estimates, whether we are in government or in opposition, must always be maintained as the most open forum where ordinary Australians can get a member of parliament under privilege to ask the difficult question, even the nasty question, to ensure that there is justice available to the community in Australia. I will not be participating again in Senate estimates but, over the last 15 years while I have been here, it has been the most productive area of my involvement in Senate processes.

**Senate adjourned at 7.27 p.m.**

## **DOCUMENTS**

### **Tabling**

The following government documents were tabled:

Australian Competition and Consumer Commission—Telecommunications reports for 2000-01—Report 1: Telecommunications competitive safeguards; Report 2: Changes in prices paid for telecommunications services in Australia; Report 3: Telstra's compliance with price control arrangements.

Australian Maritime College—Report for 2001.

Australian Radiation Protection and Nuclear Safety Agency—Quarterly report for the period—

1 July to 30 September 2001.

1 October to 31 December 2001.

Australian Trade Commission (AUSTRADE)—Export Market Development Grants—List of grant recipients for 2000-01.

CrimTrac Agency—Report for 2000-01—Corrigenda.

Department of Communications, Information Technology and the Arts—The future of community television, June 2002.

Gene Technology Regulator—Quarterly report for the period 1 October to 31 December 2001.

Murray-Darling Basin Commission—Report for 2000-01.

*National Health Act 1953*—Private health insurance premium increases—Report for the quarter commencing 1 January 2002.

National Rural Advisory Council—Report for 2000-01, including a report on the Rural Adjustment Scheme.

Natural Heritage Trust—Report for 2000-01.

Pharmaceutical Benefits Pricing Authority—Report for 2000-01.

Productivity Commission—Report—No. 20—Citrus growing and processing, 30 April 2002.

Treaties—

*Bilateral*—Text, together with national interest analysis—

Agreement between the Government of Australia and the Government of the Cook Islands relating to Air Services, done at Apia on 18 September 2001.

Agreement between the Government of Australia and the Government of the Republic of Chile relating to Air Services, done at Santiago on 7 September 2001.

Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations.

*Multilateral*—Text, together with national interest analysis—

Agreement establishing the International Organisation of Vine and Wine, done at Paris on 3 April 2001.

Amendment, adopted at Geneva on 21 December 2001, to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects of 10 October 1980.

Australian declaration under paragraph 2 of Article 36 of the Statute of the International Court of Justice 1945, lodged at New York on 22 March 2002.

Australian declarations under Articles 287(1) and 298(1)(a) of the United Nations Convention on the Law of the Sea 1982, lodged at New York on 22 March 2002.

International Convention for the Suppression of the Financing of Terrorism, done at New York on 9 December 1999.

### Tabling

The following documents were tabled by the Clerk:

A New Tax System (Goods and Services Tax) Act—

GST-free Supply (In-home Care) Amendment Determination 2002 (No. 1).

GST-free Supply (Long Day Care) Determination 2002.

Aboriginal and Torres Strait Islander Commission Act—Aboriginal and Torres Strait Islander Commission (Regional Council Election) Amendment Rules 2002 (No. 3).

Admiralty Act—Rules—Statutory Rules 2002 No. 109.

Air Navigation Act—Regulations—Statutory Rules 2002 No. 123.

Air Services Act—Direction under section 16—Instrument TREG 09/2002.

Australia New Zealand Food Authority Act—Regulations—Statutory Rules 2002 No. 119.

Australian National University Act—

Board of The Faculties Statute 2002.

Board of the Institute of Advanced Studies Statute 2002.

- Deputy Vice-Chancellorship Statute 2002.
- Faculties Statute 2002.
- Institute of the Arts Statute 2002.
- Interpretation Statute 2002.
- Programs and Awards Statute 2002.
- University Seal Statute 2002.
- Vice-Chancellorship Statute 2002.
- Australian Prudential Regulation Authority Act—
- Australian Prudential Regulation Authority (Commonwealth Costs) Determination 2002.
- Instrument under section 51—Instrument fixing charges to be paid to APRA, dated 13 May 2002.
- Australian Research Council Act—Determination—
- No. 9—Determination under section 51, dated 7 March 2002.
- No. 10—Determinations under section 51, dated 24 April; and 3 and 10 May 2002.
- Australian Securities and Investments Commission Act—Regulations—Statutory Rules 2002 No. 124.
- Authorised Deposit-taking Institutions Supervisory Levy Imposition Act—Authorised Deposit-taking Institutions Supervisory Levy Imposition Determination 2002.
- Authorised Non-operating Holding Companies Supervisory Levy Imposition Act—Authorised Non-operating Holding Companies Supervisory Levy Imposition Determination 2002.
- Banking Act—Regulations—Statutory Rules 2002 No. 125.
- Broadcasting Services Act—Notice of reservation of capacity for national radio broadcasting services (No. 1 of 2002).
- Civil Aviation Act—Civil Aviation Regulations—
- Airworthiness Directives—Part—
- 105, dated 11 [4], 15, 18, 29 [2] and 30 [2] April; and 1 [4], 3 [8], 8 [2], 16 and 21 May 2002.
- 106, dated 12 [2] and 15 [2] April; and 1 [5] and 3 [3] May 2002.
- 107, dated 10 [2] April; and 1 [3], 3 and 16 May 2002.
- Exemption No. CASA EX11/2002.
- Instruments Nos CASA 253/02, CASA 255/02, CASA 300/02, CASA 301/02, CASA 311/02, CASA 312/02, CASA 320/02 and CASA 323/02.
- Class Rulings CR 2002/3 (Addendum) and CR 2002/26-PR 2002/31.
- Commonwealth Electoral Act and Referendum (Machinery Provisions) Act—Regulations—Statutory Rules 2002 No. 117.
- Commonwealth Places (Mirror Taxes) Act 1998—Commonwealth Places (Mirror Taxes) Modification of Applied Laws (Queensland) Amendment Notice 2002 (No. 1).
- Corporations Act—Regulations—Statutory Rules 2002 No. 126.
- Currency Act—
- Currency (Perth Mint) Determination 2001 (No. 2) Amendment Determination 2002 (No. 1).
- Currency (Royal Australian Mint) Determination 2002 (No. 3).
- Customs Act—
- CEO Instruments of Approval Nos 16 and 17 of 2002.
- Regulations—Statutory Rules 2002 No. 98.
- Dairy Produce Act—
- Dairy Structure Adjustment Program Scheme Amendment 2000 (No. 9).
- Supplementary Dairy Assistance Scheme 2001 Variation (No. 3).
- Defence Act—Determination under section—
- 58B—Defence Determinations 2002/11-2002/14.
- 58H—Defence Force Remuneration Tribunal—Determination No. 8 of 2002.
- Diplomatic Privileges and Immunities Act—Diplomatic Privileges and Immunities Regulations—Certificates under regulation 5A, dated 9 May 2002 [2].
- Environment Protection and Biodiversity Conservation Act—
- Instrument amending list of—
- Exempt native specimens under section 303DB, dated 14 May 2002.
- Threatened species under section 178, dated 2 August 2001.

- Lord Howe Island Marine Park (Commonwealth Waters)—  
 Comments on representations on the draft management plan, dated April 2002.  
 Management Plan.  
 Notice of proposed accreditation of the Heard Island and McDonald Islands Fishery Management Plan 2002, dated 14 May 2002.
- Export Control Act—Export Control (Orders) Regulations—Export Meat Amendment Orders 2002 (No. 1).
- Family Law Act—Regulations—Statutory Rules 2002 No. 110.
- Federal Court of Australia Act—Rules of Court—Statutory Rules 2002 No. 130.
- Financial Management and Accountability Act—Regulations—Statutory Rules 2002 No. 113.
- Fisheries Management Act and Fishing Levy Act—Regulations—Statutory Rules 2002 No. 104.
- Fisheries Management Act—  
 Heard Island and McDonald Islands Fishery Management Plan 2002.  
 Regulations—Statutory Rules 2002 No. 115.
- Fuel Quality Standards Act—Regulations—Statutory Rules 2002 No. 116.
- General Insurance Supervisory Levy Imposition Act—General Insurance Supervisory Levy Imposition Determination 2002.
- Goods and Services Tax Determination GSTD 2002/2.
- Goods and Services Tax Ruling GSTR 2002/1.
- Great Barrier Reef Marine Park Act—Regulations—Statutory Rules 2002 No. 112.
- Health Insurance Act—  
 Determination—HIA/s3GC(3)/No. 1 of 2002.  
 Health Insurance (Eligible Collection Centres) Approval Principles 2002.
- Higher Education Funding Act—  
 Bridging for Overseas-Trained Professionals Loan Scheme Guidelines, dated May 2002.
- Determination under section—  
 15—Determinations Nos T35-2001 and T37-2001.  
 16—Determination No. T36-2001.  
 98S—Determination No. 2002-001.
- Research and Research Training Management Reports Guidelines for Higher Education Institutions 2002.
- Immigration (Education) Act—Regulations—Statutory Rules 2002 No. 120.
- Income Tax Assessment Act 1936*—Regulations—Statutory Rules 2002 Nos 101 and 111.
- Insurance Act and General Insurance Reform Act—Regulations—Statutory Rules 2002 No. 127.
- Insurance Act—Regulations—Statutory Rules 2002 No. 103.
- Lands Acquisition Act—Statements describing property acquired by agreement under sections 40 and 125 of the Act for specified public purposes [2].
- Life Insurance Supervisory Levy Imposition Act—Life Insurance Supervisory Levy Imposition Determination 2002.
- Migration Act—  
 Direction under section 499—Direction No. 28.  
 Notice under subsection 501C(8), dated 28 May 2002.  
 Regulations—Statutory Rules 2002 No. 121.  
 Statement under section 91D—Prescription of the People's Republic of China as a safe third country.
- National Health Act—  
 Determination under—  
 Schedule 1—HSR 8/2002, HSR 9/2002 and HSR 11/2002.  
 section 5D—HSR 10/2002.
- Ombudsman Act—Regulations—Statutory Rules 2002 No. 122.
- Passports Act—Regulations—Statutory Rules 2002 No. 118.
- Patents Act—Regulations—Statutory Rules 2002 No. 100.
- Primary Industries (Customs) Charges Act—Regulations—Statutory Rules 2002 No. 106.

Primary Industries (Excise) Levies Act—Regulations—Statutory Rules 2002 No. 107.

Primary Industries Levies and Charges Collection Act—Regulations—Statutory Rules 2002 No. 108.

Privacy Act—Regulations—Statutory Rules 2002 No. 105.

Product Ruling—

Addendum—

PR 2001/89.

PR 2002/26 and PR 2002/33.

PR 2002/62-PR 2002/83.

Radiocommunications Act—

Mobile-Satellite Service (2GHz) Frequency Band Plan 2002

Radiocommunications (118MHz to 137MHz Amplitude Modulated Equipment—Aeronautical Radio Service) Standard 2002.

Radiocommunications (Cellular Mobile Telecommunications Devices) Class Licence 2002.

Radiocommunications Devices (Compliance Labelling) Amendment Notice 2002 (No. 1).

Radiocommunications (MF and HF Radiotelephone Equipment—International Maritime Mobile Service) Standard 2002.

Radiocommunications (Paging Service Equipment) Standard 2002.

Radiocommunications (Receiver Licence Tax) Act—Radiocommunications (Receiver Licence Tax) Determination 2002.

Radiocommunications (Transmitter Licence Tax) Act—Radiocommunications (Transmitter Licence Tax) Determination 2002.

Retirement Savings Account Providers Supervisory Levy Imposition Act—Retirement Savings Account Providers Supervisory Levy Imposition Determination 2002.

Social Security Act—Social Security (Fares Allowance for Private Transport) Determination 2002.

Superannuation Contributions Determinations SCD 2002/1-SCD 2002/4.

Superannuation Guarantee Determination SGD 2002/1.

Superannuation Supervisory Levy Imposition Act—Superannuation Supervisory Levy Imposition Determination 2002.

Taxation Administration Act—Regulations—Statutory Rules 2002 Nos 102 and 128.

Taxation Determinations TD 2002/6-TD 2002/14.

Taxation Ruling TR 2000/17 (Addendum).

Telecommunications Act—

Carrier Licence Condition (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2002).

Interception Capability Plan Determination 2002 (No. 1).

Regulations—Statutory Rules 2002 No. 99.

Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2002 (No. 2).

Telecommunications (Types of Cabling Work) Amendment Declaration 2002 (No. 1).

Telecommunications (Carrier Licence Charges) Act—

Telecommunications (Annual Carrier Licence Charge) Determination 2002.

Telecommunications (Costs Attributable to Telecommunications Functions and Powers) Determination 2002.

Telecommunications (Consumer Protection and Service Standards) Act—

Special Digital Data Service Provider Determination 2002 (No. 1).

Telecommunications (Emergency Call Service) Determination 2002.

Therapeutic Goods Act—

Regulations—Statutory Rules 2002 No. 114.

Therapeutic Goods (Manufacturing Principles) Determination No. 1 of 2002—MP1/2002.

Therapeutic Goods Order No. 70.

Veterans' Entitlements Act—

Instruments under section 196B—Instruments Nos 44-51 of 2002.

Veterans' Entitlements (Treatment Principles—Dental Fees Instrument) Amendment Instrument 8/2002.

Veterans' Entitlements (Treatment Principles—Veterans' Home Care Instrument) Amendment Instrument 3/2002.

**PROCLAMATIONS**

A proclamation by His Excellency the Governor-General was tabled, notifying that he had proclaimed the following provisions of an Act to come into operation on the date specified:

International Transfer of Prisoners Act 1997—Act, except for sections 1 and 2—5 June 2002 (Gazette No. GN 22, 5 June 2002).

### QUESTIONS ON NOTICE

The following answers to questions were circulated:

#### **Electorate Offices: Computers (Question No. 246)**

**Senator Allison** asked the Special Minister of State, upon notice, on 16 April 2002:

With reference to the past major electorate office computer upgrade, when primary work stations were introduced to all offices, and the information provided to electorate officers that their individual C:drives were completely private, could (they) be used to store sensitive information separate from the network and must therefore be backed up separately:

- (1) Why is it that CSC (Cluster 3) consultants are able to access electorate officers' C:drives having been given administrator rights to the system?
- (2) Do all CSC employees have administrator rights, and are therefore able to access all electorate staff C:drives?
- (3) On what grounds can CSC employees access C:drives?
- (4) Do any other groups or individuals have administrator rights to electorate officers' C:drives?
- (5) Can a Minister or someone from Ministerial and Parliamentary Services access electorate officers' C:drives?
- (6) How long has CSC, or any other group, been able to access electorate officers' C:drives?
- (7) What legislation or guidelines exist to guarantee that sensitive material that may be held within electorate officers' computers, particularly C:drives, remain private and confidential?
- (8) Can the Minister explain why electorate officers were told their C:drives were secure and independent and should be used to store sensitive information, when in fact they can be accessed by external groups?
- (9) Is the Minister aware that the security section of the properties of C:drives in electorate offices (with the exception of laptops) shows administrator access to everything on the C:drive?
- (10) Given that it would seem, from the security settings, that any changes made by electorate officers to the settings can be over-ridden by an administrator, hence not allowing the drive or any folder contained within to be private, can the Minister advise: (a) why electorate officers have not been given the authority to make their C:drives private; and (b) why electorate officers were not advised their C:drives are not private?
- (11) Is the Minister willing to guarantee the security of any files on C:drives in electorate offices?

**Senator Abetz**—The answer to the honourable senator's question is as follows:

The electorate office IT environment has been configured to enable Senators, Members and their staff to have access to both the Parliament House network and their electorate offices. To support this environment and enable the monitoring and maintenance of IT equipment in both networks, a remote management service was introduced. Remote management includes upgrades to the anti-virus software, and software patches to ensure operating system integrity and management of administrator access.

Electorate office staff may store data on the Parliament House drive, the primary work station in each electorate office, or on their individual C:drives. All components used to support the operating system, whether in Parliament House, on individual PCs or laptops, must be accessible to the software support personnel. No part of the system can be excluded. However, as the C:drives are not part of the current back up regime, it is necessary for individuals to perform this function.

- (1) The Department has contracted Computer Sciences Corporation Australia Pty Ltd (CSC) for the delivery of IT services to electorate offices. Selected CSC staff, with an appropriate Commonwealth security clearance, who support the electorate office environment utilise administrator rights to perform their duties. Administrator rights are required to access user PCs for the purposes of providing IT support eg retrieving a document, resetting printers.
- (2) Not all CSC employees have administrator rights, only those support personnel who are required to access the electorate office system for support purposes.
- (3) A CSC employee can access the C:drive both remotely and on site to assist a user but must have the permission of the user before doing so.

- (4) Administrator rights to the electorate office IT environment and a user's C:drive are provided to technical support staff within both the Department of Finance and Administration and the Department of the Parliamentary Reporting Staff to provide remote support.
- (5) Only those personnel who provide IT support to the offices have this access.
- (6) Remote access to C:drives was introduced as part of the March 2001 software upgrade to facilitate software support and installation of anti-virus software.
- (7) The Privacy Act 1988, the Commonwealth Protective Security Manual and agencies' own security requirements provide the legislative framework and guidance to protect the privacy and confidentiality of sensitive material that may be held on electorate office computers.
- (8) The Department was unaware that electorate office staff had been advised that their C:drives were secure and independent and should be used to store sensitive information. The Department did not authorise CSC or its contractors to make this claim.
- (9) Whilst the personal folders on the C:drive may be visible to an authorised user, the system security only permits the opening of files by the file owner or a system administrator who is required to have the owner's permission.
- (10) (a) Electorate office staff have a high degree of privacy on their C:drives. Only a limited number of people have administrator rights, and to exercise these rights the administrator is required to seek the owner's agreement. (b) The Department could not advise users that their C:drives were not private because this would have been incorrect as administrators must have access to support the electorate office IT system.
- (11) No, I am unable to guarantee the security of files on C:drives. C:drives are secure from everyone except administrators and the Department monitors administrator access to electorate office IT systems.

**Kennedy Electorate: Program Funding  
(Question No. 248 and 267)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, and the Minister for Regional Services, Territories and Local Government, upon notice, on 18 April 2002:

- (1) What programs and/or grants administered by the department provide assistance to people living in the federal electorate of Kennedy.
- (2) What was the level of funding provided through these programs and/or grants for the 2000-01 and 2001-02 financial years.
- (3) Where specific projects were funded: (a) what was the location of each project; (b) what was the nature of each project; and (c) what was the level of funding for each project.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services and the Minister for Regional Services, Territories and Local Government have provided the following answer to the honourable senator's question:

- (1) The Department of Transport and Regional Services provides funding to the federal electorate of Kennedy under the following programmes:
  - Remote Aerodrome Inspection Programme;
  - Remote Air Service Subsidy Scheme;
  - Federal Black Spot Programme;
  - National Highways Funding;
  - Roads to Recovery Programme;
  - Local Government Financial Assistance Grants;
  - Local Government Incentive Programme;
  - Rural Communities Programme;
  - Rural Plan;
  - Regional Solutions Programme;
  - Rural Transaction Centres Programme;



- Rural Domestic Violence Programme;
- Regional Flood Mitigation Programme;
- Regional Assistance Programme; and
- Dairy Regional Assistance Programme.

(2) **Remote Aerodrome Inspection Programme**

2000-2001 \$5,225

2001-2002 \$5,824

**Remote Air Service Subsidy Scheme**

2000-2001 \$337,275

2001-2002 \$55,230

**Federal Black Spot Programme**

2000-2001 \$390,000

2001-2002 \$960,000

**National Highways Funding**

2000-2001 \$43,019,780

2001-2002 \$22,012,018

**Roads to Recovery Programme ( Total over 4 years of Programme)**

The programme commenced in 2001 and will be operational from 1 January 2001 to 30 June 2005. Total funding allocated to date to twenty three local government councils in the federal electorate of Kennedy amounts to \$35,472,821.

**Local Government Financial Assistance Grants**

2000-2001 \$37,433,649

2001-2002 \$38,977,844

**Local Government Incentive Programme**

2000-2001 \$289,500.

2001-2002 programme ended

Note—this funding was shared by the electorates of: Leichhardt, Herbert and Kennedy.

**Rural Communities Programme**

2000-2001 \$83,167

2001-2002 programme ended

**Rural Plan**

2000-2001 \$130,000

2001-2002 programme ended

**Regional Solutions Programme**

2000-2001 \$511,090

2001-2002 \$361,364

**Rural Transaction Centres Programme**

2000-2001 \$53,247

2001-2002 No funding has been allocated

**Rural Domestic Violence Programme**

2000-2001 \$22,546

2001-2002 programme ended

**Regional Flood Mitigation Programme**

2000-2001 \$50,000

2001-2002 \$25,000

**Regional Assistance Programme**

2000-2001 \$440,000

2001-2002 no funding was allocated

**Dairy Regional Assistance Programme.**

2000-2001 \$568,701

2001-2002 \$14,938

**Note**

- Funding figures provided for the 2001-02 financial year in some cases are estimates and can be subject to change.
- Boundaries of some local government authorities covering the federal electorate of Kennedy also fall into other electorates. In such cases projects could benefit more than one electorate.

(3) (a), (b) and (c)

**Federal Black Spot Programme;**

Black Spot Programme		2000-2001	2001-2002
Recipient Name	Project Description		
Boulia Shire Council	Rollover Crashes-Widen Formation and Sealed Pavement-QLD: Diamantina Developmental Road (Boulia-Dajarra) & Between Boulia and Dajarra.	\$120,000	.
	Private Vehicles With Caravans Overtaking Type 2 Road Trains-Widen the Formation-Seal Pavements Over .75km Length at 50km Intervals-QLD, Boulia: Kennedy Development Road & .	.	\$180,000
	Private Vehicles With Caravans Overtaking Type 2 Road Trains-Widen the Formation-Seal Pavements Over .75km Length at 50km Intervals-QLD, Mt Isa: Diamantina Development Road & .	.	\$200,000
Charters Towers City Council	Adjacent Approaches-Install Signs-QLD, Charters Towers: Dalrymple Highway & Hewett Street.	\$10,000	.
	Adjacent Approaches/Opposing Turns-Channelisation and Signage-QLD, Charters Towers: Hackett Terrace & Bridge Street.	\$50,000	.
	Right Turn and Rear End Crashes-Pedestrian Refuge-Stagger Cross T-Traffic Islands on Approaches-QLD, Charters Towers: Church Street & Gill Street.	.	\$150,000
Etheridge Shire Council	Off Carriageway/Loss of Control-Reprofile Curved Alignment/Resurface Approaches/ Signage/Linemarking-QLD, Forsayth: Forsayth-Georgetown Road & 4Km North of Forsayth at Queenslander Creek.	\$210,000	.
	Insufficient Road Sinage-Tight Alignment for Gravel Road Sections-Install Warning Signage-Delineators-Seal Full Width Including Shoulder-QLD, Undarra National Pk: Underra Access Road & ..	.	\$80,000

Black Spot Programme	2000-2001	2001-2002
Mareeba Shire Council	Adjacent and Rear End Crashes- Protected Right Turn/Left Turn Provi- sion/Sealed Shoulders-QLD, Cairns: Kennedy Highway & Anzac Avenue.	\$350,000

**National Highways Funding**

Year	Recipient	Description	Amount
2000-2001	State Government of Queensland	Widening, rehabilitation, minor realignment (Bruce Highway)	\$10,459,514
2000-2001	State Government of Queensland	Widening, rehabilitation, minor realignment (Bruce Highway)	\$6,308,348
2000-2001	State Government of Queensland	Widening and rehabilitation (road between Cloncurry to Mt Isa)	\$13,404,288
2000-2001	State Government of Queensland	Widen and rehabilitation (Bruce Highway, road between Townsville to Cairns)	\$1,029,338
2000-2001	State Government of Queensland	Widening and rehabilitation (Warrego, Landsborough & Flinders Highways)	\$7,752,059
2000-2001	State Government of Queensland	Rehabilitation. (Bruce Highway—Pound Creek)	\$3,554
2000-2001	State Government of Queensland	Planning for the construction of a bridge over the Georgina River (Barkly Highway)	\$3,830,600
2000-2001	State Government of Queensland	Various road works (Barkly Hwy—Inca Creek, Mt Isa-Camooweal)	\$261,417
2001-2002	State Government of Queensland	Widening and rehabilitation (Warrego, Landsborough & Flinders Highways)	\$3,814,350
2001-2002	State Government of Queensland	Widening, rehabilitation and minor realignment (Bruce Highway)	\$3,613,652
2001-2002	State Government of Queensland	Various road works (Bruce Highway—Pound Creek)	\$24,440
2001-2002	State Government of Queensland	Planning for construction of a bridge over the Georgina River (Barkly Highway)	\$2,256,555
2001-2002	State Government of Queensland	Widening and rehabilitation, minor realignment, o/t lanes (Bruce Highway)	\$563,415
2001-2002	State Government of Queensland	Widening and rehabilitation (Barkly Highway, Cloncurry to NT Border)	\$1,000
2001-2002	State Government of Queensland	Widening and rehabilitation (Barkly Highway, Cloncurry to Mt Isa)	\$11,489,939
2001-2002	State Government of Queensland	Various road works (Barkly Highway—Inca Creek, Mt Isa-Camooweal)	\$248,667

**Roads to Recovery Programme; (Total over 4 years of Programme)**

Local Council	Roads to Recovery over 4 years (\$)
Atherton	691,288
Boulia	1,364,846
Burke	916,909
Cairns (p)	4,313,897
Cardwell (p)	857,093
Carpentaria (p)	1,871,974

Local Council	Roads to Recovery over 4 years (\$)
Charters Towers	480,979
Cloncurry	1,926,932
Croydon	1,116,800
Dalrymple	3,286,401
Doomadgee	154,205
Eacham	649,481
Ethridge	2,012,496
Flinders	2,111,401
Herberton	1,114,128
Hinchinbrook (p)	1,480,515
Johnstone	1,230,277
Mareeba (p)	2,656,563
McKinlay	1,755,608
Mornington	339,976
Mt Isa	1,868,036
Richmond	1,414,496
Thuringowa (p)	1,858,520
Total	\$35,472,821

'p' denotes Council boundary falls in more than one electorate.

Note: in six of the twenty-three LGAs, the above funding is attributed to cross electorate boundaries.

#### Local Government Financial Assistance Grants

The Federal Government provides untied Financial Assistance Grants to all local governing bodies in Australia. These grants are made up of a 'general purpose' component, which aims to give all councils the capacity to provide an equitable level of local services, and a 'local roads' component which is distributed according to road expenditure need. Local Government Financial Assistance Grants are payable under the Local Government (Financial Assistance) Act 1995 to Local Governing Bodies.

Financial Assistance Grants funding to the councils in Kennedy are outlined below:

Council Name	Financial Year	General Purpose funding	Roads funding	Total funding
Atherton	2000/2001	\$273,689	\$211,465	\$485,154
	2001/2002	\$270,872	\$225,921	\$496,793
Boulia	2000/2001	\$1,401,489	\$417,506	\$1,818,995
	2001/2002	\$1,484,082	\$417,998	\$1,902,080
Burke	2000/2001	\$1,449,354	\$280,482	\$1,729,836
	2001/2002	\$1,534,777	\$309,012	\$1,843,789
Cairns p	2000/2001	\$2,045,633	\$1,319,621	\$3,365,254
	2001/2002	\$2,024,541	\$1,364,188	\$3,388,729
Cardwell p	2000/2001	\$412,074	\$262,185	\$674,259
	2001/2002	\$407,768	\$270,423	\$678,191
Carpentaria p	2000/2001	\$1,995,683	\$572,637	\$2,568,320
	2001/2002	\$2,113,610	\$586,833	\$2,700,443
Charters Towers	2000/2001	\$997,777	\$125,107	\$1,122,884
	2001/2002	\$1,014,082	\$125,896	\$1,139,978
Cloncurry	2000/2001	\$650,549	\$589,448	\$1,239,997
	2001/2002	\$689,270	\$631,773	\$1,321,043
Croydon	2000/2001	\$1,363,837	\$341,629	\$1,705,466
	2001/2002	\$1,444,592	\$368,923	\$1,813,515

Council Name	Financial Year	General Purpose funding	Roads funding	Total funding
Dalrymple	2000/2001	\$2,112,805	\$1,005,313	\$3,118,118
	2001/2002	\$2,223,445	\$1,168,274	\$3,391,719
Doomadgee	2000/2001	\$102,968	\$47,171	\$150,139
	2001/2002	\$101,891	\$48,377	\$150,268
Eacham	2000/2001	\$793,936	\$198,676	\$992,612
	2001/2002	\$841,036	\$202,824	\$1,043,860
Etheridge	2000/2001	\$1,518,285	\$615,622	\$2,133,907
	2001/2002	\$1,607,580	\$621,908	\$2,229,488
Flinders	2000/2001	\$888,324	\$645,877	\$1,534,201
	2001/2002	\$940,600	\$659,568	\$1,600,168
Herberton	2000/2001	\$1,516,772	\$340,812	\$1,857,584
	2001/2002	\$1,606,160	\$364,444	\$1,970,604
Hinchinbrook p	2000/2001	\$853,742	\$452,889	\$1,306,631
	2001/2002	\$844,923	\$462,259	\$1,307,182
Johnstone	2000/2001	\$1,120,110	\$376,342	\$1,496,452
	2001/2002	\$1,108,379	\$387,739	\$1,496,118
Mareeba p	2000/2001	\$1,635,162	\$812,642	\$2,447,804
	2001/2002	\$1,732,238	\$883,303	\$2,615,541
McKinlay	2000/2001	\$1,164,123	\$537,040	\$1,701,163
	2001/2002	\$1,232,939	\$553,050	\$1,785,989
Morningson	2000/2001	\$437,295	\$103,998	\$541,293
	2001/2002	\$463,053	\$106,738	\$569,791
Mount Isa	2000/2001	\$1,580,535	\$571,432	\$2,151,967
	2001/2002	\$1,564,166	\$583,221	\$2,147,387
Richmond	2000/2001	\$1,134,678	\$432,694	\$1,567,372
	2001/2002	\$1,201,636	\$440,673	\$1,642,309
Thuringowa p	2000/2001	\$1,155,720	\$568,521	\$1,724,241
	2001/2002	\$1,143,787	\$599,072	\$1,742,859

'p' denotes Council boundary falls in more than one electorate.

#### Local Government Incentive Programme

Under the LGIP in 2000-2001, 55 projects were approved for funding nationally, including nine projects from Queensland. (The programme ended in 2001.) Of the nine projects approved in Queensland, three projects covered councils falling into the electorate of Kennedy, the electorate of Herbert and the electorate of Leichhardt. A summary of each project and funding allocated in 2000-2001 is outlined below:

- Gulf Savannah Project (\$100,000)—funding has been allocated for the engagement of a coordinator to undertake a resource audit with the aim of reducing the duplication of service delivery and resources and to achieve cost sharing between the relevant councils. In addition, the project aimed to develop a tourism model to maximise potential tourism benefits for the region and to identify training and skill requirements as a means of providing targeted skills development in the region;
- funding has been allocated to develop and implement a joint integrated planning scheme covering the Flinders, Richmond and McKinlay Shires (\$90,000); and

- funding has been allocated for the employment of an officer to develop a strategic plan for the FNQ Regional Organisation of Councils and manage the implementation of local government initiatives associated with the Far North Queensland (FNQ) Regional Plan. (\$99,500).

#### **Rural Communities Programme**

Funding was allocated through the programme for a range of rural community projects including community planning, community development, community infrastructure, and community information provision. The programme ended in 2001.

#### **A summary of each project and funding allocated in 2000-2001 is outlined below:**

- Flinders Shire Council—\$26,900

Funding has been allocated to continue to provide a Commonwealth information service to the community, including information on government programs.

- Babinda Taskforce Inc. in the Electorate of Kennedy—\$56,267

Funding has been allocated as part of an initiative to implement the community's strategic plan by employing a Community Development Officer to provide leadership training and to develop an asset and skills register for the community.

#### **Rural Plan**

Funding was allocated through the programme for strategic planning and the implementation of strategic plans. The programme ended in 2001.

One project was funded through the programme in the federal electorate of Kennedy in 2000-2001 as outlined below:

- Gulf Local Authorities Development Association—130,000

Funding has been allocated for the coordination of existing strategic plans and consultations to obtain support for the final plan and for its implementation strategy.

#### **Regional Solutions Programme**

Funding is provided under the Regional Solutions Programme to help regional and rural communities to identify and develop projects relevant to their own community. The programme recognises the diversity in regional communities and the fact that projects need to be targeted to specific needs.

#### **A summary of each project and funding allocated in 2000-2001 is outlined below:**

- Eacham Shire Council—\$4,545

Funding has been allocated to develop community youth enterprise plan.

- Drovers Camp Association Inc—\$200,000

Funding has been allocated to construct a building, which will form part of the first stage of the Drover's Camp Project. This will include an information centre and a display of droving at Camooweal.

- Richmond Rodeo Association Inc—\$46,545

Funding has been allocated to construct a building to house catering and administration facilities for the Rodeo Association.

- Mareeba Shire Council—\$260,000

Funding has been allocated for the employment of an Executive Officer for the Atherton Tablelands Sustainable Regions Advisory Committee.

#### A summary of each project and funding allocated in 2001-2002 is outlined below:

Flinders Shire Council—\$200,000

Funding has been allocated to develop an Environmental and Cultural Interpretative and Information Centre.

Milboe Pty Ltd—\$154,545

Funding has been allocated for a community support and capacity development project focusing on assisting community organisations to initiate, organise and implement activities and events that stimulate community interest and participation.

Townsville Enterprise Limited—\$6,819

Funding has been allocated for a Tourism Development Strategy for the Greenvale Region.

**Rural Transaction Centres Programme**

The Rural Transaction Centres (RTC) Programme provides funds to help small communities establish their own RTC to provide access to services. Each RTC is as individual and innovative as the community it serves. Types of services can include financial services, post, phone, fax, internet, Medicare easyclaim, access to Centrelink and Federal, State and local government services.

A summary of projects and funding allocated to communities in the federal electorate of Kennedy in 2000-2001 is outlined below:

Croydon—\$7,597

Funding has been allocated for the preparation of a business plan for the town of Croydon and surrounding districts. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

Hinchinbrook—\$9,050

Funding has been allocated for the preparation of a business plan for the towns of Halifax, Lucinda and Taylors Beach. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

Mornington—\$15,000

Funding has been allocated for the preparation of a business plan for the town of Gununa and surrounding districts. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

Mount Isa—\$11,000

Funding has been allocated for the preparation of a business plan for the town of Camooweal and surrounding district. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

Johnstone—\$6,600

Funding has been allocated for the preparation of a business plan for the community of Silkwood. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

Greenvale—\$4,000

Funding has been allocated for the preparation of a business plan for Greenvale. The objective was to assist in the identification of community requirements as a means of assessing the feasibility of a RTC.

**Rural Domestic Violence Programme**

Funding has been allocated through the programme for a range of initiatives relating to rural domestic violence including research and data analysis and for initiatives to consolidate existing prevention, crisis services and post-intervention strategies currently being implemented by community-based organisations.

A summary of each project and funding allocated in 2000-2001 is outlined below:

North Queensland Domestic Violence Resource Centre—\$15,000

Funding has been allocated to strengthen formal and informal resource systems and to provide better linkages to agencies such as Centrelink.

Ravenshoe Community Centre—\$7,546

Funding has been allocated to develop an action plan focussing on a planned approach for the community to work with the community and government organisations to make existing services function more effectively. One of the key aims of the plan was to identify and address gaps in services being provided to the community.

**Regional Flood Mitigation Programme**

The Regional Flood Mitigation Programme is a Federal Government Regional initiative that works in partnership with State, Territory and Local Governments to implement priority, cost effective flood mitigation works and measures in rural, regional and outer metropolitan Australia. The programme is designed to integrate with the Federal Government's approach to natural disaster mitigation throughout Australia.

Funding was allocated for the following project in 2000-2001:

Cardwell Shire Council—\$50,000

Funding has been allocated for the Tully and Murray Rivers ALERT Warning System.

Funding was allocated for the following project in 2001-2002:

Johnstone Shire Council—\$25,000

Funding has been allocated for a flood warning system at Innisfail.

#### **Regional Assistance Programme**

Funding is provided through the Regional Assistance Programme (RAP) to generate employment in metropolitan, regional and remote Australia. Projects funded through the programme encourage local community action to boost business growth and create sustainable jobs. It provides seed funding for innovative, quality projects of value to the community.

A summary of each project and funding allocated in 2000-2001 is outlined below:

Western Cape Regional Consultative Group—\$110,000

Funding has been allocated for managing the operation of the Weipa Visitor Centre and Keeping Place including assisting in the development of indigenous employment schemes relating to the work of the Centre.

Richmond Shire Council—\$115,500

Funding has been allocated for a business growth initiative relating to the commercial raising and production of two existing native fish species, the Sleepy Cod and the Redclaw crayfish. It involves research on the use of Great Artesian Bore water, the climate tolerances and the black soil effects on pond constructions.

Richmond Shire Council—\$88,000

The Richmond Marine Fossil Museum is an important regional tourist attraction with a rapidly growing visitor profile. It is also an important cultural and economic asset to the North West Queensland region and to the Richmond Shire. Funding has been allocated for

the appointment of a curator/palaeontologist for the Fossil Museum. This is a natural progression of the strategies identified to develop the museum into a significant cultural and economic asset and regional tourist attraction for Richmond and the North West community.

Gulf Local Authorities Development Association—\$27,500

Funding has been allocated for a skills assessment of people previously employed at Century Mine in Far North Queensland. The rationale is to provide local businesses with information on skills available in their communities. An indigenous project officer will be employed to undertake the study with the cooperation of the Aboriginal Business Development Trust. This project will complement two projects already undertaken to assess the small business opportunities in the Gulf Region and also on Mornington Island.

Mount Isa Chamber of Commerce Inc—\$33,000

Funding has been allocated to assess the financial viability of a regional freight interchange for the Mount Isa region servicing the mining industry of North West Queensland.

Tableland Promotion Bureau—\$66,000

Funding was allocated to the Atherton Tablelands Promotion Bureau to coordinate an international ornithological conference called 'Birds in Paradise' in October 2001. This contributed to regional tourism development and employment generation.

#### **Dairy Regional Assistance Programme (Dairy RAP)**

Dairy RAP is designed to assist communities that have been impacted upon by the deregulation of the dairy industry. Funding is provided through the programme to facilitate long term employment by supplementing business investment and providing support for services that will lead to on-going economic and social benefits for regions affected by dairy deregulation.

A summary of each project and funding allocated in 2000-2001 is outlined below:

St Vincents Community Services—Atherton Tablelands—\$119,900

Funding has been allocated to employ an Area Support Worker in the Atherton Tablelands to provide comprehensive counselling and support services to families and individuals impacted upon by dairy deregulation. The Area Support Worker will be based in Malanda and will provide services to the



Eacham, Atherton and Herberton Shires. St Vincent's Community Services Bush Connection will coordinate this project.

Mungalli Creek Dairy—Atherton Tablelands—\$60,500

Funding has been allocated to assist the Mungalli Creek Dairy located on the Atherton tablelands to expand their business to include the production of gourmet cheeses and to open a tourist facility. The project is expected to create employment opportunities and stimulate economic activity in the Atherton region.

Eacham Shire Council—Eacham Shire—\$ 275,000

Funding has been allocated to provide support to the Eacham Shire Council for infrastructure development, which will facilitate the establishment of a dementia-care facility in the Eacham Shire, to be constructed by St Vincent's Community Services. The new facility is expected to provide regional benefits and employment opportunities both when established and during construction.

Tableland Economic Development Corporation Inc—\$107,145

Funding has been allocated to employ a Community Response Coordinator in Malanda to assist in the implementation of a coordinated approach to addressing issues on the Tablelands resulting from dairy industry deregulation.

Atherton Neighbourhood Centre Inc—\$6,157

Funding has been allocated for a series of stress management awareness sessions to be run for local community members who are dealing with the impact of dairy deregulation on a day-to-day basis. The Atherton Tablelands has traditionally been a community heavily reliant on dairying and is suffering the impact of dairy deregulation.

The summary of a project for which funding was allocated in 2001-02 is outlined below:

Jill Apps trading as Malanda Homewares—\$14,938

Funding has been allocated to assist a family owned company in Malanda to produce a range of art and craft supplies with a tropical theme including patchwork quilts. Dairy RAP funding will enable this small business to diversify its product lines and advertise its products internationally. The company aims to establish Malanda as a centre of excellence for country style crafts.

### **Environment: Christmas Island Detention Centre**

#### **(Question No. 296)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 6 May 2002:

With reference to the approval and construction of the detention centre on Christmas Island:

- (1) What impact will the total detention centre developments being built on Christmas Island, including the new port and road upgrades, have on the environment.
- (2) Why has no environmental impact assessment been done.
- (3) Who authorised the developments to proceed without an environmental impact statement; and (b) when and why.

**Senator Hill**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) The developments will not have a significant impact on the environment.
- (2) No environmental impact assessment under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) will be carried out in relation to the proposed Immigration Reception and Processing Centre and associated infrastructure because an exemption has been granted under section 158 of the EPBC Act.

There are a number of other infrastructure projects proposed for Christmas Island. They include the development of an additional port facility, an extension to the airport and an upgrade of the Linkwater Road. All of these projects are controlled actions under the EPBC Act. Possible impacts of these proposals on the environment are subject to the rigorous environmental assessment and approvals processes under the EPBC Act.

- (3) The Minister for the Environment and Heritage granted the exemption on 3 April 2002. He issued a media release on 17 April and published a formal statement of reasons under the EPBC Act on the

Environment Australia website. A copy of the document has been provided to the honourable senator. Further copies are available from the Senate Table Office.

**Environment: Christmas Island Detention Centre**

**(Question No. 315)**

**Senator Brown** asked the Minister representing the Minister for the Environment and Heritage, upon notice, on 15 May 2002:

With reference to the Christmas Island Detention Centre:

- (1) Was any action, earthworks or construction activity relating to the detention centre undertaken on Christmas Island before the proposal to construct the detention centre was referred to the Australian Heritage Commission as required under section 30 of the Environment, Protection and Biodiversity Act.
- (2) When was the proposal referred to the commission.
- (3) On what date did the commission reply.
- (4) What was the commission's advice regarding prudent and feasible alternative sites.
- (5) (a) Who authorised the works on Christmas Island; and (b) on what date were those works authorised.

**Senator Hill**—The Minister for the Environment and Heritage has provided the following answer to the honourable senator's question:

- (1) Preliminary activities were undertaken on behalf of the Department of Transport and Regional Services to allow surveying to commence before the proposal was referred to the Australian Heritage Commission (AHC). As soon as the Department of the Environment and Heritage became aware of these activities the Department of Transport and Regional Services was advised of the potential environmental impact and activities were ceased immediately.
- (2) The AHC received a joint referral from the Departments of Immigration and Multicultural and Indigenous Affairs, and Transport and Regional Services on 26 April 2002.
- (3) 21 May 2002.
- (4) The AHC advised that if no feasible and prudent alternatives exist for the location of the Immigration Reception and Processing Centre then all reasonable measures should be taken to minimise the adverse effects. A copy of the AHC advice has been provided to the honourable senator. Further copies are available from the Senate Table Office.
- (5) (a) The Department of Transport and Regional Services.  
(b) 13 March 2002.

**Insolvency and Trustee Service Australia**

**(Question No. 316)**

**Senator Ludwig** asked the Minister representing the Attorney-General, upon notice, on 15 May 2002:

- (1) What proportion, in both percentage and dollar amounts, of Insolvency and Trustee Service Australia's (ITSA) budget was allocated to funding investigations intended to ensure compliance with the Bankruptcy Act 1966.
- (2) What is the level of staffing support, in hours and actual number of personnel, allocated by ITSA to conducting investigations intended to ensure compliance with the Bankruptcy Act 1966.
- (3) Where are these investigative resources based.
- (4) How many investigations were carried out by staff from the ITSA in: (a) the 1999-2000 financial year; and (b) the 2000-01 financial year.
- (5) How many documents filed with the Official Receiver were examined by the Bankruptcy Regulation Branch of ITSA in: (a) the 1999-2000 financial year; and (b) the 2000-01 financial year.
- (6) How many Part X arrangement documents filed with the Official Receiver were examined by the Bankruptcy Regulation Branch of ITSA in: (a) the 1999-2000 financial year; and (b) the 2000-01 financial year.

- (7) How many Part X arrangement creditors meetings were attended by a Bankruptcy Regulation Officer in: (a) the 1999-2000 financial year; and (b) the 2000-01 financial year.
- (8) How many Part X arrangements required remedial action as a result of attendance by Bankruptcy Regulation Officers in: (a) the 1999-2000 financial year; and (b) the 2000-01 financial year.

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

- (1) Approximately \$2.2m or 8% of ITSA's budget in both 2001-2002 and 2002-2003 is or will be applied to ITSA's Bankruptcy Regulation role. Bankruptcy Regulation investigates administrations of the Official Trustee and Registered Trustees, examines complaints raised about matters arising under the Bankruptcy Act 1966, and reviews decisions made by trustees.
- A further 2.9% (\$0.8m) of ITSA's budget in 2001-2002 and 3.8% (\$1m) in 2002-2003 is or will be applied to ITSA's Fraud Investigation role, where investigations into possible offences under the Bankruptcy Act are conducted and matters are referred to the Australian Federal Police for further investigation or to the Commonwealth Director of Public Prosecutions for prosecution.
- (2) Bankruptcy Regulation—there were 15 employees as at 30 April 2002 amounting to 13 on a full time equivalent basis.
- Fraud Investigation—5 ITSA employees augmented by 2 seconded Australian Federal Police agents, all working on a full time basis.
- (3) Bankruptcy Regulation employees are located in Perth (1), Sydney (4), Brisbane (5) and Melbourne (5) and travel to other States and Territories as required to conduct investigations.
- Fraud Investigation employees are located in Melbourne (3) and Brisbane (2) and they travel to other States and Territories as required to conduct investigations.
- (4) (a) 1999-2000:  
Bankruptcy Regulation—921 investigations comprising 101 complaints, 333 inspections of estates administered by 163 registered trustees and 487 inspections of Official Trustee (ITSA) estates.  
Fraud Investigation—investigation of 71 possible offences under the Bankruptcy Act commenced.
- (b) 2000-2001:  
Bankruptcy Regulation—929 investigations comprising 103 complaints, 372 inspections of estates administered by 145 registered trustees, and 454 inspections of Official Trustee estates.  
Fraud Investigation—investigation of 108 possible offences commenced.
- July 2001 to April 2002:  
Bankruptcy Regulation—725 investigations comprising 112 complaints, 334 inspections of estates administered by 132 registered trustees and 279 inspections of Official Trustee estates.  
Fraud Investigation—investigation of 186 possible offences commenced.
- (5) (a) 2857 documents were examined.  
(b) 2854 documents were examined.  
Between 1 July 2001 and 30 April 2002, 2459 documents were examined.
- (6) (a) 1592.  
(b) 1524.  
Between July 2001 and April 2002, 1376.
- (7) (a) 19.  
(b) 6.  
Between July 2001 and April 2002, 22.
- (8) (a) 11.  
(b) 2.  
Between July 2001 and April 2002, 10.