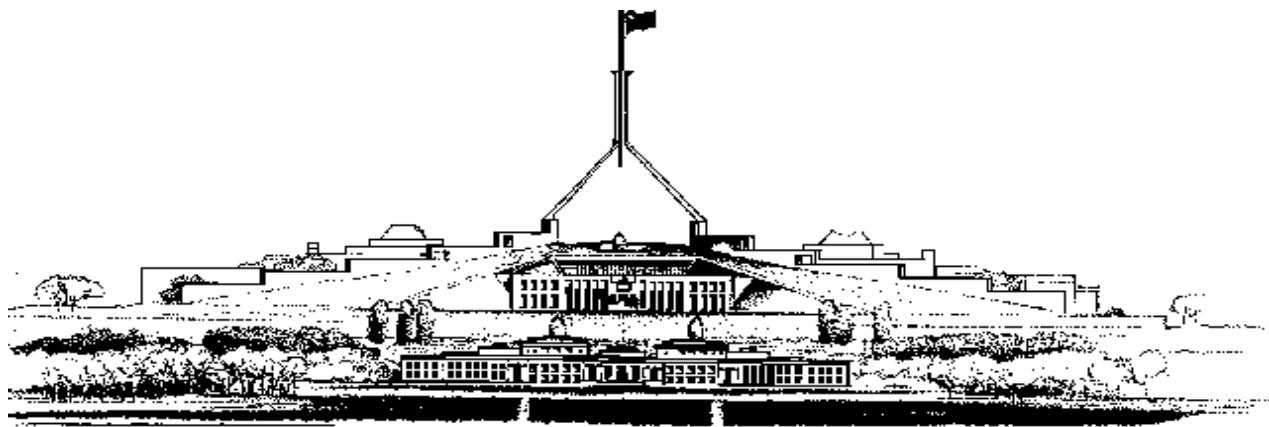




COMMONWEALTH OF AUSTRALIA

**PARLIAMENTARY DEBATES**



**SENATE**

**Official Hansard**

**No. 11, 2001**  
**WEDNESDAY, 22 AUGUST 2001**

THIRTY-NINTH PARLIAMENT  
FIRST SESSION—TENTH PERIOD

BY AUTHORITY OF THE SENATE

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## SITTING DAYS—2001

Month	Date
February	6, 7, 8, 26, 27, 28
March	1, 5, 6, 7, 8, 26, 27, 28, 29
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May	9, 10, 22, 23, 24
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August	6, 7, 8, 9, 20, 21, 22, 23, 27, 28, 29, 30
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November	12, 13, 14, 15, 19, 20, 21, 22
December	3, 4, 5, 6, 10, 11, 12, 13

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MELBOURNE	1026 AM
ADELAIDE	972 AM
PERTH	585 AM
HOBART	729 AM
DARWIN	102.5 FM

*Wednesday, 22 August 2001*

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

**FAMILY AND COMMUNITY SERVICES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001**

**First Reading**

Motion (by Senator Tambling) agreed to:

That the following bill be introduced: A Bill for an Act relating to the application of the Criminal Code to certain offences, and for related purposes.

Motion (by Senator Tambling) agreed to:

That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

**Second Reading**

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (9.31 a.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

The purpose of this bill is to apply the Criminal Code Act 1995 to all offence-creating and related provisions in Acts falling within the portfolio of the Minister for Family and Community Services, and to make all necessary amendments to these provisions to ensure compliance and consistency with the Criminal Code's general principles. The amendments will ensure that, after application of the Criminal Code, existing criminal offences and related provisions continue to operate in the same manner as at present. This bill is one of a series designed to apply the Criminal Code on a portfolio-by-portfolio basis.

An important component of the bill is to provide clarity about the application of strict liability to some offence-creating provisions. Under the Criminal Code an offence must specifically identify strict liability, otherwise the prosecution will be required to prove fault in relation to each element of the offence. The bill ensures that the strict liability nature of some provisions is not lost

in the transition to application of the Criminal Code's general principles. If relevant offences are not adjusted in this manner many will become more difficult for the prosecution to prove, and therefore reduce the protection which was originally intended by the Parliament to be provided by the offence.

This bill will similarly improve the efficient and fair prosecution of offences by clarifying the physical elements of offences and amending inappropriate fault elements. This measure has the potential to save many hours of court time otherwise spent in complicated, and sometimes inconsistent, interpretation of offence-creating provisions.

The Criminal Code is a significant step in the reform of our system of justice, and it is important that it be implemented in a way that is considered and pays careful regard to the way Commonwealth offence provisions are to work in practice. This bill is an important step in that process.

Ordered that further consideration of this bill be adjourned to the first day of the 2002 autumn sittings, in accordance with standing order 111.

**FAMILY ASSISTANCE ESTIMATE TOLERANCE (TRANSITION) BILL 2001**

**First Reading**

Motion (by Senator Tambling) agreed to:

That the following bill be introduced: A Bill for an Act to amend the A New Tax System (Family Assistance) (Administration) Act 1999, and for related purposes.

Motion (by Senator Tambling) agreed to:

That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

**Second Reading**

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (9.32 a.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This bill follows through on the Government's recent announcement of a \$1,000 tolerance for families with a family tax benefit or child care benefit overpayment because of incorrectly estimated income or shared care in 2000-2001.

The bill adapts an existing provision in the family assistance law so that the Government's decision can be put into effect through a disallowable instrument. The instrument will be made and tabled as soon as possible after the bill is enacted.

The new family assistance system put more than \$2 billion extra into the pockets of Australian families. It meant, for the first time ever, that top-ups will be paid to families who have been paid less than their actual entitlement because they overestimated their income during the year.

The Government's information campaign to tell families about the new system has been very effective, with some 800,000 families updating their income estimates during the year. However, the first year was one of transition, and some families clearly needed extra help in adjusting to the new arrangements. While many families have got their income estimate right, and they should be congratulated, there are still those whose circumstances mean that it is difficult for them to estimate their income accurately. This special \$1,000 tolerance will be available to those who have underestimated their income and have an overpayment as a result.

The \$1,000 tolerance will also be available where a separated parent has incorrectly estimated their share of their child's care. If a family has both a family tax benefit overpayment and a child care benefit overpayment, the \$1,000 tolerance will apply to each overpayment.

Any family who still has an excess payment after the \$1,000 tolerance may have it recovered by adjusting their future payments. Of course, many families who overestimated their income will reap one of the main benefits of the new system when they are paid their family tax benefit or child care benefit top-ups with their tax refund or in a direct payment.

Now that families have had time to adjust to the first year of the new system with the benefit of this lenient approach, the Family Assistance Office is working closely with them to help them with their income and shared care estimates for 2001-2002.

Ordered that further consideration of this bill be adjourned to the first day of the 2002 autumn sittings, in accordance with standing order 111.

## INDUSTRY, SCIENCE AND RESOURCES LEGISLATION AMENDMENT (APPLICATION OF CRIMINAL CODE) BILL 2001

### First Reading

Motion (by Senator Tambling) agreed to:

That the following bill be introduced: a Bill for an Act relating to the application of the Criminal Code to certain offences, and for related purposes.

Motion (by Senator Tambling) agreed to:

That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

### Second Reading

**Senator TAMBLING** (Northern Territory)—Parliamentary Secretary to the Minister for Health and Aged Care) (9.33 a.m.)—I table the explanatory memorandum relating to the bill and move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

The purpose of the Industry, Science and Resources Legislation Amendment (Application of Criminal Code) Bill 2001 is to amend certain offence provisions in legislation within the Industry, Science and Resources portfolio to reflect the application of the *Criminal Code Act 1995* (the Criminal Code) to all criminal offences in Commonwealth laws.

The amendments are intended to ensure that when chapter 2 of the *Criminal Code Act 1995* (the Code) is applied from 15 December 2001 to all Commonwealth criminal offences, those provisions will continue to operate in the same manner as they operated previously. If legislation containing offence provisions were not amended to have regard to the Code, the Code, upon coming into operation, may alter the interpretation of existing offence provisions.

The Criminal Code is set out in schedule 2 to the *Criminal Code Act 1995*. It contains the general principles of criminal responsibility that will apply to all Commonwealth criminal offences when the *Criminal Code Act* comes into force, on and after 15 December 2001.

Chapter 2 of the Criminal Code codifies the general principles of criminal law and adopts the common law approach of subjective fault based principles. It adopts the traditional distinction of

dividing offences into their physical elements (the *actus reus*) and fault elements (*mens rea*). The general rule is that for each physical element of an offence it is necessary to prove that the defendant had the relevant fault element. The prosecution must prove every physical and fault element of an offence. The physical elements are "conduct", "result of conduct" and "circumstances of conduct" and the fault elements specified in the *Criminal Code* are "intention", "knowledge", "recklessness" and "negligence".

The "default fault elements", which the *Criminal Code* provides, will apply where a fault element is not specified and where the offence (or an element of the offence) is not specified to be a strict or absolute liability offence. The default fault elements set out in the *Criminal Code* are "intention for a physical element of conduct" and "recklessness for a physical element of circumstances or result".

Fault elements will not be applied where an offence is specified to be one of strict liability. This bill specifies where an offence is one of strict liability. This is necessary to ensure that offences currently interpreted as strict liability continue to be interpreted as such after the *Criminal Code* is applied. In addition the bill amends certain offence provisions to remove the defence and restate it is a separate subsection. This is to ensure that the defences are not interpreted as an element of the offence.

The amendments fall into the following broad categories:

- specifying that an offence is one of strict liability (with an express statement on the face of the offence that is an offence of strict liability, referring to section 6.1 of the *Criminal Code*);
- restructuring offence provisions which include an inappropriate fault element for conduct;
- restructuring offence provisions which include an inappropriate fault element for circumstance;
- restructuring offence provisions where part of the conduct element of the offence includes breach of a condition;
- restructuring offence provisions to proscribe the actions of a person whose conduct causes damage, injury, destruction or obliteration of prescribed property;
- restructuring criminal offence provisions containing a defence, by putting the defence provisions in separate subsections, in order to avoid a defence being mistakenly interpreted to be part of the elements of the offence;
- specifying whether a defence places a legal or evidential burden on a defendant;
- restructuring an offence to resolve an internal conflict between the offence and the complicity provision of the *Criminal Code*;
- restructuring ancillary offence provisions so as to apply the relevant ancillary provisions of the *Criminal Code*;
- extension of meaning of 'engaging in conduct' to include omissions;
- restructuring offence provisions so as not to require knowledge of law;
- specifying in provisions which establish criminal responsibility for corporations whether or not Part 2.5 of the *Criminal Code* (dealing with corporate criminal responsibility) is applicable.

This bill ensures that the current criminal offences will operate in the same manner as they currently operate, following the application of the *Criminal Code*.

Ordered that further consideration of this bill be adjourned to the first day of the 2002 autumn sittings, in accordance with standing order 111.

## BUSINESS

### Consideration of Legislation

Motion (by Senator Tambling) agreed to:

That the provisions of paragraphs (5) to (7) of standing order 111 not apply to the Customs Tariff Amendment Bill (No. 5) 2001, allowing it to be considered during this period of sittings.

### ALCOHOL EDUCATION AND REHABILITATION ACCOUNT BILL 2001

#### In Committee

The bill.

**The CHAIRMAN**—There are a number of amendments and a number of requests. Since there is no running sheet, I suggest that we deal with the opposition amendments first, then the opposition requests for amendment and then the Democrats' requests for amendment. If there is no disagreement with that, that is the way we shall proceed. Is it the wish of the committee that the statements of reasons accompanying the requests be incorporated in *Hansard* immediately af-

ter the requests to which they relate? There being no objections, it is so ordered.

**Senator CHRIS EVANS (Western Australia)** (9.35 a.m.)—On behalf of the Labor Party, I move opposition amendment (1) on sheet No. 2287:

(1) Clause 3, page 2 (after line 11), after paragraph (a), insert:

(aa) to support programs to reduce domestic violence caused by alcohol or other licit substance abuse;

I have just received the Democrat request—I think the suggestion of the order is a good one, so I can have a look at the detail of that. In general, I want to say to the Senate, and more particularly to Senator Lees, that Labor is serious about these amendments. I was not in the chamber for all of Senator Lees's speech in the second reading debate, but I had a look at the *Hansard* and read what she said. I want to make the point that this is a genuine attempt by Labor to make the legislation better. It is perfectly appropriate for parties and individuals to negotiate outside the parliament and to reach arrangements on legislation; it is part of the political process. While it is perfectly appropriate for those discussions to take place, for agreements to be reached and for understandings to be made about how one must proceed inside the chamber—it has always been part of the political process; some people rail against it, but that is just a misunderstanding of how politics works—at the end of the day the decision is for the Senate and any agreement outside of this chamber by parties or persons has to be tested inside the Senate and the Senate gets to make a judgment about those things.

In one of her references, Senator Lees talks about 'people we have appointed to the foundation'. You have not actually appointed anyone to the foundation yet; it is a process for the parliament to decide on the legislation. I understand that invitations have been issued in a formal sense and that they have met informally, but there is a role for parliament. Labor think the amendments we are moving are important protections that ought to be represented in parliament. Agreements can be reached between individuals who may come and go; it may well be that the minister

for health is no longer the minister for health in three months. It is important that the parliament reflect parliament's view, and that is why we are keen to include our amendments and requests to make sure that the legislation is right. It is the legislation that lasts, not the agreements and not the individuals. That is why this is important. I do not doubt the bona fides of Senator Lees or her motivations in this—I know that she has put a lot of work into the matter and that she has a lot of interest in it, and I concede that she knows more about the fundamental issues involved than I do. But my plea is: let us make sure that we get the legislation right, because in the end that is what will stand the test of time, that is what will be permanent, that is what will become the law of the land. It is important that the legislation is correct.

I will not delay the Senate too long. We have had the Senate inquiry process, and the issues have been discussed inside the parliament and by the interested groups. Amendment (1) concerns the question of domestic violence. Labor are seeking to broaden the focus of the foundation to include a major issue concerning alcohol abuse that we think has not been given enough prominence as a result of the negotiations that occurred before the bill. I think everyone in the chamber would concede that domestic violence is a serious problem and that alcohol is a major contributing factor; most people acknowledged that in their speeches in the second reading debate. A recent study in the *Medical Journal of Australia* showed that almost 30 per cent of middle-aged women have suffered violence or child abuse in their lifetimes. I will not go through all the statistics; I think the parliament accepts that the question of domestic violence and its links to alcohol abuse are very firmly established. Labor think it is important that the foundation and the legislation formally reflect that broadening of focus. It is important that the parliament give the direction to the foundation that it include that reference, and that is why we have moved that amendment. I urge the Senate to support it.

**Senator LEES (South Australia)** (9.40 a.m.)—There is absolutely no doubt that domestic violence is an extremely important

issue. As I move around in my capacity as Democrats' health spokesperson, it is an issue that I come across constantly. It is one that I believe is frequently overlooked by both state and federal governments. Indeed, often I feel that no more than lip-service is paid to its effects, particularly the flow-on effects to children of their experiences in a violent household. In particular, the level of funding from the Commonwealth for domestic violence support services—be it for accommodation or shelters or indeed for the peak body that coordinates the various services across the country—has fallen well short in all of those areas.

However, I do not believe that this is the place to make up that shortfall. This is a one-off amount of money contributed by those people who paid too much across the counter for their draught beer since the change in our tax system and through until the change to the level of tax on draught beer was made. It is to go to programs to reduce the abuse of alcohol and other legal substances, as in petrol and glue sniffing. However, if we start putting in specifics such as that in this amendment, there are a number of consequences.

I think that the group that have been selected as members of the foundation are all well aware of these issues. They are all people who have had experience in the area of alcohol abuse, and there is absolutely no doubt that there will be flow-on effects into the issue of domestic violence and the impact, particularly on women and children, of those people who have overindulged in alcohol, particularly those people who get drunk regularly and abuse their families. But to start requiring, particularly in the wording that is here, support for programs to reduce domestic violence caused by the abuse of alcohol or other licit substances moves us away from the actual programs that are now running into domestic violence. Go and visit women's shelters and look at some of the specific support services: services for those who are offenders, services for children and services for mostly women—those who are the victims. I do not think we can start breaking it down as to why they are the victims and start looking at specific causes. It is

an issue that is handled regardless of the actual cause of the violence. While alcohol is a major contributing factor in many instances, the foundation will already pick that up; it will already be dealing with the core problem. One of the spin-off effects will be that domestic violence itself can be dealt with.

It is not just unnecessary but an unnecessary complication to put it in this way and to risk further watering down the amount of money that goes into core programs to reduce the abuse of alcohol. As I said in my speech in the second reading debate, tobacco when used as directed will kill. Tobacco is a product that is legal, but we know that it is deadly even used as the manufacturers direct. Alcohol is a product that when used carefully, used responsibly, does not cause harm; it is the irresponsible use of it that this piece of legislation is tackling through funding and setting up the Alcohol Education and Rehabilitation Foundation. I do not for a moment want to suggest that we in this place are not fully aware of the devastating impact of domestic violence on so many Australian families, but I do not believe it is constructive to try to put money into it in this way.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (9.45 a.m.)—The government does not support this amendment, as we consider it to be unnecessarily restrictive. The relationship between alcohol abuse and domestic violence is recognised and would clearly be within the scope of the foundation's activities. I refer to the subclauses under clause 3, which are very explicit with regard to preventing alcohol and substance abuse and supporting evidence based alcohol and other illicit substance abuse treatment, rehabilitation, research and preventative programs—particularly that one. The other objectives of promoting education and public awareness and providing funding grants would all, I think, embrace issues such as domestic violence and other matters related to alcohol abuse. The foundation is required to expend 20 per cent of its funds on projects addressing indigenous issues, and it is expected that the foundation will focus its early attention on activities and projects that are designed to

address domestic violence. Such projects could, for example, be in the form of public awareness and education programs, or funding could be provided to projects that have a direct impact on families that experience abuse of this nature. The legislation as drafted allows funding for these purposes.

**Senator CHRIS EVANS (Western Australia)** (9.46 a.m.)—If nothing else, I can count and so I understand that we are not going to get the amendment carried. I must put on the record that I think the explanation given for not including this objective was very unconvincing. On the one hand, people seemed to be saying, ‘It is already covered; they can already do it, and to say so would be too restrictive.’ That argument is nonsense.

**Senator Lees**—No, it’s not.

**Senator CHRIS EVANS**—Well, Senator Lees, you made some comments and Senator Tambling made some others, and they were not exactly the same story. All I am saying is that it seems to me to be a reasonable thing to assert that we ought to support, to quote the amendment, ‘programs to reduce domestic violence caused by alcohol or other illicit substance abuse’. It seems reasonable to make that an objective, to say that, as part of the foundation’s work, we are serious about dealing with the effects of alcohol abuse, such as the resultant domestic violence on families. We think that is a really important issue. It seems to us that it is more than reasonable that it be made explicit in the objectives of the foundation. I do not understand why making that an objective is, to use the words used by the government, ‘unnecessarily restrictive’. At the same time, they want to argue that it is work they will do anyway, although Senator Lees says she does not want that work to occur because it would broaden the focus too much. I am not sure what the explanation is for the opposition to this amendment. I do not want to labour the point, but I do think it is an important amendment. It allows us to focus on one of the major social problems brought about by alcohol abuse. Recognising it in the objectives is an important statement from this parliament about the importance of that issue,

but obviously that is not going to be supported.

Amendment not agreed to.

**Senator CHRIS EVANS (Western Australia)** (9.49 a.m.)—On behalf of the Labor Party, I move opposition amendment (2) on sheet No. 2287:

(2) Page [6] (after line 13), after clause 13, insert:

**13A Conditions of agreement**

Any agreement made under section 9 or 12 must include the following conditions:

- (a) the condition that the Foundation or a replacement body must comply with such policies, not inconsistent with any of the purposes referred to in section 3, as the Minister directs should guide the activities of the Foundation or replacement body;
- (b) the condition that the Foundation or a replacement body must consult with the following:
  - (i) the Aboriginal and Torres Strait Islander Commission; and
  - (ii) the National Aboriginal Community Controlled Health Organisation; and
  - (iii) the National Indigenous Substance Abuse Council;

about priorities for, and ways of funding, indigenous substance abuse programs;
- (c) the condition that not less than 20% of funding in any year must be allocated to indigenous substance abuse programs.

The purpose of this amendment is to ensure that the matters which the government signed off on in its memorandum of agreement with the Democrats are actually required to be included in the funding agreement with the foundation. We are very concerned to make sure that those objectives are reflected in the funding agreement. We have had a fairly sad history of agreements made with Democrats and others by the minister for health that have never actually come to pass. The famous letters from the minister that are circulated in the chamber as reasons why we should not legislate matters have become a bit of a standing joke. It is always

the case that they never quite get applied in the same way. There is always a reason why the minister cannot quite fulfil the commitments. Quite frankly, the question of who will be the minister for health in three months time is a bit of an open issue.

What Labor says is, 'Let us get the legislation right. If we want to do something, if we want this to represent the intention of the parliament, let us include it in the legislation.' Therefore, it is our intention to reflect those matters in the funding agreement. They go to the question of consultation and indigenous substance abuse programs, and we specifically put this in as clause 13A, conditions of agreement. It is all very well to come into the chamber and say, 'We have agreement with parties outside the parliament.' What Labor says is, 'That is fine, that is part of the political process; at the end of the day, it is our job to reflect the will of the parliament in the legislation.' We have a fairly chequered history when it comes to the success of assurances from ministers circulated in letters or reflected in memorandums of understanding: those things do not have the same authority as parliamentary amendments reflected in legislation. Therefore, I urge the Senate to support this amendment.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (9.51 a.m.)—The Labor amendment is essentially in three parts. With regard to subclause (a), I would argue that this approach would be entirely inconsistent with the memorandum of understanding that establishes the foundation as an independent organisation. With regard to subclause (b), the foundation is likely to consult widely in determining priorities for expenditure on indigenous projects. It is expected that, as an independent body, the foundation will develop its own protocols for consulting with the relevant organisations. With regard to subclause (c), the funding agreement between the Commonwealth and the foundation specifies that 20 per cent of the total funds for the entire four years must be directed to projects targeting indigenous Australians and, therefore, I would argue that the Labor Party amendment is unnecessary.

**Senator LEES (South Australia)** (9.52 a.m.)—I will also deal with this Labor amendment in three parts. Firstly, I want to stress again, as I said in my speech in the second reading debate, that we want this foundation to be independent of government but still fully accountable. As we went through the committee hearing, I think we saw that that is indeed the case. I again direct the Labor Party back to that committee report. I think it is on pages 2, 3, 4 and 5.

**Senator Chris Evans**—I was at the hearing; I asked both of the questions.

**Senator LEES**—Fine—you have your answers there in terms of accountability. I think this amendment is absolutely unnecessary. I am not quite sure what has motivated it. I listened carefully to your speech, Senator Evans, but, as we went through the processes in the committee hearing, I thought it was very clear that it was to be an independent body. The last thing we want to see happen is that this body is seen as a replacement funding body; that instead of the state or, indeed, the Commonwealth putting regular money into various substance abuse programs, a level of government just shrugs its shoulders and says, 'Oh, look, we'll let the foundation take care of that. We're not going to be bothered putting money into that this year, and we don't want any pressure from anyone for that to occur.'

To deal with section (b), I think it is quite dangerous to start saying that we have a list of people you have to talk to, because we obviously must add to that list. We then should need to go through the charities. If we go back to the document that sets out whom the board members of the foundation are to represent, you will see that there are indigenous people on the board and there are people representing the churches and the charities—people who for years have dealt with the after-effects of substance abuse and who have tried the best they can to work in the area of education, prevention and rehabilitation. As for listing, for example, the National Indigenous Substance Misuse Council, we actually have the chair of that council as one of the members of the foundation. Scott Wilson, the chairperson of the National Indigenous Substance Misuse Council—I will not

go through his complete CV—and the other members are perfectly capable of knowing whom they should consult and where they need to go for further information. In this particular case, I think it is not up to us to pick out just three groups and say that these are the three groups—and the wording is—‘must consult with’, and then presume that they can get the rest of it right. I think we leave it with some confidence to an expert body to decide where and when they go for information and how they proceed.

As for the last part of this amendment, I find it quite limiting, quite restricting, because it says, ‘Not less than 20 per cent of funding in any year.’ It may be that in the first year they get to 18 per cent; it might be 25 per cent in the second year. I think it very much depends on the programs that are submitted and on what information they have as to whether programs need either one-off funding or ongoing funding. I do not think that we should limit the foundation in this way, to say that every year they have to get to that 20 per cent. It is very clear that by the end of the four years they have to have spent at least 20 per cent of funding on indigenous issues, on indigenous substance abuse programs, but I do not think that we need to restrict them in this way.

**Senator CHRIS EVANS (Western Australia)** (9.56 a.m.)—It is clear that I am wasting my breath, but I do want to make a couple of points. When Senator Lees uses the royal ‘we’, she reflects again her agreement with the minister. You have not appointed anybody to a foundation. You may have a cosy little deal with the minister and you may have shared a nice bottle of red wine in doing the deal. This is the parliament of Australia. We are dealing with the legislation, and what we have to reflect is the view of the parliament. What you want to do is to say that we all accept that you have done this deal and that is enough. I do not have a problem with you doing a deal with the government, but you cannot come in and say that, instead of us having legislation, we have this deal, we have this piece of paper between the former Leader of the Democrats and, hopefully, the former minister. Quite frankly, I do not find that reassuring at all.

You keep referring to the Senate inquiry. As you know, Senator Lees, you and I, I think, are the only two—along with the chair—who sat through it all. I think it is fair to say that I took a full participatory role in that. At the end of that process, I was concerned that your deal was not adequate, that it was not providing enough protections for the expenditure of Commonwealth taxpayers’ funds—\$115 million—saying, ‘It’s okay, leave it to them. We’ve got a deal; we’ve got an understanding.’ I am afraid that that is not good enough for me. I have a difference of opinion with you about that. I think we ought to put some protections in place. You said it was dangerous to put these things in. We have gone from ‘not necessary’ to ‘dangerous’. I do not know what it will be by the third amendment.

*Senator Lees interjecting—*

**Senator CHRIS EVANS**—You used the word ‘dangerous’—I am happy to refer you to the *Hansard*—that it is dangerous for us to put assurances and guarantees in the legislation, that it is better that we rely on the agreement that you reached with the minister in writing outside of the parliament. Quite frankly, I do not share your views. What happened to the old Democrats of public accountability—keep the bastards honest and make sure it is all brought before the parliament? When it does not suit you, it is abandoned. Quite frankly, your record of deals with the minister for health is appalling. Most of them have not been honoured. You come in here and you wave letters around at every debate: ‘I’ve done a deal with the minister.’ Quite frankly, they are not worth the paper that they are printed on and they are very rarely honoured. What I am saying to you, Senator Lees—and I made the point at the start—is that I do not doubt your motives and I do not doubt your interest in this issue, but what you have suggested in this parliament is not good enough. It is not good enough for the expenditure of Commonwealth money, and we want to make sure that we have the protections.

Your example is to say that the National Indigenous Substance Misuse Council are already covered because ‘we have the chair on the foundation’. But you do not have a

foundation, because it has not been established yet. You have a group of people about whom you and the minister had a chat and drew up a list. They are perfectly good people; there is no question about their qualifications. But what happens if that gentleman resigns? Does the next chair of the National Indigenous Substance Misuse Council come onto the foundation? No, he does not. Why? Because there are no regulations; there is no governance of who the members are, how they are reappointed or what their terms are, et cetera. Again, it is all a matter of some secret deal. It is not in the legislation. It is not good enough. If you want me to be reassured, and if you want the parliament to be reassured, let us cover those issues and let us make sure we have got the accountability measures.

But they are not there and, quite frankly, Senator Lees, I am not reassured. You may say, 'Tough; I don't care.' That is your political judgment and that is fine. But I make the point to you: you have spent your political career arguing about public accountability and saying that that is one of the Democrats' key issues. Senator Murray comes in and lectures us day after day; let us see you put it into practice. Don't talk the talk; walk the walk. Support proper accountability measures in this legislation, not secret deals that, quite frankly, you are incapable of enforcing. You do not have the ability to enforce them, and we have seen that time and time again. You get done over when the minister finds that what he signed off on is all too hard. Let us put it in the legislation.

**The TEMPORARY CHAIRMAN**  
(**Senator Lightfoot**)—Are you referring to me when you say 'you'?

**Senator CHRIS EVANS**—If you like, Mr Chairman. I always speak through the chair.

**The TEMPORARY CHAIRMAN**—I took no part in that, Senator Evans.

**Senator CHRIS EVANS**—I know you were taking a keen interest in the debate, as always.

**The TEMPORARY CHAIRMAN**—I always listen to your speeches, Senator Evans.

ans. Perhaps you might care to address your remarks to the chair rather than to senators.

**Senator CHRIS EVANS**—I accept your admonishment, Mr Chairman. I was, through you, trying to address some remarks to Senator Lees. We have been in the centre of the discussion, but I accept your correction. The point I am trying to make is: this is a chance for the parliament to make sure we get it right and it is important that we do so. We are talking about \$115 million of public money. We ought to make sure that the proper protections are in place. We all agree with the objectives of the foundation. As I say, we have been prepared to concede that the sort of people you are looking for to get involved are perfectly reputable. There is no argument about the public good that this foundation can do and that good people are being encouraged to be part of it, but we do think that the parliament has the right to insist on the proper protections, and I am disappointed that the Democrats are not supporting those measures.

**Senator LEES** (*South Australia* (10.02 a.m.))—I find it very interesting that you should argue accountability. I can assure you that if there were anything even vaguely wrong with this legislation—and you yourself referred to Senator Murray—Senator Murray would be down here in a flash arguing very strongly about it. If you could put a case—

**The TEMPORARY CHAIRMAN**  
(**Senator Lightfoot**)—Would you like to put the case to me, Senator Lees? Put it through the chair, if you would not mind.

**Senator LEES**—Yes, Mr Chairman, I will put it through the chair. I point out to Senator Evans, through the chair, that we are not, through this legislation, appointing those people who have been invited to go on to the board. In fact, perhaps this is getting at the heart of what Labor's problem is with this bill. They ensured that we did not pass it last sitting session. Fine, we went through the committee process; I thought that was fairly clear, although Senator Evans now says that he has some doubts after it. But I think the detail set out there made it very clear that all the accountability procedures have indeed been followed. But this bill is not appointing

those particular people. It is not done that way. To refer back to Senator Murray, he has tried on 17 separate occasions to get an independent, separate process up for the appointment of people to boards, whether it is the ABC board or whatever board it is—generically, to have a process whereby ministers do not get to decide, they do not get to put mates on boards, and we actually have an open and transparent process based on merit. You have voted that down every time, Senator Evans. The Labor Party have voted down that legislation every time. Here we have a time when the government have not done it on their own. The government have not done it.

**Senator Chris Evans**—Who have they done it with? You.

**Senator LEES**—Exactly—and that is your problem, Senator Evans.

**Senator Chris Evans**—Your mates are on.

**The TEMPORARY CHAIRMAN**—Order! Senator Evans and Senator Lees, would you come to order please. Could you stop shouting at each other and address your remarks to the chair.

**Senator LEES**—This is getting to the heart of Senator Evans's problem. He was not consulted. If the Labor Party had wanted an independent process, Senator Murray has given them opportunity after opportunity. A number of other Democrat senators have moved the amendments; they voted it down. So we stick with the old process, which means the government gets to appoint boards. Here we have, in this instance, the government consulting with the Democrats because we are the ones who helped and assisted in setting up this Alcohol Education and Rehabilitation Foundation. The Labor Party have their knickers in a knot because they were not consulted. This is at the heart of these amendments. The Labor Party are upset because they have not been consulted.

**Senator Chris Evans**—The parliament wasn't consulted.

**Senator LEES**—Obviously, if you get into government you can take over the reins and, no doubt, that is why you have opposed our amendments. When you get into gov-

ernment, you will not want to have to consult with anybody. You yourselves will want to be able to choose who is on boards. We have worked with government constructively on the basis of merit to put up a list of people. We have now got 11 names agreed to, all of whom have expertise in areas related to education, to the prevention area or indeed to rehabilitation for those people who have been unfortunately affected badly by alcohol. We are very pleased to say that this is a process that has now come to a conclusion and that that board has indeed met, as had already been discussed during the early committee hearings. We had Professor Webster there, who is the chair of the board, explaining what the board's processes were and what stage that is now up to. We must look at the motives of the Labor Party here and their interests of involvement in this legislation. They come in here with an amendment that says that we consult with three groups but there is no mention of 'must consult' with any others. These amendments speak for themselves. They are not necessary and I say again that the Democrats will not be supporting them.

**Senator CHRIS EVANS (Western Australia)** (10.06 a.m.)—The important point to draw from that is that the Democrats' principal position now is that the way to fix the problem of governments appointing mates to boards is to make sure they consult with the Democrats to make sure that their mates are appointed. It is a ludicrous proposition about public accountability. They say, 'Provided they have a chat with me and I am happy, it is okay.' No wonder the Democrats inside the party have had concerns about the decision making process. You have argued for years about proper accountability. A secret deal between the minister and someone from the Democrats is not accountability. This is our chance to have accountability.

The key point I leave with the committee is the rhetorical question: how are these people to be reappointed? If one dies, retires or resigns, how are they to be reappointed? Again, is that a question for discussion between the health spokesman for the Democrats and the minister? Why is that not contained in the legislation? The point is that

none of this is contained, and the constant assertion that the foundation is up and working and the board is meeting is not true and was not the evidence given to the committee. At this stage it is a group of people who has been invited in for a cup of tea and a chat. The legislation gives the power to these processes. That is what we are debating today; that is why we ought to get it right. All I am urging is that the parliament insist on the proper accountability measures that we have always insisted on before and about which the Democrats have made much play. As I say, if we are not going to have that, we are not going to have that, but I think it would be a much better piece of legislation if those accountability measures were included.

**Senator HARRADINE (Tasmania)** (10.08 a.m.)—I think much of the heat in the previous exchanges was unnecessary. I think it is really not appropriate for Senator Evans to say that we do not have a chance to deal with this. These things come before us, and very often none of us know what is going to come through the executive government to the parliament. When it gets to the parliament, we are able to deal with them. That is what we are doing here and now.

I happen to agree with the amendment that has been moved by Senator Evans, but I do not think the reflections that were made were justified. Senator Lees has done a very good job in a very important area, attention to which has dwindled over the years. We all know it is an enormous problem that we are faced with. We went through the second reading debate, and we have been through this time and time again, individually and with constituents. Alcoholism is an enormously costly problem, costly to the public purse as well as to the fundamental structures of our society. Alcoholism affects families deeply, and they and their extended families bear the cost largely.

To that extent, I appreciate what has been achieved and the outcome is here before us. Our job now is to see whether we can maintain some sort of accountability in the legislation itself. Senator Lees has agreed that that is obviously necessary and has indicated that. We happen to have a slight disagreement on the question of appointment. On

balance, I support the amendment put forward by Senator Evans.

I would like to raise, however, the condition that not less than 20 per cent of funding in any year must be allocated to indigenous substance abuse programs. Is the definition of substance abuse programs contained in the legislation?

*Senator Chris Evans interjecting—*

**Senator HARRADINE**—I do not know whether it is, Senator Evans.

**The TEMPORARY CHAIRMAN (Senator Lightfoot)**—It does not appear to be in the bill, Senator Harradine.

**Senator HARRADINE**—Senator Evans, pursuant to your principle that things need to be cut and dried and put in the legislation, perhaps we ought to look at including the term ‘substance abuse programs’.

**Senator Chris Evans**—A consequential amendment might be useful, but I have not done too well on amendments generally, Senator Harradine.

**Senator HARRADINE**—Let us see how it goes.

**Senator TAMBING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.11 a.m.)—I think it is very important to point out that this legislation is not about the powers of the Alcohol Education and Rehabilitation Foundation itself or anything like that. This is essentially a budget related measure to appropriate funds. In effect, it establishes an account to provide by 1 July 2005 at least \$115 million to the foundation, et cetera, for various things. If you look very carefully at part 1 and part 2 of the Alcohol Education and Rehabilitation Account Bill 2001, you see it is very much focused on establishing the account. Then I would point out clause 6, ‘Credits to the account’. There must be credited to the account \$10 million on the day on which the act receives royal assent, \$24 million on 1 July 2002, \$40 million on 1 July 2003 and \$41 million on 1 July 2004. The essence of this legislation is very much that provision of funding to the foundation for purposes that will arise.

The question that Senator Harradine has raised goes to the core of the funding agreement with the foundation. This funding agreement between the Commonwealth and the foundation specifies that 20 per cent of total funds for the entire four years of funding must be directed to projects targeting indigenous Australians. I think that is the essence of that 20 per cent, and it will be a matter for the foundation itself to determine those particular programs and other activities in that area.

**Senator HARRADINE (Tasmania)** (10.14 a.m.)—That is a bit vague. What does it mean that this 20 per cent is to assist Aboriginal and indigenous people, or words to that effect? This is the Alcohol Education and Rehabilitation Account Bill 2001. I presume what is meant there is not only alcoholism but also petrol sniffing, for example, or glue sniffing and the like. The whole drugs area—heroin and other illegal drugs—is in another box, is it not?

**Senator Lees**—Illegal.

**Senator HARRADINE**—Yes, illegal. Am I clear that we are talking about licit drugs? Are we talking only about licit substances now?

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.15 a.m.)—In addressing Senator Harradine's questions, I draw his attention to clause 3 of the bill, where the objects of this act are set out in a number of subclauses:

- (a) to prevent alcohol and other licit substance abuse, including petrol sniffing, particularly among vulnerable population groups such as indigenous Australians and youth;
- (b) to support evidence-based alcohol and other licit substance abuse treatment, rehabilitation, research and prevention programs;
- (c) to promote community education encouraging responsible consumption of alcohol and highlighting the dangers of licit substance abuse;
- (d) to promote public awareness of the work of the Foundation or body and raise funds from the private sector for the ongoing work of the Foundation or body;

- (e) to provide funding grants to organisations with appropriate community linkages to deliver the services referred to in the above paragraphs.

It is important to draw that distinction between the licit programs and other drug initiatives of government which are handled in other government appropriations.

**Senator HARRADINE (Tasmania)** (10.16 a.m.)—I thank the parliamentary secretary. Whilst we are on that subject, I did raise in the estimates committee a number of questions, particularly the question of how this will assist in ensuring that no-one who has made a decision that they have a problem and that they need help and has made a decision to pick up the phone and ring a detox unit will be told that they have got a three-week waiting list, which is devastating to them. How is this legislation going to ensure that those people will be able to immediately go into a program which will be designed to assist them with their alcoholism?

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.18 a.m.)—The government shares Senator Harradine's concerns regarding the need for quick access to rehabilitation services for people with an alcohol addiction. The foundation will be required through its constitution to provide 85 per cent of its funding to professional and community organisations whose charter is to provide rehabilitation and other specific services to alcohol-dependent people and their families. The government has every expectation that the funding available through the foundation will make a significant difference to the availability of places and access to such services, ensuring a more timely response to people in need.

I would point out that this legislation is providing the funding. The foundation will act as the filter and provide the process by which that will meet. It will be up to the various organisations—hopefully many community based—to provide the actual services. So it will not be the government acting as a service delivery agency. I appreciate the concerns Senator Harradine raises about getting quick access, getting quick delivery of services, and that will be a matter

that I am sure the foundation will oversight very carefully in any of the bodies making proposals to it and in monitoring their progress.

**The TEMPORARY CHAIRMAN (Senator Lightfoot)**—The question is that opposition amendment No. 2 moved by Senator Evans be agreed to.

Question resolved in the negative.

**Senator KNOWLES (Western Australia)** (10.19 a.m.)—I seek leave to table some additional information from the Australian Associated Brewers and also from the Aboriginal Drug and Alcohol Council that has been provided to the Community Affairs Legislation Committee. I apologise to Senator Harradine that I was unable to give him any further details.

Leave granted.

**Senator CHRIS EVANS (Western Australia)** (10.20 a.m.)—I move opposition amendment No. 3:

(3) Page [6] (after line 18), at the end of the Bill, add:

**15 Accountability etc.**

- (1) The Foundation and any replacement authority are deemed to be Commonwealth authorities for the purposes of Divisions 2 and 3 of Part 3 of the *Commonwealth Authorities and Companies Act 1997*.
- (2) The Minister must cause a copy of each business plan of the Foundation or a replacement body to be tabled in each House of the Parliament as soon as practicable after it has been finalised by the Foundation or a replacement body, as the case may be.

This amendment seeks to insert an accountability clause into this very small bill. That would essentially do two things. Firstly, it seeks to ensure that the foundation will have to report to parliament, be subject to the Auditor-General and be accountable at estimates committees by ensuring that it is deemed to be a Commonwealth authority for the purpose of the Commonwealth Authorities and Companies Act. The opposition is grateful for the advice from the clerks that these goals will be achieved by this amendment.

The foundation will be clearly seen to be a public body publicly accountable for spending public money, rather than a private creature lacking such accountability. That goes to the argument that I have been trying to put throughout this committee stage that this parliament should ensure that accountability mechanisms are contained in the legislation. The second part of the amendment implements the memorandum of understanding reached between the Democrats and the government to ensure that the business plan to be produced by the foundation is tabled in the parliament and hence becomes a public document. I know we are to be reassured that all of that will happen anyway—trust us, it will all be okay!—but the point I have been trying to make through this debate is that these things ought to be in the legislation.

Senator Harradine, your intervention was useful. I had tried earlier in the debate to say that it was perfectly appropriate for people to negotiate outside of the formal process here, and I have no problem with that, but at the end of the day we had the opportunity to get it right. I think you might have missed some of the earlier debate. I also, I might say, before I got a bit excited, did pay tribute to Senator Lees's contributions to these issues and her interest in them. I do not want to make this a personal attack, but I am most concerned about the process and about making sure we get it right. The opposition think this amendment makes sure we have got the proper accountability measures in place and that this foundation is accountable to parliament for those public moneys. We think it is a very proper measure, one that should not cause any excitement and should not be seen as dangerous. We think this amendment would enhance the bill, and I urge the Senate to support it.

**Senator LEES (South Australia)** (10.22 a.m.)—This foundation is to be established as an incorporated charitable trust. We have already had a number of discussions about the issue of accountability, and I guess the Labor Party are going to continue to say that there are problems, but in fact there are not. The Auditor-General will be auditing and properly supervising in many ways the audit process and the accounts of the foundation.

The bill requires the minister to table a copy of every funding agreement and any variation to any funding agreement in each house of federal parliament within 15 sitting days. We are not moving to a completely independent company that runs off and does its own thing. This organisation will be accountable to parliament, we will have oversight of it and we will keep a very close watch on where every single cent is spent. However, as I have said before, we do not want this money back into government coffers just to be distributed in a regular way as money that they would put into alcohol programs. This is additional money. Setting this body up as an incorporated charitable trust will hopefully also encourage ongoing donations that can be tax deductible so that after the bulk of the money is spent in four years there will still be more money raised, as I said in my second reading contribution, perhaps through the beer industry or the wine industry or, indeed, industry generally by people who are concerned about the abuse of legal substances. Indeed, by the end of this month, the foundation is required to submit a detailed business plan. So I say to the opposition: obviously we all want to see in this place full accountability, but it has already been done.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.24 a.m.)—The government does not support the proposed Labor amendment. The memorandum of understanding establishes the foundation as an independent organisation, as Senator Lees has just outlined. It is not appropriate for such an organisation to be subject to the Commonwealth Authorities and Companies Act, any more than it would be appropriate for another independent charity such as the Heart Foundation or the Salvation Army to be subject to the act because they receive Commonwealth funding.

I am sure that, given the level of funding I outlined in answer to Senator Harradine's question between now and the year 2005, there will be a number of occasions on which senators can ask occasions, particularly in the Senate estimates committee, of the officials of the Department of Health and Aged

Care. That and the other normal accounting and auditing processes, I think, would give the level of security that the committee is looking for.

**Senator CHRIS EVANS (Western Australia)** (10.26 a.m.)—I would like to ask a question of the Parliamentary Secretary to the Minister for Health and Aged Care because the contribution of Senator Lees and the parliamentary secretary actually confirmed my confusion on this subject. Senator Lees stated that what we have created here is an 'incorporated charitable trust'. Those words were not used by the minister. When I asked the question of Professor Webster, the soon-to-be chair of this organisation, what form this foundation was to take, I am almost certain he replied—I will check the  *Hansard*—that it was to be a company limited by guarantee. This seems to me to highlight the problem: the legislation does not tell us what we are creating; it is not defined in the legislation. As Senator Lees is one of the authors of this legislation and stated in her contribution then that it is going to be an incorporated charitable trust and as I am sure Professor Webster indicated at the hearing that it was to be a company limited by guarantee, before we pour \$115 million into this, is someone able to tell me what it is?

**Senator HARRADINE (Tasmania)** (10.27 a.m.)—I think that is a good question and I am sure the chamber would be obliged of a response to that. I am somewhat confused. Yes, you could ask questions of health department officials. I have done that over the years.

**Senator Chris Evans**—With varying success.

**Senator HARRADINE**—With varying success. I agree with what Senator Evans says. Unless the issue is now down in the legislation, there could well be confusion at a later date which is not going to do the trust corporation any good at all. Certainly, the principle of public accountability will not be assisted unless we have it, as suggested by Senator Evans, in the legislation.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.28 a.m.)—I

am advised that the actual structure of the organisation will be a public company limited by guarantee, and it is certainly intended that the foundation will also be able to accept charitable donations. The model likely to be adopted by the foundation reflects the specifications of the memorandum of understanding between the government and the Australian Democrats for an independent charitable body whose primary role is to distribute funding to non-government organisations to address the issue of alcohol and other illicit substance abuse. The MOU requires the foundation to meet a number of stringent accountability mechanisms, and these have been incorporated into the legislation, the funding agreement and/or the constitution as appropriate. I am also advised—and I think this information was made available to the committee at the time it considered the legislation—that the foundation's constitution is currently being developed by a major law firm which specialises in company law. The constitution is a fundamental governance document which will specify in some detail the foundation's objectives, general powers, membership rules, use of public trust funds, meeting conventions and reporting requirements. There has certainly been a fair degree of consultation and discussion in this regard which I believe covers the issues of accountability that are intended to be covered by the Labor Party amendment. So the government does not see the need for the Labor Party amendment.

**Senator CHRIS EVANS (Western Australia)** (10.30 a.m.)—I may have missed it, so forgive me if I did, but I do not think you actually answered the question. The question was: is this to be an incorporated charitable trust or is it to be a company limited by guarantee, and where is that specified? The second part of the question is: are you able to provide the Senate with a copy of this constitution?

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.30 a.m.)—I do not have a copy of the constitution at this time, and I am unable to provide that. I think it is still at the point of being developed. As I said at the outset of my comments, I am ad-

vised that the structure is that it is to be a public company limited by guarantee. The important point I was making was that it was certainly also intended to be an organisation structured in such a way as to be an independent charitable body.

Question put:

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

The committee divided. [10.36 a.m.]

(The Chairman—Senator S.M. West)

Ayes.....	25
Noes.....	40
Majority.....	15

#### AYES

Bishop, T.M.	Buckland, G.
Campbell, G.	Carr, K.J.
Collins, J.M.A.	Conroy, S.M.
Cooney, B.C.	Crossin, P.M.
Denman, K.J.	Evans, C.V.
Forshaw, M.G.	Gibbs, B.
Harradine, B.	Hogg, J.J.
Hutchins, S.P.	Ludwig, J.W. *
Mackay, S.M.	McKiernan, J.P.
McLucas, J.E.	Murphy, S.M.
O'Brien, K.W.K.	Ray, R.F.
Schacht, C.C.	Sherry, N.J.
West, S.M.	

#### NOES

Abetz, E.	Allison, L.F.
Alston, R.K.R.	Bartlett, A.J.J.
Boswell, R.L.D.	Bourne, V.W.
Brandis, G.H.	Brown, B.J.
Calvert, P.H.	Campbell, I.G.
Chapman, H.G.P.	Cherry, J.C.
Coonan, H.L. *	Crane, A.W.
Eggleston, A.	Ellison, C.M.
Ferguson, A.B.	Ferris, J.M.
Greig, B.	Herron, J.J.
Hill, R.M.	Kemp, C.R.
Knowles, S.C.	Lees, M.H.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Minchin, N.H.
Murray, A.J.M.	Newman, J.M.
Patterson, K.C.	Stott Despoja, N.
Tambling, G.E.	Tchen, T.
Tierney, J.W.	Troeth, J.M.
Vanstone, A.E.	Watson, J.O.W.

#### PAIRS

Bolkus, N.  
 Cook, P.F.S.  
 Crowley, R.A.  
 Faulkner, J.P.  
 Lundy, K.A.  
 \* denotes teller

Payne, M.A.  
 Ridgeway, A.D.  
 Reid, M.E.  
 Gibson, B.F.  
 Heffernan, W.

Question so resolved in the negative.

**Senator CHRIS EVANS (Western Australia) (10.39 a.m.)**—I move:

That the House of Representatives be requested to make the following amendment:

(1) Clause 6, page 4 (after line 18), at the end of the clause, add:

*Fixed income—uninvested money*

(2) Within 28 days after the end of a financial year, there is to be credited to the Account, in respect of the financial year, an amount equal to the fixed-income percentage of the difference between \$115 million and the amounts credited to the Account as at the end of the financial year.

*Fixed-income percentage*

(3) For the purposes of the application of subsection (2) to a particular financial year, the *fixed-income percentage* is:

- (a) the percentage equal to the rate of interest earned by the Commonwealth as at the end of the financial year on deposits held with the Reserve Bank of Australia; or
- (b) if the Minister for Finance, by written instrument made within 28 days after the end of the financial year, determines a higher percentage—that higher percentage.

*Statement pursuant to the order of the Senate of 26 June 2000*

This amendment is circulated as a request because it provides for an amount of money representing interest to be credited to the Account and therefore available to be paid out for the purposes of the Account. Clause 8 of the bill provides for amounts to be paid out of the Account in accordance with funding agreements, and for a reference to an amount paid out of the Account to be a reference to an amount paid out of the Consolidated Revenue Fund (CRF). The amendment will therefore have the effect of allowing more funds to be paid out of the CRF, thereby increasing the

demand on the appropriation and therefore the “proposed charge or burden on the people” within the meaning of the third paragraph of section 53 of the Constitution.

Section 21 of the Financial Management and Accountability Act 1997 (FMA Act) provides that if an Act other than the FMA Act establishes a Special Account for identified purposes, then the CRF is appropriated for expenditure for those purposes. It is therefore a standing appropriation for the purposes of Special Accounts of this kind. Clause 8 of the bill also constitutes an appropriation because it provides authority for money to be drawn from the CRF and therefore comes within the definition of “appropriation” in section 5 of the FMA Act.

*Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000*

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure out of an appropriation in the bill or a standing appropriation in a statute amended by the bill. The Senate has also accepted amendments as requests where the standing appropriation was not in the statute to be amended by the bill but in a closely related statute which, in those cases, was part of the new tax system legislation. In this case the appropriation is a combination of provisions in the bill itself and in a statute referred to in the bill and which applies to it. The request is therefore in accordance with the precedents of the Senate.

This request of the House of Representatives seeks to deliver the government’s promise that the full equivalent of the increase in excise collected on draught beer since 1 July 2001, less the \$5 million allocated to the Historic Hotels initiative, will be appropriated and allocated to the foundation. It is there in black and white with the Prime Minister’s signature on the agreement. This is an important request. We are trying to ensure that the government fulfils its commitment. The government is trying to be a little mean and tricky, I might suggest, with the mechanism it has devised by moving the money to the foundation and trying to spread the payments over four years. The effect will

be to deny the foundation the full value of the money and prevent it earning a further \$13 million in interest over the next four years. The foundation is being denied a significant amount of money by this mechanism. The government has decided to make payments annually to the foundation with money it has already collected but to make the smaller payments in the early years. On a rough calculation, we arrived at a figure of about \$13 million worth of interest. The opposition has two issues with this. One is the question about whether the full excise that was collected has been paid over. We argue that it has not been. Given that and given the agreement between the Democrats and the government that the appropriate amount is \$115 million, we then find there is a mechanism which effectively denies the foundation the full value of that.

I note that the Democrats have circulated a similar request to the one moved by me on behalf of the Australian Labor Party. I think the difference goes to the question of whether the interest accrues continually or only over three years. I will leave it for Senator Lees to explain the differences. We think this is an important request to ensure that the full benefit of the money wrongly collected from Australian beer drinkers is passed on to the foundation. There is no reason why the government should reap a windfall profit from that money by its failure to pay it immediately. On our calculations, that is another \$13 million that could be used appropriately for the foundation. I would urge the chamber to support the request moved by the Australian Labor Party. I will be clearer, when Senator Lees has spoken to her amendment, as to the difference between the two requests.

**Senator LEES (South Australia** (10.43 a.m.)—I find it very interesting that the Labor Party is now defending the agreement between the Democrats and the government, having criticised it as being unreliable previously. However, I will let that one go. We estimate that the amount of money we are talking about is somewhere between \$10 million and \$12 million. We have been having extensive discussions with the government on this issue. It was apparently a

Treasury decision to appropriate the money over four years instead of on a one-off basis that would have allowed the Alcohol Education and Rehabilitation Foundation to accrue the interest naturally. What we did not want to see—what we wanted to avoid at all costs—was any further delay in this bill passing. Apparently, the government has some specific technical issue with supporting the Labor amendment.

We felt that the money should be accredited to the account at the end of the period. Remember, the foundation is spending 80 per cent of this money within four years, so it will not be an issue for them; they will know how much interest is being accrued. We presented to government another alternative because we did not want to see this legislation bouncing backwards and forwards between the two houses if the government was not able to accept the Labor Party's amendment. I guess it is eventually over to government but this mechanism means that each year an amount of money is paid at the beginning of 1 July 2001, 2002, 2003 and 2004. The interest will be added up and paid in at the end. The fund will know how much it is getting. It will have maybe \$13 million—our figures are suggesting closer to \$10 million. We will not really know until the end of the day. But those in charge of the funding process, those on the board, will know roughly how much money is accruing and can leave the way in which it is spent open until that final year.

So while I am not moving my amendment—I realise I cannot do that until we have dealt with this one—we wanted to cover all bases. If the government still had problems with the Labor amendment we wanted to make sure there was one there so that this bill would not go over to the House of Representatives, be changed again and bounced back here as we get closer and closer towards an election, with more and more legislation building up. We want this bill dealt with today in a form that the government is comfortable with.

**Senator TAMBLING (Northern Territory**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.46 a.m.)—

The government does not support Labor's request for an amendment on this matter but rather, is more attracted to the proposal being put forward by Senator Lees. The Commonwealth funding for the Alcohol Education and Rehabilitation Foundation has been appropriated over four years, as is usual government practice. The commitment of these funds over the next four years is \$10 million in 2001, \$24 million in 2002, \$40 million in 2003 and \$41 million in 2004, which represents a significant spending challenge to the foundation. I note Senator Evans's comment about the appropriation being a lower amount in the early years and then building up. As I am sure Senator Evans would appreciate, to get the program delivery essence of this in a proper form and to ensure the success of these types of programs, that is a more prudent and appropriate way to go about it. Initial high levels of up-front funding often then mean underspends, which is counterproductive in getting good program outcomes, given the nature of this area. I would, therefore, argue that this is an appropriate distribution of the funds.

Because of the need to ensure that these moneys are spent on targeted, effective community based activities the funding allocations have been deliberately organised to increase over the four-year period as experience and capacity expands. As I indicated initially, with regard to the other issues we are not going to support this amendment but we are attracted to the Democrat amendment.

**Senator HARRADINE (Tasmania)** (10.48 a.m.)—I indicated in my speech during the second reading debate that I believed the foundation is entitled to the money derived from interest on the \$115 million and that I support any amendments to achieve this. I indicated that if the government considers it is not entitled to the \$120 million—that was a rough figure—it must also accept that it is not entitled to keep the interest derived from this money for itself but should pass it onto the foundation.

I am inclined to support the amendment moved by Senator Evans. If that fails, I will support the amendment proposed by Senator Lees. The government has not given the

chamber a reason why, specifically and technically—if that is the problem—there is a problem with Senator Evans's amendment. If there is some such problem it has gone over my head. But I indicate to the committee that I will support the amendment moved by Senator Evans.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.50 a.m.)—I appreciate the question by Senator Harradine. Let me be totally frank: the government is more attracted to the proposal put forward by Senator Lees, not necessarily for specific or technical reasons.

**Senator CHRIS EVANS (Western Australia)** (10.50 a.m.)—I think I am offended that, automatically, propositions advanced by Senator Lees are more attractive than ones advanced by me. That might have to be referred to the Privileges Committee! Maybe I should shut up—maybe it is obvious to everyone that propositions advanced by Senator Lees are more attractive and I just have not noticed. I think it is an indictment on the government that if what they are really saying is that it is a question of from whence the request comes that determines their attitude rather than the technical merits or the efficacy of the amendment.

I do not want to labour the point, but I indicate that we think our approach is preferable. I suspect the reason Senator Lees's amendment is more attractive to the government is that it costs them less and they get to keep more of the money. Without any explanation to the contrary, I think that would be the general view. So, unless the minister is to articulate some other reason, I am inclined to persist with our request on the basis that he has not articulated a more worthy reason why we ought to go for the Democrat request instead.

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (10.51 a.m.)—Let me give Senator Evans a very good and cogent reason why Senator Lees's amendment is attractive. At the end of the four-year period—looking forward to what will then be the subsequent operation of the founda-

tion—it will provide an additional bank of funds for the ongoing program, which will hopefully be supplemented and complemented by the contributions of other community based activities of the foundation. So the specific amounts that have been agreed to under the memorandum of understanding are very much a forward commitment of the four-year program, and the accumulated interest will then provide additional finances which will enhance and add to the operation of the foundation into the future.

Request not agreed to.

Request (by Senator Lees) agreed to:

That the House of Representatives be requested to make the following amendment:

- (1) Clause 6, page 4 (after line 18), at the end of the clause, add:

*Interest on uninvested money*

- (2) There must be credited to the Account by 1 July 2004 an interest amount in respect of each of the financial years commencing on 1 July 2001, 2002 and 2003.
- (3) The interest amount for a financial year is worked out using the formula:

$$[(\$115 \text{ million} - \text{Sum of amounts credited}) \times \text{Fixed - income percentage}]$$

where:

**fixed-income percentage**, for a financial year, is:

- (a) the percentage equal to the rate of interest earned by the Commonwealth, as at the end of the financial year, on deposits held with the Reserve Bank of Australia; or
- (b) if the Minister for Finance, by written instrument made within 28 days after the end of the financial year, determines a higher percentage—that higher percentage.

**sum of amounts credited**, for a financial year, means the sum of all amounts credited to the Account in that financial year or an earlier financial year.

*Statement pursuant to the order of the Senate of 26 June 2000*

This amendment is circulated as a request because it provides for an amount of money representing interest to be credited to the Account and therefore available to be paid out for the purposes of the Account. Clause 8 of the bill provides for amounts to be paid out of the Account in accordance with funding agreements, and for a reference to an amount paid out of the Account to be a reference to an amount paid out of the Consolidated Revenue Fund (CRF). The amendment will therefore have the effect of allowing more funds to be paid out of the CRF, thereby increasing the demand on the appropriation and therefore the “proposed charge or burden on the people” within the meaning of the third paragraph of section 53 of the Constitution.

Section 21 of the *Financial Management and Accountability Act 1997* (FMA Act) provides that if an Act other than the FMA Act establishes a Special Account for identified purposes, then the CRF is appropriated for expenditure for those purposes. It is therefore a standing appropriation for the purposes of Special Accounts of this kind. Clause 8 of the bill also constitutes an appropriation because it provides authority for money to be drawn from the CRF and therefore comes within the definition of “appropriation” in section 5 of the FMA Act.

*Statement by the Clerk of the Senate pursuant to the order of the Senate of 26 June 2000*

The Senate has long accepted that an amendment should take the form of a request if it would have the effect of increasing expenditure out of an appropriation in the bill or a standing appropriation in a statute amended by the bill. The Senate has also accepted amendments as requests where the standing appropriation was not in the statute to be amended by the bill but in a closely related statute which, in those cases, was part of the new tax system legislation. In this case the appropriation is a combination of provisions in the bill itself and in a statute referred to in the bill and which applies to it. The request is therefore in accordance with the precedents of the Senate.

Bill agreed to subject to a request.

Bill reported with request; report adopted.

**FINANCIAL SERVICES REFORM  
BILL 2001**

**FINANCIAL SERVICES REFORM  
(CONSEQUENTIAL PROVISIONS)  
BILL 2001**

**CORPORATIONS (FEES)  
AMENDMENT BILL 2001**

**CORPORATIONS (NATIONAL  
GUARANTEE FUND LEVIES)  
AMENDMENT BILL 2001**

**CORPORATIONS (COMPENSATION  
ARRANGEMENTS LEVIES) BILL 2001**

**Second Reading**

Debate resumed from 9 August, on motion by **Senator Ian Campbell**:

That these bills be now read a second time.

*(Quorum formed)*

**Senator CONROY (Victoria)** (10.56 a.m.)—I rise to speak on the Financial Services Reform Bill 2001 and related legislation. The FSR Bill deals with the licensing of financial market operators and of clearing and settlement facilities. It introduces a single licensing framework for all financial service providers. It introduces minimum standards of conduct for financial service providers and enhanced disclosure of financial service products when dealing with retail clients. It introduces other amendments to the Corporations Act 1989, including amendments to the market misconduct provisions and to the continuous disclosure provisions. The FSR Bill will replace chapters 7 and 8 of the Corporations Act, repeal the Insurance (Agents and Brokers) Act 1984, repeal provisions in the Insurance Act 1973 and in the Retirement Savings Accounts Act 1997 and amend the Life Insurance Act 1995, the Insurance Contracts Act 1984 and the Superannuation Industry (Supervision) Act 1993, among other acts. The Financial Services Reform (Consequential Provisions) Bill 2001 makes provision for the transition to the regulatory regime proposed by the FSR Bill. That bill also makes a range of amendments to other Commonwealth legislation that are necessary as a consequence of the FSR Bill. The Corporations (Fees) Amendment Bill 2001, the Corporations (National Guarantee Fund Levies) Amendment Bill 2001 and the Cor-

porations (Compensation Arrangements Levies) Bill 2001 deal with fees and levies flowing from the FSR Bill, but they are included in separate bills to comply with section 55 of the constitution.

Labor supports this package of legislation. These bills have been the subject of an inquiry by the parliamentary Joint Statutory Committee on Corporations and Securities, which provided an opportunity to hear from participants in the financial services industry and also to question Treasury and ASIC on aspects of this bill. I have been advised by Treasury that these bills will realise efficiency gains in cost savings for the financial services industry by:

... providing a regulatory neutral regime, moving from an industry focus of regulation—with banks being subject to one set of rules, insurance companies another, and so on—to a functional focus of regulation, regulating like activities in like ways regardless of what institution, profession or body is engaged in this activity.

The government believes that this should encourage increased competition in the industry, lower barriers of entry, reduce costs and provide greater confidence on the part of consumers. I believe that consumer confidence will be enhanced by the establishment of the consistent and comparable financial product disclosure regime that is provided for in the FSR Bill. The FSR bill will also ensure that consumers can access appropriate complaint handling mechanisms for resolving disputes with financial service providers. The Labor members therefore believe that these bills will enable consumers to make better financial decisions and will deliver advantages to consumers.

It is timely that the regulation of financial advice providers be considered by parliament. We have seen a rapid growth in the number of retail participants in the financial markets. For example, nearly one in two adult Australians now directly own shares listed on the ASX. That is not, however, the only area where Australians are investing, and the market now provides a range of products with different characteristics and objectives to cater to a range of needs.

Beginning with Labor's decision to make superannuation compulsory, Australians

have become conscious of the need to provide for their future. The demographic structure of Australian society necessitates that this be the case. Increasingly, Australians are wanting to be financially independent and this is to be encouraged and supported. They need to receive good advice from an early age and on every financial product to ensure that their objectives can be met. Australian consumers need to feel confident that they are in a position to decide their financial future and to make financial decisions. That requires that the people who advise them are competent, that they are trained and able to give the advice. It requires that consumers receive all the information they need to make a decision, that they know the total cost of a product, that they know both the return and the risks inherent in the product and that they know what biases may have influenced the provision of the advice. It also requires that ASIC be able to implement and enforce the objectives of this bill. In that regard, I note a recommendation of the government members of the parliamentary Joint Statutory Committee on Corporations and Securities, which was supported by the Labor members, that the government explore the possibility of additional funding for ASIC to allow it to meet its new responsibilities.

This legislation has the support of the consumer groups. In a submission to the joint parliamentary committee, the Australian Consumers Association wrote:

Consumer groups have keenly anticipated the FSR Bill. Improving the consumer protection standards in financial services is a critical public policy issue in an environment where Australian consumers are increasingly asked to take responsibility for the direct management of their wealth and income, including retirement incomes ... In this regard, the ACA strongly supports the approach taken by the Bill to establish a consistent, uniform and clear regulatory platform for disclosure, licensing, codes of conduct and practices in financial services. The consumer protection aims of the Bill and the comprehensive approach taken to disclosure and licensing (including the critical issue of commission disclosure on risk products, which must continue to ensure a sound consumer protection framework) are supported by the ACA. Similarly the Financial Services Consumer Policy Centre advised the committee:

The consumer movement has been widely anticipating this important bill which provides a new foundation for the provision of consumer protection in financial services, with particular focus on disclosure, licensing, selling practices, codes of practice and the general shift towards consistency and uniformity. We are pleased to report that we agree with the majority of the proposals, though there are a number of specific areas that we believe require further attention.

These bills are not perfect and Labor will be moving a number of amendments. Before I proceed to outline some of the omissions in the legislation, I wish to comment on its implementation. The Labor members note that there is a wide power to make regulations under the FSR Bill and that ASIC has been given extensive powers to modify the legislation. For example, under proposed section 911A(2)(k) of the bill, a person can be exempted from the requirement to hold an Australian financial services licence if they provide a service covered by an exemption prescribed in the regulations. I note that the Minister for Financial Services and Regulation said in a speech on 3 July 2001 that:

... before the introduction of choice, the Government recognises that lighter touch regulation is appropriate, and only public-offer funds, which excludes most corporate and industry funds will be subject to licensing under the Bill. This reflects the current situation. Even after choice is introduced, the regime applying to industry and corporate funds will be flexible.

My discussions with Treasury and ASIC officers and industry participants indicate that the operational structure of industry funds and corporate funds can be accommodated within the structure of the bill. I trust that the minister will, as he has promised, continue to consider the needs of industry funds and corporate funds as this bill will apply to them.

There are many other provisions within the bill that allow the minister or ASIC to finetune the application of the bill. These include provisions governing the content of the various disclosure documents and the situations in which the disclosure documents must be given. I also note that the transitional provisions set out in the Financial Services Reform (Consequential Provisions) Bill 2001 provide a further degree of flexibility by allowing most people to transit into

the new regime over a two-year period. The bill also provides for insurance multi-agents to apply for a qualified licence which will allow such agents further time to meet the competency requirement to hold a licence. The government will also introduce further amendments today which provide further concessions to insurance agents in relation to the timing of when the bill will apply to them.

While I would have preferred, like many others, to have seen the benefits of this bill for consumers be realised at the earliest opportunity, Labor remains supportive of this legislation. By the end of the transition period, we expect every person offering or advising on a financial product to be operating under the FSR regime. The flexibility in the legislation should allow the minister, Treasury and ASIC to deal with many of the issues that have been raised with the committee. This flexibility also stems from the structure of the bill, such that only the principles of the new regulatory regime are encapsulated in the legislation. Any variance in detailed application of those principles to particular sectors or circumstances are to be dealt with in the regulations. This is a new structure and will require that the implementation of the bill by the minister be thoughtfully considered, and the impact of the bill be monitored. This is particularly important given the large number of people who are likely to be required to be licensed under the Corporations Act for the first time.

A number of my concerns raised in looking at the provisions of the legislation were met by the minister in amendments he tabled in the other place on 28 June 2001. For example, I and many others were concerned about the changes to the obligations of the financial services licensee. The original legislation only required that a financial services licensee act competently and honestly, rather than the existing requirement in the Corporations Act that a licensee act efficiently, honestly and fairly. I thought it was important that the requirement for fairness be reinstated. That phrase 'efficiently, honestly and fairly' was also well understood.

I also welcome the amendments introduced by the minister to the Australian Secu-

rities and Investments Commission Act in the Financial Services Reform (Consequential Provisions) Bill 2001. They mirror changes made to the Trade Practices Act since responsibility for financial services was removed from the ACCC's consumer protection jurisdiction and given to ASIC. A number of significant changes had been made to the Trade Practices Act since the jurisdiction in relation to financial services was moved to ASIC, which left financial consumers in an inferior position. The government should, having implemented the changes to the ASIC Act, have been more mindful of the need for the act to continue to mirror the Trade Practices Act. However, the government has now acted and I support the amendments.

The minister also introduced on 28 June amendments to the powers of ASIC to impose, vary or cancel conditions on licences of bodies also regulated by APRA. These provisions are to be further amended by the government today. It is necessary in the interests of consumers and efficient enforcement that ASIC not be unnecessarily curtailed by having to consult with APRA on every occasion that it imposes, varies or revokes a condition on a licence of an APRA regulated body. This would not protect consumers and would hamper ASIC's ability to respond in a timely manner. The amendments—which will require ASIC to consult with APRA before imposing, varying or revoking a condition only if such an action would, in ASIC's opinion, have the result of preventing the licensee from carrying on the activities for which APRA has regulatory or supervisory activities—appear far more workable. The issue of how APRA and ASIC interact is a vexing issue, and I note that many in the industry are concerned about how these two agencies coordinate their activities.

The final amendment introduced by the minister on 28 June which I will comment on was the change to the insider trading provisions. The wording of that offence was changed by the legislation supposedly to comply with the Criminal Code. Those changes, however, would have made the offence harder to prove. It is essential that the

market be fair to protect the interests of all shareholders, including retail shareholders, and to maintain the reputation for integrity which Australia's financial markets generally enjoy.

I should also add my support to the changes in the continuous disclosure regime which are proposed in the FSR Bill. It is proposed that a breach of section 1001A will now be both a criminal offence and a civil penalty provision. This will assist ASIC to enforce Australia's continuous disclosure regime. There is sufficient evidence, I believe, to justify this. For example, in a joint study conducted last year by the ASX and ASIC of listed technology companies, ASIC concluded that a number of companies were ignoring the basics of good company disclosure or, worse, were not even aware of those obligations. Further, a survey last year by the University of Sydney Accounting Foundation found that many directors felt that the continuous disclosure provisions 'lacked teeth'. Accordingly, Labor will be supporting this amendment.

However, this legislation, like the minister, is silent on the issue of analyst independence. It is time for the minister to acknowledge that analysts have a responsibility and obligation to ensure that shareholders understand the basis on which their reports are provided. A number of retail consumers rely on analysts' reports to provide accurate information. They believe the reports to be a fair and true assessment of a company's future performance. It is not acceptable that there is a code which is understood by some in the market but is unknown to others. Consumers need to know, or be able to determine, whether a report is biased because of work being done in other sections of the financial institution for which the broker works. I have previously quoted an extract from a speech by Laura Unger, the Acting Chairman of the SEC, but it is worth repeating:

One of the most important sources of information has always been analysts. Unlike others, they put their name on their work-product and professional reputations are at stake. But, for a variety of reasons, including recent market events, there is scepticism of the objectivity of analysts' recommendations lately. One survey showed that in

2000, 99.1% of brokerage-house analysts' recommendations were 'strong buy', 'buy' or 'hold' recommendations.

I have just returned from the US, where a congressional committee is inquiring into the issue of analyst independence. Some of the evidence has been quite extraordinary. Analysts have been appearing and saying, 'Look, everybody knows that "hold" means "sell".' The last time I went through the dictionary 'hold' certainly did not mean 'sell', but that is the code you had to understand. If Laura Unger has not convinced you of the problem, an article on Mary Meeker, a stock analyst at Morgan Stanley known as the Queen of the Internet, is terrifying. *Fortune* magazine on 14 May 2001 wrote:

Though it's hardly news anymore that the Chinese Wall once separating investment banking from Wall Street research has eroded, what you realize in talking to Meeker is the extent to which these two supposedly conflicting functions—keeping companies happy and giving investors honest stock advice—are now organically intertwined. She talks unashamedly, for instance, about how she used her research to help land banking deals for Morgan Stanley. And she describes how upset she became when Morgan Stanley lost a hotly contested deal to archrival Goldman Sachs. "I had never lost an IPO mandate in my life for a company that I wanted to take public," she says, sounding like, well an investment banker.

This is an issue which needs to be addressed. I understand that the industry, and the Securities Institute of Australia in particular, is examining this issue and preparing guidelines. I encourage that work to continue and, when completed, I encourage industry to adopt such guidelines. Labor is committed to seeing this practice cleaned up. Investors need to be able to rely on advice that is an intelligent analysis of a company's performance.

I will only mention briefly those areas in which we are seeking amendments. They are aimed at ensuring that Australian consumers receive the information they need to make informed financial decisions, that licensees act appropriately and that restrictions are placed on unsolicited telephone calls so as to protect consumers from the unsavoury type of behaviour. In particular, we will be seeking to restore the hawking prohibitions in

relation to managed investment products. We will also be seeking the removal of the declared professional body provisions and the proposal to record telephone conversations in relation to takeovers.

Labor will also be moving an amendment to allow regulations to be made to specify certain activities which, even if performed by a lawyer in the ordinary course of their activities, will be considered financial product advice. In Labor's view, it is no longer appropriate for unlicensed persons to operate mortgage investment schemes, even if it was the practice in the past that lawyers operated such schemes. I know my colleague Senator Sherry will be saying much more on this when he speaks.

Before I conclude, I wish to confirm Labor's commitment to full disclosure of commissions for all financial products. We remain committed to achieving this objective and will be seeking a commitment from the government that this bill requires that. Labor is, however, supportive of these bills and endorses the efforts encapsulated in this legislation to assist Australians to make informed financial decisions. I note that the committee report has been tabled and I would like to acknowledge Senator Chapman, who has done an enormous amount of work on this bill. It was a lengthy process, as I am sure Senator Chapman would agree. I did not get a chance to speak when the report on the bill was tabled, but I would like to thank the committee staff, who did a mountain of work to get everything ready so that we could debate the bill today. I acknowledge the minister's commitment to good consumer legislation and look forward to a speedy debate.

**Senator CHAPMAN (South Australia)** (11.15 a.m.)—There is absolutely no doubt that this Financial Services Reform Bill 2001 is landmark legislation. It covers the financial services sector of our economy which, as I understand it, now makes up some seven per cent of the Australian economy. The bill is certainly the most major, and possibly the last, piece in the jigsaw of the government's program of reform of the Corporations Law and of the financial services sector of our economy. So, as I said, it is very important,

landmark legislation and, as Senator Conroy from the opposition said a few moments ago, it did attract very detailed attention from the parliamentary Joint Statutory Committee on Corporations and Securities, which I chair. I welcome the fact that, on behalf of the opposition, Senator Conroy has indicated support for this legislation. There is no doubt that the uniform structure which this legislation will establish in terms of the education and training requirements, the licensing requirements and the product disclosure requirements for anyone involved in the financial services industry and marketing what are now called financial products—that is, investments in one form or another, whether equities, deposit products or insurance products—will be a major step forward for this industry. Therefore, the opposition's support for this legislation is very important.

As I said, the joint committee did examine this legislation in great detail. In a sense we have examined it on two occasions now. There was a draft exposure bill published a year or so ago, which the committee examined. It made certain recommendations with regard to that exposure draft and, as a consequence of that, the government introduced this legislation. Again the committee examined this legislation in great detail and produced a report that was finally tabled out of session last week.

In that report we indicated very strong support for the legislation, not only in our own determination as a committee, but also based on the evidence that the committee received. The evidence across all sectors of the financial services industry did indicate very strong support for the legislation; however, some evidence we received also indicated that there were certain areas that could be improved with amendments to make the legislation even better. It is to those areas that I want to direct attention this morning, based on the report that the committee handed down last week. I say at the outset that I welcome the cooperation of Minister Hockey in his dealings with the committee and in his response to the report and its recommendations. By and large, Minister Hockey and the government have accepted the recommendations of the committee

which, with a few exceptions, were unanimous recommendations: in other words, they were recommendations of all parties. The government members, the Labor members such as Senator Conroy and a couple of his colleagues and the Australian Democrats' Senator Murray all supported the bulk of the proposed amendments put forward in the committee report.

The first proposed amendment dealt with what in the previous Corporations Law had been an exemption provided for the media, including journalists who were reporting on financial affairs and economic matters. In the original legislation, it was proposed that those media representatives be required to be licensed, because of the possibility that their comments might be regarded as financial advice. The committee recommended an amendment to the bill to restore the previous exemption that existed for the media generally, including financial journalists, in the Corporations Law. Again, I welcome the fact that the minister has accepted that proposed amendment, and in the committee stage an amendment will be moved to that effect to restore that exemption for media representatives.

The second issue on which we made a recommendation for change was with regard to the proposal for a requirement that conversations in relation to takeover proposals should be recorded. In other words, conversations between the bidder in a takeover proposal and shareholders of the target should be tape recorded. We regarded this as unnecessary and, in fact, quite impractical. However, the government regard this as still essential with regard to retail shareholders. They have, therefore, accepted our recommendation in part and will move an amendment to limit the requirement to record telephone conversations during takeovers to conversations with retail investors—that is, the small shareholders—but they will accept our amendment to the extent that it applies to major corporate shareholders in regard to takeovers. Again, I welcome the acceptance of that recommendation from our committee.

Another issue in our report relates to the insurance industry. We recommended, for instance, that simply providing a quote for an

insurance policy over the telephone should not be defined as financial advice under the legislation. The government have accepted that recommendation and again will be moving an amendment to give effect to that. They are also going to accept our recommendation that certain types of insurance should be exempt from the requirements of the legislation. The best example, I guess, in terms of a cooling-off period would be travel insurance. For instance, you might have a travel insurance policy that only lasts for a 10-day trip someone is taking and yet under the original legislation a 14-day cooling-off period would apply to that policy. Quite clearly it was nonsense that someone could actually take their 10-day trip, have their travel insurance and then come back and say, 'I am still within the cooling-off period, I do not want that travel insurance' and get a refund. Again, I welcome the fact that the government has responded positively to our recommendation that, for certain short-term insurance policies, travel insurance being the best example, that cooling-off period will not apply.

Another issue addressed by the committee was in relation to professional bodies. This particularly relates to lawyers and accountants and the fact that, in the course of their general advising of clients on legal and financial matters, that could have been regarded as financial advice and required them to be licensed under the legislation. We, as a committee, recommended that what we said could be defined as incidental advice provided by lawyers and accountants in the normal course of their business should be exempt from the legislation. Again, the government has responded positively to that recommendation. Amendments will be included to provide that advice provided by lawyers in the ordinary course of their activities as a lawyer that is reasonably regarded as a necessary part of those activities is exempt from the definition of financial product advice. That will similarly apply to registered tax agents.

I note that there is some controversy in the media at the moment, apparently aroused by accountants saying that this does not go far enough in relation to them, but it seems to

me that most practising accountants who are likely to be giving advice to their clients will be registered tax agents. Obviously there is a continuum, if you like, in the nature of advice given by accountants. At one end, it is clearly advice of a type which would not be covered by this legislation and would not require them to be licensed; at the other end of the continuum, they could clearly be giving direct financial product advice and should come under the licensing arrangements. In the middle of that, there is probably a grey area. I believe that the proposals that the government is putting forward for amendment will provide an appropriate dividing line, if you like, between what is and what is not financial advice that will be subject to those licensing requirements. Therefore, I believe that the concerns of the accountants in relation to that issue have been covered by the government.

Another issue that was raised before the committee was pooled superannuation funds—that is, funds that act as aggregators of superannuation moneys from other funds and, in effect, are operating at a wholesale level rather than at a retail level. Again it is my understanding that the government will include amendments to ensure that they are not caught by the requirements of the legislation. They are all very important amendments that came under consideration by the committee, and we recommended that changes should be made to the legislation. It is gratifying to me that the government has accepted, by and large, those particular recommendations.

One of the major issues that was raised with the committee was the potential impact of this legislation on a sector of small business—in particular, those who have previously operated as insurance agents, selling general insurance or perhaps selling term life insurance, but not involved in marketing financial products that have an investment return component. There were several issues of concern to that sector of the financial services industry. The first of those concerns related to the potential impact of the legislation on what might be described as their right to work. The second issue was the impact of the legislation on their client base—the own-

ership of their client base and the ownership of the continuing streams of commission, including trailing commissions, that would flow from previous sales of products to those clients. We regarded those as very important issues. The legislation, as drafted, could have resulted in a detrimental impact on those agents, simply by the fact that a new regime was coming into place. The government has again considered that particular issue and I welcome its positive response. The government will now amend the legislation to provide that agents who have contracts with insurance companies will be enabled for those contracts to continue in operation for the term of those contracts. If that is, in effect, a perpetual contract, obviously that contractual arrangement will continue infinitely into the future. I think that provides very important protection for that sector of the industry.

I note that that again has aroused some controversy in the media in the last 24 hours, particularly in the *Financial Review*, where Mr Cleary—their journalist—and their editorial this morning refer to that matter. I quote from the *Financial Review* editorial. It says:

... the Government is set to give agents what looks like an excessively high level of protection against losing their tenure as an authorised representative.

It also quotes the chief executive of the Financial Planning Association, Mr Ken Breakspear, as saying:

... the growth of small financial planners in recent years shows they have not been hurt by the arrival of the Corporations Law, and small financial advisers would also prosper under the Financial Services Reform Bill, contrary to fears that small business would suffer a loss of market value.

It goes on to say:

It [federal government] should now think carefully whether it is wise and in the interests of consumers to protect small agents against contract termination unless they have actually been convicted of fraud.

That is not actually in the terms of the amendment that the government is proposing. There is no reference to the limits on the protection of their contracts; it simply means that their existing contracts will continue.

I think it is important to make the point that this is not an excessively high level of protection. It is saying that if an insurance agent has a contract with an insurance company to provide services in this area, that contract will continue. That is not providing excessive protection; it is simply recognising that there is an existing legal relationship between the agent and the insurance company and that legal relationship should not be affected detrimentally by this legislation. In other words, the agent should not be put in any worse position by this legislation than he would be had this legislation not been introduced. That is, I think, what any reasonable person would regard as quite an acceptable position. It does not in any way give the agent any advantage; it simply ensures that he is not disadvantaged as a result of what is a new regime, new legislation, coming into place, which, as I said, is very important and beneficial legislation for the industry overall. I am not a lawyer but I would have thought—and the minister might be able to help me on this—that all we are doing is protecting the common law rights of insurance agents for their contractual obligations to continue to be met.

As for Mr Breakspear's comments, of course he represents the Financial Planning Association, which tends to be the bigger end of town—the bigger businesses that will certainly become very important under the new regime. They are essentially large businesses that have resulted from the aggregation of the former individual independent agents into rather large financial planning companies which by and large are now owned by the product manufacturers, owned by the big financial institutions. So Mr Breakspear does not really speak for those at the small business level when he says that the small financial planners have thrived under the new Corporations Law. What he needs to do is to consider exactly what has happened, because what has happened is that a lot of the small financial planners have been aggregated into major companies, major institutions, rather than continuing to operate as small operators.

So I regard that proposed amendment as being of singular importance in ensuring that

those small independent agents have the opportunity to continue in business on the basis of their existing contractual arrangements. Obviously, if there are provisions in those contracts that allow them to be terminated and the termination provisions are spelt out, they will still apply. But, if those contracts continue infinitely, those agents will have the opportunity to continue to operate on their existing basis, at least in terms of their rights to maintain their income stream from pre-existing commissions that have previously been earned from sales and also in terms of the goodwill or asset value of their businesses. If they have buyback arrangements in terms of the goodwill with the insurance companies with whom they have these contractual arrangements, they will continue, and that will ensure that they are not, as I say, financially disadvantaged by this legislation.

The other issue on which the parliamentary Joint Statutory Committee on Corporations and Securities made a recommendation also relates to the insurance agents. That was in relation to the disclosure of commissions. Having examined this matter twice, the committee have come to the conclusion that it should not be a requirement that insurance agents disclose their commission on what are described as risk insurance products, that is, those products that provide insurance against risk—it might be fire insurance, home insurance, term life insurance, crop insurance and so on—which is a source of income for many of these small insurance agents. We do not believe there is any consumer demand for disclosure in this particular area. We believe that it will be detrimental, particularly for those insurance agents operating in small communities, to their capacity to earn an income from selling these forms of insurance without any demonstrable benefit to the consumer. We do not believe, on the evidence presented to us, that the commissions play any significant role in the advice that an insurance agent might give to a customer with regard to the options they have for this form of insurance. As a committee, we recommended that for this form of insurance the commission should not be required to be disclosed.

Another very important aspect of this, brought to our attention in evidence, is the attempts by insurance companies to standardise and force down commissions. We believe that the mandatory disclosure of commissions for this type of insurance will hasten that process. What that in effect means is reduced incomes for the insurance agents, which means they will have fewer resources with which to run their businesses. Quite often it is the insurance agent that acts as the intermediary between their client and the insurance company when there is a claim to be made. It is the insurance agent who goes in to bat for their client against the insurance company if there is a dispute with regard to payment of a claim or whatever. If those small operators have reduced incomes because of a move to standardise and push down, drive down, commissions, they have less income and therefore fewer resources available within their businesses. It does reduce their capacity to have the resources available to them to effectively go in to bat for their clients against the insurance companies in the event of a dispute. That was a very important factor in the committee coming to the conclusion that they did: that these forms of commissions should not require disclosure. The government have not accepted that particular recommendation and they will not amend the legislation to bring that recommendation into effect. They have made an on-balance decision; I accept that but I do regret it. *(Time expired)*

**Senator MURRAY (Western Australia)** (11.36 a.m.)—I rise to speak to the Financial Services Reform Bill 2001 and its related bills. These bills arise out of the sixth stage of the Corporate Law Economic Reform Program, or CLERP as it is colloquially known. I have said before that CLERP sounds like a troll's name, and I still think it does. Anyway, CLERP it is. CLERP was conceived by the coalition in March 1997 as a response to the Wallis report and to comprehensively improve Australia's corporate law as part of its drive to promote business and economic development in Australia. That intention has consistently been fully supported by the Australian Labor Party and the Australian Democrats because, on a cross-party basis, all parties did believe that

the Corporations Law needed to be modernised, improved, made more efficient and effective and to contribute more to Australia's competitiveness. We, the Democrats, also believed it needed to take into account social values as well as economic values, and in this whole process we have paid a lot of attention to accountability aspects and aspects of fairness as well as aspects of economics, efficiency and competition.

The CLERP process released discussion papers on six issues. Those were known as 'Accounting standards', 'Fundraising', 'Director's duties and corporate governance', 'Takeovers', 'Electronic commerce' and 'Financial markets and investment products'. The release of those papers was an extremely useful commencement for this long exercise of review and reform. The Senate dealt with some of those issues—accounting standards, fundraising, director's duties and corporate governance—in October 1999. The Democrats played an active role in the passage of the Corporate Law Economic Reform Program Act 1999, and we made some very constructive contributions and amendments.

The fifth issues paper out of CLERP titled 'Electronic commerce' seems to have disappeared into the ether. When the minister responds to the speeches in the second reading debate, perhaps he might be able to refresh my memory on what has happened to CLERP 5—where it has gone and whether it might ever reappear in any other form. I think, if you are going to present a package as your overall approach, we at least ought to be taken out of our misery and know whether it is looming in the background or whether it has disappeared.

Today we are dealing with CLERP 6, which was originally titled 'Financial markets and investment products'. A discussion paper on CLERP 6 was released in March 1999. To give credit where credit is due, Treasury has undertaken an extensive consultation process over the two-year period. In addition to that consultation, the Joint Statutory Committee on Corporations and Securities inquired into the draft Financial Services Reform Bill and reported in August last year. That committee then again inquired into the

bill before us today and reported last Wednesday.

I want to take this opportunity, because none of us were able to speak to the tabling of the report, to comment extremely favourably on the process that was undertaken. To my mind, the position we arrive at today of addressing this bill is at the end of what is the very best of the processes that the parliament can throw up. I mentioned earlier that Treasury have consulted heavily and not defensively in this matter. They have been prepared to make adjustments as a good case has been made.

Secondly, the Joint Statutory Committee on Corporations and Securities chaired by Senator Grant Chapman has, on a cross-party basis, done an extremely thorough review. As Senator Conroy said earlier—and I agree with him—Senator Chapman and the hard-working secretariat are to be complimented on the thoroughness and effort that they put into the process of review and the consequences. In fact, as the committee moved into its latter stages, at times we were hard-pressed to keep up with the minister's rapid and positive response to the recommendations that were being made to us in submissions. As the submissions were made and the committee was hearing them and as the committee was indicating in its questioning and response a positive response to the case at issue, out would come the minister saying, "I agree." That is very helpful to a committee, because it indicates that you can move on and make a recommendation knowing where you are. A round of compliments to everyone: the Treasury, the advisers supporting the minister, the chair and deputy chair of the committee, the secretariat, the members of the various parties on it and, most importantly of all, the people who made submissions.

Before I conclude my congratulations, I would like to record some thanks to my own adviser, Lee Jones. When I was not able to be at hearings he tracked this whole process. I think sometimes we need to remind the chamber just how important our advisers are to us in arriving at informed decisions and in assisting us to progress legislation in this manner. I would urge this government and

any government to ensure that the pay and the conditions and the terms under which both our electorate staff and the staff generally made available to political parties are kept current and competitive to ensure that we keep good people.

I return to the report. The Wallis report had recommended the introduction of a single licensing regime for all financial sales, advice and dealing, and the creation of a consistent and comparable product disclosure framework—a great principle and highly desirable but very difficult in practice to get right. The general aim of the bill is to provide uniform regulation of all financial products, a single licensing framework for financial service providers, minimum standards of conduct for financial service providers dealing with retail clients, uniform disclosure obligations for all financial products provided to retail clients and flexibility for authorisation of market operator and clearing and settlement facilities. The Democrats support the objects of the bill. However, we have seen consistently through the process scope for improving the bill in a few areas and have welcomed government amendments. There are other amendments on the floor from us and from others, and we will deal with those on their merits.

The recent report of the Joint Statutory Committee on Corporations and Securities into the bill made a number of very constructive recommendations, and the Democrats supplementary report made one very important one that I want to refer to in this discussion in relation to what have become termed collectively as 'ethical investments'. Ethical investments are investments that are made taking into account the use to which the money invested will be put and the wider implications of the use of that money. I use the term 'ethical investment' to denote an investment that has been made when the investor of the money has been cognisant of the social, environmental and ethical impacts of the product that the entity has sold to him or her and the way in which that money will be used.

It has been estimated that approximately \$250 million is currently invested in ethical investment funds in Australia. This is ex-

tremely low and is likely to escalate rapidly. Socially responsible investment now accounts for around \$US2.16 trillion—I will repeat that: \$US2.16 trillion—in the United States and \$A7.2 billion in the United Kingdom. This is a massive new market. Industry specialists believe that ethical investment in Australia will follow United States and United Kingdom trends and grow to become a multibillion dollar industry in the next five years. That is not far away. Consumers are investing in ethical investment products not only because of a perceived benefit for the environment and society as a whole but also because they are also viewing an ethical investment as carrying less risk than so-called unscreened investment whilst providing the potential for higher returns.

A KPMG survey conducted in the middle of last year showed that 69 per cent of Australians would consider socially responsible investing if given the opportunity. The Democrats are of the view that the investing public would welcome being given the information necessary to allow them to know when an investment is environmentally, socially and/or ethically responsible. However, the Democrats are alert to recent trends where exaggerated claims are made about financial products, and that is why we think some legislative attention is necessary. There is support in the government for this area of interest. Just over a week ago, on 13 August, the Minister for the Environment and Heritage, Senator Hill, commented in a press release:

In order to assess companies, socially responsible investment fund managers or individual investors need particular information about environmental and social performance but in Australia these details can be difficult to find.

The minister made that comment when he announced the release of a new business guide to socially responsible investment. That sort of initiative is a good start, but the Democrats do believe that we need to do more. We are not attempting to prescribe ethically or socially responsible investments, but we would like to encourage a marketplace which is well informed about which funds include socially responsible considerations in investment decisions.

If when we reach the committee stage the chamber agrees to the amendment that I will be moving, it needs to be made clear that Australia will not be out on a limb relative to the rest of the world. In other words, we will be pursuing best practice. In July of last year an amendment to the UK Pensions Act was enacted in the United Kingdom which requires pension trustees to disclose their policy on socially responsible investment in the statement of investment principles. The law does not require any fund to change its policy, but its clear purpose is to draw attention to their practices and encourage voluntary policy and operational changes.

It would be almost impossible for a person to come up with a neat definition of what is ethical. That issue is something that the opponents of this sort of measure will loudly trumpet in trying to resist what I am proposing. However, it needs to be understood that the person who decides the ethics of the situation and whether they are acceptable is the investor. All that the fund promoters need to do is spell out against set criteria the non-financial considerations that are taken into account when making investment decisions when using the investors' funds.

In the majority report of the corporations and securities committee the argument against mandating this disclosure is that market forces will deliver consumers the most transparent disclosure of socially responsible investments. The suggestion is that making the requirement mandatory is unnecessary. The Democrats would like to actively progress the advent of these types of products. It will be useful to start this process by asking in law that those who do take into account ethical, environmental or social considerations state that unequivocally. In that way, we believe that the interest in the availability of ethical investments will be heightened. Any company making a claim that it considers environmental, social or ethical matters when making an investment should be required to substantiate that claim which conveys a marketing value to the product.

The Democrats have two objectives in relation to ethical investments. The first is to encourage a market for ethical investments and to promote awareness of their availabil-

ity. As I mentioned before, Australia currently has about \$250 million invested in ethical investments. We would like to encourage the growth of that figure. The second objective is to ensure that as the market develops consumers are provided with accurate information about the investments. We do not want a situation to arise where promoters start to misrepresent their investments as ethical investments because of the marketing benefits that that label confers. If anybody thinks it is a fanciful view that there will be boosterism of this sort, please pay attention to the nature of the mass marketing investment schemes which are currently causing over 65,000 Australian investors to experience a swathe of irritation, anxiety and disaster. In many respects, those prospectuses and marketing tools used to promote those investments used boosted information to mislead consumers. In this area we need to avoid that.

Claims about ethical investments should be able to be substantiated. The Australian Securities and Investments Commission should be empowered to develop guidelines that must be complied with where a product disclosure statement makes a claim that environmental, social or ethical considerations are taken into account in selecting, retaining or realising an investment. Some might put to me the question why we are singling out claims about ethical investing for special attention when there are already provisions in the Corporations Act which prohibit misleading and deceptive conduct. This bill focuses on full disclosure and encourages it. If you were to use that argument, you might as well say that you do not need the bill at all, because the Corporations Law already says that you should not mislead and deceive people. That has been found to be insufficient. The primary reason is that the imbalance in the access to information is worrying the government, the opposition and us. In the absence of any other requirements, if a statement states that, yes, the managers of the fund take ethical considerations into account, where can the investor go to try to confirm that? The promoters of the fund should be obliged to show their hand to such an investor and detail against set criteria why they claim that their investment is ethical.

The Democrats are not looking to impose substantial additional costs on fund managers and promoters or to see consumers swamped with pages and pages of useless information, but we are wanting to see consumers provided with sufficient information to judge whether they accept that an investment product is indeed ethical. It should be a judgment by investors, not by promoters. I can recall the passage of the Company Law Review Bill 1997 in June 1998, when the government and others in the business community thought the sky was about to fall in when the Senate passed my amendment which included the requirement to annually report on compliance with environmental regulation. They also thought the sky was going to fall in when we passed the amendment that required disclosure of directors' fees, which I note the government now supports fully.

The sky did not fall in. I understand that, while it took a short time for business to become comfortable with what was required to comply with section 299(1)(f), it now does not present a concern in terms of compliance. It has done what I intended, and that is to focus corporate minds on this issue. The Democrats were years ahead on triple bottom line advocacy but now, too, corporate bodies accept this as mainstream. I am hopeful that I have the same support of the Labor Party on this issue as they courageously gave me on the environmental reporting amendment that I referred to earlier. I appreciate that support, and I note that they also supported us on that amendment we moved in 1998.

The other matter which I should elaborate on is the Democrat second reading amendment that I have circulated and now move. I move:

At the end of the motion, add:

"and that the requirement in the legislation that commissions on risk products be fully disclosed be referred to the Joint Statutory Committee on Corporations and Securities for inquiry and report on or before 1 October 2003".

The amendment relates to disclosure of commissions on risk products. In its current form the bill requires full disclosure of those commissions, and, *prima facie*, the Democrats support disclosure. However, this is

what I had to say on that matter in the corporations and securities committee report:

I can understand the argument for complete exclusion of risk-based products from the commission disclosure regime. If that is a view that is carried so be it. However partial disclosure—as recommended by the committee—seems inappropriate.

If it is accepted that the payment of a commission is significant to a customer then surely full disclosure of the quantum is also important. Presumably the quantum determines the degree to which any agent is likely to be influenced by the existence of the commission.

Given a choice between requiring disclosure and not, the Democrats will almost invariably err on the side of disclosing ...

However, I recognise the point made my Senator Chapman that there is concern. I therefore want the committee to use the period of transition to review this issue and, if necessary, go back to the government of the day and suggest further change before the time has elapsed for the introduction of this. That will allow cooler heads to prevail while this is reconsidered. So I do hope that the Senate will support my second reading amendment to get the committee to look in more depth at this issue and to come back when it is not so pressed by the need to push through the main body of the legislation.

**Senator SHERRY (Tasmania)** (11.56 a.m.)—The Senate is considering a number of bills in regard to financial services reform. Before I go any further, I would like to acknowledge the work of the parliamentary Joint Statutory Committee on Corporations and Securities. I notice that Senator Chapman, the chair of the committee, sat through this debate. I think it is important to acknowledge the work of these committees because it often goes unacknowledged. The examination of the issues that we consider in this place is very important to our understanding of those issues and also is a very important outlet for individuals and various interest groups to express a particular view on legislation and for that to be taken into account to varying degrees by governments of the day.

The bills that we are considering constitute the third tranche of the government's

legislative response to the financial system inquiry report—commonly known as the Wallis inquiry. The inquiry concluded that the complex and fragmented regulatory framework in financial services was creating inefficiencies for financial service providers and confusion for consumers. It recommended the introduction of a single licensing regime for all financial sales advice and dealing, and the creation of a consistent and comparable product disclosure framework. It argued that these changes would generate substantial benefits for both the industry and consumers.

It is claimed that consumers in particular will benefit from improved levels of disclosure of information, improved access to appropriate complaints handling mechanisms for resolving disputes with financial service providers and improvements in the competency and training of persons providing financial services. The legislation deals with the licensing of financial market operators and of clearing and settlement facilities, and introduces a single licensing framework for all financial service providers, replacing the differing licensing and legislative requirements currently imposed on dealers and advisers in securities, futures, banking products, managed funds, superannuation, insurance and other financial products.

The legislation introduces minimum standards of conduct for financial service providers and enhanced disclosure of financial service products when dealing with retail clients. It also introduces other amendments to the Corporations Law, including amendments to the market misconduct provisions and amendments to the discontinuous disclosure provisions and the like. The bill will require a large number of persons who have not previously been regulated under the Corporations Act to be so licensed. Much of the debate surrounding this legislation is focused on who is in and who is out and the degree to which they are in and out. I will speak a bit more about that later.

The theme of this legislation, following on from the Wallis inquiry, is to regulate in this area in respect of the functional product rather than in respect of the institution that is distributing and selling the particular prod-

uct. While supporting this legislation, as part of the Labor opposition, I must say that I am not as enthusiastic an advocate of this approach for a number of reasons. I am certainly not as enthusiastic as the government in terms of the over-the-top sell job that it attempted when it introduced the prudential regulators APRA and ASIC into this country. I think the jury is still out on just how effective APRA and ASIC are as financial regulators.

Certainly at the time there were what I would argue were extravagant claims made about Australia having the world's best practice financial regulatory system, which would be examined and implemented in a similar way around the world. They were certainly some of the comments made at the time by the Treasurer, Mr Costello. The sad fact is, of course, that in recent times there have been significant and justified criticisms made of the way APRA and ASIC have gone about their regulation. Some of the problems in the area have been beyond APRA and ASIC's particular control. I believe they have been underresourced. The level of expertise of some of their staff needs to be improved. They were issues that were imposed on them by the government of the day, but there is still a culture in APRA and ASIC when it comes to the regulation of financial institutions. They are insufficiently vigilant. When given a reasonable level of evidence that there are problems, they are not acting quickly enough. There is evidence of buck passing from one regulator to another. These issues have been well canvassed in recent times, not just in the media but also in the Senate Select Committee on Superannuation and Financial Services report. There are significant problems with financial regulation in this country and part of that problem is the current regulators themselves. Sadly, we had the major collapse of HIH Insurance. There is a royal commission. We have had recently the collapse of a number of superannuation funds—Commercial Nominees to name but one. We have had significant problems with solicitors mortgage funds. Given the evidence that that has occurred, it is difficult, I think, to argue at the present time that we have world's best practice regulation.

To turn to this particular legislation, I want to focus on lawyers and some superannuation products. Before I do that, I think it is sometimes mistakenly claimed that the legislation we are considering—and what it leads to—is the total answer to problems that occur from time to time with financial products in this country. It is not the total answer. The theoretical argument is often advanced in this country that all we need is to have open disclosure of fees, charges and commissions, adequate regulation of the people who deliver those particular products and education of consumers, and then all the problems will be solved. That is the sort of theoretical, economic competitive knowledge model that is advanced by some in this country—some in particular in this government. That is not sufficient to protect consumers in Australia. This has been well highlighted in respect of the recent HIH collapse. There is a need at certain times for governments to intervene—hopefully there are sufficient protective mechanisms in place—to ensure there are appropriate mechanisms to compensate consumers in relation to certain classes of products, though not all products.

In a capitalist system, there will always be a level of risk that an individual has to bear, but when you are faced with the collapse of a major insurance company such as HIH—tens of thousands of Australians were burnt as a result of that collapse and often those consumers did not know they had insurance with HIH, because the company they had insured with had on-placed the insurance with HIH—you need effective mechanisms to compensate consumers should those disasters occur. I note that Australia is, I think, only one of a handful of advanced economies that does not have a compensation fund in respect of insurance collapse. Even the United States, which is often promoted as the sort of nirvana of the free market, has a compensation mechanism when an insurance collapse occurs; Australia does not.

The theoretical model of superannuation advanced recently in the guise of choice is that, effectively, deregulation means that: you remove the corporate nature—the bundling together—of product and you educate

consumers, you disclose all the fees and commissions and she'll be right. That is the theoretical model that has been advanced by this government in respect of superannuation, when the evidence of the effective deregulation of some of the superannuation market has shown, particularly in the United Kingdom and Chile, that consumers—depending on the degree of deregulation—are ripped off, despite disclosure, despite so-called competitive mechanisms, despite so-called adequate regulation.

You need to do more in the event of theft and fraud in respect of superannuation products. There is a compensation mechanism that requires moneys that are lost in those circumstances to be placed into a fund through a cross-levy system on the rest of the industry. That is an important protective mechanism that recognises that superannuation is a retirement product. We cannot in a society such as ours where theft and fraud occurs accept a situation, albeit that it is a very small number of people who suffer in this way, where their money is stolen, because they are going to depend, at least in part, on these savings for their retirement.

As I said earlier, much of the debate around this legislation has focused on who is in and who is out. This is a timely debate because there have been a number of substantial problems with what are known as solicitors mortgage funds in this country. The Senate Select Committee on Superannuation and Financial Services has carried out a case study on the problems that occurred in Tasmania. That report will be released next week and it is pretty good reading. It is good reading in the sense that it well illustrates the major problems that even lawyers from time to time get themselves into. However, the problems in respect of the solicitors mortgage funds have not occurred just in Tasmania. They have occurred in Western Australia, Queensland, New South Wales and South Australia. For some reason that I am yet to identify, they do not seem to have occurred in Victoria.

Solicitors mortgage funds are a financial investment product generally run by a small number of legal firms in each state where a consumer, quite often a customer of the legal

firm, invests money through the funds in mortgages on property. It is usually the first mortgage and can be up to 65 per cent of the valuation of the property. In those circumstances you would not expect a great deal to go wrong. However, the evidence is to the contrary. There have been a significant number of collapses in most Australian states and a significant amount of money—in the hundreds of millions of dollars around the nation—has been lost as a result of investment in these products. I think this highlights why this piece of legislation is important, bearing in mind my caveats on why we need other protective mechanisms.

Unfortunately, when you look at the particular disclosure documents that were made by some—including, I would acknowledge, a small number of legal firms in my home state of Tasmania—you find that, in some cases, the claims that were made were misleading. In most cases it was very difficult to find the commission and the charges and fees, but some of the claims that were made were misleading. Some of these funds have collapsed. There was a mixture of reasons for that—partly incompetence, partly poor valuations, ranging to false valuations, and partly theft and fraud. There were a range of problems. This piece of legislation helps clean up, to a significant extent, these types of products.

When I read some of the evidence before the committee, I went to the submissions from the various legal firms and law societies. The solicitors mortgage fund products had been administered by law societies in their respective states. I was a bit taken aback by the submission from the Law Institute of Victoria on this legislation. I quote from a letter:

... the provisions of the FSRB—that is, the legislation we are dealing with—are considered to be an unwarranted intrusion into the independence of the legal profession. To require solicitors to limit advice according to the conditions imposed by ASIC will severely limit the independence of the profession and impede the provision of independent, impartial advice to clients.

That is a fairly startling and, frankly, arrogant claim to be making in respect of the

regulation of lawyers, solicitors and financial products. To be fair, reading later submissions to the committee, the law societies and some legal firms made it clear that their focused objection to this legislation lay with so-called incidental financial advice in the course of what would be considered normal legal work. That is fair enough, but what concerns the Labor opposition is that it is made very clear that solicitors mortgage funds, which are clearly a financial investment product, should be covered by this legislation.

I want to touch briefly on the issue of superannuation. The superannuation industry—without going into enormous detail—has a number of different types of funds. We have do-it-yourself small superannuation funds, we have what are known as corporate funds, we have master trusts, which in the main retail to the public, and we have what are known as industry funds, multi-employer funds. There is a growing tendency among those funds to attempt to sell in the retail sector and I think it is fair that they be covered by this legislation. However, the concerns raised by the corporate superannuation industry, I believe, are valid. Generally—there may be one or two of which I am not aware—they are not for public offer; they are not retailing to the general public. They are effectively custodians of the superannuation money of employees of the corporation and are also not-for-profit superannuation funds. Overwhelmingly, they are a good superannuation product. There was an argument, at least in the early stages of this legislation, that the trustees would be required to be licensed, along with the other groups that are brought within the ambit coverage of this legislation. The corporate superannuation industry made a submission and gave evidence to the committee hearings, and I am pleased that the concerns they expressed, at least in large part—perhaps not totally—have been taken into account when developing the legislation, the amendments and the regulations.

As my colleague, and our spokesperson, Senator Conroy has indicated, the Labor opposition is broadly supportive of the legislation. I am a little sceptical of some of the

claims that have been made about the regulatory change in this country in the last few years. I note, however, that Mr Hockey has been somewhat more circumspect in the claimed advantages of this legislation compared with the claimed advantages that the Treasurer, Mr Costello, made about the introduction of APRA and ASIC in Australia a few years ago. Perhaps they have learnt from experience that the number of corporate collapses and the problems that APRA and ASIC have experienced do not indicate world's best practice regulatory regimes, or at least that you cannot draw that conclusion at the present time; the jury is still out.

I am a little more circumspect about the alleged 'huge' benefits that will flow to consumers. There will be benefits; it is an advance, but we should not forget that regulators need to be very vigilant about the sale and distribution of financial products in this country. Consumers will, regrettably, still get burnt—hopefully not often. The disclosure of fees and commissions and charges is fine. That is all very well—people are entitled to access that information in a way in which they can draw comparisons, because often some of the disclosures that have occurred up to the present time are not easily readable. We should never forget that the vast majority of consumers in this country are not financially literate, and are unlikely ever to be so. Despite the best will in the world and massive education campaigns—in the case of this government, propaganda campaigns—it is very difficult to educate the mass consumer market to the necessary degree of financial literacy. There will always need to be protective mechanisms and compensation mechanisms in the sorts of areas I have outlined, to maximise protection to consumers. *(Time expired)*

**Senator COONEY (Victoria)** (12.16 p.m.)—I will continue on from where Senator Sherry left off. There are occasions when I think it is a pity we cannot extend the time that is given to a speaker. This is an occasion where we could have listened to Senator Sherry for some extra length of time. Yesterday I mentioned my son-in-law, Joe Ragg, who is a doctor. Senator Chapman promptly brought me to order for dealing with some-

thing that was irrelevant. Let me make it relevant in this way. My son-in-law is learning the trade of surgeon. I was saying to somebody what a terrible length of time my son-in-law had to serve to become a surgeon—something like 15 years. I did not get a sympathetic reply. In fact, the reply was, 'If somebody is going to take a knife to me, he or she would want 15 years of experience at least.' We, as a community, regulate the people who are going to take a knife to somebody else—

**Senator Sherry**—How are they going to get the experience?

**Senator COONEY**—That is a very interesting question, Senator Sherry. We ensure that lawyers and doctors have proper experience and integrity. The same goes for other professions. Electricians and plumbers, at least in the old days, when I was younger, had to serve apprenticeships and be qualified before they went about their practice. They had to be people of integrity. That was expected. In our community we have financial advisers, people who give us advice about how to handle whatever money we may have to invest. In the past there has not been sufficient consciousness of the need to have people with proper training and integrity in this area. It is an area where great damage can be done to people. If an operation goes badly that can lead to dreadful consequences. If a representation before the court goes wrong somebody might end up in gaol—a dreadful thing. If a plumber does not do his or her work properly we get a lack of sanitation and all sorts of problems. If an electrician does not carry out his or her work properly we are without light. We can understand that sort of thing.

However, the myriad of times when people have been given poor financial advice and as a result are left penniless is overlooked. In Victoria, where I come from, the collapse of Pyramid was a disaster, as you well know, Madam Acting Deputy President Knowles. It left a tragic legacy which even now has ramifications, particularly around Geelong. Going back to the 1970s, Cambridge—people here probably cannot remember Cambridge—was another example of a collapsed financial institution. When we

are dealing with money and how it is to be spent, we are dealing not only with the economic ramifications of that, but also with its social ramifications—the fact that people can be left without the proper wherewithal to live. That can lead to tragedy.

Today we see how people who are getting older and who have to go onto the pension are living in a very frugal way. Throughout this community there are people who are living in very poor circumstances. That is a problem. We take steps to do something about that through the pension system. The Labor government, as Senator Sherry was saying, set up superannuation schemes to try to equip people with enough resources to provide them with the means to live comfortably when they got older. As Senator Sherry has so eloquently shown, superannuation is a matter of great moment—not only superannuation, but any vehicle in which people want to invest.

We each follow our own profession. We are in the profession—I call it that advisedly—of politics. We practice that profession, hopefully, with some skill. Everyone practises their skill. It is great to see the tram drivers in Melbourne—locating myself for a moment in my city—or plumbers, or builders, or the members of any other profession going about their profession, devoting their time and attention to it. But that means that you cannot devote the time and attention that you might want to devote to it investing your money or doing with your money what seems appropriate.

I remember years ago a great man called Hubert Hoy, an electrician, thought he would spend money on the Stock Exchange. He went down there for a day, he saw people going about their business and he said, 'Well it is no good me going into that on my own because, without proper advice, I would lose my money.' I think it has become more and more obvious that people who advise us about our money should be properly qualified and should be people of integrity, as I keep saying, and that is what the legislation we are now dealing with has much to do with. The general proposition is that there ought to be a bill such that the licensing, if you like, or the certification of people should

be done from one source and that there should be a scheme set up so that those who give advice are licensed.

Once we get to that point, and everybody agrees that that is the point we should get to, we then come to the question: is this person giving financial advice? Senator Chapman chaired the committee that looked into this, the parliamentary Joint Statutory Committee on Corporations and Securities. It was a very eminent committee, I am sure you would agree, Senator Chapman.

**Senator Chapman**—And it had some very eminent members, Senator Cooney!

**Senator COONEY**—Yes, it had some very eminent members, Senator Chapman. We looked into it and we produced the *Report on the Financial Services Reform Bill 2001*. I think there has been general agreement, but there have been some disagreements along the lines of who should be licensed, who should not be and, in certain cases, what services ought to attract the licensing of people who give them. In our minority report, in the *Report on the Financial Services Reform Bill 2001*, the Labor members of the committee have set out certain points. I think we have put forward excellent propositions, and the shadow minister for financial services and regulation, Senator Conroy, has done much work. But the person I admire greatly in this area is Ms Diane Brown, who is in Senator Conroy's office, because she brings the intellectual capacity and rigour that I admire. The first dot point of the summary says:

The Labor members support the bill.

So there is no problem with that. The next point states:

The Labor members agree with the recommendations of the Chair that the 2-year transitional period be retained and that the Government explore the possibility of additional funding for ASIC to allow it to meet its new responsibilities.

Perhaps I should explain what is happening here. A lot of the precise rules and regulations that are going to be made will be made through ASIC, and there will also be a series of regulations and policy statements made. There is always a concern when matters are dealt with through subordinate legislation. I

do not mean to say that subordinate legislation does not have its place; of course it does. I do not mean to say that subordinate legislation is not effective; of course it is. But there is always a question of what should be done through primary legislation and what should be done by secondary or subordinate legislation. I think—and this is a comment of mine—that we have to watch carefully to see what regulations and policy statements are brought forward through ASIC, and we have to keep them in check, because, in the end, it is the parliament's responsibility to ensure that legislation serves this country in the way that it should do. The next dot point is illustrative of the problems that arise in this area, and they are necessary problems that must necessarily be resolved. It says:

The Labor members recommend that the Bill be amended so that media organisations regain the certainty currently provided by the Corporations Act exemption.

That dot point is talking about the situation where a financial journalist might be writing an article about an insurance company or a manufacturing business, or whatever, and is giving a general description of how that business is operating. There is then the a question of whether that is financial advice. If a person was writing up his or her story and started to get into difficulties as to whether this came within the law or fell outside of the law then there are some problems. So this dot point suggests that the law be expressed so that the journalist can write without going through that worry and will only be caught by these provisions if in fact he or she gives financial advice with the intent to do so. This becomes an issue for other professions, such as lawyers and accountants. If you are running a commercial case, as a lawyer, then of course there is going to be discussion about commercial matters. But you should not be caught by provisions in this act because you are not giving commercial advice. What you are doing is dealing with a case with commercial ramifications.

I will jump a few dot points because I am running out of time. The next one is:

The Labor members do not agree with the recommendation of the Chair to exclude from the

Bill compulsory third party and workers compensation insurance, nor the recommendation of the Chair to exclude from the disclosure requirements the provisions of a quotation alone for a general insurance product.

What the chairman, Senator Chapman, was saying, as I understand it—he can correct me if I am wrong—was that when you are dealing with financial advice in those areas, there is really not much in the way of decision making. If you want to take out insurance for third-party liability or workers compensation liability or risk liability, then the premiums are going to be pretty much within a range that does not require financial advice. Therefore, since this sort of insurance is very common and is well-known to people, it should not be licensed. We Labor members of the committee said that these people should be licensed because they are giving advice.

**Senator Chapman**—I am not saying that they should not be licensed, just that they should not be required to disclose—

**Senator COONEY**—Thanks for that. Senator Chapman is saying that they should be licensed but that they should not have to disclose what the commission—is that right?

**The ACTING DEPUTY PRESIDENT (Senator McKiernan)**—Interjections are disorderly. Do not encourage conversation.

**Senator COONEY**—It is not disorderly—

**Senator Jacinta Collins**—He is being very helpful.

**The ACTING DEPUTY PRESIDENT**—Order! There are standing orders in this place and it is my job to enforce them and that is all I am doing, irrespective of the number of supporters.

**Senator COONEY**—Of course, Mr Acting Deputy President, but perhaps you might not be enforcing the standing orders as they are written—not that I would suggest that for one minute, but I think that is the proposition being put. However you interpret matters when you are king of the castle, Mr Acting Deputy President, we will of course accept. But I think it was important that I corrected what I had said about Senator Chapman's position and that it should not be allowed to

go off into the ether without being corrected. I hope I have done that.

What has been said is that, with workers compensation, third-party insurance and liability insurance generally, the people giving that advice should be licensed but, as I understand it, there need not be disclosure requirements for the provisions of a quotation. That is what is being said, I think. There is a difference on that between the majority and the Labor minority. The Labor minority says that not only should the person selling this insurance be licensed but that there should be a disclosure requirement for the provision of a quotation for that sort of insurance. The next point I have dealt with already but I will read it out:

The Labor members recommend that the declared professional body provisions be deleted from the Bill. The Labor members are still considering whether an exemption for incidental advice by lawyers and accountants should be restored or the definition of 'financial product advice' be appropriately amended.

There was a difference in the committee about this, and that is what I was talking about when discussing the issue of journalists and what they write. This is the same sort of thing with regard to accountants and lawyers. If you are a lawyer or an accountant incidentally to being a financial adviser, of course you should be licensed and all the provisions of this legislation should apply. But the question is: when are you a financial adviser and when are you acting as a lawyer or accountant, and where do these matters become, as it were, coincidental to your general advice?

The next dot point deals with the issue of not-for-profit superannuation funds. It states: The Labor members agree with the proposal of the Minister to table regulations exempting not-for-profit superannuation funds from the licensing requirements and certain disclosure requirements under the Bill.

This has been dealt with by Senator Sherry, who I think is paramount in this area in this house. The last dot point says:

The Labor members agree with the recommendation of the Chair to review the operation of the Bill.

I want to make the point that the whole area of corporations is an area which will always need reviewing. (*Time expired*)

**Senator FERGUSON (South Australia)** (12.36 p.m.)—I rise to speak to the Financial Services Reform Bill 2001 in the knowledge that it is a bill that has had a pretty long gestation period. It has been around for public consultation now for almost two years. It is a good bill, and it is an even better bill with the amendments that are going to be moved to change the original bill as a result of some excellent work that was done by Senator Chapman's Joint Statutory Committee on Corporations and Securities. That committee has looked into this bill twice and has come up with a number of recommendations, some for the second time. I am very pleased that the government accepted many of the changes that were recommended in the report of the joint committee because they have made this bill a much better bill.

I want to speak on only one issue in this legislation, that is, commissions for agents on non-accumulation or risk products. I suppose it is only fair that I should declare an interest, because for eight years prior to entering this place I worked as a commission agent, tied to the Colonial Mutual company, as it was then, but with a number of general insurance agencies. I would like to place on record that earning a livelihood as a commission agent is a legitimate, respected and honourable profession and an honourable method of earning a living, which some people in this place would suggest that it is not. In all of this dash for clarity and for transparency in everything that takes place, I wonder what the end result of this legislation, as it currently provides, is going to be for the consumer. If commissions have to be disclosed when the end result is affected by any commissions paid, will it also include the amount of money that is paid to someone like Bernie Fraser when he makes ads for industry funds? He has to be paid from somewhere—unless he is doing it on a purely voluntary basis, and if he is I think he should say so. If he is being paid to do those ads, that is going to diminish the returns to the members of those industry funds that he so often recommends on television that everybody should

join because no commissions are paid—that terrible thing, a commission!—to anybody who is supplying a service—a year-long service or a lifelong service in many instances—and earning a commission.

I want to comment briefly on some very poor and ill-advised reporting in the *Financial Review* when it talked about Mr Hockey facing on Monday night strong pressure 'to cave in to the long-running resistance by small life insurance agents' to the disclosure of commissions. Paul Cleary's article in today's paper says:

Mr Hockey also refused to accept a recommendation in favour of exempting life agents from disclosing commissions ...

I was at that meeting; as a matter of fact, I chaired it. The only issue that has ever been at stake for both me and a number of the members of our committee is whether or not commissions should have to be disclosed on a risk product where the payment of a commission has no effect on the end result to the client. I am perfectly aware that commissions should be disclosed on any financial accumulation product when it affects the end result to the client. As a matter of fact, when I worked as an agent for Colonial, even as far back as 1985 in presentations to clients we were obliged to put in the full costs to the client and how that would affect the end result of their accumulation or financial product. Originally it was done on a very small device that just gave a print-out, but further on, in 1987, we were issued with laptop computers, and every time we gave a presentation it had to include the cost to the consumer of all the fees and charges, including commissions, that were taken out by the company. That was from 1987 onwards, and in those days some of the commissions were very high and had an enormous impact on the end result. The best thing that has happened in recent times is that, on those types of products, commissions have been changed so that in the early days it does not have such an impact on the client's investment. That has been a move for the better. For a long time now, there has been concern amongst some companies that any commission that is paid to an agent which affects the return should be disclosed.

That is why it is so wrong when this report talks about the disclosure of the commission of life agents, because in most cases life agents these days are selling products where their commission does affect the end result. The only product they sell where it does not is term life insurance. In fact, regardless of what commission is paid on a term life product, the client in the event of a claim will get exactly the same amount of money regardless of how much commission is involved in that contract. That is why I do not see any necessity for commissions to be disclosed on term life product.

Of course, the other area where commissions will be required to be disclosed is in the area of fire and general insurance. There are many fire and general insurance agents in Australia. I worked principally in country areas and I know of some 15,000 to 25,000 registered agents throughout Australia, many of whom have a general insurance agency as an adjunct to another small business, such as a hardware shop or a general store, that they may be running in a country town. In some small towns in the outlying areas in rural and regional Australia, that is a service that is provided to that community. One of the problems is that in many of these cases these people are only earning a very small amount of money out of their insurance agencies—as I said, it is an adjunct to their normal business—but it does make their business viable and economic to run, sometimes providing a great service to those communities.

Mr Acting Deputy President, you and I would both know that, once the commission on these products has to be disclosed, if past history is any example, the client will say, 'You're earning that much money out of my car or house insurance, are you? How about you drop your commission, take half as much as you would normally take, and you can have the business?' The disclosure of commission on risk product means that these people will have their incomes forced down purely by the disclosure of the amount of commission that has to be disclosed when they are insuring for an event for which, regardless of what commission they are paid, they will get the same end result in the event of a claim. As I said right from the start,

making a living by earning a commission is one of the ways that many people in Australia earn their incomes. To drive these people to give up some of their livelihood because they have to disclose an amount that does not affect the client in any way whatsoever is going to have a detrimental effect on a lot of people and a lot of small businesses throughout Australia.

**Senator Knowles**—They don't have to disclose their overheads, either.

**Senator FERGUSON**—Senator Knowles is right: disclosing a commission does not tell you how much petrol they have to put in their car to service a client and it does not tell you how much their telephone bill is when they are doing business, answering calls and ringing up about claims that might be made. The commission that is paid to a risk insurer is designed to cover all of their costs—and that is not taken into account. Everybody seems to think that that is just salary that goes in the pocket. It does not have the same effect on salaried risk insurers because those on salaries will have their expenses paid in some other way. I am thinking of the enormous number of people out in rural and regional Australia, and in some cases in city areas as well, who have a risk insurance agency purely as an adjunct to their business to help them make their business more viable and one from which they know they can earn a reasonable living. It is for those reasons that I am particularly concerned that the government did not take up the recommendation of the joint committee regarding the insurance commission on risk products.

Debate interrupted.

#### MATTERS OF PUBLIC INTEREST

**Senator McKiernan**—Order! It being 12.45 p.m., I call on matters of public interest.

#### Social Policy

**Senator KNOWLES** (Western Australia) (12.45 p.m.)—Today I would like to talk about the Labor Party's total gross hypocrisy and misrepresentation in relation to what they are telling the Australian community about social policy. Over the last five years, this government has had a job and a half to

do turning this country around to being a fairer country, ensuring that there are job opportunities and that those people who cannot look after themselves are actually cared for by other taxpayers and that pensioners are getting a better deal—the list goes on and on. All we have been confronted with, at an accelerated pace in recent times, is total and utter misrepresentation.

Senators Newman and Vanstone deserve congratulations for what they have done in this area of policy. It has been a very difficult one which has been subjected to continual misrepresentation. Therefore, I would like to go through some of the facts about where we are today. Employment and unemployment are very important issues for so many people. The Labor Party yesterday were talking about unemployment as though it was something about which they had a proud record. They have forgotten that during their 13 years of office they had well over one million people unemployed, which was over 10 per cent of the population without a job. By June this year, that had fallen to 6.9 per cent. The Labor Party cannot trumpet that they are the party of those wanting a job: they simply put them out of jobs. The coalition has created 833,300 new jobs since April 1996. That has ensured that the unemployment rate is well below that left by Labor. Equally, by June this year the numbers receiving unemployment related income support payments had declined by 32 per cent since the time that Labor had one million people unemployed. In terms of taxation for all the other Australians who have to look after those who are unemployed when Labor are in office, the impact of that is a substantial decline.

Equally, in relation to the issue of youth unemployment, the Labor Party have long trumpeted their ability to look after the young people of this country. Their ability to look after the young people of this country was demonstrated over 13 years when they simply put them out of work. Youth unemployment under Labor was at a staggering 21 per cent. That is shocking in anyone's terms, but it is something about which the Labor Party seem very proud. Fortunately, that has dropped to 13 per cent under the coalition

government. That is still too high, but an eight per cent reduction is better than none.

The same applies to work force participation. Employment participation has increased since the mid-nineties under Labor. Seventy-one per cent of working age people are now employed, compared to only 69 per cent in April 1996 when we came to office. Older workers in particular, whom Labor were very keen to throw onto the scrap heap, saying, 'We do not need your expertise anymore, we do not want you in the work force', have benefited to the tune of 150,500 places. Older people between 55 and 59 years old have been getting jobs. So employment growth is now at the stage where 73 per cent of those employed are in full-time employment. As total employment has grown, the proportion of those in part-time employment has increased. Since 1996 when we came to office, 369,600 full-time jobs and 463,700 part-time jobs have been created.

What does that do for families? That is the other important aspect of this. The Labor Party, quite willing to misrepresent facts, have said, quite wrongly, that the gap between rich and poor has widened. If that is so, and if their assertion is correct, why is it that the ABS figures do not substantiate their claim? The rate of jobless families has now dropped, and that is something about which we should all be proud. It is something about which the Labor Party should be congratulating the government, but they cannot bring themselves to do it. In 1991, 8.4 per cent of all couple families with children were jobless. In 1993, this peaked at 10.8 per cent of all couple families with children. That has fallen to 7.5 per cent under the coalition. In 1991, 53 per cent of sole parents were jobless. This increased to 54.8 per cent in 1993. It has fallen back to 48 per cent under the coalition. These are figures that the Labor Party should be congratulating the government on, and yet they refuse to do so. They just continue to go out there and misrepresent the situation. Equally, the number of jobless families with children, after rising through much of the 1990s, fell at the end of the decade. The number of jobless sole parent families has continued to fall.

Real wage increases for low income workers is another area that we should concentrate on. The Labor Party believe that they are the sole repository of all wisdom when it comes to caring for low paid workers. What did they do, other than push them out of work, pushing more and more people onto the unemployment queues, thereby creating greater poverty? They also reduced their real levels of income. The real value of the minimum wage fell under the Labor Party, but it has increased for low income workers under the Howard government.

Between 1992 and 1996, the real value of the minimum wage fell by almost five per cent. Since 1996, under the coalition, it has grown by over eight per cent. The Labor Party pushed it down; the coalition has pushed it up. That is what the coalition has done for low income families and low income workers in comparison with the Labor Party. This represents the fruits of sustained economic growth and a reformed industrial relations system that allows the benefits of productivity gains to flow on to wages—not keeping a brick on people's heads, not forcing their incomes down. Equally, assistance to low income families is important. Payments to all families have risen in the past five years. No-one would believe that if they just listened to Mr Beazley and his band of merry men and women who just go out willingly misrepresenting the truth.

The new tax system has improved the position of low income working families by increasing payments for families and reducing their taxation levels. A single income family with two children has boosted its real income by 15½ per cent between 1995 and 2001. For families using child care, the increase can be even stronger, rising to 22 per cent or more. Income inequality, as I say, is unchanged. The Labor Party will say that the gap between the rich and the poor has just got wider and wider. Some media commentators have the gall to just slavishly repeat the Labor Party claims as if they were true. The gap has not got wider.

Equally, the Labor Party—Senator Evans, in particular—and their acolytes in sections of the media will continue to talk about child-care assistance becoming less afford-

able and less available. Over the 10 years from 1991 to 2001, real Commonwealth expenditure on child care rose by 160 per cent. In 2001 dollars, it grew from \$573 million to \$1,490 million. Child-care cash payments and subsidies—which of course are the major components of Commonwealth child-care expenditure—were substantially simplified and restructured as part of the new tax system. The number of children and families using child care also grew. In 1991, there were 302,000 children from 196,000 families using child care. This year, there are 700,000 children—remember, there used to be 302,000—from 500,000 families. That is not 200,000 families but 500,000 families. Under Labor, growth in child care was unchecked and unsustainable. Most child-care centres were simply put in Labor marginal seats to try and hold their seats. Many of those child-care centres have closed and others have opened, but, once again, the misrepresentation flows on by the Labor Party, in that they only talk about those that have been closed. They never refer to those that have been opened—particularly those that have been opened because there is an area of unmet need. This is not about just slamming child-care centres into a marginal Labor seat to try and hold the seat or win votes but about making sure that child care is available where it is required.

Equally, in education, the number of school students has increased by 105,000 since the coalition government came to office—more than a three per cent growth rate. Between 1996 and 2000, the number of vocational education students increased by a massive 402,000 people—a growth rate of some 30 per cent. There was a continued strong growth in tertiary education, with an increase of over 60,000 additional tertiary students between 1996 and 2000, and that represents a 10 per cent growth. We know, of course, that the Labor Party had absolutely no wish or desire to give people an opportunity to go into trades, into apprenticeships, and the number of apprenticeships just went down and down. The coalition has given young people who do not necessarily want to go on to tertiary education a greater opportunity.

In the few moments that I have left available to me, I want to get on to pension rates, because pension rates is another thing that the Labor Party continually misrepresents. Between 1991 and 1995, under Labor, pension rates simply kept pace with inflation. As I have said in this place so often before, they kept pace with inflation, but retrospectively kept pace with inflation. The pension went along, the CPI figures came out and then the pension was increased to match the CPI figures. Not so under the coalition. Real pension rates are now 4½ per cent higher than they were in 1996. In 1996, the government legislated to ensure that the single pension rate never fell below 25 per cent of the male total average weekly earnings. Good economic management and labour market reform have allowed sustained growth in average earnings since then, and this legislation means pensioners also benefited from this growth. Current rates are \$201 per week for singles and \$335.50 for married couples, and that, as I said, is a real increase of 4½ per cent on the rates when Labor was in office. So when we get the pensioners' federation—the mouthpiece for the Labor Party—talking about how good the Labor Party is in looking after older Australians, it could not be further from the truth. They were duded continually by the Labor Party, with pension rates being increased only after the CPI. We now have them well ahead of the CPI.

The other side of income is interest rates, because many young people have a home mortgage and have to pay out huge home mortgages. When the Labor Party were in office, of course, way back over decades, interest rates got up to 17 per cent and business mortgages were in the 20 per cent range, and today the current home loan interest rate is 6.8 per cent compared with that peak of 17 per cent in 1989-90. This represents a saving to borrowers of \$744 per month on a loan of \$100,000 or \$521 on a loan of \$70,000. That is a clear income windfall for people who have mortgages. It is more money that goes into their pockets and it is more money that they can spend on their children and themselves than Labor has ever been able to deliver to them. I just hope that the Labor Party will see reason and stop

misrepresenting the facts to the electorate.  
(*Time expired*)

**Social Policy  
Job Network**

**Senator JACINTA COLLINS** (Victoria)

(1.00 p.m.)—My contribution today seeks to highlight and reflect on what is now one of the perennial sores of the Howard government—that is, the Job Network program. At this same stage of the last sitting week, I concentrated on the poor contribution of the Minister for Employment, Workplace Relations and Small Business, Tony Abbott, to industrial relations in Australia, but I think it is also timely to reflect on what was his contribution with respect to the Job Network—although currently Minister Brough is the one bearing the weight of those responsibilities.

Whilst I am talking about the Job Network, employment and unemployment, I should also reflect on some of the issues raised just now by Senator Knowles and perhaps add some context to her fairytale. Senators should reflect on the fact that, when Mr Howard was Treasurer when the coalition lost government in 1983, both unemployment and inflation were in double digits. Senator Knowles mentioned inflation, and that is very important. Recent commentators on employment in the last week have made the point that the level of employment in Australia now, with the current state of economic growth, is very poor. The level of employment is very poor, once you take into account the overall state of the economy that this government has acknowledged it was handed by the Labor government. All of the fundamentals that this government has relied upon were put in place in the 13 years of Labor. Another reflection that senators should have in this debate was, for instance, the point that Senator Cherry made in his first speech yesterday: there are four unemployed for every advertised vacancy in Australia.

Let us also look at another common argument by this government, that there has been a growth in real wages. This government never talks about the social wage. Senator Knowles never made mention of the social wage and the contribution that that has made

to the living standards of the working poor. She ran a very interesting argument, which was that the Labor Party puts forward the myth that there is a growing division between the rich and the poor. It is not just the Labor Party; it is not just what she would call the mouthpieces of the Labor Party: in social policy terms, it is very clear that that growing division is occurring. There is no myth.

Senator Cherry raised yesterday the issue of assisting the working poor when, for instance, adjustments are made on the CPI rather than the cost of food. But other elements of the social wage that need to be taken into account are the problems that people are experiencing every day in terms of access to adequate health, education and child care. Senator Knowles cannot argue that the ABS statistics which say that there has been an increase in the number of working families and a growth in the numbers of working poor actually mean that there is no growth in the division between the rich and the poor. A higher number of working poor does not mean that that gulf is being created. Her statistics do not bolster her argument. But let me get back to the issue that I wanted to address today.

Last sitting week, senators debated a private member's bill that I had put forward, a bill that called for the establishment of a Job Network monitoring authority to oversee the monitoring, evaluation and complaint resolution processes within the Job Network program. The government senators who spoke to the bill cried that there was no need for a Job Network monitoring authority. They took the attitude that close enough is good enough. As far as they are concerned, the system is doing it right, it does not need improving, it does not need greater transparency and it does not need more accountability. While the government admit that there are some dubious practices and some petty problems about the place, they say that they are really not much for everyone to worry about. But I ask: how do they know? They do not want to look. They do not want a wide-ranging inquiry into corruption and rorting in the Job Network—unlike for the building industry, which now has a royal commission arising from a flimsy, gossipy

report from the Office of the Employment Advocate.

Let us have a look, though, at the report that the department did produce on the rorts that had been highlighted in budget estimates in relation to the Job Network. I have put a series of questions on notice, following that report, highlighting the inadequacies and seeking further information from the minister and/or the department. Issues that have not been answered in this report are things such as my first question about other emerging practices that have raised concerns during the course of the inquiry, as mentioned in the report in paragraph 38, and the fundamental question which was not addressed of how prevalent such practices are and why the report did not address this issue. The report has gone out of its way to diminish any practices other than those that were highlighted with Leonie Green and Associates. For instance, further to paragraph 5 in the report, have IPA Personnel Pty Ltd or Drake Employment Services Pty Ltd been applying strategies which are, in the words of the report itself, 'inappropriate under ESC2 or which appear to meet the letter but not the spirit of ESC2'? This was not addressed. The question is: if so, why were these not investigated and outlined, as with the Leonie Green and Associates matters?

After the report was tabled, further examples of problems came forward, and in my questions on notice I asked: when did concerns regarding Employment Plus in Whyalla first come to the department's attention? What action was taken? Was Employment Plus applying strategies other than those publicised in the *Adelaide Advertiser* on 6 August this year, regarding claims for people without assistance from Employment Plus—which are, again in the words of the report, 'inappropriate under ESC2 or which appear to meet the letter but not the spirit of ESC2'? There are a number of questions coming forward in relation to perhaps some other practices that are yet to surface. A question has been raised as to whether any of these inappropriate strategies have spread throughout regional South Australia as other agencies seek to compete with this sort of rorting.

Another question which has been highlighted from this report is perhaps a good example of how Minister Abbott, when he was the relevant minister, and certainly Dr Shergold in supporting his minister before estimates, have dealt with these matters. We raised the issue of IPA in estimates, and the practices were cleared as, 'Quite okay.' But when we look at the job-matching policy revisions, it appears to say, 'Actually we're going to rule that sort of thing out now because we have decided that it is wrong.' But this would not be admitted at estimates. There were other matters that would not be admitted by Dr Shergold at estimates—for example, the matter of jobs being created for 15 hours simply so a Job Network provider could receive a payment for putting someone in a job—the phantom job issue.

I recall the estimate hearings, and I encourage any senator to read the transcript, to look at the attempts at justification by the department and to compare them now with what has been admitted in this report. But, again, that only goes half of the way, because the report does not answer many issues. For instance, how many Job Network members have been identified regarding the concerns raised with job splitting? How will job splitting be defined? How will we deal with the definition of whether someone has tried to split a job to maximise their commercial advantage? How many Job Network members have been claiming job-matching outcome fees for filling vacancies in their own offices? Perhaps this is a more fundamental question: what was the process for the development of the job-matching policy revisions? And far more broadly, because job matching is not the only issue of concern by a long shot: what policy settings, code of conduct clauses and ESC2 conditions are to be reviewed as a result of this inquiry?

Apart from the job-matching policy revisions and the announced Productivity Commission inquiry—which is very limited with respect to how, in the immediate sense, we can rectify these problems—there is little else by way of response from this government to the very clear and obvious rorting that is occurring within the Job Network. For instance, when the phantom job story first

broke in budget estimates in June, I called for an investigation. I wanted to know if the allegations were true with regard to Leonie Green and Associates and how far the suspect practices went. I raised the names of other businesses; however, these have been swept away quickly and quietly from any in-depth departmental investigation. We still do not know how prevalent these practices are.

It is a strange attitude for government senators to exhibit. One of the original guiding principles in establishing the Job Network was to address the structural weaknesses and inefficiencies inherent in employment services arrangements. It is interesting to see how quickly the government have become tired of reform, even when obvious structural problems are pointed out to them. The Job Network monitoring authority that was proposed would go a long way to addressing structural weaknesses in the Job Network program. This is because a monitoring authority is not about dealing only with suspect practices that crop up here and there around the network; rather, it is about getting to some root causes of hidden processes and lack of accountability. It is about ongoing and transparent evaluation—something that in many policy areas this government is keen to avoid. But there are consequences, and the ongoing stories of rorts and rip-offs are going to continue until the government deal with these things in a more appropriate policy framework.

In recent months we have learned a lot about the operations of the Job Network. However, most of this knowledge has come not from the Department of Employment, Workplace Relations and Small Business or from the minister, but rather from the media as it trumpets the latest scandal and problem with the network. One journalist went as far as to produce a lexicon of the various rorts and bad practices that could be found in the Job Network. Some of these words did not exist prior to the establishment of the Job Network. These words came into being because there are in the network structural weaknesses and many instances for people to abuse the system. We had the well-known practices of the phantom jobs, serial placements and job splitting, which I have already

raised. There were some of the older problems of creaming and parking, which Senator Mackay and others have dealt with for quite a number of years now. But the new phrase that I found somewhat amusing, and this one relates to the Whyalla example, was the hijacking. We can now hijack jobs in the free market of trying to buy and sell job placements.

On my count, \$115,000 in wrongful payments has been paid back by Job Network providers of late. But who knows what else is out there and who knows even what else has been paid to date? That is perhaps another question I should add to my questions on notice. It may tell us how many other examples the minister or the department have succeeded in quickly moving under the mat. But the department simply does not want to look at many of these.

Unfortunately, much of the mess of the Job Network program was caused by the former minister for employment, Minister Abbott, who allowed his ideology to override commonsense in several areas of the network, and the department, in seeking to protect their minister, have developed an attitude of conceal, avoid, pretend, avoid, until it is obvious that they have to do something. In the long term I do not think that does protect their minister, and I think it is a very bad slight on Minister Abbott's career that these rorts continue to surface. I think the blame should be sheeted directly home to him.

Now that the minister has moved on to bigger and better things, Minister Brough has been left to clean up this mess. But he appears to be having trouble just being briefed by his department about suspect practices in the Job Network, let alone trying to find substantial solutions to these issues. The *Canberra Times* editorial of 26 July put it succinctly with the opening line, 'The Job Network has lurched from one—(*Time expired*).

#### Scientists: Lobbying of Parliamentarians

**Senator HARRADINE (Tasmania)** (1.15 p.m.)—I rise today to speak on a matter of public interest. There have been a number of scientists around Parliament House in the last couple of days who have given us the benefit of their knowledge and research and

have been lobbying members of parliament. I want to talk about the matter of lobbying of parliamentarians by scientists. I have enormous respect for the work of the vast majority of scientists. Every day we benefit from the outcomes of their endeavours. We should not forget the real definition of the scientific method used by science, as stated in the Academic Press *Dictionary of Science and Technology*:

Scientific method is an organised approach to problem solving that includes collecting data, formulating a hypothesis and testing it objectively, interpreting results and stating conclusions that can later be evaluated independently by others.

The application of the scientific method is used by scientists to arrive at the truth. Generally, their work is very systematic. They employ experimentation to facilitate the independent verification of scientific observations and to arrive at their conclusions. They employ many experimental techniques—such as statistical tests of significance and double blind trials—designed to minimise the influence of individual bias in research. So I was rather surprised to learn of the methods that the Federation of Australian Scientific and Technological Societies used yesterday to assist scientists in their communications with parliamentarians. Some lobbyists go about their work in a very professional way. They might say they apply similar systematic and rigorous methods as do scientists. By and large, they are a reputable group. We all know who they are, and there is no need to mention them by name. But whom did the organisation decide to pick to tutor the scientists in how to approach lobbyists? None other than the spokesman for the porn industry.

**Senator Boswell**—Oh, no!

**Senator HARRADINE**—Yes, the spokesman of the porn industry, Robbie Swan, or should I say Caroline Sweetly, whichever alias he goes by. A number of the scientists were not very happy with that particular decision of their organisation. The fact of the matter is that the porn industry relies on utilising the big lie technique, threats of blackmail against politicians and deceitful behaviour governing terms. An ex-

ample of the latter is the use by the porn industry of the title 'Non-violent erotica' to describe X-rated videos. The nature of those videos was considered by the Joint Select Committee on Video Material in its inquiry into the classification guidelines for films and videotapes. That committee received evidence from social scientists which showed that the bulk of X-rated videos engender a 'sexually calloused and manipulative orientation towards women' and 'mediates in the mind of the habitual viewer a perception of women in general as being highly promiscuous and available'—hardly non-violent erotica. Mrs Danna Vale from the House of Representatives said that there should be health warnings on X-rated videos and mentioned that children who view them can be sexually traumatised, can turn into dysfunctional adults and sometimes habitual sexual offenders for the rest of their lives. Robbie Swan of the sex industry—the porn merchants' spokesman—said that instead of health warnings, sex movies should carry the recommendation that, 'This video could save your marriage, could improve your sex life and could improve your state of mind.' That is the big lie, as is the use of the behavioural governing term.

It is not only a problem for the porn industry. My concern also is that the use of behavioural governing terms in some of the scientific areas these days is questionable—for example, the regular use of the term 'therapeutic cloning'. We have heard that time and time again. Therapeutic cloning is a term that is used by some of the science technologists who are wanting to clone human embryos for the purposes of experimenting on them, or deriving stem cells from them, to their destruction. They call that therapeutic cloning. That is not therapeutic cloning. The highest body in Australia, the Australian Health Ethics Committee, has stated quite categorically that that is not therapeutic cloning. I think it is important on a day like today to put paid to this false concept of therapeutic cloning. On 15 December 2000, the chair of the Australian Health Ethics Committee, which is a statutory body, in a letter tabled in the Senate on 7 February 2001, said:

In Appendix 1 to the invitation from the NHMRC to State and Territory Health Authorities, the term "therapeutic cloning" was used mistakenly in summarising AHEC's policy.

The origin of this mis-statement follows: In the Ethical Guidelines, AHEC reaffirmed and applied the well-accepted distinction between (a) therapeutic research and (b) non-therapeutic research. Therapeutic interventions are interventions directed towards the wellbeing of the individual embryo involved and non-therapeutic interventions are interventions that are not directed towards the benefit of the individual embryo but rather towards improving scientific knowledge or technical application.

... . . . .

The Ethical Guidelines, and in particular the section on research on embryos (section 6) and the list of prohibited/unacceptable practices (section 11), rely upon and apply this distinction between therapeutic and non-therapeutic research. The more-recently-coined term 'therapeutic cloning' collapses both (a) the distinction between therapeutic and non-therapeutic research on embryos and (b) the distinction between destructive and non-destructive experimentation on embryos. The creation of embryos specifically for research purposes, experimentation on those embryos and their subsequent destruction, etc. all fall under this term. It was because of the lack of transparency of the term 'therapeutic cloning', because the term concealed rather than revealed these ethically-significant differences, that AHEC rejected its use. AHEC said that, in the matter of cloning and related technologies, the fundamental distinction was between the production by cloning of whole human entities (such as human embryos) and the production by cloning of the component parts of those entities (such as cells, DNA, etc). AHEC held that, whereas the latter has been an accepted part of medical and scientific research for over fifty years, the former should take place only in exceptional circumstances .

So it is clear that the term 'therapeutic' relates to the subject—that is, to the embryo—if it is of benefit to the embryo or not. Clearly, the use by some of these science technologists who want to do therapeutic cloning is quite contrary to the official description of that term promulgated by the Australian Health Ethics Committee, which is a statutory committee of the National Health and Medical Research Council. So when anybody hears the phrase 'therapeutic cloning' ask them what they mean. Very often, if this is propaganda by those who are

wanting to do cloning for experimentation on the resultant embryo to its destruction, if it comes from that source, it means something quite different from what the Australian Health Ethics Committee says ought to be the term's use. It is a behavioural governing term. That is of concern for a number of areas of endeavour in Australia, not least the area of endeavour that we are in—politics and government. We must always be clear on the terms that we use: that they are not just behavioural governing terms but describe precisely the nature of the being. Therapeutic cloning which results in the destruction of the human embryo clearly is not very therapeutic for that embryo. That of course was the gist of the Australian Health Ethics Committee's view.

Similarly, there are other areas where some medical scientists are talking about eliminating disease. Very often that turns out to be not eliminating or curing the disease but eliminating the bearer of the disease, the unborn bearer of the disease. But, coming back to the choice of lobbyist by the Federation of Australian Scientific and Technological Societies to tell scientists how to go about lobbying parliamentarians, I have to say that, if that is the way they go, I will have to take with a grain of salt what FASTS say to us if they follow the big lie technique of the porn industry.

#### Newsagents

**Senator GIBBS (Queensland)** (1.30 p.m.)—I rise today to speak on a very important matter relating to newsagents. Recent as well as past events have landed thousands of newsagent owners across the country in a very concerning predicament which I would like to bring to the attention of the Senate. Newsagents undoubtedly perform and provide a vital service in our community. Whilst this is true regardless of whether you live in the country or the city, the products and services newsagents provide are particularly important in rural and regional centres. Newsagents are nevertheless a commercial operation, but in so many respects we have come to depend on newsagents in a way that is somewhat similar to the need we have of many government services and support. Newsagents are not just vendors of newspa-

pers and magazines, although this in itself is an important provision for most of us. Newsagents are often also drycleaning agents, stationers, convenience stores, bookshops, community event promoters and, of course, substitute post offices selling stamps and envelopes, et cetera, particularly where Australia Post is not close by.

With particular reference to my last point, as we witness the disgraceful situation of post office closures unfolding it is clear just how important newsagents around this country truly are. Newsagents do not just represent product and service providers to local communities; they are a fundamental component of the local economy as well. Newsagents are a generator of income and wealth for the local community but, more importantly, they are job creators, giving locals, often young people in particular, stable employment opportunities with which to afford a decent standard of living for themselves and their families. One might find it rather dubious to argue the importance of newsagents to a local community in such a way, but the evidence to support my claim is irrefutable. Like post offices and banks, newsagents are part of a town's pride. When you take away these essential providers of products and services—when you take away a community's local bank or post office or newsagent—you are effectively taking away an element of its pride, not to mention the economic consequences of such an outcome. A newsagent might employ only one, two or 10 employees in each locality, but consider that in terms of a national employment figure and you get a major source of employment and job creation in this country, the loss of which would be devastating both for individual towns and the nation as a whole.

I dare say that most of us have visited a newsagent in the last week, and many undoubtedly have some kind of personal relationship with the staff who work there. In light of this, it is worth while taking the time to consider how we would feel if our local newsagent were forced to close because the business was no longer viable. This is not some frivolous argument but an issue that now faces thousands of newsagents around Australia. It is a problem that is having a

detrimental impact on my local newsagent and, I am sure, on those of other senators present. I am referring, of course, to the impact of deregulation and the conditions brought about by the national competition policy which newsagents such as my local one are having to endure.

**Senator Boswell**—Who brought it in? Good old Labor Party!

**Senator GIBBS**—Just let me finish, Senator, so that I can get to the point here. The process of deregulation in this country has been a difficult process for many industries. It is a process that has brought many benefits to the community, but there can be no doubt as to the hardship it has placed many small businesses and their employees under. Newsagents are operating in an industry that is constantly facing new challenges. In addition to the impact of deregulation on newsagents, we should not forget the numerous other factors that are making a newsagent's survival that little more difficult. They include: a threat to the ongoing viability of home delivery services; a reduction in the number of newspapers and increased concentration of ownership of Australian newspapers; increased circulation of free suburban, regional and ethnic newspapers; the detrimental impact of the GST on commission revenue; increased competitive pressure from new forms of media, including Internet and pay TV; and changes to the availability of newspapers and magazines, which are now readily available in convenience stores, supermarkets and service stations.

However, a new and equally pertinent issue is now facing the industry. The problem relates to the inability of newsagents to collectively negotiate terms with their suppliers under the Trade Practices Act. I should point out that this prohibition applies not only to newsagents but also to a number of industries dominated by small players. Under the current regime, the Trade Practices Act prohibits collective negotiation and secondary boycotts unless authorisations are granted by the Australian Competition and Consumer Commission. The problem is, however, that the process of gaining an authorisation is expensive, confined by time limitations and

must be for a specific purpose. It goes without saying that such a process is extremely lengthy and arduous. In addition, the application carries a significant fee and an authorisation will not be granted if the matter is in relation to margins and/or territories.

These arrangements have inevitably contributed to a grossly inequitable situation whereby small business interests, particularly those of newsagents, are being restricted from effective negotiation with strong and much more powerful suppliers on a collective basis. This obvious disparity is clearly hampering small business operators due to the inherent, weighty commercial disadvantage and is ultimately leading to a major decline in their performance.

The reality faced within the industry is that newsagents, which are owner operated small businesses, are being forced to accept less favourable terms with their suppliers. This means small mum and dad style business operations are having to try to negotiate viable terms on their own with major corporate suppliers—without any help from a representative body, such as the Queensland Newsagents Federation, and without a collective bargaining position. This predicament is obviously precarious and is inevitably forcing newsagents, who have been left out in the cold, to accept less favourable terms that may ultimately lead to their demise.

Given my previous comments on the contribution which newsagents make to the economy, there should be no illusions as to the economic devastation that such a demise would have—not only on the lives of newsagent operators but on the state of the economy as well. Luckily, newsagents out there around the country are putting up a fight. They do not want to close any more than we would want them to, but some of the tactics that suppliers are using against newsagent operators are nevertheless mean and tough and could send many to the wall.

One ongoing example raised with me personally by my local newsagent in Queensland involved a major newspaper publisher using very heavy-handed tactics to gain better product positioning in the shop at great expense to individual newsagents. Unfortunately, when newsagent operators question

this proposal, given the considerable financial burden, they are threatened with a substantial cut to their commissions. Of course, there are undoubtedly many more examples just like this one which thousands of newsagents right around the country are having to accept. Unfortunately, either because they are too afraid to raise the matter publicly for fear of reprisal or due to a lack of understanding with regard to their rights, so many newsagent operators are agreeing to unfair terms with their suppliers.

The obvious solution would be to give newsagents the same collective bargaining rights which other industries are entitled to. It hardly seems fair and equitable that newsagents are not entitled to be represented on a collective scale while major corporate retailers such as supermarkets, service stations and franchises are entitled to negotiate agreements and arrangements with their suppliers as a group. It is worth while noting also that a similar situation has evolved in other countries, such as the USA and the United Kingdom. The disparity in negotiation powers for many small businesses has had significant economic and social consequences in local communities, and the governments there are now taking steps to address the issue. However, it seems that newsagents and other small business groups are not being granted the same level of sympathy or even consideration of the matter by the federal government here in Australia.

The Queensland Newsagents Federation has endeavoured on numerous occasions to bring this matter to the attention of the government over a long period, but to this day it has largely fallen on deaf ears. Over the course of this year, the QNF has written three letters to the Minister for Financial Services and Regulation, Mr Hockey, and a letter to the Prime Minister, Mr Howard. Responses to these letters have been either non-existent or unsatisfactory, and it is clear that this issue has the potential to become an important election issue. As noted in the *Australian Financial Review* on 20 July this year:

Newsagents are always a force to be reckoned with in Australian politics. They are an iconic small business delivering a service to millions of Australians, so they tend to attract public support.

They are widely distributed across all federal electorates—including the marginal electorates that decide the outcome of each contest.

In conclusion, the request that newsagents like my local one have asked for does not seem to be an overly complex one. As I see it, they are simply asking for fairer treatment under the law and, in particular, the basic and fundamental right to collective bargaining and negotiation. The government undoubtedly have an ideological opposition to any type of collective bargaining, but their policy on newsagents is nothing short of mean and tricky. Newsagents are not powerful interest groups; they are not even unions. We are talking about small businesses that are operated by mums and dads in our local towns and suburbs. They are a vital part of the economic and social fabric in our society and are asking for nothing more than other businesses in industries like supermarkets and service stations—all powerful rivals of newsagents—are entitled to and expect.

Newsagents are being left without a voice and without much power. They do not deserve the treatment they are currently being subjected to, and they should be entitled to voice their concerns collectively. I ask the Howard government to finally address these concerns, and I will continue to push for better and fairer outcomes for newsagents until such time as this matter is resolved.

#### Volunteering

**Senator BARTLETT (Queensland)** (1.44 p.m.)—I would like to speak briefly on the important topic of volunteering and the role that volunteers play in keeping the fabric of the Australian community together. I will start by paying tribute to a particular group of volunteers whom I met with last night who were telephone counsellors with Lifeline. Most Australians would be aware of the work that Lifeline does in a whole range of areas. One of its best-known areas of activity is having people available at the other end of the phone for people in immediate crisis, people who are in desperate need of somebody to talk to. What may not be known by many Australians is that a vast chunk of that telephone counselling work is done by volunteers, who sacrifice an enormous amount of time just in being trained to be able to per-

form such an important task and then, of course, in being there on the other end of the telephone to provide assistance, counselling and support.

It is important to give extra recognition to the role of such volunteers as these, not just with nice words passing on thanks to people—although that, of course, is important—but through recognition of the incredibly valuable role that such people as these play. Sometimes the value of the work of volunteers is calculated by putting a dollar value per hour on the amount of time that people work and then saying that that is a contribution in dollar value to the community. That is a valid approach which, whenever that is done, highlights that voluntary work contributes billions to the Australian community and to the Australian economy. It clearly highlights that, without the contribution of volunteers—if that work were to be withdrawn—the economic and social impacts would be immense.

It is important to value even more strongly than that the role of people such as these telephone counsellors, because you can also look at the value in terms of the benefit provided each time they save a life, prevent family breakdown or a crisis from developing into a long-term chronic problem. That saves enormous amounts, some of them not able to be measured in dollars and cents, in terms of benefit to the community. Really, the work that volunteers such as these are doing is sending a message that they believe that every person is important, every person has value and every person should be assisted to contribute as fully as possible to the Australian community and to realise their full potential. In many ways, providing simple but crucial services such as telephone counselling is sending that message, making that statement and working in support of maximising the contribution that everybody can make to the community. Again, that highlights that the value of the contribution of volunteers rests on much more than just putting a dollar value on the hours that they work. In many ways, it is a stronger statement than is made by all of us who do community work for a wage, because people who are doing it voluntarily are giving a stronger

signal that they believe that it is important to contribute to make society a better place and to assist others to improve their role in the community.

The concept of maximising the opportunity for people to participate to their full potential is something that in many ways was a thread running through the discussion and community debate in relation to welfare reform over the past 12 to 18 months. Part of the focus of the McClure report that was brought down earlier this year was to look at ways to maximise people's opportunities and ability to participate. Unfortunately, we have seen a heavy overreliance on the part of the government on the principle of mutual obligation and putting extra obligations and extra burdens on job seekers, the unemployed people in the community—rather than giving extra emphasis where it quite clearly is required, to providing extra encouragement and assistance to people. That is much broader than just providing individual assistance directly from government services to individual people, such as the unemployed: it is also recognising the value of, and providing the incentives and the structural support for, volunteers and community organisations, more broadly, in their work of assisting others in the community to maximise their full potential.

In making that point, I would like to move on to the broader issue of the role of unemployed people themselves as volunteers and the contribution that they make, which is not only often not valued but also directly undermined by the excessive reliance on mutual obligation that we have seen in recent times. Without the efforts of the three million Australians who volunteer each year, community organisations would be in crisis, governments could not fund the gaps, and social services and the economy would collapse. Yet it is an irony that up to 50 per cent of all volunteers are people who are, at the same time, seeking paid work and would be seen as unemployed and in many ways not productive members of the community. But of course these volunteers are not unemployed; they are just unpaid.

The approach through the International Year of Volunteers needs to more clearly

recognise their massive contribution and to specifically recognise the massive contribution which unemployed people make to the unpaid work force. A key objective of the International Year of Volunteers is working to break down stereotypes and build constructive images, and it presents an opportunity to publicly acknowledge the efforts of job seekers, of unemployed people, who are dogged by their own unique stereotypes. The evidence suggests that employers are influenced by the negative images portrayed by some in the community—including, unfortunately, some ministers in this government. Seven out of 10 jobs are taken by people already in the work force, and only one job in 10 goes to a long-term unemployed person. Who would want to risk hiring a 'dole bludger', a 'job snob' or a 'welfare cheat', as they are so readily portrayed to be by some in this government, when there are plenty of applicants who have so-called proved themselves by being in the paid work force—thus ignoring the way many volunteers who are unpaid prove themselves in that area of work?

Job seekers' voluntary work is not properly recognised. Publicly available information indicates that unemployed people contribute as much as 900 million unpaid work hours each year. If you value that at just \$15 an hour, that indicates a contribution of \$13½ billion to the community and to the economy, which well and truly outstrips the amount paid in Newstart payments of around \$8 billion each year. Yet unfortunately, for many years now, successive statements by a range of politicians have vilified and stigmatised all unemployed people. As a result, some public opinion regards unemployed people as undeserving of support which costs money to provide. I think that principle is demonstrated by the growing gap in the level of adequate assistance provided to unemployed people—something that the Democrats have been trying to highlight in recent weeks—and the growing degree of poverty that is occurring as a consequence of these growing inadequacies in the social welfare system.

As far as back as 1992, a survey by Volunteering SA revealed that some Australians

were unsure of the difference between voluntary work and community service orders imposed on offenders by criminal courts. Punitive schemes such as Work for the Dole, enforced 'volunteering' and one-sided mutual obligation have further blurred the public perception of volunteering by unemployed people. Job seekers who take up voluntary work often receive little or no government assistance with transport costs and few organisations are able to fully reimburse volunteers' fares. In my own state of Queensland we have the unfortunate situation—and I think a unique situation in Australia—where job seekers are not granted transport concessions. All other state governments provide unemployed people with public transport concessions, but in Queensland job seekers pay full fares on buses, ferries and trains. That not only makes it harder and more expensive for job seekers when using public transport to look for work, but it also makes it more expensive for them as volunteers when using public transport to get around and provide assistance to the community. Travel costs can add up quite quickly and, when you are receiving levels of payment that are already well below the poverty line, having extra transportation costs put on top of that obviously makes it much more difficult, whether job hunting or contributing as a volunteer. In addition, much of the unpaid work of job seekers is performed in areas such as child care, aged care, state schools, community organisations—many areas that have suffered government funding cuts and staff reductions—and the voluntary work in many cases is plugging those gaps.

I would like to make special mention of an organisation that is based in my own state of Queensland, the Unemployed Persons Advocacy organisation. It is a genuine non-government organisation that seeks to highlight the contribution and the value of unemployed people, both in the work that they perform as volunteers and in the extra contribution they are able to make; and it also highlights some of the many barriers they have to being able to get back into the paid work force. This organisation maintains its impartiality and independence by not seeking funding from governments, yet it continues to make extensive efforts to seek recognition

for unemployed people—and I think it would be desirable if there were more attention given to the work of organisations such as Unemployed Persons Advocacy in highlighting the reality of life for unemployed people and for volunteers.

It is worth noting a quote from the Prime Minister, Mr Howard, made in May last year, in Brisbane, when he was acknowledging the efforts of the previous Queensland Liberal Party President. Mr Howard said, 'It's never an easy job; it's a thankless job as an unpaid volunteer.' Being the President of the Liberal Party in Queensland these days certainly would be a thankless job. But I think that statement also notes that, in many cases, being an unpaid volunteer in a range of activities is a thankless job, and it is appropriate particularly to acknowledge that extra difficulties do exist with the voluntary work that is provided by job seekers and unemployed people.

It is important to give extra value to the work of volunteers. In many cases, a lot of focus is put on the entitlements and wage rates of parliamentarians such as ourselves, and I think it is much more difficult to defend our allowances and entitlements if there is inadequate support and assistance being provided to others in the community who perform valuable work. The Democrats urge a much more serious consideration of the proposals and suggestions put forward to provide greater recognition of the unpaid voluntary work force who are job seekers. Some of those small measures would provide these people with extra support and assistance to maximise their potential as individuals; those measures would also help to acknowledge the great contribution they make more broadly to society, the community and the economy.

#### QUESTIONS WITHOUT NOTICE

##### Aged Care: Rally in Melbourne

**Senator CHRIS EVANS** (2.00 p.m.)—My question is directed to Senator Vanstone, representing the Minister for Aged Care. I understand she is again not here yet. Here she is.

**The PRESIDENT**—Senator Evans, your question?

**Senator CHRIS EVANS**—We might have to pursue this question of breaching the minister. Is the minister aware that a rally of families and aged care nurses today in Melbourne called on the government to fix the aged care crisis? Doesn't this rally just add to the chorus of voices now calling for change in aged care, with residents and families, nurses, providers and doctors all identifying problems in your system? Does the government dismiss the genuine concerns raised by the families of nursing home residents and nurses at today's rally, or will the Minister for Aged Care finally admit to the problems in aged care, which include a shortage of qualified staff, the underfunding of care and a severe shortage of aged care beds?

**Senator VANSTONE**—I thank Senator Evans for the question. Senator, I am unaware of the rally that you are talking about. I am not sure whether you said it was held in Melbourne today or yesterday. I do not accept the proposition that you put in your question that there is a crisis. What I do know about aged care is that we have a much better situation now than when we first came to government.

**Senator Chris Evans**—What is the proof for that?

**Senator VANSTONE**—Madam President, the senator has asked a question. I am trying to answer it; I am about 20 seconds into it and he has got other questions. The proof for that is the tremendous job that has been done in the provision of places. I have canvassed in this place on numerous occasions that when we left office the benchmark of how many beds per thousand should be available was not being met by your government and has significantly improved under this government. I will give you one piece of credit, Senator: I do understand that in a small way the previous government tried to develop some packages that would allow elderly people who would prefer to live in their home but could not really look after themselves without any extra assistance to do so. We have taken that program, which was very small under your government, and have had the opportunity to expand it, and older Australians have really taken to it. It was a good idea and I assume that it has sup-

port on all sides. If you provide elderly Australians with a few extra services, quite often they can stay in their homes a lot longer.

I come to the point that you make about the supply of good quality staff for nursing homes, which is of course an important issue. But it is not an issue which is entirely—in fact, not centrally—the responsibility of the Commonwealth government. Nursing is very much a state government matter. I think the aged care industry is in the same position as a number of health care sectors. They have to face a national shortage of qualified staff. Aged care employers do have greater flexibility to deal with the work force issues as a consequence of changes that this government has made. The industry does need to take advantage of those opportunities. I do understand, as well, that a nurse returners consultancy is being undertaken, which will seek to identify the number of nurses who have left nursing and why qualified nurses are working in professions other than nursing and to develop some strategies to in particular encourage nurses to return to the aged care sector because, while there might be a nursing shortage overall, there is a particular one in aged care. Mrs Bishop has introduced the Minister for Aged Care awards for excellence, which recognise and reward the pursuit of a culture of professional excellence in the aged care industry—and I think that it is very important to recognise the work that can be done. There are some other points that could be made, but generally, as I say, I do not accept your assertion that there is a crisis. The aged care sector is in much better condition now than it was in when we came to government. There is a problem with the supply of nurses to aged care but it is not one you can blame this government for.

**Senator CHRIS EVANS**—Madam President, I ask a supplementary question. I thank the minister for her answer. The minister starts by saying that there is not a crisis and then describes some of the symptoms and blames them on the former Labor administration. Isn't it a fact that the Howard government's reforms of 1997—your reforms which you said were going to fix the aged care system—have failed to ensure older

Australians receive proper care? Weren't the recent reports on the Templestowe Private Nursing Home, where residents were left in substandard care for at least a year while your system allegedly monitored the care, yet another example of how the Howard government's system has failed to protect residents? Won't you admit that those failures occur, and why won't you seek to address that? Why do you say that everybody else bar you is wrong, that there is no aged care crisis? Providers, nurses, residents and families all say that there is a problem, but you are continually in denial. Why won't you admit it and thereby start to address it?

**Senator VANSTONE**—Senator, I hope, before the week is out, to assist you with focusing your mind on who is in denial in some areas. It might be enlightening for you but we will come to that another day. You raise the issue of Templestowe. I remind you of the appalling record your government had in keeping any standards at all in the aged care area. You had an appalling record.

**Senator Chris Evans**—You keep saying it; it is not true.

**Senator VANSTONE**—I thank you for at least recognising that just because you say something does not mean it is true, because that is certainly true in your case and that of your colleagues. We have introduced a system which ensures much greater protection, and of course when you have the appropriate checks you will find problems. So we intend to do.

#### Health: Public System

**Senator KNOWLES** (2.07 p.m.)—My question is to the Leader of the Government in the Senate, Senator Hill. Will the minister please inform the Senate how the Howard government's responsible management of the economy has allowed it to invest record amounts of funding for public hospitals? Is the minister also aware of any disgraceful, politically motivated and dishonest claims that have been made that emergency patients are being turned away from public hospitals in my home state of Western Australia? Can the minister inform the Senate of the truth of this disgraceful matter?

**Senator HILL**—This government is proud of the fact that it has contributed record funding to public hospitals in Australia—some \$31.7 billion. Not only have we made record funding available to public health in this country but we have taken pressure off the private health system which, as we all recall, was in a parlous state when Labor went out of government. The flow of people out of private health care at that time was a national disgrace.

As I said, over the life of the current Australian health care agreement, Commonwealth funding for the public health system will total \$31.7 billion. This is an increase of 28 per cent in real terms on the last agreement negotiated by Labor in 1993. It is good news for the states and it is good news for Australian families. For example, in Western Australia, Commonwealth grants for hospitals this year will increase by 10 per cent to a total of \$644 million. Remember that when we came into government Labor had left us with a \$10 billion budget deficit. In the last five years \$80 billion of debt has been run up. We have demonstrated that we have been able to balance the books and, at the same time, invest more in critically important public services such as health and hospitals.

The reality is that health services for Australians have been given a high priority by the Howard government. But Labor, of course, still wants to run a grubby scare campaign because it is easier to do that than to develop alternative policies. Yesterday, the Leader of the Opposition, Mr Beazley, said that a member of his family had been denied emergency treatment at a public hospital in Perth and was forced to go to a private hospital. That was not true. The hospital said that it was not true and the AMA said that it was not true.

*Honourable senators interjecting—*

**The PRESIDENT**—Order! Senators in the chamber are shouting. They know they are behaving in a disorderly fashion. There is an appropriate time to debate the minister's answer.

**Senator HILL**—In order to attempt to illustrate what Mr Beazley said was the poor

state of public health, he invented this story about his family.

*Opposition senators interjecting—*

**The PRESIDENT**—Order!

**Senator HILL**—When he was caught out, what did he say? He said that he did not say it in public; he said that he had said it to caucus. So he misled the caucus and he was not trying to mislead the public. But what he forgot was that he has spokespersons who go out and brief on the caucus. Senator Sue West and Senator George Campbell go out and brief the story to the public. Furthermore, Mr Beazley had his spokesperson, who is Jenny Macklin, go on the Graham Richardson show. What did she say? 'When Kim told us that story today in caucus everyone gasped because they really don't imagine that people will be turned away from emergency.' They were not turned away; it was invented. It was a grubby political trick. Furthermore, when he said he did not say it in public, he forgot the fact that he did say it at a public meeting at Merimbula last month. Untruths are a poor alternative to the development of good quality policy.

**Senator Cook**—You are lying.

**The PRESIDENT**—Order! Senator Cook, withdraw that remark.

**Senator Cook**—Out of deference to you, Madam President, I will withdraw the word 'lying', although he is lying.

**The PRESIDENT**—Senator Cook, withdraw that allegation.

**Senator Cook**—I will withdraw the word 'lying', although he is lying.

**The PRESIDENT**—Order! Senator Cook.

**Senator Cook**—I withdraw the word 'lying'.

**The PRESIDENT**—Thank you.

**Senator HILL**—It is hard to understand the sensitivity. It seems that Labor say that it is okay for them to have been misled but that they do not believe the public should be misled.

*Opposition senators interjecting—*

**The PRESIDENT**—Order! If Labor senators want to debate this matter, there is

an appropriate time to do so. Shouting consistently is disorderly.

**Senator HILL**—This is important, because this man aspires to be the alternative Prime Minister of this country.

**Senator Cook**—And you have lied to us.

**Senator HILL**—He cannot tell the truth to his caucus and he cannot tell the truth to the public.

**The PRESIDENT**—Senator Hill, resume your seat.

**Senator Cook**—Madam President, I rise on a point of order. If someone lies in this chamber, can we say that they are lying?

**The PRESIDENT**—You know the rules, you know the circumstances and you also know the appropriate time to deal with these issues. There is no point of order.

**Senator HILL**—Perhaps Senator West and Senator George Campbell will make a public explanation after this debate to bring the truth to the public in this instance. The point is that the Leader of the Opposition lied to the public. *(Time expired)*

*Honourable senators interjecting—*

**The PRESIDENT**—The Senate will come to order and we will proceed with question time.

**Senator KNOWLES**—Madam President, I ask a supplementary question. I ask the Leader of the Government in the Senate: will he please provide further details to the Senate and to the Australian people to reassure them that such a disgraceful, dishonest claim about the state of public hospital emergency rooms in Western Australia is not true?

**Senator HILL**—I use this supplementary question to respond to Senator Cook. Mr Kim Beazley at his doorstep said today:

... this is the first time I've said anything about this publicly ...

Not that it is not the truth; he said that it is the first time he has said anything about it publicly. That in itself was untrue. So the whole story about his daughter was a fabrication. His claim that he had never said it publicly was a fabrication. He does not deserve the office of Leader of the Opposition

and he certainly does not deserve to be considered as an alternative Prime Minister.

#### **Motor Vehicle Industry: Free Trade Agreement**

**Senator SCHACHT** (2.15 p.m.)—My question is to Senator Minchin, the Minister for Industry, Science and Resources. Can the minister confirm that modelling work commissioned by his own government indicates that Mr Howard's proposed free trade agreement with the United States would lead to (1) a reduction in both overall output and domestic market share for the Australian motor vehicle industry, (2) an expansion of nearly 50 per cent in Australian imports of US motor vehicles and (3) trade diversion from our trading partner Japan to the United States of nearly \$350 million? In view of this, will the government come clean with the Australian car industry on the impact of an FTA before Mr Howard makes his visit to the United States of America?

**Senator MINCHIN**—It is a bit rich for the Labor opposition now to come crawling out of a hole and pretend to be the great champions of the Australian car industry, having been the ones that were totally opposed to the removal of the most insidious tax that this industry operated under, Labor's wholesale sales tax, under which the car industry paid one-quarter of the federal indirect tax paid in this country. We are the ones who removed that, despite the opposition from these clowns opposite. So it is a bit late for them to come now and pretend to be the champions of the Australian car industry. They have no credibility on that. The car industry has performed outstandingly under our government. We are great champions of this industry and under us their export performance has been stunning as well as their domestic performance, their record in sales.

When it comes to the free trade agreement, which is being handled by Mark Vaile, the Minister for Trade, we will take a very hard-headed approach. We have said in principle that it is in the long-term interests of this nation to reach a free trade agreement with the United States, but we are at the very early stage of that process. Obviously, there would have to be very detailed and hard-headed negotiations in relation to any par-

ticular aspects of that proposed agreement that would have industry impacts in Australia. One of the things that I, as industry minister, would be most concerned about would be to ensure that there were no adverse impacts for the Australian automotive industry. It is a fact that, in relation to any proposed free trade agreement with the United States, we have to look very carefully at the 15 per cent tariff that this industry needs for the next five years, and I will certainly be right at the forefront of ensuring that any such agreement does not impact adversely on the great Australian car industry.

**Senator SCHACHT**—Madam President, I ask a supplementary question. Minister, you did not answer the question whether you can confirm that there has been modelling work done in your own department about the impact on the car industry. In particular, as part of that modelling work or as a result of the modelling work that has now been completed, have you consulted with Toyota, Mitsubishi and General Motors Holden about the results of this modelling work?

**Senator MINCHIN**—I cannot confirm that. I have not had discussions with them about that modelling. I have had discussions with those companies about the potential consequences of a free trade agreement with the United States. As I say, while in principle we strongly support the prospect of such an agreement, naturally we would have to take very careful consideration of the impacts on Australian industry and, as far as I am concerned, we will not agree to anything that would be damaging to the Australian automobile industry. It is critical. Having done so much on our part to build up a great Australian industry, a great export industry for this country, we are not going to do anything to damage it.

#### Economy: Policies

**Senator CRANE** (2.19 p.m.)—My question is to the Assistant Treasurer. Will the minister inform the Senate of the benefits delivered to the Australian community by the coalition government's responsible management of the economy? Is the minister aware of any alternative policies?

**Senator KEMP**—Thank you to Senator Crane for that very important question. The benefits of responsible economic policy speak for themselves. Since this government came into office the level of interest rates has plummeted, real wages have grown, which is important, taxes have been cut and more than 800,000 new jobs have been created. And, as the Treasurer pointed out today, a consensus of forecasts in the private sector suggest that in 2002 we will be growing faster than Europe, Japan and America. This is an extremely good record. When you contrast this record with the previous government, when we were first elected in 1996 the budget was in deficit to the tune of \$10 billion. This came as a shock to the country and, I might say, as a shock to the backbench of the Labor Party, because Mr Beazley, Senator Cook and others had been running around assuring the country that the budget was in surplus when in fact the budget was in deficit.

Senator Hill in his response to a question today pointed out that this is not the first time that Mr Beazley has misled the public. He was caught out when the Labor Party went into the 1993 election hiding their tax plans. When they got into government they increased corporate taxes, they jacked up the petrol excise and they slugged everyone—man, woman and child—with the increased wholesale sales tax rates. Then Mr Beazley had the gall to stand up in parliament after 1993 and claim that Labor was able to get away with his dishonest plans because the Liberal Party did not ask the right questions. That is why we are pressing Labor every day to provide us with their real plans.

Mr Beazley also claimed that he was the minister who invented competition. Rather like Mr Gore, who said that he invented the Internet, Mr Beazley apparently claimed that he was the man who invented competition. But what he has invented of course are new low standards in public life. What he has done today and what he has done previously is demonstrate a pattern of behaviour which has shown itself to be quite careless of the truth and quite careless of the facts. Take roll-back, for example, which the Labor Party are now apparently prevented from talking about: they have rolled back on roll-

back. I have challenged the Labor Party day after day to stand up after question time and debate roll-back, and every time after question time Senator Cook, Senator Sherry and Senator Conroy run out of the chamber because they have been told under no circumstances are they to stand up and debate roll-back.

**Telecommunications: Industry Development**

**Senator MARK BISHOP** (2.23 p.m.)—My question is to the Minister for Communications, Information Technology and the Arts, Senator Alston. Is the minister aware of the latest telecommunications industry report which was referred to in yesterday's *Age* in an article titled 'Alston the weakest link'. What is the minister's response to the report's findings that he is to blame for the lack of effective competition in the Australian telecommunications industry and, as the report states:

He not only deserves the full blame for the totally flawed deregulation process that has been conceived and implemented by him; on top of that, he failed to stimulate new developments in the market, such as digital TV and datacasting.

**Senator ALSTON**—I did read that. It was not in the comedy pages, but that is probably because it was more in the category of tragedy. It was written by someone who masquerades as a serious commentator—

**Senator Conroy**—Goodbye!

**Senator Faulkner**—Come in spinner!

**Senator ALSTON**—You asked me for my response. You want to know my response? If you really want to know his views—if you think he has got anything serious to say—you can pay \$1,000 or so to find out. If you really think there is any substance to him, you cannot find out unless you pay big money up front. So what you get is a teaser and all sorts of sprays around the world: 'What a shocking performance we've got,' 'Everyone's going broke,' 'Every company will be down the drain,' 'The place is a complete mess,' 'I warned the czar,' and all that sort of stuff.

I think this bloke might have given an interview in which he said something like, 'I warned this minister back in 1995. I got up at

a seminar and I said a whole bunch of things. I told the government the way to go.' Of course, I then wrote to him and said, 'Just one small problem, sport: we weren't in government in 1995, and I organised that seminar and you were nowhere to be seen. In fact, I had not heard of you until a couple of years ago when you tried to make a name for yourself by making these grand, sweeping statements.' And what did I get back from him? I got back a pathetic little email saying, 'You should understand that, although I don't have any formal qualifications, I'm very interested in telecommunications. I take a keen interest in the subject and I'll continue to do so.' So when I read something that just makes a general, sweeping statement about how pathetic competition is in this country, without suggesting what alternative approaches ought to be adopted and what in fact ought to happen or without commenting on whether we were wrong in opening up the market in 1997—because this is a person who claimed that we should have done it earlier, not later—it is rather hard to take it seriously.

**Senator MARK BISHOP**—Madam President, I ask a supplementary question. I must say that I was quite surprised at that response. Is the minister seriously trying to suggest that he has achieved effective competition in the telecommunications industry, success in the deregulation process and stimulation of new developments in the market, such as digital TV and datacasting?

**Senator ALSTON**—It took me a long time to explain to Senator Bishop how slowly digital television is moving around the world. In fact, it is very dependent on interactivity, which has not really emerged to date. There is one country in the world that has digital television of any significance, and that is the UK, where it is a pay TV model. We are talking about terrestrial free to air, so the UK is not any point of comparison for us. The US are, although they cannot make up their mind whether they are HD or—

*Opposition senators interjecting—*

**The PRESIDENT**—Order! There is a series of senators on my left shouting. They are behaving in a disorderly fashion.

**Senator ALSTON**—I suppose what is more important is whether Senator Bishop is really flagging that the opposition are opposed to the competitive regime we introduced in 1997—whether they think that somehow it should have gone further at the time, because I do not ever remember that sort of discussion occurring. I certainly have not had any concerns expressed to me—there have been comments of welcome—about the fact that we are about to introduce another set of pro-competitive initiatives. We introduced some in 1999. I cannot remember whether you supported them. I hope that you will be supporting this round in the next few weeks. *(Time expired)*

**Privacy Commission Guidelines:  
Commonwealth Agencies**

**Senator STOTT DESPOJA** (2.28 p.m.)—My question is addressed to the Minister representing the Attorney-General. Is the minister aware that a recent audit by the Privacy Commissioner revealed that ‘nearly one-third of Commonwealth web sites still fail to meet the baseline requirement of displaying a privacy statement’? This is despite a direction to Commonwealth agencies that they comply with the Privacy Commission guidelines by 1 June last year. Does the minister agree with the comments by the Privacy Commissioner that what is being asked of agencies is not unreasonable or difficult; it is simply a matter of their paying more attention to the privacy implications of their web site than they have? I ask the minister: why are government agencies still not meeting these basic requirements in relation to privacy and what is the government doing to ensure that Commonwealth agencies comply?

**Senator ELLISON**—I am aware of the comments of the Privacy Commissioner in this regard, and the government is somewhat disappointed at those comments in relation to this audit. As more and more information becomes available online and as Australians increasingly deal with government online, it is critical that people using online services are aware of what personal information may be retained and of how it will be used. While I agree that the results of the federal Privacy Commissioner’s audit are disappointing, the

government has purposely set the bar high in this area and agencies are required to meet this standard. This report states that 69 per cent of government agencies display on their web sites a privacy statement, and we want to see that percentage increased.

I have been advised that since the results of the survey were made known to agencies, about two weeks ago, many of those agencies have taken steps to ensure compliance. I understand that the Privacy Commissioner is working with the National Office for the Information Economy to assist those few agencies experiencing problems to achieve full compliance as soon as possible. To back this up, the Privacy Commissioner has also indicated that if this survey were conducted today, he would expect the results to be quite different. The report, I understand, was conducted between May and July this year, and the government is of the view that, since July, there have been great improvements in this area. However, we are still working to ensure that the results are in accordance with our expectations. I have been advised by my colleague Senator Alston that, of the agencies reported in the March 2001 government online survey conducted by NOIE, 97 per cent indicated that they expected to meet all privacy guidelines by December 2001. That is, 97 per cent of those agencies will be meeting what is a stringent requirement in relation to privacy by the end of this year.

We have taken steps, as a government, in relation to privacy, not only in the government sector but also in the private sector, and you have seen that with the draft guidelines being drafted by the Privacy Commissioner. We are taking steps to address concerns in relation to privacy which have been expressed in the community, and this has been across a whole range of activities in the Australian community. This government is totally committed to seeing that government agencies and departments meet those obligations in relation to privacy, and we have been doing work in relation to this. If that report were conducted right now, there would be a different result—a very much more encouraging result.

**Senator STOTT DESPOJA**—Madam President, I ask a supplementary question. I

thank the minister for his answer and thank him for conceding that the government shares the Privacy Commissioner's disappointment. I ask the minister whether he is also aware—and I acknowledge the 69 per cent figure and the government's disappointment with that—that the same audit demonstrated that less than half of the web sites that collect personal information over the Internet actually complied with the requirement that they indicate what the information was being collected for and to whom it would be provided. The minister says that agencies are being encouraged to meet the deadline as soon as possible. Could he explain to the chamber what is 'as soon as possible'? Is it the December date to which he referred? Obviously, that is when the legislation comes into effect. Could he outline any other progress to the chamber?

**Senator ELLISON**—As Senator Stott Despoja indicated, the legislation does come into effect by December this year, and I have indicated that we fully expect there to be compliance to the tune of 97 per cent by that time. That is the figure you need to look at. The report by the Privacy Commissioner indicated a figure that was recorded some months ago. Since then, we have moved on and we have increased the performance of these agencies and departments in relation to privacy.

*Senator McKiernan interjecting*

**Senator ELLISON**—Senator McKiernan does not want to hear this, of course, because it is good news. It is good news and good work being done by the government in relation to privacy—something which he is not concerned about.

#### Goods and Services Tax: Modifications

**Senator MURPHY** (2.34 p.m.)—My question is to the Assistant Treasurer, Senator Kemp. Is the Assistant Treasurer aware that the Minister for Family and Community Services, Senator Vanstone, criticised the government's implementation of the GST on the *Sunday* program last weekend? Was she speaking for the government when she said: There's a limit to how frequently you can adjust and fine tune. You need things to settle down and you can have another go at it.

When is the government planning to have another go at it?

**Senator KEMP**—Is that the best question that can be given to Senator Shayne Murphy? I know that you do not write your own questions, Senator Murphy, but you should go to the questions committee and demand that they lift their game, to be quite frank. It is a pathetic question. This government has brought about massive tax reform to create, among other things, a more competitive tax system. We have lowered the company tax rate. We have had the largest income tax cuts in Australian history. We have abolished a raft of taxes and we have brought in the goods and services tax, which has brought about a major change in the economy to the benefit of Australian families and Australian businesses.

The truth of the matter is that the success of our policy is demonstrated by the attitude of the Australian Labor Party. The Australian Labor Party said a couple of years ago that they had a central policy for the next election called 'roll-back'. They conceded that they were going to keep the new tax system, even though they complained all the way through the Senate debates that this could not be fixed and that it was not a fair system. But, at the end of the day, the Labor Party, in a burst of hypocrisy which beggars belief, have said that they would keep the GST—but then they said that they would roll it back. We have been waiting almost two years for the Labor Party to tell us what roll-back is. The shadow Treasurer, Mr Crean, indicated that it was their central policy as they go towards the next election. We now read that even a Labor frontbencher is fed up with the performances and the whining of Mr Simon Crean. On this side of the chamber we have our suspicions; we think it was probably Senator Conroy who fingered Mr Simon Crean. We say that because Senator Conroy has a bit of a reputation for occasionally speaking the truth.

We had an explanation that roll-back was the central policy and now we understand that the Labor Party are not talking about roll-back. Roll-back has gone off the Labor Party agenda. It shows that the Labor Party, in effect, have accepted the major tax reforms that we have made. Roll-back, appar-

ently, is not the central policy which it was claimed to be. Senator, if you do not like the system that we brought in, you should have a policy to change it, and you have not. The truth of the matter is that you have not got a policy to change it. As the Treasurer said, and I quoted him before, ALP stands for 'Australian lazy party'—a party that, after five years in opposition, find it impossible to define their central policy; that is, roll-back. What is it, how much will it cost and how will it be funded? No-one seems to know. The challenge is there. If Senator Cook cares to drop me a note saying, 'We are going to debate roll-back after question time,' I will stay here and debate it. This is the 20th time, I suspect, that I have put out this challenge and no-one accepts it. (*Time expired*)

**Senator MURPHY**—Madam President, I ask a supplementary question. The minister might like to inform the Senate whether or not the Minister for Family and Community Services, Senator Vanstone, consulted with him before speaking about the government's BAS backflips on the *Sunday* program.

**Senator KEMP**—I would regard Senator Vanstone as a very effective minister. If I may say so, she is a very popular minister out in the wider community. What we have put up is major tax reform. It is tax reform that will benefit Australian business and Australian families. As the Labor Party does not propose to roll it back I would have to say that the Labor Party is effectively endorsing the changes we have made. Senator, the challenge is out. If you do not like the tax system and you want to debate roll-back, I will be the first person in the chamber to do it. The challenge is out to you.

#### Dairy Industry: Deregulation

**Senator HARRIS** (2.39 p.m.)—My question is to Senator Alston, representing the Minister for Agriculture, Fisheries and Forestry. Last Friday, dairy farmers announced an increase of 10c to 15c on their white milk products, while at the same time not guaranteeing any of this price increase being passed to the dairy farmers. As Australian consumers are now starting to see the benefits of national competition policy and dairy deregulation flowing out of their pockets, will the minister commit to ensuring that the

ACCC monitors a fair proportion of this increase being passed on to dairy farmers?

**Senator ALSTON**—On 27 July, the ACCC announced the outcome of a review of its report findings of April 2001 that the profit margins of supermarkets on milk had fallen following dairy deregulation. I presume that Senator Harris's concerns relate to that whole deregulatory approach. In April, the ACCC released a comprehensive report entitled *Impact of farmgate deregulation on the Australian milk industry*. The ACCC report found that farm gate prices for market milk had fallen significantly by an average of 19c per litre across Australia. The report confirmed that the greatest impact of falling farm gate prices had been on farmers in the former quota states. On a more positive note, the report also found that the lower prices had been passed to consumers. For example, supermarket plain milk prices had fallen by an average of 22c per litre, with all milk categories falling by an average of 12c per litre. The report also found that both supermarkets and processors had reduced their profit margins on milk, with supermarket margins on aggregate milk sales decreasing by 19 per cent. This finding was confirmed on 27 July following a subsequent review brought about by pressure from some dairy farmer organisations and processors.

The Dairy Farmers Cooperative has announced that it is seeking a retail price increase for branded and home brand milk of 10c to 15c per litre from 1 September and this move reflects the higher world prices being achieved generally for milk products, along with some reductions in supply due to poor seasonal conditions in South Australia and southern Australia and the impact of deregulation. As a result of the announcement by Woolworths, the government urges processors to share the benefits of any retail price increases with farmers. If the price increases are achieved, it will negate a significant portion of the benefits that have flowed from deregulation to consumers and would be unfortunate. However, as I have already indicated, the change essentially reflects a strengthening world market for dairy products rather than any real transfer of benefits away from the consumer.

**Senator HARRIS**—Madam President, I ask a supplementary question. The minister's answer did not provide any assurance that the ACCC would monitor this new price. In relation to the national competition policy introduced by the Keating government and supported by this government, has the government exaggerated the benefits of national competition policy and subsequent dairy deregulation for both the consumers and the dairy farmers?

**Senator ALSTON**—I think the title of the organisation gives you some indication of where its priorities lie. It is the Australian Competition and Consumer Commission. Its charter requires it to look after the concerns of consumers.

**Senator Robert Ray**—Tell us which one it is.

**Senator ALSTON**—We put them first. I know you put the unions first.

**Senator Robert Ray**—Are you sure about that?

**Senator ALSTON**—Yes, I am very sure about it. I am sure Senator Harris is sure that consumers get very well looked after by the ACCC, often to the chagrin of some in the business sector. The fact remains that they will always examine issues that are brought to their attention. If you regard that as an ongoing monitoring role, then they already have it. It is open, of course, to any organisation to make complaints about the extent to which prices are being passed on. As I have already indicated, there have been very substantial price reductions to the overwhelming benefit of consumers as a result of that package. That package, as you know, was brought about because of pressure from the dairy industry itself, certainly not by the federal government. *(Time expired)*

#### Pharmaceuticals: Pricing

**Senator FORSHAW** (2.45 p.m.)—My question is directed to Senator Vanstone, representing the Minister for Health. When did the Minister for Health become aware that his consumer representative on the Pharmaceutical Benefits Pricing Authority, Mr Geoff Honnor, was also employed as a consultant to the Australian Pharmaceutical Manufacturers Association? What conflict of

interest did the minister, as consumer representative, have when the PBPA negotiated the listing of Celebrex on the pharmaceutical benefits scheme? Why has the government allowed the independence of the authority charged with negotiating prices for pharmaceuticals to be so seriously compromised by the actions of Minister Wooldridge?

**Senator VANSTONE**—I have some advice from Dr Wooldridge in relation to this matter. He has been advised that Mr Honnor, the consumer representative on the Pharmaceutical Benefits Pricing Authority, was engaged on contract for a period of 3½ weeks by the Australian Pharmaceutical Manufacturers Association. Dr Wooldridge understands that the contract, which has now been completed, arose after the last Pharmaceutical Benefits Pricing Authority meeting on 11 July and that the contract had not been offered to Mr Honnor at the time of that meeting. There was, therefore, no potential conflict of interest that he needed to declare at that 11 July meeting.

Dr Wooldridge also says that he rightly expects that Mr Honnor will declare a potential conflict of interest at the next meeting of the authority as required by the conflict of interest guidelines in place. That will be examined in the first instance by the authority members. Dr Wooldridge points out that, as he has indicated before, he expects the highest standards of probity from all advisory bodies within his portfolio. He takes seriously any allegations of conflict of interest and he will take steps to ensure that there are no actual conflicts of interest amongst the membership of all committees within his portfolio. Once he has heard any more on this matter, if there is any action that is required to be taken he will take it.

**Senator FORSHAW**—I ask a supplementary question, Madam President. I thank the minister for that answer. The first part of the original question was: when did the minister become aware of Mr Honnor's employment as a consultant? I do not think the minister provided that answer and I ask you to answer that part of the question. Also, how many meetings of the Pharmaceutical Benefits Pricing Authority has Mr Honnor had to excuse himself from because he was

on the pharmaceutical industry's payroll? Who was representing Australian consumers on the authority when the minister's consumer representative was unable to participate because of conflict of interest?

**Senator VANSTONE**—Senator, the remaining parts of your question—both those which you say were not addressed in the first instance and those you have subsequently added—I will refer to Dr Wooldridge and I will come back to you.

#### Telstra

**Senator TCHEN** (2.48 p.m.)—My question is directed to the Minister for Communications, Information Technology and the Arts, Senator Alston. Minister, has the coalition been totally honest and up-front in its approach to Telstra and other telecommunications issues? Is the minister aware of any alternative approaches and are they similarly honest and up-front?

**Senator ALSTON**—As Senator Tchen well knows, we have certainly made our intentions plain. In the lead-up to the 1996 and 1998 elections, for example, we made it crystal clear what our attitude was in relation to Telstra and ownership issues and we delivered on those commitments. In the lead-up to the next election it is going to be critically important for people to make judgments, not only about what is said but about the credibility of those saying it. That is why I think our record is a very impressive one on that front.

That has always been accompanied by a whole range of consumer protection arrangements. We introduced the customer service guarantee which ensures that people get their phones connected and repaired on time or they get a rebate. There are a number of other legislative protections as well which operate utterly irrespective of ownership. Mr Beazley knows that—just as he knows that back in 1991, when he was the communications minister, he turned Telstra into a GBE and required it to operate commercially. But that does not stop him writing letters to people suggesting that Telstra is a company only interested in profits and that it will ignore all its obligations. They are statutory obligations.

I presume the Labor Party is not about to repeal the universal service obligation, the price cap regime, the untimed local calls regime, the customer service guarantee and the like. Of course it is not. But Mr Beazley is the type of leader who thinks that if he can just slip around issues, mislead people whenever he gets the opportunity and generally confuse and muddy the waters, somehow people will not take much notice. He was out the other day saying that people are not asking him for any detail on his health and education proposals. He thinks that somehow he will skate through. Well, Madam President, he will not. He has form. Let us look at what happened with the Commonwealth Bank, for example. On *Business Sunday* in May 1994, when asked:

Do you have to sell off more of the Commonwealth Bank to cover the \$2 billion hole?

He said:

It wouldn't be our intention to do that.

They are the weasel words that they used in the prospectus after the 1993 election—after it, not before. So as soon as he became the Finance Minister in 1995 he privatised the Commonwealth Bank—the rest of it. It was merely an intention, meaning he would do what he liked in due course.

All this has come home to haunt Mr Beazley in the last 24 hours as a result of what he told caucus privately. What is the point of saying these things? Are you only misleading caucus? Is that his point—that it is okay to lie to your colleagues? Why does Senator West, as one of the spokespersons, go out there and say that a friend drove Mr Beazley's daughter from accident and emergency ward to accident and emergency ward, to accident and emergency ward?

**Opposition senator**—What's this got to do with it?

**Senator ALSTON**—Everything, because it goes to credibility. If Senator West said that, presumably she said it on the basis of authority. Mr Beazley then turns around and says, 'Actually, I never said anything about this in public,' and we have stories all day on ABC radio about 'he never said it in public.' It turns out he did say it in Bega. So what does he say at his doorstep this morning? He

said, 'Well, I didn't say it in the national media. Mind you, I would have no objection to saying it in the national media.' So he twists and turns. It is a classic example of what happens when you do not have the political courage to stand up there and justify your policies but you think you can use these sorts of examples and then skate around the truth. It is a matter of great concern that he dismisses his caucus spokespersons as informal advisers, blames the media for not getting it right, says they were fully briefed and then says they should have—(*Time expired*)

**Senator TCHEH**—Madam President, I ask a supplementary question. I thank the minister for his answer. Can he provide further details of how the government is improving telecommunications services for all Australians?

**Senator ALSTON**—Yes. We are in the process, of course, of implementing a \$163 million package as a result of recommendations in the Besley report, and we are doing that so that we can provide services across the board, whether they are basic services, whether they are mobile phone services or whether they are Internet access. Labor of course opposed everything. A billion dollars worth of social bonus initiatives were opposed by Labor. They have always criticised the NTN—the Networking the Nation trust—and now of course we have this pathetic performance by someone who wants to be leader. Oh what a tangled web we weave! This will haunt him forever: going out there bagging everyone in sight, blaming everyone but himself, trying to think that he can somehow get away with this without anyone ever following it up. That is what will happen to you, whether it is Knowledge Nation or anything else. You thought you could surf in on the GST; then you thought you could surf in on Knowledge Nation. (*Time expired*)

#### Science and Technology Indicators

**Senator GEORGE CAMPBELL** (2.55 p.m.)—My question is for Senator Minchin, Minister for Industry, Science and Resources. Can the minister confirm that the OECD's main science and technology indicators show quite clearly that there was a rapid growth in Australian research and development spending between 1984 and 1995,

both as a share of GDP and in relationship to the OECD spending levels? Don't these figures show an increase from 1.11 per cent of GDP to 1.76 per cent of GDP over that period, an increase of 59 per cent? Can the minister further confirm that relative spending on R&D has been in decline since the Howard government came to office in 1996, and hasn't R&D as a share of GDP fallen by 15 per cent from 1.76 per cent in 1995-96 to 1.49 per cent in 1998-99? Given these facts, isn't it a sham for the minister to continue to assert that the Howard government is doing better than Labor on its commitment to science?

**Senator MINCHIN**—I thought Senator George Campbell was getting up to make a personal explanation for dumping his own leader in it miserably today. He has caused his leader unbelievable strife. Then he tried to cut off his deputy leader. In relation to his question, which is a pretty pathetic attempt to gain some mileage on Science Meets Parliament today, I think it is pretty pathetic because the science community knows that this government has made a huge investment in science under the Backing Australia's Ability program, a \$3 billion additional commitment to science and innovation in this country, made possible by the fact that we have cleaned up the mess left to us by the previous government. We inherited from this lot \$10,000 million a year in bankrupt businesses, and a \$95 billion debt that we had to reduce. That has enabled us to set aside \$3 billion extra over the next five years to invest in science and innovation which would not have been possible unless we had resurrected this economy from the shambles that was left to us.

Senator George Campbell knows as well as I do that, in relation to R&D, this country performs very well internationally in relation to public investment in R&D. We stand up with the best in the OECD. The problem this country has had historically is relatively low levels of business investment in R&D compared to Europe. That is a function of the structure of our economy and the nature of manufacturing in this economy. What we have done under Backing Australia's Ability is do something the Labor Party never did in

its 13 years in office—that is, introduce a 175 per cent tax concession for additional R&D, a substantial commitment to ensuring that business increases its investment in R&D.

We have also introduced, for the first time ever, a cash rebate equivalent to the 125 per cent standard tax concession for R&D for small business—again, something the Labor Party never did. We have committed to an additional five years of investment at \$180 million a year in R&D start grants, something again that is showing where this government is coming from in stimulating business R&D. We have a great record in science and innovation and we are proud of it. What we are seeking from the Labor Party is at least a commitment to endorsing what we have done. They have not yet even done that. We have heard nothing from them: just the ‘noodle nation’; just the ridiculous debacle we had with Barry Jones’s report. No policy whatsoever.

**Senator GEORGE CAMPBELL**—Madam President, I ask a supplementary question. Is the minister aware that the President of the Federation of Australian Scientific and Technological Societies, Professor Peter Cullen, recently stated that Australia has failed to build on our knowledge base and to convert clever Australian ideas into wealth for our country? Can the minister confirm that the professor is correct in his assertion?

**Senator MINCHIN**—In my presence last night Peter Cullen got up at the cocktail party for scientists and warmly thanked the government for its Backing Australia’s Ability and congratulated the government on its substantial investment in science and innovation—\$3 billion extra over the next five years, only made possible by our excellent management of the economy.

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

#### ANSWERS TO QUESTIONS WITHOUT NOTICE

##### Motor Vehicle Industry: Free Trade Agreement

**Senator MINCHIN (South Australia—Minister for Industry, Science and Resources)** (3.00 p.m.)—Senator Schacht

(3.00 p.m.)— Senator Schacht asked me a question today regarding the proposed United States free trade agreement. I have some further information to add to my answer and I seek leave to incorporate that response into *Hansard*.

Leave not granted.

**Senator MINCHIN**—I am quite happy to read my answer into *Hansard*. The answer to the senator’s question is no. Neither my department nor any of the agencies that report to me have done modelling or research into the effects of an Australia and United States free trade agreement on the Australian automotive industry. As I stated earlier today, our government will, as part of any free trade agreement negotiations with the United States, seek to ensure that no section of Australian industry, most particularly the car industry, is worse off as a result of the agreement. In fact, we will be endeavouring to provide greater benefits for each area of Australian industry.

#### Commonwealth Heads of Government Meeting: Zimbabwe

**Senator HILL (South Australia—Minister for the Environment and Heritage)** (3.01 p.m.)—I want to qualify something that I said yesterday in an answer to Senator Faulkner regarding Zimbabwe. I said that Mr Downer will be attending a meeting in Abuja, which was my brief. I now understand that it is not certain that he will be attending. He may be attending that meeting.

#### Telecommunications: Industry Development

**Senator CARR (Victoria)** (3.01 a.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Bishop today relating to competition in the telecommunications industry.

I do so in response to the newspaper reports about this government’s ‘weakest link’. I think we are entitled to ask why it is that Channel 10’s latest contestant is so often being told goodbye. I think we are entitled to ask why it is that the Paris option looks so good for this minister. I think we are entitled to assess his performance and, in view of the

report that recently appeared in regard to this minister, examine his record.

We could look, for instance, at the abortive changes that he tried to bring in regard to cross-media laws. We could look at his record of performance in regard to digital TV. We could look at his vendetta against the ABC. We could see the deliberate way in which he has sought to run down our national broadcaster. We could examine the way in which he has sought to marginalise the SBS. We could look at the way in which he has sought to undermine Radio Australia. We could examine the famous Cox Peninsula fiasco. We could take the view that was taken by the *Australian* that:

In any language, the Howard Government's approach to Radio Australia has been shortsighted, incoherent and irresponsible. Its decision to spend \$9 million in resurrecting Radio Australia, while an overdue remedial step for foreign policy, reflects domestic policy failure and is an embarrassment. No one should feel this more acutely than the Communications Minister Richard Alston.

We could look at his obsession with the privatisation of Telstra, which has seen the entire policy direction of this government in regard to telecommunications centre upon his failed attempt to prop up the share price for Telstra rather than what it ought to be centred on, which is maintaining a good, efficient national telephone system that all Australians can enjoy. We have seen a government that takes the view that it is not appropriate for the Australian government to own a telecommunications company but it is all right for the Singapore government to maintain a telephone company.

This recently published report highlights the way in which this government's communications policy is totally flawed. We have seen in this report the statement by Paul Budde that there is no solution in sight. We had the minister tell us today that this was an attempt by a particular commentator to make a name for himself. He tried to dismiss it in a cavalier way and this is characteristic of the way in which this minister treats his portfolio. We have heard comments that the developments during the first half of 2001 can only be described as disastrous for competition in telecommunications.

This report indicates that this minister does not have a clue about a blueprint for the telecommunications market in Australia. We note in this report that the government is currently back-pedalling. I think we are entitled, when we look at this whole litany of policy failures, to try to understand what is central to this minister's incompetence. The central feature in all of this is his arrogance and his contempt for his responsibilities as a minister in a national government.

We have seen a minister who finds it too difficult to come down to the chamber to vote in important divisions, even when there is a budget bill under consideration. We have seen a minister who is more obsessed with spending time in the gym than he is about bothering to maintain a detailed understanding of a complex policy area. We have seen a minister who is essentially preoccupied with his own narcissism. He is interested in the trappings of office but he is not interested in doing the work. He is not interested in keeping on top of the brief. What he is interested in is acting like a lazy barrister—playing to the gallery, seeking to trivialise, seeking to ridicule, seeking to reduce, as we saw once again today, people's positions and question their motives in making the comments they are making.

This is a minister that we have seen to be a complete failure. It is no wonder that he is the weakest link in this government. He is a minister that has been preoccupied with being a lap-dog for the Prime Minister and a poodle for the media proprietors. He is a minister who is not able to effectively deal with the complex issues of telecommunications because he is not interested in them. *(Time expired)*

**Senator TIERNEY (New South Wales)** (3.07 p.m.)—I have a feeling of *deja vu* in this debate because I was here yesterday when Senator Carr was making a statement relating to higher education. For Senator Carr, the history of higher education seemed to start in 1996; nothing occurred before that. Yesterday I rolled out what the problems were in higher education, created by the Dawkins reform of 1987. In a similar fashion, today I want to roll out what happened under the communications policy of the ALP

from 1991 to 1996. The great tragedy for Australia was that we were on the edge of the information revolution in this country and who was holding the levers at that time but the Labor government under Paul Keating. And who was his minister? Michael Lee, whom I used to call at the time the Rip Van Winkle of communications policy because he was asleep at the wheel when the most vital decisions in communications policy were being made.

The way that 'rational' decision making was made under the last Labor government was basically through caucus backroom deals by Keating, wanting to get his way on satellites or whatever else. There was no logic, there was no structure to the whole thing. And when we were on the cusp of the information age, we had the battle between Keating and Hawke for the leadership. This was a time when there was a rapid movement of ministers in and out of the field of communications. At that time, we had six ministers for communications in 18 months under the Labor government. Under this government, we have had Senator Richard Alston for 5½ years. We have had stability in policy making and a consistent direction as we moved towards a deregulated approach in the communications industry. There was nothing like that under Labor: it was just chaos. At that time, a whole range of decisions was made which could have totally nubbed the roll-out of communications and the information age in this country. It is a miracle that we have done so well, given the poor start in laying down the basic policy in communications that occurred under the previous Labor government.

I would like to go into a few very short examples. One classic related to the A and B licences for pay TV, the satellite bidding process. You might remember that at the time we had Senator Collins, who signed a document that he had not read. There was a major Senate inquiry into the situation where a group, through a collapsing bid process, got control of licences at a very low price. We had a major hearing into that.

At the same time, one of the central issues in communications policy was the ABC. There was a major hearing into the malad-

ministration of the ABC by the Labor government. Senator Carr was on that inquiry—indeed, he was the first speaker. He was so interested in the inquiry that he and his mate Senator Forshaw spent half the time talking through the inquiry. He made some rather unfortunate allegations about some things that Senator Alston had done—allegations that were completely incorrect and were proved incorrect by a witness. Senator Carr was taken to court by Senator Alston and had to pay up for saying some rather foolish things outside the parliament.

So what we had was a rather chaotic picture of communications policy under the last Labor government. It is to the great credit of the Australian communications industry that they did so well, given the poor start under the Labor government. It is total and rank hypocrisy for Senator Carr to get up here today and criticise our minister, who has done such a great job in communications policy over the last six years.

**Senator SCHACHT (South Australia)** (3.11 p.m.)—I rise to support the motion moved by my colleague Senator Carr to take note of the answer given by Minister Alston to the question asked by Senator Bishop about his performance as minister, headlined in the report by the independent communications consultant Paul Budde, who in summarising his report said the following regarding the minister's area of responsibility:

Government telecommunications policy is totally flawed—no solution in sight. Under political and legal pressure, the ACCC has dismally failed the industry. Under the current regime at least two more years of delay are expected. Under the current regime, no-one apart from Optus will survive as a national telecom operator to compete with Telstra. The Labor Party, through its knowledge based nation policy has so far been the only one to show leadership and vision. Both Telstra and the government failed to display any of this.

He then goes on to say elsewhere in his report:

Developments during the first half of 2001 can only be described as disastrous for competition in telecommunications in Australia.

Another quote:

We are currently pedalling backwards.

This is what an independent communications consultant has said about this minister and his policy. When we asked the question today, the answer that the minister gave clearly indicated that he treated seriously Mr Budde's complaints and criticism, because we got a diatribe back about the history—who Mr Budde was, what his previous reports were, how long he had been around, and the fact that the minister on previous occasions has communicated with Mr Budde, pointing out, according to the minister, some of Mr Budde's errors. As the answer went on, it became clear that Mr Budde's report has got under the skin of this minister. We would have expected a competent minister to give a quick, short answer saying, 'Who is Mr Budde? His report is of no concern to the government,' and to sit down. But no, Minister Alston spent the time during both the answer to the question and the answer to the supplementary question bagging the consultant, which proved to us that deep down, in a Freudian way, he admitted that this is actually a problem, that he knows he is under pressure.

Senator Alston is the government's 'weakest link'. Calling him the weakest link, I am, of course, referring to the popular television program of the same name. Some people might not think of it as one of our more intellectual programs, but a popular range of quotes has come into the community from it. This minister is the weakest link among the 30 or so ministers in the government. He is the deputy leader of the Senate—the No. 4 minister in the government—and he is considered to be weaker than Senator Abetz! What a disgrace to be called worse than Senator Abetz, or Senator Ian Macdonald, or Bronwyn Bishop—the kerosene lady—or David Kemp. These are ministers who we from the opposition see day after day bumbling, obfuscating and being incompetent and confused.

**Senator Conroy**—What about Elmer Fudd?

**Senator SCHACHT**—And then, of course, there is Senator Kemp, who cannot answer questions even about his own responsibility of taxation. Yet here we have an in-

dependent report saying that this minister is weaker than all of them.

**Senator Conroy**—What about Missing Minchin, Invisible Minchin?

**The DEPUTY PRESIDENT**—Senator Conroy, will you cease interjecting.

**Senator SCHACHT**—Maybe Senator Minchin is considered more competent because he shuts up and does not say as much. That is the only reason that he does not get a bad comparison. But I have to say this arrogant minister—

**The DEPUTY PRESIDENT**—Senator, please watch your language.

**Senator SCHACHT**—He prides himself on being one of the top people in the Liberal Party and hankers to become leader of the Liberal Party in this chamber, although he is no threat to Senator Hill, no matter how bad Senator Hill's performances are—

**Senator Conroy**—He can't be worse than Jackie Kelly?

**Senator SCHACHT**—Maybe he gets there just ahead of Jackie Kelly, although it is a close run thing. But remember, this is a minister who over the last 5½ years has wrecked ABC funding, wrecked Radio Australia, wrecked the introduction of digital television and wrecked competition policy. In the sale of Telstra, in the first tranche he undersold it and in the second tranche he oversold it. The public lost the value of Telstra in the first sale because of his underselling of the share value. He then took the punters for a ride by overselling it in the second. (*Time expired*)

**Senator EGGLESTON (Western Australia)** (3.16 p.m.)—What a tour of nonsense we have just been taken through by Senator Schacht. Senator Alston is one of the strongest and most effective ministers in this government. He is a minister with an outstanding record, unequalled by anybody in the ALP who has held the post of telecommunications minister or anybody on that side of the house responsible for IT.

Senator Alston, without doubt, is one of the stars of the Howard government. He has brought reform to the telecommunications scene in Australia and produced major bene-

fits not only for people in metropolitan areas but throughout Australia, through improvements in telecommunications in regional areas of Australia. Senator Alston is someone who should be regarded as a great benefactor to the people of Australia in terms of the improvements he has brought in telecommunications. For Senator Schacht to get up today and criticise this great senator, who has created so much change and brought such great improvement to telecommunications, is an absolute farce. We know that Senator Schacht would love to be staying on, hopefully one day to get back into the position of being a telecommunications minister, but, sadly for him, he never will, and nobody at all on the Labor side will ever equal the record of Senator Alston.

Let us have a look at some of the things Senator Alston has done. First of all, he deregulated the telecommunications industry. That brought competition to the telecommunications industry. It has meant a dramatic decrease in the cost of telephone calls around this country and vast improvements in other areas. We have seen not only a decrease in the cost of calls but also improved Internet access for people in regional Australia and improved mobile phone access for them with the introduction of the CDMA network and the provision of mobile phone coverage all the way along Highway 1 on the east coast of Australia—and that will be extended to other areas of Australia as time goes on.

One of Richard Alston's great achievements on behalf of the government, in conjunction with Minister Fahey, was the sale of Telstra. That brought widespread benefit to the Australian community, most obviously in the creation of the \$1.6 billion Natural Heritage Trust, which has done so much to protect and preserve the environment of Australia—not only on the land but also in the waterways, on the coast and in the oceans—and to protect endangered species. That came as a result of an initiative from Senator Alston. That is not a major achievement in the telecommunications industry but it came as a result of selling off Telstra, or part of it.

Senator Schacht referred to the digitilisation of television, which was a very complicated thing to do. Digital television is the

way of the future, and Richard Alston has shepherded Australia into the digital era, while protecting the interests of the existing free-to-air television companies. On 1 January this year we saw the introduction of digital TV. It will bring a new era in television to the people of Australia. It will bring an era which will have interactivity as a spin-off in due course and better access for people in regional areas to health and education programs. It will be seen, along with other achievements of Richard Alston, as a great achievement of that very effective and strong minister.

One of the most important things Richard Alston has overseen is the Networking the Nation program, which has done a great deal to improve telecommunications in regional areas. In particular, one might quote the example of the establishment of rural transaction centres. Over 100 of them have been established, and they have brought banking and Internet access to people in small regional communities. (*Time expired*)

**Senator MARK BISHOP (Western Australia)** (3.21 p.m.)—If we were to go back in time to March 1996, had the Prime Minister of the day allocated the portfolio of communications to you, you could not have asked for a more interesting portfolio area. It covered diverse areas like digital TV, broadcasting policy, datacasting, Internet regulation, telecommunications deregulation and the associated competition principles. It covered some interesting agencies like the ABC, SBS, Australia Post and Telstra, all of them at the cutting edge of development, change, innovation and service delivery. In the portfolio there was enough policy work to make any reformer drool at the prospect of planting his vision on key industries in this country, and yet this minister has failed in nearly every area of policy development and implementation I have just mentioned.

Let us examine a few, one by one—digital TV and datacasting, Internet regulation, telecommunications competition and the ABC. First, let us deal with digital TV and datacasting. It is almost 18 months now since the bill was passed in this place, and the results are clear and on the public record for all to see. We know that there has been expensive

spectrum wasted by excessive grants to free-to-air broadcasters. There is no digital broadcasting in Australia as yet. There are no additional datacasters in Australia. There is boycott of government policy in this area, by both News Corporation and Fairfax. Conversion boxes sold at a retail level number less than 300 after 18 months. The net result is that digital TV and datacasting have both been strangled at birth. In this area, Minister Alston gets a grade F for failure. He is the weakest link, as my colleague said. He gets a grade F because he has failed to listen to industry, failed to respond to advice and failed to have any plan, strategy or vision in the area of datacasting and digital policy.

In the area of Internet regulation, almost 24 months have passed after the first bill was passed in this chamber, and again the results are clear and on the public record for all to examine and see. We know that millions of dollars were spent by this government on futile efforts at prohibition. The results are clear also. There has been no reduction at all in the amount of offensive material available on the Internet, coming into this country from offshore; there has been no reduction in the amount of offshore gambling sites offering product to this country—all because this minister has acted contrary to advice from his own agency, from his own department, from a range of industry experts and from a whole range of interested observers. On each occasion in the content regulation and gambling area, Minister Alston knew better. He had a way to regulate and he had a way to control the Internet, but the net result in both of those areas has been no change. Offensive material and gambling products are still continuously beamed into this country from offshore. All the talk, all the policy change and all the Internet regulation has resulted in no change at all. Again, that is a grade F for failure to Minister Alston in this area of Internet regulation. He has failed to listen to industry, failed to accept any advice from his own department, failed to have any plan in this area, except that of deliberate and wilful ignorance, and failed to list any strategy or vision for this new communications medium.

I next turn to the area referred to by previous speakers—telecommunications and com-

petition policy. Again, after five years of this minister, results are clear. We are heading to an effective duopoly in this industry of Telstra and Cable and Wireless Optus. Growth is rapidly shrinking, mobile markets are dropping, new entrants are failing to get any significant market share and, hence, we have declining levels of competition. As a consequence, wholesale prices are too high. Insufficient growth means low wholesale margins, which means fewer companies operating and less competition. It is mostly caused by Telstra and by ineffective and deficient regulation by the ACCC. Again, they are the two agencies that report in this area to this minister. *(Time expired)*

Question resolved in the affirmative.

#### Dairy Industry: Deregulation

**Senator HARRIS (Queensland)** (3.27 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Communications, Information Technology and the Arts (Senator Alston) to a question without notice asked by Senator Harris today relating to the deregulation of the dairy industry.

It is quite clear from Senator Alston's answer that he has not been informed by the dairy producers in Victoria, New South Wales, Queensland, South Australia and Western Australia. Very clear indications of what has happened within the industry are available. Quoting from a document from the dairy producers association, it is quite clear that in the New South Wales regulated market in 1995, the consumer was paying \$1.10 per litre, with a clearly defined margin for processors and retailers adding 58.5c to the consumer price, and the dairy farmer received 51.5c per litre. In a deregulated market, on 1 December 2000, the consumer was paying \$1.19 per litre, an increase of 9c, processors and retailers added 84c, an increase of 24.5c per litre, and the dairy farmer was 35c per litre down—that is, down 16.5 per cent per litre. So farmers lost 14.1c per litre, the processors and retailers gained 25.1c per litre and the consumer price was up by 9c per litre. This is totally contrary to the information that Senator Alston conveyed to the chamber today. Again, I quote from the dairy producers association:

As the article explains, this is pretty much what is happening now with milk. Once again we've been taken for a ride by the big empty promises of the cheer-squads of neo-liberalism. Case by case they exaggerate and outright lie about the benefits we the consumer will get from these fabulous policies. Why do we continue to believe the nonsense they spout?

We now have less farms, buggered-up families and communities, including a number of suicides ... an environmental disaster waiting to happen in the form of 'battery cows' ...

I have raised this issue before and I believe we now have in Queensland at Kilcoy an application for a 7,000-head dairy. If that is not the introduction of battery cows into this industry, I do not know what is. Speaking of earlier times, Jim Scott pointed out the other day—in fact, he pointed out years in advance of deregulation—that there was a bonus profit that is about to increase for the big businesses who pushed for deregulation in the first place, and now there is the evaporation of the one benefit we were promised to compensate us for all of this, that is, cheaper milk.

I would like to make reference to some of the issues that have been raised directly with me by those in the industry. I would like to have a look at the comparison of the Wilson case, in which the lessee left the industry after spending only 55 days—that was almost two years ago—and got a cheque in the mail for approximately \$180,000, and the Stohl case, in which the lessee defaulted and the owner of that property had to mortgage his mother's home in an attempt to raise money to purchase more cattle. I believe that Senator Alston's answer today was grossly incorrect for the reasons that I have put on the record.

Question resolved in the affirmative.

### NOTICES Presentation

**Senator Bolkus** to move, on the next day of sitting:

That there be laid on the table by the Leader of the Government in the Senate (Senator Hill), no later than immediately after questions without notice on the next day of sitting, the report prepared by the Great Barrier Reef Marine Park Authority on water quality targets in the

catchments feeding into the Great Barrier Reef region.

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

That the time for the presentation of the report of the Employment, Workplace Relations, Small Business and Education Legislation Committee on the provisions of the Workplace Relations Amendment (Prohibition of Compulsory Union Fees) Bill 2001 be extended to 18 September 2001.

**Senator Chris Evans** to move, on the next day of sitting:

That the Senate—

- (a) notes the failure of the Government:
  - (i) to adequately contribute to the funding of public health services, and
  - (ii) to plan for and fund the aged care services needed by our ageing population; and
- (b) calls on the Government to address the problems now evident in Australia's health and aged care systems.

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

That the time for the presentation of the following reports of the Foreign Affairs, Defence and Trade References Committee be extended to 27 September 2001:

- (a) second report on the examination of developments in contemporary Japan and the implications for Australia; and
- (b) the disposal of Defence properties.

**Senator Lees** and **Senator Lundy** to move, on the next day of sitting:

That the Senate—

- (a) notes that the Australian Broadcasting Corporation (ABC) is currently reviewing its television coverage of sport;
- (b) is concerned that the review will result in the cessation of the television broadcast coverage of women's sport, particularly basketball and netball;
- (c) notes:
  - (i) that over the past decade, and probably more, the ABC has been a leader in the broadcast of women's sport, which has provided a significant boost to the development of women's sport in Australia and which provides audiences with program-

ming not provided elsewhere, in keeping with the ABC's Charter that the ABC provide, amongst other programs, 'specialised broadcasting programs',

(ii) that any decision to cancel the television broadcast of women's sport will have a detrimental effect on the sport, particularly on drop out rates amongst adolescent girls, which will reduce the pool of talent available within Australia and therefore the strength and viability of women's netball and basketball, currently well-respected and successful internationally, and

(iii) further the disproportionate disadvantage likely to be felt amongst young women in rural and regional centres, who, because of geographical circumstances, are unable to travel to capital cities to watch live sport,

(d) recognises the strong role models elite women sports athletes are to young women and the positive value this has on young women's self-esteem, health, fitness and general well-being, and that without such television broadcast coverage such positive role models will disappear; and

(e) calls on the ABC Board to agree to the continuation of the television broadcasting of women's sport.

**Senator Conroy** to move, on the next day of sitting:

That the Senate—

(a) notes that banking is the most profitable industry in Australia and that these profits have been caused by increased bank fees, increased bank queues and reduced banking services;

(b) notes, in particular, that:

(i) in the past half year the major banks announced record profits of more than \$5 billion and are headed for profits of more than \$10 billion for the full year, and

(ii) according to the Reserve Bank's recent update *Bank Fees in Australia*, banks earned \$2.1 billion in fees from households in the past 12 months and that in the past 4 years this income has increased by 75 per cent; and

(iii) since 1996 banks have closed 1,505 bank branches; and

(c) calls upon the Government to immediately negotiate a social charter with Australia's banks to ensure that all Australians have access to affordable banking services.

**Senator Hill** to move, on the next day of sitting:

That the following bill be introduced: A Bill for an Act to improve the quality of employment services and rehabilitation programs provided for people with disabilities, and for related purposes. Disability Services Amendment (Improved Quality Assurance) Bill 2001.

## COMMITTEES

### Selection of Bills Committee

#### Report

**Senator CALVERT (Tasmania)** (3.32 p.m.)—I present the 12th report of 2001 of the Selection of Bills Committee.

Ordered that the report be adopted.

**Senator CALVERT**—I also seek leave to have the report incorporated in *Hansard*.

Leave granted.

*The report read as follows—*

### SELECTION OF BILLS COMMITTEE

#### REPORT NO. 12 OF 2001

1. The committee met on 21 August 2001.
2. The committee resolved to recommend—
  - (a) That the provisions of the following bill be *referred* to a committee as follows:

Bill title	Stage at which referred	Legislation Committee	Reporting date
Trade Practices Amendment (Telecommunications Bill 2001 (see appendix 1 for a statement of reasons for referral))	Immediately	Environment, Communications, Information Technology and the Arts	17 September 2001

(b) That the following bills not be referred to a committee:

- Customs Tariff Amendment Bill (No. 5) 2001
- Education, Training and Youth Affairs Legislation Amendment (Application of Criminal Code) Bill 2001
- Financial Services Reform Bill 2001

Financial Services Reform (Consequential Provisions) Bill 2001  
 Corporations (Compensation Arrangements Levies) Bill 2001  
 Corporations (Fees) Amendment Bill 2001  
 Corporations (National Guarantee Fund Levies) Amendment Bill 2001

- New Business Tax System (Thin Capitalisation) Bill 2001
- New Business Tax System (Debt and Equity) Bill 2001
- States Grants (Primary and Secondary Education Assistance) Amendment Bill (No. 2) 2001
- Veterans' Affairs Legislation Amendment (Further Budget 2000 and Other Measures) Bill 2001
- Workplace Relations Amendment (Minimum Entitlements for Victorian Workers) Bill 2001

3. The committee **deferred** consideration of the following bills to the next meeting:

*Bill deferred from meeting of 22 May 2001*

- Aviation Legislation Amendment Bill (No. 2) 2001

*Bills deferred from meeting of 7 August 2001*

- Constitution Alteration (Appropriations for the Ordinary Annual Services of the Government) 2001
- Customs Tariff Amendment Bill (No. 4) 2001
- General Insurance Reform Bill 2001
- Motor Vehicle Standards Amendment Bill 2001
- Superannuation Legislation Amendment (Indexation) Bill 2001
- Taxation Laws Amendment Bill (No. 4) 2001

*Bills deferred from meeting of 21 August 2001*

- Commonwealth Electoral Amendment Bill 2001
- Health and Aged Care Legislation Amendment (Application of Criminal Code) Bill 2001
- State Elections (One Vote, One Value) Bill 2001
- Wool International Amendment Bill 2001  
 (Paul Calvert)

**Chair**  
 22 August 2001

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Appendix 1

**Proposal to refer a bill to a committee**

**Name of bill(s):**  
 Trade Practices Amendment (Telecommunications) Bill 2001

**Reasons for referral/principal issues for consideration**  
 To examine, in particular, the impact of limiting the evidence that can be adduced on appeals to the Australian Competition Tribunal to the evidence that was put before the ACCC

**Possible submissions or evidence from:**  
 Telstra  
 Cable and Wireless Optus  
 Macquarie Corporate Telecommunications  
 Vodafone  
 Australian Competition and Consumer Commission

**Committee to which bill is referred:**  
 Environment, Communications Information Technology and the Arts Legislation Committee

**Possible hearing date:**

**Possible reporting date:** 17 September 2001  
 (signed)  
 Vicki Bourne  
 Whip/Selection of Bills Committee member

**Intelligence Services Committee  
 Meeting**

Motion (by **Senator Calvert**)—by leave—agreed to:  
 That the Joint Select Committee on the Intelligence Services be authorised to hold a private meeting otherwise than in accordance with standing order 33(1) during the sitting of the Senate from 4 pm today.

**LEAVE OF ABSENCE**

Motion (by **Senator O'Brien**)—by leave—agreed to:  
 That leave of absence be granted to Senator Crowley for the period 20-23 August 2001 inclusive on account of absence overseas on parliamentary business.

**COMMITTEES**

**Economics Legislation Committee  
 Extension of Time**

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

That the time for the presentation of the report of the Economics Legislation Committee on annual reports tabled by 30 April 2001 be extended to 19 September 2001.

**Economics References Committee**  
**Extension of Time**

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

That the time for the presentation of the report of the Economics References Committee on the framework for the market supervision of Australia's stock exchanges be extended to 27 August 2001.

**MERRI CREEK VALLEY: PROPOSED FREEWAY**

Motion (by Senator Brown) not agreed to:

That the Senate—

- (a) considers that, as there are viable alternatives to the freeway proposed for the Merri Creek valley in Melbourne between Craigieburn and the Metropolitan Ring Road, the freeway should not be built; and
- (b) supports the National Highway funds being spent instead on these alternatives, each of which is long overdue:
  - (i) improvements to the Hume Highway,
  - (ii) upgrading passenger public transport, and
  - (iii) interstate rail freight infrastructure.

**Senator Brown**—I would like my obvious lone support for the motion recorded.

**GREENPEACE: ARREST OF PROTESTERS IN THE UNITED STATES OF AMERICA**

Motion (by Senator Brown) agreed to:

That the Senate—

- (a) is concerned by the arrest of Australian citizens, Nicholas Clyde and Stuart Lennox, in the United States during the peaceful Greenpeace protest against the 'Star Wars' proposal; and
- (b) calls on the Government to seek their early return to Australia.

**MATTERS OF URGENCY**  
**Mandatory Sentencing**

**The DEPUTY PRESIDENT**—I inform the Senate that the President has received the

following letter, dated 22 August, from Senator Greig:

Dear Madam President

Pursuant to standing order 75, I give notice that today I propose to move:

That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Senate to acknowledge the increasing community opposition to mandatory sentencing and the imminent repeal of such legislation in the Northern Territory, and to urge the Western Australian Government to repeal mandatory sentencing laws.

Yours sincerely

Senator Brian Greig

Is the proposal supported?

*More than the number of senators required by the standing orders having risen in their places—*

**The DEPUTY PRESIDENT**—I understand that informal arrangements have been made to allocate specific times to each of the speakers in today's debate. With the concurrence of the Senate, I shall ask the clerks to set the clock accordingly.

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

That, in the opinion of the Senate, the following is a matter of urgency:

The need for the Senate to acknowledge the increasing community opposition to mandatory sentencing and the imminent repeal of such legislation in the Northern Territory, and to urge the Western Australian Government to repeal mandatory sentencing laws.

There can be little doubt that, in the wake of the very recent Northern Territory election result, we have seen a very strong swing towards those parties opposed to the Northern Territory mandatory sentencing regime and that community opposition to that regime is increasing and welcome. Certainly that was not the only factor in that election, but debate around mandatory sentencing was a significant part of the overall election and one that drew sharp distinction between the Territory's government and opposition. The ruling CLP, a strong advocate of mandatory sentencing, is about to lose power after 26 years in government in spite of its relentless sup-

port for mandatory sentencing and the use of that issue as a political tool and weapon—a weapon that, thankfully, has backfired—in its armoury of campaign strategies. In that context, I do think it is worth the Senate reviewing its position on mandatory sentencing, given that the issue is once again in the spotlight and given that this chamber has previously passed legislation to repeal mandatory sentencing.

After campaigning on what has been seen as an electorally unpopular platform of repealing mandatory sentencing legislation in the Northern Territory, the Northern Territory Labor Party, to its credit, has won strong support for its position. Perhaps Territorians finally came to understand the inherent injustice of such a scheme or perhaps they came to see the fruitless waste of time and money needed to support such an ineffective scheme. Either way, the tide has turned.

The Territory's regime and its sister regime in WA have rightly been brought into domestic and international condemnation. Despite some modifications to the Territory's scheme by the coalition last year, it remains an ineffective solution to juvenile crime because it continues to deny judges and magistrates the discretion they need in deciding appropriate sentencing given the circumstances of a particular crime. Whilst not targeting indigenous crime directly, both regimes operate in states with a high concentration of indigenous people, and therefore the effect of those laws has been to disadvantage indigenous youth and their families.

When the first imprisonments for relatively trivial property offences were first highlighted in Australia they brought significant protests on the streets—mostly protests from what Territorians would call the southern states but also protests on the streets of Alice Springs and Darwin. The wider community in Australia has rightly demanded the repeal of such legislation, as made evident through protests, popular press, radio talk-back, petitions and so on. Indeed, the Senate's own Legal and Constitutional References Committee inquiry found that mandatory sentencing is not appropriate in a modern democracy and does in fact breach international obligations under treaties and con-

ventions. Yet, in spite of that international and domestic condemnation, the federal government has failed to take a reasonable approach to this matter.

The issue was resolved unsatisfactorily, largely with smoke and mirrors, when the Prime Minister formulated a political solution with the then Northern Territory Chief Minister, Mr Shane Stone. As an editorial in the *Australian* noted at that time:

[The changes] merely ameliorate the extent of the regime. It is important that the age of adulthood in the territory is raised to 18 years (from 17). It is important also that all juveniles arrested for minor offences be placed in diversionary programs before a decision is taken whether they are charged. It is important that the diversionary program will be enhanced through an injection of \$5 million in federal funds. It is also important that an Aboriginal interpreter service will be funded, if only to explain the purpose of the law to some transgressors. But the fundamental issue—mandatory sentencing itself—has escaped review.

It seems now, though, that the Northern Territory government has paid the electoral price. One long-time resident of the Territory was quoted recently in the *Australian* as saying:

There was a time when those of us in the Northern Territory didn't mind as being seen as different and dismissive of southerners criticisms of the way we do things—but times have changed. Many of us no longer want to be regarded as red-necks and cowboys.

Whilst federally Labor has taken heart from this poll and has supported the repeal of mandatory sentencing in this chamber, its broader record on mandatory sentencing is not one to be proud of. It was, after all, first introduced by then Premier Dr Carmen Lawrence in my home state of Western Australia. Yet now, as a federal Labor politician, Dr Lawrence and her colleagues are opposed to mandatory sentencing. Sadly, this is in conflict with the state Labor government of my home state, which maintains mandatory sentencing laws and, as recently as yesterday, reiterated its support for them.

There is no question of the popular electoral support for mandatory sentencing in my home state—and probably for all the wrong reasons—yet the state government in WA, and Attorney-General McGinty in particular,

have shown themselves in recent months to have the courage and integrity to take on unpopular issues, particularly with regard to social policy, and to show leadership on them. Sadly, that leadership is nowhere to be found in the hazy and emotive law and order debates that dominate the airwaves and print columns in the popular press.

However, despite having the opportunity, both the federal coalition's and opposition's commitment to overturning this offensive legislation is, at best, half-hearted and the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 2000, cosponsored by Senator Brown and Senator Bolkus and by Mr Andren from the House of Representatives, is now a distant memory. Granted, that bill died in the other place, but attempts by me to continue to promote mandatory sentencing repeal amendments to Territory legislation—something I tried to do in an omnibus bill last year—saw both the government and the opposition collude to withdraw that bill in its entirety rather than even allow debate on my amendment.

But where exactly does the Northern Territory Labor leader Ms Clare Martin really stand on mandatory sentencing? It seems that when mandatory sentencing is repealed there, as it appears that it will be, they will be introducing sentencing legislation that will introduce a small element of judicial discretion, but otherwise the plans sketched out during the campaign appear not much different from the existing system.

So the state of play in the Northern Territory is that currently we have a deal between Prime Minister Howard and the now immediate past Chief Minister Denis Burke. We have a situation where Northern Territory police have the option to use diversionary programs involving juveniles, and the federal government have provided some \$5 million for diversionary programs, including interpreter services. But it does mean that the first offence by an adult would attract a mandatory sentence of 14 days in jail.

There is a clear difference and distinction between the Territory situation and the Western Australian situation. In Western Australia, the system applies to home burglary. If an offender has offended two or more times

previously for the same offence, they are subject to mandatory sentencing. It is argued that somehow, because that is less draconian than the Northern Territory situation, that is acceptable. But as Mr Dennis Egginton, Aboriginal Legal Services Chief Executive Officer, said only yesterday:

WA's laws jailed younger juveniles for longer periods than those in the NT.

If they—

meaning the Northern Territory—

repeal their laws, WA will be the only State in breach of Australia's human rights obligations.

While we are about to see the death of this legislation in the Northern Territory, these laws remain operative in Western Australia.

**Senator COONAN (New South Wales)**

(3.44 p.m.)—Senator Greig's motion today is a bit like the curate's egg: it is good in parts. The operation of mandatory sentencing legislation is undoubtedly difficult and complex. I do not think anyone denies that. There is no doubt that there is a body of community opposition to mandatory sentencing, and I think that needs to be acknowledged. Indeed, it may be growing, as Senator Greig's motion suggests. I am on the record as saying that I do not support mandatory sentencing for the categories of offences that are covered by the present Northern Territory and Western Australian legislation, and I have consistently advocated other more constructive ways to deal with repeat offenders, especially juveniles. The Attorney-General has previously expressed concern and has indicated that the Commonwealth does not support mandatory sentencing but, of course, firmly believes that sentencing is a state and territory matter.

Be that as it may, in speaking against the motion today I would remind the Senate that opposition to mandatory sentencing is not a universal view. While the opposition of the Labor leader in the Northern Territory, Clare Martin, to mandatory sentencing may well have galvanised opposition to mandatory sentencing in the Territory, as some have claimed, in Western Australia a change of government has resulted in no foreshadowed change. Indeed, the Premier of Western Australia, Labor leader Dr Gallop, is on the record as supporting the mandatory sentenc-

ing regime. He did this against the wishes of Mr Beazley all through the mandatory sentencing debate and before he became Premier. Clearly, there is both political and community support for mandatory sentencing in Western Australia. I think we need to acknowledge that.

The question for today's debate then is whether this parliament should lead public opinion in what might be thought of by some as the appropriate direction or whether it is more appropriate for the Commonwealth to recognise that sentencing is a matter for state and territory governments to deal with and that the government is conscious of the problems they face in balancing the need to curb repeat crime and the community's concern to protect young people. That is the balance that has to be struck.

As the Senate would know, the issue of mandatory sentencing has been extensively canvassed by the Senate Legal and Constitutional References Committee in its inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999, and it is currently undertaking an inquiry into the Human Rights (Mandatory Sentencing for Property Offences) Bill 2000 to report in September of this year. The earlier inquiry examined the mandatory sentencing regimes in both the Northern Territory and Western Australia. It was acknowledged by all of the committee members that the apparent safeguards and practical operation of the Western Australian legislation did put it in a different category of severity to the then Northern Territory regime. Following the report, the Northern Territory regime was substantially altered to meet concerns, with the financial assistance of the Commonwealth. Senator Greig mentioned \$5 million committed by the Commonwealth for the juvenile pre-court diversion scheme and a jointly funded Aboriginal interpreter service. I think it is fair to say that a range of diversionary programs has been introduced that has substantially improved the outcome for juvenile offenders, including the definition of 17-year-olds, who were hitherto treated as adults for the purposes of the legislation, as juveniles. I will come back to the considerable achievements of the negotiations with the Northern Terri-

tory in the introduction of these programs if time permits.

But, as I mentioned earlier, the Labor leader in the Northern Territory has indicated her intention to repeal mandatory sentencing if she forms a government. As the possibility of mandatory sentencing being repealed is certainly in prospect—I think we have to acknowledge that—that may leave Western Australia as the only jurisdiction where mandatory sentencing for property offences remains on the statute books; so I intend to concentrate on Western Australia. What does the Western Australian law provide and why does it apparently enjoy community and political support in that state? Put succinctly, the Western Australian mandatory sentencing regime is directed to home invasion or home burglary. They are words that strike terror into most home owners' hearts. In that regard, it differs significantly from the Northern Territory legislation, which covers a wide range of property offences and which could have got, prior to the changes that were made in the Territory, a young person for some quite trivial offence.

The Western Australian legislation provides that an adult, 18 years and over, should receive 12 months jail for a third or subsequent offence and that a young person—that is, 16- and 17-year-olds—should receive 12 months prison or detention or, relevantly for the purposes of today's discussion, an intensive youth supervision order. In other words, in Western Australia the court can have regard to the fact that the rehabilitation of a young offender is facilitated by the participation of the offender's family in a program. It stands to reason, really, that someone's prospect of rehabilitation is much enhanced if the whole family—or at least those who are important adults in the young person's life—are involved.

Sections 98 and 99 of the Young Offenders Act provide that the court may make an intensive youth supervision order with or without a sentence of detention. The President of the Children's Court in Western Australia has decided that the court could use those provisions to release a young person who was a repeat home burglar. In other words, the magistrate or judge was not con-

strained from exercising his or her discretion, which is the relevant point, and taking the individual circumstances of the young person into account.

In 1998, the Young Offenders Act was amended to enable the courts to give credit to juveniles for time spent on remand. There is provision in the Young Offenders Act for referral to a juvenile justice team of a young person alleged to have committed, been charged with or found guilty of various offences including home burglaries. The team may dispose of the matter by, for example, specifying conditions to be complied with by the young person. The Young Offenders Act makes limited provision for the early release of young persons under supervision. In other words, the legislation has been tempered by most of the usual safeguards and options that you would expect in any responsive and flexible criminal justice system dealing with young offenders. In addition, the minister administering the Criminal Code is bound to review the mandatory sentencing legislation after four years from its commencement and submit a report to parliament, and that is expected by 14 November of this year, as I understand the situation.

Having regard to the fact that the mandatory sentencing scheme for juveniles in Western Australia is not mandatory in its operation and that in the Northern Territory there have been significant enhancements to their scheme by means of diversionary programs—and indeed the whole scheme may be repealed—what is left to offend the sensibilities of those who oppose mandatory sentencing? Adults in Western Australia who have broken into a home and committed burglary on three occasions receive a mandatory sentence—the so-called ‘three strikes’ for repeat offenders. The legislation was thought to be necessary and justifiable. The committee was told that Western Australia has the highest rate of home burglary in Australia. In 1993, 11 per cent of homes in Western Australia experienced a burglary or an attempted burglary compared with the overall rate for Australia of 6.8 per cent. I think it is worth going back to the introduction of the Criminal Code Amendment Act, where it was said:

The government shares the community’s concern about the prevalence of home invasion offences and acknowledges the devastating effect which such offences can have on the lives of victims.

At a local level, I believe it is important to respect the views of a democratically elected government giving expression to constituent concerns. I certainly have received communications from people in Western Australia asking how I would feel if my home had been broken into. One person had a break-in on 13 occasions and they asked me how I would like to be cleaning up a house 13 times later. I certainly would not like it, and I certainly do respect the right of the Western Australian government to move at their own pace in making their own laws for sentencing of repeat offenders.

**Senator COONEY (Victoria)** (3.54 p.m.)—This is a very important topic up for discussion today. Senator Greig has, as is often the case, come forward with a matter of some moment. He has moved the proposal:

That, in the opinion of the Senate, the following is a matter of urgency:

The need of the Senate to acknowledge the increasing community opposition to mandatory sentencing and the imminent repeal of such legislation in the Northern Territory and to urge the Western Australian government to repeal mandatory sentencing laws.

He has dealt with that, as has Senator Coonan and, as has been mentioned, as did the Legal and Constitutional References Committee report, on which I think we worked very well.

I think there is some concern in this context—and I understand entirely that Senator Greig does not intend it this way—that we are concentrating only on mandatory sentencing, which is bad for all the reasons that Senator Greig has mentioned and that Senator Coonan has spoken of. But mandatory sentencing is only part of the problem in sentencing generally. It is quite clear that in Australia today more and more people are being put in prison because of the sentencing laws right around the country, and there is, for better or for worse, a law and order campaign going on from state to state. I think they are the sorts of issues that must be faced. So it is not just mandatory sentencing;

if we concentrated only on mandatory sentencing I think that we would be missing the point in many a case.

Senator Coonan spoke of how somebody would feel whose house had been broken into again and again and again. How would somebody feel whose son or daughter was assaulted? How would someone feel whose money was taken from them by some financial dealer? And we were talking about doing something about financial advice only this morning. How would anybody feel when an insult was done to their body, their pocket or their sense of dignity? They would feel very bad about it. But should that be the only consideration we take into account when we are looking at the issue of sentencing? People say, 'Look, why don't we ask the victim what he or she would do in respect of the person who has committed the offence?' But what if on the other hand we asked what the mother and father of the person who perpetrated the crime would do if he or she were asked that question? You are going to get two different results, depending on who you ask. That is why the system has developed over the years to have a person who should bring a good mind to this—a good mind in the sense of one who can do justice by everyone.

A lot of the problems arise in this area because some of us believe that there is such a thing as redemption—that some people, if they have committed a crime, can nevertheless be redeemed in certain circumstances. Some years ago a musical called *Les Misérables* played in Melbourne and the rest of Australia. It was based on the book of the same name by Victor Hugo. There were of course several figures, but the two interesting ones in this respect were Jean Valjean, the criminal, and Javert, the policeman, who chased him. The policeman was full of sincerity, but it turned out that he was mistaken. He thought that there was no good in Valjean—that he would never recover—and that he should therefore pursue Valjean no matter what. As that play showed, there was a great deal of good in the criminal in that case.

What we have to do as a civilised community, as a community in which civil principles predominate, is to see what is the ap-

propriate course to take in any particular instance. A judge's decision, when the judge is faced with the question of what should happen to a person who comes before him or her, can be reached by asking these questions. What has this person done? What sort of evil has he or she perpetrated on his or her fellows? Then he or she might go on to ask: what sort of person is the criminal? Is it his or her first offence? Is that relevant? Is the crime an abominable one? Is that an issue to take into account? Has reparation been made? Is that a matter to take into account? These are the sorts of things that should be open to consideration for justice to be done to the person who is before the court. If a person is put in prison, the length of their sentence will depend on the answers to those questions. Each person should be tested on his or her merits against what has been suffered by the victim. You will take into account what has happened to the victim and you will take into account what sort of person the perpetrator of the crime is, and from those circumstances you will try to work out what will happen. That is a decision to be made in respect of each individual, and that is why people do not like mandatory sentencing.

This issue has arisen today—Senator Greig, correct me if I am wrong—because of the probable win of the Northern Territory election by Ms Clare Martin. She promises to take an appropriate approach to this matter, and I think she ought to be congratulated. Since we are congratulating members of my party—Mr Acting Deputy President, I know you have the generosity of soul to give credit where credit is due—

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—I do indeed, Senator Cooney.

**Senator COONEY**—Thank you, Mr Acting Deputy President. I hope senators remember former Senator Michael Tate—he is from your state, Senator Brown—who is now in Holy Orders in Tasmania. He was the person who brought in the sentencing provisions set out in the Commonwealth Crimes Act. They operate in respect of federal offences and are set out in division 2. I do not have time to go through it all, but section

16A outlines the matters to which the court should have regard when passing sentence. It states:

In determining the sentence to be passed, or the order to be made, in respect of any person for a federal offence, a court must impose a sentence or make an order that is of a severity appropriate in all the circumstances of the offence.

It then goes on to talk about those matters. As a party, we have some good things to say about ourselves in this area of sentencing. I am not saying that this is universal throughout the land, but as far as the federal system is concerned the Labor Party have some good things to talk about here.

It is easy to demonise people who commit crimes. The biblical admonition that there ought to be an eye for an eye and a tooth for a tooth always seemed to me to be too severe. The way things are happening these days, you begin to wonder about people's attitude to that. People often call for penalties far in excess of the severity of the crime that has been committed. That is my observation. Also, it is always easier to give justice to the attractive people in the world. For example, if a young lady aged 25, beautifully dressed and beautifully spoken were to come in here, she would appeal to our hearts and it would be easy to give justice. It becomes a bit more difficult when you have an old lag, somebody in their 60s—I am in my 60s, so I am a bit concerned—

**Senator Bolkus**—You appeal to our hearts.

**Senator COONEY**—Yes. If somebody is dirty and looks mean and miserable and does not work well, it is very hard to give that person justice in the same sense. But, if we were using our sentencing law appropriately, if we were doing justice to everyone, we would be trying to divorce our prejudices—I am not saying divorce our feelings because you cannot divorce feelings from the area of criminal law when there is so much emotion, and properly so—to do justice between the victim and the perpetrator of the crime and then we would be getting somewhere. Mandatory sentencing has to be seen in that context. It is a good thing that Senator Greig has raised it. I cannot anticipate what Senator Ludwig will say, but I hope he speaks a lot

about the Northern Territory provisions that Clare Martin has brought in. Senator Brown, are you going to speak?

**Senator Brown**—Yes.

**Senator COONEY**—I am always very interested to hear what he has to say. I think this is a topic that should be debated in this chamber. If you are sentenced to imprisonment, the old idea of the civilly dead is still around.

**Senator Bolkus**—The what?

**Senator COONEY**—The civilly dead. In other words, if you are locked up you have no rights; therefore, you are called civilly dead. There was a film made about that in Melbourne—a horrifying film about the results of that sort of thing. People not only lose their freedom but also lose their reputation, their future and all sorts of things. They might deserve to have that happen to them. All I am saying is that, if we believe in a redemptive process, if we believe in some sort of justice, we will look at each individual and try to do the right thing in respect of him or her. There are lots and lots of principles about sentencing that have been developed, and we are still developing them, so let us develop them with the right spirit and on the right basis.

**Senator MASON (Queensland)** (4.07 p.m.)—In rising to briefly address Senator Greig's urgency motion this afternoon, I congratulate him on an eloquent address against mandatory sentencing. I will make three points very quickly. Firstly, I oppose mandatory sentencing. I think that generally in this country punishment is justified because it rehabilitates. There is no evidence that mandatory sentencing rehabilitates. Sometimes it is argued that punishment may deter. I do not think there is any argument that mandatory sentencing deters. Some people have argued that mandatory sentencing can be an appropriate act of retribution or revenge, or part of just desserts. I am not even sure of that because, without the exercise of judicial discretion, the capacity for an appropriate reflection of just desserts is extremely difficult. I do not think you can justify mandatory sentencing on common punishment grounds.

Mandatory sentencing is a simple approach to a very complex problem, but what it does illustrate is that there is community concern about crime. Of that there is no doubt. There is great concern in the Northern Territory and Western Australia. I see from news clippings over the last couple of days that Mr Carr, the Premier of New South Wales, has come under some criticism for not being able to control crime in Western Sydney in particular. It is a big problem, hence people often clamour for simple solutions. That takes me to my second point. While I do not support mandatory sentencing, I do think it is an appropriate issue for a state or territory government to deal with. That might sound like a cop-out, but let me explain why.

It has always been the case under our constitutional arrangements—under the Commonwealth Constitution and state constitutions—that state governments have power over law and order and punishment. I think we would all agree with that: it is a matter of fact. But it is also a matter of principle. I am reluctant, sitting here in Canberra, to legislate for crime and justice issues relating to people living in Darwin or, for that matter, Perth or Brisbane. I think it is a matter best left to state legislatures. There has been a change of government in Western Australia this year and, it would seem, in the Northern Territory. If that is because people have changed their opinion on mandatory sentencing, that is fine with me. I will not be complaining about that. If Dr Gallop and Ms Martin wish to change the law, that is fine. I have no problem with that at all. It is something that is best left with state legislatures.

My third point is perhaps more important and more interesting. What worries me about some of the arguments—and these are not arguments put by Senator Greig today, but arguments I hear in the community, offered in the opinion pages of newspapers—is that there is a social and political agenda that seems to want to blame society for criminal activity rather than the individual. It is a philosophy that tends to deny that individuals have free will. That is a very dangerous philosophy. Obviously it is antithetical to liberalism because we believe in individual

responsibility. That is central to our philosophy. I have been disturbed by things I have heard and read recently, to the effect that certain racial, perhaps religious or gender groups may be more predisposed to criminal activity and that, therefore, if they commit criminal activity, that is okay. I do not like that.

**Senator Bolkus**—No-one said it is okay.

**Senator MASON**—Senator Bolkus interjects and says, ‘No-one says it is okay.’ I accept that no-one is saying it is okay. What I am trying to do though is shoot home responsibility. People in Australia will not wear the fact that people try to blame society. Individuals are responsible and must be held accountable for their actions. It is for that reason that the Attorney-General, Mr Williams, and this government proposed diversionary programs in the Northern Territory—with the former Chief Minister, Mr Burke, and his government—that forced offenders to come to terms with their offences—not to blame the victim, not to blame society, but to bring offenders face-to-face with the victims of their criminal activity. I think that is a very good thing. One thing we never want to get in this community is the view that somehow people are not responsible for their actions, or that some people are less responsible for their actions than others. That is racist and discriminatory. I will not wear it, and neither will the community. We have to ensure that all Australians are treated as one and, where there is disadvantage—and I accept Senator Bolkus’s interjection—that has to be addressed. I hope that these diversionary programs are successful. There has been success in the past with the Dubbo program and with the victim-offender mediation in New Zealand. If we continue to work on that, I think we will move ahead.

In conclusion, I think Senator Greig should be applauded for bringing this matter before the Senate today. It is an important issue. I think he is right that mandatory sentencing is an inappropriate sentencing tool. In a federation such as Australia it is appropriate that state and territory legislatures take responsibility for that, but let us never take away responsibility from the individual.

**Senator LUDWIG (Queensland)** (4.15 p.m.)—I rise to speak on standing order 75, the urgency motion moved by Senator Greig. At the outset I remind the Senate that the urgency motion goes to:

The need for the Senate to acknowledge the increasing community opposition to mandatory sentencing and the imminent repeal of such legislation in the Northern Territory ...

I might just pause at that point, and it is not to be unkind to Senator Greig. I understand the passion with which he speaks about mandatory sentencing in his home state. However, I am perplexed as to whether his motion means mandatory sentencing per se—whether it encompasses all types of mandatory sentencing—or whether we are talking about the mandatory sentencing Senator Brown's bill speaks about, which bill is currently before the Senate Legal and Constitutional Committee, or the mandatory sentencing considered by the Senate Legal and Constitutional References Committee when it inquired into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999.

The urgency motion talks specifically about the repeal of such legislation in the Northern Territory and urges the Western Australian government to repeal mandatory sentencing laws. Is that 'laws' in plural—in other words, all mandatory sentencing laws? I think it is a minefield to go down that path. There is obviously a distinct difference between what is happening in Western Australia and what is happening in the Northern Territory. But there is also a distinct difference between mandatory sentencing laws as I understand them in this context—laws which go to property offences—and mandatory sentencing laws which might go to more serious or violent offences, that type of regime. I think Senator Cooney had a point when he said that mandatory sentencing is only one part of the issue.

The other part of the issue is the community at large and how they regard mandatory sentencing. Senator Greig has informed us that there is increasing community opposition to mandatory sentencing. The community, as I understand it from a Queensland perspective, is concerned about crime and

about how to deal with crime. With sufficient time I will go to the Queensland position and to how Queensland is dealing with crime in the community. But before going there, it might be worthwhile having a look at where we are now in relation to mandatory sentencing in the style that I understand it. Two types of mandatory sentencing exist in the Northern Territory currently and I suspect if Clare Martin becomes the Chief Minister that mandatory sentencing in the form of a property offence will end. In Western Australia I understand it was proposed that mandatory sentencing, following the introduction of the proposed property offences regime there, be reviewed after four years.

Senator Cooney talked specifically about how you deal with issues that bubble up in the community such as what to do about crime. Senator Cooney hit the nail on the head when he talked about diversionary programs. The Northern Territory—under Attorney-General and Chief Minister, Denis Burke—did eventually look at how to walk away from mandatory sentencing per se as it relates to property offences. That regime went not so much to what the WA regime envisages—a 'three strikes and you are in' regime—but more to a position where you have a graduated number of days in prison for the first offence, and then any subsequent offences.

It is important to take a step back and look at what happened in the Northern Territory when they agreed with the federal government to introduce diversionary programs. From submissions that have been made in another place, the results appear to show that the programs were starting to have some effect. What directly worked to assist were community based drug and substance abuse diversionary programs, a jointly funded Aboriginal interpreter service, together with the establishment of a juvenile diversionary unit in the Northern Territory Police to administer the diversionary processes and to conduct family conferencing. Those issues, when you put them together, start to give us a better picture. They show us that diversionary programs can work to mitigate the problems in the community. Clare Martin's policy posi-

tion, as enunciated prior to the Northern Territory election, was that:

Labor will repeal mandatory sentencing for property crime, replacing it with a regime that is tough on crime, and tough on the causes of crime.

That brief statement fronts a well articulated position paper on crime protection, punishment and prevention. The one idea in that paper that I draw out is that there is clear evidence that community, social and developmental initiatives work to reduce crime.

The Queensland Premier similarly established a task force on crime prevention back in August 1998 to address the causes of crime and implement effective crime prevention activities across all areas of government. Later, in December 1999, the Premier launched the Queensland crime prevention strategy, Building Safer Communities, as part of the government's overall approach. The Queensland government committed in the order of \$80 million over three years for what are real solutions to deal with crime in the community: to establish a community crime prevention fund, to support local communities and to plan and manage crime prevention activities, plus a range of other mechanisms and guiding principles to ensure that diversionary programs and the like actually work within the community.

It is not only in Queensland. Western Australia similarly established a justice co-ordinating council to coordinate criminal justice and crime prevention initiatives—that is, the implementation of a state crime prevention strategy. Mandatory sentencing for property crime exists, as far as we can tell, in detail in two states. We have dealt with the Northern Territory which, as I have said, deals with a particular form of mandatory sentencing. For a first offence you get 14 days, for a second offence 90 days and for a third offence one year. Hopefully the Northern Territory government which I understand is about to form will abolish that system.

In WA the Criminal Code was amended on 14 November 1996 to provide that adults or juvenile offenders who are convicted for a third or more time of a home burglary offence must be sentenced to a minimum of 12 months imprisonment. So that is the type of

mandatory sentencing that we are looking at. Senator Mason went on briefly to give us his three reasons. Perhaps one of them was more a free-will speech rather than an argument about mandatory sentencing, but he was right in the sense that community concern about crime is important and needs to be addressed. But simply abolishing mandatory sentencing is not always the answer.

**Senator BROWN (Tasmania)** (4.23 p.m.)—I congratulate previous speakers on the quality of this debate and, indeed, Senator Greig for bringing the motion before the Senate. In the short time I have, I point to the very important role that the Senate has had in changing the mindset on mandatory sentencing laws in the Northern Territory and Western Australia as they relate to property crimes. We are all aware that these laws have particularly captured young indigenous people at a rate far above the non-indigenous population, and we recognise that these laws are for the mandatory sentencing of people for property crime but not, as Senator Cooney said, for white collar crimes which often involve much greater property loss for people in the community.

In the run to the federal election in 1998, I foreshadowed I would move to introduce a bill into the Senate to override mandatory sentencing laws which captured children in the Northern Territory. I had been approached by indigenous groups and the Greens in the Northern Territory, but at that time there was no public debate about it. After the election I made good that commitment and consulted widely with other members of the Senate and got assistance from Chris Sidoti of the Human Rights and Equal Opportunity Commission, Louis Schetzer from the National Children's and Youth Law Centre, and from legal and community representatives in the Northern Territory. On 25 August 1999, with the support of the ALP, the Democrats and the Independent member of the House of Representatives Peter Andre, I introduced a bill to ban mandatory sentencing for juveniles across Australia. That legislation was finally supported by the Senate. It was the first private member's legislation to go through this place in five years. I remind senators that it was supported

because the government allowed government time for it to be debated, recognising the by then high level of public concern about the issue. There had been quite considerable turnouts of people protesting about mandatory sentencing in Hobart, Sydney, Melbourne and other cities around the country. Also, huge amounts of mail had been coming in to the offices of members of the Senate and the House of Representatives.

A Senate committee then had hearings in Darwin, Alice Springs and Perth. Subsequent to that there was the tragic death of a 15-year-old Aboriginal boy from Groote Eylandt who had been detained in Darwin while serving a 28-day sentence for stealing texta colours worth a few dollars. It appears that he was totally unable to comprehend why he was there and for how long he was to stay in detention. There were public hearings and protests, and prominent people from all walks of life, including Jane Campion and Mal Meninga, signed petitions and supported statements in support of the bill. The majority of the Senate supported it.

As you know, Mr Acting Deputy President, the bill was then supported in the House of Representatives by Mr Andren and the Labor Party but it was not able to be debated because of government numbers. However, the government in turn then moved to introduce, with the Northern Territory, diversionary programs. I must say that this introduced the very important provision for Aboriginal language interpreters in the courts in the Northern Territory. There are now over 200 of these interpreters. Also, the age of majority was raised to 18 in the Northern Territory, which means that today, while we are here debating this, a large number of 17-year-olds are not in jail who otherwise might have been. Diversionary sentencing is working, and it will do so too in Western Australia where there is an even greater number of Aboriginals as against non-Aboriginals locked up under mandatory sentencing laws. I support this motion. I will continue to work to end mandatory sentencing and to do the right thing, that is, hand back to the courts their right to make the punishment—and hopefully rehabilitation sentence—fit the crime.

**Senator EGGLESTON (Western Australia)** (4.29 p.m.)—Mandatory sentencing legislation raises complex and difficult issues. I think the record shows the Commonwealth government has recognised that states and territories have a difficult job dealing with the impact of crime and the problem of repeat offenders, and acknowledges that these are issues which the states and territories are best placed to address. I think we have to ask ourselves why in Western Australia and the Northern Territory there is mandatory sentencing. Mandatory sentencing in those two jurisdictions was introduced because people were concerned about law and order problems. There was a culture of lawlessness in Perth: there were home break-ins and old people were being beaten quite cruelly. There was a great deal of public concern about what was happening. That is why the Western Australian government introduced very focused mandatory sentencing laws concerning home invasion or home burglary.

In the Northern Territory, there was also great public concern about what appeared to be a culture of lawlessness and an impression—a widespread belief, in fact—that the courts were being too lenient with offenders and that the punishments that were being meted out did not reflect the seriousness of the crimes involved. People were concerned that recidivists seemed to be let off too lightly. We have to understand that background in considering the question of mandatory sentencing.

The agreement between the Commonwealth and the Northern Territory governments for a juvenile pre-court diversion scheme and an Aboriginal interpreter service has reflected the Commonwealth government's commitment to work cooperatively with the states and territories to prevent juveniles entering the criminal justice system. That program has had a fair degree of success. The Commonwealth has worked with the Northern Territory government to ensure that rehabilitation and education programs for young people are effective in preventing repeat offending, by addressing the underlying causes of juvenile crime. Significant progress has been made under the agreement,

including the implementation of community based diversionary programs, the establishment of a juvenile diversion unit in the Northern Territory and the training of police in diversion procedures. Victim-offender conferencing has also been established, which has helped—perhaps reduced—the incidence of juvenile detention in the Northern Territory. The establishment of an Aboriginal interpreter service has also been a very important innovation.

The WA laws were introduced to deal with the question of home burglaries, and they are not draconian. Offenders are given ample opportunity to modify their behaviour before they run the risk of being sentenced to detention. Under the three-strike law, the mandatory detention system operating in WA, the question of detention only arises on a third conviction for home burglary. Before that occurs, offenders are always, in all cases, given numerous opportunities to mend their ways. The detention is a way of dealing with problem offenders, and I think that should be understood. The detention occurs in Western Australia in the interests of protecting members of the community and helping the offenders to overcome their problems through counselling and through dealing with issues like drug and alcohol problems. But it is not inevitable that children in Western Australia, even upon conviction for a third offence, will be detained. The alternative is that young people are placed on intensive youth supervision orders, through which they are provided with counselling and help in the community. Detention is only a default alternative.

Although a great deal has been said over the last two years in the parliament of Australia about Australia's mandatory detention regimes, I think it is very instructive to have a look at the rest of the world and compare Australian regimes with those of other countries, particularly with other common law jurisdictions such as the United States and the United Kingdom. On 18 April 2000, Radio National's *Law Report* dealt with the issue of mandatory sentencing. Susanna Lobez, the presenter, interviewed Professor Freiberg, of the University of Melbourne, about how Australia's regime compared with

those in the rest of the world. Professor Freiberg made the point that Australia's regimes are minor and that in the United States, 23 states have mandatory sentencing laws, some of which are quite draconian. He said:

... in California there have been 40,000 convictions under mandatory sentencing laws, and people can get up to 25 years for a third strike for stealing a pizza.

Australia's regime pales in comparison. In the United Kingdom, the mandatory legislation also applies more strictly than it does in Australia. (*Time expired*)

**Senator GREIG (Western Australia)**  
(4.35 p.m.)—In the few minutes remaining in the debate, I will touch on the key themes that have emerged today. I begin by making it very clear that the motion before us is not a directive. It is not a piece of legislation. We cannot today force the Western Australian government to do anything in particular. The motion is merely making a statement. I would argue that it is a moral statement, an important one and one which should be made. Given that this chamber has already passed legislation to that effect, which is a directive—because it would have had a real legal impact on the ground—I find it bizarre that we cannot simply reiterate that with a motion today.

Both Senators Mason and Coonan effectively said in their respective contributions that they believe strongly in states rights. Whatever views they may have on mandatory sentencing itself, they had strong views on the rights of states and territories to determine their own laws. I would argue that that ethos was completely obliterated some years ago when members of this chamber voted to overturn the voluntary euthanasia laws in the Northern Territory—which was legislation that that parliament introduced for its own people. I also make the point that the Northern Territory recently had a referendum—I think it was at the last federal election—in which it asked: 'Do you want self-determination? Do you want self-government, or would you rather the Commonwealth continue to have overriding powers?' A majority of people voted for the latter, thereby giving this chamber the mandate

to do as it chooses in terms of various laws in relation to the territories.

I take exception to some of Senator Mason's argument in relation to individual responsibility and to the notion of free will. It is a quaint notion, but I would argue that free will does not exist where an offender is severely and adversely affected, perhaps by drugs or poverty or desperation or mental illness or peer pressure. I learnt recently on an investigative tour in Darwin that many of the particularly young Aboriginal men that are being sentenced under mandatory sentencing in the Northern Territory are doing so as a right of passage. It is a way of achieving manhood, particularly for those from Groote Eylandt. It is a way of obtaining some kind of kudos within the white system.

I would say to Senator Mason rhetorically, who is not here, that, if we firmly believe in freedom of the individual, individuals must have freedom of choice and free will, and we must extend that ethos to judges and magistrates. They must be the ones who decide on the appropriate sentencing of offenders. Inflexible laws are not to be promoted by inflexible politicians. That is the core of the issue here. I think this chamber has both the right and the duty to send a message—if not to override legislation—to the Western Australian parliament that it firmly believes that mandatory sentencing is wrong for social reasons, for reasons of reconciliation and our response to indigenous people, and for economics. *(Time expired)*

Question put:

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

The Senate divided. [4.42 p.m.]

(The President—Senator the Hon. Margaret Reid)

Ayes.....	10
Noes.....	47
Majority.....	37

AYES

Allison, L.F.	Bartlett, A.J.J.
Bourne, V.W. *	Brown, B.J.
Cherry, J.C.	Greig, B.
Harradine, B.	Lees, M.H.

Murray, A.J.M.

Stott Despoja, N.

NOES

Bishop, T.M.	Bolkus, N.
Brandis, G.H.	Buckland, G.
Calvert, P.H.	Campbell, G.
Carr, K.J.	Chapman, H.G.P.
Conroy, S.M.	Coonan, H.L.
Cooney, B.C.	Crane, A.W.
Crossin, P.M.	Denman, K.J.
Eggleston, A.	Evans, C.V.
Ferguson, A.B.	Ferris, J.M.
Forshaw, M.G.	Gibbs, B.
Gibson, B.F.	Heffernan, W.
Herron, J.J.	Hill, R.M.
Hogg, J.J.	Hutchins, S.P.
Kemp, C.R.	Knowles, S.C.
Lightfoot, P.R.	Ludwig, J.W.
Macdonald, I.	Macdonald, J.A.L.
Mackay, S.M.	Mason, B.J.
McGauran, J.J.J. *	McKiernan, J.P.
McLucas, J.E.	Minchin, N.H.
Murphy, S.M.	Patterson, K.C.
Reid, M.E.	Schacht, C.C.
Sherry, N.J.	Tchen, T.
Troeth, J.M.	Watson, J.O.W.
West, S.M.	

\* denotes teller

Question so resolved in the negative.

**COMMITTEES**  
**Scrutiny of Bills Committee**  
**Report**

**Senator LUDWIG (Queensland)** (4.46 p.m.)—On behalf of Senator Cooney, I present the 10th report of 2001 of the Standing Committee for the Scrutiny of Bills. I also lay on the table Scrutiny of Bills *Alert Digest No. 10* of 2001, dated 22 August 2001.

Ordered that the report be printed.

**Membership**

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

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

That Senator Crowley be discharged from and Senator West be appointed to the Community Affairs References Committee from 31 August 2001.

**VETERANS' AFFAIRS LEGISLATION  
AMENDMENT (FURTHER BUDGET  
2000 AND OTHER MEASURES)  
BILL 2001**

**First Reading**

Bill received from the House of Representatives.

Motion (by Senator Minchin) agreed to:

That this bill may proceed without formalities and be now read a first time.

Bill read a first time.

**Second Reading**

**Senator MINCHIN (South Australia—  
Minister for Industry, Science and  
Resources) (4.49 p.m.)**—I move:

That this bill be now read a second time.

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

Leave granted.

*The speech read as follows—*

This bill is a package of amendments to implement several measures designed to further improve the delivery of income support benefits through the repatriation system. A number of these measures reflect changes in the social security system, to ensure that both systems operate consistently and fairly.

These amendments to the Veterans' Entitlements Act 1986 will provide for more generous treatment for income support recipients whose partners receive periodic compensation payments, such as those paid by insurance companies.

Currently, if a person receives a compensation-affected payment, then the couple's combined pensions are reduced by one dollar for every dollar of the periodic compensation. Under the new measure, the dollar-for-dollar reduction will apply only to the pension of the person who receives the compensation. If the amount of compensation exceeds the amount of that person's pension, then the excess will be treated as the ordinary income of their partner. With the income free area and taper that applies to ordinary income, this measure will result in an increase in the amount of income support payments to couples who have low levels of income from compensation payments.

Other amendments again mirror changes in social security system, to simplify provisions relating to the recovery of compensation. These amendments will provide for direct recovery of compensation debts from compensation payers and insurers, in circumstances where there has been an overpayment of pension because of the treatment of periodic compensation as ordinary income.

This bill also amends the Veterans' Entitlements Act 1986 in relation to the treatment of financial assets which are regarded as unrealisable for the purposes of hardship provisions under the assets test. In hardship cases, such unrealisable assets will also not be regarded as a financial asset when applying deeming provisions under the income test.

This means that in future the actual return on an unrealisable asset will be counted as ordinary income, rather than the deemed rate of return.

The treatment of income streams will be amended to ensure that the conditions applied to income streams under the means test will be clear and unambiguous. These amendments will also correct a number of anomalies and unintended consequences.

Finally, this bill will change the payment of income support instalments, which currently are rounded to the nearest multiple of ten cents. In future, instalments of income support will be paid to the nearest cent, bringing Veterans' Affairs arrangements into line with the calculation of pension instalments paid through the social security system.

This bill demonstrates the Government's ongoing commitment to improving the repatriation system to benefit those in the veteran community who most need our help.

Debate (on motion by Senator Denman) adjourned.

**FEDERAL OFFICE OF ROAD SAFETY**

**Return to Order**

**Senator MINCHIN (South Australia—  
Minister for Industry, Science and  
Resources) (4.49 p.m.)**—by leave—The Senate agreed on 22 August 2001 that the Minister representing the Minister for Transport and Regional Services provide documents detailed in the order by 5 p.m. today. The minister expects to be in a position to table the response to the return to order by 6.50 p.m. today.

**FINANCIAL SERVICES REFORM  
BILL 2001**

**FINANCIAL SERVICES REFORM  
(CONSEQUENTIAL PROVISIONS)  
BILL 2001**

**CORPORATIONS (FEES)  
AMENDMENT BILL 2001**

**CORPORATIONS (NATIONAL  
GUARANTEE FUND LEVIES)  
AMENDMENT BILL 2001**

**CORPORATIONS (COMPENSATION  
ARRANGEMENTS LEVIES) BILL 2001**

**Second Reading**

Debate resumed.

**Senator FERGUSON (South Australia)**

(4.50 p.m.)—Prior to the luncheon break I was talking about this legislation and in particular the disclosure of commission on risk products. I will not go over the ground that I covered at that time except to say that, as far as I am concerned, it is a matter of principle, which I stated quite strongly during all the discussions that we had prior to the introduction of this bill, that where the commission that is received by an agent in relation to a product has no effect on the end result for that client should a claim be made—and because it is defined as a risk product or a non-accumulative product there can only be a claim when the event occurs—the agent or the representative should not have to disclose to the client the amount of remuneration that he or she is getting. As a matter of fact, the disclosure could have exactly the opposite result. From my experience as an insurance agent for eight years, I know that there were some products where five per cent commission was paid and some where 10 per cent commission was paid. It is quite possible that the product that paid 10 per cent commission was a better product than the product that paid five per cent commission, yet it is in the consumers' mind that they must be getting a better deal. If the person who is selling the product is receiving less money, the consumer thinks they must be better off. The reverse is the case: sometimes they may choose the wrong product when the disclosure has to be made.

I note Senator Murray's second reading amendment where he, as a sort of halfway house, moved:

... that the requirement in the legislation that commissions on risk products be fully disclosed be referred to the Joint Statutory Committee on Corporations and Securities for inquiry and report on or before October 2003.

In other words, during the transition period we will see what happens to risk products: we will have an inquiry and at the end of the day if it is not working so well then maybe we will do something about it. Can I say with respect to Senator Murray that, while I certainly will be supporting that because it is better than anything that is currently in the bill, really that is putting the cart before the horse. What should have happened is that the disclosure of commission on risk products should have been left as it is during the transition period. Then at the end of two years there could be an inquiry to see whether or not the nondisclosure of commission on risk products had affected in any way the transparency or the decision making of people who were actually purchasing those products from agents and whether people might make submissions to the Joint Corporations and Securities Committee saying, 'Look, we feel that the nondisclosure of commission on risk products is having an adverse effect on the clients.'

I can tell you that the disclosure of commission has never come at the request of consumers. The consumer bodies may have given evidence to Senator Chapman's committee that they needed all the transparency that was available. That is their job. The Consumers Association need almost to find a justification for their existence in some cases, and I think this is one of them. There has never been any push from consumers for the disclosure of commission on risk products. I sold those products for eight years and I can tell you that never once was I asked what was the commission rate on the product that was being sold. The client was concerned only as to whether the product that they were buying was going to deliver them the result they wanted in the event of a claim being made. Commission was never the issue. While people might come in here and

talk about HIH and the collapse of major insurers, the disclosure of commission would not have made any difference to that. The quantum of commission that is paid to agents certainly does not influence the product that people will buy in risk cases.

I can give you another example in the area of crop insurance, which I was involved with because I lived in a farming area and did a lot of work there. Some companies do not like crop insurance; some companies do like crop insurance because the larger your portfolio the more your risk is spread. If you can get a big enough portfolio it becomes good insurance; if you have only a small portfolio of crop insurance it is a higher risk because you have not spread it as much. I dealt with companies some of whom offered five per cent commission for crop insurance and some of whom offered 10 per cent commission for crop insurance. Their rates were exactly the same, but one company liked the business; the other did not. It was only natural that, as an agent, where there was no difference, I wanted to look after my security and my income so I chose in most cases one that paid 10 per cent commission. I knew the product that the client was getting was exactly the same as that where I was getting only five per cent. I think that is a decision that any person in business would make. I may have put car insurance with another company because they liked car insurance while the company that liked crop insurance did not like car insurance. The quantum of commission and the level of commission that is paid to an agent bears no relation to whether or not the person is adequately covered for the risk that they are insuring against.

**Senator Chapman**—It is strange that in this bill crop insurance is regarded as wholesale and not covered.

**Senator FERGUSON**—I understand that Senator Chapman. I was only using it as an example.

**Senator Chapman**—It is an inconsistency.

**Senator FERGUSON**—But it would have been so simple in this bill for the government to have decided to say that it re-

quires a disclosure of all commissions paid except for those commissions paid on risk or non-accumulation products. Where there is a commission paid on an accumulation product and the amount received by the agent or the person representing the company affects that which the client may get, it must be disclosed. The person needs all that information to make a balanced decision, particularly in the case of general insurance. Term life is another example where you insure yourself for a flat rate regardless and the premium is X amount of dollars. In most cases in term life, people look at the premium. They do not look at what commission is paid; they want to know how much it is going to cost them in actual dollars to get the death and disability cover that they require for their own protection, the protection of their business or the protection of their family.

This is a very good bill overall. It has been made much better by the amendments that will be moved by the government as a result of the considerable work that has been done by Senator Chapman and the Joint Committee on Corporations and Securities. They have twice looked into this bill. As I said in my opening remarks, this bill has had a very long gestation period. I congratulate the minister on the amount of consultation that took place, because it is almost two years since we first saw the proposals that are coming forward in this legislation. Every player in the field has had a chance to be consulted and had a chance to have their say.

I was disappointed in the remarks in the editorial in today's *Financial Review* and in Paul Cleary's article which were simply not accurate. If they choose to report on rumour or what somebody else might tell them, it would not hurt them to actually check the facts before they put it in the paper. There was never on our side of politics any resistance. He talked about 'long running resistance by small life insurance agents to disclosure of commission'. That simply was not true. This side of the parliament has always supported disclosure for life agents where they are talking about accumulation and financial products. I do not know whether Senator Sherry was in the chamber this morning when I was talking, but in my life

as an agent we were disclosing full fees and charges in every presentation out of a laptop computer from 1987 onwards. This is not something new. Some companies did not, but this is not something new. I am disappointed in the reporting.

I am also disappointed in some of the re-action of the Financial Planning Association, Mr Ken Breakspear and IFSA. They are looking after the big end of town, they are looking after the companies and they are looking after those people who deal in much greater amounts of money and looking at things like trailer commissions and other matters. My concern and my only concern in relation to risk products is to make sure that the livelihoods of the very, very small operator, that person who makes even just part of their income out of selling risk insurance as an adjunct to their business—and there are thousands of them throughout rural and regional Australia that I know of and certainly some in metropolitan areas as well—are not going to be affected by the fact that they have to disclose the quantum of their commission to their clients when they are talking to them. As I stated just before lunch, I know a number of people who would say, 'Well, if this is the quantum of commission you are making, sling me a half or take less and I will give you the business,' so in fact you are reducing their income.

The other point I want to make is that I believe this is going to be a device for major insurance companies to push down the rate of commission to the lowest common denominator so it makes it very difficult for some of the smaller operators and smaller agents to make a living as a commission agent. As I said right at the very start from my speech, earning an income from commission is still an honourable profession and way to make a living and one that should be respected in the way that it always has been. I wonder whether we will get to the day, if this legislation gets through and we see the disclosure of commission, where someone who is selling second-hand cars and wants you to buy a Holden instead of Ford will have to say, 'I am getting paid \$150 extra to sell you the Holden,' or someone who is pushing a certain line of suit to you in a

men's clothing store will have to tell you he is making a quid because he is selling more of those suits than something else. Why single out risk products and the disclosure of commission on risk products when in fact the person who is purchasing gets exactly the same result at the end of the day regardless of the commission that is paid? But I commend the bill as a whole because I think it is a very good bill.

**Senator COONAN (New South Wales)** (5.01 p.m.)—I am very pleased to speak in support of the Financial Services Reform Bill 2001 and the related bills in this package that will revolutionise financial services in Australia and the provision of financial services in Australia. The bill contains landmark reforms, as earlier speakers have said. The reforms have been described in detail and I do not want to go over the detail again.

The bill restructures an industry that contributes about seven per cent to Australia's economy and employs close to 330,000 Australians. It will directly benefit the 17 million consumers of financial services in Australia and it will provide the industry with unprecedented opportunities to export services to an estimated three billion people in Asia and in other jurisdictions.

The purpose of the bill is to harmonise the fragmented regulatory regime for the financial services industry to ensure a consistent level of market integrity and consumer protection across the industry. It establishes a single licensing regime for the provision of financial services. Essentially, it proposes three key reforms: a harmonised licensing, disclosure and conduct framework for all financial service providers, a consistent and comparable framework for financial product disclosure and a streamlined regulatory regime for financial markets and for clearing and settlement facilities.

Consumers particularly will benefit from the introduction of a consistent framework of consumer protection. They will have an enhanced capacity to understand and compare different financial products and to evaluate financial advice. Consumers will also have access to efficient procedures to deal with complaints and to resolve disputes with financial service providers. I want to say

something about that a little later. Industry will benefit by the cutting of compliance costs and the removal of regulatory barriers to the introduction of technological innovations. E-commerce will be boosted by the facilitation of electronic delivery of a range of financial services and products.

Today, our services sector is one of the most dynamic and innovative sectors of the Australian economy. It represents 72 per cent of GDP and this percentage is growing. Mining and agriculture represent over eight per cent and financial services represent over seven per cent of GDP. But when it comes to exports, it is a very different story. Services represent only one per cent, whereas the mining and manufacturing sector represents 55 per cent. Projections suggest that revenue from Asia's financial services industries will reach \$US450 billion by the year 2011. In non-Japan Asia, real financial market revenues are expected to grow by 10 per cent per year. Obviously, there is significant potential for Australia to grow our export of financial and professional services. It is against this background and the need to meet the challenges of changing consumer needs, the forces of globalisation, technological advances and the blurring of traditional boundaries between different types of service providers that this bill has been introduced. This government is responding to consumer expectations for better service at less cost and greater returns on more diverse investments.

The bill delivers the third instalment of the reforms arising out of the 1997 financial system inquiry known as the Wallis report. The bill is essentially based on the premise that it is no longer possible for different institutions, services and products to be regulated under separate financial frameworks governing licensing, disclosure and other conduct obligations which vary across different industry sectors. The bill, as others have said, is complex and far reaching. For the purpose of my brief contribution today, I want to confine my comments to a couple of issues. The first is the complaint provisions. Under the bill, all licensees will be required to be members of an independent complaints scheme approved by the Australian Securi-

ties and Investments Commission within a two-year transition period. So far, ASIC has approved the insurance inquiry complaints scheme for general insurance as well as the financial industry complaints scheme. The latter covers licensed shareholders, financial planners, life insurers and fund managers. Obviously, providers of banking services and superannuation services will also require approval of an appropriate complaints scheme.

The significant improvement on existing complaints schemes is that, at the point of sale, either when buying a financial product or receiving financial advice, a provider will also be required to furnish a comprehensive disclosure document that will include information on how to make a complaint. This is a boost for the consumer, who otherwise might be unaware of how to make a complaint and might get discouraged by the difficulty of taking on a large institution and indeed overwhelmed by the financial burden of the cost implications of pursuing a complaint in court. Obviously, a cheap, effective and fair means of resolving disputes is in the interests of both the consumer and the financial provider, and there is a real interest in making that known right at the start.

It has to be said that not all complaints will be justified or will warrant a remedy, whatever a complainant might think. But where consumers have been misled or facts material to the risk being assumed have not been disclosed or adequately explained, or where the provider has been negligent and a consumer has suffered loss, an independent and readily accessible complaints mechanism can assist in sorting out responsibility before the matter escalates and entrenched positions are taken by either side.

Following what might be regarded as an exhaustive consultation process—as Senator Ferguson has said—that has included extensive industry consultation and two reports of the Parliamentary Joint Statutory Committee on Corporations and Securities, the government has brought forward some sensible amendments to the regulatory framework and uniform licensing provisions. Here I would also like to add my commendations on the work of the committee, which across

party lines have worked through a very complex regulatory framework and have brought the bill to the chamber in a pretty sound state for debate. The key amendments are: retention of existing contractual arrangements with life companies; exempting lawyers and tax advisers who give incidental financial advice in the ordinary course of their activities; the exemption of pooled superannuation funds in the wholesale market; and some limitations on the taping of financial advice given by telephone to retail investors during takeovers.

I wish to briefly comment on the requirement that those selling financial products disclose all fees, charges and commissions, which has been the subject of earlier contributions. This requirement has been the subject of some criticism as having the potential to affect small agencies, typically in country Australia, which sell general insurance, often as an adjunct to some other business such as a stock and station agency or a pharmacy. One of the arguments advanced in favour of the proposition that those agents selling risk products should be exempt from disclosure is that the commission paid will have no direct impact on the ultimate outcome for the consumer. However, this view overlooks the fact that the underlying objective of the bill is to ensure that the consumer is protected and given sufficient information in a form that will enable them to make an informed choice.

The amount of commission paid to an agent is a material fact that may influence a consumer's choice of provider. It may also signal how keen a provider is to get the business. When faced with two largely identical products from two different providers, why would an agent not go for the one that pays the highest commission? In that scenario, the decision would be influenced by the financial interests of the agent rather than factors that would impact on the consumer such as the service history or the financial health of the provider. It must be said in defence of agents—and I wholeheartedly accept this—that most would be influenced quite properly by a number of factors, including competitive premiums and how to provide a good service for their client. However, it is not as

clear-cut as it should be. Any material factors going to the formation of a contract which could influence a consumer's choice of provider should be transparent and disclosed. I do not think that the arguments advanced for exemption are sufficient to outweigh the consumer's right to know about the financial reward that the agent will gain by recommending a certain provider.

No doubt these reforms will require adjustments, and the two-year transitional period seems not unreasonable in the circumstances. As Chair of the Senate Regulations and Ordinances Committee, I look forward to scrutinising the detailed machinery of the regulatory scheme to ensure fairness and that personal rights are protected. The regulations are also subject to an extensive consultation process with industry and consumer representative bodies.

Finally, the bill represents new approaches to regulation of market misconduct. The explanatory memorandum makes it clear that the existing law in the Corporations Act is intended to be reproduced but extended to all financial products and markets. Lawyers and those advising industry will need to be alive to the implications that the application of the Criminal Code will bring to conduct regulated by the bill. As this is a speech and not a legal advice—sometimes I tend to slip into my former role—I will but refer to the comprehensive and thoughtful exploration of these legal issues in a paper given by Joe Longo, special counsel to Freehill's lawyers, and delivered on 31 May at Sydney University's law school.

**Senator Ian Campbell**—A fine Western Australian.

**Senator COONAN**—He is a good Western Australian. I quote the concluding paragraph:

For lawyers, great care will need to be taken to identify the legislative strand which supports a particular conclusion. For industry, while much of the substance of the regulatory approach presently found in the Corporations Act is intended to be reproduced in proposed Chapter 7, the attempt to take a unified approach to regulating financial products generally will, I think, force industry to reconsider its compliance strategies as regulatory and market attention is, in effect, refocussed on a

range of financial products that historically may not have been regarded as being relevant to market manipulation and insider trading, for example. I commend the paper to those who are interested in the market misconduct provisions.

It would be remiss of me if I did not also note the role that Senator Ian Campbell played in the development of many aspects of this legislation. There have been a lot of players in this, as well as extensive consultation, but while we have quite rightly praised the efforts of the committee we should also note that Senator Ian Campbell played a pivotal role in earlier incarnations of this bill. Having said all that, I will now sit down. I commend the bill to the Senate.

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.14 p.m.)—How hard it is to follow the eloquent contribution of the Deputy Government Whip. It would be hard to find anyone in this building whose knowledge could surpass her knowledge of corporate law issues. While we are patting each other on the back so vigorously, I should mention the tremendous contribution of a range of people to what has been, without exaggerating, a very successful program. I do not even think people on the opposition benches would contradict this, although I can get carried away from time to time on this. The Corporate Law Economic Reform Program—CLERP, one of the worst acronyms in modern political history, designed in my office back in 1997—has generally been supported by all groupings within the parliament. We have had a couple of disagreements. The most significant one was over takeovers reform, where I and the government were pressing to have a follow-on rule, a mandatory bid rule, which would mirror the law that is in place in the City of London. That is the most significant policy difference, and I still remain hopeful that at some stage in the future the Democrats and potentially the Labor Party may see the benefit of that takeovers reform.

Having said that, I want to carry on from Senator Coonan and say thank you to the range of people who saw what started its life as CLEP 6 and have been deeply involved

in moving it from the initial concept of merging chapters 7 and 8 of the Corporations Law to today, when it has become known as the Financial Sector Reform Bill. The existing Corporations Law had the stock exchange regulated or legislated under chapter 7 and the futures exchange under chapter 8. Back in 1997, we decided that the products and services effectively offered by the futures exchange and by the stock exchange had merged in many respects, that many of the derivatives type contracts and a range of the other futures type contracts offered by the stock exchange at that time had merged and that there was little justification for having two separate bodies of law regulating those financial products.

From there, we also looked closely at a report called the good advice report, as I recall, which recommended, as you would know, Mr Acting Deputy President Sherry, from your experience in superannuation, that there needed to be some harmonisation of regulation of people involved in giving financial advice across a range of financial areas, including superannuation, general insurance, risk and non-risk products and a range of other financial planning offerings—including managed investments, which have been in the news lately—and the traditional securities and futures products. That was a report that made some sound recommendations.

Following that report, we then had the Wallis inquiry, which looked at reform of the entire financial system in Australia, and many of the key Wallis recommendations were implemented during the last parliament. That saw the establishment of the Prudential Regulatory Authority, new powers for ASIC and the most historic reform of the financial system in Australian history. Most people—certainly those in international areas looking at Australia's regulatory structure—are finding a system in Australia that is operating very effectively and has made Australia an exemplar around the world in terms of corporations and financial regulation. It is interesting to see that even in European countries like Germany they are tending more and more to model their financial and corporate law governance structures on the

system that has been developed here in Australia under the CLERP program since the Treasurer gave me responsibility for that program at the end of 1996.

That was when we set out. With this significant piece of reforming legislation, we are nearing the end of that enormous Corporate Law Economic Reform Program. This brings to an end a lot of that process. Even though we look forward to CLERP 7 coming before the parliament fairly shortly, CLERP 1, 2, 3, 4, 5 and 6 together saw the most significant rewriting of Corporations Law in Australian history. They make our Corporations Law the envy of many other jurisdictions around the world. I think when we finally get the follow-on rule and the mandatory bid rule into takeovers law, it will be without any doubt the greatest corporations regime on the globe. We look forward to Senator Andrew Murray's support for that change when it comes before the Senate next.

But it did involve enormous consultation and a policy view from the Treasurer and myself and the government that we should rewrite the Corporations Law with a couple of key objectives. The core one was to have a body of law in this country which encouraged enterprise, encouraged business, encouraged investment, encouraged the formation of capital and encouraged mergers and acquisitions so that capital could find its best use and which also created an institutional framework with the Wallis reforms that gave consumers a stronger level of protection and better disclosure regimes, so that consumers knew, in better and more assessable detail, what the sorts of risks and rewards and opportunities of the various products they would be accessing were, so that they were then able to make better decisions based on that information.

It has been an enormous process. I think it is fair to say that it has contributed significantly already, with the enactment of the fundraising reforms, the takeovers reforms, the corporate governance reforms and, very importantly, the reforms to accounting standards, to Australia's growth as an international financial centre and, although it is hard to measure these things, I think it has con-

tributed to Australia's increasing economic security in a period when we are pretty much a Rock of Gibraltar economically in a turbulent sea of international economic events. That is a very good thing. It means that the mums and dads, as they have begun to be known in recent years, the investors of Australia, who either invest through big superannuation funds or in managed investment schemes or directly into securities or other products, can feel some security and become part of the free enterprise system in Australia with some security about their investments. No Corporations Law and no financial structure is ever going to take away risk, but it is very important that, when people enter into these products, they understand what the risks are and what the rewards are.

I think it has been an important reform. I am pleased to have been associated with it. I join Senator Coonan in thanking Senator Chapman for his significant work throughout the entire CLERP program, and particularly with this bill. I also pay credit particularly to Senator Ferguson. During my time of trying to get CLERP6 into a piece of legislation and ultimately into this place, he gave me enormous assistance with his significant personal knowledge of and expertise in the insurance industry. I know that Senator Ferguson is respected throughout the industry across Australia. I thank him for the time he gave to me when I was a parliamentary secretary struggling with the demands of the insurance industry. I also thank my friend John Hibbett at the FPA, the banks and all the different players in this. I think the concept of finding a unique, single regulatory regime for all the people who have been in that industry for so long was, I guess, in Sir Humphrey's language a brave decision, but we are here today. I see from my briefings from departmental officials that on most of the areas of this law there is pretty solid agreement. We will have a couple of disagreements in the committee stage.

I conclude by thanking not only all the people here but all the people who did bother to come forward and assist the government to design this large package. I mentioned John Hibbett, but there were many other people right around Australia who contrib-

uted and gave up their very valuable time to assist the government with its consultations. Last, but not least, I thank the departmental officials who used to be in the Business Law Division—I do not know what it is called these days. Since Jim Murphy's time as the head there, there has been a whole range of people in the Treasury department in what was called the Business Law Division. It is probably called something else now. They are not all here in the box today but are back at Treasury, but I thank them for the enormous amount of work that has gone on since late 1996 until the present.

I think you would be hard pressed to find a piece of legislation that has had the sort of consultation that this has had. It deserved it. I think Joe Hockey, the minister, would tell you that it is about seven per cent of the GDP of Australia. It affects just about every man, woman and child in Australia, because just about everyone has some form of interaction with the investment community, no matter where they invest. Getting this legislation right and ensuring that consumers are protected, and balancing that with a need to develop capital, is a hard balancing exercise. I sincerely thank the Treasury officers who have put so much time and effort into what is a significant piece of legislation. I thank all honourable senators who have contributed to the debate and look forward to moving this legislation through its subsequent stages. I commend the bill to the Senate.

**The ACTING DEPUTY PRESIDENT (Senator Sherry)**—The question is that the second reading amendment moved by Senator Murray be agreed to.

Question resolved in the affirmative.

**The ACTING DEPUTY PRESIDENT**—The question is that the amended motion be agreed to.

Question resolved in the affirmative.

Bills read a second time.

#### In Committee

**Senator IAN CAMPBELL (Western Australia)**—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.27 p.m.)—I table supplementary explanatory memoranda relating to the government amendments to be

moved to these bills. The memoranda were circulated in the chamber yesterday.

#### FINANCIAL SERVICES REFORM BILL 2001

The bill.

**Senator IAN CAMPBELL (Western Australia)**—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.28 p.m.)—by leave—I move government amendments Nos 1 to 19, 21 to 64, 69 to 126 and 128 to 157:

- (1) Schedule 1, item 1, page 6 (lines 26 to 30), omit paragraph (d), substitute:
  - (d) funds are able to be withdrawn or transferred from the facility on the instruction of, or by authority of, the depositor:
    - (i) without any prior notice to the ADI that makes the facility available; or
    - (ii) if the ADI that makes the facility available is included in a class of ADIs specified in regulations made for the purposes of this subparagraph—subject to a prior notice requirement that does not exceed the period specified in those regulations in relation to that class of ADIs;

whether or not the withdrawal or transfer will attract a reduction in the return generated for the depositor as mentioned in subparagraph (c)(i); and
- (2) Schedule 1, item 1, page 8 (after line 8), after the definition of *disqualified individual*, insert:

*execution-related telephone advice* has the meaning given by subsection 946B(1).

- (3) Schedule 1, item 1, page 8 (lines 14 and 15), omit “subsection 766B(1)”, substitute “section 766B”.
- (4) Schedule 1, item 1, page 9 (after line 30), after the definition of *general insurance product*, insert:

*holder*, in relation to a financial product, means the person to whom the financial product was issued, or if it has (since issue) been disposed of to another person who has not themselves disposed of it, that other person (and *hold* has a corresponding meaning).

(5) Schedule 1, item 1, page 11 (line 2), omit “or (1)”.

(6) Schedule 1, item 1, page 13 (after line 9), after the definition of recognised affiliate, insert:

***relevant personal circumstances***, in relation to advice provided or to be provided to a person in relation to a matter, are such of the person’s objectives, financial situation and needs as would reasonably be considered to be relevant to the advice.

(7) Schedule 1, item 1, page 17 (before line 1), after subsection (3), insert:

(3A) For the avoidance of doubt, none of the following are taken to give rise to the issue of a financial product to a person (the *client*):

(a) the client making a further contribution to a superannuation fund of which the client is already a member;

(b) the client making a further deposit into an RSA maintained in the client’s name;

(c) the client making a further payment under a life insurance investment product;

(d) the client making a further deposit into a deposit product;

(e) the client engaging in conduct specified in regulations made for the purposes of this paragraph in relation to a financial product already held by the client.

(8) Schedule 1, item 1, page 20 (line 30), omit “subsection (5) or (7)”, substitute “subsection (5), (6) or (7)”.

(9) Schedule 1, item 1, page 22 (lines 13 to 19), omit subsection (6), substitute:

*Superannuation products and RSA products*

(6) For the purposes of this Chapter:

(a) if a financial product provided to a person is a superannuation product or an RSA product, the product is provided to the person as a retail client; and

(b) if a financial service (other than the provision of a financial product) provided to a person who is not covered by subparagraph (c)(i) or (ii) relates to a superannuation product or an RSA product, the service is provided to the person as a retail client; and

(c) if a financial service (other than the provision of a financial product) provided to a person who is:

(i) the trustee of a superannuation fund, an approved deposit fund, a pooled superannuation trust or a public sector superannuation scheme (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) that has net assets of at least \$10 million; or

(ii) an RSA provider (within the meaning of the *Retirement Savings Accounts Act 1997*);

relates to a superannuation product or an RSA product, that does not constitute the provision of a financial service to the person as a retail client.

(10) Schedule 1, item 1, page 23 (line 33) to page 24 (line 5), omit notes 1, 2 and 3 to subsection (9), substitute:

Note 1: There is no such presumption in relation to the provision of a product or service that is or relates to a general insurance product, a superannuation product or an RSA product. Whether or not such a product, or a service relating to such a product, was provided to a person as a retail client is to be resolved as provided in subsection (5) or (6), as the case requires.

Note 2: In criminal proceedings, a defendant bears an evidential burden in relation to the matters in paragraphs (7)(a) to (d) (see subsection (8)).

(11) Schedule 1, item 1, page 30 (line 15), omit “may be still be”, substitute “may still be”.

(12) Schedule 1, item 1, page 30 (after line 33), after paragraph 764A(1)(b), insert:

(ba) any of the following in relation to a managed investment scheme that is not a registered scheme, other than a scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED(1)(a), (b) and (c) are satisfied:

(i) an interest in the scheme;

- (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
- (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

(13) Schedule 1, item 1, page 32 (lines 17 to 20), omit subparagraph (k)(ii), substitute:

- (ii) a contract to exchange one currency (whether Australian or not) for another that is to be settled immediately;

(14) Schedule 1, item 1, page 32 (lines 21 to 29), omit paragraph (l).

(15) Schedule 1, item 1, page 34 (lines 18 to 21), omit paragraph (m), substitute:

- (m) a contract to exchange one currency (whether Australian or not) for another that is to be settled immediately;

(16) Schedule 1, item 1, page 34 (lines 24 and 25), omit paragraph (o).

(17) Schedule 1, item 1, page 35 (lines 1 to 9), omit paragraph (s), substitute:

- (s) any of the following in relation to a managed investment scheme (whether or not operated in this jurisdiction) in relation to which none of paragraphs 601ED(1)(a), (b) and (c) are satisfied and that is not a registered scheme:
  - (i) an interest in the scheme;
  - (ii) a legal or equitable right or interest in an interest covered by subparagraph (i);
  - (iii) an option to acquire, by way of issue, an interest or right covered by subparagraph (i) or (ii);

(18) Schedule 1, item 1, page 37 (line 5), omit “the provision of an exempt document”, substitute “the provision or giving of an exempt document or statement”.

(19) Schedule 1, item 1, page 37 (lines 12 to 15), omit paragraphs (3)(a) and (b), substitute:

- (a) the provider of the advice has considered one or more of the person’s objectives, financial situation and needs; or
- (b) a reasonable person might expect the provider to have considered one or more of those matters.

(21) Schedule 1, item 1, page 37 (lines 21 to 29), omit subsection (6), substitute:

(9) In this section:

***exempt document or statement*** means:

- (a) a document prepared, or a statement given, in accordance with requirements of this Chapter, other than:
  - (i) a Statement of Advice; or
  - (ii) a document or statement of a kind prescribed by regulations made for the purposes of this subparagraph; or
- (b) any other document or statement of a kind prescribed by regulations made for the purposes of this paragraph.

(22) Schedule 1, item 1, page 37 (line 31), after “conduct”, insert “(whether engaged in as principal or agent)”.

(23) Schedule 1, item 1, page 38 (line 10), after “own behalf”, insert “(whether directly or through an agent or other representative)”.

(24) Schedule 1, item 1, page 38 (after line 12), after subsection (3), insert:

- (3A) For the purposes of subsection (3), a person (the ***agent***) who deals in a product as an agent or representative of another person (the ***principal***) is not taken to deal in the product on the agent’s own behalf, even if that dealing, when considered as a dealing by the principal, is a dealing by the principal on the principal’s own behalf.

(25) Schedule 1, item 1, page 39 (after line 12), at the end of section 766D, add:

- (2) Paragraph (1)(a) does not apply to a person stating prices at which they propose to acquire or dispose of financial products if:
  - (a) the person is the issuer of the products; and
  - (b) the products are superannuation products, managed investment products or financial products referred to in paragraph 764A(1)(ba) (which relates to unregistered managed investment schemes).

(26) Schedule 1, item 1, page 39 (lines 14 to 34), omit subsections 766E(1) and (2), substitute:

- (1) For the purposes of this Chapter, a person (the ***provider***) provides a ***custodial or depository service*** to another person (the ***client***) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an ar-

angement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.

- (2) The following provisions apply in relation to a custodial or depository service:
  - (a) subject to paragraph (b), for the purposes of this Chapter, the time at which a custodial or depository service is provided is the time when the financial product or beneficial interest concerned is first held by the provider as mentioned in subsection (1);
  - (b) for the purposes of Part 7.6, and of any other provisions of this Act prescribed by regulations made for the purposes of this paragraph, the continued holding of the financial product or beneficial interest concerned by the provider as mentioned in subsection (1) also constitutes the provision of a custodial or depository service.

Note: Because of paragraph (a) (subject to regulations made for the purposes of paragraph (b)), the requirements of Part 7.7 relating to financial services disclosure need only be complied with before the product or interest is first held by the provider. However, because of paragraph (b), the provider will be subject to the licensing and related requirements of Part 7.6 for so long as they continue to hold the product or interest.

- (27) Schedule 1, item 1, page 40 (line 4), after “registered scheme”, insert “, or the holding of the assets of a registered scheme”.
- (28) Schedule 1, item 1, page 44 (after line 35), after subsection (8), insert:
  - (8A) Nothing in this section, other than subsections (7) and (8), excludes or limits the operation of subsection 601FB(2) in relation to the provisions of this Chapter or to proceedings under this Chapter.
- (29) Schedule 1, item 1, page 46 (lines 5 to 9), omit the definition of **clearing and settlement arrangements**, substitute:

**clearing and settlement arrangements**, for transactions effected through a financial market, means arrangements for the clearing and settlement of those transactions. The arrangements may be part of the market's operating rules or be separate from those operating rules.

- (30) Schedule 1, item 1, page 48 (line 19), omit “in”, substitute “on or in relation to”.
- (31) Schedule 1, item 1, page 50 (line 35), omit “an individual”, substitute “a person”.
- (32) Schedule 1, item 1, page 53 (lines 1 to 20), omit section 792G, substitute:

**792G Obligations to notify people about clearing and settlement arrangements in certain circumstances**

- (1) If, in relation to a category of transactions, being all transactions or a class of transactions effected through a licensed market, the market licensee:
  - (a) does not have any clearing and settlement arrangements for transactions in that category; or
  - (b) has clearing and settlement arrangements for transactions in that category, but they are not arrangements with the operator of a clearing and settlement facility for the clearing and settlement of such transactions through the facility;

the market licensee must, before a person becomes a participant in the market, give the person written advice:
- (c) if paragraph (a) applies—that the licensee does not have any clearing and settlement arrangements for transactions in that category, and that it is the responsibility of the parties to such transactions to make their own arrangements for the clearing and settlement of such transactions; or
- (d) if paragraph (b) applies—setting out particulars of the clearing and settlement arrangements for transactions in that category.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

- (2) Within a reasonable time before a market licensee ceases, in relation to a category of transactions, being all transactions or a class of transactions effected through a licensed market, to

have clearing and settlement arrangements (the *terminating arrangements*) with the operator of a particular clearing and settlement facility for the clearing and settlement of such transactions through the facility, the market licensee must give the participants in the market written advice:

- (a) if the terminating arrangements are not being replaced by any other clearing and settlement arrangements—that the licensee will no longer have clearing and settlement arrangements for that category of transactions, and that it will be the responsibility of the parties to such transactions to make their own arrangements for the clearing and settlement of such transactions; or
- (b) if the terminating arrangements are being replaced by new clearing and settlement arrangements—setting out particulars of the new arrangements.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(33) Schedule 1, item 1, page 62 (line 13), omit “in”, substitute “on or in relation to”.

(34) Schedule 1, item 1, page 77 (line 17), omit “an individual”, substitute “a person”.

(35) Schedule 1, item 1, page 112 (line 22), omit “**Record-keeping etc.**”, substitute “**Miscellaneous**”.

(36) Schedule 1, item 1, page 113 (after line 24), at the end of Part 7.4, add:

**854B Exemptions and modifications by regulations**

- (1) The regulations may:
  - (a) exempt a person or class of persons from all or specified provisions of this Part; or
  - (b) provide that this Part applies as if specified provisions were omitted, modified or varied as specified in the regulations.
- (2) Without limiting subsection (1), regulations made for the purposes of this section may declare that provisions of this Part are modified so that they apply (with or without further modifications) in relation to persons, bodies or situations to which they would not otherwise apply.

- (3) For the purpose of this section, the *provisions of this Part* include:
  - (a) definitions in this Act, or in the regulations, as they apply to references in this Part; and
  - (b) any provisions of Part 10.2 (transitional provisions) that relate to provisions of this Part.

(37) Schedule 1, item 1, page 120 (lines 8 to 11), omit paragraph (c), substitute:

- (c) the operator of a clearing and settlement facility, if:
  - (i) there are clearing and settlement arrangements (as defined in section 790A) for some or all transactions effected through the market; and
  - (ii) those arrangements are with the operator of the facility; or

(38) Schedule 1, item 1, page 156 (lines 6 to 11), omit the definition of *representative*, substitute:

*representative* of a person means:

- (a) if the person is a financial services licensee:
  - (i) an authorised representative of the licensee; or
  - (ii) an employee or director of the licensee; or
  - (iii) an employee or director of a related body corporate of the licensee; or
  - (iv) any other person acting on behalf of the licensee; or
- (b) in any other case:
  - (i) an employee or director of the person; or
  - (ii) an employee or director of a related body corporate of the person; or
  - (iii) any other person acting on behalf of the person.

(39) Schedule 1, item 1, page 157 (lines 3 to 12), omit paragraph (b), substitute:

- (b) the service is the issue, variation or disposal of a financial product by the person (the *product provider*) pursuant to an arrangement (an *intermediary authorisation*) between the product provider and a financial services licensee under which:

- (i) the financial services licensee, or their authorised representatives, may make offers to people to arrange for the issue, variation or disposal of financial products by the product provider; and
- (ii) the product provider is to issue, vary or dispose of financial products in accordance with such offers, if they are accepted;

provided that the offer pursuant to which the issue, variation or disposal is made was covered by the financial services licensee's Australian financial services licence;

- (ba) the service is the entry into of an intermediary authorisation referred to in paragraph (b);

(40) Schedule 1, item 1, page 157 (after line 26), after paragraph (e), insert:

- (ea) the service is the provision of general advice and all of the following apply:
  - (i) the advice is provided in a newspaper or periodical of which the person is the proprietor or publisher;
  - (ii) the newspaper or periodical is generally available to the public otherwise than only on subscription;
  - (iii) the sole or principal purpose of the newspaper or periodical is not the provision of financial product advice;
- (eb) the service is the provision of general advice and all of the following apply:
  - (i) the advice is provided in the course of, or by means of, transmissions that the person makes by means of an information service (see subsection (6)), or that are made by means of an information service that the person owns, operates or makes available;
  - (ii) the transmissions are generally available to the public;
  - (iii) the sole or principal purpose of the transmissions is not the provision of financial product advice;

- (ec) the service is the provision of general advice and all of the following apply:
  - (i) the advice is provided in sound recordings, video recordings, or data recordings;
  - (ii) the person makes the recordings available to the public by supplying copies of them to the public and/or by causing the recordings (if they are sound recordings) to be heard by the public, causing the recordings (if they are video recordings) to be seen and heard by the public, or the contents of the recordings (if they are data recordings) to be displayed or reproduced for the public;
  - (iii) the sole or principal purpose of the recordings is not the provision of financial product advice;

(41) Schedule 1, item 1, page 158 (lines 14 to 16), omit subparagraph (g)(ii), substitute:

- (ii) the service is one in relation to which APRA has regulatory or supervisory responsibilities;

(42) Schedule 1, item 1, page 159 (lines 11 to 16), omit subsection (5), substitute:

- (5) The exemption under paragraph (2)(ea), (eb) or (ec), or an exemption under paragraph (2)(k) or (l), may apply unconditionally or subject to conditions:
  - (a) in the case of the exemption under paragraph (2)(ea), (eb) or (ec), or an exemption under paragraph (2)(k)—specified in regulations made for the purposes of this paragraph; or
  - (b) in the case of an exemption under paragraph (2)(l)—specified by ASIC in writing published in the *Gazette*.
- (6) In this section:

**information service** means:

- (a) a broadcasting service; or
- (b) an interactive or broadcast videotext or teletext service or a similar service; or
- (c) an online database service or a similar service; or
- (d) any other service identified in regulations made for the purposes of this paragraph.

(43) Schedule 1, item 1, page 161 (after line 3), at the end of section 911B, add:

(3) If, as mentioned in paragraph (1)(d), the provider holds their own Australian financial services licence covering the provision of the service, then, for the purposes of the other provisions of this Chapter, the service is taken to be provided by the provider (and not by the principal) unless regulations made for the purposes of this subsection provide otherwise.

(44) Schedule 1, item 1, page 162 (lines 21 to 26), omit paragraph (g), substitute:

(g) if those financial services are provided to persons as retail clients— have a dispute resolution system complying with subsection (2); and

(45) Schedule 1, item 1, page 162 (after line 30), at the end of section 912A, add:

(2) To comply with this subsection, a dispute resolution system must consist of:

(a) an internal dispute resolution procedure that:

(i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and

(ii) covers complaints against the licensee made by retail clients in connection with the provision of all financial services covered by the licence; and

(b) membership of one or more external dispute resolution schemes that:

(i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and

(ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*) against the licensee made by retail clients in connection with the provision of all financial services covered by the licence.

(3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:

(a) standards or requirements made by ASIC; or

(b) approvals given by ASIC.

(46) Schedule 1, item 1, page 164 (line 31), omit “this Act”, substitute “the financial services laws”.

(47) Schedule 1, item 1, page 168 (lines 12 and 13), omit “significantly limiting or restricting the APRA body’s ability to carry on”, substitute “preventing the APRA body from being able to carry on”.

(48) Schedule 1, item 1, page 168 (lines 32 and 33), omit “significantly limiting or restricting the ADI’s ability to carry on”, substitute “preventing the ADI from being able to carry on”.

(49) Schedule 1, item 1, page 171 (after line 14), at the end of section 915B, add:

(4) ASIC may suspend or cancel an Australian financial services licence held by the trustees of a trust, by giving written notice to the trustees, if:

(a) the trustees of the trust cease to carry on the financial services business; or

(b) a trustee who is a natural person:

(i) becomes an insolvent under administration; or

(ii) is convicted of serious fraud; or

(iii) becomes incapable of managing their affairs because of physical or mental incapacity; or

(c) a trustee that is a body corporate becomes an externally-administered body corporate; or

(d) the trustees lodge with ASIC an application for ASIC to do so, which is accompanied by the documents, if any, required by regulations made for the purposes of this paragraph.

Note 1: For fees in respect of lodging applications, see Part 9.10.

Note 2: If there is only one trustee, subsection (1) will apply (if the trustee is a natural person), and subsection (3) will apply (if the trustee is a body corporate).

(50) Schedule 1, item 1, page 173 (lines 14 to 28), omit subsection (1), substitute:

(1) If a financial services licensee, or a related body corporate, is a body (the *APRA body*) regulated by APRA, other

than an ADI (within the meaning of the *Banking Act 1959*),  
the following provisions apply:

(a) ASIC cannot suspend or cancel the licensee's licence if doing so would, in ASIC's opinion, have the result of preventing the APRA body from being able to carry on all or any of its usual activities (being activities in relation to which APRA has regulatory or supervisory responsibilities), unless ASIC has first consulted APRA about the proposed action;

(b) if ASIC suspends or cancels the licensee's licence and paragraph (a) does not apply to that action, ASIC must, within one week, inform APRA of the action that has been taken.

(51) Schedule 1, item 1, page 174 (lines 1 and 2), omit "significantly limiting or restricting the ADI's ability to carry on", substitute "preventing the ADI from being able to carry on".

(52) Schedule 1, item 1, page 175 (after line 7), after subsection 916A(3), insert:

(3A) A person must not give a purported authorisation if that purported authorisation is void to any extent under subsection (3).

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(53) Schedule 1, item 1, page 175 (after line 15), after subsection 916B(2), insert:

(2A) A person must not give a purported authorisation if that purported authorisation is contrary to this section.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(54) Schedule 1, item 1, page 175 (line 20), at the end of subsection 916B(3), add "in writing given to the body corporate".

(55) Schedule 1, item 1, page 175 (after line 25), after subsection (5), insert:

(5A) If a licensee gives consent under subsection (3) to a body corporate, the licensee must keep a copy of the consent for 5 years after the day on which it ceases to have effect.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(56) Schedule 1, item 1, page 175 (after line 27), at the end of section 916B, add:

(7) An authorisation of an individual as mentioned in subsection (3) may be revoked at any time by:

(a) the licensee; or

(b) the body corporate that gave the individual the authorisation; giving written notice to the individual.

(8) If a person revokes the authorisation of an individual under subsection (7), that person must inform, in writing, the other person who could have revoked the authorisation.

(9) To avoid doubt, an authorisation given as mentioned in subsection (3) is taken, for the purposes of sections 916C to 916F, to be given by the body corporate, not the licensee.

(57) Schedule 1, item 1, page 176 (lines 8 to 10), omit subsection 916C(3), substitute:

(3) A person must not give a purported authorisation if that purported authorisation is in breach of this requirement.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(58) Schedule 1, item 1, page 176 (after line 20), after subsection 916D(2), insert:

(2A) A person must not give a purported authorisation if that purported authorisation is given in breach of this requirement.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(2B) The requirement in subsection (1) does not prohibit a financial services licensee from being an authorised representative in circumstances covered by section 916E.

Note: In a prosecution for an offence based on subsection (2A), a defendant bears an evidential burden in relation to the matters in this subsection. See subsection 13.3(3) of the *Criminal Code*.

(59) Schedule 1, item 1, page 177 (line 5), after "ASIC", insert "etc."

(60) Schedule 1, item 1, page 177 (after line 11), after subsection 916F(1), insert:

(1A) A person who authorises an individual to provide a financial service on behalf of a financial services licensee as mentioned in section 916B must give the licensee written notice (in accordance with subsection (2)), within 10 business days of the individual being authorised to provide the financial service, if the licensee's consent to the authorisation was given in respect of a specified class of individuals.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(61) Schedule 1, item 1, page 177 (lines 19 to 23), omit subsection (3), substitute:

(3) A person must notify ASIC, by lodging a written notice, within 10 business days if:

- (a) the person authorised a representative under section 916A or 916B and there is a change in any details relating to the representative that are required to be included under subsection (2); or
- (b) the person revokes the authorisation of a representative under section 916A or 916B.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(62) Schedule 1, item 1, page 181 (lines 5 to 15), omit subsection (3), substitute:

*Financial service covered by multiple authorities: conduct within authority for one or more of them*

(3) If:

- (a) the representative is the representative of more than one of the licensees in respect of a particular class of financial service; and
- (b) the conduct relates to that class of service; and
- (c) the conduct is within authority in relation to:
  - (i) only one of those licensees (the **authorising licensee**); or
  - (ii) two or more of those licensees (the **authorising licensees**);

then:

- (d) if subparagraph (c)(i) applies—the authorising licensee is responsible for the conduct, as between that licensee and the client; or
- (e) if subparagraph (c)(ii) applies—the authorising licensees are jointly and severally responsible for the conduct, as between themselves and the client.

(63) Schedule 1, item 1, page 186 (lines 22 to 27), omit paragraph (e), substitute:

- (e) if members of the body provide that kind of financial product advice to persons as retail clients—ensure that each of its members has a dispute resolution system complying with subsection (2); and

(64) Schedule 1, item 1, page 187 (after line 2), at the end of section 919A, add:

(2) To comply with this subsection, a dispute resolution system must consist of:

- (a) an internal dispute resolution procedure that:
  - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
  - (ii) covers complaints made by retail clients in connection with the provision by the member of the kind of financial product advice covered by the declaration; and
- (b) membership of one or more external dispute resolution schemes that:
  - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
  - (ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*) made by retail clients in connection with the provision by the member of the kind of financial product advice covered by the declaration.

(3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:

- (a) standards or requirements made by ASIC; or
  - (b) approvals given by ASIC.
- (69) Schedule 1, item 1, page 195 (line 10), omit “(ii)”, substitute “(iii)”.
- (70) Schedule 1, item 1, page 204 (line 14), omit “and”.
- (71) Schedule 1, item 1, page 209 (after line 4), after subsection (4), insert:
  - (4A) The regulations may define what constitutes a public forum for the purposes of subsection (4).
- (72) Schedule 1, item 1, page 211 (lines 5 to 8), omit paragraph 941F(b), substitute:
  - (b) the following conditions are satisfied:
    - (i) there is a change in circumstances before the service is provided, and the Financial Services Guide does not contain the information it would be required to contain if it were given to a person immediately after that change;
    - (ii) the fact that the Financial Services Guide does not contain the up to date information is materially adverse from the point of view of a reasonable person deciding, as a retail client, whether to proceed to be provided with the financial service;
- (73) Schedule 1, item 1, page 212 (lines 24 to 33), omit paragraph (g), substitute:
  - (g) if the providing entity provides execution-related telephone advice (see section 946B)—a statement in relation to which the following requirements are satisfied:
    - (i) the statement must indicate that the client may request a record of execution-related telephone advice that is provided to them, if they have not already been provided with a record of that advice;
    - (ii) the statement must set out particulars of how the client may request such a record;
    - (iii) any limitations in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regula-
- tions made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and
- (74) Schedule 1, item 1, page 212 (lines 34 to 38), omit paragraph (h), substitute:
  - (h) information about the dispute resolution system that covers complaints by persons to whom the providing entity provides financial services, and about how that system may be accessed; and
- (75) Schedule 1, item 1, page 214 (after line 5), at the end of section 942B, add:
  - (8) If:
    - (a) the Financial Services Guide includes a statement to the effect that a client may request a record of execution-related telephone advice; and
    - (b) the client is provided with execution-related telephone advice to which that statement applies; and
    - (c) the client has not already been provided with a record of that advice;
  - the providing entity must comply with a request made in accordance with that statement for a record of that advice.
- Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (76) Schedule 1, item 1, page 215 (lines 18 to 28), omit paragraph (h), substitute:
  - (h) if the providing entity, when acting as representative of the authorising licensee or any of the authorising licensees, provides execution-related telephone advice (see section 946B)—a statement in relation to which the following requirements are satisfied:
    - (i) the statement must indicate that the client may request a record of execution-related telephone advice that is provided to them, if they have not already been provided with a record of that advice;
    - (ii) the statement must set out particulars of how the client may request such a record;

(iii) any limitations in those particulars on the time within which the client may request such a record must be consistent with any applicable requirements in regulations made for the purposes of this subparagraph or, if there are no such applicable requirements, must be such as to allow the client a reasonable opportunity to request a record of the advice; and

(77) Schedule 1, item 1, page 215 (lines 29 to 34), omit paragraph (i), substitute:

(i) information about the dispute resolution system that covers complaints by persons to whom the providing entity provides financial services when acting as representative of the authorising licensee or any of the authorising licensees, and about how that system may be accessed; and

(78) Schedule 1, item 1, page 217 (after line 7), at the end of section 942C, add:

(8) If:

- (a) the Financial Services Guide includes a statement to the effect that a client may request a record of execution-related telephone advice; and
- (b) the client is provided with execution-related telephone advice to which that statement applies; and
- (c) the client has not already been provided with a record of that advice; the providing entity must comply with a request made in accordance with that statement for a record of that advice.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(79) Schedule 1, item 1, page 222 (lines 5 to 15), omit subsection (1), substitute:

(1) The providing entity must only provide the advice to the client if:

- (a) the providing entity:
  - (i) determines the relevant personal circumstances in relation to giving the advice; and
  - (ii) makes reasonable inquiries in relation to those personal circumstances; and
- (b) having regard to information obtained from the client in relation to

those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and

(c) the advice is appropriate to the client, having regard to that consideration and investigation.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(80) Schedule 1, item 1, page 223 (line 4), omit “the client”, substitute “the client’s relevant personal circumstances”.

(81) Schedule 1, item 1, page 223 (lines 12 and 13), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

(82) Schedule 1, item 1, page 223 (line 16), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

(83) Schedule 1, item 1, page 224 (lines 17 to 32), omit subsection (2), substitute:

(2) The providing entity does not have to give the client a Statement of Advice if, before the execution-related telephone advice is provided, the client agrees to a Statement of Advice not being given in respect of the advice, or advice of that kind.

(84) Schedule 1, item 1, page 225 (after line 3), after subsection (3), insert:

(3A) The providing entity must keep a record of the advice and, in doing so, must comply with any applicable requirements of regulations made for the purposes of this subsection.

Note 1: Failure to comply with this subsection is an offence (see subsection 1311(1)).

Note 2: For the client’s right to a record of the advice, see subsections 942B(8) and 942C(8).

(85) Schedule 1, item 1, page 225, lines 4 to 11, omit subsection (4).

(86) Schedule 1, item 1, page 225 (line 16), omit “(c)”, substitute “(b)”.

(87) Schedule 1, item 1, page 232 (line 6), omit “financial situation and needs”, substitute “financial situation or needs”.

(88) Schedule 1, item 1, page 232 (line 19), omit “financial situation and needs”, substitute “financial situation or needs”.

(89) Schedule 1, item 1, page 235 (lines 5 to 16), omit section 950B, substitute:

**950B Requirement to have reasonable basis for the advice**

The providing entity must only provide the advice to the client if:

- (a) the providing entity:
  - (i) determines the relevant personal circumstances in relation to giving the advice; and
  - (ii) makes reasonable inquiries in relation to those personal circumstances; and
- (b) having regard to information obtained from the client in relation to those personal circumstances, the providing entity has given such consideration to, and conducted such investigation of, the subject matter of the advice as is reasonable in all of the circumstances; and
- (c) the advice is appropriate to the client, having regard to that consideration and investigation.

Note: Failure to comply with this section is an offence (see subsection 1311(1)).

(90) Schedule 1, item 1, page 235 (line 20), omit “the client”, substitute “the client’s relevant personal circumstances”.

(91) Schedule 1, item 1, page 235 (lines 28 and 29), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

(92) Schedule 1, item 1, page 235 (line 32), omit “objectives, financial situation and needs”, substitute “relevant personal circumstances”.

(93) Schedule 1, item 1, page 237 (after line 7), at the end of section 950D, add:

- (4) The providing entity must also, at or before the giving of the advice, give the client any other information required by regulations made for the purposes of this subsection.

(94) Schedule 1, item 1, page 257 (after line 6), after subsection (3), insert:

- (3A) For the purposes of paragraph (3)(c):
  - (a) section 917C is taken to apply, despite section 917F; and
  - (b) section 917D is taken not to apply.

(95) Schedule 1, item 1, page 259 (line 13), after “client”, insert “;”.

(96) Schedule 1, item 1, page 259 (line 14), omit subparagraph (iii), substitute:

- (iii) to the licensee in the licensee’s capacity as a person acting on behalf of the client.

(97) Schedule 1, item 1, page 263 (after line 8), at the end of Subdivision A, add:

**981H Money to which Subdivision applies taken to be held in trust**

- (1) Subject to subsections (2) and (3), money to which this Subdivision applies that is paid to the licensee:
  - (a) by the client; or
  - (b) by a person acting on behalf of the client; or
  - (c) in the licensee’s capacity as a person acting on behalf of the client; is taken to be held in trust by the licensee for the benefit of the client.
- (2) Subsection (1) does not apply to money that the licensee and the client agree in writing is not held in trust by the licensee for the benefit of the client.
- (3) The regulations may:
  - (a) provide that subsection (1) does not apply in relation to money in specified circumstances; and
  - (b) provide for matters relating to the taking of money to be held in trust (including, for example, terms on which the money is taken to be held in trust and circumstances in which it is no longer taken to be held in trust).

(98) Schedule 1, item 1, page 268 (line 14), omit “money”, substitute “property”.

(99) Schedule 1, item 1, page 292 (lines 3 to 6), omit section 1011A, substitute:

**1011A Jurisdictional scope of Division**

- (1) Subject to subsection (2), sections 1012A, 1012B and 1012C only apply in relation to offers and recommendations referred to in those sections that are received in this jurisdiction.
- (2) Section 1012B also applies in relation to issues referred to in subparagraph 1012B(3)(a)(iii) that are made in this jurisdiction.
- (3) The regulations may make provision dealing with the jurisdictional scope of some or all of the other provisions of this Division. The other provisions of

this Division have effect subject to any such regulations.

(100) Schedule 1, item 1, page 301 (line 22) to page 302 (line 2), omit subsection (4).

(101) Schedule 1, item 1, page 303 (lines 8 to 10), omit paragraphs (8)(a) and (b), substitute:

- (a) the financial product is a financial product described in paragraph 764A(1)(ba) (which relates to certain managed investment schemes that are not registered schemes); and
- (b) the holder of the office (by whatever name it is known), in relation to the managed investment scheme, that corresponds most closely to the office of responsible entity of a registered scheme is an exempt body; and

(102) Schedule 1, item 1, page 303 (lines 14 and 15), omit “responsible entity of the scheme”, substitute “office holder referred to in paragraph (b)”.

(103) Schedule 1, item 1, page 303 (line 17), omit “responsible entity of the scheme”, substitute “office holder referred to in paragraph (b)”.

(104) Schedule 1, item 1, page 303 (after line 29), after subsection (9), insert:

*Recommendation, issue or sale situation—client is associated with registered scheme*

(9A) In a recommendation situation, an issue situation or a sale situation, the regulated person does not have to give the client a Product Disclosure Statement if:

- (a) the financial product is a managed investment product; and
- (b) the client is associated (within the meaning of subsection (9B)) with the scheme’s responsible entity.

(9B) For the purposes of subsection (9A), the client is associated with the scheme’s responsible entity if the client is:

- (a) an executive officer of the responsible entity or of a related body corporate; or
- (b) a spouse, parent, child, brother or sister of a person who is an executive officer of the responsible entity or a related body corporate; or

(c) a body corporate controlled by a person referred to in paragraph (a) or (b).

(105) Schedule 1, item 1, page 305 (line 29), omit “992A”, substitute “992A”.

(106) Schedule 1, item 1, page 311 (after line 8), after section 1012I, insert:

***1012IA Treatment of arrangements under which a person can instruct another person to acquire a financial product***

*Definitions*

(1) In this section:

*acquirer*, in relation to a custodial arrangement, has the meaning given by the definition of ***custodial arrangement***.

*client*, in relation to a custodial arrangement, has the meaning given by the definition of ***custodial arrangement***.

***custodial arrangement*** means an arrangement between a person (the ***provider***) and another person (the ***client***) (whether or not there are also other parties to the arrangement) under which:

- (a) the client is, or is entitled, to give an instruction that a particular financial product, or a financial product of a particular kind, is to be acquired; and
- (b) if the client gives such an instruction, a person (the ***acquirer***), being the provider or a person with whom the provider has or will have an arrangement, must (subject to any discretion they have to refuse) acquire the financial product, or a financial product of that kind; and
- (c) if the acquirer acquires the financial product, or a financial product of that kind, pursuant to an instruction given by the client, either:
  - (i) the product is to be held on trust for the client or another person nominated by the client; or
  - (ii) the client, or another person nominated by the client, is to have rights or benefits in relation to the product or a beneficial interest in the product, or in relation to, or calculated by reference to, dividends or other benefits derived from the product.

**instruction** includes a direction or request.

**provider**, in relation to a custodial arrangement, has the meaning given by the definition of **custodial arrangement**.

**regulated acquisition** means an acquisition of a financial product pursuant to an instruction by the client under a custodial arrangement, being an acquisition:

- (a) by way of issue by the issuer (the **regulated person**); or
- (b) pursuant to a sale by a person (the **regulated person**) in circumstances described in subsection 1012C(5), (6) or (8).

**regulated person**, in relation to a regulated acquisition of a financial product, has the meaning given by paragraph (a) or (b) (as the case requires) of the definition of **regulated acquisition**.

*Obligation on provider to give client a PDS*

- (2) Before a regulated acquisition of a financial product occurs pursuant to an instruction given by the client under a custodial arrangement, the provider must give the client a Product Disclosure Statement for the product if a Product Disclosure Statement for the product would, if there were an equivalent direct acquisition by the client, be required by subsection 1012B(3) or 1012C(3) (see subsection (3) of this section) to be given to the client by the regulated person before that acquisition occurred. For this purpose, an **equivalent direct acquisition** is an acquisition that would occur if:
  - (a) the product were instead being offered for issue or sale direct to the client by the regulated person for the same price (or for the appropriate proportion of that price, if the transaction for the regulated acquisition also covers other products); and
  - (b) the circumstances of that issue or sale to the client were otherwise the same as those in which the regulated acquisition will occur.

*Determining whether a PDS would have to be given for an equivalent direct acquisition*

- (3) The following provisions apply for the purpose of determining whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product:
  - (a) the effect of the provisions referred to in subsection 1012B(5) or 1012C(10), as the case requires, as they have effect subject to the following paragraphs, must be taken into account;
  - (b) subsections 1012D(1) and (2) apply as if references in those subsections to the regulated person's belief in relation to a matter were instead references to the provider's belief in relation to that matter;
  - (c) subsections 1012D(2) and (3) apply as if references to the client already holding a financial product of the same kind also included a reference to a person already holding a financial product of the same kind as a result of an instruction given by the client under a custodial arrangement;
  - (d) sections 1012E and 1012F are to be disregarded;
  - (e) section 1012G has effect in accordance with subsection (4).

*Modification of section 1012G*

- (4) The following provisions apply in relation to section 1012G:
  - (a) in determining for the purposes of subsection (2) whether the regulated person would be required by subsection 1012B(3) or 1012C(3) to give the client a Product Disclosure Statement for the financial product, subsection 1012G(2) applies as if the reference to the client instructing the regulated person (in an issue situation) that they require the financial product to be provided or issued immediately, or by a specified time, were instead a reference to the client instructing the provider that they require the financial product to be acquired immediately, or by a specified time;

- (b) if, because of subsection 1012G(2) as it applies because of paragraph (a) of this subsection, the provider does not have to give the client a Product Disclosure Statement for a financial product before a regulated acquisition of the financial product occurs pursuant to an instruction given by the client under a custodial arrangement:
  - (i) subsection 1012G(2) applies in relation to the provider, the client and the regulated acquisition as if the obligation it imposes to comply with subsection 1012G(3) were imposed on the provider; and
  - (ii) subsection 1012G(3) applies in relation to the provider, the client and the regulated acquisition as if the reference to the regulated person were instead a reference to the provider, as if subparagraph 1012G(3)(b)(i) were omitted and as if the reference in subparagraph 1012G(3)(b)(ii) to the day on which the financial product was issued or sold to the client were instead a reference to the day on which the regulated acquisition occurs.

*Modification of section 1013A*

- (5) Section 1013A applies in relation to a regulated acquisition as if:
  - (a) paragraph 1013A(1)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (a) of the definition of **regulated acquisition** in subsection (1) of this section; and
  - (b) paragraph 1013A(2)(b) also covered a Product Disclosure Statement that is required to be given by subsection (2) of this section in relation to an acquisition covered by paragraph (b) of the definition of **regulated acquisition** in subsection (1) of this section.

*Provider is not an agent for the purposes of section 1015C*

- (6) For the purposes of the application of section 1015C in relation to a regulated acquisition, the provider in relation to

the relevant custodial arrangement is taken not to be an agent of the client.

*Provider is covered by sections 1015E, 1021F and 1021I*

- (7) Sections 1015E, 1021F and 1021I apply in relation to a regulated acquisition as if the references to a regulated person were instead references to the provider in relation to the relevant custodial arrangement.
- (8) *Regulations may provide for other modifications*
  - (a) The regulations may provide for other modifications of provisions of this Part that are to have effect in relation to regulated acquisitions.
  - (b) Schedule 1, item 1, page 316 (lines 1 to 4), omit paragraph (g), substitute:
    - (g) information about the dispute resolution system that covers complaints by holders of the product and about how that system may be accessed; and
  - (c) Schedule 1, item 1, page 316 (line 15), at the end of subsection (1), add:
    - ; and (k) any other statements or information required by the regulations.
  - (d) Schedule 1, item 1, page 330 (line 3), at the end of subsection (2), add:
    - ; or (f) it is a restricted issue that occurs in a situation covered by regulations made for the purposes of this paragraph.
  - (e) Schedule 1, item 1, page 339 (line 22), after “managed investment product”, insert “that is an ED security”.
  - (f) Schedule 1, item 1, page 339 (line 24), after “managed investment products”, insert “that are ED securities”.
  - (g) Schedule 1, item 1, page 348 (after line 31), after subsection (2), insert:
    - (2A) Subject to subsections (2B) and (2C), the money is taken to be held in trust by the product provider for the benefit of the person who paid the money.
    - (2B) Subsection (2A) does not apply to money that the product provider and the person who paid the money agree in writing is not held in trust by the product provider for the benefit of the person.
    - (2C) The regulations may:

- (a) provide that subsection (2C) does not apply in relation to money in specified circumstances; and
- (b) provide for matters relating to the taking of money to be held in trust (including, for example, terms on which the money is taken to be held in trust and circumstances in which it is no longer taken to be held in trust).

(113) Schedule 1, item 1, page 354 (lines 5 to 9), omit subsection (7), substitute:

*Content of confirmation*

- (7) The confirmation of the transaction must give the holder the information that the responsible person reasonably believes the holder needs (having regard to the information the holder has received before the transaction) to understand the nature of the transaction.

(114) Schedule 1, item 1, page 355 (lines 7 to 22), omit section 1017G, substitute:

**1017G Certain product issuers and regulated persons must meet appropriate dispute resolution requirements**

- (1) If:
  - (a) particular financial products are, or have been, available for acquisition (whether by issue or sale) by a person or persons as retail clients; and
  - (b) the issue or sale of those products is not covered by an Australian financial services licence;

both the issuer, and any regulated person obliged under subsection 1012C(5), (6) or (8) to give a retail client a Product Disclosure Statement for one or more of those financial products, must each have a dispute resolution system complying with subsection (2).

Note 1: If the issue of particular financial products is covered by an Australian financial services licence, the requirement to have a dispute resolution system relating to the issue of the products is imposed by paragraph 912A(1)(g).

Note 2: Failure to comply with this subsection is an offence (see subsection 1311(1)).
- (2) To comply with this subsection, a dispute resolution system must consist of:
  - (a) an internal dispute resolution procedure that:
    - (i) complies with standards, and requirements, made or approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
    - (ii) covers complaints, against the person required to have the system, made by retail clients in relation to financial services provided in relation to any of those products; and
  - (b) membership of one or more external dispute resolution schemes that:
    - (i) is, or are, approved by ASIC in accordance with regulations made for the purposes of this subparagraph; and
    - (ii) covers, or together cover, complaints (other than complaints that may be dealt with by the Superannuation Complaints Tribunal established by section 6 of the *Superannuation (Resolution of Complaints) Act 1993*), against the person required to have the system, made by retail clients in relation to financial services provided in relation to any of those products.
  - (3) Regulations made for the purposes of subparagraph (2)(a)(i) or (2)(b)(i) may also deal with the variation or revocation of:
    - (a) standards or requirements made by ASIC; or
    - (b) approvals given by ASIC.

(115) Schedule 1, item 1, page 361 (after line 21), after subsection (5), insert:

(5A) The regulations may specify other circumstances in which the right to return the product (and have money paid to acquire it repaid) cannot be exercised.

(116) Schedule 1, item 1, page 361 (line 35), after "is to be", insert "increased or".

(117) Schedule 1, item 1, page 362 (line 2), omit "**of managed investment products**", substitute "**relating to certain managed investment schemes**".

(118) Schedule 1, item 1, page 362 (line 5), omit "managed investment product", substitute "financial product described in paragraph 764A(1)(ba) (which relates to certain

managed investment schemes that are not registered schemes”).

(119) Schedule 1, item 1, page 367 (line 7), omit “taken”, substitute “if the acquisition occurs in circumstances in which the party is required by a provision of this Part to have been given a Product Disclosure Statement for the product—taken”.

(120) Schedule 1, item 1, page 387 (after line 20), after subsection (4), insert:

(4A) For the purposes of paragraph (4)(b):

(a) section 917C is taken to apply, despite section 917F; and

(b) section 917D is taken not to apply.

(121) Schedule 1, item 1, page 392 (line 25), after paragraph 1041E(b), insert:

; and (c) when the person makes the statement, or disseminates the information:

(i) the person does not care whether the statement or information is true or false; or

(ii) the person knows, or ought reasonably to have known, that the statement or information is false in a material particular or is materially misleading.

(122) Schedule 1, item 1, page 392 (line 26), omit “this section” substitute “this subsection”.

(123) Schedule 1, item 1, page 392 (line 29), omit “this section” substitute “this subsection”.

(124) Schedule 1, item 1, page 392 (after line 31), at the end of section 1041E, add:

(2) For the purposes of the application of the *Criminal Code* in relation to an offence based on subsection (1), paragraph (1)(a) is a physical element, the fault element for which is as specified in paragraph (1)(c).

(3) For the purposes of an offence based on subsection (1), strict liability applies to subparagraphs (1)(b)(i), (ii) and (iii).

Note: For **strict liability**, see section 6.1 of the *Criminal Code*.

(125) Schedule 1, item 1, page 444 (after line 31), at the end of section 1074C, add:

(3) Nothing in subsection (1) or (2) confers a discretion to deal with a matter in the operating rules of a prescribed CS facility if there is an obligation under section 822A for that matter to be dealt with in those rules.

(126) Schedule 1, item 1, page 460 (line 20), omit “**relating to financial products**”.

(128) Schedule 1, item 1, page 461 (after line 11), before subsection (1), insert:

(1A) A person must not engage in conduct that results in the falsification of:

(a) a book required to be kept by a provision of this Chapter; or

(b) a register or any accounting or other record referred to in section 1101C.

Note: Failure to comply with this subsection is an offence (see subsection 1311(1)).

(129) Schedule 1, item 1, page 461 (line 16), omit “1101D”, substitute “1101C”.

(130) Schedule 1, item 1, page 461 (line 32), after “subsection”, insert “(1A) or”.

(131) Schedule 1, item 1, page 462 (after line 7), after section 1101G insert:

**1101GA How Part 9.3 applies to books required to be kept by this Chapter etc.**

(1) In this section:

**Chapter 7 book** means:

(a) a book (by whatever name it is known) that a provision of this Chapter requires to be kept; or

(b) a document lodged under, or for the purposes of, a provision of this Chapter; or

(c) a book relating to the business carried on by a financial services licensee or an authorised representative of a financial services licensee; or

(d) a register or accounting record referred to in section 1101C.

(2) Part 9.3 does not apply in relation to a Chapter 7 book except as provided in the following paragraphs:

(a) section 1303 applies to a Chapter 7 book;

(b) section 1305, and subsections 1306(5) and (6), apply to a Chapter 7 book as if references in section 1305 to a body corporate were instead references to a person;

(c) regulations made for the purposes of this paragraph may provide that other provisions of Part 9.3 apply in relation to a Chapter 7 book, or a class of Chapter 7 books, with such

modifications (if any) as are specified in the regulations.

- (132) Schedule 1, item 20, page 471 (line 6), omit “registered scheme”, substitute “managed investment scheme”.
- (133) Schedule 1, item 20, page 471 (line 33) to page 472 (line 4), omit paragraph (1).
- (134) Schedule 1, item 20, page 473 (lines 24 to 32), omit paragraph (1).
- (135) Schedule 1, item 20, page 475 (lines 1 to 3), omit subsection (3).
- (136) Schedule 1, item 20, page 476 (line 23) to page 477 (line 10), omit subsections (12) and (13), substitute:

*Meaning of provide a custodial or depository service*

- (12) For the purposes of this section, a person (the *provider*) provides a ***custodial or depository service*** to another person (the *client*) if, under an arrangement between the provider and the client, or between the provider and another person with whom the client has an arrangement, (whether or not there are also other parties to any such arrangement), a financial product, or a beneficial interest in a financial product, is held by the provider in trust for, or on behalf of, the client or another person nominated by the client.
- (137) Schedule 1, item 20, page 477 (line 14), after “registered scheme”, insert “, or the holding of the assets of a registered scheme”.
- (138) Schedule 1, page 506 (after line 20), after item 252, insert:

**252A Section 9 (definition of on-market buy-back)**

Repeal the definition, substitute:

**on-market buy-back** means a buy-back by a listed corporation on a prescribed financial market in the ordinary course of trading on that market.

- (139) Schedule 1, item 261, page 507 (line 30), after “APRA”, insert “, other than a trustee of a fund or trust referred to in any of subparagraphs (d)(i) to (iv)”.
- (140) Schedule 1, page 513 (after line 15), after item 302, insert:

**302A Section 9 (definition of trading day)**

Repeal the definition, substitute:

***trading day*** of a financial market means a day on which the market is open for trading in financial products.

- (141) Schedule 1, item 323, page 516 (line 1), omit “an option approved by a securities exchange as”.
- (142) Schedule 1, page 520 (after line 4), after item 357, insert:

**357A Section 350**

Repeal the section, substitute:

**350 Forms for documents to be lodged with ASIC**

- (1) A document that this Act requires to be lodged with ASIC in a prescribed form must:
  - (a) if a form for the document is prescribed in the regulations:
    - (i) be in the prescribed form; and
    - (ii) include the information, statements, explanations or other matters required by the form; and
    - (iii) be accompanied by any other material required by the form; or
  - (b) if a form for the document is not prescribed in the regulations but ASIC has approved a form for the document:
    - (i) be in the approved form; and
    - (ii) include the information, statements, explanations or other matters required by the form; and
    - (iii) be accompanied by any other material required by the form.
- (2) A reference in this Act to a document that has been lodged (being a document to which subsection (1) applies), includes, unless a contrary intention appears, a reference to any other material lodged with the document as required by the relevant form.
- (3) If:
  - (a) this Act requires a document to be lodged with ASIC in a prescribed form; and
  - (b) a provision of this Act either specifies, or provides for regulations to specify, information, statements, explanations or other matters that must be included in the document, or other material that must accompany the document;

that other provision is not taken to exclude or limit the operation of subsection (1) in relation to the prescribed form (and so the prescribed form may also require information etc. to be included in the form or material to accompany the form).

(143) Schedule 1, page 523 (before line 1), after item 377, insert:

**377A Subsection 633(1) (table item 14)**

Repeal the item, substitute:

14 The target must send a copy of the target's statement (and any accompanying report) to the operator of each prescribed financial market on which the target's securities are quoted.

(144) Schedule 1, page 524 (before line 4), after item 382, insert:

**382A Paragraph 636(1)(g)**

After "if any securities", insert "(other than managed investment products)".

**382B After paragraph 636(1)(g)**

Insert:

(ga) if any managed investment products are offered as consideration under the bid and the bidder is:

- (i) the responsible entity of the managed investment scheme; or
- (ii) a person who controls the responsible entity of the managed investment scheme;

all material that would be required by section 1013C to be included in a Product Disclosure Statement given to a person in an issue situation (within the meaning of section 1012B) in relation to those managed investment products;

(145) Schedule 1, page 526 (after line 29), after item 398, insert:

**398A Paragraph 662B(1)(d)**

Omit "securities exchange", substitute "market operator".

(146) Schedule 1, page 533 (after line 3), after item 426, insert:

**426A Paragraph 724(1)(b)**

Omit "stock market of a securities exchange", substitute "financial market".

(147) Schedule 1, item 457, page 542 (after table item 265A), insert:

265AA	Subsection 916A(3A)	100 penalty units or imprisonment for 2 years, or both.
265AB	Subsection 916B(2A)	100 penalty units or imprisonment for 2 years, or both.
265AC	Subsection 916B(5A)	50 penalty units or imprisonment for 1 year, or both.
265AD	Subsection 916C(3)	100 penalty units or imprisonment for 2 years, or both.
265AE	Subsection 916D(2A)	100 penalty units or imprisonment for 2 years, or both.

(148) Schedule 1, item 457, page 542 (after table item 265B), insert:

265BA	Subsection 916F(1A)	25 penalty units or imprisonment for 6 months, or both.
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(149) Schedule 1, item 457, page 543 (after table item 269A), insert:

269AA	Subsection 942B(8)	50 penalty units or imprisonment for 1 year, or both.
269AB	Subsection 942C(8)	50 penalty units or imprisonment for 1 year, or both.

(150) Schedule 1, item 457, page 543 (after table item 270C), insert:

270CA	Subsection 946B(3A)	50 penalty units.
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(151) Schedule 1, item 457, page 543 (table item 271A), omit the table item.

(152) Schedule 1, item 457, page 548 (table item 299A), omit "Section 1017G", substitute "Subsection 1017G(1)".

(153) Schedule 1, item 457, page 549 (after table item 307C), insert:

307CA	Subsection 1021M(1)	50 penalty units.
307CB	Subsection 1021M(3)	100 penalty units or imprisonment for 2 years, or both.

(154) Schedule 1, item 457, page 549 (table item 308B), omit the table item.

- (155) Schedule 1, item 457, page 550 (table item 310C), omit “Section 1041E”, substitute “Subsection 1041E(1)”.
- (156) Schedule 1, page 550 (after table item 317B), insert:

317BA	Subsection 1101F(1A)	50 penalty units or imprisonment for 12 months, or both.
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- (157) Schedule 3, page 565 (after line 22), after item 10, insert:

**10A Section 9 (definition of *old Corporations Law*)**

Omit “Part 11.1”, substitute “Part 10.1”.

I am assured by the good people in the advisers box that most of these amendments are of a minor or technical nature. They are intended to clarify the operation of the proposed new arrangements and to correct drafting errors in the current version of the bill. However, a number of the proposed amendments involve significant policy changes. These changes are partly the product of the continued consultation that has taken place between the government and stakeholders since the introduction of the two bills. The amendments also seek to address a number of areas of concern identified by the Parliamentary Joint Statutory Committee on Corporations and Securities—known to me as the Chapman committee.

**Senator Chapman**—A very good name, too.

**Senator IAN CAMPBELL**—I thought you would like that. In its report, the parliamentary joint committee affirmed its long-standing support for the objectives of the bill and for the process of consultation that has been engaged in to ensure that these objectives are appropriately achieved. However, the committee also made a number of recommendations for change. In responding to the committee’s recommendations, the government has taken care to balance the importance of ensuring that the new regime does not impose a disproportionate regulatory burden on industry participants with the need to maintain the bill’s consumer protection objectives.

Rather than going through the amendments in detail—I think they are all well known to Senator Conroy, who is carrying

the bill for the opposition, and Senator Murray, who is handling it for the Democrats—it is probably better if I say that I am on call here to answer any specific queries, unless you want me to run through all of them. That would just take up time. It is probably better to focus on the ones on which there is disagreement or where there are questions.

**Senator MURRAY (Western Australia)**

(5.30 p.m.)—I apologise for having missed the slot for general questions; I was in the back talking to my adviser. To me, this debate seems a little like an epilogue. We have actually done everything; we are just tying the bow, almost. I have two general questions, while we have the opportunity. I did ask in my second reading speech that you remind me of what has happened to CLERP 5. I do not know whether you made those remarks as I was coming down to hear you talk. It would be nice to know what is happening to that.

The second thing is that I was very conscious of Senator Ferguson’s heartfelt—rather than hard—advocacy on the risk product side of things. We have, as you know, moved a second reading amendment, which has been accepted. I would merely like an assurance from the government that, even though we are going to pass those provisions, the government will wholeheartedly assist the committee in examining that issue more deeply to determine and understand the issues that Senator Ferguson and many other senators in your backbench and numbers of others are concerned about.

**Senator CONROY (Victoria)** (5.32

p.m.)—I want to ask a question that you also might want to answer, if I can have your indulgence. I know that with the Managed Investments Act we also sought a similar provision. Probably to your surprise and certainly mine, the government decided to do a private inquiry into managed investments. I would like to clarify whether this is a request for the Parliamentary Joint Statutory Committee on Corporations and Securities to actually do it or just a request for an investigation to be held, Senator Murray.

**Senator MURRAY (Western Australia)** (5.32 p.m.)—The record has it that it is for Corporations and Securities, yes.

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.32 p.m.)— Firstly, CLERP 5 has always been a mystery CLERP, because it was one of a series of exceptionally good policies under the CLERP banner. If you think about it in the context of it being written in 1997, it was all about electronic commerce in enabling the corporations' interaction with ASIC, effectively, but also e-commerce generally. It was quite significantly ahead of its time in trying to enable e-commerce. In fact, if you do a retrospective analysis of government policy across the whole globe, you will find it is one of the earliest papers, if not the earliest paper, on what a government can do to facilitate e-commerce. I do not even think it was called e-commerce then. I cannot claim credit for that. I will not do an Al Gore and say that we invented the Internet or e-commerce, but it was a far-reaching policy.

Some of it was picked up by the Corporate Law Review Bill 1998, which Senator Murray and I—and, I think, Senator Conroy—debated in that year, including reforms to the Payment Systems and Netting Act 1998. A number of the subsidiary unfinished bits of business there will form part of legislation that enacts a range of the CLERP 7 policies, which I released just before the last federal election. I remind you that they include things such as changing the annual reporting requirements of companies from having to lodge a return annually to having to do it only if there is a change to the particulars. As Senator Murray would know, at the moment every company is required to send a return each year to the government and attach their annual corporations fees to it. As you would know, Mr Temporary Chairman Sherry, and as Senator Murray would know, this government is strongly committed to cutting red tape. There is a piece of annual paperwork that a company is required to do and, if you are a small business and you effectively have a husband and wife partnership—two of them are the di-

rectors and one is the secretary; you do not change your address for everything—it is an unnecessary piece of paperwork to lodge every year. So, amongst a range of other things, we came up with a decision not only to get rid of that requirement but also to significantly e-enable the processes of business between ASIC and the various businesses. The bits of CLERP 5 that were not picked up in the CLRB legislation or the Payments Systems and Netting Act 1998 will be picked up by a piece of legislation which we hope to introduce in the next couple of weeks. The second point is that the government will fully cooperate with the committee, and I give you the undertaking that you have sought in relation to that inquiry.

**Senator MURRAY (Western Australia)** (5.36 p.m.)—I have a further general question—because I am aware that there are loose ends to be tied up—to the parliamentary secretary. With regard to the proposed legislation that will come in in the next few weeks, is it the intention of the government to automatically send that to the Parliamentary Statutory Joint Committee on Corporations and Securities to progress? Is there urgency with it, or is it one of those things that could be delayed until after the election? I will repeat that: it is a question with regard to the further bill that is going to come before us, which will include loose ends that need to be tied up. Is it the intention of the government to put that straight across to the corporations and securities committee to try to get an early result on the matter, or is the intention to allow it to go over the election period and be dealt with next year at more leisure?

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.37 p.m.)—The practical reality is that the parliament is scheduled to sit two weeks on, two weeks off for the rest of the year. But all of us know there is likely to be an election—if you understand what the Prime Minister is saying—some time before the end of the year, so we are not going to have that many sitting weeks left. Virtually every corporations bill that has happened in the time I have been here has been referred to the Chapman committee. We

expect that to be the case in this instance. Generally, consideration of corporations bills by the Joint Statutory Committee on Corporations and Securities ensures that they get a smoother passage through this place. That is how the committee should work. Without bragging, the Joint Statutory Committee on Corporations and Securities was established because I asked the previous Labor government for a statutory committee when they brought in the new Corporations Law in 1990. The then Attorney-General—Michael Duffy, I think—agreed it was a good idea. I think the committee has worked very well, particularly under Senator Chapman's chairmanship.

**Senator CONROY (Victoria) (5.38 p.m.)**—Senator Campbell, have you had a chance to confer on that matter we were discussing? I think we are able to accommodate that if we go down that path, but I am happy to talk for a few moments on these amendments if you would like.

**Senator Ian Campbell**—I will respond later.

**Senator CONROY**—I want to congratulate the government on moving these very worthwhile amendments. The government have been very responsive in what has been, as I am sure Senator Ferguson and Senator Chapman would agree, a long and detailed consultation period, and the government should be congratulated. Senator Ferguson has been very active behind the scenes, chatting away with many of his old colleagues in his old industry—as have I, it should be said. There is no attempt to portray Senator Ferguson as having a vested interest when I have also come from the same industry, although a different part.

**Senator Ferguson**—You didn't get commission!

**Senator CONROY**—It has been welcomed that the government have been prepared to consult. In fact, I know at times the minister has joked about consultation fatigue on this issue. Most people will probably welcome the fact that we will hopefully be able to complete the Financial Services Reform Bill 2001 over the next few days. I know, Senator Ferguson, that when this bill was

first tabled you had a bit more hair on top than you have now.

**Senator Ferguson**—Yes, and it was a different colour too.

**Senator CONROY**—We will hopefully see our way through this legislation over the next 24 or 48 hours—the shorter the better. I know the government are working as I speak to try to facilitate this and to allow us some time to consider a range of amendments that have been tabled recently so that we can move more comfortably through this tomorrow morning. We are awaiting final confirmation of that. Perhaps tomorrow morning we will have a bit more time to work our way through some of the finer points. I hope Senator Murray is comfortable with that.

**Senator IAN CAMPBELL (Western Australia)**—Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.41 p.m.)—There is a whole range of amendments. It is silly to bring on a debate if everyone is not quite ready to deal with it. We did understand that everyone was ready, but I respect the position of senators opposite. Senator Murray has suggested that we deal with this batch of amendments that have been moved, if senators are happy with that. I have a signal from Senator Conroy that that is okay with Labor. I think we will do that, Mr Temporary Chairman. We have an indication from the parliamentary liaison officer that we will return to the environment legislation that the Senate has been dealing with previously. We are just sending out an all points bulletin to Senator Ridgeway, who apparently was in continuation on his second reading speech. When Senator Ridgeway comes down to the chamber I will jump onto my feet and move that the committee report progress. In the meantime, I encourage Senator Chapman to make one of his brilliant contributions.

**Senator CHAPMAN (South Australia) (5.42 p.m.)**—I refer the Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts to government amendment No. 16, which proposes to insert after clause 1436 in the Financial Services Reform (Consequential Provisions) Bill 2001 clause 1436A, Treatment of representatives—insurance agents. Clause 1436A

has some nine subclauses. Can the parliamentary secretary confirm for me that the practical effect of this amendment is to ensure the continuation for insurance agents of whatever existing contractual arrangements they currently have in place with insurance companies or which might be put in place during the transition period of the next two years, irrespective of other effects of this legislation—in other words, if insurance agents currently have contracts in place with insurance companies, that this legislation will not act in any way to override the effects of those contracts? Secondly, could the parliamentary secretary confirm for me that in fact this amendment actually deals with that relationship between the agent and the insurance company and has no effect in any way of diminishing the level of consumer protection provided under this legislation?

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.43 p.m.)—The point that Senator Chapman goes to is one of the crucial elements of the Financial Services Reform (Consequential Provisions) Bill 2001. Dealing with the insurance agents has been a critical part of the consultations in trying to move to a new regime without, as I said in my opening remarks at the committee stage, imposing an unfair and unnecessary regulatory burden on those people. As Senator Chapman would know, the great majority are small business people who have been running successful and ethical businesses for many years. They are a very important part not only of the economic fabric but also of the social fabric of Australia, and they usually play a very important role in their own communities.

This bill generally provides enhanced protection for small business clients of financial service providers. I will read you the full brief, Senator Chapman, because I think it goes to the points you raise and I think it is important to put it on the record for the benefit of the people whom you are seeking some assurances about. It does provide enhanced protection for those clients of financial service providers. It also has been welcomed by the representatives of many small businesses

that are themselves financial service providers—for example, financial planners and insurance brokers. Senator Chapman's committee expressed some concerns about the impact on insurance agents, and they are similar to the concerns that Senator Ferguson has been raising very persistently—ever since 1997, I have got to say.

The government proposes to address these concerns through the introduction of a revised set of transitional arrangements. Proposed government amendments to the bill will allow insurance agents to continue to operate under the current regulatory framework throughout the two-year transition period that will follow the commencement of the new regime. This will apply even where insurance company principals transition to the new regime by becoming financial services licensees. The new transitional arrangements have been introduced in recognition of the differences between the regulatory framework that currently applies to insurance agents and that governing the representatives of other existing licensees, such as securities dealers. They will provide agents with more time to set in place arrangements for transitioning to the new regime.

For those agents that do not wish to seek their own licence, it will provide more flexibility in establishing arrangements with licensees. The amendments will also clarify the impact of the new regime on existing contractual relationships between agents and principals. It will make it clear that where conduct by the agent prior to commencement creates an entitlement to remuneration such as commission payments this bill does not terminate that entitlement. I hope that answers Senator Chapman's inquiries.

**Senator CHAPMAN (South Australia)** (5.47 p.m.)—I think that does. The parliamentary secretary has referred to entitlements to commission, but I understand from reading the amendment that it refers to commission and other forms of remuneration. My interpretation is that if an agent has in place a contract with an insurance company that relates to, for instance, the buyback arrangements for the book value of their clients, trailing commissions and so on—basically any contractual arrangement—then that

will continue in place basically ad infinitum if a contract remains open-ended. If a contract does have a termination date, then obviously it terminates on that date, but if it is an open contract then, notwithstanding this legislation, those contractual arrangements will continue in place. Even under the new regime these benefits to the agents will continue.

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.48 p.m.)—I think I can give Senator Chapman an assurance that his understanding is correct. The shorthand way to do it is to read section 1436A, headed ‘Treatment of representatives’, at pages 5 and 6 of the amendments. I think that would make it clear to anyone who had a concern here. It says:

(8) If:

(a) before the end of the transition period, or such longer period during which regulations made for the purposes of subsection (7) provide for the application of some or all of the relevant old legislation, the insurance agent engages in conduct that, under the authorising agreement as then in force, creates a right to brokerage, commission or other remuneration (which may be a present right, or a future right that is dependent on matters specified in the authorising agreement) ...

That, I think, would cover the buyback situation that you are referring to, Senator Chapman. That is dependent on matters specified in the authorising agreement, and the right is still in existence immediately before the end of that period. So it does, to use your language, go into the future. Nothing in the bill will interfere with that contractual arrangement.

**Senator FERGUSON (South Australia)**— (5.50 p.m.)—I am not sure that I have followed all of the changes that have been made to the bill recently, but one of the points under discussion certainly in recent times was that the disclosure of commission on risk products was particularly put in place for occasions where advice is given—in other words, where people have more than one product with varying rates of commission to offer. In fact, they must disclose the commission because the quantum of the commission

may influence which product they wish to sell to a client. While I do not necessarily agree with the principle, I understand the reasoning behind that. Where a person only has a single product to sell—in other words, he or she is not giving advice—from one company, does the quantum of commission have to be stated in the contract?

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.51 p.m.)—The advice I am given is that, if it is not personal advice, it will not have to be disclosed. I am happy to give more detailed advice, because it is obviously a matter of great importance. We could go into a series of hypotheticals, and I do not think it would help.

**Senator FERGUSON (South Australia)**— (5.52 p.m.)—If it is the case that a person is not giving personal advice on a product as it relates to any other product—in other words, they had only one product to sell—what would be the difference in a situation where a person has three agencies with the same product, all of which have the same commission rate—in other words, there is no difference between the commission rate on any of those three products? How, if each of those products had exactly the same commission, could that then be construed as influencing the advice as to which product that person could buy?

**Senator IAN CAMPBELL (Western Australia)**— Parliamentary Secretary to the Minister for Communications, Information Technology and the Arts) (5.53 p.m.)—It does depend a bit on the individual circumstances. I am happy to give you a more detailed answer. I do understand the importance of it better than most people.

Amendments agreed to.

Progress reported.

**ENVIRONMENT AND HERITAGE  
LEGISLATION AMENDMENT BILL  
(NO. 2) 2000 [2001]**  
**AUSTRALIAN HERITAGE COUNCIL  
BILL 2000 [2001]**  
**AUSTRALIAN HERITAGE COUNCIL  
(CONSEQUENTIAL AND**

**TRANSITIONAL PROVISIONS) BILL  
2000 [2001]**

**Second Reading**

Debate resumed from 21 August, on motion by **Senator Ian Campbell**:

That these bills be now read a second time.

**Senator HUTCHINS (New South Wales)**

(5.55 p.m.)—I rise, following my colleagues Senator Bolkus and Senator McLucas, to outline Labor's position on these environment bills. As has been reported to the Senate by Senators Bolkus and McLucas, the bare bones of what these bills will do cover four areas. Firstly they will gut the Australian Heritage Commission, which currently operates independently to manage and protect Australian heritage, and replace it with the Australian Heritage Council, which will merely have an advisory role. Secondly they will transfer the power to make decisions relating to the listing of heritage sites away from an independent body of experts like the Heritage Commission and pass it on to the federal environment minister.

The third aspect of the bills is that they will abolish the current Register of National Estate and replace it with a National Heritage List or Commonwealth Heritage List. This will be limited only to properties of national value, relegating responsibility for the protection of all other sites to the states. Finally, this puts a cloud over the future of the 13,000 sites currently on the Register of National Estate. It will be at the discretion of the minister as to which sites will fit into this new Commonwealth Heritage List and which will simply be left off it.

So these bills seek to abolish an independent body of experts such as the current Australian Heritage Commission and replace it with an advisory body; they seek to abolish the Register of National Estate and put in jeopardy those 13,000 sites that are currently on it; and they seek to transfer the naming of that sort of stuff—that is, they will move from being on a Register of National Estate to being on a Commonwealth Heritage List. That signifies to me, and I am sure it signifies to a lot of Australians who are concerned about the preservation of not only our indigenous heritage but also our European

heritage, that we are about to allow the vandals to get inside the gate.

As a Tasmanian, Mr Acting Deputy President Sherry, you may recall—and I certainly do, as a New South Welshman—the Askin years in New South Wales between 1965 and 1976 under Sir Robert Askin, Premier Tom Lewis and Sir Eric Willis. I recall the number of heritage properties that were bulldozed around Sydney in that era—in those 11 years of conservative New South Wales rule—to make way for high-rise apartments. That is what the coalition did when they were in power over that period in New South Wales. It disturbs me that this is the intent of this legislation, particularly for places in New South Wales.

As I said, there are 13,000 sites listed on the Register of National Estate. In just my local area, in the city of Penrith, there are a number of them, which I will refer to shortly. When we have a number of Liberals and National Party people in this place who purport to have some sense of history and some need, as I said, for the continuity of not only indigenous heritage but also European heritage, I cannot understand why they are not more outspoken in their party rooms and are not saying more here in the parliament itself.

There are a number of sites—and I will be Sydney-centric and New South Wales-centric—that are worthy of preservation. At the moment we have 13,000 listed. But, if we accept what the minister and the government are proposing, we could end up with only a handful of sites. The sites that may be deemed to be on the Commonwealth Heritage List may be limited and a number of indigenous and European icons that we wish to preserve may be abolished by an incoming conservative government—whether it is in New South Wales or anywhere else. This is akin to allowing the vandals in the gates. This is akin to allowing them to walk in, take over and threaten these icons that we hold precious and dear.

I recall clearly the tory years in New South Wales, during which a lot of heritage listed buildings were torn down, carted away and not preserved to make way for high-rises around Sydney Harbour. I recall clearly going with one of my uncles, who was a tip

truck driver, to Mosman while they carted away the remnants of a number of buildings with beautiful Georgian architecture that had been bulldozed to make way for some sort of high-rise.

I know that you, Mr Acting Deputy President Lightfoot, are probably very concerned about the preservation of icons of European importance, as your own actions in relation to the Fremantle Artillery Barracks demonstrate. So I wonder why the party room of the coalition has allowed the opportunity in this legislation for the preservation of these heritage listed areas to be transferred to the hands of the state governments. I cannot recall the name of the former New South Wales coalition minister who was quite proud of his slogan 'tar, seal and beautify', but that was the way he approached any area, whether it was heritage listed buildings or heritage listed bushland. That is what we will see. The bill will transfer the decision making from an independent body of experts to an advisory panel and, in the end, the decision will be made by a minister on political grounds.

People might say that we are lucky to have a conservative conservationist type minister in the position at the moment, but I do not believe that, and I think that will be proven in time. I do not believe that this should be subject to political pressure, because we are dealing with a number of sites in a number of areas that, if they were 'tarred, sealed and beautified', would probably attract a lot of money. I do not believe it is fair on any federal government minister to be put into a political predicament where, for example, there is some bushland around Sydney Harbour and they are approached and told, 'If you can sell this bushland off you might get a few hundred million dollars,' even though this bushland might have some indigenous attraction or might have some attraction for descendants of European settlers. I do not believe that the minister should be put into that position. That is why, under Labor's legislation, the independent body of experts made that decision. What was wrong with that? The body is made up of people who have an interest in heritage listing, architecture, the environment and the

ecology. Why would we—or anybody listening to this broadcast—give this government a blank cheque to go and destroy our indigenous and European heritage? There are no guarantees in this legislation that that would not occur—none at all. It all goes back to the minister. It all goes back to the possibility that the minister would be subject to pressure from his political cronies.

I saw what Sir Robert Askin did in New South Wales during his government's years in power. I saw what Tom Lewis did. I saw what Sir Eric Willis did when a high-rise building got in the way of some European or indigenous heritage. They were subject to political pressure—or they applied it themselves. They tore down these buildings and they tore away a lot of Sydney's heritage. That was done because of the kind of political pressure the Minister for the Environment and Heritage, Senator Hill, will be putting himself under if this bill is passed. We are going to oppose these bills and I hope that the Democrats oppose these bills. We believe that the current legislation is quite adequate. We feel that the legislation should be altered so as to progress the ability of the Commonwealth to protect and manage Australian heritage sites, not to strip them back, as this legislation allows to occur.

**Senator Hill**—The current legislation offers no protection at all!

**Senator HUTCHINS**—Understand this, Minister: you are going to be put under political pressure if this bill is passed. It will all come back to you. The white shoe brigade will come and say to you, 'Please, let's rip this away, let's put some nice high-rises here, let's put a freeway through here—let's do something like that.' You will be subject to it. It is foolish of anybody to think that that will not occur. It is absolutely foolish of the government to put their minister in a position where that might occur.

I want to talk about my local area, as I have done before. Currently, of the 22 sites in my local area—the city of Penrith—21 are in the electorate of Lindsay, which is held by Mrs Kelly.

**Senator Hill**—She is a very good member, too. She is an excellent local representative.

**Senator HUTCHINS**—I would not say that. I want to talk about a number of the sites that will be in jeopardy if this bill is carried. I know what the Liberals think about Western Sydney. They think we do not exist. Like a lot of Liberals, they think that Sydney stops at Strathfield and starts again at Leura. Except for probably Mrs Kelly and, say, Mr Kerry Bartlett, there are no Liberals past Parramatta. Of course, you understand why. Senator Payne has an office at Parramatta, but she drives out there every day from some trendy inner city suburb. I am not sure where Senator Coonan lives, but I am sure that it is nowhere near where I live in St Marys, which is out in the west of Sydney.

Let us look at what the Liberals think about people who live in Western Sydney and why I say we are in jeopardy if this legislation is passed. I refer to a report by David Penberthy in the *Daily Telegraph* of 6 August. Mr Acting Deputy President, being a Western Australian, you might not be aware that there is to be a by-election in Auburn in Western Sydney in a few weeks time. The Liberals are running a candidate. I do not know why, but I suppose it is to beef up Mrs Chikarovski's leadership chances. Let me tell you what the advice was for the Liberals when they went out and campaigned in Auburn. What frontbencher Brad Hazzard said to his colleagues—I do not know Mr Hazzard but I understand he represents the North Shore seat of Wakehurst in Sydney—was that when male MPs go out to the west and campaign in Auburn they should keep a tracksuit top in their car because in the past residents have responded better when he wore a tracksuit instead of a shirt and tie.

**Senator Hill**—I rise on a point of order. Mr Acting Deputy President, this might be interesting to some—although I doubt it—but it is certainly not relevant to the bill before the chamber. If the honourable senator wants to have a chat about domestic political issues near his place of residence, perhaps he should do so on the adjournment.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—I remind you, Senator

Hutchins, that your remarks should be addressed to the bills before the Senate. However, if you are developing an argument in the next few seconds with respect to what you were saying, please proceed; otherwise, revert back to the bill.

**Senator HUTCHINS**—What I am getting to, as I said, is the fact that in the City of Penrith, where I am a resident, we currently have 22 estates on the national register. I believe they are in jeopardy if this legislation is carried. I believe they are in jeopardy because, as I said earlier, most Liberals think Sydney stops at Strathfield and starts again at Leura.

**Senator Hill**—Are they on the state list?

**Senator HUTCHINS**—No, they are your Liberals too.

**Senator Hill**—No. Heritage items—are they on the state list?

**Senator HUTCHINS**—Let me explain to Senator Hill, through you, Mr Acting Deputy President, that Senator Marise Payne, one of his colleagues, has an office in Parramatta, but she drives out to Parramatta from the inner city every day, I assume, when she goes to her office. I understand that the office of Senator Coonan, another Liberal senator, is in Phillip Street. I am not sure that Senator Coonan gets out to the west at all. Senator Heffernan is a Liberal from Wagga Wagga. I do not know that Senator Heffernan has an office in Sydney at all. What I was developing—

**Senator Hill**—I rise on a point of order, Mr Acting Deputy President. I submit to you that it is a reflection upon Senator Coonan to suggest that she does not travel to the west of Sydney. She represents the whole of New South Wales, and I am confident she represents it well, including the west of Sydney.

**The ACTING DEPUTY PRESIDENT**—I do not think that was a point of order, but—

**Senator HUTCHINS**—I withdraw that reflection on Senator Coonan because I know, from talking to her the other day, that she was out in Blacktown. She had to get a lift from a tow truck driver, as I understand it.

**The ACTING DEPUTY PRESIDENT**—Senator, please proceed to address the bills currently before the chair. If there were fewer interjections, I am sure Senator Hutchins would find it much more appropriate to address the bill, rather than answering interjections.

**Senator HUTCHINS**—We believe that our locally registered sites will be in jeopardy.

**Senator Hill**—How?

**Senator HUTCHINS**—I have already explained it to you. If you have not worked it out by now, you are not going to. What do the Liberals in Sydney think? As I have said, Brad Hazzard has advised his colleagues campaigning in Auburn that they should wear a tracksuit top and tracksuit pants. There is one Liberal state member of parliament in Western Sydney, Liz Kernohan—she is not a bad person—who has apparently advised that when the women MPs run around Auburn trying to—

**Senator Coonan**—Mr Acting Deputy President, I raise the point of order that was made a little earlier. What Liberals may or may not have said about what people should wear seems to have almost no relevance to how these sites could conceivably be endangered.

**Senator Forshaw**—On the point of order, Mr Acting Deputy President, I have been listening to Senator Hutchins's excellent speech. Senator Hutchins has been drawing attention to the cultural significance of Western Sydney, and he believes it would be endangered as a result of this legislation. I think it is entirely appropriate, in developing that argument, for Senator Hutchins to reflect upon the cultural heritage, if you like—the cultural attitudes—of the representatives of the Liberal Party with respect to—

**The ACTING DEPUTY PRESIDENT**—There is no point of order, Senator Forshaw.

**Senator Forshaw**—I am not making a point of order: I am speaking on the point of order.

**The ACTING DEPUTY PRESIDENT**—You are out of order.

**Senator Forshaw**—I was responding to the argument that the point by Senator Hutchins about the cultural views of Liberals in Sydney is not relevant to this debate. I would suggest that it is very relevant because it is relevant to the approach that this government and the political party would take to cultural heritage in Western Sydney.

**The ACTING DEPUTY PRESIDENT**—I am sure the Senate will take on board what you have said, Senator Forshaw. I invite Senator Hutchins to proceed with the bills currently before the Senate.

**Senator HUTCHINS**—Thank you, Mr Acting Deputy President. I refer to what Ms Kernohan said. She advised—

**Senator Coonan**—Mr Acting Deputy President, Senator Hutchins is reverting—

**Senator Forshaw**—He hasn't even quoted her yet. She's a member for Western Sydney.

**Senator Coonan**—He has. He said that when she was speaking to women Liberal members—

**The ACTING DEPUTY PRESIDENT**—Do you have a point of order, Senator Coonan?

**Senator Coonan**—My point of order is that Senator Hutchins is reverting to form and proceeding to speak about what Liz Kernohan, the member for Camden, said to some other Liberal women members. That cannot be relevant, culturally or in any other way, to the protection of heritage sites.

**The ACTING DEPUTY PRESIDENT**—Senator Forshaw, I do not mean to disturb your conversation with Senator Coonan—and I apologise for having to do it—but you are out of order. Senator Hutchins, you may proceed with the information that you can give the Senate that is relevant to the bills.

**Senator HUTCHINS**—I would argue that what I am about to say in relation to what Dr Kernohan said—

**The ACTING DEPUTY PRESIDENT**—That is what I am inviting you to do. If it is relevant, Senator Hutchins, you may do it.

**Senator HUTCHINS**—I believe it is. It says what the attitude of Sydney Liberals to people who live in the western suburbs of Sydney does in terms of jeopardising the sites that are on the Register of the National Estate.

**The ACTING DEPUTY PRESIDENT**—I do not think you can generalise, Senator Hutchins.

**Senator HUTCHINS**—Let me proceed, Mr Acting Deputy President.

**The ACTING DEPUTY PRESIDENT**—I am inviting you to proceed, but please restrict your comments to those that pertain to the bills before the chamber.

**Senator HUTCHINS**—I will. When Sydney was first settled in 1788, the early part of the settlement was on Sydney Harbour but the major part of the settlement for almost 30-odd years was on the fringes of Sydney. In fact, they call places such as Liverpool, Penrith, Windsor and Parramatta ‘Macquarie towns’. At the time, they were far more relevant to the governing and the economic wellbeing of the colony. In my area, there are a number of sites of historic value that I believe will be jeopardised if this bill proceeds. One of the sites that I believe is in danger is called Mamre House, which is not far from where I live. It was originally the property of Samuel Marsden, the ‘flogging parson’. I believe its continuity on the Register of the National Estate could be well and truly jeopardised if this bill proceeds. As in the good old days of Robert Askin, this building, being on valuable property, could be bulldozed.

I also want to refer to Werrington House. In terms of the history of the country, Werrington House, which is in the city of Penrith, was where Sir Henry and Lady Parkes once resided. They resided there from 1860 to 1872. I believe that this place may be jeopardised if it is put into a political environment where a minister has to make a decision, even though independent experts have determined this place is of historical relevance. There is also Victoria Bridge, across from Emu Plains to Penrith, which is one of two bridges constructed between 1864 and 1867. The only other bridge that is still

standing that was constructed in that period is at Menangle. Also in Penrith is a place called Thornton Hall. This was the home of the Smith family—I do not mean the Smith Family charity group—of Thomas Smith and then his son Sydney. Sydney Smith was the first member for Macquarie in the federal parliament and the first Post Master General. These sites are of immense value, and the minister may agree. I do not believe that such decisions should be taken away from independent experts whose opinion is that these buildings belong on the estate and given to some sort of advisory body that may or may not agree with that opinion.

It is clearly the intention of this legislation to reduce the number of places on the Register of National Estate from 13,000 to a few hundred. This is where I come back to my point about the Liberals and their attitude to Western Sydney. I have already said that they think that we just wear tracksuit tops and pants out there, that that is how sartorially elegant we are. Dr Kernohan said that Liberal MP women were best not to wear make-up or dress too well because women may be embarrassed to answer the door—

**Senator Hill**—Mr Acting Deputy President, I rise on a point of order, which goes to relevance. The bill has nothing to do with women wearing make-up. The honourable senator was doing well for a while. He was referring to listed properties within Western Sydney and was seeking to make—

**Senator Forshaw**—You are just wasting his time. You have made the same point of order all the way through. It is you that is irrelevant.

**Senator Hill**—Thank you very much. We do not talk about whether women should wear make-up during question time.

**The ACTING DEPUTY PRESIDENT**—Senator Hill, what is your point of order.

**Senator Hill**—The point of order is that Senator Hutchins, having got back onto the bills for a short while, has now drifted off again into a discussion of whether women should wear make-up. That is clearly not at all relevant to these bills and I invite you to

bring him back to what is before the chamber.

**The ACTING DEPUTY PRESIDENT**—Senator Hill, I am sure that Senator Hutchins, in the 30 seconds that are left to him, will come back and speak of something that is relevant to the bills currently before the Senate.

**Senator HUTCHINS**—Mr Acting Deputy President, I have made my point about what the Liberals think of people in Western Sydney. Irrespective of the minister's rhetoric, you would be mad to put yourself in this position where you will come under political pressure. *(Time expired)*

**Senator LEES (South Australia** (6.20 p.m.)—Due to Senator Ridgeway being on a pair, I seek leave to incorporate the speech that was begun by him.

Leave granted.

*The speech read as follows—*

I rise to speak today about the Environment Protection and Biodiversity Conservation Amendment Bill (No. 2) 2000 and in particular, about the implications of this bill for the protection of Indigenous heritage.

This bill seeks to insert a new heritage protection regime into the Environment Protection and Biodiversity Conservation Act 1999, thereby providing for the protection of natural, cultural, historic as well as Indigenous heritage.

These amendments would make national heritage places another matter of 'national environmental significance' under the Act.

The bills also establish two new lists:

1. National Heritage List and
2. Commonwealth Heritage List, which would replace the current Register of the National Estate, that contains a number of Indigenous places.

The protection of cultural heritage is one of the utmost importance to Indigenous peoples.

It is part of our identity that has been passed from generation to generation over many thousands of years. It is interwoven with our languages, stories, our art, customs and traditional practices.

For my generation, our culture is the legacy that we will give to our children and grandchildren. This is a weighty responsibility, and one that exists under Indigenous law and custom - regardless of whether it is acknowledged by the mainstream Australian legal system or not.

As Michael Dodson has put it:

*Everything about Aboriginal society is inextricably interwoven and connected to the land. Culture is the land ... our reason for existence is the land. You take that away and you take away our reason for existence. We have grown the land up. We are dancing, singing, painting for the land. We are celebrating the land. Removed from the land we are literally removed from ourselves.*

The recognition and protection of Indigenous heritage, including sites, places and landscapes, is therefore central to the reconciliation process.

As ATSIC noted in its recent submission to the Senate Committee, "protection provides an important safeguard to the maintenance and regeneration of Indigenous culture and demonstrates an acceptance and respect for cultural differences which are the hallmarks of reconciliation."

But at the current time, Indigenous heritage is poorly protected and Indigenous peoples have no direct control over their heritage.

Nor have they been involved in discussions over the new heritage protection regime to the extent that we believe they should have, especially given the recent discussion about the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998, which seeks to reform the 1984 Act.

Of particular concern is the lack of consultation and discussion relating to the relationships between the ATSIHP Bill and this current suite of heritage bills.

The fact that the legislators of this country continue to make decisions about Indigenous heritage in this day and age without seeking the prior and informed consent of the people whose lives will be affected by those decisions is not acceptable - especially when the subject of these decisions is as fundamental as the protection and management of the oldest living cultures in the world.

The Australian Democrats are not alone in being gravely concerned with the disrespect that this type of behaviour shows to Aboriginal peoples and Torres Strait islanders.

The Environment Committee, in its report into the bill, raised the issue of how the proposed legislation would relate to existing laws, and in particular, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, and its proposed replacement, the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998.

The Committee stated that "there is no clear discussion in either the legislation itself or the accompanying materials about the intended relationship between the two regimes. This is unacceptable given the complexity and sensitivity of

indigenous heritage protection, and the amount of negotiation, consultation, review and inquiry that has been invested into the ATSIHP legislation, including the:

- Review of the Aboriginal and Torres Strait Islander Heritage Protection Act 1984 by the Hon Elizabeth Evatt AO (the Evatt Report)
- Joint Parliamentary Committee on Native Title and the Aboriginal and Torres Strait Islander Land Fund 11th and 12th Reports
- Senate Legal and Constitutional Legislation Committee report into the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998.

The Committee consequently recommended that the Government provide full details about the relationship between Indigenous heritage protection in the proposed EPBC regimes and the ATSIHP Act prior to the Senate's consideration of the bills and that Indigenous peoples be given the opportunity to comment on the Government's response.

The Committee also recommended that the Government provide a full response to the recommendations contained in the Evatt report.

So far, no response has been forthcoming, which is highly unsatisfactory given that this report was tabled in this place in 1996 are a most thorough and considered evaluation of these complex issues by The Hon Elizabeth Evatt.

I remind the Senate that the Evatt report was warmly received by many Aboriginal and Torres Strait Islander peoples and their representative organisations across the country because for the first time, a government review set out with the goal to:

“respect and support the living culture, traditions and beliefs of Aboriginal people and to recognise their role and interest in the protection and control of their cultural heritage.”

This is the approach that all members of this place should be taking in relation to the heritage amendments we put before this Chamber.

I would also like to remind the Chamber of one of the recommendations of the Evatt Report which is long overdue in this country, and that is a national policy for Indigenous heritage protection that would address all aspects of Indigenous cultural heritage. As the report recommended:

“Such a policy should form the basis of standards for cultural heritage protection, and for programs at all levels of government which affect Aboriginal heritage. An Aboriginal-controlled body such as an Aboriginal Cultural Heritage Advisory Council should have responsibility to oversee the

implementation of this proposal, and should also have a role in monitoring Aboriginal heritage protection nationally and in co-ordinating laws and programs that have an impact on Aboriginal heritage.”

Perhaps if we had acted on the advice of the Hon Elizabeth Evatt, we would not find ourselves still grappling with the issues she clarified over 5 years ago.

I also bring to the Senate's attention the fact that ATSIC, as the peak national body for Indigenous peoples, has similar concerns to those of the Australian Democrats in relation to the lack of consultation with Indigenous peoples about the relationship between existing heritage regimes and the proposed amendments to the EPBC Act to include heritage.

The Chairman, Mr Geoff Clark, stated in his submission that “it is ironic and very disappointing that on the day before the Bills were introduced into Parliament, representatives of the Indigenous leadership, including myself as the Chairman of ATSIC were meeting with the Minister Hill on the Aboriginal and Torres Strait Islander Bill 1998 and not one word was uttered by the Minister or his advisers about a new heritage regime being introduced into Parliament on the next day.”

The ATSIC submission states that:

“While the heritage amendments to the EPBC Act are before Parliament, it would be important to detail the impact of the whole indigenous heritage regime and consider those in context with the ATSIHP Bill negotiations, and on the ground protection of Indigenous sites and heritage in the interim.”

In response to the need to significantly strengthen the protection of Indigenous heritage, ATSIC (and the Australian Conservation Foundation) have proposed that Indigenous heritage become another matter of national environmental significance, under the Act. This would then regulate actions which have a significant impact on Indigenous heritage.

The Australian Democrats believe that this proposal is worthy of further consideration, and should be the subject of further consultation and negotiation with Indigenous Peoples in the context of changes to both this and the Indigenous Heritage Protection Act.

The second reading amendment which I am consequently moving today is that the Government engage in discussions with Indigenous Peoples about the relationship between the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the 1998 Bill, the Native Title Act 1993 and

the proposed insertion of a new heritage protection regime into the Environment Protection and Biodiversity Conservation Act 1999, and that these discussions include consideration of making Indigenous heritage another matter of national environmental significance under the EPBC Act.

Specifically, the Government needs to discuss with Indigenous peoples the details of any such a trigger and in particular:

- a. the type of trigger which could be used, including whether to use the current significant impact trigger under the EPBC Act;
- b. if this EPBC trigger were used, what would constitute a 'significant impact' in relation to Indigenous heritage, and what would consequently be a 'controlled action';
- c. the opportunities and constraints of using a trigger under the EPBC Act to protect both tangible and intangible heritage;
- d. the requirements upon a person who discovers a site or object with Indigenous heritage values;
- e. what consultation processes are needed in alerting Indigenous peoples about a proposed action;
- f. issues related to public notification of sites;
- g. the options available in dealing with an action which may have a significant impact on Indigenous heritage;
- h. how 'Indigenous heritage' or 'Indigenous heritage values' should be defined;
- i. what the criteria should be for assessing Indigenous heritage values; and
- j. the appropriateness and workability of using state and territory heritage regimes and planning laws to protect and manage Indigenous heritage and whether these regimes could be accredited by the Commonwealth under a bilateral agreement.

I commend this amendment to the Senate for its consideration.

**Senator LEES**—The second matter I want to deal with is Senator Ridgeway's second reading amendment. On behalf of Senator Ridgeway, I move:

At the end of the motion, add:

"but the Senate calls on the Government:

- (a) to engage in discussions with Indigenous Peoples about the relationship between:
  - (i) the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*;
  - (ii) the *Aboriginal and Torres Strait Islander Heritage Protection Bill 1998*;
  - (iii) the *Native Title Act 1993*; and
  - (iv) the proposed insertion of a new heritage protection regime into the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act); and
- (b) to include in these discussions, consideration of indigenous heritage as another matter of national environmental significance under the EPBC Act".

I will speak briefly about the issue that Senator Ridgeway was dealing with specifically relating to this bill. I also wish to discuss another piece of legislation that seems to have vanished. Indeed, Senator Ridgeway stressed, as did Senator Woodley, how disappointing it is that, after lengthy negotiations, after all the discussions and, finally, after an agreement between indigenous people and the environment minister, the Aboriginal and Torres Strait Islander Heritage Protection Bill 1998, which was an improvement and a replacement for the 1984 act, seems to have vanished. On behalf of Senator Ridgeway, I ask Senator Hill if there is any sign of that bill and, in particular—this will also be dealt with by my colleague Senator Allison—how that relates to and integrates with the legislation that we are currently dealing with. This bill establishes, as the chamber knows, two new lists—the National Heritage List and the Commonwealth Heritage List—which replace the current Register of the National Estate. The Register of the National Estate contains a number of indigenous sites. Therefore, questions arise as to what this legislation is seeking to do and what, at the stage of final negotiations, that other piece of legislation would have achieved, how it relates back and, indeed, which is the stronger

of the two acts as far as their working for indigenous people.

To make one final point as I look at Senator Ridgeway's amendment, the Democrats agree with the ATSIC proposal that all indigenous sites should have protection. Indeed, the ATSIC proposal is certainly worthy of further consideration. However, to formally amend during the committee stage of this bill, particularly given the previous negotiations and discussions, is something we are very wary of at this point in time. We believe that, given the work that has already been done, we need to revisit that to look at how the two acts will work together. In particular, if we are to move down the road in this bill, we need to go back to the national indigenous working groups, the land councils, and basically, in the context of both pieces of legislation, look at protection for indigenous Australians. So, in closing, I want to speak on behalf of this motion that Senator Ridgeway has put together. It asks the Senate to call on the government to engage in discussions with indigenous peoples about the relationships between the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the protection bill of 1998 so far as the negotiations have gone and the Native Title Act 1993, and to propose the insertion of a new heritage treatment regime into the EPBC Act.

**Senator HILL** (South Australia—Minister for the Environment and Heritage) (6.24 p.m.)—In closing this second reading debate, I thank all senators who have participated. I have not personally heard all contributions but—

*Senator Bolkus interjecting—*

**Senator HILL**—No, I did not. I listened to Senator Cooney yesterday. I thought his was a most constructive historical recollection and very useful as background information to this debate. I heard Senator Ridgeway's brief contribution yesterday. I listened carefully to Senator Hutchins' contribution this afternoon. So I think I have at least been able to get the flavour of the debate.

There is clearly, on the part of the Labor Party, the opposition—to give them the benefit of any doubt—a misunderstanding as to

what is being sought through this process. One might say that there is a deliberate avoidance of the fact, but I will not argue that. I am simply prepared to accept that it is a misunderstanding.

The problem with the existing Register of the National Estate is that there is no real protection power that comes with it. It has been a very important contribution to the development of heritage conservation in Australia and, at the time of the commencement of that legislation and the establishment of the Register of the National Estate, it really was leadership in this field. It required the development of lists of places that should become part of this Register of the National Estate, and those places could cover the field of natural heritage, built heritage and cultural heritage including indigenous heritage. That has been valuable in developing a list of some 13,000 items that most Australians would accept are of heritage importance. However, the degree of importance has been a subject that has come in for much more critical debate in recent years. There is certainly a point of view that basically applications for listing and pressure for listing have come about because of political issues of the day rather than any overall analysis as to what are the really important heritage items in this country that should therefore be on a national list.

Secondly, apart from that debate as to whether the list reflects items that most Australians would think are of national importance today, the protection of those items is not really significantly enhanced by the existing legislative scheme at all. Basically, the existing scheme only places an obligation on the Commonwealth government, and only when a proposed action of the Commonwealth government will have a detrimental effect upon those assets is the act triggered. Even if it is triggered, all that is required under section 30 of the legislation is a consideration as to whether all feasible alternatives have been taken into account. So most threats to items on the Register of the National Estate are not from the Commonwealth at all. It is a very rare occurrence where the Commonwealth intends to take some action that could detrimentally affect a

listed item. As I have said, even on those rare occasions there is no protection *per se* given to that item: it is simply that the Commonwealth has clearly got to understand the consequences of what it is doing and that it has taken that into account.

What happened, of course, is that this early start in Australia on heritage conservation through the existing Australian Heritage Commission Act was quickly overtaken by better protection in each of the states. It was the states that set up independent heritage authorities that basically had a power and responsibility of protection. You, I think, Mr Acting Deputy President, would argue that this is in fact a primary responsibility of the states rather than the Commonwealth in any event.

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—That is probably right, Senator, yes.

**Senator HILL**—That is clearly a Western Australian perception of our federal structure, but I can quite understand it—that the primary responsibility for conservation of heritage lies with the states. When there were no state legislative regimes it was understandable for the Commonwealth to show leadership and to establish the Register of the National Estate. We now have this huge national register with no real powers attached to it. In addition, we have state heritage protection schemes that provide much greater real protection to items that have been listed. Not surprisingly, we find many items are now listed on the Register of the National Estate and listed on state heritage lists as well. Not surprisingly, because of the size of the national list and because of the processes of registration, a huge backlog has developed.

All of this caused the commission, some years ago—I acknowledge it commenced this process before we came to government in 1996—to question whether it was time to move on to a more contemporary scheme of conservation and protection. The commission itself commenced this debate, through preparing discussion papers. It led the debate from 1996 onwards around the country. People regard the issue of heritage dearly and so there are passionate views on this subject.

The debate that took place within heritage communities around the country certainly was passionate. For some, it is true there is a deep sentimental attraction to the notion of the Register of the National Estate, even though those who are involved in this debate and are well-informed accept that it offers very little, if any, protection at all. The commission recognised that at this stage of Australia's cultural development there needed to be a better national scheme, one that could more effectively provide protection where it is appropriate to provide protection and one that would also give the primary responsibility to that level of government that should accept that responsibility—not only for protection but for the costs that are inevitably associated with it.

I have mentioned protection at a Commonwealth level and protection at a state level but of course many local governments around Australia have also taken on this responsibility and developed lists within their jurisdictions. They have also, to some extent, developed ways of protecting the assets on their localised lists. The fourth stream is the non-government lists, the National Trust lists and the like. It is therefore not surprising that those who regard this issue as a serious one have been wrestling for some years with the way in which all of these lists and all of these various regimes of differing levels of protection might be rationalised into something that is a more effective national scheme.

We picked up this challenge when we came to government. We took the advice of the Australian Heritage Commission and took it to governments other than our own. In 1997, the governments of Australia—the Commonwealth and the state governments—agreed that there should be a new scheme. That agreement is the basis of what is before the chamber today. It is interesting that Senator Hutchins sees a great threat from Liberals in this scheme, when the New South Wales Labor government endorsed it back in 1997. They did so because they also recognised that it was time to move on and it was time to develop a new scheme.

The fundamentals of this scheme are that there would be a national list, probably a

relatively limited national list, of items which most Australians would regard as so fundamentally important to our cultural heritage—whether they be built items or otherwise—that they should be recorded in that national sense and that, within its capacity, the Commonwealth should accept an ultimate responsibility for their protection. I will try to explain that to you a little further, Mr Acting Deputy President. I can imagine you would be the sort of honourable senator that might be a little nervous about that concept, so I will not use an example in Western Australia. But let us take, for example, the Victorian parliament, the first parliament of the Federation of Australia. It is clearly an asset of great historical and cultural importance to all Australians. I, as a South Australian, have as much interest in seeing that properly conserved as any Victorian. I would not be surprised therefore if independent experts say that that is the sort of place that should be regarded as being of genuinely national heritage significance, for which the Commonwealth, representing all Australians, would have ultimate responsibility for protecting.

On that idea, the Commonwealth government and the state governments agreed. They also agreed that there are many items that could be best described as being of state heritage significance and that they should be protected by effective state heritage regimes. You would then have a better scheme in that you would have a national list and Commonwealth protection for items of genuinely national heritage significance, whilst the mass of items that are of state significance would be protected under the existing state regimes. Those regimes could be accredited by the Commonwealth, provided that they meet a set of best contemporary practices. The state and Commonwealth governments also believed that it was legitimate for local governments, and it was the responsibility of local governments, to protect items that could be described as being of local heritage importance.

That is the framework of what is before the chamber today. It is designed to achieve a better protection, a more effective protection, of our heritage in a national sense and cer-

tainly a level of protection that is far superior to that which exists today. In addition to that, in this legislation we recognise that the Commonwealth is the owner of many properties. They may not reach a level of national significance, but the Commonwealth nevertheless has to accept responsibility for the heritage values of its properties.

*Senator Forshaw interjecting—*

*Senator Bolkus interjecting—*

**The ACTING DEPUTY PRESIDENT**—Senator Bolkus! Sorry to interrupt you, Minister. Senator Bolkus, you are interrupting proceedings with your conversation; the speaker on his feet has the call and I find it difficult to concentrate on what he has to say. If you want to talk to Senator Forshaw, I invite you to meet outside somewhere.

**Senator HILL**—For that purpose, the Commonwealth should list such items. In practice, of course, what would happen is that you would avoid this duplication and that items that are not of national importance but are of state importance and are on the state lists would stay there. That is obviously a sensible reform in itself. The Commonwealth and the states having agreed to that framework, we then went through the process of drafting this legislation. The parliamentary committee considered the legislation, and there has been a long and important community—

**The ACTING DEPUTY PRESIDENT**—Senator Hill, could I interrupt you again. I understand that there may have been an arrangement to stop the debate at 6.40 p.m.

**Senator HILL**—Why don't I stop in about two minutes?

**Senator Bolkus**—Twenty seconds.

**Senator Forshaw**—You've stopped now.

**Senator HILL**—At this stage it would be sensible, it seems to me, to complete the second reading debate. I have set out the framework for it and I have given the rationale. I have said that there has been a long and important public debate that has led to this parliamentary debate.

The last issue I want to touch upon is that raised by the Australian Democrats—that is,

the indigenous heritage issue. I was invited to comment on the sites bill. It is still the government's desire to have that piece of legislation passed this session. I believe that we are close to achieving that goal and we will continue to work to achieve that outcome. In relation to indigenous heritage, yes, it is included within this legislation. So, if the indigenous heritage achieved the national significance standard, it would be treated as such.

In relation to the broader area of indigenous heritage, we accept—as the governments accepted in 1997—that there is still more work that needs to be done to develop an effective way to properly respect and conserve the broader range of indigenous heritage values across Australia. That debate must continue, and the rationalisation that has been argued for by Senator Ridgeway of the various pieces of legislation should ultimately occur as well. In our view, that should be the next phase of heritage protection within Australia and the next major project for this parliament. On that basis, I would accept the amendment to the second reading suggested by Senator Ridgeway, because I think it is pointing to an important direction for the future that this government would accept. I commend the bill to the Senate.

**Senator BOLKUS (South Australia)** (6.41 p.m.)—by leave—The opposition also support the amendment in order to give consideration to the issues raised by the Democrats. In respect of the second part of the amendment, though, we anticipate that there may be some pitfalls in doing what the Australian Democrats would like us to do. We give it passage in respect of the second part in order to air some of the pluses and minuses of it, but we also share the concern expressed by Senator Ridgeway about ATSI heritage legislation.

Amendment agreed to.

**Senator Hill**—I understand that the Labor Party want to divide on the second reading. It was put to me that that will obviously take some time, and I am wondering whether it would assist the chamber if some process were agreed to that would allow the division to take place tomorrow rather than today. If a

motion could be moved to postpone the division on the second reading until the next day of sitting, I think that would serve my purpose.

**Senator O'Brien**—In relation to the proceedings this evening, there was an understanding that at 6.40 p.m. we would proceed to certain other business—a message and a response to a return to order—which would have enabled at least some time to be spent dealing with the return to order subject. That time is no longer available, so I do not see any reason why we should curtail the second reading division. We might as well have it now as tomorrow.

**The ACTING DEPUTY PRESIDENT**—I put the question that the motion that these bills be now read a second time, as amended, be agreed to.

The Senate divided. [6.48 p.m.]

(The Acting Deputy President—Senator P.R. Lightfoot)

Ayes.....	39
Noes.....	28
Majority.....	11

#### AYES

Abetz, E.	Allison, L.F.
Bartlett, A.J.J.	Boswell, R.L.D.
Bourne, V.W.	Brandis, G.H.
Calvert, P.H.	Campbell, I.G.
Chapman, H.G.P.	Cherry, J.C.
Coonan, H.L. *	Crane, A.W.
Eggleston, A.	Ellison, C.M.
Ferguson, A.B.	Ferris, J.M.
Gibson, B.F.	Greig, B.
Heffernan, W.	Herron, J.J.
Hill, R.M.	Kemp, C.R.
Knowles, S.C.	Lees, M.H.
Lightfoot, P.R.	Macdonald, I.
Macdonald, J.A.L.	Mason, B.J.
McGauran, J.J.J.	Murray, A.J.M.
Newman, J.M.	Patterson, K.C.
Stott Despoja, N.	Tambling, G.E.
Tchen, T.	Tierney, J.W.
Troeth, J.M.	Vanstone, A.E.
Watson, J.O.W.	

#### NOES

Bolkus, N.	Brown, B.J.
Buckland, G.	Campbell, G.
Carr, K.J.	Collins, J.M.A.
Conroy, S.M.	Cook, P.F.S.

Cooney, B.C.	Crossin, P.M.
Denman, K.J.	Evans, C.V.
Forshaw, M.G.	Gibbs, B.
Harradine, B.	Hogg, J.J.
Hutchins, S.P.	Ludwig, J.W. *
Lundy, K.A.	Mackay, S.M.
McKiernan, J.P.	McLucas, J.E.
Murphy, S.M.	O'Brien, K.W.K.
Ray, R.F.	Schacht, C.C.
Sherry, N.J.	West, S.M.

**PAIRS**

Alston, R.K.R.	Ridgeway, A.D.
Minchin, N.H.	Faulkner, J.P.
Payne, M.A.	Crowley, R.A.

\* denotes teller

Question so resolved in the affirmative.

Bills read a second time.

**DOCUMENTS**

**The ACTING DEPUTY PRESIDENT (Senator Lightfoot)**—Order! It being after 6.50 p.m., I intend to proceed to consideration of government documents.

**Department of Education, Training and Youth Affairs: National Report on Schooling**

**Senator CARR (Victoria)** (6.53 p.m.)—I move:

That the Senate take note of the document.

This is a report from the 1999 national report on schooling in Australia. It would appear that this government is not yet able to bring forward documents any more quickly than we have seen in the past. It is two years out of date. This was the first year where we saw the recommitment of the national goals for schooling. The national goals for schooling are outlined in this report. The Minister for Education, Training and Youth Affairs, Dr Kemp, is the first education minister since this report was brought down to completely undermine those national goals for schooling. Last December, we saw a schools bill brought into this parliament which saw \$22 billion expended on schools in such a manner that it seriously challenged those national objectives and goals as outlined in this report. It was a schools bill that undermined the basic premise that we have had for many years in this country of a fair and reasonable distribution of funding between government sectors and non-government sectors. In that

bill, we saw a disproportionate, inequitable, divisive and totally unfair allocation of funding brought forward by this government which demonstrated an ideological obsession and a prejudiced view against public education in this country. That is quite inconsistent with the national goals for schooling as outlined in this report.

In that bill, we saw a continuation of a policy whereby from 2000 through to 2004—that is the quadrennium under discussion in that bill—the amount of money going to government education from the Commonwealth is reduced as a total of outlays from 37.1 per cent to 34 per cent. That is a marked and substantial shift in the allocation of moneys going to public education in this country. We saw a new model of funding put in place—the so-called SES model—which was totally unfair and was totally prejudiced towards the schools that are already wealthy or powerful and, of course, are able to look after themselves much more effectively than the poorer non-government schools.

A couple of weeks ago, I visited two small Jewish schools in Victoria: Yeshivah and Beth Rivkah College in Caulfield and Ad-dass Israel. Those schools highlight just how grossly improper this bill was last year and how inadequate a funding model it was. These two schools are in a wealthy area, but they are so poor that they have to actually run a roster system for use of the playgrounds. Not enough money is put into those schools to allow all the kids to go into the playground at once. It is a small community of people which is required, for religious and community reasons, to live around a synagogue and the school. They often live in extremely poor circumstances. That community is not characterised by wealth, as this model would suggest living in Caulfield would be. More often than not this community is characterised by poverty. We have a government that sees this as a model that discriminates against those people.

On the other hand, the government schools in the area in which I live in the north of Melbourne are being discriminated against by this government to the point where Commonwealth expenditure has been reduced from 37 per cent of total outlays in

2000 to 34 per cent in 2004. That is a remarkable jump in such a short time. The national school goals outlined in the report have been undermined by this government—a government that is intent on undermining the Karmel settlement, the consensus that held sway in this country for 25 years around the issue of non-government schools. We have a government that is intent upon a policy which is unfair, divisive and totally unjust. We have a government determined to discriminate against public education and the majority of Australians in favour of the wealthy and the privileged few.

**Senator TIERNEY (New South Wales)** (6.58 p.m.)—I rise to speak on the same matter. I am delighted to follow Senator Carr to put the record straight on this nonsense that he has been peddling. The very simple fact that Senator Carr seems to want to totally ignore is that public schools are 88 per cent funded by state governments. What has declined in recent years is the commitment of the states to their public schools. The worst example of that is the Carr Labor government, which came into office in 1995, in my own state of New South Wales. We left office in New South Wales spending 25½ per cent of the state budget on education. What have the Carr government in New South Wales spent on education as a percentage of the budget? They have spent 22 per cent—that is, 25½ per cent down to 22 per cent. That is the problem, Senator Carr. The state governments are cost shifting and moving money out of the public schools to the point—if you have a look at the budget comparisons—where they are putting up the budget, in New South Wales, by between one per cent and two per cent. At the same time, the federal money—and remember that that is only 12 per cent of the money that goes to state schools—is going up at over five per cent a year, which is more than double what is happening in the states. We are actually making up for some of this shortfall created by the states, but because they are 88 per cent of school budgets it is of course a big ask. The reality is—and Senator Carr totally ignored this—that government schools in this country are overwhelmingly the responsibility of state governments and, if there is a problem in the public schools, it is over-

whelmingly the result of the policies of state governments such as the Carr government in New South Wales. Fortunately, we have come in with top-up money in a number of areas such as literacy and numeracy, which has dramatically halved the rates of illiteracy in our primary schools in New South Wales. And that is what I wanted to focus on today.

Before I finish, and before Senator Carr walks out of the chamber, I want to make the point that Senator Carr started his comments by saying that this report was late. Senator Carr, the reason the report is late is that your Labor mates in New South Wales and in Victoria have been slow in putting the figures in. How can you actually have a national report without New South Wales and Victorian figures? These two states make up two-thirds of the schools in Australia. Why are they late? Because those state Labor governments are dragging the chain. I was very surprised that Senator Carr did not start bagging the state Labor governments. He does not seem to like doing that, but they are the guilty parties in this regard.

I want to focus on the way in which the federal government, in its specific areas of responsibility in the states schooling system, has dramatically improved the literacy and numeracy rates in this country in the time it has been in government. I want to quote the figures for year 3 and year 5. These are the figures relating to 1996 to 1999. In that time the illiteracy rate for year 3 students has dropped from 27 per cent to 13 per cent, and that is a halving for that year. For year 5 students, it has fallen from 29 per cent to 14 per cent—again, a halving of the illiteracy rate in this country. But we have a series of state Labor governments across this country now, unfortunately, that are really dragging the chain on agreements to improve these standards even further. The state Labor governments do not want to report this; they do not want to report it to parents. The behaviour of the Labor states on this matter has been an absolute disgrace. We made great progress in the last three years. That is now all in danger because the state Labor governments do not want to report their figures. I call on them to really focus on this incredibly important matter and to make sure that we do have

proper reporting requirements. We know where we are up to, we know what needs to be done, and in the future we can drop these illiteracy rates even further. The whole key to the future of children in this country is that they are literate and that they are numerate. They cannot survive in our economy and in our society without that. We have made dramatic improvements. I call on the Labor Party, federally and state, to join with us in that very important matter. *(Time expired)*

Question resolved in the affirmative.

#### ADJOURNMENT

**The ACTING DEPUTY PRESIDENT (Senator McKiernan)**—Order! Consideration of government documents has now concluded and I propose the question:

That the Senate do now adjourn.

#### Health Services: Rural, Regional and Remote Australia

**Senator SANDY MACDONALD (New South Wales)** (7.04 p.m.)—In light of this week's debate about health services, I want to outline the coalition's achievements and our determined commitment to deliver further improvements. In the past three budgets there have been more than 120 targeted health initiatives introduced by the Howard-Anderson government. This year's budget continues the government's commitment to better health outcomes for rural, regional and remote Australians by addressing shortfalls in the rural health work force, particularly in the field of nursing, and strengthens existing measures to provide sustainable rural health services.

These initiatives complement the really inspirational \$562 million regional health strategy called More Doctors, Better Services that has been in place since the 2000-01 budget, and it followed the Michael Wooldridge-John Anderson medical outreach tour. This year's budget delivers record funding for Medicare and confirms the coalition's commitment to strengthen and improve our public hospital system. It includes \$300 million for increased Medicare rebates for GP visits, particularly benefiting patients with complex health conditions who need longer consultations with their doctor; \$104 million over four years for GPs to employ

more practice nurses so that they can focus on diagnosis and clinical care; \$13 million over four years to provide 110 nursing scholarships worth \$10,000 per year targeting students from rural and regional backgrounds to access undergraduate nursing degrees; \$120 million for GPs to provide better outcomes in mental health care; nearly \$50 million to allow GPs to better treat Australians with diabetes, which is an increasing problem for all of us; funding for GPs to better manage patients with asthma; \$72 million to increase the number of women who can be screened for cervical cancer, especially women living in regional and remote areas and targeting migrant women and Aboriginal women; and over \$43 million to increase the availability of after-hours and emergency care for 32 new after-hours medical care sites that are being established across the country.

The coalition government has particularly focused on enhancing rural health education and training. This will see the development of nine rural clinical schools and three university departments of rural health in regional areas. I am pleased to be able to say that this includes a department of rural health to be established in Tamworth, where my electorate office is. This will be established in cooperation with the University of Newcastle, which is working in partnership with the University of New England in Armidale. Congratulations to both those universities and to the medical schools within those universities. This initiative will provide specific rural health training and encourage medical and other health professionals to take up rural practice.

Another initiative is the Rural Australia Medical Undergraduate Scholarship Scheme, which aims to increase the number of students with a rural background studying medicine by providing financial support during university. In the year 2000, this provided approximately 430 scholarships, and around 80 further scholarships have been awarded this year.

Further, a total of \$33.4 million has been allocated to fund the Commonwealth Medical Rural Bonded Scholarship Scheme over the next four years. Under this scheme, 100 new medical school places tied to the schol-

arships will be offered every year, with students receiving \$20,000 annually while studying, in return for a commitment to work in rural areas for at least six years once they complete their fellowship as a general practitioner or as a specialist. One hundred medical students have already signed up for these scholarships.

The multipurpose services initiative is a joint Commonwealth, state and territory government program responding to the needs of rural families through the delivery of improved health and aged care services. This is achieved through the pooling of funds from various sources to sustain diverse medical services in the one location. To date, 54 of these multipurpose service sites have been approved and operate nationally. These multipurpose service sites also support 1,124 flexible aged care places. The more allied health services initiative provides \$49.5 million over four years to boost the range of health professionals, including mental health workers, podiatrists, physiotherapists and dieticians in rural areas. Early estimates indicate there will eventually be more than 130 full-time equivalent health positions funded nationally from this program. The medical specialist outreach assistance program will ensure that visiting specialists, local GPs and health services can work together to improve local health practitioners' skills as well as health care for rural Australians. The enhanced pharmacy package provides funding over four years for a range of allowances to sustain or increase the number of pharmacies in more remote areas and provide work force support.

Other rural health initiatives undertaken in the past three years are continuing. I will mention some key programs. The Rural Retention Program has provided payments to more than 2,000 doctors who have practised in rural areas for a specified period since the introduction of this world-first initiative in 1999. This amount includes a second payment to over 1,600 of those doctors. The John Flynn scholarship scheme continues and provides financial support to enable medical students to form long-term relationships with rural communities and gain a better understanding of rural medical practice.

Each year some 600 medical students receive assistance under this scheme, with 150 new scholarships available this year. In the 1999-2000 budget, the rural women's general practitioner service was funded to provide regular female GP visits to more than 60 communities—another world first. The government has funded the Royal Flying Doctor Service for more than 40 years, particularly to help rural and remote communities access a broad range of clinical services and the best aero-medical emergency retrieval system in the world.

The coalition is also working to make the health system better and more user friendly. For example, when Labor was in government, Australians could claim a Medicare rebate only from a Medicare office or by post. Over the last four years the coalition has implemented a number of initiatives to improve access to Medicare, including more than 800 national claiming facilities in addition to telephone claiming facilities. Over the next year advances in technology should in fact allow patients to claim their Medicare rebate on the spot from the doctor's surgery.

In contrast to Labor, the coalition believes in a strong private health sector to complement the public system. The private health sector allows Australians the freedom to choose their own doctor and hospital and helps alleviate pressures on the public system. The coalition will continue to improve Australia's health system by reforming Commonwealth-state relations and by emphasising quality care and preventive treatment. If Labor were serious about providing better health services to Australians, even in opposition they have the chance to do something constructive—for instance, by urging the New South Wales state Labor government, which gets around \$8.3 billion this year from the GST arrangements, to spend more of that money on the public health services that are desperately needed in New South Wales. The coalition will continue to provide Australians with a choice of private care combined with a quality public hospital system. This means that Australians, particularly those who live in regional Australia, will have affordable, high quality and world-class health care.

### Northern Territory Election

**Senator CROSSIN (Northern Territory)**

(7.14 p.m.)—18 August 2001 will be recorded in the history books of Australia as a very significant day for the people in the Northern Territory. I must say it is a great honour for me to be able to stand up in front of my colleague Senator Tambling and deliver this adjournment speech on the election outcome in the Northern Territory last Saturday. When Paul Keating stood up and said, ‘How sweet it is,’ after he won the federal election in 1993 some of us in the Labor Party could not imagine a sweeter victory, but last Saturday was certainly it. The 26-year reign by the CLP in government in the Northern Territory is finished—gone. Their stranglehold over the political scene in the Northern Territory has finally collapsed, and it has collapsed with a nine per cent swing against the Country Liberal Party. It was a swing that, if we were being honest, none of us would have predicted this time last week. It was a significant swing against the Country Liberal Party.

The people in the Northern Territory have elected the Australian Labor Party for the first time since self-government. We are confident that after counting finishes this week we will govern in our own right in the Northern Territory, having gained 13 seats. There is a new, enthusiastic and revitalised team now heading up the annals of Parliament House in the Northern Territory. The Northern Territory has come of age. As the papers have suggested this week, people in the Territory have finally thrown off the mantle of being redneck and staid. They have seen through Clare Martin and her team what terrific new and fresh policies are waiting for them when that government takes office in the next week or so in the Northern Territory.

My congratulations go to Clare Martin, who, as someone said to me today, goes down as a legend in the Labor Party, and so she will. She is the first female political leader ever in Australia to win government from opposition. She is not only the first Northern Territory Chief Minister from the Labor Party but also the first female Chief Minister in the Northern Territory. There is

no doubt this week that there is a mood of excitement prevailing throughout the community, and so there should be.

There are now four women from the Labor Party who will take up positions in the new government, one woman Independent and two women from the CLP. We have an outstanding result in having elected seven women to the 25-seat government in the Northern Territory. Delia Lawrie and her mother, Dawn Lawrie—Dawn Lawrie, of course, was a member of that parliament many years ago—are the first mother-daughter political duo or dynasty in the nation to be elected to the same parliament.

The indigenous balance has increased. We now have four indigenous members from the Australian Labor Party sitting in government. That representation matches the indigenous population in the Northern Territory on a per capita basis. It is the highest indigenous representation in any Australian parliament ever. In Marion Scrymgour we have elected the second indigenous woman to a parliament in this country and the first-ever indigenous woman into the parliament in the Northern Territory.

There is no doubt that the electorate recognises the positive plans that Labor put out through the campaign to deal with the fundamentals that have always been a priority for Labor: health, education and jobs. From the very day that the campaign kicked off the CLP were on the backfoot, fighting each day to try to resurrect themselves out of a quagmire of negativity and ill-conceived policies. The second day after the campaign was launched the gas-petroleum project fell over, yet Denis Burke, the Chief Minister, wanted to still campaign and trumpet that his government was the only government that could bring development to the Northern Territory. The Australian Labor Party had their policies costed by Access Economics, something which the CLP did not do. The CLP never bothered to show Territorians details of its policies throughout the campaign.

What have we seen since the campaign result on Saturday night? What have we seen since that huge swing to the Labor Party, managing to put them into office? Denis Burke has apologised for one of the most

fundamental mistakes a leader in this country could have ever made—that is, that the Country Liberal Party decided that no matter what the cost to Territorians they would put the Labor Party last. That meant that in five seats they would give their preference to One Nation above the Labor Party. It caused an outcry up there. The Multicultural Council immediately put out a press release and said that they were:

... shocked, dismayed and disappointed at the decision made today by the CLP not to put One Nation last.

Beryl Mulder, the council's president, went on to say:

The Territory is a diverse, multicultural place where diversity is valued, and we had expected that in recognition of this, the CLP would make a principled stance against what parties with a racist platform, such as One Nation, stand for.

But what dominated the campaign in the Northern Territory was the politics of survival, not the politics of ruling for all Territorians. How could Denis Burke and his team stand up there and say how proud they were of the Northern Territory being a multicultural community, how much money they had given to multicultural organisations and how they valued their input when in fact they did not put the One Nation Party last on their ticket at Saturday's election? Denis Burke has now had to eat humble pie. We have seen him publicly apologise nationally for making such a mistake. As some of my colleagues have said in Darwin this week, 'Denis, it's too little, too late.'

The second thing that the CLP have said is that the Labor Party push polled last Friday night. Well, Denis Burke, I say this to you: you only know too well what push polling is. You do not have to seek legal advice as to whether or not what the Labor Party did last Friday night was push polling. Go and ask Lynton Crosby, go and ask Mark Textor, go and ask Shane Stone. They will all tell you, because they all know, because they have done it in previous Territory elections, that what the Labor Party did last week was to canvass voters on behalf of the Labor Party. It was not a polling company that rang people last week and it was not push polling that occurred in one of those seats prior to Satur-

day's election—Denis Burke knows that; the Country Liberal Party knows that—in the Northern Territory. If there is anybody at all in the Northern Territory who could best know and understand what push polling is, then it certainly is the Country Liberal Party and Denis Burke. Territorians can now expect a more open and transparent government. They can expect major changes in the areas of health and education. A Labor victory will make a huge difference in the delivery of federal funded services.

I will conclude by recognising those people who deserve the most recognition after last Saturday's win for us. Apart from Clare Martin, her staff and the 12 candidates who got in, there are those other 12 candidates who stood for the Labor Party and who were not successful in getting elected. Thanks is due to them, on behalf of the members of the party, for their hard work and the commitment they maintained throughout that campaign. But this was a win in the Northern Territory for many, many Australian Labor Party members, some of whom have given more than 20 years of their life to see this outcome last Saturday night. There are some who do not live in the Territory anymore. I could start to name them but, as is the case with naming people, sometimes you miss some out, and I would not want to do that. So those people know who they are and they will take heart from the thanks that is being given to them. That includes those people who have walked kilometres over 20 years doing letter-boxing, those people who have folded thousands of pieces of paper and those people who have given their time and money to see exactly what was achieved last Saturday night.

It is a great win for the Australian Labor Party in this country and for people in the Northern Territory, and I would hope that what Clare and her team have been able to achieve would receive congratulations internationally. I am very excited and enthusiastic when I look to what a Northern Territory will be like under a Labor government. Territorians can expect—and rightly so—that a sense of great achievement and a sense of great change awaits them over the next four years.

### Centenary of Federation: AirShows in the Outback

**Senator LUDWIG (Queensland)** (7.24 p.m.)—I rise tonight to congratulate the Queensland state government and Centenary of Federation Queensland on their recent and very successful AirShows in the Outback program. As all members of the chamber would be aware, this year marks the centenary of our nation's federation. It is a year in which we as a nation are celebrating the strength of purpose that federation has brought to Australia and a year in which we will celebrate the cultural diversity of our society. It is a historic year, filled with events enabling all Australians to participate and show pride in their communities and nation.

Centenary of Federation events are designed to be inclusive of all Australians. They reflect the diversity of talent, interest and imagination that are the building blocks of our nation. Centenary events are taking place in our cities, towns and regional centres and in the outback. Indeed, this is a centenary for all Australians and is as much about providing a glimpse of our nation's future as it is about celebrating our past achievements. AirShows in the Outback was an event that amply met these aims of inclusiveness and community involvement.

The Queensland government, the Centenary of Federation Queensland and the National Council of the Centenary of Federation, in association with Airshows DownUnder, developed a unique aviation spectacular that reflected the great importance of Western Queensland in the development of Australian aviation. AirShows in the Outback consisted of a series of aviation displays travelling throughout Western Queensland, staged over a circular route of something in the order of 2,400 kilometres. Major flying displays were held in Charleville, Longreach, Cloncurry, Charters Towers, Emerald and Roma.

Further, in the spirit of inclusiveness that lies at the heart of all Centenary of Federation events, general aviation pilots flying their own aircraft were invited to become part of an air rally. This air rally then operated in conjunction with the travelling air show. In so doing, many Australian general

aviation pilots were able to share in the Federation AirShows in the Outback experience. As well as visiting the larger towns where the major air shows were held, this travelling air show and air rally also visited a number of other Western Queensland towns, including Tambo, Blackall, Winton, McKinlay, Julia Creek, Richmond, Hughenden, Moranbah, Clermont, Capella, Springsure and Injune. This served to bring a key federation event to many rural and outback Queensland towns. A notable side benefit of this event was that all the proceeds raised from the air rally went to the Royal Flying Doctor Service, a very worthwhile recipient and a truly invaluable service for regional and rural Australians—a service, I might add, that was pioneered in Western Queensland.

I had the good fortune to be invited to the Federation AirShows in the Outback corporate lunch, held in Longreach by the Hon. Peter Beattie from Queensland. Longreach is not only my birthplace but a very appropriate venue for a major air show, given its long and very close association with the early pioneers of Australian commercial aviation—the most notable of these, of course, being the fledgling commercial aviation carrier Qantas. Further, like many towns in Western Queensland, Longreach also had a wartime role and operated as a major base for American long-range heavy bombers and had a base hospital. However, all this is aviation history. The town of Longreach is not just an appropriate venue because of its links with the past but is now a major stopping point for tourists and travellers experiencing the rich diversity of Western Queensland along the Matilda Highway. Indeed, with venues such as the Stockmen's Hall of Fame and the soon to be completed Qantas Museum, Longreach has become a worthwhile tourist destination in its own right.

The air show itself was a huge success and a great credit to its organisers. Static and flying displays served to detail the history of the aviation industry in Queensland and other parts of Australia. A range of materials were loaned by organisations such as the Qantas founders museum, the TAA museum and the Ansett museum. Highlights of this historic display included the full-sized rep-

lica of Sir Charles Kingsford-Smith's *Southern Cross* and a TAA DC3. However, I think that all who were there would agree that the show-stealer was the static and flying displays of the Lockheed Constellation, affectionately known as the 'Conni' or 'Super Constellation'—for those people who may have recalled that great aircraft.

This aircraft is a tribute to the dedication of the members of the Australian Historical Aircraft Restoration Society who found this aircraft in Arizona at an aircraft graveyard and then spent in the order of five years—just think of the amount of toil and trouble—and an additional \$1.5 million restoring it and returning it to Australia. It now provides a valuable link to Australia's aviation history because Super Constellations, as some may recall, were used by Qantas from 1954 and were the first Australian aircraft to fly a true round-the-world service.

The people of Longreach also showed great support for this stage of the AirShow in the Outback with attendance numbers estimated to be about 4,000 which, to put it in perspective, is more than 90 per cent of Longreach shire's entire population. This event was clearly enjoyed and welcomed by the people of Longreach and I was pleased to see my state colleague the Hon. Matt Foley attend this leg of the air show on behalf of the Premier. I am sure that, for all those who took part in the AirShow in the Outback program either as part of the air show or the air rally or as one of the many thousands who witnessed it, the experience will have been a once in a lifetime memory of our Centenary of Federation.

While in Longreach I also had the good fortune to be invited to present the ribbons and prizes for the Longreach Federation Princess. It was good to see the community spirit of the people of Longreach, who turned out in large numbers for the Federation Princess competition and its associated parade. Clearly the people of Longreach take great pride in their town and local community. In recognition of this, I make special mention of the Mayor of Longreach, Councillor Maloney. Western Queensland towns are very much a reflection of the efforts that their local councils put into them and Councillor

Maloney and her team can certainly take pride from their achievements in the local community.

I would also like to make special mention of Mr Bill Paton, the District Secretary of the Australian Workers Union and long-time member of the Australian Labor Party. It was the Longreach branch of the Australian Labor Party that sponsored the Federation Princess Parade. The Princess Parade is about small children being part of the community and representing the spirit of the outback and the Centenary of Federation. The children took great pride in dressing in various period costumes to represent the outback in the spirit of the Centenary of Federation. I was dragooned into being a judge of that parade. I would have to say it was one of the most difficult tasks that I have ever had to perform. I had to come up with a winner of the Princess Parade of what was called the outback but, because it is the Centenary of Federation, was renamed the Centenary of Federation: Federation Princess. I can say on behalf of Mr Paton and the local Australian Labor Party that a significant amount of time and effort was put into making the event a success and I was very pleased. I pass on my congratulations to them. The number of people that actually turned out on the Saturday morning rivalled, in my view, the people that turned out for the air show that was held on the Friday.

In closing, I would once again like to congratulate the Queensland state government and the Centenary of Federation, Queensland on the success of the AirShow in the Outback program. It was particularly pleasing to see the people of western Queensland included in what was a key Centenary of Federation event.

#### **Northern Territory Election**

**Senator TAMBLING (Northern Territory)**—Parliamentary Secretary to the Minister for Health and Aged Care) (7.33 p.m.)—Last Saturday there was an election in the Northern Territory to elect members of the Legislative Assembly. I acknowledge and congratulate the Australian Labor Party on their success at that election. However, I am apprehensive and concerned about a number of issues that were raised during the election

campaign and I seriously will be watching very carefully the implementation of policies and the administration of the Labor regime in the Northern Territory.

Very proudly, I was a member of the first Legislative Assembly of the Northern Territory, created in 1974. In my long political career in the Northern Territory, I have been pleased to work with a number of leaders and chief ministers; Goff Letts, Paul Everingham, Ian Tuxworth, Steve Hatton, Marshall Perron, Shane Stone and Denis Burke. Each and every one of these chief ministers has brought a unique and special style to the Northern Territory that I think all Territorians have recognised for such a long period, 26 years—a period in Australian political life that had an incredible record of development and particularly social change in the Northern Territory.

Eighteen of the 25 electorates stayed true to their routine voting profiles at last Saturday's election, which included two Independents, and that is not abnormal in a Northern Territory election. The changes were largely based on geographical and social issues in the seven seats in the northern suburbs of Darwin where previously only one of those seats was held by the ALP. So six seats changed hands. We obviously need to ask questions about why there was such a swing geographically. The focus at this election was on suburban families and their concerns and perceptions of the party that I represent, the Country Liberal Party, and the advertising of the challenger. Very obviously, the antenna into the northern suburbs by my own political party needs to be more carefully and finely tuned.

However, I would point out to the Labor Party that the swing to the Labor Party was only in the order of two per cent on the primary vote. The flow-on of preferences from the Independents was what achieved the final result for the Labor Party. I do not take away from that end result. We need to recognise that the Northern Territory community has changed very significantly since 1974 in terms of population size, economic development and maturity with regard to tertiary education and the significant changes that have taken place in the Aboriginal commu-

nities of the Northern Territory. The Country Liberal Party has served each and every Territorian in each and every electorate and in each and every town and community extremely well. I am sure that when history records that period of 26 years it will be not only the economic growth that is noted and so significantly recorded but also the changes in the social environment, the racial environment, the tolerance and the types of situations that have arisen.

Obviously, one of the issues that impacted on last week's campaign was the spectre of One Nation. Whilst One Nation and its voting patterns in other parts of Australia have been significant, it is interesting to note that in this election One Nation put up candidates in five seats where they made no difference whatsoever to the vote. In those northern suburbs of Darwin where many multicultural groups and communities live there was obviously an adverse reaction to the consideration of preferences. I acknowledge that and I note that the Chief Minister has apologised to the community for it. There were many other issues connected with this election campaign—for instance, the concentration of television. Senator Crossin has commented on push polling. There is certainly criticism of the way in which the Labor Party chose to engage in this style of campaigning on the last day of the campaign. As I said earlier, there were parochial and geographic issues, as well as the impact of policies that need to be looked at and understood.

My challenge to the new ALP administration in the Northern Territory is that it should always recognise the changing values and changing needs within the community and not be directed by its federal or national bodies and union shop stewards. Thankfully, in the Northern Territory to date union power and influence has not been an issue that has entered into any great exchange. I sincerely hope that we will not now see in the Northern Territory the degree of influence that the union movement has sought to exercise on Labor Party administrations in many other states, as it did when Labor was in office federally.

As I have said, there will be challenges and there will be tests. Ms Martin is to be

congratulated on her win but, at the same time, she is equally to be challenged and put on notice that at every move she will be tested not only by the community of the six electorates in which she gained her significant advantage and swing but by the entire Northern Territory, and certainly by the Country Liberal Party, which I am pleased to have represented in that Legislative Assembly and the House of Representatives and now represent in the Senate.

The Northern Territory is an exciting community. Madam President, as you know, in representing territories we have rather different constitutional and social communities to represent. I would sincerely hope that in the near future we will see a very close and collaborative arrangement between the federal government and the Northern Territory government, albeit the new Labor administration. I will work constructively with Ms Martin, her team and her ministers but, at the same time, I will be critical if at any stage I believe they step outside of the character, the needs and the requirements of Territorians.

**Senate adjourned at 7.41 p.m.**

**DOCUMENTS**

**Tabling**

The following government documents were tabled:

Advance to the Finance Minister—Statements and supporting applications for issues—

May 2001.

June 2001.

Council for Aboriginal Reconciliation—Report for the period 1 June 1999 to 31 December 2000 (Final report).

Finance—Departmental items—Adjustments and borrowings—Statements and supporting applications for issues—June 2001.

Ministerial Council on Education, Employment, Training and Youth Affairs—National report on schooling in Australia 1999.

**Tabling**

The following documents were tabled by the Clerk:

Australian Meat and Live-stock Industry Act—Australian Meat and Live-stock Industry (Live Sheep Exports to Saudi Arabia) Amendment Order 2001 (No. 2).

Fuel Quality Standards Act—

Fuel Standard (Diesel) Determination 2001.

Fuel Standard (Petrol) Determination 2001.

Veterans' Entitlements Act—Instruments under section 196B—Instruments Nos 57-64 of 2001.

**Indexed Lists of Files**

The following document was tabled pursuant to the order of the Senate of 30 May 1996 as amended 3 December 1998:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2001—Statements of compliance—Department of Foreign Affairs and Trade.

## QUESTIONS ON NOTICE

The following answers to questions were circulated:

### Government Services: Information Shops (Question No. 3589)

**Senator Faulkner** asked the Minister representing the Minister for Finance and Administration, upon notice, on 28 May 2001:

- (1) (a) How many Federal Government information shops were operating as of 1 March 1996; and (b) can a list be provided of each town/city in which a shop was located at that time.
- (2) What was the annual cost of operating those Federal Government information shops operating as at 1 March 1996.
- (3) What was the total annual revenue of the information shops in the 1995-96 financial year.
- (4) (a) How many Federal Government information shops were operating as of 1 March 2001; and (b) can a list be provided of each town/city in which a shop was located at that time.
- (5) What was the annual cost of operating those Federal Government information shops operating as 1 March 2001.
- (6) What is the total annual revenue of the information shops in the 2000-01 financial year to date.
- (7) What is the reason for the reduction in estimated resourcing for Output 2.3.1—Access to Government Information from \$12 385million in 1999-2000 to \$ 11 173 million, as outlined at page 38 of the Finance and Administration Portfolio Budget Statements 2000-01, Budget Related paper 1.9.
- (8) What is the reason for the reduction in estimated revenue for Output 2.3.1—Access to Government Information from \$10 884 million in 1999-2000 to \$8 834 million, as outlined at page 38 of the Finance and Administration Portfolio Budget Statements 2000-01, Budget Related paper 1.9.
- (9) How has the portfolio implemented, to date, the commitment that ‘developments this year will provide improved access by customers to Government information’, as outlined at page 36 of the Finance and Administration Portfolio Budget Statements 2000-01, Budget Related paper 1.9.

**Senator Abetz**—The Minister representing the Minister for Finance and Administration has supplied the following answer to the honourable senator’s question:

- (1) (a) Nine.  
(b) Adelaide, Brisbane, Canberra, Hobart, Melbourne, Parramatta, Perth, Sydney, Townsville.
- (2) The estimated annual cost of operating the nine Government Info Shops as at 1 March 1996 was \$ 5.324 million.
- (3) The annual revenue from sales of publications through the nine Government Info Shops in 1995-96 was \$ 5.203 million.
- (4) (a) Nine.  
(b) Adelaide, Brisbane, Canberra, Hobart, Melbourne, Parramatta, Perth, Sydney, Townsville.
- (5) The annual cost of operating the nine Government Info Shops in 2000-01 is estimated to be, exclusive of overhead costs, \$ 4.125 million.
- (6) Revenue from sales through the nine Government Info Shops in 2000-01 is estimated to be \$3.082 million.
- (7) and (8) The total price of output 2.3.1 declines from \$23.269 million estimated actual 1999/2000 to \$20.007 million budgeted 2000/2001.  
Whilst appropriations and external revenues remain relatively constant over the 2 year period, total price declines due to savings in overheads allocated to this output.
- (9) The portfolio has implemented the following measures in 2000-01 to improve access to government information:
  - improved the functionality of the www.fed.gov.au whole of government website;
  - made an online version of the Public Service Gazette available free of charge; and
  - developed an online bookshop facility to provide an additional method of access to government information.

**Atomic Testing: Compensation**  
**(Question No. 3625)**

**Senator Allison** asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 19 June 2001:

- (1) How much compensation for health conditions related to radiation exposure to civilians and ex-servicemen involved in the nuclear tests in the 1950s and 60s and the subsequent clean up operations. Can the answer be provided to show breakdowns for: (a) Australian servicemen and women; (b) Indigenous people; (c) civilian contractors; (d) pastoralists; (e) families of the deceased; (f) health disorders for which compensation has been made; (g) number by year awarded compensation; and (h) the average compensation pay out.
- (2) How many people in each of the above categories have applied unsuccessfully for compensation.
- (3) Can details be provided of the nuclear test claims, to Comcare for compensation, which have been rejected by the Government but which have been and/or are being challenged in the courts.
- (4) What are the legal costs to date for the Government of defending such cases.
- (5) What was the medical and/or scientific basis for limited payment of compensation to those with multiple myeloma or leukaemia other than chronic lymphatic leukaemia.
- (6) Will the limitation of these two diseases be reviewed following, or as part of, the current health study.
- (7) If other cancers are found to be linked to radiation exposure, will compensation for these diseases be paid to the families of the deceased.
- (8) Is there a more accurate assessment of the total number involved in the test program than the estimate of 15 400 provided in 1989; if so, what is that figure and can it be broken down into the categories referred to in (1); if not, why has this assessment not been done.
- (9) How many of these 15 400 have subsequently died of cancer.
- (10) What measures has the Government adopted to collect data in each of the categories referred to in (1).
- (11) Is it the case that no records are available of defence personnel and civilians involved at Emu Plain and Monte Bello Islands; if so: (a) why; and (b) what steps have been taken to trace those records.
- (12) (a) How many defence personnel involved in the nuclear tests have been and are currently receiving war disability pensions; and (b) are any of these ex-servicemen receiving these pensions for illness related to nuclear tests as opposed to other war service related illnesses.
- (13) How many people receiving a Department of Veterans' Affairs war disability pension are also nuclear test veterans.
- (14) What steps have been taken by the Government to inform people in each of the categories listed in (1) of the compensation arrangements in place and in particular Aboriginal people who were at the time: (a) on pastoral properties in the Everard Ranges and Officer Creek areas; (b) at stations within the northern and north-eastern vicinity of the Emu sites; (c) in the Maralinga area; (d) in the Gascoyne, Pilbara and Murchison area; and (e) at the Wallatina and Welbourn Hill during the so-called 'black mist'.
- (15) Are recent reports that suggest that disabled people were brought to Australia from Britain to be part of the nuclear tests accurate; if so: (a) what was the rational for their involvement; (b) how many were involved; (c) what was the nature of their involvement; (d) were they willing participants; (e) what information was provided to them about the tests; (f) what was Australia's involvement; (g) were these people returned to Britain, and if so, when; (h) how many remained in Australia; (i) were those who remained provided with Australian pensions and/or compensation; (j) can details be provided of their care following the tests; and (k) will this group be included in the current health review.

**Senator Minchin**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

- (1) Compensation has been paid to claimants under:

- the Special Administrative Scheme and the Act of Grace Scheme administered by the Department of Industry, Science and Resources;
- as result of a successful common law action;
- under the Safety, Rehabilitation and Compensation Act 1988 administered by COMCARE; and
- the Military Compensation and Rehabilitation Service (MCRS) which assumed responsibility for claims by ex-service personnel in July 1991 from COMCARE.

The breakdown for each category is as follows:

- (a) 9 payments have been made to Australian servicemen (a further 7 cases are still under consideration);
- (b) 5 payments have been made to indigenous people;
- (c) 3 payments have been made to civilians;
- (d) no payments have been made to pastoralists;
- (e) 10 payments have been made to families of the deceased (excludes 3 payments to families in category (b));
- (f) the health disorders for which payments have been made include malignant neoplasms and skin conditions such as psoriasis.
- (g) 1981 (1), 1989 (6), 1990 (6), 1991 (1), 1992 (2), 1993 (1), 1994 (2), 1996 (2), 1998 (1), 2000 (2) and 2001 (3).
- (h) The average compensation payout has been \$126,561.

(2) Australian servicemen – 342 (This figure includes some cases where the Commonwealth has accepted liability for conditions arising from a member's service but where no compensation has been paid.)

Indigenous people – 14

Civilians - 11

(3) Common Law Actions

Since the conclusion of the British Nuclear Testing Program, at least 79 common law actions against the Commonwealth have been instituted by ex-servicemen, other former Commonwealth employees and employees of Commonwealth contractors.

Many of the cases before the courts have either been discontinued or withdrawn. Four cases have been heard by the court.

- (4) Legal costs expended by the Commonwealth are funded by a Special Appropriation, established in September 1989 to cover the costs of defending the Atomic Test related common law actions and compensation payments arising from these actions. To date, \$5.13 million has been spent on both legal and compensation costs. It is not possible to provide a further breakdown of legal and compensation costs.
- (5) The Special Administrative Scheme was announced on 4 September 1989 and is administered by the Minister for Industry, Science and Resources. Changes to the Scheme, were announced on 10 February 1995 and it now provides for the payment of compensation to those Australian participants (or their dependants) in the British atomic tests program who developed leukaemia (other than chronic lymphatic leukaemia) in the first 25 years after participation in the tests program.

The decision to commence the Scheme was based on the results of a study undertaken by the UK National Radiological Protection Board (NRPB) of the health of participants in the British atomic tests program. The study, published in 1988, showed a possible increase in risk of test participants developing multiple myeloma and leukaemia (other than chronic lymphatic leukaemia). The UK Government then extended its war pensions scheme to cover British test participants with these conditions. As the activities of Australian and UK personnel at the sites were similar it was decided by the Australian Government to introduce a scheme to cover Australian participants.

Following the publication of a follow-up NRPB study in December 1993, the UK Government decided to accept new claims only where leukaemia (other than chronic lymphatic leukaemia) had developed in the first 25 years after participation in the atomic tests. On 10 February 1995 the

Australian Government announced changes to the Special Administrative Scheme to reflect these later findings.

(6) and (7) The Government will consider reviewing the Special Administrative Scheme and the Act of Grace Scheme if the results of the current health study suggest this is appropriate.

(8) The preliminary version of the Nominal Roll of Australian participants in the British Atomic Tests Program conducted in Australia from 1952 – 1963 at present contains 16,716 names. The names on the Roll are in the following categories:

- Navy – 3,268;
- Army – 1,657;
- RAAF – 3,201; and
- 8,590 civilians, including 10 indigenous people.

Pastoralists are not identified separately within the civilian group.

(9) It is not possible to provide an answer to this question at this stage. However, the Cancer Incidence and Mortality Study will match data with national cancer registers and death certificates. The information obtained from the Study will provide an estimate of the number of atomic tests participants who have died since the tests.

(10) The preliminary Nominal Roll referred to in (8) has categories for civilian personnel, defence service personnel and indigenous people.

The definition of an Australian ‘Atomic Participant’ for the purpose of the Roll is someone who was present, either working or as a visitor, in at least one of the testing areas whilst a test or tests were conducted in that area, or were there within a 2 year period after the explosions.

The Roll has been compiled by examining Department of Defence records (including ship lists of the involved HMA Ships, Routine Orders from the Army Units known to have been involved, and identified RAAF Squadrons and Squadron members), personnel records of private firms engaged for the purposes of conducting and supporting the tests, the Report of the Royal Commission into Atomic Testing (1986) and records of the issue of Maralinga Security Cards. Documents prepared previously for the purposes of listing participants in the tests and other documents provided by the various ‘nuclear veteran’ associations were also examined for any additional names and identifying details.

The names on the Roll have also been checked against the list of radiation-exposed personnel compiled by JR Maroney in the Australian Radiation Laboratory document ‘Personal Monitor Records From Exposure To Beta And Gamma Radiation During Engagement In The Program Of British Nuclear Weapons Tests In Australia’, dated 10/12/1984.

The Roll contains the names of ten aboriginal residents who were present in the testing areas. Obtaining a comprehensive list of aboriginal people who were exposed to the tests because they were in the area is extremely difficult. It is recognised, therefore, that there are names of aboriginal people, who were in the area, that are missing from the Roll. This is partly because population information from the relevant communities (Yalata, Koonibba, Ernabella, Maralinga Tjarutja, Pitjantjatjara, Yankunytjara, Wallatinna, Ngaanyatjarra, Marble Bar and Cundeelee) was not sought or obtained at the time of the testing program and partly because movement of indigenous people through the restricted area during the testing period, may not have been effectively policed.

Similarly, a lack of contemporary population information on the residents of pastoral properties, which may have included some aboriginal people, means that the Roll may not include that group if they were not included as part of the information in other documents. However, the Aboriginal and Torres Strait Islander Commission (ATSIC) have a representative on the Atomic Tests Participants Consultative Forum chaired by the Department of Veterans’ Affairs (DVA). Officers from DVA and ATSIC are working together to identify sources from which this information may be obtained.

(11) The Department of Industry, Science and Resources holds records for defence personnel and civilians involved at both the Emu Plain and Monte Bello Island Atomic Tests. These documents include a Nominal Roll for Australian participants at Emu Plain, Australian Radiation Laboratory records of radiation dose readings, Ship Lists for the 1952 and 1956 Monte Bello Island tests and RAAF lists for both Emu Plain and the Monte Bello Islands.

(12) and 13) (a) No comparison has yet been done between the Atomic Tests Participants Nominal Roll and DVA data bases to determine the number of atomic tests participants in receipt of a disability pension. Such a comparison would be time consuming and could not be completed until the Nominal Roll was finalised.

(b) No disability pension paid by DVA would be paid for illnesses relating to atomic testing. Atomic testing is not service covered by the Veterans' Entitlements Act 1986. Therefore, all pensions paid by DVA are for conditions arising from service other than atomic testing.

(14) The Special Administrative Scheme and the Act of Grace Scheme were announced through the issue of separate Ministerial media releases. In addition, the plaintiff for common law actions, Maurice May and Company, has been regularly provided information on the two schemes for distribution to their clients. The Government has also directly provided potential claimants with details of the two schemes in response to requests for information through correspondence with Ministers or officials, and has provided information directly to Atomic Test Veterans' groups for circulation to its members.

Senator Gareth Evans, the then Minister for Resources and Energy announced the then Government's response to the Royal Commission into British Nuclear Tests in Australia, as recorded in *Hansard* on 17 September 1986. In that response, Senator Evans announced the Government's intention to establish a scheme to allow claims to be considered under the Compensation (Commonwealth Employees) Act 1971, to be administered by the Department of Social Security. The Minister also extended an invitation to the Aboriginal communities' legal representative to submit claims for compensation.

Australian defence personnel have previously been made aware of the role of the MCRS through media releases and information made available to members at their workplace.

(15) This allegation received media attention in 1984 and was brought to the attention of the Royal Commission and is referred to in the list of exhibits at the back of the Report. The Royal Commission considered this allegation and rejected it as having no substance.

**Australian Search and Rescue: *Upstart***  
**(Question No. 3696)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 9 July 2001:

- (1) When was the yacht sailing off the coast of Queensland to the town of 1770, that was the subject of a search by Australian Search and Rescue (AusSAR) which commenced on 8 July 2001, first reported missing.
- (2) (a) What was the name of the missing yacht; and (b) did it have an emergency position indicating radio beacon (EPIRB) and a life raft, or life boat with EPIRB fitted, on board.
- (3) (a) When was the last contact with the missing yacht; and (b) what was the yacht's location when that contact was made.
- (4) In which state is the yacht registered.
- (5) When was AusSAR advised, and by whom, that the yacht was missing.
- (6) Who notified AusSAR that the yacht was missing.
- (7) When was AusSAR first notified that debris had been found washed up near Baffle Creek, north of Bundaberg.
- (8) Who notified AusSAR that the debris had been located.
- (9) Did Queensland state search and rescue authorities initiate the search for the missing yacht following the discovery of the debris near Baffle Creek or did AusSAR initiate the search for the yacht.
- (10) If the Queensland state search and rescue authorities initiated the search, how and when did AusSAR become involved in the search.
- (11) If AusSAR initiated the search for the yacht, what was the basis for that action and did it follow a request from the Queensland authority to take over the coordination of the search.
- (12) If AusSAR did take over the coordination of the search following a request from the state authority: (a) how; (b) when; and (c) by whom, was that request communicated to AusSAR.

- (13) (a) What was the basis for the request; and (b) what was the basis for AusSAR agreeing to take over the coordination of the search for the missing yacht.
- (14) (a) Did the senior search and rescue officer on duty at the time the debris was discovered define the search area for the missing yacht; and (b) how soon after AusSAR was advised that debris had been located was the search area defined.
- (15) Can the Minister provide all calculations, including all work sheets, used in determining the search area.
- (16) (a) Since the first search area was defined, on how many occasions has the search area been recalculated; and (b) can a copy be provided of the calculations, including work sheets, used in the above recalculations.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) The yacht was not reported missing. The Queensland Police Service advised that the police in Bundaberg were notified of debris on Saturday 7 July 2001 found on a beach north of Bundaberg. It was identified to have come from a yacht named *Upstart*.
- (2) (a) The name of the yacht was *Upstart*.
- (2) (b) The Queensland Police at Bundaberg advised that *Upstart* had lifejackets, a maritime distress beacon (EPIRB), a liferaft and a Zodiac tender.
- (3) (a) Advice from Queensland Police indicated that the last contact with *Upstart* was at midday on Friday 6 July 2001.
- (3) (b) Advice from Queensland Police indicated that *Upstart* was then off Baffle Creek.
- (4) *Upstart* is registered in Victoria.
- (5) The Queensland Police at Bundaberg advised AusSAR at 11.25 am on Saturday 7 July that they were making inquiries into debris found on a beach north of Bundaberg. It was identified to have come from a yacht named *Upstart* but at that stage it was not known if the debris was new. The Queensland Police Search and Rescue Mission Coordinator at Hervey Bay advised AusSAR at 1.34 pm on Saturday 7 July that Police investigations had confirmed the debris to be new, relating to *Upstart*'s intended voyage from Bundaberg to 1770.
- (6) See answer to question (5).
- (7) See answer to question (5).
- (8) See answer to question (5).
- (9) The Queensland Police initiated search actions after debris was found.
- (10) The Queensland Police had overall coordination responsibility throughout the incident. AusSAR was formally requested by facsimile from the Queensland Police to assume responsibility for the air search component from 2.03 p.m. on Saturday 7 July.
- (11) Not applicable.
- (12) Not applicable.
- (13) Not applicable.
- (14) (a) The AusSAR officer concerned prepared an air search area in anticipation of the request to assume responsibility for the air search component. The area was agreed by the Queensland Police Search and Rescue Mission Coordinator.
- (14) (b) The proposed air search area was defined at 2.04 pm on Saturday 7 July 2001.
- (15) Copies of the search areas have been provided to the Table Office.
- (16) (a) The search area was redefined twice, in response to improving information about the vessel's movements and water movement, and to increasing numbers of available search aircraft.
- (16) (b) The redefined areas are included in the answer to question 15.

**Australian Search and Rescue: *Just Cruisin***  
**(Question No. 3715)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 13 July 2001:

- (1) When was the motor cruiser, *Just Cruisin*, that was travelling from Mooloolaba in Queensland to Swansea in New South Wales first reported missing.
- (2) Was the missing cruiser known to have on board an Emergency Position Indicating Radio Beacon (EPIRB) and a liferaft, or lifeboat, with EPIRB fitted.
- (3) (a) When was the last contact with the missing cruiser; and (b) What was its location when that contact was made.
- (4) In which state is the cruiser registered.
- (5) When was Australian Search and Rescue (AusSAR) advised, and by whom, that the cruiser was missing.
- (6) Did Queensland state search and rescue authorities initiate the search for the missing cruiser or did AusSAR initiate the search for the cruiser.
- (7) If the Queensland state search and rescue authorities initiated the search, how and when did AusSAR become involved in the search.
- (8) If AusSAR initiated the search for the cruiser, what was the basis for that action and did it follow a request from the Queensland authority to take over the coordination of the search.
- (9) If AusSAR did take over the coordination of the search following a request from the state authority; (a) how; (b) when; and (c) by whom, was that request communicated to AusSAR.
- (10) (a) What was the basis for the request; and (b) What was the basis for AusSAR agreeing to take over the coordination of the search for the missing cruiser.
- (11) (a) Did the senior search and rescue officer on duty at the time the cruiser was reported missing define the search area for the missing cruiser; and (b) how soon after AusSAR was advised that the cruiser was missing was the search area defined.
- (12) Can the Minister provide all calculations, including all work sheets, used in determining the search area.
- (13) (a) Since the first search area was defined, on how many occasions has the search area been recalculated; and (b) can a copy be provided of the calculations, including work sheets, used in the above recalculations.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) This information is not held by AMSA because the vessel was first reported missing to the New South Wales Police.
- (2) *Just Cruisin* was known to have a maritime distress beacon (EPIRB) for the boat and one crew member had a personal EPIRB. Both beacons required to be manually activated. *Just Cruisin* had a 3-metre fibreglass dinghy, but no liferaft or lifeboat.
- (3) (a) AusSAR has been advised that the last contact with the vessel was at 1.53 pm on Friday 6 July by radio with the Volunteer Coast Guard at Mooloolaba. They stated they were on route to Tangalooma on Moreton Island.  
(b) The vessel's position was not reported but is assessed as being within a few kilometres of the harbour based on other intelligence.
- (4) The vessel is registered in Queensland.
- (5) The Sydney Water Police advised AusSAR at 10.31 pm on Tuesday 10 July that a vessel was overdue on the north coast of New South Wales.
- (6) The Queensland Police Service initiated the search.
- (7) AusSAR first became involved when requested by the New South Wales Police Service to issue an "All Ships" broadcast to ships transiting the northern New South Wales coast region. The broadcast requested vessels to report any sightings of *Just Cruisin* to AusSAR or Sydney Radio. The broadcast was issued at 2.09 am on Wednesday 11 July.
- (8) Not applicable.
- (9) (a) The Queensland Police requested AusSAR to assume coordination of the search by facsimile.  
(b) The transfer of coordination became effective at 2.15 pm on Wednesday 11 July.

(9) (c) The request was made by Brisbane Water Police.

(10) (a) The basis for the request was that the potential search area spanned part of the Queensland and New South Wales coastlines and that, although a search for a pleasure craft is strictly a Police task according to the National Search and Rescue Manual, coordination of all three authorities would be better handled by AusSAR.

(10) (b) The basis for assuming coordination was AusSAR's agreement that coordination of all three SAR authorities would be best handled by AusSAR.

(11) (a) The respective search areas were defined by the particular authority with overall coordination responsibility at the time. Police defined the search areas early in the search before AusSAR assumed overall coordination.

(11) (b) AusSAR defined a search area immediately after accepting coordination but had commenced search planning and sourcing search aircraft about 90 minutes prior to the formal transfer of coordination.

(12) Copies of the search areas are attached.

(13) (a) Initial search areas for search aircraft were defined by AusSAR on Wednesday 11 July, when AusSAR assumed coordination from the Queensland Police. AusSAR re-defined the air search areas on completion of aircraft sorties on Tuesday 11 July and again on completion of aircraft sorties for Wednesday 12 July. AusSAR completed its air search activity late afternoon on Friday 13 July. AusSAR then suspended the air search pending further intelligence. Overall coordination for the incident was transferred back to Queensland Police at 5.30 pm on 13 July. After police reported positive identification of some wreckage found during the searches on 13 July, AusSAR resumed coordination of the air search component at 1.26 pm on Saturday 14 July. AusSAR defined a new search area focused on the tidal movement areas in and around Moreton Bay. The search on 14 July located the submerged wreckage of *Just Cruisin* but no evidence of the crew. AusSAR's coordination of the air search component ceased on completion of the searches on 14 July.

(13) (b) Copies of the search areas have been provided to the Table Office.

**Immigration and Multicultural Affairs Portfolio: Missing Computer Equipment  
(Question No. 3734)**

**Senator Faulkner** asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 25 July 2001:

(1) Have there been any desktop computers or any other item of computer hardware, other than laptop computers, lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) what and how many have been lost; (b) what and how many have been stolen; (c) what is the total value of these items; (d) what is the normal replacement value per item; and (e) have these items been recovered or replaced.

(2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.

(3) How many of these lost or stolen items had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.

(4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.

(5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.

(6) What departmental disciplinary or other actions have been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4).

**Senator Minchin**—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator's question:

- (1) (a) None lost.
- (b) None stolen.
- (c) to (e) Not applicable.
- (2) (a) to (d) Not applicable.
- (3) Not applicable.
- (4) (a) and (b) Not applicable.
- (5) (a) and (b) Not applicable.
- (6) Not applicable.

**Veterans' Affairs Portfolio: Missing Computer Equipment**  
**(Question No. 3739)**

**Senator Faulkner** asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 25 July 2001:

- (1) Have there been any desktop computers or any other item of computer hardware, other than laptop computers, lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) what and how many have been lost; (b) what and how many have been stolen; (c) what is the total value of these items; (d) what is the normal replacement value per item; and (e) have these items been recovered or replaced.
- (2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.
- (3) How many of these lost or stolen items had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.
- (4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.
- (5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.
- (6) What departmental disciplinary or other actions have been taken in regard to the items in (1) or in relation to the documents etc. in (3) or (4).

**Senator Minchin**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

There have been no reports of lost or stolen desktop computers or any other item of computer hardware.

**Immigration and Multicultural Affairs Portfolio: Missing Laptop Computers**  
**(Question No. 3753)**

**Senator Faulkner** asked the Minister representing the Minister for Immigration and Multicultural Affairs, upon notice, on 25 July 2001:

- (1) Have there been any laptop computers lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) how many have been lost; (b) how many have been stolen; (c) what is the total value of these computers; (d) what is the average replacement value per computer; and (e) have these computers been recovered or replaced.
- (2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of a police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.

- (3) How many of these lost or stolen computers had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.
- (4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.
- (5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.
- (6) What departmental disciplinary or other actions have been taken in regard to the computers in (1) or in relation to the documents etc. in (3) or (4).

**Senator Ellison**—The Minister for Immigration and Multicultural Affairs has provided the following answer to the honourable senator's question:

- (1) (a) None lost.
  - (b) One laptop computer, leased under outsourced desktop leasing arrangements, was stolen.
  - (c) The laptop was leased under leasing arrangements for a three-year period. It was stolen before the leasing arrangement had expired. The Department was required to pay out the remaining monthly leasing payments to the value of \$3405.00.
  - (d) The replacement value for each leased laptop computer is \$227.00 per month for a three-year period, totalling \$8172.00.
  - (e) The laptop computer has not been recovered or replaced.
- (2) No.
  - (a) to (d) Not applicable.
- (3) One laptop computer.
- (4) (a) The number of documents is unknown.
  - (b) The laptop was believed to contain documents classified no higher than In-Confidence.
- (5) (a) None.
  - (b) None.
- (6) No disciplinary action has taken place as the theft was not investigated. The incident was referred to the Internal Investigations Section.

The Department has in place the following security measures:

Protective Security and Information Technology Security Instructions, which are based on the policies outlined in the Commonwealth Protective Security Manual and relevant Defence Signals Directorate manuals;

Code of Conduct policies;

Home Base Work procedures;

Encryption software installed on all laptop computers. The function of this software is to protect the data stored on the laptop computer's hard drive from unauthorised persons by encrypting the hard drive and providing password protection; and

Ongoing Code of Conduct and security awareness training, which is a mandatory requirement for all staff to attend.

**Veterans' Affairs Portfolio: Missing Laptop Computers**  
**(Question No. 3758)**

**Senator Faulkner** asked the Minister representing the Minister for Veterans' Affairs, upon notice, on 25 July 2001:

- (1) Have there been any laptop computers lost or stolen from the possession of any officer of the department and/or agencies within the portfolio during the 2000-01 financial year; if so: (a) how many have been lost; (b) how many have been stolen; (c) what is the total value of these computers; (d) what is the average replacement value per computer; and (e) have these computers been recovered or replaced.

- (2) Have the police been requested to investigate any of these incidents; if so: (a) how many were the subject of police investigation; (b) how many police investigations have been concluded; (c) in how many cases has legal action commenced; and (d) in how many cases has this action been concluded and with what result.
- (3) How many of these lost or stolen computers had departmental documents, content or information other than operating software on their hard disc drives, floppy disc, CD Rom or any other storage device.
- (4) (a) How many of the documents etc. in (3) were classified for security or any other purpose; and (b) if any, what was the security classification involved.
- (5) (a) How many of the documents etc. in (3) have been recovered; and (b) how many documents etc. in (4) have been recovered.
- (6) What departmental disciplinary or other actions have been taken in regard to the computers in (1) or in relation to the documents etc. in (3) or (4).

**Senator Minchin**—The Minister for Veterans' Affairs has provided the following answer to the honourable senator's question:

- (1) Yes
  - (a) nil;
  - (b) one;
  - (c) at the time of the theft the written down value was approximately \$700;
  - (d) \$3,378; and
  - (e) the laptop stolen has not been recovered and a replacement laptop has been issued.
- (2) Yes
  - (a) one;
  - (b) police investigations to date have not resulted in recovery of the laptop or the laying of any charges;
  - (c) none; and
  - (d) not applicable.
- (3), (4) and (5) The one laptop did not contain any departmental documents, it did not have a CD Rom and it was used for accessing the department remotely which needed a password.
- (6) There has been no departmental disciplinary action. The theft was reported to the police for investigation as stated in (2).

**Australian Search and Rescue: *Aimlis***

**(Question No. 3784)**

**Senator O'Brien** asked the Minister representing the Minister for Transport and Regional Services, upon notice, on 31 July 2001:

- (1) When was the yacht, the *Aimlis*, sailing off Chesterfield Reef 1,100 kilometres east of Bundaberg first reported in need of assistance or missing.
- (2) Did the yacht have an Emergency Position Indicating Radio Beacon (EPIRB) and a life raft or lifeboat with EPIRB fitted.
- (3) In which state is the yacht registered.
- (4) When was AusSAR advised, and by whom, that the yacht needed assistance or was missing.
- (5) Who notified AusSAR that the yacht needed assistance or was missing.
- (6) Did Queensland state search and rescue authorities initiate the search for the yacht or did AusSAR initiate the search for the yacht.
- (7) If the Queensland state search and rescue authorities initiated the search, how and when did AusSAR become involved in the search.
- (8) If AusSAR initiated the search for the yacht: (a) what was the basis for that action; and (b) did it follow a request from the Queensland authority to take over the coordination of the search.

- (9) If AusSAR did take over the coordination of the search following a request from the state authority: (a) how; (b) when; and (c) by whom, was that request communicated to AusSAR.
- (10) (a) What was the basis for the request; and (b) what was the basis for AusSAR agreeing to take over the coordination of the search for the yacht.
- (11) (a) Did the senior search and rescue officer on duty at the time define the search area for the missing yacht; and (b) how soon after AusSAR was advised that the yacht needed assistance was the search area defined.
- (12) Can the Minister provide all calculations, including all work sheets, used in determining the search area.
- (13) (a) Since the first search area was defined, on how many occasions has the search area been recalculated; and (b) can a copy be provided of the calculations, including work sheets, used in the above recalculations.

**Senator Ian Macdonald**—The Minister for Transport and Regional Services has provided the following answer to the honourable senator's question:

- (1) 1.28 am on Tuesday 26 July 2001.
- (2) The yacht had a 121.5 MHz maritime distress beacon (EPIRB), a liferaft and a tender vessel.
- (3) New Zealand.
- (4) 1.28 am Tuesday 26 July 2001 by Taupo Maritime radio (New Zealand).
- (5) Taupo Maritime radio (New Zealand).
- (6) AusSAR initiated a response to the distress situation. It was not a search.
- (7) Not applicable.
- (8) (a) Not applicable.
- (8) (b) Not applicable.
- (9) Not applicable.
- (10) Not applicable.
- (11) (a) No, the vessel was aground at a known location.
- (11) (b) Not applicable.
- (12) Not applicable.
- (13) Not applicable.

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