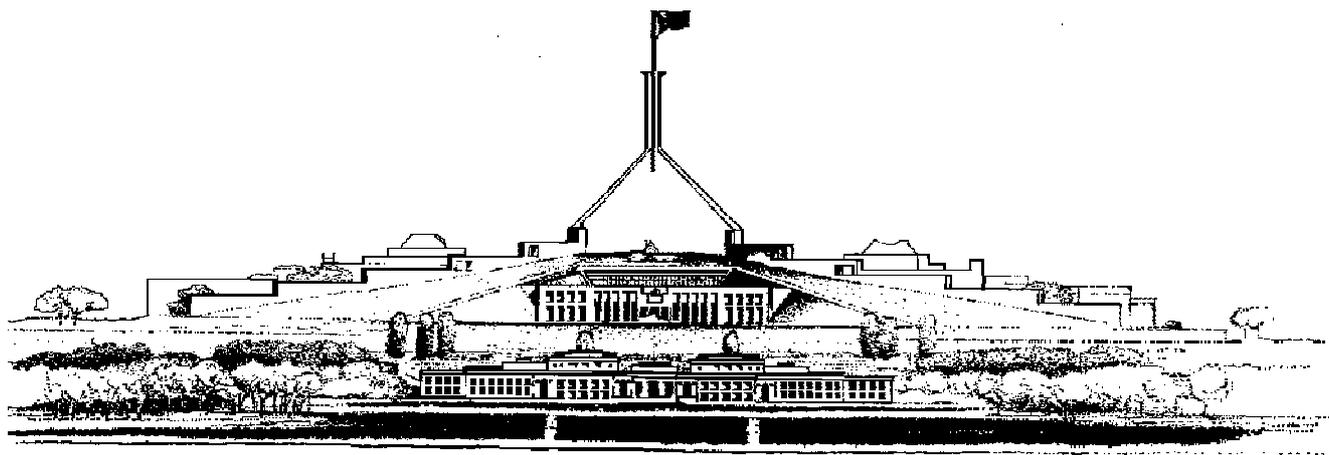




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SENATE

Official Hansard

MONDAY, 27 MAY 1996

THIRTY-EIGHTH PARLIAMENT
FIRST SESSION—FIRST PERIOD

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Monday, 27 May 1996

The PRESIDENT (Senator the Hon. Michael Beahan) took the chair at 2.00 p.m., and read prayers.

QUESTIONS WITHOUT NOTICE

Sale of Telstra

Senator SCHACHT—My question is directed to the Assistant Treasurer and Minister representing the Minister for Finance. I ask: are you aware of the technique used by companies where the legal owners of a corporate entity transfer the assets and liabilities of that entity to a second entity with a board that does not appear to be under their control in order to avoid legal and financial obligations that may apply to them as controllers of the first company? Can you confirm whether such a technique is commonly known as asset stripping? Do you approve of such arrangements and can you confirm whether the government has received any advice suggesting such a technique as a way of avoiding legislative restrictions on the sale of Telstra?

Senator SHORT—Yes, I am of course aware of the technique to which the shadow minister refers. I am also aware of course that asset stripping leads to the minimisation of tax in an illegal way. This is something which I am sure both sides of the parliament, and indeed all people, are strongly opposed to. The taxation laws and administration of this country are designed to prevent that sort of arrangement. The answer to the first part of your question is yes. As far as the second part of your question is concerned, it is not directly related to the first part.

Senator SCHACHT—Mr President, I ask a supplementary question. As you will not make any comment and will not confirm that there is a connection between the processes of what you are doing with this non-parliamentary route to privatise Telstra, can you at least give us confirmation that the estimated cost of going down the non-legislative route would be at least \$1 billion or up to \$1.5 billion in stamp duty foregone? If you do accept that way, is that not more than the \$1

billion you were promising the environment, which destroys the whole environment package?

Senator SHORT—That question sounds as fanciful as any question from the opposition this session. So far as Telstra is concerned, the fact is that the government plans to progress the partial sale of Telstra through the parliament. We have brought forward enabling legislation as a matter of priority in order to achieve that. Yet the other side of the parliament—supported, aided and abetted by the minor parties I regret to say—has thrust off the proper consideration of Telstra and the government's proposals into the next session of parliament. I remain confident that the Telstra sale bill will be passed by the Senate. That is the government's position and we maintain it.

Sale of Telstra

Senator MICHAEL BAUME—My question is addressed to the Minister for Communications and the Arts. He will be aware of some expressions of feigned outrage about the possibility of the government exploring extraparliamentary options for the sale of Telstra. What is the government's attitude to this and why would it consider such options?

Senator ALSTON—Yes, I am aware of some expressions of feigned outrage. They come from both the major opposition parties in this chamber. Indeed, I noticed Senator Schacht talked about an outrageous act of public vandalism. On *AM* this morning, Senator Kernot said:

Why go to the election campaign saying we are going to put this through the parliament and before we sell any more of it we will go back to the people.

Later on she said:

Either you say you won't bypass it even if you feel frustrated or you won't.

We did not say any of those things. Indeed, we remain committed to this bill going through the parliament. The tragedy is that you know full well that it should.

Senator Schacht—Who has leaked all the advice?

Senator ALSTON—We are entitled to take advice about any alternative options that

might become necessary. As a result of your intransigence and procrastination you may well force us to explore other options. Our preferred course of action is to go down the path that we have foreshadowed via legislation. Just in case anyone is in any doubt about who the real hypocrites are on this issue, if you talk about parliamentary vandalism you ought to have regard to what Paul Keating wanted to do with Telstra prior to the last election. If Senator Schacht wants to earn his keep as a shadow minister, he should tell us here and now whether it is still the your policy to sell off Mobilenet, *Yellow Pages* or OTC, because that is what Paul Keating wanted to do.

Do you disown him or don't you? Is that still your policy? Are you in fact wanting to break Telstra up into bits and pieces? If he had his way you would have already flogged off about a third of Telstra's revenue stream. We have a perfect right—indeed, an obligation—to respond to public pressure which endorsed our proposal to privatise Telstra. If you are intent on blocking that, you must take the consequences of our pursuing other options. I hope the Democrats also read this morning's editorial in the *Melbourne Age*? It said:

... is it fair to ask: precisely who needs to be kept honest? ... the Democrats ... have become a stronger force for opposition to the government's program than the ALP ... an emerging contradiction in the party's *raison d'être* ... the spirit of the "Keep the Bastards Honest" approach that gave birth to the party was designed to ensure that each government, be it Labor or Liberal, kept its election promises and behaved honourably.

They have an existential conflict on how much they should represent their own ideology et cetera. The point remains that you know what the voters decided on 2 March in relation to Telstra. You are the ones who are deliberately frustrating the policy we took to the last election. We didn't say it, but it was always our preferred course to have legislation through the parliament.

If you are the ones who are going to ensure that that cannot happen—of course, you have closed minds on the issue; you are locked in because of your ideology and because of the trade union movement which pulls the strings

and Senator Ray who pulls the other strings a little closer to the front of this chamber—that of course will mean we do have to examine other alternative courses; and we will, but it will be your fault if we have to go down that path. We are the ones who want the bill to go through parliament in accordance with the mandate we obtained. If you take the view that nothing will allow you to change your mind, that you are simply determined to frustrate that approach, you will bear the consequences.

Senator MICHAEL BAUME—I thank the minister for that response. I wonder whether he has seen the article in the *Australian Financial Review* of 7 February, which noted:

... the assertion by one of the country's top corporate lawyers that Keating had, as late as one month ago been quietly sounding out captains of industry to see if they would head a taskforce to break up and privatise Telstra.

Former Senator Richardson said:

This wimpish proposal did not satisfy Paul Keating, who wanted to go much further and sell off Telecom into the bargain.

I ask the minister: how different in principle is what he is suggesting from what was suggested on these previous occasions?

Senator ALSTON—I did see that article and it is precisely what Paul Keating always wanted to do. If you look at what Home Alone did in the House of Representatives, you will find that he was mouthing precisely the same formula. In other words, what he was on about was preserving Telstra's so-called core assets. That was the answer that Keating gave when he was asked about various proposals to asset strip Telstra. He fell back on the proposition that he was in favour of anything that was in the national interest.

The crunch in all this was that when he was asked on *Lateline* in 1994 whether it really mattered whether Telstra was publicly or private owned, he said, 'Not of its essence, no.' That is the Labor Party's current stated position. If you are about to disown him, tell us. Otherwise, the public is entitled to assume that you do have an alternative approach to this issue and that involves breaking up Telstra, doing what you have said for the last three years or more. Indeed, if we go back to

1989 when Paul Keating sold off Aussat and wanted to sell off OTC, the public will know your attitude on this issue. (*Time expired*)

Higher Education Funding

Senator JACINTA COLLINS—My question is to the Minister for Employment, Education, Training and Youth Affairs. On the *7.30 Report* on Friday, in relation to expenditure cut-backs in the higher education system, Kerry O'Brien asked you, 'Did you mention the figure of 12 per cent' to Australia's vice-chancellors? You implied that this was a proposition put to you by the vice-chancellors. Was this the case or did you mention the figure of 12 per cent to the vice-chancellors?

Senator Bolkus—On the alcohol bottle, was it?

Senator Watson—Mr President, I take a point of order. That improper interjection from Senator Bolkus should be absolutely withdrawn. It was disgraceful.

The PRESIDENT—Order! I'm afraid that because I was in discussion I did not hear it, Senator Watson. Senator Bolkus, if that is a matter that should be withdrawn, I ask you to withdraw it.

Senator Bolkus—Mr President, all I did was quote the reference in the *Advertiser*, that the vice-chancellors assume—

The PRESIDENT—Order!

Senator Bolkus—I am just telling you what it was, because I am not going to withdraw it. The vice-chancellors assumed that the 12 per cent came from the alcohol level on the bottle of wine that was in front of her. I do not think that is insulting.

The PRESIDENT—Let me look at it in *Hansard* and I will follow the matter up later.

Senator VANSTONE—I thank the senator for the opportunity to give this answer yet again in this place. I will continue to give the answer until, finally, senators opposite understand what the truth of the matter is. Senator, you quite rightly identify that this matter has been raised in this place in the past. You will see no inconsistency between what I have said here and what I said to Kerry O'Brien. I have made it abundantly clear. The things that are

clear are twofold in respect of your question. First, I have never nominated a specific savings target for the higher education sector. I have been at pains to indicate, as I indicate to those opposite now—I repeat it again—that no decisions with respect to this matter have been made.

What I have done is ask the vice-chancellors and other interested parties to take the opportunity to bring the knowledge that they have with respect to higher education and to use that knowledge to shape the savings proposal as opposed to allowing a savings proposal to shape higher education. Let me refer to what I have said in response to any specific questions put to me. You, senator, would know how bright the vice-chancellors are and how cunning some of your people are—they are constantly asking, 'Are you looking at five per cent? Are you looking at six per cent?' I will repeat to you what I said to Kerry O'Brien: if someone put a proposition to me, 'Is it five per cent,' I would say, 'Five per cent, I cannot say.' If someone said to me, 'Is it five or 12,' I would say, 'Five or 12, I cannot say.' What I made clear to him is what I made clear in this place last time you asked that question. I will keep giving you the same answer; that is the situation.

I have never nominated a specific savings target whatsoever. I may respond to the proposition of specific savings targets by repeating the proposition put to me and saying, 'I can't say.'

Senator JACINTA COLLINS—I read the transcript of your interview on the *7.30 Report* and, frankly, your last few sentences were incoherent. Would you allow the vice-chancellors to provide their version of events to the Senate Employment, Education and Training References Committee?

Opposition senator interjecting—

Senator VANSTONE—There was a very good interjection by someone on your side, Senator Collins. Any senator or member who sought to inhibit in any way the opportunity for any Australian to put a view forward to a Senate committee would be committing a breach of privilege. Senator Collins, you may not be familiar with the law of privilege as it relates to this place, but I have had some

acquaintance with it. I would certainly not at any stage try to stop someone putting their view forward to a Senate committee or to this Senate, if they were asked before the bar of this place. I would never do that.

Australian Labor Party Policy

Senator MacGIBBON—My question is directed to the Leader of the Government in the Senate. I ask if the senator's attention was drawn to the statement attributed to the federal President of the ALP, Mr Barry Jones, in today's press. The statement said that the great policy book of the ALP was irrelevant and complex and could not be followed by ALP voters, and that the party was out of touch and had failed to detect the great grievances in the community. This was not a statement by Jennie George in a burst of honesty about the ACTU, but it was a statement by the federal President of the ALP. What hope is there for those disaffected members of the community under the present government's policies?

The PRESIDENT—Order! That question has nothing to do with your area of responsibility, Senator Hill. I rule it out of order.

Senator Hill—What I want to do, Mr President, is demonstrate why this government will not be doing the same as the Labor Party—the lessons we have learnt from Labor's experience.

The PRESIDENT—That was not the way it was asked.

Senator Alston—Mr President, on a point of order: the last part of that question, which you may not have heard as I heard it, asked whether the present government's policies would accommodate the concerns of people.

Senator Bob Collins—It did not.

Senator Alston—Let Senator MacGibbon ask it. In Senator Hill's role as Leader of the Government in the Senate, he is entitled to respond to any question that asks about the attitude of the government.

Senator Schacht—He didn't—

Senator Alston—Let the last part of the question speak for itself. I am simply saying this: a question should not be ruled out of order before the last part of it is heard, and

the last part was the crunch line. Once again, you fell asleep prematurely.

Senator MacGibbon—I wish to speak to that point of order. I am sorry you did not hear me, Mr President. The final part of the question was—

Senator Cook—You can't ask a question properly; that is your problem.

Senator MacGibbon—You are a failed minister.

The PRESIDENT—Order! Just speak to the point of order.

Senator MacGibbon—The final part of my question was this: how are those disaffected members of the community going to be dealt with by the policies of the present government?

The PRESIDENT—That is not the way I heard it. The only—

Senator Michael Baume—You heard wrong.

The PRESIDENT—I was listening very carefully for that reference, because that would have got Senator MacGibbon out of trouble. That reference was not uttered as far as I was concerned. The only way I can check this is by reference to *Hansard* and, if that is the case, I will give Senator MacGibbon another question tomorrow. I rule the question out of order now.

Senator Abetz—On a point of order, Mr President: you have just heard the question possibly rephrased. I would have thought—

Senator Schacht interjecting—

Senator Abetz—I said 'possibly rephrased'. In your task as President of the Senate and in trying to establish a spirit of goodwill between senators, if there is a technical difficulty with a question and that technical difficulty is overcome at your suggestion, I would have thought it would have been appropriate for you to let the honourable senator ask the question and have it answered. I would be interested, Mr President, to see how your technical rulings applied when those senators over there were sitting on this side.

The PRESIDENT—I know you always like to make that point, Senator Abetz. I am,

I believe, impartial in these matters. I simply did not hear that reference in Senator MacGibbon's question. The reference to it later was too late. The question was asked and I was asked to judge on the question as it was asked.

Higher Education Funding

Senator COATES—My question is directed to the Minister for Employment, Education, Training and Youth Affairs. I refer to the minister's address to the Association of Education of the Gifted and Talented early in April. Does the minister still believe, as she said then, that university funding—including research funding—should be allocated only on an annual basis on the basis of faculty performance? Or does she now realise that universities, because of their multimillion dollar teaching and research programs, need long lead times in their planning?

Senator VANSTONE—Mr President, you may not have had the opportunity to peruse the article which Senator Coates is indirectly referring to. It is an article which was put on the internet by a number of academics and which I raised in this place in a debate on higher education last week.

The particular article purports to be a precis of an after-dinner speech, not on gifted children but given to a conference on gifted children. It is interesting to note that the alleged precis of this speech—which I regard as a quite mischievous send-up of the speech, and that is being generous to the author—is not a precis that appeared a day or two after the event because somebody who heard what was said was distressed by it. Oh, no!

This is a precis that was cooked up some three or four weeks after the speech was given and distributed on the internet. Its introductory line—and this should give everybody a clue as to what is going on here and what is the purpose of the distribution of this send-up of the speech—contains words to this effect: 'This is what we are up against in higher education cuts. Please distribute as widely as possible.' In other words, the intention of the send-up is perfectly clear. It is to be distributed so as to be as damaging as possible in the hands of all those who will

take the send-up to be a realistic presentation of what was said.

I gave an outline in the debate on Thursday as to what I did say in that speech, and I stand by that. I think it might bear some repeating but, since I do not have the time to go through even the precis of the speech, I will not.

But coming to the specifics of Senator Coates' question, I have not said that university funding should be on an annual basis. It could not possibly operate on an annual basis. I think that answers your question.

Senator COATES—Mr President, I ask a supplementary question. Is the implication of the attitude Senator Vanstone is expressing in her speeches to that organisation and in her discussions with others—whether the report is precisely correct or not—that she wants to implement significant cuts? Given that many university staff positions are still tenured, isn't the implication of the minister's argument that she proposes completely doing away with tenure?

Senator VANSTONE—No, Senator, that is not the case. I can assure you that no person given the opportunity to be responsible for higher education would choose a situation where savings need to be found from that area. It is only because we came to government following 13 years of a guilty party that left an \$8 billion hole in the budgetary process that all ministers will be looking for a contribution to the savings proposal. The opportunity that has been given to the vice-chancellors and other interested parties is to shape that proposal.

Nobody would want to be in the situation that this government now finds itself in—that is, left with a budget in disrepair because of your refusal after four years of growth to bring the budget back into black. Senator, I am sorry if you think somebody wants to engage in this task. They don't, but it does need to be done.

Senator Knowles—I rise on a point of order, Mr President. May I just ask you a question on procedure. Are you going to allow Senator Bolkus to roam around this chamber poking senators who are reading on

the shoulder? Are you going to allow him to come around, bully and harass senators who are reading? Are you going to allow him to walk across the chamber without acknowledging the chair? Mr President, are you going to tolerate such rude behaviour from these creatures on the other side without even recognising you in the process?

The PRESIDENT—I have not been in the habit of stopping people from wandering around the chamber unless they are walking in front of me. I was not aware that he was poking people or being rude in any way. But if you were, Senator Bolkus, I would ask you to desist.

Sale of Telstra

Senator KERNOT—My question is to the Leader of the Government in the Senate. The Prime Minister told parliament on the first day it resumed after the election:

I would like to take this opportunity . . . to reaffirm a number of the things that I have said about the importance of reasserting the supremacy of the parliament over the executive—and I say that very deliberately. It is part of our system of government that the executive is controlled by parliament . . . I think it is important that steps are made on both sides of the parliament to reassert and re-establish a degree of respect and regard for the institution.

You say that parliament is your preferred option for the sale of Telstra but, given the Prime Minister's commitment to the supremacy of parliament, then should not the bypassing of parliament never be an option? It is kind of like cheating, isn't it? Isn't the Senate part of the parliament? Doesn't it have a perfect right to cast a majority vote as it sees fit? Wasn't this your view when you were in opposition?

Senator HILL—We certainly wish to make the administration more accountable to the parliament. We do not run away from that. As compared with the former Prime Minister, who regarded this place as unrepresentative will, we not only respect this institution but will do what we can to enhance its standing within the Australian community.

I have to say, Senator Kernot, that I think you are confusing two separate notions here. The issue of whether a government must

always go to the parliament first before it sells any government asset has got nothing to do with the principle of accountability to the legislature at all. I am sorry, Senator Kernot, you are confusing two different principles.

But having said that, our preferred option in relation to the sale of Telstra is as you have just restated—the piece of legislation we put to this place which you announced, without looking at it, that you would vote against and which you are now using as a basis to abuse this place and its standing. You are a party to the sham of sending the legislation off to a committee and inviting the community to participate in that committee process in the belief that their views will be taken into account when you and your factional colleagues in the ALP and the Australian Greens have already announced that you have no intention of listening to them because you have decided to vote against it. So if anyone in this place is showing a lack of respect for this institution and its place within the Australian democracy, it is exactly you—the Australian Democrats.

The gall of Senator Kernot to come in here today and lecture us on parliamentary accountability when she has chosen to so abuse the standing of this place as well as of all of those within the community whom she is going to mislead into believing they can play a worthwhile role in the deliberations of that committee. I am sorry, Senator Kernot, you have got two distinct notions confused. But, nevertheless, let us do it your way. Let us put the bill through the parliament. Just give us a chance to meet the responsibility that we as a government have to the Australian people, the promise that we took to the Australian people that was overwhelmingly supported.

Senator KERNOT—Minister, I am not at all confused. It was your government and your Prime Minister that gave a commitment to the supremacy of parliament and now you seek to qualify it. Wasn't it your government when in opposition that voted to refer 50 bills a year to committees? It was okay then. Secondly, in your election policy on privatisation you gave another firm commitment that Telstra will not be broken up. Are you now going to qualify that commitment as

well? And by the way, editorials from the *Age*, the *Australian* or anywhere else do not intimidate us and neither do your attempts at bullying.

Senator HILL—We are not opposed to committee hearings; we support them. Senator Kernot might recall that it is only a few days ago that we supported the Telstra bill going to a committee for almost four weeks.

Senator Sherry interjecting—

Senator HILL—Remember the native title bill. The Australian Democrats said a fortnight was plenty of time, but not for the Telstra bill. It is not a genuine committee's consideration. Not very long ago the Labor Party and the Democrats said that legislative committees were the way to deal with legislation because the government had a responsibility to control the business. Of course, now that they are on the other side of the chamber a different set of rules apply, and guess who becomes a party to the changed set of rules: the Australian Democrats. Largely, Mr President, as we were reminded, the policy of splitting up Telstra was the ALP's and Mr Keating's. They were the ones who said, 'Sell the Yellow Pages; get the money for the Yellow Pages'. (*Time expired*)

Senator-elect Ferris

Senator FAULKNER—My question is directed to Senator Hill in his capacity as Minister representing the Prime Minister. Minister, following the tabling of the documents required by the return to order last Thursday, will you now acknowledge that Senator-elect Ferris received, firstly, \$1,904.50 in salary, secondly, \$800.05 in travel allowance, and, thirdly, airfares to the value of \$6,738.40? If it was the contention of the government that Senator-elect Ferris was never employed by Senator Minchin, why were these moneys paid? Finally, will the leader of the government now take on the responsibility of moving a substantive motion to refer the matter of Senator-elect Ferris's eligibility to take her place as a senator to the High Court?

Senator Alston—On a point of order, Mr President: that question involves some very delicate and, I would have thought, careful,

legal advice. I hope that senators all heard the question before they jump on it. The question asks about such issues as whether or not payments constituted a receipt. That question, for example, involves careful, legal analysis of the issues. The last thing this parliament should be asked to do is to provide a quote. Senators are not here to get kerb-side quotes on what conduct amounts to and whether it deserves to be referred anywhere. These are classical, legal questions and should be left to the lawyers.

Senator Robert Ray—On the point of order, Senator Alston obviously did not hear the question, which simply asked, firstly, whether Senator-elect Ferris was paid salary, travel allowance and airfares. Secondly, he was asked why the money was paid if she was never employed. Thirdly, Senator Hill was not asked to make a judgment about these matters but whether the matter would be put to the area that should make the judgment, that is, the High Court.

The PRESIDENT—There is no point of order. There are no legal arguments being addressed here.

Senator Campbell—On a point of order: when Senator Ray was given the call to speak to the point of order, Senator Faulkner was on his feet. Does the Leader of the Opposition in the Senate get precedence over the de facto leader of the opposition when you are calling someone to raise a point of order?

The PRESIDENT—Agile as he is, Senator Ray was well ahead of Senator Faulkner.

Senator HILL—It might be a trifle unfair, but at least we now know who wrote the question. When it was rephrased by your de facto leader, it came out in slightly different terms because there was a movement away from law and a movement towards the fact. Senator Bolkus, you can ask a second question, but I will answer your question, Senator Faulkner. Senator, you presumed that there was a contract of employment.

Senator Bolkus—She signed one.

Senator HILL—Listen, you didn't even practise law. I'm not even sure whether you finished your articles. Whether there is a contract of law under the Crown—

Honourable senators interjecting—

The PRESIDENT—Order! Will Senator Hill take his seat for just a second. We will wait for some silence before we go any further. I call Senator Hill.

Senator HILL—Mr President, they questions of law to be determined on the facts, and the advice of Senator-elect Ferris's senior counsel, an eminent Western Australian Queen's Counsel, is that there was no such contract and therefore there is no problem. The matter is as simple as that. So, unfortunately, Senator Faulkner, there is no contract that puts her in the position that you would like to see her put in.

Senator FAULKNER—I ask a supplementary question. Minister, will you guarantee to the Senate that all papers required under part A of that order were tabled?

Senator HILL—What I can tell you is that we went to great trouble to ensure that they were. I have spoken to both ministers in the other place. They believe that every relevant document has been tabled. The only qualification was the one in the statement that was tabled with the documents in relation to legal professional privilege, which was adopted by you every time when you were in government. So, subject to that, yes, I believe that every relevant document has been tabled.

Aboriginal Health

Senator O'CHEE—My question is directed to the Minister for Aboriginal and Torres Strait Islander Affairs. In this National Reconciliation Week, what positive steps has the government taken to improve the living standards of indigenous Australians?

Senator HERRON—I thank Senator O'Chee for the question. During this National Reconciliation Week the government will draw attention to the low state of health of Aboriginal and Torres Strait Islander people and embark on a comprehensive strategy to rectify the situation. The previous government chose to ignore for too long the appalling state of Aboriginal health. We will not make the same mistake.

Extending the reach of a comprehensive primary health service system will be a key

priority. Obtaining better coordination between Aboriginal and specific services in the mainstream state health systems is another priority. As well as building up the service infrastructure, the government will work with service providers, researchers and technical experts to ensure that we have comprehensive strategies in place to combat particular health challenges facing Aboriginal people, including cardiovascular and infectious diseases, including HIV-AIDS.

Last week, for example, the Minister for Health, Dr Michael Wooldridge, met with the Australian National Council on AIDS working group on indigenous sexual health. Dr Wooldridge will be working with them and Aboriginal service providers to respond to the threat of HIV-AIDS to Aboriginal and Torres Strait Islander communities. A national Aboriginal and Islander health council has been established as a forum for dialogue for Aboriginal community stakeholders, especially ATSIC and community-controlled health organisations. Invitations to join this committee have been made and its membership is expected to be announced shortly.

These measures collectively represent the start of an enormous task to improve the health standards in the indigenous community. For example, Northern Territory Aboriginals are on average roughly three times as likely to die at any age than their Western counterparts. This peaks at about 30 to 34 years of age, when their chances rise to 10.

Their life expectancy is also lower. Aboriginals generally have a higher, and in most cases very much higher, mortality rate from all causes except from neoplasms, although cervical cancer in women is almost six times the national rate. They also have a higher and ever growing incidence of circulatory disease, renal disease, obesity and diabetes, with all their complications, and are more likely to die from injuries or motor vehicle accidents. There are also more alcohol related deaths.

The crude birthrate and the neonatal death rate are higher. The stillbirth rate is almost three times and the infant mortality rate about four times that of non-Aboriginals. Nutritional deficiencies in infants under five years of age are also up. Infections and respiratory and

parasitic diseases are much more common and leprosy and tuberculosis were once almost exclusively Aboriginal diseases.

Sexually transmitted disease is much more prevalent. AIDS is as yet an unknown quantity, but when it does appear it has the potential for devastating consequences. Trachoma and middle ear disease are rife. Although trachoma no longer causes so much blindness, it has serious sequelae.

Drought

Senator WEST—My question is directed to the Minister representing the Minister for Primary Industries and Energy. I refer you to Minister Anderson's statement reported on 20 March that he had asked RASAC to update its early summer 1995 review of the drought situation in current drought exceptional circumstances areas and to provide advice to him by 11 April. Did the minister receive such advice? Did that advice include a recommendation that a number of exceptional circumstances declarations be revoked? If so, in what areas? When will the minister announce whether or not he plans to extend the application of exceptional circumstances drought provisions to areas near Nyngan, Wilcannia and Cobar in New South Wales, as requested by both the New South Wales government and the New South Wales Farmers Association?

Senator PARER—I did see some newspaper article about that, which I presume has sponsored the senator's request. I have no particular brief from the minister on it. It is particularly detailed. I will refer it to him and get an answer to you as quickly as possible.

Senator WEST—Given that the former minister made RASAC reports available to the opposition, will the minister undertake to table the RASAC review?

Senator PARER—I will refer that to the minister as well.

Marshall Islands: Nuclear Waste

Senator CHAMARETTE—My question is directed to the Minister representing the Minister for Foreign Affairs. I refer the minister to plans by the government of the Marshall Islands to allow its territory to be

used as an international dumping ground for the disposal of nuclear waste. What is the government's position on the importation of nuclear and other deadly waste into this Pacific region? Will the Minister for Foreign Affairs ask the Marshall Islands government to reject this proposal when he attends the Pacific Island forum in early September?

Senator HILL—I do not think anyone is telephoning the President on this occasion. We understand that the Republic of the Marshall Islands—

Honourable senators interjecting—

Senator HILL—Richo didn't think it was funny at the time. We understand that the Republic of the Marshall Islands has established a national commission to explore the possibility of using one or more of its remote islands as a geological repository for nuclear materials and to advise the government appropriately. The Marshall Islands government has accepted the commission's recommendation that a preliminary study be undertaken to address the environmental, economic, technical, health and safety concerns of the proposed facility.

The Marshall Islands faces a formidable task in rehabilitating islands contaminated by past US nuclear testing and it is understandable that, given its limited resources, the government will want to consider all options available to rectify this situation. Nevertheless, the Australian government would be most concerned if the Marshall Islands government proceeded with any proposal which introduced new and unacceptable risks of further radioactive contamination of the fragile marine environment of the Pacific.

For these reasons, and pending the outcome of any technical studies, we have serious reservations about the idea of a radioactive materials facility in the Republic of the Marshall Islands. Australian reservations were conveyed to the Marshall Islands government when this proposal was first raised a year or so ago. The government is prepared to—

Senator Bolkus—He has fallen asleep again, Robert.

Senator HILL—As long as Senator Chamarette is listening; she asked the ques-

tion. The government is prepared to reiterate these reservations as appropriate. The Marshall Islands government is well aware of the complex issues involved with the idea and the potential problems. The Marshall Islands government has promised, however, that the next step, if indeed it decides to take the matter further, would involve public hearings even before moving to a full feasibility study.

We particularly welcome the Marshall Islands government's commitment to consultations and its undertaking to keep the Australian government and its Pacific island neighbours fully informed of developments. I thank the honourable senator for her question.

Senator CHAMARETTE—Mr President, I ask a supplementary question. I welcome the minister's response to my question, but how does he reconcile his answer with the previous government's position on the export of spent nuclear fuel rods from Australia to Scotland? I hope the same reservations that he has applied to the measure in relation to the Marshall Islands will also be applied at home.

Senator HILL—I do not think we have to reconcile our position with anything that Labor did when it was in government. If there is some subtlety there that I am missing, I will give it further consideration. But obviously the transport of these nuclear rods from Australia is an entirely different matter.

Aboriginal Employment

Senator BOB COLLINS—My question is directed to the Minister for Aboriginal and Torres Strait Islander Affairs. Minister, is it true that your recent general directions to ATSIC could have the effect of stopping or significantly delaying funding to the community development employment program beyond 1 July this year? If so, are you aware that this program currently employs—in very useful community work, I might add—more than 27,000 Aboriginal and Torres Strait Islander people in more than 250 communities across Australia and it would put them in the position of having to then apply for unemployment benefits? I might add that includes 6,500 people in my electorate. Given the distress and the uncertainty this issue is now causing in Aboriginal and Torres Strait Island-

er communities—concern which I know has been directly brought to your attention and that of the Prime Minister—can you assure the Senate the first quarter's release for 1996-97 of CDEP wages, recurrent and capital funding, will be received in these communities by 1 July?

Senator HERRON—I thank Senator Collins for the question because it is a very important one which I hope to use to clear up a lot of misapprehension and misinformation throughout the community. CDEP is supported by the government. We have a very strong commitment to its continuation because, as Senator Collins said, it is a very productive program. I have seen first hand the benefits that the community development employment program has brought to indigenous communities.

We will honour our election commitment. There is no doubt about that. As the Prime Minister has stated categorically since his election, we will continue to support CDEP. The government will also support ATSIC's continual monitoring of community development employment program funds to ensure that they are appropriately allocated and spent. Further, the government will consult with ATSIC on the wider implications of its original objective to increase the skill level of participants and, where possible, facilitate their transfer to the general work force.

Senator Collins, it should be obvious to you from that that we have a commitment to the community development employment program. It should be obvious to you that we intend it should continue. We believe that at no stage will the funds be cut off from that program by any action. We have a firm commitment to its continuation along the lines that you have suggested, and we recognise the significance of the program.

Senator BOB COLLINS—I am grateful for the answer the minister gave but, with respect, the question really was not about that point. I was not questioning the government's commitment to the program. The point of the question is that CDEP is in fact the biggest single program funded by ATSIC. A question

that has been raised, at least with me, is whether the general directions the minister has provided ATSIC requiring, as they do, the appointment of a special auditor and so on may at least have the effect of delaying these payments to communities simply by the established process being implemented. Is that correct? Can the minister give an assurance that the general directions will not have that effect and that the appointment of the special auditor and the things he is required to do before programs are refunded will not hold up these payments?

Senator HERRON—The special direction that I have given in relation to the auditor is that all programs are subject to review within that context. The reason for that is that we have to allow that, if something is brought to the attention of the special auditor, it needs to be considered. So it is within that context that all programs are taken within the purview of the general direction that I have given.

Having said that, over a third of the funds—over \$300 million—that are spent by ATSIC go into CDEP. It is not the intention—nor do I believe this will occur—that there will be any delay in the expenditure of those funds. While I do not believe it has been in any way intentional, there is, as I said previously, misinformation, misapprehension and misunderstanding in respect of the program. (*Time expired*)

Child Labour

Senator SPINDLER—My question is directed to the Minister representing the Minister for Trade. I refer the minister to the unanimous Senate resolution of 22 September 1994 calling on the then government to play an active role in the elimination of child labour and to the report of the working party on labour standards in the Asia-Pacific region, which is now available from Mr Fischer's office. Does the minister agree with the recommendations, which include giving AusAID a more active role in eliminating child poverty as well as making child labour and other labour conditions an integral issue in trade negotiations and at international financial institutions? Secondly, what will the

government do to implement the working party's recommendations?

Senator HILL—In the short time available I have been able to get some comments from the relevant minister. As regards to the first part of the question relating to AusAID, the honourable senator will be aware of the emphasis that we are providing within the aid program on poverty alleviation which may go some way towards remedying the evil of which he speaks. But I acknowledge it is not necessarily related to that. I am not sure what other specific action the honourable senator is suggesting be made through our aid program to overcome this evil—and there is no doubt that it is an evil.

With regard to trying to use the multinational negotiations on trade as a tool for achieving that objective, we do not see that as appropriate. That is an entirely different negotiation, designed to help open up the international trade environment. I understand that what studies have been done suggest—and I refer specifically to one by the OECD with which I suspect the honourable senator is familiar—that there is no empirical evidence linking low labour standards to unfair trade advantages. So whilst the OECD certainly concluded that child labour is morally reprehensible, as it should, it also concluded that it did not have a significant effect on economic determinants of international trade.

Senator SPINDLER—Mr President, I ask a supplementary question. I thank the minister for his answer as far as it goes. The specific recommendation that I was referring to was the recommendation to allocate an additional \$15 million per annum for four years to this particular program. It also referred to instructions by the minister to Australian representatives at international financial institutions and to AusAID to build a strategy against child labour into all submissions, tenders and other negotiations. Perhaps the minister could also advise whether he intends to table the report so that it is more readily available through the Tables Office rather than simply from Mr Fischer's office. I might add that it is regrettable that leverage, to the extent that we have it, in trade negotiations is not to be used to

address social issues. It is one of the areas that we should pursue. (*Time expired*)

Senator HILL—I will ask Mr Fischer if he will table that document. I will also ask him to take note of your concern that relates to a specific \$15 million program. I remind the honourable senator that the evil of which he speaks, that is, the exploitation of children, is clearly a basic abuse of human rights and Australia is very much at pains not only to support but to enforce all of the major human rights conventions. Hopefully, as part of a wider international community we can together do something to reduce this human abuse. If Mr Fischer has further information that will be of use to the honourable senator, I will ensure that that gets to him as well.

Social Security: Newly Arrived Residents

Senator JONES—My question is directed to the Minister for Social Security. Last Thursday afternoon the government introduced into the House of Representatives the Social Security Legislation Amendment (Newly Arrived Resident's Waiting Periods and Other Measures) Bill 1996. This bill applies a two-year waiting period for newly arrived residents to 15 social security payments—the seniors health card, the health care card and to above minimum rates of family payment. Does the government intend to apply the two-year waiting period to other payments or entitlements? Would it be true to say, in view of the large number of payments to which the two-year waiting period is proposed to apply, that all you have done is to extend the six months to the two-year period?

Senator NEWMAN—I wonder whether the shadow minister has written that question for Senator Jones because I cannot imagine Senator Jones would also be getting it wrong. If you would like me to read it out, Senator Jones, the payments that are covered by the existing six months provisions are: jobsearch allowance, newstart allowance, sickness allowance, parenting allowance, widow allowance and youth training allowance.

In February during the election, in meeting our commitments, we said we would continue to grant all refugee and humanitarian migrants

eligibility to access welfare benefits immediately upon their arrival, but we said that access to welfare benefits for migrants other than refugee and humanitarian migrants will be available after two years under a coalition government. We said that full access to family allowance and Medicare will be maintained for all migrants immediately upon arrival and as well that we would provide a safety net for those migrants whose circumstances changed significantly after arrival in Australia for reasons beyond their personal control.

Throughout this document we were talking about welfare benefits. We have decided to include: partner allowance, mature age allowance, special benefit, above minimum family payment, rent assistance with new payments, guardian allowance, child disability allowance, carer pension, double orphan pension, maternity allowance, multiple birth allowance, mobility allowance, disability wage supplement, disadvantaged persons scheme, health care card and Commonwealth seniors health card. There are other areas of welfare benefits which have not yet been finalised, as I was trying to tell the Senate last week and I told Senator Faulkner in answer to his questions for two days running.

Senator Robert Ray—When you got caught out.

Senator NEWMAN—I was not caught out at all.

Senator Robert Ray—Misleading the Senate.

Senator NEWMAN—Mr President, I have not misled the Senate. The problem has been that the shadow minister, the receiver of stolen property, is also illiterate. He seems to have a very real problem in reading administrative orders or perhaps even knowing that they exist. I do not have responsibility for those other areas of welfare benefits which were referred to in our policy other than the ones that I have read to you. Other ministers, my colleagues, have responsibilities in those areas and they will be making announcements in due course.

I have not misled the Senate. I have told you precisely what is in the legislation. It is

consistent with our election promise. Your shadow minister, I understand, finally had his briefing late last week. Maybe that is why he is not now asking the question but has left you with the baby.

Senator JONES—Senator Newman, can I now give you the bath water. In your answer you referred to the question asked by Senator Faulkner. Let me refer to it. Senator Faulkner asked whether the two-year waiting period for migrants would apply only to those payments that the current six months waiting period applies to. In answer to the question, you said, and I quote, ‘Possibly no’. Last Thursday, in the other chamber, the Prime Minister said, ‘All we have done is extend your six months to two years.’ Who is correct? You or the Prime Minister?

Senator NEWMAN—The Prime Minister and I stand by our policy document released to the Australian people on which they made a decision at the election.

Superannuation

Senator FERGUSON—My question is to the Assistant Treasurer. I ask: under the superannuation guarantee arrangements, the previous government has clearly failed to make adequate provision for casual and itinerant workers and those with small contributions. Can the minister advise the Senate on how the government proposes to address these failings?

Senator SHORT—I thank Senator Ferguson for that important question. The superannuation guarantee arrangements put in place by the previous Labor government are just one example of the policy changes that were introduced by Labor which have major shortcomings because of a lack of attention to detail. They could never get it right when it got to the detail right across the policy board. Problems with the superannuation guarantee are also indicative of the failure to address the concerns of average Australians which stem from the imposition of poorly thought through Labor government policy—something which, as I said, was so much a feature of Labor’s term of office.

The supposed solutions put forward by the former Labor government to the so-called

small amounts issue do not address the underlying problem. Their so-called solution was to offer so-called member protection under which there is the potential for nil returns when fees and charges exceed returns on the account, or even negative returns after insurance premiums are deducted. The coalition government will address this problem by offering greater freedom of choice of where superannuation moneys are placed. Freedom of choice is a fundamental part, though it is something I know the other side does not like.

Senator Alston—That is ludicrous.

Senator SHORT—That is absolutely right, Senator Alston. A key component of this is the government’s intention to allow financial institutions to introduce retirement savings accounts, RSAs.

Senator Sherry—You are correcting what you said last week.

Senator SHORT—No, I’m not. RSAs will satisfy a market need: the option of a simple, low-cost and convenient product to assist Australians to save for their retirement.

Senator Sherry—How much? Give us the cost.

Senator SHORT—If you could just simmer down, Senator Sherry, you will get an answer to those things. RSAs will not, as I said last week to Senator Sherry and others, replace existing superannuation arrangements. Rather, they will provide a voluntary alternative for people with small superannuation balances, such as casual, part-time and temporary workers, and for those who are close to retirement who seek a low risk, low fee product with stable returns.

RSAs will be a more suitable option for casual and itinerant workers by providing a single account in which small superannuation entitlements can be accumulated. RSAs may also enhance portability of benefits, making continuing contributions easier when a member changes employment frequently or has multiple jobs. RSAs will allow employees to consolidate separate accounts—a very important but practical possibility.

The introduction of RSAs will therefore also assist in reducing the proliferation of superannuation accounts with small balances.

According to figures of the Insurance and Superannuation Commission, as of December last year there was an average of 2.5 member accounts per worker. The government's entire superannuation policy reform agenda, including RSAs, will help to ensure that the superannuation guarantee works much more effectively at providing improved retirement incomes for many more Australians and we will be pressing ahead with the details of planning these reforms in the near future. As I have said on other occasions, we will be consulting very widely in the process.

Senator FERGUSON—I thank the minister for his response. I further ask: can the minister advise how this reform will fit in with the overall package of reforms to improve national savings?

Senator SHORT—Of course, the introduction of RSAs is just one of the reforms—

Opposition senators interjecting—

Senator SHORT—These people don't like this, but it is just one of the reforms to the superannuation arrangements to which the government is committed. We have a package of reforms in the superannuation area which will make the system more flexible and better able to accommodate the needs of people through their working lives.

The government's superannuation and fiscal policy reforms will provide a better bottom line for national savings than Labor's failed agenda could have ever hoped to have achieved. That will produce enormous benefits for most Australians—there will be more economic growth, more jobs, lower foreign debt, lower interest rates than would otherwise have been the case, and higher living standards for all Australians.

Australian Labor Party Policy

Senator MacGIBBON—Mr President, you and I had a divergent view on what I asked in my question to Senator Hill. Through the good offices of *Hansard* I have now obtained the pinks. I would like to read my question from the *Hansard* document:

My question is directed to the Leader of the Government in the Senate. I ask if the senator's attention was drawn to the statement attributed to the federal President of the ALP, Mr Barry Jones,

in today's press. The statement said that the great policy book of the ALP was irrelevant and complex and could not be followed by ALP voters, and that the party was out of touch and had failed to detect the great grievances in the community. This was not a statement by Jennie George in a burst of honesty about the ACTU, but it was a statement by the federal President of the ALP. What hope is there for those disaffected members of the community under the present government's policies?

I submit that that is a different statement to the one that you attributed to me. I would ask you now to concede the validity of my question and allow me to ask it now to the Leader of the Government in the Senate.

The PRESIDENT—Order! I do accept that that is correct and I apologise for it. I had also asked for the pink. I have only just got it, as you saw then, so I was not able to make a judgment. With the concurrence of the Leader of the Government in the Senate, I will allow that question.

Senator HILL—This is an important question, Mr President, because it is all about sorting out the mess that we inherited—the mess that is now being recognised by Mr Jones, the Federal President of the ALP. He, of course, was calling for—and we understand this from the *Age* this morning—a set of 10 commandments for the ALP to tell the public what it now stands for in simple terms. He said what had gone wrong was that the ALP had got out of touch with the community and failed to pick up a sense of grievance in the community—'The Keating government had got the big picture right, but it had not been so good on the little pictures.' The little pictures, of course, were the hundreds of thousands of Australian battlers who were missing out as a result of Labor's policy. But Mr Jones also said the rank and file—

Senator Carr interjecting—

Senator HILL—This is for your interest, Senator Carr. Mr Jones also said the rank and file were calling for a loosening of factionalism, factionalism which had gone to the nth degree. That reminds me of what former Victorian Premier Cain said not so long ago on factionalism. He said and I quote—

Senator Robert Ray—Mr President, on a point of order: I think you were quite right to rule the second part of Senator MacGibbon's

question in; but you still unequivocally ruled the first out, and that is all that Senator Hill has addressed. The question to Senator Hill is what is he going to do about it as a government person. The first part of the question, I would maintain, you properly ruled out. It is just an excuse for Senator Hill to give a rant and a rave and waste the Senate's valuable time.

The PRESIDENT—Order! It was a nice try but there is no point of order.

Senator HILL—I understand Senator Ray's sensitivity because I quote what the former Victorian Premier Cain said:

You have two or three people, mostly in Canberra, Senators Robert Ray and Kim Carr, who play the factional game in airport lounges or on aeroplanes going up to Canberra. It's a bit like playing chess with a magnetic board on an aeroplane and it is all so stupid and so bad for the party and it's got to stop.

Of course it did not and you learnt the lesson.

It is interesting that former Treasurer, Mr Willis, reconfirmed what Mr Jones said when he said recently that Labor had 'lost the trust of the electorate', and he specifically referred to the 1993 budget. You would remember, Mr President, that was the one that followed the l-a-w law tax promises when the Australian Democrats, the fourth faction, urged the Labor Party to break its promise—this is what they called keeping the so-and-sos honest. They did so and they started the process of losing the confidence of the electorate. That was followed by a two per cent increase in wholesale tax, a five per cent increase—

Honourable senators interjecting—

The PRESIDENT—Order! I will ask for some order again. There is total disorder on both sides of the House, and from you, too, Senator Kernot. I must say that these sorts of questions and answers do not help things. But Senator Hill has the call.

Senator Cook—Mr President, on a point of order: can someone tell us how what Senator Hill is saying now relates to his portfolio in any way at all?

The PRESIDENT—In relation to the question, it is in order.

Senator HILL—I was explaining how Labor had lost the trust of the electorate: the

l-a-w law tax cuts; the two per cent increase in wholesale tax; the 0.1 per cent increase in the Medicare levy—do you remember that, Senator Collins; are you proud of that?; a three per cent increase in company tax; increases in departure tax; and increases in tobacco excise. This was after you promised 'no new taxes'. Do you remember that, Senator Carr? A seven per cent increase in motor vehicle tax, and so it went on.

The new Australian government has learnt the lessons of Labor's failure. We will take the hard decisions to get the economy right. We will govern for all Australians. Most of all, we will honour promises that we have made and rebuild the trust of the Australian people.

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

Superannuation

Senator SHORT—Last Thursday, 23 May, Senator Mackay asked me a question without notice on the effect of an income tax ruling. I now have an answer for her which I seek leave to incorporate in *Hansard*.

Leave granted.

The answer read as follows—

Treasury—Senate

Senator Mackay asked the Assistant Treasurer/Minister representing the Treasurer in the Senate, without notice, on 23 May 1996:

My question is directed to the Assistant Treasurer. Is the Minister aware of Income Tax Ruling 96/10, which removes the exemption from taxation contained in section 110C of the Income Tax Assessment Act of investment income derived by superannuation funds through their investment in life insurance companies which is subsequently used to pay superannuation benefits to fund members? Does the Minister agree that this is a form of double taxation on the retirement income of self-funded retirees?

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

1. Does TR 96/10 remove the exemption?
- Taxation Ruling TR 96/10 does not remove the exemption from taxation in section 110C nor does it impose double taxation. The Ruling sets out how life companies should calculate their section 110C exemption. It introduces no new requirements for obtaining exemption.
- Section 110C exempts from tax the investment income of a life assurance company's CS/RA

[Complying Superannuation/Rollover Annuity] class of income that relates, wholly or partly, to current pension liabilities.

- . Section 110C was introduced in 1989.
 - . The intention of section 110C is to provide an exemption for income of a life company which relates to life insurance policies held by superannuation funds, where the superannuation funds use the policies to fund their liabilities to pay current pensions.
 - . 'Current pensions' paid by superannuation funds to retirees include:
 - allocated pensions
 - annuities
 - allocated annuities.
 - . These amounts are subject to tax in the hands of the retiree.
2. Does TR 96/10 lead to double taxation?
- . Taxation Ruling TR 96/10 does not impose double taxation.
 - . Income is exempt in the hands of the life company by virtue of section 110C because it is used to fund current pensions which are subject to tax only in the hands of the retiree (ie. there is no double taxation).
 - . The potential for double taxation would only arise where the life company fails to satisfy certain requirements set out in the law which ensure that the income is being used to fund current pensions. Obviously if the income is not being used to fund current pensions it is inappropriate to provide the exemption. TR 96/10 introduces no new requirements.

Industry Views

- . The ATO consulted extensively with the industry in producing the Ruling. In particular, the Life Investment and Superannuation Association (LISA) provided significant input and comment. They have responded favourably to the final Ruling.
- . The main concern raised by the industry was the requirement to obtain actuarial certificates in certain circumstances in order to obtain the section 110C exemption.
- . TR 96/10 simply restates the requirements which apply to superannuation funds as set out in Taxation Ruling IT 2617 (November 1990).
- . However, the ATO and LISA have agreed to form a working party to address the issues of actuarial certificates in the context of compliance to the industry.

Drought

Senator PARER—During question time, Senator West asked me a question in my capacity as representing the Minister for Primary Industries and Energy, Mr Anderson. I would like to provide an answer to that.

The drought has broken, as Senator West would know, in many regions but the government recognises there are many other areas where it clearly has not. The Rural Adjustment Scheme Advisory Council last reviewed the drought situation at the end of spring and reported to the former Minister for Primary Industries and Energy, Senator Bob Collins, at the end of December. However, he did not act on that report.

In March, the minister, Mr Anderson, asked RASAC to provide him with an update on drought exceptional circumstances declarations in eastern Australia based on the earlier advice to Senator Collins. He also asked RASAC to report to him on the application by the New South Wales government for the extension of drought exceptional circumstances to a number of areas in central and western New South Wales. RASAC has now provided him with a report, having visited a large number of areas where it was felt its conclusions about seasonal conditions needed to be ground-truthed. He is now considering the report and expects to make an announcement shortly.

The minister would like to make the point that, when a drought exceptional circumstances declaration is revoked, eligible farm families in that area continue to receive drought relief payment for a period of a further six months, while business support under the rural adjustment scheme is available for up to 18 months after revocation.

Senator-elect Ferris

Senator BOLKUS (South Australia)(3.15 p.m.)—I move:

That the Senate take note of the answer given by the Minister for the Environment (Senator Hill), to a question without notice asked by the Leader of the Opposition in the Senate (Senator Faulkner) today, relating to the qualification of Senator-elect Jeannie Ferris.

Today we saw the government's latest attempt at a systematic cover-up of this particular affair. We saw Senator Hill try to address the issue, and we saw him address it very ineptly. The government has made a monumental mistake here. Senator Minchin employed

someone whom he should not have employed. But, instead of going down the honest road, the government from day one has tried to dissemble and cover up the facts.

Today we had Senator Hill claiming that there was no employment agreement, when I have a copy of that agreement here and it has been tabled by his own government. Today we had Senator Hill saying that legal advice has been had to the effect that senators-elect are not covered, when his own Minister Jull has advised Senator Minchin that he had problems with the capacity of Senator-elect Ferris to hold her position and still hold an office in the senator's office. There has also been a referral to Senator Durack, who was Attorney-General in the Liberal government previous to this one, claiming that senators-elect are covered by section 44(i) of the constitution.

Senator Hill, you cannot run away from this issue; you will not be able to. It is not a matter of issuing pairs and numbers in this place because automatically we would issue pairs. This is a question of the validity of the deliberations of the Senate. Unlike every other such instance in recent years, in this particular case we know about the problem of Senator-elect Ferris—and, by knowing about it, the deliberations and the votes of the Senate could very well be tainted by the doubt over her capacity to sit here. Any one of South Australia's 700,000 voters is able to prosecute this matter if you do not—and you are not inclined to, as was indicated earlier today.

The issue is, as I said earlier, not whether a senator-elect is covered by section 44(i), because the situations of Senator Durack and Senator Michael Baume are related by Mr Jull in arguing to Senator Minchin that senators-elect are covered. It is not a matter of the actual job, because Senator Vanstone has already admitted in her answer to me that the actual office that Senator-elect Ferris held is covered by section 44.

The question is: did she hold the job? I asked the simple question on 1 May. That could have been answered on 2 May because the documentation shows that everything that was relevant to my question was available on

2 May. It took 19 days for the government to come up with an answer. All the information was on the record on 2 and 3 May, other than the legal advice which you did not give. You could have provided all that information 18 to 19 days before you chose to answer that question. When finally Senator Short fronted on this issue, he and Senator Vanstone did not know who was holding the baby.

But Senator Short was asked on 9 May about Senator-elect Ferris. All the information was available to him. He either had the brief there and was not prepared to answer the opposition's questions or, if he did not have the brief, he should have been asking questions of the Minister for Administrative Services. There is no conceivable way in which the previous government, if an issue had been on the public agenda for a week—as it had been before Senator Short was asked about it—would not have had a brief before the minister. He chose not to answer; he was buying time.

Then, of course, comes the hapless Senator Vanstone. She answered on 20 May. Her answer was full of holes, full of misleading statements; it was something that was of total disrespect to the Senate. She gave us a gloss on the employment situation of Senator-designate Ferris. But in that gloss there were some important aspects which were on the record in the department which did not even merit her recognition.

Why did she not mention, for instance, that there was a signed work agreement, an agreement signed on 18 March, some two months before the answer she gave to the Senate? Why did she not mention that salary had been paid and refunded and some 13 days salary had actually gone into Senator-elect Ferris's account? Why did she not mention that air travel had been paid and refunded? Why did she not mention that TA had been paid and refunded? Why did she not mention that \$9,441.45 was, in fact, paid or taken back by the Department of Administrative Services? Why did she not mention Jull's letter of 3 April quoting Senator Durack and Senator Michael Baume? Why did she not mention Senator Minchin's four letters of approval? Why did she not mention that, after two

weeks in the job, Senator Minchin decided to give the Senator-elect a 22.5 per cent wage increase while reclassifying her? Why did she not mention that there was a meeting on 3 April and another one on 11 April where these matters were discussed? Why did she not mention that it was only on 19 April that Senator Minchin and Senator-designate Ferris decided to withdraw from this scam?

Senator Vanstone, did you check your facts? Senator Hill, did you check your facts? Why are you misleading the Senate? You are misleading it because you know that there is absolutely no way you can define 'volunteer' to mean someone who is paid \$49,000 per annum plus \$7,000 in travel in three weeks. Senator Short, can I say to you in closing: I did practise law.

Senator Campbell—Madam Deputy President, I raise a point of order. Can the shadow minister make an accusation of misleading the Senate without moving a substantive motion?

The DEPUTY PRESIDENT—My impression was that he had asked that the ministers answer questions; he was posing them in terms of questions.

Senator ROBERT RAY (Victoria) (3.21 p.m.)—Senator Bolkus has made out a fairly compelling case that Senator Vanstone and Senator Short have failed to properly answer questions. The question mark also goes over the next speaker, Senator Minchin, and what he has told this particular parliament.

Senator Minchin was given permission to make a personal statement. When you read that personal statement and then go back and read all the documents in the return to order, you can see how dissembling that statement was by acts of omission. Time and time again in that carefully crafted statement, Senator Minchin fails to tell the full facts. As Parliamentary Secretary to the Prime Minister, he should have done so. He makes mention just offhandedly towards the end of his statement that three days pay were made. He knows better than that. He knows that not only three days pay were paid to Ms Ferris but that another 10 days pay were paid to her, and that the Department of Administrative Services retrieved that money from the bank by way of fax—and Senator Minchin was

present at a meeting when that was explained to him, as the file note shows.

Senator Minchin has failed to say a whole lot of things. Surely if he were honestly addressing this statement, in the section where he was referring to voluntary work in the office he would have made some mention of the over \$800 travel allowance claimed by his staff member. Who signed the travel allowance forms? Did Senator Minchin sign them? Did he or did he not sign the travel warrants for the expenditure on the airfares? Most importantly, why did he not admit in this chamber that Ms Ferris signed a work contract and I think it was Ms Robinson—

Senator Bolkus—Dunstan.

Senator ROBERT RAY—Ms Dunstan, sorry, who witnessed that particular document. Those opposite came in here with this carefully crafted statement hoping to fool the minor parties into not supporting the return to order. Once the return to order was put down, they were sprung on all these particular issues.

Why was there no mention of a meeting with Graham Semmens from the Department of Administrative Services—that you flew on Easter Sunday, Senator Minchin, to meet with him on Easter Monday? That is not a normal type of meeting. That is when the file note is dated—11 April. Why was there no mention of that? Why didn't you mention those things? You did not mention the extra pay, the travel allowance, the airfares, the work contract or any of these things. They are irrelevant as far as Senator Minchin is concerned; he did not mention those particular facts.

He did not mention, for instance, that after just a few days work a 22½ per cent pay rise was applied to this brilliant staffer who had no experience in Aboriginal affairs at all, if we are to believe the biography you put on the work contract, but who must have performed stunningly to get a 22½ per cent pay rise after just a few days.

We still do not know to this day when Senator Minchin advised Ms Ferris to get the legal opinion. Senator Minchin said that it was before she was employed or before he proposed her employment. Is that true, Sena-

tor Minchin, or do you want to revise that story and tell us that the legal opinion was sought between 3 April, when you were first notified of the problem, and 11 April, before you secretly met with a Department of Administrative Services officer on Easter Monday? Do you want to tell us the truth about those particular matters?

If you think, Madam Deputy President, that this parliament has been misled, either willfully or accidentally, you should go back to an article in the *Adelaide Advertiser* of 2 March, which is a real bottler. When this issue first came up—

Senator Ferguson—2 March?

Senator ROBERT RAY—Sorry, 2 May, I correct myself. Senator Minchin informed the *Adelaide Advertiser* that Ms Ferris was a volunteer in his office and not paid staff. That was a direct lie, wasn't it, Senator Minchin, to the journalist concerned? How stupid does that journalist feel today when he sees that she got \$1,900 in salary, \$800 in travel allowance and well over \$7,000 in first-class airfares—all those things? Yet Senator Minchin told the *Adelaide Advertiser* that she was just a volunteer.

In all these things it is not so much the original offence that is the problem; it is the total cover-up by Senator Vanstone, Senator Short, Senator Minchin and the minister now leaving the chamber, Senator Hill. They must bear responsibility for the cover-up of these particular matters. These matters should be resolved not by us exercising a partisan political judgment but by the High Court. When the Wood case came up here, irrespective of my views on Robert Wood, I, as the Manager of Government Business, referred the matter to the High Court. (*Time expired*)

Senator MINCHIN (South Australia—Parliamentary Secretary to the Prime Minister) (3.26 p.m.)—I am rather disappointed with the ALP for descending into this grubby little exercise to cover up an innuendo on their own part. There is no cover-up on our part. We have tabled all the documents relating to this matter. We have put on the table every document. There is nothing in my statement to this parliament that was misleading in any

way. We have told you exactly what the facts are.

You have misled the Senate today by talking about my meeting with a representative from DAS on Easter Monday. If you want to know the truth, I was at home all Easter Monday and I met with the Goldfields Land Council in my home on Easter Monday doing my job of fixing up the mess you left in the Native Title Act. That is what I was doing on Easter Monday. If you have delusions about Easter, that is your problem and not mine. I was doing my job of trying to fix up your lousy, messy Native Title Act. Don't give me any of this stuff about Easter. I don't know what you are on about.

The facts are that I proposed the appointment of Jeannie Ferris. Payments were made subject to the approval of the Minister for Administrative Services (Mr Jull). The minister's approval was not granted. Therefore, there was no employment contract entered into, no employment contract at law and no office of profit created, and no section 44 question arose. Even if there was an office of profit, which there was not, it does not apply to senators-elect, and it is an absolutely misleading statement by Senator Bolkus to say that Senator Durack says that it applies to senators-elect.

That is not what Senator Durack says. Senator Durack says that questions could be raised. Well, of course, questions could be raised; lawyers will ask questions about anything. How do you get a straight answer out of a lawyer? A lawyer will say you can ask a question about anything. Of course you can ask questions, but it depends on the answers. Of course a lawyer will say you can ask questions.

Questions can be asked about section 44. You know as well as I do that section 44 needs amending, but section 44 does not apply to senators-elect. Professor Lane said that; Christine Wheeler QC in Perth said that. It obviously does not apply to senators-elect. It applies to candidates in an election 'in the process of being chosen'. You people have probably never read the constitution, because you don't like it. You would like the constitution thrown out, wouldn't you? You want to

throw away the whole bit, the whole box and dice.

Section 44 says that it only applies to candidates because it talks about candidates 'in the process of being chosen'. The process of being chosen applies from the day nominations open to polling day. Then it applies when you are sitting. It does not apply to senators-elect. Are you suggesting that a senator elected in July of one year cannot work in the public sector at all until 1 July the next year? That is an absolute nonsense. So on two counts you come down. No office of profit was created, and section 44 does not apply to senators-elect.

There is nothing in this. This is a great diversion by the poor old South Australian Labor Party. The South Australian Labor Party is in an absolute mess. Those who are left are fighting amongst themselves. You have already blown up one faction. The Centre Left has just blown up and disintegrated; they are all leaving. Mr Quirke of the Right wants to come up here because the South Australian Labor Party is such a mess.

You perceive that there may be problems in the South Australian Liberal Party. We have the luxury of absolutely dominating South Australia. You are a rump in South Australia. We dominate the political scene in South Australia and we are proud of it. You may perceive that there are problems. We have internal creative tension, which is terrific and productive and producing good government.

You are using this silly little exercise to cover up your own problems and turn attention to the South Australian Liberal Party. There is nothing in this. It is a diversion. You are wasting the Senate's time again, when this Senate should be concentrating on the problems you have left this country: the disgraceful level of unemployment and government debt—\$100 billion of government debt. You do not want to know that: you want to come in here and question a female staffer who is a volunteer on my staff and a senator-elect. That is what you want to waste your time on—not talk about the foreign debt of \$180 billion. Let's not talk about that. We have had Labor staffers coming to us saying, 'This Senator Bolkus, how dare he talk about

people who work on staff, another senator coming in.'

This is a very sad, dispirited day for Australia that you waste our time on this issue. There is absolutely nothing in it. I urge you to concentrate on the issues that actually face this country, and do this country a service and not a disservice with this silly, time-wasting exercise.

Senator SCHACHT (South Australia) (3.31 p.m.)—I want to speak to the same motion. We have had a most extraordinary defence, if you could call it that, a rambling, ranting defence of the position that Senator Minchin created that proved he is one of the biggest political dills this Senate has ever seen. To someone like me, who has been a full-time party official, he has disgraced the profession by being such a dill who did not understand the position of senator-elect.

Now what are the facts? You have made a complete goose of yourself. I just say for the record, Madam Deputy President, that, during the period he was in charge of the Liberal Party in South Australia, I was in charge of the Labor Party in South Australia. He never won one Labor-held seat from us, state or federal, during that period.

Look at the employment agreement. What are the facts? On 18 March 1996, Senator-elect Ferris and Senator Minchin completed and signed an employment agreement. The signing was witnessed by an R. Dunstan. It was a volunteer agreement. It goes on in the papers documented here for pages, with Senator Minchin's signature and Senator-elect Ferris's signature all through it. This is actually here, tabled in the Senate. Senator Minchin says, 'I only appointed her subject to Mr Jull approving it.' Yet the actual letter of 18 March says:

Dear David,

I wish to advise that I have appointed Miss Jeannie Ferris to the position of assistant adviser.

A few days later, after that volunteer has apparently performed so well, he writes another letter jumping her up another \$8,000 or \$9,000 a year in annual salary. Don't come in here and mislead the Senate and say there was no agreement; that it was all subject to

Mr Jull. You appointed her. You got her to sign an agreement, which you signed as a contract of employment.

On the issue of salary, on 28 March 1996, Senator-elect Ferris was paid three days salary and three days ministerial staff allowance, grossing \$604.54 and netting \$512.64. For the next pay period, Senator-elect Ferris was paid salary and ministerial allowance grossing \$2,015.16 and netting \$1,391.86. For travel conducted over 28 and 29 March 1996, Senator-elect Ferris was paid travel allowance in the amount of \$189.90; for travel conducted over the period 31 March to 4 April 1996, she was paid travel allowance in the amount of \$610.15.

For air travel—and this is extraordinary for a volunteer—on 20 March 1996, Senator-elect Ferris travelled from Adelaide to Canberra on Qantas flight 474 first class at a cost of \$499. On 21 March 1996, she travelled from Canberra to Adelaide on Ansett flight 185 first class at a cost of \$462. On 28 March 1996, Senator-elect Ferris travelled from Adelaide to Perth first class on Ansett flight 79, and on 29 March, she travelled from Perth to Adelaide first class on Ansett flight 188. Between 31 March and 4 April, Senator-elect Ferris travelled from Adelaide to Canberra on Qantas flight 624 first class; Canberra to Sydney on Qantas flight 562 first class; Sydney to Brisbane on Qantas flight 540 first class; Brisbane to Sydney on Qantas flight 543 first class; Sydney to Darwin and Darwin to Adelaide on Qantas flights first class.

Senator Bob Collins—Sydney to Darwin!

Senator SCHACHT—Sydney to Darwin. The total cost of these trips was \$2,922.40. Then, on 10 April, she flew from Adelaide to Canberra and Canberra to Adelaide, economy class and then first class, at a total cost of \$795. Her total salary, travel allowance and emoluments is \$9,442.45. Senator-elect Ferris happens to be the best paid volunteer in the history of Australian government. It is extraordinary! Senator Minchin has misled this Senate again and again by saying that she had a three-day appointment at a few dollars, which she repaid. She took \$9,440. She is no longer a volunteer. You are in deep—(*Time expired*)

Senator CRANE (Western Australia) (3.36 p.m.)—I just want to make one point. Senator Schacht read out a lot of figures. He did not say that, when the responsible minister did not approve that appointment, Senator-elect Jeannie Ferris repaid all the money. That is the crucial point. He left that out.

Question resolved in the affirmative.

Higher Education Funding

Senator CARR (Victoria) (3.36 p.m.)—I move:

That the Senate take note of the answer given by the Minister for Employment, Education, Training and Youth Affairs (Senator Vanstone), to a question without notice asked by Senator Jacinta Collins today, relating to higher education funding.

The minister was asked: did she or did she not use the figure of 12 per cent? She, quite frankly, in my mind, failed to answer that question adequately.

She suggested that someone else put to her the range of figures of five to 12 per cent. It is important to contrast the minister's answers today and on other occasions concerning this matter, in terms of what she said here and what has been said outside. It is quite abundantly clear to me that she has used the range of five to 12 per cent as the figure for any proposed cut. We have already seen in terms of the Expenditure Review Committee decisions from April that proposals are being made and acted upon for cuts of that magnitude; that is if we are to take any notice at all of what the press has been saying.

What we can say with quite simple clarity is that a person she has quoted at length, the AVCC Executive Director, Frank Hambly, at 12.30 today at a meeting with the education committee of the Senate said that the minister did use the figure of 12 per cent. It is quite clear in terms of what she said here and what Frank Hambly has said about these proposals that the minister is terribly mistaken. The vice-chancellors are not happy about being called a pack of liars.

Senator Bob Collins—It just shows you that Senator Minchin is right; you can't get a straight answer out of a lawyer.

Senator CARR—That is absolutely right. Furthermore, Senator Vanstone indicated in discussions with me on Thursday that I should check with Frank Hambly as to what he has been saying on this matter. In this week's *Campus Review* Frank Hambly is quoted as saying:

The Minister certainly made it clear that there had been no decision taken on the level of any cuts but we came away from the meeting with the impression that it would be 5 to 12 per cent.

I asked the executive director of the AVCC, 'Was that an accurate and direct quote?' He has informed me today that that is the case. What he has indicated is his very deep concern on behalf of all the vice-chancellors across the country. There is a great deal of anxiety and worry about the proposed reductions in funding. He has indicated to the education committee that cuts to the operating grants would lead to very significant reductions either in student numbers or course quality.

He has indicated quite clearly that this would be a complete breach of the commitments and promises entered into by this coalition in the run-up to the election. Cuts of this size would lead to quality reductions and reductions in class sizes or course options. Faculties may well be forced to close. Universities may be going to the wall at various regional levels. We will see great impact on the questions of access and equity for students across this country if such cuts are allowed to proceed.

The minister may well have been suggesting tactically that 12 per cent is appropriate. Despite what she says here—I suggest she is coming very close to misleading the Senate on this issue—it may well be the case that she is hoping that if the cut is below 12 per cent, somehow we will accept that and be grateful for it. I ask a very simple question: why is it that defence is treated in one way—I have no real difficulties with that, given the strategic importance of defence—and education treated in another? Should not the same arguments apply to education as those exempting the defence budget from budget cuts?

What is the essential difference between the strategic importance to this country of educa-

tion—in terms of our cultural, economic and social development—and the strategic importance of defence? Are there not significantly the same sorts of arguments that apply to the strategic importance of both sectors to Australian society?

Question resolved in the affirmative.

Sale of Telstra

Senator SCHACHT (South Australia) (3.41 p.m.)—I move:

That the Senate take note of the answer given by the Assistant Treasurer (Senator Short), to a question without notice asked by Senator Schacht today, relating to the proposed partial privatisation of Telstra.

Senator Ferguson—You are busier now than you were when you were in government, Schattie!

Senator SCHACHT—You are making such a mess of government that we do not know which target to shoot at each day—there are so many. In the first answer Senator Short gave today on the main question on the Telstra issue, he made no mention of the parliamentary route; he bumbled around trying to explain that there was this other option. I happened to notice later in question time in the Senate that we got a different sort of answer from Senator Alston.

One of the things that was most striking in my supplementary question, when I asked about the estimation of how much stamp duty would be forgone by going the non-legislative route, was that the estimates that are around now are well in excess of \$1 billion. This is extraordinary. Here we are being told that this legislation is so important because we could get \$1 billion for the environment, yet if the government goes the non-legislative route just to privatise Telstra they will forgo that billion dollars that will have to be paid in stamp duty.

We know it is no longer really an issue about the environment; it is an ideologically driven issue for the coalition to privatise Telstra, irrespective of the billion dollars for the environment. They would have to forgo a billion dollars. That is why in your Telstra bill you exempt the payment of stamp duty. If you go through the legislative route, you

exempt yourself from stamp duty. You also exempt yourself from the corporations power of the Australian Securities Commission so you do not have to fulfil the normal prospectus requirements of a company in the private sector that is being established for the first time.

They are all natural things to do when you are privatising a company through a legislative route. But if you go the non-legislative route, you have all those extra costs. You will reduce the price of Telstra from what you would get through the legislative route—if you could convince parliament. You won't be getting \$8 billion. If you did get anywhere near it, we are advised, you would have to pay a billion dollars plus on stamp duty alone. That wipes out the money you would have for the environment.

We are getting down to the bottom line: this government is not privatising Telstra to help the environment; it is privatising it for an ideologically driven reason because it does not believe there is any value in public ownership, even for an asset for the Australian people like Telstra. It is about time that the government comes clean and tells the Australian people, 'We are going to privatise no matter what.'

The final point I will make on this issue is that this advice was not sought during last week when the bill was sent off to the Senate committee. We have been advised that this advice was sought in March of this year within two or three weeks of the new government being sworn in—long before the parliament had started, long before you had even produced the bill or introduced it into this parliament. You are already preparing another way for what would be the greatest scam on the Australian people: the privatisation of Telstra by stealth so that somewhere along the line you can achieve your ideological objectives.

Question resolved in the affirmative.

PETITIONS

The Clerk—A petition has been lodged for presentation as follows:

Food Labelling

We, the undersigned citizens and residents of Australia, call on all Senators to support implementation of the following:

a requirement to label with the production process, all foods from genetic engineering technologies or containing their products;

real public participation in decisions on whether to allow commercialisation of foods, additives and processing agents produced by gene technologies;

premarket human trials and strict safety rules on these foods, to assess production processes as well as the end products.

Precedents which support our petition include several examples of foods already labelled with the processes of production; irradiated foods (here and internationally); certified organic foods; and many conventional foods (pasteurised; salt-reduced; free-range; vitamin-enriched; to name only a few).

We ask you all to accord a high priority to supporting and implementing our petition.

by **Senator Woodley** (from 140 citizens).

Petition received.

NOTICES OF MOTION

Days and Hours of Meeting

Senator KEMP (Victoria—Parliamentary Secretary to the Minister for Social Security)—I give notice that, on the next day of sitting, I shall move:

- (1) That the Senate meet on Friday, 31 May 1996, and that:
 - (a) the hours of meeting shall be:
 - 9 am—1 pm,
 - 2 pm—3.45 pm; and
 - (b) the routine of business shall be government business.
- (2) That the question for the adjournment be proposed at 3.45 pm.
- (3) That the procedures for the adjournment specified in the sessional order of 2 February 1994 relating to the times of sitting and routine of business apply in respect of this order.

Senator-elect Ferris

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

That the following questions relating to the qualification of one or more senators be referred to

the Court of Disputed Returns pursuant to section 376 of the Commonwealth Electoral Act 1918:

- (a) whether there is or will be a vacancy in the representation of South Australia in the Senate for the place for which Senator-elect Jeannie Ferris was returned;
- (b) if so, whether such vacancy may be filled by the further counting or recounting of ballot papers cast for candidates for election for senators for South Australia at that election;
- (c) alternatively, whether in the circumstances there is a casual vacancy for one senator for the State of South Australia within the meaning of section 15 of the Constitution;
- (d) whether any other senator aided, abetted, counselled or procured, or by act or omission was in any way directly or indirectly knowingly concerned in, the matters giving rise to paragraph (a);
- (e) if so, whether there is a vacancy in the representation of the relevant State in the Senate for the place for which that senator was returned; and
- (f) if so, whether in the circumstances there is a casual vacancy for one senator for the relevant State within the meaning of section 15 of the Constitution.

Victorian State Opera

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

That the Senate—

- (a) congratulates:
 - (i) the Victorian State Opera Musicals and Concerts Division on the innovative staging of the Puccini spectacular at Melbourne Park on 23 and 25 May 1996, and
 - (ii) the principals, chorus, dancers, children, creative team and designers on the world-class presentation of operatic entertainment;
- (b) extends its best wishes to the Victorian State Opera in any future productions in Australia and overseas; and
- (c) applauds the initiative of the Victorian State Opera Company through its director, Mr Ken Mackenzie-Forbes, in the promotion of opera to such a large audience over the 2 nights of the event in Melbourne.

National Reconciliation Week

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

That the Senate—

- (a) welcomes the initiative of the Council for Aboriginal Reconciliation to launch a National Reconciliation Week to be held each year from 27 May to 3 June for at least the next 5 years up to 2001, the centenary of federation;
- (b) notes that the inaugural National Reconciliation Week, beginning 27 May 1996, will launch 12 months of community activities and a public awareness campaign leading up to the Australian Reconciliation Convention, which will be held during National Reconciliation Week in 1997;
- (c) reaffirms its commitment to a process of reconciliation; and
- (d) calls on all Australians to support the National Reconciliation Week and thereby to advance the reconciliation process.

Rural and Regional Affairs and Transport Legislation Committee

Senator CRANE (Western Australia)—I give notice that, on the next day of sitting, I shall move:

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the Primary Industries and Energy Legislation Amendment Bill (No. 1) 1996 be extended to 24 June 1996.

Labor Council of New South Wales

Senator FORSHAW (New South Wales)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

- (a) notes that:
 - (i) on 25 May 1996, the Labor Council of New South Wales celebrated its 125th anniversary,
 - (ii) the council is constituted by 112 trade and industrial unions in New South Wales and represents many hundreds of thousands of workers and their families, and
 - (iii) the council and its affiliates have a long and distinguished record of successfully representing the interests of workers and their families and protecting their wages and working conditions;

- (b) recognises that a free trade union movement is fundamental to the continued existence of a fair and democratic society; and
- (c) calls on the Federal Government to ensure continued legislative recognition of the rights of trade unions to represent members and employees in the Industrial Relations Commission in order to protect award standards and other fundamental conditions of employment.

Consideration of Legislation

Senator KEMP (Victoria—Manager of Government Business in the Senate)—I give notice that, on the next day of sitting, I shall move:

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

Housing Assistance Bill 1996

Indigenous Education (Supplementary Assistance) Amendment Bill 1996

Customs Tariff (Miscellaneous Amendments) Bill 1996

Airports Bill 1996

Airports (Transitional) Bill 1996

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

Telecommunications (Carrier Licence Fees) Amendment Bill 1996

Taxation Laws Amendment Bill (No. 1) 1996.

I table the statement of reasons justifying the need for these bills to be considered during these sittings. I seek leave to have the statement of reasons incorporated in *Hansard*.

Leave granted.

The statement of reasons read as follows—

HOUSING ASSISTANCE BILL STATEMENT OF REASONS FOR INTRODUCTIONS AND PASSAGE IN THE 1996 WINTER SITTINGS

The purpose of the New Housing Assistance Bill is to provide a head of power for a new Commonwealth State Housing Agreement (CSHA) under which the Commonwealth will provide financial assistance to the States and Territories for housing assistance purposes.

The Bill will provide that the Minister for Social Security may determine a form of agreement dealing with housing assistance, that is, the form of the CSHA. It is anticipated that the form of the CSHA will be a disallowable instrument.

The form of the CSHA to be specified under the Bill will, amongst other things:

- identify the principal housing assistance strategies available to address housing needs;
- establish the detail of the financial arrangements including retrospective Commonwealth State financial contributions, financial reporting and audit requirements, and provision for progressive changes to these financial arrangements;
- specify outcomes to be achieved through the delivery of the various forms of housing assistance and provide a basis for performance to be assessed and compared across jurisdictions;
- provide a basis for the development of a nationally consistent approach to the identification and measurement of housing needs to assist the effective targeting of assistance; and
- provide a broad framework for addressing the rights and obligations of consumers with respect to the various forms of housing assistance provided.

The new CSHA under the proposed Bill must commence on 1 July 1996. Negotiations with the States and Territories have been premised on a 1 July 1996 start-up date. It is critical that the bill is passed in time for the CSHA to be executed by the Commonwealth and all States and Territories before this date. If the CSHA cannot be executed by 1 July 1996 urgent legislation would be required to extend financial appropriations to the States and Territories under the current Housing Assistance Act 1989.

INDIGENOUS EDUCATION (SUPPLEMENTARY ASSISTANCE) AMENDMENT BILL 1996—STATEMENT OF REASONS

Description of the Bill

The Indigenous Education (Supplementary Assistance) Act 1989 provides for the appropriation of funding for the Aboriginal Education Strategic Initiatives Program (AESIP). It enables grants of financial assistance to be made to the State and Territory governments, non-government school systems, Aboriginal and Torres Strait Islander education institutions and education consultative bodies for the purpose of advancing the education of Aboriginal and Torres Strait Islander peoples. Funding under the Act is appropriated on a triennial calendar year basis, with the current triennium due to finish at the end of 1996.

Purpose of the Bill

The Bill provides for an appropriation for the 1997-1999 triennium and includes an indexed appropriation of an additional amount of \$7.85 million for

the period 1 January 1996 to 30 June 1997; \$102.376 million for the period 1 January 1997 to 30 June 1998; \$114.436 million for the period 1 January 1998 to 30 June 1999, and \$121.976 million for the period 1 January 1999 to 30 June 2000.

Background to the Changes

Changes to the Act are proposed in the context of the Commonwealth's response to the *National Review of Education for Aboriginal and Torres Strait Islander Peoples* which examined the effectiveness of strategies developed in the first triennium of the National Aboriginal and Torres Strait Islander Education Policy (AEP). The Review found that despite broadly based improvements since the AEP was implemented, Indigenous people remain the most educationally disadvantaged group in Australia. At all levels of education, Indigenous people participate and attain significantly less in education than the rest of the community.

In September 1995 the Commonwealth Government demonstrated its willingness to substantially increase its funding support by some \$142 million over the following four years as part of the response to the National Review. Currently around \$83 million is provided by the Commonwealth each year under AESIP. From 1997 AESIP funds will be distributed on a per capita basis with the aim of delivering better outcomes against agreed accountability arrangements. Additional funding will be provided for Strategic Results Projects with a further funding to provide capital assistance for teacher housing for non-government schools in remote areas. These initiatives are based on a commitment by States and Territories delivering better outcomes against agreed accountability.

The importance of including the legislation in the Winter Sitting

Following the Commonwealth's response to the National Review recommendations, and the positive response from the Ministerial Council on Education, Employment, Training and Youth Affairs which followed soon after, bilateral negotiations have taken place between the Department of Employment, Education, Training and Youth Affairs and senior officers of the State and Territory Departments of Education. These negotiations have resulted in agreed understandings and a new commitment to shared responsibility and shared effort to further the goals of the AEP. Indications are that the States and Territories are willing to commit in excess of \$40 million of additional funds to this end.

There is still a great deal of work to be done before the new arrangements can take effect. It is imperative that the new legislation be passed as soon as possible to cater for the long lead time that is required in such an undertaking, particularly in the

context of Commonwealth-State relations. All parties need to know the precise level of support that will be made available so that levels of per capita funding, Transitional Funding, Strategic Results Projects funding and capital funding can be determined. If the passage of the bill is held over until the Spring Sitting it will create a great deal of uncertainty and hesitancy.

The bill contains an element of \$7.85 million for Strategic Results Projects in 1996 and some Departments of Education have already lodged bids for these funds to undertake strategic projects for which they will share the costs. If the bill does not go through in the Winter Sitting the progress towards achieving better educational outcomes will be seriously delayed.

When the announcement of the Commonwealth's response to the National Review was made there was a great deal of enthusiasm and support from those concerned with the advancement of Aboriginal and Torres Strait Islander peoples. They recognise the importance of this legislation and anxiously await its outcome.

CUSTOMS TARIFF (MISCELLANEOUS AMENDMENTS) BILL 1996

STATEMENT OF REASONS FOR INTRODUCTION AND PASSAGE DURING THE 1996 WINTER SITTINGS

This Bill is a technical corollary to the new Customs Tariff Act 1995 (Act No. 147 of 1995), which passed the Parliament in the 1995 Spring Sittings with bi-partisan support.

The Customs Tariff Act 1995, which will commence on 1 July 1996, implements over 500 tariff classification changes to the Harmonized Commodity Description and Coding System of the World Customs Organization. The passage of the Act last year, providing an effective 6 months lead time before its commencement was necessary to enable the importing community to make the necessary computer and documentary changes resulting from the new Tariff Act. It has also enabled the checking and revalidation of 120,000 tariff advices on the tariff classification of goods.

The current Customs Tariff Act 1987 will be repealed by Part 3 of the Customs Tariff Act 1995 with effect from 1 July 1996. There are several Commonwealth Acts and Regulations which presently contain references to the Customs Tariff Act 1987, including references to sections of that Act and to items, subitems, headings and subheadings of Schedules to that Act. It is necessary to legislatively update all references to the provisions of that Act to ensure the continued effectiveness of these references.

There are also several types of instruments, such as by-laws and Tariff Concession Orders, which contain references to the provisions of the Customs Tariff Act 1987. As a majority of these instruments are intended to continue in effect for the purposes of the new Tariff Act, it is necessary in this Bill to enact a transitional provision to apply to these instruments. In the absence of such a provision, all these instruments will lapse on the commencement of the new Tariff on 1 July 1996.

AIRPORTS (TRANSITIONAL) BILL 1996
AND AIRPORTS BILL 1996

STATEMENT OF REASONS FOR
INTRODUCTION AND PASSAGE IN THE
1996 WINTER SITTINGS

The purpose of the Airports Bill is to establish the regulatory arrangements to apply to the Federal Airports following leasing of the airports to private operators. The purpose of the Airports (Transitional) Bill is to implement a framework to effect the sale of Federal Airports under long term leases.

It is essential that the Airports Bill, in conjunction with the Airports (Transitional) Bill, be considered in the Winter parliamentary sittings to ensure that the Government's airport leasing program, a significant part of the Government's economic reforms and an important contributor to the Government's Budget strategy, is not unduly delayed.

The leasing of the airports is expected to generate a significant offset to outlays in the forthcoming financial years. Airports cannot be leased until the regulatory and sales legislative arrangements are in place. Importantly formal market testing cannot commence until the release of an Information Memorandum in early October 1996 which is dependant upon the passage of both bills. Delay will put at risk the Government's ability to lease any Federal Airports in 1996-97.

STATEMENT OF REASONS AS TO WHY
THE SOCIAL SECURITY LEGISLATION
AMENDMENT (NEWLY ARRIVED
RESIDENT'S WAITING PERIODS AND
OTHER MEASURES) BILL 1996 SHOULD BE
INTRODUCED AND OBTAIN PASSAGE IN
THE 1996 WINTER SITTINGS

One of the election initiatives announced by the Government was that the newly arrived resident's waiting periods that apply before a person may be paid certain social security payments was to be extended from 26 weeks to 104 weeks. As a

general rule, the initiative is to apply to a person arriving in Australia on or after 1 April 1996 or who is granted a permanent visa on or after 1 April 1996, whichever is later. Legislation needs to be in place as soon as possible to give effect to that initiative.

The Bill would also go some way to addressing concerns expressed by employers about inefficient bureaucratic processes. Amendments to both the Social Security Act 1991 and the Student and Youth Assistance Act 1973 would facilitate a more efficient information gathering process from employers and other third parties.

Amendments would be made to the Data-matching Program (Assistance and Tax) Act 1990 to ensure that income data from up to the two financial years immediately before the current financial year may be used in a single data-matching program. Failure to proceed with the amendments at the earliest possible opportunity potentially jeopardises realising significant savings to revenue.

TELECOMMUNICATIONS (CARRIER
LICENCE FEES) AMENDMENT BILL 1996
STATEMENT OF REASONS

The Telecommunications (Carrier Licence Fees) Amendment Bill will amend the Telecommunications (Carrier Licence Fees) Act 1991 to enable full recovery from carriers of the Commonwealth's contribution to the International Telecommunication Union.

Passage of the legislation in the Winter Sittings 1996 is essential to enable collection of the full contribution for the 1996-97 financial year, because carrier licence fees are payable annually on 1 July.

Statement of Reasons for Introduction And
Passage Of The Taxation Laws Amendment Bill
(No.1) 1996 In The Winter Sittings.

Background

The Bill will give effect to:

1. An election commitment of the Government to reduce the provisional tax uplift factor to 6%;
2. A 1995-96 Budget announcement by the previous Government to amend the income tax law to prevent a future revenue loss through the manipulation of off-market share buys by companies; and
3. An announcement by the previous Government that five funds or organisations would be listed in the gift provisions of the income tax law so that donations made to those funds or organisations would be tax deductible.

Reasons for introduction and passage in the Winter Sittings

Introduction and passage of the above Bill in the next session of Parliament is crucial to give necessary effect to the above measures.

If the Bill is not given introduction and passage status by 30 June 1996 the ATO will be unable to implement these measures in time for commencement on 1 July 1996. This is important for these measures as they will vitally affect taxpayers in making commercial and personal decisions.

The amendment to the provisional tax uplift factor is needed to give effect to a Government election commitment. Additionally, the ATO needs to be sure that the measure will apply from 1 July 1996 so that essential computer and administrative systems alterations can be made by that time to implement the change. If the change is to operate from a later date then the existing systems will need to remain in place.

The share buy back amendments were announced in the Budget and were to commence on 9 May 1995. These amendments therefore affected relevant transactions occurring on or after that time. Immediate implementation is necessary to provide certainty in the application of the law to these transactions.

The amendments to the gift provisions of the income tax laws are required to give effect to the announcements by the previous Government in relation to 5 funds or organisations. In the light of these announcements taxpayers have been making donations to these funds or organisations on the assumption that the law would be changed to give effect to the announcement.

Sale of Swedish Arms

Senator MARGETTS (Western Australia)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

(a) notes:

- (i) reports that the Swedish Government has decided to sell up to four naval cannons to the Indonesian Navy as a result of pressure from Swedish arms company, Bofors, and
- (ii) this impending arms sale constitutes a major shift in Swedish policy on Indonesia and East Timor as Sweden, in the past, has been committed to a policy of no new arms deals with Indonesia and action in the European Union and United Nations for the right to self-determination, and has provided 10 million SEK in aid for the promotion of human rights in East Timor;

- (b) calls on the Swedish Government to return to its principled policy stance of 1994 and consistency with the European Parliament's call for an arms embargo on Indonesia; and
- (c) calls on the Australian Government to convey this message, in the strongest possible terms, in dealings with representatives and ministers of the Swedish Government and to ask them to reconsider the decision.

Burma

Senator TROETH (Victoria)—At the request of Senator Reid, I give notice that, on the next day of sitting, she will move:

That the Senate—

(a) notes:

- (i) that 26 May 1996 is the 6th anniversary of the general elections held in Burma and that the State Law and Order Restoration Council (SLORC) has not allowed the victors of the election, the National League for Democracy (NLD), to take power, and
- (ii) with alarm, the SLORC's crackdown against Burmese politicians and others who appeared likely to attend a conference called by Daw Aung San Suu Kyi, on 26 May 1996, to discuss democracy in Burma and condemns the arrest, to date, of over 260 people;
- (b) expresses concern that, despite continued overtures by the NLD, the SLORC refuses to enter into political dialogue with it; and
- (c) notes:
 - (i) with concern, that violations of basic human rights, such as by use of forced labour, continue despite continued calls by the United Nations General Assembly and the Commission on Human Rights to abandon such practices,
 - (ii) that NLD General Secretary, Daw Aung San Suu Kyi, has called on the international community not to encourage trade and investment at this time, and
 - (iii) the Australian Government has asked its diplomatic representative in Rangoon to seek an explanation from the Government of Burma and to express Australia's concern at events, and advises that Australia intends to take up this matter in the Human Rights Committee of the United Nations; and
- (d) requests the Australian Government to continue to closely monitor the situation in Burma and to respond appropriately.

Box Ironbark Forests

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

That the Senate—

- (a) notes that:
- (i) box ironbark forests are fast disappearing, particularly in Victoria,
 - (ii) there are a number of threatened animals which rely on box ironbark forests,
 - (iii) box ironbark forests have inspired elements of Australian folk lore, such as Henry Lawson's 'The Iron Bark Chip', Banjo Patterson's 'The Man from Iron Bark' and Steele Rudd's 'On our selection',
 - (iv) box ironbark forests have inspired well-known paintings by S T Gill and Eugene von Guera'd,
 - (v) box ironbark forests are very important to the Aboriginal communities of the region;
 - (vi) box ironbark forests are important for migratory and nomadic movements of species across climatic and topographic gradients and between vegetation communities, and
 - (vii) at least 75 per cent of box ironbark forests have been destroyed since settlement and the remainder are threatened by mining, particularly gold mining, timber extraction, grazing, weeds and feral animals, and land clearing practices; and
- (b) calls on the Government to develop management programs under the Endangered Species Protection Act to protect Australia's remaining box ironbark forests.

Consideration of Legislation

Senator KEMP (Victoria—Manager of Government Business in the Senate)—I give notice that, on the next day of sitting, I shall move:

That the order of the Senate of 29 November 1994, relating to the consideration of legislation, not apply to the Shipping Grants Legislation Bill 1996.

I indicate to the Senate that a statement of reasons justifying the need for this bill to be considered during these sittings has already been tabled and incorporated in *Hansard*.

Nuclear Waste

Senator CHAMARETTE (Western Australia)—I give notice that, on the next day of sitting, I shall move:

That the Senate—

- (a) welcomes the decision by the company, US Fuel and Security, not to go ahead with the dumping of nuclear waste at Palmyra Atoll;
- (b) views, with alarm, the increase in the number of companies offering a 'dumping for profit' service of nuclear and other deadly wastes in the area; and
- (c) calls on the Australian Government to work for a cessation in the trade in nuclear and other deadly wastes, and to ensure that nations take responsibility for dealing with their own wastes within their own territories.

Higher Education Funding

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

That the Senate—

- (a) notes that the week beginning 27 May 1996 marks a National Week of Action by the National Tertiary Education Union (NTEU);
- (b) recognises that:
 - (i) the outstanding wage claim made by general and academic staff has been unresolved since 1994, and
 - (ii) the salaries of academic and general staff in universities have fallen seriously behind those of comparable workers since 1991;
- (c) notes that unless the academic and staff wage claim is addressed the quality of university teaching and the learning environment will be compromised;
- (d) recognises that funding cuts of 12 per cent to universities could result in the loss of as many as 48 000 student places, or as many as 19 000 general and academic staff jobs; and
- (e) supports the NTEU in its nation-wide action on 30 May 1996.

Introduction of Legislation

Senator KEMP (Victoria—Manager of Government Business in the Senate)—I give notice that, on the next day of sitting, I shall move:

That the following bill be introduced: A Bill for an Act to amend the Australian Federal Police Act 1979. *Australian Federal Police Amendment Bill 1996.*

Consideration of Legislation

Senator KEMP (Victoria—Manager of Government Business in the Senate)—I give notice that, on the next day of sitting, I shall move:

That the order of the Senate of 29 November 1994, relating to the consideration of legislation, not apply to the Australian Federal Police Amendment Bill 1996.

I also table a statement of reasons justifying the need for this bill to be considered during these sittings and seek leave to have the statement incorporated in *Hansard*.

Leave granted.

The statement read as follows—

Australian Federal Police Amendment Bill 1996
Statement of Reasons for Passage in the Winter
Sittings

The government is seeking the introduction and passage of amendments to the Australian Federal Police Act 1979 in the Winter 1996 sittings of parliament.

The amendments insert a new provision to exclude a person from the operation of the 'unfair dismissal' provisions of the of the Industrial Relations Act 1988 where the person has been dismissed for 'serious misconduct'. Serious misconduct includes corruption, a serious abuse of power or a serious dereliction of duty. These amendments are important in ensuring that the commissioner is able to deal quickly with any incidence of corruption in the AFP.

Urgent passage is required to respond to allegations of corruption that have been made in recent months.

Superannuation Committee

Senator KEMP (Victoria—Manager of Government Business in the Senate)—I give notice that, on the next day of sitting, I shall move:

That—

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

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

- (a) the role of superannuation funds in the governance of Australian corporations, as referred to the committee on 27 November 1995;
- (b) the implications of the enormous growth in superannuation fund assets in Australia, as referred to the committee on 27 November 1995;
- (c) the use of derivatives by superannuation funds in Australia, as referred to the committee on 27 November 1995; and
- (d) the Investment Committee of the Reserve Bank's Officers' Superannuation Fund, as referred to the committee on 29 November 1995.

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

- (4) The committee consist of 6 senators, 3 nominated by the Leader of the Government in the Senate, 2 nominated by the Leader of the Opposition in the Senate and 1 nominated by any minority groups or independent senators.

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

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

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

LEAVE OF ABSENCE

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

That leave of absence be granted to Senator Ellison for 27 May, 1996 on account of family illness.

COMMITTEES**Rural and Regional Affairs and Transport Legislation Committee****Extension of Time**

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

That the time for the presentation of the report of the Rural and Regional Affairs and Transport Legislation Committee on the provisions of the Shipping Grants Legislation Bill 1996 be extended to 30 May 1996.

CONSIDERATION OF LEGISLATION

Motion (by **Senator Kemp**)—as amended by leave—agreed to:

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

Education and Training Legislation Amendment Bill 1996

Housing Loans Insurance Corporation (Transfer of Assets and Abolition) Bill 1996

Primary Industries and Energy Legislation Amendment Bill (No. 1) 1996

NUCLEAR TESTING: CHINA

Motion (by **Senator Margetts**)—agreed to:

That the Senate—

- (a) notes, with concern, reports that the Chinese Government will undertake further nuclear tests in the near future and that China continues to argue that so-called 'peaceful nuclear explosions' be permitted under the scope of the Comprehensive Test Ban Treaty which is currently being negotiated in Geneva;
- (b) notes widespread community support for the action of Greenpeace in despatching its vessel *MV Greenpeace* to Shanghai to protest against these decisions of the Chinese Government; and
- (c) calls on the Australian Government to:
 - (i) condemn, in the strongest possible terms, any future nuclear tests by the Chinese Government, and
 - (ii) continue to argue strongly for a total ban on any form of nuclear explosion in the negotiation for a Comprehensive Test Ban Treaty.

CONSIDERATION OF LEGISLATION

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander

Affairs)—I ask that government business notice of motion No. 1 standing in my name, proposing the exemption of the Aboriginal and Torres Strait Islander Commission Amendment Bill 1996 from the order of the Senate concerning the consideration of legislation, be taken as formal.

Leave not granted.

ORDER OF BUSINESS**Indexed Lists of Files**

Motion (by **Senator Panizza**, at the request of **Senator Harradine**) agreed to:

That general business notice of motion No. 29 standing in the name of Senator Harradine for this day, proposing an order for the production of indexed lists of departmental files, be postponed till 2 sitting days after today.

COMMITTEES**Rural and Regional Affairs and Transport Legislation Committee****Report**

Senator CRANE (Western Australia)—I present the first report of 1996 of the Rural and Regional Affairs and Transport Legislation Committee on the examination of annual reports.

Ordered that the report be printed.

**INDIGENOUS EDUCATION
(SUPPLEMENTARY ASSISTANCE)
AMENDMENT BILL 1996****First Reading**

Bill received from the House of Representatives.

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

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

Bill read a first time.

Second Reading

Senator KEMP (Victoria—Parliamentary Secretary to the Minister for Social Security) (4.05 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 amends the Indigenous Education (Supplementary Assistance) Act 1989 to provide improved arrangements for grants of financial assistance to be made to the state and territory governments, non-government school systems and indigenous education institutions. The aim of this bill is to facilitate increased participation and improved education outcomes for indigenous Australians.

The current act provides funding to 30 June 1997. This bill amends the funding level for the period 1 January 1996 to 30 June 1997 and establishes funding levels up to 30 June 2000.

These funding levels reflect an increase of \$7.85 million on the existing appropriation for 1996, and establish the commonwealth's commitment under this act for each year of the third triennium of the national Aboriginal and Torres Strait Islander education policy.

Funding under the act is appropriated on a triennial calendar year basis.

The government intends to make major changes to the Aboriginal education strategic initiatives program from January 1997, with a new funding triennium to commence at that time. The restructuring of the Aboriginal education strategic results program will accelerate development of culturally appropriate indigenous education services under rigorous outcomes-focused accountability arrangements.

In terms of program administration those changes will establish a more cost-effective, more transparent, more manageable, and—critically—a more accountable process for the distribution of commonwealth funds. Parties to an indigenous education agreement will receive funding in two ways; either by way of a per capita entitlement basis, or on the basis of strategic results projects.

Both elements will focus on ensuring that the program is a "value for money" program which achieves improved educational outcomes for indigenous Australians. This will mean negotiating a higher level of educational accountability for these commonwealth funds. The supplementary funding from the Aboriginal education strategic initiatives program is the commonwealth's principal program for indigenous education.

The per capita element of the Aboriginal education strategic initiatives program will provide an entitlement based, equitable, recurrent funding arrangement. It will recognise the different resource bases of education providers as well as accommodating the higher costs of education provision in remote areas and in some sectors. Such acknowledgment is a prerequisite for establishing outcomes-based accountability arrangements.

The element known as the "strategic results projects" will provide funding required to undertake priority projects of national significance that will

contribute to achieving policy goals by 2001. Such projects, in order to receive commonwealth funding, must demonstrate that they deal with major barriers to educational attainment such as high drop-out rates and low retention rates. These projects will remove barriers to attainment that cannot be addressed by mainstream programs. Projects will be for a specific period of time, will have specified purposes, outcomes and targets, and will be subject to an accountability system which will focus much more than in the past on the monitoring and reporting of improved educational outcomes rather than just financial inputs.

The implementation of such rigorous accountability measures will ensure a comprehensive improvement in the achievement of goals for reducing the educational disadvantage of indigenous Australians.

Many factors contribute to that educational disadvantage. The identification of the causes of such high levels of educational disadvantage is complex. In acknowledging this complexity the National Aboriginal and Torres Strait Islander education policy reflects the importance of a cooperative, collaborative effort to develop more effective processes for education for Aboriginal and Torres Strait Islander peoples. The policy is based on the principle of shared effort and shared responsibility with state and territory governments in consultation with indigenous people. The tripartite nature of this partnership is a key component of the determination to achieve better outcomes from all sectors of indigenous education.

The 1994 review of the national Aboriginal and Torres Strait Islander education policy found that between 1989 and 1993 the percentage of Aboriginal and Torres Strait Islander students staying on to year 12 of school increased from 14 per cent to about 33 per cent. During the same period, the number of indigenous students attending university doubled.

Despite such encouraging improvements in educational outcomes indigenous people remain the most educationally disadvantaged group in Australia. From preschool right through to university, Aboriginal people and Torres Strait Islanders participate and attain significantly less in education than their non-indigenous peers.

For example, at primary school level, three times as many indigenous students have literacy and numeracy problems as do other primary students.

At secondary school level, 25 per cent of indigenous students leave school before completing year 10, compared to 2 per cent of other Australians. The year 12 retention rate for indigenous students is 33 per cent, compared to 76 per cent for other Australians.

The importance of quality education is clear. These amendments to the Indigenous Education (Supple-

mentary Assistance) Act will provide funding to improve education opportunities and outcomes for indigenous people.

Economic efficiency and social justice concerns require education to provide a basic foundation of opportunity for all people.

There is agreement within the Ministerial Council on Education, Employment, Training and Youth Affairs, following reaffirmation of its commitment to the national Aboriginal and Torres Strait Islander education policy, that states and territories will set literacy, numeracy and employment targets in their indigenous education agreements for Aboriginal education strategic initiatives funding in the next triennium. These are key issues requiring increased effort and rigorous monitoring of strategies to ensure their success.

Efforts will also be concentrated on the early childhood education years to ensure better outcomes in literacy and numeracy.

There will also be efforts to concentrate on the employment of indigenous people at all levels of the education and training industry.

It is recognised that, to achieve improved outcomes, strategies will need to address other key issues including:

- . involving Aboriginal and Torres Strait Islander parents in their children's education
- . improving preschool education outcomes
- . employing and training Aboriginal and Torres Strait Islander education workers
- . providing appropriate professional development of staff involved in indigenous education
- . developing culturally sensitive curricula
- . involving indigenous Australians in educational decision-making
- . setting as an objective the achievement of literacy and numeracy outcomes for indigenous Australians which are similar to those of non-indigenous Australians, and reviewing progress towards this objective by the year 2000; and
- . giving priority to addressing the development of sound foundation competencies, particularly in literacy and numeracy, to assist indigenous Australians in making the transition from education and training to the workforce.

The level of improvement evident in some sectors of indigenous education has to become more consistent across the whole provision of education services for indigenous Australians. The rate of improvement must be accelerated. Not only will such improvement bring about important benefits for individuals and the entire indigenous community, it will also play a major part in the national reconciliation agenda.

These amendments will, through the restructuring of the Aboriginal education strategic initiatives program, contribute to ensuring that such improvements are achieved in indigenous education.

I commend the bill to the Senate.

Ordered that further consideration of the second reading of this bill be adjourned until the first day of sitting in the Spring sittings, in accordance with the order agreed to on 29 November 1994.

CONSIDERATION OF LEGISLATION

Senator HERRON (Queensland—Minister for Aboriginal and Torres Strait Islander Affairs) (4.06 p.m.)—I move:

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

It is important that this exemption be given because these amendments must pass during the session or it will be too late to apply them to the ATSIC October elections. They are already in train and the amendments that we propose have three key components. They are: to continue the current practice of the minister appointing two commissioners to the ATSIC board and the chairman, to reduce the size of regional councils and to give the minister the power to appoint an administrator to ATSIC under certain defined circumstances which are in the explanatory memorandum.

There are also a number of other key amendments which in the majority are being supported by ATSIC and which are based on the recommendations of an electoral review panel set up by the previous minister. The former Minister for Aboriginal and Torres Strait Islander Affairs established this panel under section 141 of the act. Some of these recommendations require changes to the act. Section 383 of the Commonwealth Electoral Act permits the Australian Electoral Commission to seek an injunction to restrain a person from contravening or committing an offence against the act or another Commonwealth law applying to elections.

The ATSIC act contains no specific provision equivalent to section 303 of the Commonwealth Electoral Act and this hampers the effect of the running of ATSIC elections by the AEC. It is proposed to amend

the act to include a specific provision to allow for the Australian Electoral Commission to have injunctive powers in relation to ATSIC elections.

In addition to that, another amendment will give greater stability to the position of deputy chairman by allowing for the election of the deputy chairman after board elections only and not, as at present, after every zone election. There is also an amendment to provide consistency in the election of deputy chairmen for regional councils and the commission. There is another amendment that will make regional council meetings open to the public and therefore more accountable to the community. A further amendment will bring regional counsellors into line with local government in relation to financial interests.

Finally, there is an amendment to create statutory interest for ATSIC, TSRA and the Indigenous Land Council in land that they have funded. This entails having a caveat put on the material that defines ownership so that it cannot be sold without the intended purchaser being aware of the presence of that caveat.

So there are a number of amendments which are supported by ATSIC that will lead to openness and accountability, which ATSIC also supports. It is the wish of the government that these amendments apply to the ATSIC elections in October. If this bill does not go through, then it will not apply. As I mentioned, ATSIC supports many of the amendments and considers that the amendments it is agreeable to should apply for the October elections. If this legislation is not granted exemption from inter-sessional rule, it may be that it will apply from after the ATSIC elections. That would hardly be fair to candidates who may be encouraged to stand for or discouraged from standing for those elections.

Senator CHAMARETTE (Western Australia) (4.10 p.m.)—I rise to indicate that the Greens (WA) oppose this motion to exempt this particular piece of ATSIC legislation on the principle that a bill should be introduced in one session and debated in the next. We appreciate the fact that it may present difficulties in the time line to the ATSIC elections,

which the minister has referred to. However, we do not believe that that is a sufficient excuse to allow for matters which have not received adequate consultation throughout the Aboriginal community in Australia to be put into the legislation. If this bill were exempted from the cut-off motion, it may well be that at least parts of it or the whole of it may be rejected. So the time line difficulties may well still operate.

It might behove the government to have a look at some of the time line difficulties in the elections and to present a different bill, which might address issues that have been canvassed within ATSIC and the wider Aboriginal community separate from other matters—such as the appointment of an administrator and the giving of enormous powers—that deal with the bureaucratic level of ATSIC functioning. My understanding is that this matter was going to be deferred until tomorrow, because all parties have not been able to consider the implications of immediately exempting the legislation and dealing with it in this place. If that occurs, I will be happy to see the matter deferred. But I want to put on the public record that the reasons given so far are in no way satisfactory to the Greens.

Senator KERNOT (Queensland—Leader of the Australian Democrats) (4.12 p.m.)—I have listened to Senator Herron's reasons and I agree that the Senate should assist the government to have this ATSIC bill debated this session. That does not mean that I agree with the amendments he is proposing. We should assist the government on this matter because otherwise there would be a very negative impact on ATSIC's capacity to get itself ready for the elections in October. I do not mind whether the issue is concluded today or tomorrow because I do not think anything is going to change in the government's reasons or its justifications for the amendments or in the Democrats' view of them. I am not sure why the opposition is proposing to adjourn the debate. If there is some problem, I would be willing to hear it.

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

**CUSTOMS AND EXCISE
LEGISLATION AMENDMENT BILL
(No. 1) 1996**

In Committee

Consideration resumed from 22 May.

The bill.

The TEMPORARY CHAIRMAN (Senator Calvert)—The committee is considering the Customs and Excise Legislation Amendment Bill (No. 1) 1996. When the committee was last considering the bill, Senator Margetts had moved her amendments Nos 1 to 8 as circulated. The question is that the amendments be agreed to.

Senator COOK (Western Australia) (4.14 p.m.)—I think when the committee last adjourned I was in full flight and I was stopped at that point. I have been hovering ever since, waiting to get back into full flight, and this is the opportunity to do so. What my full flight was about was describing the opposition's attitude to the Customs and Excise Legislation Amendment Bill (No. 1). If I may, I will just briefly recap what I was saying. That will summarise our position and it will save some chamber time.

This customs and excise tariff bill refers to the diesel fuel rebate scheme. I noticed that got another run in this morning's *Financial Review*, with the NFF apparently making claims to the government about how the scheme should be changed and that greater rebates under the scheme be provided to farmers. Be that as it may, that is another matter. It is not a matter related to this bill.

This is a bill which I, as a minister in the former government, voted for in cabinet and the then government placed on the *Notice Paper*. It was debated here and amended here, and finally it lapsed when the election was called. The current government has now brought it back in the same form as the former government would have done, except for one clause, had it remained in office. The opposition supports all the other clauses of the bill. When we were in government we presented those clauses to this chamber. We do not resile from that. We will support them when this government, the new government,

presents them here. But the new clause that has been tacked on gives us some difficulty. In my second reading address to the chamber, I made some remarks about that.

The current situation before us is that both the Greens and, in anticipation, the Australian Democrats have amendments to move. The opposition's position is that the very purpose of this bill is to close loopholes that have been litigated over at the Administrative Appeals Tribunal, which has extended the original meaning of the bill—which has meant that people whom the government had not intended could claim the diesel fuel rebate can claim it. So this is a piece of necessary but good housekeeping to keep the definition within check. We would have done it, as I have said, but we did not, and now the new government is doing it.

The debate here, though, is about limestone and limestone quarrying being included for the purposes of combating soil acidification on farms. I referred to that in my second reading address and in essence raised some questions about the purpose of it. Being aware of the Greens' amendment, I raised some of the opposition's concerns as to the constitutionality of the amendments and the drafting of them. I noticed that Senator Margetts, in her speech to the chamber, directly addressed those concerns, and I am bound to take note of her remarks.

What she also referred to and what I have identified in this debate, as has my colleague on this side Senator Schacht, is the difficulty in a self-assessment situation of working out how we track limestone that leaves the quarry gate for the purposes of attracting this rebate as opposed to limestone that leaves the quarry gate for other purposes. That is still a matter of some concern and trouble. To that point the Greens' amendment is addressed. That shifts the whole onus from this bill to the tax act and would have to be dealt with in that forum. The opposition's point of view is that, while we have, as I have rightly indicated in the debate thus far, some reservations about that, we are in sympathy with the objectives of what the Greens are trying to do.

In particular, how we track the limestone post-quarry gate in order to ensure that it is

used for soil de-acidification is the problem. Self-assessment is a way of doing it, but it is not a very effective way. It seems to me that the very loopholes that this bill was designed to close are being reopened by this change. I can hear the patter of tax avoiders' feet as they run off to the Administrative Appeals Tribunal in the wake of this change to seek ways in which they can widen the loophole. So we in the opposition will support the amendment of the Greens on the basis that we want to tie down to a greater extent the issues of constitutionality and drafting.

As Senator Margetts has said, it may well be that the other chamber will reflect upon what we have decided here and find a better and more effective way of handling it. That may well be. If they do, so be it—an effective change will have been made. If they do not and they return the bill to this chamber, at that time we will deal with it again on its merits. I just wanted to make the point that that is where we stand with respect to the amendment that has been moved.

The amendments that are foreshadowed but have not yet been moved, the amendments in the name of Senator Spindler from the Australian Democrats, are about changing the definitions part of this bill so that uranium is defined as a non-mineral and therefore uranium mining would not be eligible for the diesel fuel rebate. Two start-up dates are given for that. The opposition will be supporting neither of those amendments.

Senator PARER (Queensland—Minister for Resources and Energy) (4.21 p.m.)—Before I respond to both Senator Margetts and Senator Cook, I would like to say that last Wednesday Senator Schacht asked me whether any other areas involving quarrying were acceptable as a legitimate claim for the diesel fuel rebate. The answer, as I understand it, is no.

ACS has advised that any quarrying operation involving the extraction of mineral contained in the material is eligible for rebate. The extraction of silica, rutile, kaolin, bentonite or other minerals by quarrying is eligible for the rebate. The extraction of sand, unless for mineral sands, sandstone, soil, clay, slate other than bentonite or kaolin, basalt, granite,

gravel, limestone or water is not eligible for the diesel fuel rebate unless they are being used to extract a mineral. Similarly, quarrying operations carrying on solely for the purpose of obtaining stone for building, road making or similar purposes are not eligible. I hope that clarifies it.

In bringing to a close the committee stage of this bill, I want to make a few comments in relation to the matters raised last week and today by Senator Cook. Senator Margetts, in moving her amendment—the effect of which is to deny eligibility for rebate for diesel fuel which is used for the extraction of limestone in the de-acidification of soil in agriculture—introduces an alternative which proposes to extend the income tax act to provide a cash rebate for landcare activities.

Senator Margetts's proposal is not costed. One of the early lines of questioning in this place by the opposition, by Senator Cook and Schacht, was: what was the method used to determine the costing process involved? The proposal that Senator Margetts has put up is not costed. We have no idea what the cost will be. I mentioned last week in reply to Senator Margetts and Senator Cook that the activity which is now proposed in the government's addition to this bill is specifically targeted to an activity which will ensure that the costs of lime will not increase to farmers. That is its purpose. This is achieved by the diesel fuel legislation defining the eligible activities for which rebate is payable. That was the reform the previous government introduced in the legislation last year.

The activity of mining for minerals, or the extraction in the case of limestone from the ground, is made eligible under paragraph A of the definition of 'mining operations'. In addition, the removal of overburden, which I mentioned last week, is also expressly defined in the legislation as an eligible activity. Whether or not a diesel fuel claimant claims that all the diesel fuel purchased was used for an eligible activity is a matter that the scheme handles through the claim process and the audit controls that accompany it. In addition, the claimant is required to nominate the eligible activity which he or she is relying upon to claim the rebate. If the activity does

not come within one of the express activities under the definition of mining operations there is no entitlement for rebate.

Senator Cook last week indicated that the opposition would now be supporting the Green amendment. The hypocrisy is obvious. While the senator was critical of the government for our costing, he is now claiming—and the opposition is claiming—to support an amendment which goes much further than the government's addition and for which no costings are available.

Senator MARGETTS (Western Australia) (4.25 p.m.)—I am afraid that the minister was not listening to my presentation. The reason why no costings were provided is that my amendment provides no more entitlement—and I believe Senator Cook has acknowledged that at various stages and last time this was looked at as well, but I do not want to speak for him—than was available under the current deductibility.

Senator Panizza—It is a rebate. You haven't even told us what the rate of rebate is.

Senator MARGETTS—I have.

Senator Panizza—What was it—100 per cent?

Senator MARGETTS—It was talking about the same levels as are available. I have mentioned that in my speech as well in terms of the level of income which will be assessed and the rates at which it is assessed. So there is no difference in the revenue implications because it is the same as is currently available under deductibility. The only difference is—for the sake of what farmers have been asking for a long time—a recognition that in a series of bad years having to wait three or four years for a year when your income is high enough to be assessed in order to claim that deductibility is an extraordinary thing to ask farmers to do if what we are saying as a parliament and as a Senate is that we believe landcare activities should be deductible and it is an entitlement.

The fact that we are allowing them to roll that entitlement over indicates that we do believe it is an entitlement that they should be able to claim. The only difference is that we

are suggesting that to encourage landcare activities, especially in bad years and especially in those years perhaps when the strain on land may be greater, this is the right thing to do to enable that capital expenditure in bad years as well as good years to be claimed in that year rather than have to wait perhaps several years and perhaps discourage the expenditure when it is needed most. So there is no extra entitlements. We are assuming that the intent is that we want to encourage farmers. If it means that some extra farmers will make a decision to take on landcare activities, presumably that would have a positive spin-off. It means that assistance, unemployment benefit and other things that may ensue from people degrading their land during bad seasons or the extra family assistance that is required may not occur. I suppose this might encourage more people to take up some landcare activities but in the end you would have to say that this is surely what we are after. This may well bring about a reduction in the amount of revenue that the Commonwealth needs to pay out later when we are thinking of ways of supporting farmers who are in dreadful straits.

So there is no more ability to claim than is currently the case. It is just in terms of a rebate rather than a deductibility and in the end that expenditure is deductible, whether it is one year, two years, three years or four years down the track. So basically we are not giving anything extra to the entitlement that exists now.

Senator PANIZZA (Western Australia) (4.29 p.m.)—I would like to ask the minister a question, but before I do I would like to comment on what Senator Margetts said. From my understanding of what she said she knows nothing about the tax act. She was saying that farmers spending for environmental reasons or fixing up land degradation should have a rebate. In my book, a rebate, rather than a tax deduction against income, is at a fixed rate. It is the same for all taxpayers. There are plenty of examples right across the tax act of that—keeping everyone on the same plane. It does not matter what your income is. Either the good senator is proposing a 100 per cent rebate or variable rates for different farmers according to their income.

That does not work. I suggest she study the tax act.

The minister has given us the inclusions and exclusions for diesel fuel rebate when it comes to agricultural lime and all those other minerals, but could he tell the Senate how gypsum—which is used on non-wetting soils on a farm so that when it rains it does not immediately run off but soaks in—will be treated?

Senator PARER (Queensland—Minister for Resources and Energy) (4.30 p.m.)—In response to Senator Panizza, gypsum is eligible for agricultural purposes. I just go back to Senator Margetts, and I will not go into this in great detail. Senator, what our amendment did was allow people mining limestone for agricultural purposes to get a diesel fuel rebate. What you have done—and this is why I say it is not costed; it does not match—is use an addition to section 75D of the taxation act. Section 75D(1B)(c) of the act spells out ‘an operation primarily and principally for the purpose of preventing or combating land degradation otherwise than by the erection of fences on the subject land’. You are offering the complete definition of land degradation as a cash rebate. That could be things such as replanting, contour work or anything like that. That is the advice I have from Customs. That is the effect. That is why I told you that you have put up a proposal that is not costed.

Senator Margetts—It is already deductible.

Senator PARER—It is deducted. You are suggesting a cash rebate. As I said to you earlier, even assuming that we are not right on this interpretation—and I believe we are, on my advice from Customs—

Senator Margetts—What are you saying? You are not being very clear.

Senator PARER—I am saying that they will be entitled to a cash rebate for anything that is defined as land degradation.

Senator Margetts—It is the same amount.

Senator PARER—Assuming that you are correct, there is still a problem. You used all sorts of language here about ‘when things are tough farmers might not be inclined to do this and therefore this is an encouragement for

them to do so because they are going to get a cash rebate’. What we are proposing is that when they buy the lime they will not be paying a higher rate. You are saying they should pay the higher rate now and at the end of the year they should come back and get a cash rebate. You are saying, ‘Let’s increase the price for lime.’ That is exactly what you are saying.

I will not belabour this point, except to repeat what I said: under your proposal, we have no idea of the costing. Senator Cook was worried before—and I think Senator Cook is taking a viewpoint on this which I appreciate but I think is wrong—when he was talking about all sorts of scams that might go on. Mind you, with an amount of \$600,000 at the top limit, the opportunity for scams is pretty low. But if we go the way of Senator Margetts, I do not know what the limit is and neither does Customs.

Senator MARGETTS (Western Australia) (4.34 p.m.)—The words of my amendment say:

Rebates for expenses deductible under 75D where deductions exceed tax liabilities.

That is what the amendment says, and that means that these things are already deductible; there is no suggestion that anything that is not already deductible under 75D is to be brought in.

Senator Parer—It is not just limestone.

Senator MARGETTS—The minister suggests that it is not just limestone, and I am in absolute agreement with that. But the argument that has been used in relation to opening up a very difficult to manage—and I believe the debate has proven that—amendment with regard to limestone is that you need it for land care. If you are concerned about land care and the ability of farmers to use lime for de-acidification of soil, maybe one of the best ways of assuring that any time they use anything including lime for land care is that they then make sure that they are not out of pocket in that year to the extent that they might be if they do not have sufficient income to be taxable. So it is no extra Pandora’s box. As I said, my amendment says ‘expenses deductible under 75D’. If you have a problem with 75D and what is

under 75D, I am sure the farmers will be very angry because they are obviously very concerned about this issue. We are going round and round in circles, and I would like to see if the Senate could vote on the issue.

Senator IAN MACDONALD (Queensland)(4.36 p.m.)—I come somewhat late to this debate, and I missed the second reading because I was overseas on parliamentary business but I do want to make a small contribution. Because of other meetings I have not had the opportunity to hear all of Senator Margetts's argument in favour of the amendment she proposes. From what I picked up in the last three minutes, it does seem to me that she is talking about a tax deductibility or a cash rebate as a form of tax instead of deducting the diesel fuel rebate at the time it is incurred.

If what I pick up is correct, what that would do, as I understand it, is make it less attractive to people who need to use the lime for addressing the acidity of soil. For those farmers who are not in receipt of an income, sure, they would get the cash rebate back later but it would be a long way down the track. It could be 18 months away, whereas the rebate, as Senator Parer points out, is instantaneous. As I understand it—perhaps you will correct me, Senator Margetts; perhaps I am wrong—that would make it less attractive.

This particular amendment that the government has picked up is one that I would urge Senator Margetts and all senators to support. Senator Margetts will be aware of the long history of this amendment. The Australian Labor Party did not want anything to do with this at all. In fact, when Senator Schacht was the minister, he refused to countenance it, despite the fact we pointed out both in this chamber and at various committee hearings that 35 million hectares of soil in Australia are highly acidic, another 55 million hectares are moderately or slightly acidic and that the cost of that acid soil to Australia means a hell of a lot to our export earnings as well as the straight environmental concern that no doubt many senators do have.

It has been said by the National Farmers Federation that this was perhaps the greatest environmental problem facing Australia and

yet the Labor government would not countenance it. In spite of all these facts and in spite of all the arguments we were able to produce, they would not have a bar of it. I might let you into a little secret on the coalition side. Initially, the coalition did not want to fiddle around with this either. They saw that there was some cost to the revenue and they did not want to do it. The coalition leadership was persuaded to allow this. It was not without a lot of argument, and some of my colleagues will smile when I say that; but the coalition eventually agreed to do this.

So I would say to Senator Margetts: please do not put this in jeopardy. If your amendment did get up, it would delay the passage of this bill. It would go back to the House of Representatives and who knows what they would do with it there—and nothing may ever happen. I understand your argument is based on the fact that there could be rorts. I have not been around to hear your arguments and I am not quite sure what you are talking about there. But even if there are some rorts, as Senator Parer says, the upper limit of this, as we have it, is \$600,000.

Senator Margetts—There is no upper limit. That's just a figure they've plucked out of the air.

Senator Parer—You got a full explanation of that. Don't make up stories. Be honest!

The TEMPORARY CHAIRMAN (Senator Colston)—Order! Senator Ian Macdonald has the call.

Senator IAN MACDONALD—My advice is there is an upper limit. If there is any rorting and I hope there is not—and there is no way in the world that I would countenance or support any rorting of these sorts of schemes—the impact is likely to be infinitesimal when you compare it to the damage which it will do to the environment, acid soils and our export potential.

Senator Margetts is obviously with the government in promoting its assistance for soil deacidification. Although she agrees with our thrust and she would be, like us, very critical of the Labor Party previously in government when they would not countenance this at all, she obviously has a concern about

the administration and that there may be rorts. I accept her concerns as genuine and I accept that she has gone to a lot of trouble to try to find a better way of doing it. All I can say is that the government obviously does not agree with her.

The government are intent on maintaining their administrative method of doing things. I would ask Senator Margetts in that instance if she would support us to get the thrust of it done, to get the legislation through so that those who do want to use lime to help in the deacidification of soils can do so to treat what is almost unquestionably Australia's greatest environmental problem and not be penalised for doing it.

No doubt many of my colleagues have raised many matters in support of the amendment. Evidence was given to us in committee hearings last year by a lot of miners who were extracting the limestone. They gave evidence of the enormous extra costs that would be involved for those wishing to use lime for deacidification purposes and the fact that those additional costs would make it unattractive and would add to the environmental degradation of our soils.

So, for all those reasons, I very much support, in a very grateful way, the provision of this legislation that includes limestone in the rebates available for those extracting limestone for use in the deacidification of soil.

Senator MARGETTS (Western Australia) (4.43 p.m.)—Senator Ian Macdonald was obviously not here for the rest of the debate. So I put it briefly on the record that this is not replacing a rebate for a deduction. It is simply allowing farmers whose assessable income is very low to be able to claim as rebate that portion that would normally be available as a deductibility. It is a recognition of the fact that farmers do have bad years and sometimes several bad years. Basically, this is putting land care as a priority issue and saying it is fair enough that, if we are saying as a parliament it ought to go ahead, farmers should not be as much out of pocket in the year that their expense takes place. We are not replacing deductibility with a rebate. We are suggesting that that portion of deduct-

ibility which they would not be able to use if their income was below that level could be claimed as a rebate rather than a deduction.

Question put:

That the amendments (**Senator Margetts's**) be agreed to.

The committee divided. [4.48 p.m.]

(The Acting Deputy President—Senator M.A. Colston)

Ayes	35
Noes	31
Majority	4

AYES

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

NOES

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

PAIRS

Carr, K.	Alston, R. K. R.
Beahan, M. E.	Hill, R. M.
Burns, B. R.	Woods, R. L.

PAIRS

Bolkus, N. Crichton-Browne, N. A.
 McKiernan, J. P. Ellison, C.
 * denotes teller

Question so resolved in the affirmative.

Senator SPINDLER (Victoria) (4.51 p.m.)—I move:

1. Schedule 1, item 15, page 6 (after line 26), insert:

6A Subsection 164(7) (definition of minerals)

In this Act, uranium is not considered to be a mineral.

This amendment refers to uranium mining and seeks to exclude uranium from the definition of 'mineral'. I commend the amendment to the Senate on the basis that, if all parties are concerned about limiting the mining of uranium, we should not use taxpayers' money to support its extraction.

Senator PARER (Queensland—Minister for Resources and Energy) (4.52 p.m.)—We have already canvassed our response on that. We will not support this amendment, and I think Senator Cook has indicated the same thing from the point of view of the opposition.

Senator COOK (Western Australia) (4.52 p.m.)—The Minister for Resources and Energy (Senator Parer) is right in that I have indicated the opposition will not support this amendment. I understand its point. But, palpably, uranium is a mineral and to declare it not to be a mineral for the purposes of this is artificial. If one is opposed to uranium mining, this is not the place to express that opposition, in my view. In any case, the opposition supports uranium mining at designated sites and, given that position, this amendment would be inappropriate.

Senator MARGETTS (Western Australia) (4.53 p.m.)—During the second reading speech I indicated the Greens' support for Senator Spindler's amendment, and that stands.

Amendment negated.

Senator SPINDLER (Victoria) (4.54 p.m.)—I will not move my remaining amendments.

Bill, as amended, agreed to.

Bill reported with amendments; report adopted.

Third Reading

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

HEALTH LEGISLATION (POWERS OF INVESTIGATION) AMENDMENT BILL 1996

Second Reading

Debate resumed from 1 May, on motion by **Senator Kemp**:

That this bill be now read a second time.

Quorum formed.

Senator NEAL (New South Wales) (4.57 p.m.)—The Health Legislation (Powers of Investigation) Amendment Bill 1996 proposes an amendment to the Health Legislation (Powers of Investigation) Amendment Act 1994 and the Human Services and Health Legislation Amendment Act (No. 3) 1995. The amendment—as I am sure the Parliamentary Secretary to the Minister for Social Security, Senator Kemp, will say—deletes the sunset clause in the two items of legislation to allow them to continue in effect after 1 July this year.

The opposition supports this legislation as it allows useful and advantageous legislation, which was part of our legislative program, to continue in force. I suppose it should be noted that, in effect, what this government is doing is endorsing part of the program of the previous Labor government.

The Human Services and Health Legislation Amendment Act (No. 3) 1995 made amendments to finetune the Labor government program in three areas: the Childcare Rebate Act 1993, the Health Insurance Commission Act 1973 and the National Health and Medical Research Council Act 1992. It also made a range of technical amendments to a range of other legislation within the health portfolio.

The Health Legislation (Powers of Investigation) Amendment Act 1994, in the main, improved the capacity of the Health Insurance Commission to investigate fraud under Medicare. This was done by increasing the

length of time that evidence obtained under a search warrant could be retained and allowed the commission to have direct access to the DPP, rather than having to go through the Federal Police. That legislation also made some adjustments to the National Health Act 1953 which regulates the administration of nursing homes.

The sunset clause which the bill before us will delete was originally recommended by the Senate legal and constitutional committee as a safeguard to ensure that the Health Insurance Commission did not abuse its extended investigatory powers. It seems that there is no evidence of this being the case; in fact, it appears the contrary is true.

The Australian National Audit Office has prepared a report on the HIC's use of the new investigatory powers, and it has concluded that the commission has acted in accordance with the enabling act and the Privacy Act 1988. I make a quick reference to the report *Impact of sunset clause on investigatory powers*, which was tabled last week and which I have had an opportunity to have a good look at. It concludes:

... the enhanced powers to investigate fraud and excessive servicing have improved the Commission's ability to conduct investigations and prepare prosecutions. The ANAO considers that without powers of this kind the ability of the Commission to conduct investigations and prepare prosecutions would be impaired.

This view has been supported by stakeholders consulted during the audit. The report continues:

... the Commission is using the enhanced powers in accordance with the legislation and in a professional manner.

Certainly, with this ringing endorsement of the previous bill, I am very happy to concur with the government in removing the existing sunset clauses.

Senator LEES (South Australia—Deputy Leader of the Australian Democrats) (5.00 p.m.)—The Democrats strongly supported the Health Services (Powers of Investigation) Amendment Bill when it came before this place in 1993. That legislation followed on from two reports to the Labor government calling for a beefing-up of the powers of the

Health Insurance Commission to better enable the commission to tackle medical fraud and overservicing.

At the time the legislation passed through the Senate, the Democrats said that they really did not see any point in this sunset clause, which was moved by the then opposition. I think it was Senator Newman who moved it. The legislation went through and we are here today removing that clause. We are certainly supporting its removal. We said at the time that we felt the sunset clause was being put in because of some concerns voiced by some who were very active in the medical profession. I note that I have since heard nothing from them about this legislation. It means either that the power is working extremely well or perhaps that the power has been used rather sparingly and that it needs to work a little bit more. I will move on to that later.

If we look at some of the results, I do not think anyone can argue that the Health Insurance Commission has been overusing the authority that was given to it. The National Audit Office, which carried out the 1992-93 audit of the commission's investigations of abuses of medical and health services, has now carried out a performance audit of progress since the 1993 legislation was enacted. It has found that the commission is using its enhanced powers in accordance with the legislation and the Privacy Act. The audit office also says that the powers have allowed the commission to investigate effectively offences against health legislation and to prepare briefs for prosecutions. The audit office notes that the extent of fraud and overservicing is still far from clear.

The commission is developing the methodology and programs needed to provide an accurate and current estimate of the extent of fraud and overservicing. The audit office intends to examine the effectiveness of the commission's approach later in the year. I look forward to that second phase of the audit, because there does seem to be, as I have said, some room for improvement in the actual investigation of fraud and overservicing.

I note that the audit office did not consult with key stakeholders in carrying out its

performance audit and that, far from complaining about the use of the new powers, some organisations actually criticised the continuing lack of results. The audit office reported:

. . . several organisations stated they had reported apparent offences to the Health Insurance Commission and had yet to see any action.

It will be interesting to see the results of the second phase of the audit but, for the time being, the audit office is fairly clear in its assertion that the enhanced powers are greatly assisting the commission to achieve results.

Since the legislation came into existence, the commission has exercised its new powers on a number of occasions. It has authorised 41 investigations, issued 171 notices and issued 23 warrants. Ten cases involving these powers have been to court, and four have led to successful prosecutions, with the remainder still being processed. While I think some of the criticism made at the time of the original legislation was valid, and there certainly were very genuine concerns, I believe things are changing for the better. I hope the government will continue the previous Labor government's efforts to crack down on this type of fraud.

I just want to outline a couple of brief issues, related to this legislation, that arose out of a *Four Corners* program a few weeks ago on the overservicing and over-medication by doctors of people who are residents in nursing homes. That *Four Corners* program—as anyone who watched it would have seen—really did paint a rather horrifying picture of over-medication of residents in nursing homes. Unfortunately, we do not seem to have had much of a response as yet from the government. Indeed, what response I have seen has been far from satisfactory.

It is fascinating that this government seems to be moving very quickly on supposed or suspected fraud in social security on the basis of, I would argue, very little evidence at all, if any. But here, when we have what I think is fairly compelling evidence, we have not really had much response other than a few vague comments. Recent research, unfortunately, backs up what that *Four Corners* program has told us.

The government would have just received the report of the quality of medication care project, which reviewed more than 3,300 nursing home residents in Queensland and New South Wales. The study found inappropriate levels of drug use and inadequate monitoring and supervision by general practitioners, and estimated that an overall reduction in drug use in nursing homes could save the taxpayers several millions of dollars a year. In the context of debate on this legislation, the obvious question is: where is the Health Insurance Commission in all of this? Perhaps that is a question the Parliamentary Secretary to the Minister for Health and Family Services (Senator Woods) can take on notice for later discussion when we get to the committee stage.

Just to go back to the report, it says that general practitioners often see individual residents for a mere six to 10 minutes a month and yet the average nursing home resident is being prescribed six different types of drugs at any one time. I have to ask the minister: isn't there some cause for concern? Senator Woods, can you perhaps give us some idea, as we move into the committee stage, as to whether or not the commission is in fact involved in this issue or, indeed, if it plans to start having a look at this issue.

In closing, I simply say that I do believe the legislation we passed in 1993 has enabled the Health Insurance Commission to smarten up its act. We continue to believe in the merits of this legislation and will be supporting the removal of the sunset clause.

Senator CHAMARETTE (Western Australia) (5.07 p.m.)—The Senate is presently considering the Health Legislation (Powers of Investigation) Amendment Bill 1996 which seeks to remove the sunset clauses which were put into two acts by the Senate when the investigation powers were given to the Health Insurance Commission. The investigation powers vested in the HIC are considerable and permit the commission to obtain information and conduct searches in order to monitor compliance with Medicare guidelines. The powers also enable the commission to execute search warrants and seize materials for the purposes of evidence. They are similar to the

investigation powers of the Australian Federal Police and authorise the Health Insurance Commission officers, instead of the Australian Federal Police, to investigate medifraud.

Naturally, when large amounts of money are involved in government programs, it is crucial that checks and balances be put in place to ensure that fraud, mismanagement and other forms of corruption are strictly controlled. However, that statement does not lead to the inevitable conclusion that these powers and this means of enforcement are the only possibilities available to us. At the time these powers were put into place, the Senate debated at some length the implications for civil liberties and individual rights, and the possibility that the investigation powers could be abused.

Senator Newman was a keen advocate for caution in relation to giving unfettered powers of a police nature to the Health Insurance Commission. Therefore, the Senate amended the then bills to incorporate the sunset clauses so that a thorough review of these powers could take place before they became a permanent feature of the legislation.

I believe, therefore, that the history of the sunset clauses and the bill that we are considering at this time serve as a cautionary tale in relation to sunset clauses and the degree of scrutiny that is given when legislation has a sunset clause placed on it. In fact, it would seem very strange to an outside observer that within the first week of this parliamentary session we were asked to pass this bill. I may be wrong, but my memory tells me that it was even contemplated that this bill be dealt with within the non-controversial legislation part of the program.

We were asked to pass this bill, remove the sunset clauses and assume that all was well. It seems strange because the report of the Australian National Audit Office on compliance aspects of the commission's work was not available to the Senate until the Friday before last, well after we were about to cough it through the Senate. That audit was a compliance audit and it indicated that the powers had been used strictly in accordance with the act. I would hope so!

That alone should not be sufficient for us to simply sign off on the sunset clauses and let the commission have the powers forever. It could be argued that the very existence of the sunset clauses ensured compliance by the Health Insurance Commission with the exact letter of the law. The audit which was tabled the Friday before last looked at only one aspect: compliance. Unfortunately, the audit office did not consult a wider range of stakeholders in this matter. They asked those people who, in my view, would have some kind of stake in having those powers—for example, the Australian Medical Association. It is obviously in the interests of professionals within this area that any so-called bad apples are weeded out and that they have powers to enforce the correct and proper behaviour within the profession.

The notable omissions from the list of those consulted included the Doctors Reform Society and the Australian Comprehensive Medicine Association, to name but two. More surprisingly still, the audit team did not consult anyone who had been investigated. Surely, if the audit was to evaluate the use of the investigation powers, to see whether those powers had been abused, it would have made sense to consult those who had been the subject of the powers. Likewise, the patients of those who had been investigated might well have a valuable contribution to make on aspects of privacy and confidentiality. When the sunset clauses were introduced in the previous sitting of the Senate both aspects were raised as being of concern.

My office has received complaints from doctors who practise a combination of complementary therapies alongside orthodox medicine. We have also heard that, subsequent to the completion of this audit report, complaints have been received from somebody who had been under investigation.

The other issue which the audit did not cover—and I have already said I have some concerns about the degree to which compliance was covered—but was not intended to cover was the efficiency and effectiveness of the investigation powers. At the time the investigation powers were introduced we were given estimates of the amounts of money

which would be saved by putting those powers in place. I believe that the Senate must properly evaluate the powers and properly consider whether or not the sunset clauses should come into effect. In order to do so, we should wait for the audit office to do the next stage audit, namely the efficiency and effectiveness audit.

I received a briefing the other day from the audit office and the Health Insurance Commission. They indicated that the next stage of audit may not be completed for some time. I indicated to them that a 12-month extension of the sunset clauses was something I was considering as an amendment. They assured me that within that 12-month period, they should be able to carry out the next stage of the audit and present the results. I have circulated amendments to the bill which would extend the sunset clauses until 1 July 1997. I will be moving those amendments at the appropriate time.

I want to continue my moralising on the cautionary tale of sunset clauses. The bill we are considering at the moment was not introduced in the previous session of parliament. It was exempted from the cut-off motion, against the vote of the Greens. That was done in order to rapidly implement, without any further consideration, the removal of the sunset clauses and the continuation of the considerable investigatory powers that have been bestowed on the Health Insurance Commission.

There have been no plans, as far as I know, to monitor in an ongoing way or review the way in which these powers are being used. I have very serious objections to that. I believe that, if sunset clauses are imposed by this chamber, we have a responsibility to the community to give their impact more than just a cursory examination before removing them.

It is with considerable alarm that I note that we are probably proceeding to the stage where the majority vote in this chamber will remove the sunset clauses and thereby remove the capacity to act, in any way, on the next stage of audit that the Australian National Audit Office is set up to perform—namely, the efficiency and effectiveness stage. This

also causes some concern, I believe, for those who may be the subject of investigation and may be further concerned about the compliance powers that have not actually been drawn to the attention of anybody in particular at this point in the history of these powers.

I conclude my remarks with this plea: if we are intending to put sunset clauses in place, this chamber should have a far more thorough investigation of and discussion into the removal of them. Otherwise, I do not think we should be voting on sunset clauses at all. This allows people who have serious concerns about this to have their concerns lulled and allows governments that want to push headlong into increasing these powers at some later stage to do so with the minimum of scrutiny.

Senator WOODS (New South Wales—Parliamentary Secretary to the Minister for Health and Family Services) (5.17 p.m.)—This bill sets the scene for a cooperative approach to legislation in this parliament. The legislation before us today was initiated in the last parliament and was supported by the coalition. Today, we are honouring that support. I am pleased to see that the opposition is planning to support these amendments concerning investigatory powers held by the Health Insurance Commission.

These powers permit the HIC to obtain information and conduct searches in order to monitor the compliance of Medicare guidelines. They also enable the commission to execute search warrants and seize materials for the purpose of evidence. This legislation will enable the continuation of these powers following the encouraging report from the Australian National Audit Office which was tabled recently, entitled *Impact of sunset clause on investigatory powers: Follow-up audit*. That report confirmed, as has been stated already, that the safety mechanisms employed by the HIC have ensured that the powers have been used correctly.

By repealing section 2 of the Health Legislation (Powers of Investigation) Amendment Act 1994 and item 68 of schedule 1 of the Human Services and Health Legislation Amendment Act (No. 3) 1995, this legislation will enable the HIC to continue to conduct

investigations and prepare prosecutions against providers and practitioners who abuse the system.

Section 2 of the Health Legislation (Powers of Investigation) Amendment Act 1994 specifically provides that the entire act should cease to have force on and from 1 July 1996. The sunset clause resulted from concerns expressed before the Senate Standing Committee on Legal and Constitutional Affairs that the broad-ranging powers provided for in the act offered scope for corruption and abuse of delegated authority by officers of the HIC. It allowed for a reasonable period—roughly two years—for parliament to make a judgment about whether the powers had been abused in any way by the HIC.

The fact is that no evidence of improper activity by the HIC has arisen during this period. Moreover, the conferred powers have clearly improved the commission's ability to effectively detect and deal with Medicare non-compliance and fraud. It is, therefore, important that those powers now be preserved in order to give full effect to the role and the function of the HIC as a regulatory body over Medicare practices and fraud.

Similarly, item 68 of schedule 1 of the Human Services and Health Legislation Amendment Act (No. 3) 1995 provides that item 66 and the amendments made by item 66 of schedule 1 of that act cease to be enforced from 1 July. Item 66 ensures procedural fairness in relation to the seizure of evidential materials for the purposes of investigating Medicare fraud and over-servicing. It does so by imposing an obligation on authorised officers or officers assisting the commission to return material seized for the purposes of evidence in the course of conducting searches and investigations when the reason warranting the seizure no longer exists or a decision has been made not to use the material in evidence. This item, therefore, aims to protect the interests and privacy of a medical practitioner—and, therefore, his or her patients—who may come under investigation for fraud.

This bill establishes that certain measures should be kept in place to allow the continued control and enforcement of compliance with Medicare benefit guidelines. This bill aims to

retain the delegation of powers which have proven, on a trial-like basis, to be efficient, substantive and pertinent to the role of the HIC.

In the absence of any evidence that the powers delegated by the Health Legislation (Powers of Investigation) Amendment Act 1994 have been or are prone to being abused and distorted, the sunset clause incorporated into that act should be repealed. In order to preserve a follow-on provision in the interests of fairness and individuals' rights, the sunset clause incorporated into the Human Services and Health Legislation Amendment Act (No. 3) 1995 which relates to item 66 should also be repealed. Without these amendments, the sunset clause will take effect on 1 July 1996 and seriously undermine the ability of the HIC to prevent, and prosecute against, Medicare fraud.

A number of issues have been raised which I was going to address in the third reading, but I will address one or two of them at this point. Senator Lees raised some questions relating to nursing homes which were not specifically relevant. I think she used the terms 'over-servicing' as well as 'over-medication'.

Let me address the over-servicing issue. I have to say to you, Senator Lees, that the problem is not with the over-servicing offered by medical practitioners to nursing homes; the problem is, as I think you said, quite the opposite. The problem is under-servicing. I think you quoted the figure of six to 10 minutes per month. If there is a problem, it is not with over-servicing for pecuniary gain; if anything, it is the inadequacy of that service.

It is important to point out at this stage that, although the nursing home industry has received a lot of criticism over the last few weeks for not achieving various outcomes—in particular, in relation to a series of articles in the *Herald*—over-medication is not the responsibility of the nursing home staff, nurses, proprietors or operators; it is the responsibility of the medical practitioners involved in the care of those patients. It is those doctors who control the prescribing and, therefore, the medication of the patients.

Senator Lees asked how we are going to address this. There are a number of ways in which it can be addressed. Obviously, it does give rise to some concern. One way is that there will be a review of high prescribers in nursing homes. We are also looking at the role of review by pharmacists in a consultant role to see exactly what is possible to improve the process.

In response to the question about whether we are concerned, we are very concerned. Unfortunately—I use that word in the sense that it is slightly difficult for us to control as a government or as an authority—it is very much a responsibility of the individual medical practitioners in that particular area. I share your concerns. Fixing it is not easy, but we are addressing a number of ways to do that.

I think it is fair to say that, over the last 10 or 15 years, the standard of care in its broader sense in nursing homes has improved fairly significantly. I think it is also fair to say that the standard of medical care in many nursing homes—of course I do not want to include every nursing home in that category—has not improved at a comparable rate. I think that really is a priority which needs addressing.

In terms of the issues which Senator Lees and Senator Chamarette raised and, firstly, the question of stakeholders which were consulted or not consulted, there were a number of organisations consulted—I think, eight or nine. Senator Chamarette raised a couple which were not consulted. One was the Doctors Reform Society. I think it is true that the National Audit Office did not consult either or any of the 10 members nationally of the Doctors Reform Society—I believe it is almost getting beyond double figures now.

I do not think the Doctors Reform Society can be seen to be a genuine group in this regard, other than as a lobby group for the Labor Party. But I have to say in all innocence and without scoring political points that the Australian Comprehensive Medical Association has never crossed my conscience. I do apologise for my ignorance in this matter. I think I am aware of most of the groups in the area. It probably does mean that it is not exactly, shall we say, mainstream. Without wishing in any way to be derogatory of the

group, because I do not know anything about it, it is not the group which springs to mind when you are thinking of who you should consult to get a broad view about these sorts of issues.

I understand the reservation which Senator Lees expressed about the powers not being used as much as they might have been. I think that is a very valid comment. I think it is probably better at this stage of new legislation to be that way, to be too cautious, rather than to go the other way. I think it is not surprising that, if anything, the HIC has been cautious. I, for one—and I know from what Senator Chamarette said she would also support this—am happy that it is not overzealous in regard to the broad use of these powers.

I have a range of concerns about what Senator Chamarette was suggesting we might do. We are now looking at a piece of legislation, the powers of which will disappear in a month's time. I think at one stage you suggested that we not do anything. If that were the case, then there would be no powers of investigation. With the best will in the world—and I don't want to in any way be critical—

Senator Chamarette—A sunset clause allows them to continue.

Senator WOODS—No, at one stage during your speech you will find that you were suggesting that we might just let the whole thing go and not do anything, in which case the whole thing will go into abeyance and there would not be any powers, which I have to say is supporting the crooks and the shonks in the profession. I know that is something you would never want to do, but that would be the end result of not taking this action.

You asked why it was so important to get this through as a priority and to get it exempt from the normal introductory mechanisms, there is the answer for you. It is because if we had not done that, then there would not be any powers in place at the end of June and, therefore, the crooks and shonks would be able to get away with that much extra, and that is something which I know none of us would want. I am not in any way suggesting that you are supporting the crooks and the

shonks—I know you far better than that, Senator Chamarette. So that was why it was important.

You also said that the evaluation of the sunset clause was cursory. With all due respect, that is just absolute rubbish. We have all got copies of the Australian National Audit Office evaluation. It has looked at the issue very carefully. There may be some minor criticism from some parties, but essentially the endorsement is ringing. I quote the summary of the ANAO's report:

- . the enhanced powers to investigate fraud and excessive servicing have improved the Commission's ability to conduct investigations and prepare prosecutions. The ANAO considers that without powers of this kind the ability of the Commission to conduct investigations and prepare prosecutions would be impaired. This view has been supported by stakeholders consulted during the audit; and
- . the Commission is using the enhanced powers in accordance with the legislation and in a professional manner.

If we do not continue to maintain these powers for the HIC, we will make it easier for the crooks and shonks to rip off the taxpayers of Australia. There is no question about that.

I do not know how much of an evaluation of a sunset clause you can have. You had two years. There is no suggestion that it has been inappropriately used. Yet what you also said, I think, was that the audit office should have consulted with those who are being investigated. I have to say to you that almost all of those who were investigated—and I would not want to say all of them—were crooks, shonks or fiddling the system. Would they want to be investigated? Of course they wouldn't. Should we ask the crooks in the world whether the police should have a search warrant? I bet your bottom dollar they will say no. It is really a fairly crazy suggestion to say, 'Let us ask the people who are really going to suffer inappropriately.' It is most inappropriate to ask those sorts of groups.

You mentioned the AMA. I think your assessment of the AMA was wrong. The AMA, as I recall, had major concerns about this legislation not because, as you said, it wanted to get rid of the bad apples—I am sure it does want to do that—it was concerned

that it was going to be abused. But as Senator Lees mentioned, the voices of the AMA and other associations have been remarkably quiet, I think, indicating that they are happy with the way in which the legislation is being implemented.

I think your case for either not doing anything and thinking about it—that is, not giving the bill the priority, which you suggested—in which case the whole thing would disappear, or for putting another year sunset clause on it is very minimal indeed. I think this is a bill which clearly has worked well. If you like, I can give you all the figures of how many people have been caught and prosecuted. There is no doubt at all that it is a very useful tool which has not been abused, which has saved the taxpayers money and which has been used appropriately to attack the crooks, the shonks and the fiddlers in the system. I commend the bill to the Senate.

Question resolved in the affirmative.

Bill read a second time.

In Committee

The bill.

Senator CHAMARETTE (Western Australia) (5.30 p.m.)—by leave—I move:

1 Schedule 1, item 1, page 3 (lines 5 to 7), omit the item, substitute:

1 Section 2

Omit "1 July 1996", substitute "1 July 1997"

2 Schedule 1, item 2, page 3 (lines 10 to 11), omit the item, substitute:

2 Item 68 of Schedule 1

Omit "1 July 1996", substitute "1 July 1997"

The first amendment extends the sunset clause on the investigation powers to 1 July 1997. The aim of the amendment is, as I mentioned in the second reading debate, to allow time for the Australian National Audit Office to conduct an effectiveness and efficiency audit of the investigation powers. I believe that is an audit that they are about to commence.

The Senate should not simply put the powers in place permanently unless we can fully and properly evaluate whether the powers are worth while in terms of the claims made for them. The powers are there to allow the Health Insurance Commission to control

fraud and overservicing. If, however, the HIC is spending more on investigation than it is saving on fraud, or is only overcoming a fraction of its fraud estimate, then the Senate should call on the government to find another way to fulfil this function.

We cannot evaluate the powers without an assessment of their effectiveness. We are all familiar with the examples of claims being made for fraud control measures which are never matched by performance. I believe it was the Victorian medical practice defence committee—in their submission to the Senate Standing Committee on Legal and Constitutional Affairs—who raised a concern that the incorrect estimations by the HIC regarding fraud and overservicing could give them unjustified rights for power and also that the HIC may have provided misleading amounts of money and estimations regarding the amount of fraud and overservicing in the profession. The privacy issue was also mentioned by that committee.

The HIC powers were accompanied by estimates that some \$69 million could be saved over the first two years of operation. We have had two years of operation and we have not yet had an audit to assess whether that kind of statement was inflated simply to obtain the powers, or whether it has been vindicated. Without the next stage of the audit process, we cannot hope to know how much has been saved or how much has been spent saving it. Therefore, we need to extend the review period which the sunset clause provides.

The second amendment flows from the other as it pertains to certain matters relating to procedural fairness of the investigation powers. It is not strictly necessary for the second amendment to be passed, as putting item 66 in place permanently by removing the sunset clause would not have a material effect. However, this amendment would allow item 66 to continue in effect until such time as the investigation powers are properly evaluated. Should it then be decided to remove them, by allowing the sunset clause to take effect, item 66 would be unnecessary and could also be removed by means of a sunset clause. For those who are wondering about

item 66, it is simply the clause relating to the return of material seized for the purpose of evidence in the course of conducting searches and investigations when the reason warranting the seizure no longer exists or a decision is made not to use the material in evidence.

The parliamentary secretary, Senator Woods, was quite scathing about my concerns. I believe his scathing comments were totally out of place, because it is the role of this chamber to ensure that it evaluates the provisions before removing the sunset clause. To rely on a document that is tabled after the bill is attempted to be pushed through and which is incomplete is not adequate conduct for this place. Senator Woods did not say this but I am sure that that if there had not been an election and we had had six months sitting of this parliament, we would have been able to have had the introduction of a bill and later on an endeavour to remove the sunset clauses following some kind of discussion within this place.

We are dealing with this bill for the first time and we are removing the sunset clause which we put in place saying we, the Senate, need it. Rather than the audit office, the Senate needed the opportunity to see whether the community had concerns. To simply start dividing the community into elite groups and 'crooks and shonks'—and to say that we listen only to elite groups and we do not listen to crooks and shonks—is utterly inadequate as a basis for asking us to rush this piece of legislation through this chamber.

For a start, if we want to have any credibility in the eyes of the community, the people who enforce laws have to be above reproach. We should not inflict, even on people who are subsequently charged with and convicted of offences, a lesser standard. We should be beyond reproach in relation to that. That is why it would have been appropriate to look not only at health commission compliance with the act but also at those people who were investigated and their clients in case there were some complaints regarding breaches of privacy of people who visit doctors' surgeries and breaches of protocol in the perception of the people who are being

charged, to see whether there were any aspects of their concerns that had merit.

To say that we do not have to even look at them to see whether they do have merit is not something which I believe we should support in this place. When I was working in the prison system, many times people who were convicted of offences would come to me and say, 'There is one law for criminals and there is another for the police. Police and people with higher powers are allowed to get away with things that we are not allowed to get away with.' I do not believe we should be supporting that. That is why we need to allow the voice of people who are being subjected to these powers to be heard when we are evaluating these powers and removing the sunset clause.

As Senator Woods implied, I would be happy to vote against these powers, let the matter lapse and go back to a position where we did not give the Health Insurance Commission the equivalent powers of the Australian Federal Police. However, that is not the purpose of this amendment. The purpose of this amendment is to allow a reasonable period to elapse—another 12 months—to make sure that the powers we are cementing into place at this time not only are being complied with but also are not having unintended consequences.

I am not casting any aspersions on the motivations of the Health Insurance Commission or on the officers carrying out the powers. I am saying that we as the Senate should be evaluating the way that is impacting on the community and on the culture in the community before we so readily agree to the lifting of the sunset clause. So that is why I have proposed these amendments for there to be another 12 months. We can then, with full and clear consciences, vote to have the sunset clause removed, because we will have subjected it to the scrutiny it deserves.

Senator LEES (South Australia—Deputy Leader of the Australian Democrats) (5.39 p.m.)—I want to begin where Senator Chamarette left off, and that is the issue of urgency and whether or not we need to do this now or later. The reason this legislation was introduced in 1993 was that the previous

system did not work. The HIC's investigative systems were fine; but, in passing things on to the Federal Police, something happened—everything seemed to go into a big basket somewhere where there was very little result in stopping the fraud and overservicing that was there.

At the time the legislation was going through I had a lot of representation from various groups in the health community that were concerned. The alternative practitioners were one group. Female general practitioners were another group, because they had different ordering practices in some areas, particularly in pathology, from men. Despite people coming to see me regularly during these few months—indeed, this afternoon in my office I had two different groups that you could best describe as health groups talking about different health issues—since this legislation was put in place no-one has come back to my office to complain. For us, that in itself says something—the fact that many of those groups that were genuinely concerned about many of the issues that Senator Chamarette has raised, including privacy, have not been back to see us.

If you look at the very small numbers of successful prosecutions, you will see that what is working is the general counselling and support for doctors whose practices might get a little red light flashing on some computer somewhere. That system seems to have been working.

That brings me to another aspect that Senator Chamarette mentioned: how much money are we saving? We are not going to see all the savings in terms of prosecutions and amounts recouped. If you sit with some people from pathology in particular and look at some of their overhead charts, you will see that some of the savings are actually made by doctors adopting different practices. It is very hard to quantify exactly how many ordering patterns have changed and how much they have changed; but, from the information provided to me, they certainly have.

Over the years a number of things the government has done—and I am just thinking of pathology—have had an impact on particular habits and doctors have been re-educated

to look at whether they really do need to order this block of tests or whether it is better to look at this particular test and have another particular approach to the use of some of the services. I say very clearly that the Democrats supported the government when they wanted this legislation in and to move that the cut-off not apply.

We cannot support Senator Chamarette's amendments now, because we see the system working reasonably well. Indeed, while we acknowledge the need for the audit process, we do not see any reason to stop what is happening for that process to occur. The audit process will now go on, and ongoing monitoring will continue as this system moves into the years hence. If something dreadful does happen, if the Health Insurance Commission runs amuck, I am sure we can bring the legislation back into this place and deal with it; but there does not seem to be much sign of that happening at the moment.

I conclude by mentioning one thing that the minister said about the Doctors Reform Society which was most unfair. I have met with the Doctors Reform Society in a number of states—in three states in the last 12 months. I have addressed meetings and, to my memory, the number of society members at each of those meetings has been at least in double figure. Indeed at one meeting in Sydney the number of members present was several times in double figures. So the minister should go back and check on the number of people who work with and are members of that very valuable organisation.

Senator NEAL (New South Wales) (5.42 p.m.)—The opposition will not be supporting these amendments to extend the sunset clauses proposed by the Greens, essentially because there is no evidence to suggest that there is any necessity to continue these clauses—in fact, the evidence indicates quite the contrary. In relation to the continued monitoring of these investigatory powers, in the audit office report there is a recommendation—which Senator Chamarette may have observed—that the Health Insurance Commission include a table in its annual report under the heading 'Statutory statements' which sets out the investigations being carried out under

these powers. That may to some extent alleviate Senator Chamarette's concerns. I do not know whether she has observed that recommendation.

Senator WOODS (New South Wales—Parliamentary Secretary to the Minister for Health and Family Services) (5.43 p.m.)—Senator Chamarette, I guess it is fair to say that, if we follow your initial statements, then we should put a sunset clause on almost every piece of legislation that comes through this place—that we should check every piece of legislation and bring it back here. Sadly for your hypothesis there are in fact a number of other ways of monitoring legislation.

We really had no problem with the fact that the sunset clause was needed to be put in. I think what you were suggesting, but perhaps did not say, was that this bill did give some slightly exceptional and stronger powers, in terms of the potential invasion of privacy, than most of the other bills we see here. So, on that basis, a sunset clause is probably quite reasonable and we were happy to go through this almost two-year period. You said, 'There must be another.' That is fine; but, as Senator Lees has pointed out, there was not another way before and the ways that we had in place before did not work.

Let me give the Senate a case which is de-identified. A practice manager at a medical centre reported that she had seen a \$6,000 cheque come into the medical centre from the director of an approved pathology authority—slightly suspicious circumstances. Later it was banked into the bank account of the centre. Interviews with other employees of the medical centre disclosed they had seen a number of cheques of the same sort of value coming into the medical centre from the same source. Fourteen briefs relating to possible offences against bribery legislation have been referred to the DPP in this matter and in the previous situation would not have gone beyond preliminary inquiry because the practice manager and the employees were not prepared to cooperate on a voluntary basis. It was only this legislation which got that message through.

There was an investigation into suspected public fraud which was facilitated by means

of false bank accounts. The investigation came to an end because the bank refused to make banking records available, but the necessary information was obtained by using these powers. One of the offenders pleaded guilty and has been gaoled for 2½ years. The other offender, I gather, comes up for trial in a couple of months time. What other way would there have been? This legislation has worked in those sorts of cases. I can give the Senate example after example, but the fact is I do not know of a better way. We were concerned about the possible misuse of the powers, but the facts are that there has been no suggestion of misuse and that the laws have worked very well indeed.

Senator Chamarette talked about the amount of money that might be saved. As Senator Lees pointed out, it is not the direct money we save, which may well be thousands of dollars or perhaps even hundreds of thousands of dollars, but the message we give to the other crooks and shonks, to use that expression again, in an area where strong powers can be used to find out what they are doing and prosecute them. So the savings are not in direct recompense for what we have extracted from the ones we find out about, but they come from the message we give to the people who would otherwise fiddle the system. That is obviously a very difficult figure to determine and one which, as Senator Lees quite rightly points out, will increase as time goes by so long as we continue to give the same sorts of messages.

Senator Chamarette talked about Senate evaluation rather than a National Audit Office evaluation. I am not as conceited as to think that I or any individual member of this Senate is better, or the Senate as a whole may be better, at investigating this sort of issue than the National Audit Office. I believe they have done a very good job in their investigation. I think they have been fairly thorough and fairly balanced.

There are also other ways in which we can continue to evaluate whether this legislation is working. I do not have to tell Senator Chamarette about annual reports and estimates committees—she is fairly familiar with those processes and has used them to great benefit

over the last few years—and indeed ongoing audits will occur. So there is no question that a good evaluation of the process has been done and that a continuing evaluation will be done. If Senator Chamarette is unhappy about parts of it, those issues can be raised when the next estimates come around—perhaps not by her, as she probably will not be here, but by someone else—and subjected to scrutiny. Thank goodness we have those systems.

In regard to listening to crooks and shonks, I do not often listen to them. I am not saying they have a voice that should not be heard, but I must say that I do not go out of my way to take advice as to how to help them to become even more crooked and shonky. I should point out that the AMA and the Medical Protection Society do have those people in their ranks. Of course, it is only a very small minority. In regard to the people who have been investigated under these powers, I am aware of no complaints from the AMA or the MPS, on behalf of the people they represent, about misuse of the power. Senator Chamarette may argue we have not spoken directly to those people, but their representative bodies—or at least two of them—have been aware of the situation and have apparently had no particular problems.

That is not in any way to suggest that we should inflict a lesser standard, because not only do those people have those mechanisms of the AMA and similar bodies but they have a number of other mechanisms available to them if those powers are misused. Directly coming to us in the Senate is not the only way of raising issues of concern about, for example, breaches of privacy, should they occur. Their voices can be heard. There is no question about that.

Just to touch upon that last issue about the Doctors Reform Society: as I remember from the last time I looked at the figures, there are something like 18,000 GPs, let alone specialists, in Australia. I do not quite know the exact membership of the Doctors Reform Society. They have always declined to tell anybody. That they have refused to deny that they number not more than double figures in New South Wales I presume means that, if they number more than double figures, they

number much more than double figures. If we are looking at total GP, let alone specialist, numbers of 18,000, we are not exactly looking at mainstream representation of the views of the whole profession.

I am not for one moment suggesting that the AMA is representative of everybody in the profession. As somebody who is happy to say he has never belonged to the AMA—and certainly at this stage of my career I do not plan to join the AMA—I am not suggesting the AMA is the be-all and end-all. But it is a much more representative body and therefore an appropriate one to consult on issues such as this.

In conclusion, I really do not think Senator Chamarette made out a case for putting another year's sunset clause into this legislation. We have seen that it works; we have seen that it is fair. There are other mechanisms for evaluating issues if they come up. We should use those, and we should let the bill stand as initially presented.

Amendments negatived.

Bill agreed to.

Bill reported without amendment; report adopted.

Third Reading

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

CRIMES AMENDMENT (CONTROLLED OPERATIONS) BILL 1996

Second Reading

Debate resumed from 8 May, on motion by **Senator Kemp**:

That this bill be now read a second time.

Senator BOLKUS (South Australia) (5.52 p.m.)—I will not speak long on the Crimes Amendment (Controlled Operations) Bill 1996. I want to make two points in respect of it. One will be of interest to and pleasantly approved of by the government. The other raises a problem we have with deliberations over this legislation. The bill was introduced by the previous Labor government quite some time ago. It was one of those bills that did not quite make it to the deliberations in this place

before the election. The bill, however, was sent off to the legislation committee of the Senate Legal and Constitutional Affairs Committee, was inquired into and was assessed by that Senate committee.

The Senate committee, in a sense, worked through the legislation fairly strenuously and came up with some amendments, some concerns, about the operation of the Crimes Amendment (Controlled Operations) Bill 1996. Those concerns essentially went to the issue of whether there were enough mechanisms in place to ensure that any potential avenue for abuse would be closely scrutinised. We are talking here of a bill that allows for the law enforcement agencies to run so-called controlled operations used for investigating unlawful activity. In a sense we are talking about situations where the Federal Police—and I think the NCA—may have some involvement in the operation.

The government introduced the legislation in response to the High Court decision in *Ridgeway*. As a consequence, the bill has come to be known as 'the Ridgeway bill'. We have no problem with the initial legislation that was introduced by the then justice minister, Mr Duncan Kerr, before the election. Looking at the government's raft of recommendations, we can say that we support most of them. We are talking about three sets of amendments that the government has put up. One is an amendment to ensure that controlled operations are only used for the purpose of investigating major unlawful activity, the emphasis being on the word 'major'. We see that as a welcome initiative but we do not see how the intention, the desire, of the government has been expressed in the legislation. So obviously in the committee stage we will make some inquiries about how the legislation has been limited to major unlawful activities.

The second raft of government amendments emanates from the Senate Legal and Constitutional Legislation Committee, and they are essentially accountability mechanisms as recommended by that committee. We do not have any problem with those amendments. The 1996 bill also provides protection for officers engaged in controlled operations from

the possibility of committing offences involving the importation, exportation or possession of narcotics contrary to the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act of 1990, and we do not have any problems with respect to recommendation 3 either.

We are concerned that one provision which provided for instant communication under section 15Q(3) of the 1995 bill has been deleted. That subsection provided that the applicant must notify the Comptroller-General—and we would argue that that should now be the Chief Executive Officer—of Customs either orally in person or by telephone or by any other electronic means of the operation. We would argue that this provision should not be deleted and we would be voting against the deletion of this provision in the committee stage.

So far, so good. I do not think the government would have any particular problems with the approach we are taking so far. There will, however, be amendments moved by the Australian Democrats which go to a further mechanism for scrutiny of the process that this legislation provides for, the controlled operations. Those amendments will provide that the process should be supervised by the courts and not by the police. In a sense, authority needs to be given by a judicial officer. This person, of course, will be independent of the AFP and the NCA and will have, we anticipate, discretion to knock back an application if the judicial officer felt there was just cause for doing so.

My understanding is that the amendments to be moved by the Australian Democrats will call very closely on the precedent established under the Telecommunications (Interception) Act, which once again was legislation introduced and passed during the life of the previous government. There has been some discussion about whether that legislation is appropriate, whether it could be used here or not or whether it may, in fact, jeopardise the processes under this section. We are concerned that there is an external mechanism in place to ensure that not only do the law enforcement agencies know that if they mess up they will be accountable but also such a procedure, we feel, is likely to encourage the

AFP and the NCA to apply their minds more deeply to consider other means of gathering evidence.

We note that this is a course of action which was recommended to the parliament, to the government, on the 1995 bill—in fact on 22 August 1995—by the then, I think, shadow Attorney-General, though he may have been representing the shadow Attorney-General in the House of Representatives. Daryl Williams called on the government to amend the bill so as to require applications to control operations to be made to a senior judicial officer. He also argued, as I would be arguing now, that the application process should be similar to that which applies under the interception act. So that would be our direction at this time. I do not know if Senator Spindler has his amendments ready but they would be amendments that we would need to look at to assess. But, as I say, in principle we agree with them.

The only complication has arisen in the last hour or so. I am now told that advice from the Attorney-General's Department calls into question the legal capacity to provide for this external mechanism. It is very late advice and, obviously, it has an impact on the Senate's consideration on this particular matter. I am not inclined to make an instant judgment based on that last minute advice. At the appropriate time, I seek that the government adjourns consideration of Senator Spindler's amendments to consider further that legal advice provided to the Attorney-General.

We think it is an important issue and we are not prepared to let it slide on the basis of an amorphous bit of advice from the Attorney-General's Department as to the capacity of judicial officers to carry out this function. We note that this function is one that has been carried out under the telephone interception act. We also note that there have been some arguments put forward that this particular situation is not identical to the situation that prevails under the interception act.

However, in the High Court in Grollo, there was some obiter about the capacity of judges when, on a six to one basis, the High Court upheld the power of judicial officers to issue intercept warrants. We say that legal prece-

dence provides sufficient foundation to allow us to consider the amendments put forward by Senator Spindler. It is not our intention to delay. I have probably said enough on this particular issue. I hope we do not complete second reading speeches tonight because we would then be given time to consider the government's advice overnight. But, Senator Vanstone, we would want to be satisfied about that advice before we are prepared to take a position in opposition to Senator Spindler's amendments.

It is one of those situations where the coalition put up something before the election. We have been persuaded by the then shadow attorney's arguments and we are inclined to support the sorts of propositions that he was putting forward then. In the transition to the government, he is now being persuaded by the arguments that persuaded the previous government, and maybe he is no longer as keen to do what he previously proposed before the election. I think a bit of time needs to be taken to see whether we can reach a consensual arrangement here. We think the legislation is important. We do not want to defer it, but we do want to clarify that particular point.

Senator SPINDLER (Victoria) (6.03 p.m.)—The Senate is considering the Crimes Amendment (Controlled Operations) Bill 1996. It might be useful to put on record the long title of the bill, which describes it very well. It reads:

A Bill for an Act to amend the *Crimes Act 1914* to exempt from criminal liability certain law enforcement officers who engage in unlawful conduct to obtain evidence of offences relating to narcotics goods, and for related purposes.

This particular formulation gave the committee, the Senate Standing Committee on Legal and Constitutional Affairs, the legislative committee, a great deal of concern because the long heading really poses that conflict: that there is unlawful conduct in which certain law enforcement officers engage, and yet the bill seeks to arrange to make that unlawful conduct legal.

Against that prospect, which filled most members of the committee with a great deal of concern, the argument was put forward by

law enforcement officers that we are dealing with an area of law enforcement which is particularly difficult—narcotics trafficking. It is difficult because very large amounts of money are involved and the possibility of corruption is always there. It is also difficult because the people running narcotics operations can avail themselves of the means to retain the best lawyers to make their operations, even before the case gets to court, as foolproof as possible, and they are notoriously hard to catch. Of course, we are all aware of the fact that narcotics drugs are causing a great deal of damage in our community, at all age levels, but particularly amongst our young people.

It raises the question of whether the route that we have followed—namely, to prohibit drugs and thereby create a black market and the opportunity for untold profits to be gained from trafficking—is the right one to deal with that social damage. I am pleased to say that now there are a number of attempts in the ACT and in Victoria to grapple with that problem and to look at alternatives. But we have not reached that stage yet; we are still in the area of trying to minimise the damage by catching the main offenders.

In this effort, the bill is a response to the High Court decision of *Ridgeway v. The Queen*, where the High Court held that the police did not have the power to allow the importation of heroin in a so-called controlled operation. This bill is designed to provide the police with the power to participate in narcotics trafficking for investigative purposes and, in particular, for the purpose of bringing to justice the main offenders.

The basic question arises of whether the police should be involved in drug trafficking, and the bill deals with a number of very important principles. In a free society, the people must never have the power to bait otherwise law-abiding citizens into engaging in criminal activity. As Mr Justice McHugh said in the *Ridgeway* decision:

Testing the integrity of citizens can quickly become a tool of political oppression and an instrument for creating a police state mentality.

However, the bill as it now stands does not do that. Rather, it simply provides for an

extension of the police power to monitor, to react and then to participate for the purpose of investigating the targeted criminal activity, an activity which is being planned by the police for the purpose of bringing the perpetrators to justice.

Section 15 specifically states that no authority to engage in a controlled operation will be given if 'the conduct of the officer involves intentionally inducing the person targeted by the operation to commit an offence'. That addresses the question of entrapment which was of great concern to me personally during the committee deliberations and, I believe, to the committee as a whole. This, I believe, has now been addressed satisfactorily in this bill that is before the Senate.

The other area that was of great concern was the accountability question and the mechanism that is provided in the bill. These provisions, as they now stand, are quite strong. For example, a certificate authorising a controlled operation must be in writing and must include a description of the operation. Secondly, as soon as a controlled operation has either been authorised or denied, the Commissioner of the Australian Federal Police must inform the appropriate minister of the decision and the reasons for it. And, thirdly, within three months of a certificate authorising a controlled operation lapsing, a written report must be presented to the appropriate minister setting out: (a) whether or not the operation was carried out; (b) the nature and quantity of the narcotics goods involved in the operation; (c) the route through which the narcotics passed; (d) the identity of any person who has or had possession of the narcotics; and (e) whether or not the narcotics have been destroyed.

Finally, it is worth mentioning that the appropriate minister must present an annual account to the Commonwealth parliament setting out: firstly, the date on which each application for a controlled operation was made; secondly, the decisions taken about each application; thirdly, the reasons for decisions; and, finally, the operational information that I mentioned just before.

So the Democrats believe that, as the bill now stands, the concerns about entrapment and accountability have been adequately met. In all of this, there is of course the concern that we must protect the persons who are undercover agents in these operations and must not jeopardise them. That, in some ways, has given us concern in the area of how you actually authorise, and who does the authorising, of such an operation. I am fully conscious of the fact, in putting forward an amendment that it should be a judicial officer that should decide that, similar to the intercept provisions, quite apart from the constitutional question, that it could open up a source of danger. Because in some way the information must be detailed enough to the judicial officer to enable that person to make an informed decision on the balance of probabilities based on information supplied. Nevertheless, the Democrats believe that the Senate should seriously consider going down this route and require a judicial officer to approve such controlled operations.

Presently, authority for a controlled operation can be given by the Commissioner of the Australian Federal Police, a deputy commissioner, an assistant commissioner or a member of the National Crime Authority. But we are concerned that all of these people, essentially, are involved on the operational side of law enforcement and perhaps do not at all times have the distance from the day-to-day pressures to make a decision on whether in any particular case an unlawful operation should be sanctioned. So we suggest that the present provisions are not sufficient.

We support, indeed, the comments made by the Attorney-General, Mr Daryl Williams, when debating an earlier draft of the bill when he said that a controlled operation should require the approval of a judicial officer. We wonder why that has changed, why there is a different view. I have not had an opportunity to study in detail the opinion provided by the chief general counsel of the Attorney-General's Department. But I note and I should quote the first paragraph:

I have been asked to provide advice on whether if the controlled operations bill were amended to require a judge to issue a certificate authorising an operation this would give rise to constitutional

difficulties. In my opinion, the use of judges in the way suggested would at least raise questions as to whether such a function was compatible with the discharge of judicial functions, and this could be a ground on which to challenge the validity of the provisions.

To me, the phrase 'would at least raise questions' is not one that puts forward a view held with great conviction. But, as I have said, I have not had an opportunity, as has Senator Bolkus, who spoke before me, to assess the opinion in great detail, and I would support his suggestion that we provide some time after second reading stage to address this very question.

In summary, we believe that in a properly administered society there should be a check between one arm of the state and another, particularly where there is potential for a significant abuse of power. A controlled operation provides the potential for just such an abuse of power. In his report into police corruption in Queensland, Commissioner Fitzgerald stated:

... drugs have caused more incursions into the civil liberties of ordinary people, more corruption and more interference than almost anything else.

We believe that, by ensuring there is independent scrutiny of applications for controlled operations, there will be less opportunity for corrupt activity.

In conclusion, the Australian Democrats welcome the Crimes Amendment (Controlled Operations) Bill 1996 as a potentially valuable addition to the investigative tools that are at the disposal of the police. We believe that the accountability measures in the bill are strong and, with the benefit of the amendments which I will be moving, they will be stronger still.

Senator COONEY (Victoria) (6.17 p.m.)—The Crimes Amendment (Controlled Operations) Bill 1996 deals with that classic question of how society is to control those activities within it which it finds repugnant—and, clearly, society finds repugnant the importation of large quantities of drugs and their sale to those who are, in effect, victims. As Senator Spindler has said, it is the sale of

these drugs to those victims that causes all sorts of terrible trouble in the community.

The issue is the classic issue: does the end justify the means? If the means are of such an abhorrent nature, then those means can never justify the end, no matter what. Any society we look at, if it is to be a good and proper society, has to be a society that is ruled by law—that is, subject to the rule of law. For example, it would not be open to this parliament, with any sense of justice, in any event, to make lawful murder, manslaughter, rape, grievous bodily harm or, indeed, any sort of bodily harm for the purposes of obtaining evidence to obtain a conviction.

What is being looked at here is a controlled operation in the sense that a transaction involving drugs would be facilitated, to some extent at least, to ensure that evidence is obtained—that is, evidence against people who are making use of those drugs for fearful and criminal purposes—which can be led in a court and which may form the basis of a conviction, if a jury decides to accept it. As I understand the argument, people have accepted that there ought to be some process by which evidence can be obtained against people who carry out the type of crime we have been talking about—that is, the crime of importing and selling drugs. The concern is about the check that is placed upon those who are going to carry out this particular procedure.

There has been some doubt, I think it would be fair to say, cast upon the efficacy of having the commissioner, one of three deputy commissioners and one of six assistant commissioners available to give permission for this procedure, and for one of the members of the National Crime Authority to give permission. So, in fact, there is Mr Palmer himself, the Commissioner, his three deputy commissioners and six assistant commissioners, and three members of the National Crime Authority.

Senator Spindler has properly mentioned the Fitzgerald inquiry in Queensland. May I say that it has never been suggested, as far as I know, and I keep an ear out for these things, that any of the people whom I have described—that is, the Commissioner of the

Australian Federal Police, the three deputy commissioners, the six assistant commissioners and the three members of the National Crime Authority—are or have been in any way tainted by corruption, unethical or untoward conduct. The reputations they all have had and still do have are outstanding ones. In my view, that is a very big point to take into account when looking at the way this operates.

It has been suggested that the classic procedure of getting a warrant from a judge is the proper way of going about this exercise. I have not had a chance to look fully at what Senator Spindler has put forward. I always like to look carefully at whatever documents Senator Spindler puts forward, because I know they will be very substantial and considerable documents, but I am not sure that this is a procedure that ought go before a judge.

The difficulty I find with warrants is that judges who give warrants necessarily give them on the basis of affidavit material, sworn material, and then that is really the end of it. I am trying to think of some instances—perhaps the minister may be able to help me—where people have gone back and looked at the warrant and the warrant has been audited. I think there are some cases, but not all that many. I think the judges issue the warrants and then a procedure is followed.

Where the certificate is issued by one of those people that I have mentioned—the commissioner, a deputy commissioner, an assistant commissioner or a member of the National Crime Authority—there is an audit under clause 15M of the bill. As I understand it—and I am subject to being corrected here—the authorising officer is subject to cross-examination in court about the basis upon which he or she gave a certificate. So the enforcement officer and the authorising officer are able to be examined in court about the basis upon which the certificate was obtained and are able to be cross-examined as to the actions taken in accordance with that certificate.

There is also the control of having to report to the Attorney-General. I know of no Attorney-General who has taken their task in

any way other than very seriously. I am sure that is a matter to be taken into account here. If the judge was to take over the place of a commissioner, a deputy commissioner, an assistant commissioner or a member of the National Crime Authority, the question then arises as to whether or not he or she should be subject to cross-examination. In my view, that would be a terrible path for us to take. Judges should not, in my view, be taken to court to be examined, whether by cross-examination or by evidence-in-chief, as to what they did in the giving of a warrant.

I looked very quickly at the amendments put forward by Senator Spindler. At first sight, they do have some attraction, but as you look at them there are some problems. The amendment to 15GA(1) states:

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

In that case, I would have thought you could go only to the Federal Court. So that is limited to a judge of the Federal Court. It goes on under 15GA(2):

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

I would have thought—and I do not purport to know—judges would have a lot of problems applying for this sort of job if it went any further than simply issuing a warrant. If it goes no further than issuing a warrant, it seems to me that the measures in the main bill are going to be more effective than the giving of a warrant.

In my view, this would be a good subject for inquiry by the Legal and Constitutional Committee, or, indeed, by some other committee, as to the effectiveness of the warrant system—the system whereby a law enforcement officer goes to a judge to have a warrant issued to carry out an intercept, an arrest or a search of property or of a person. Until that is done, it seems to me—and I would very much like to hear argument about this—that the present situation that is set out in this bill might be the best. Certainly, it gives counsel on both sides of the record a better opportunity of testing how the certificate was obtained and how the directions in the certificate were carried out than is the situation where a warrant is obtained. I would be interested to

hear what is said in the committee stage of this bill.

Senator CHAMARETTE (Western Australia) (6.30 p.m.)—It is not my intention to take up a great deal of the Senate's time in this debate, but I want to put on the record the grave concern of the Greens (WA) at the notion that the Senate is contemplating legislating for illegal activities in the form of the Crimes Amendment (Controlled Operations) Bill 1995.

The bill arises from the former government's reaction—or, some would say, overreaction—to the High Court ruling in the Ridgeway case. The court ruled that when police act illegally the evidence in any subsequent proceeding against an individual will be tainted to the point where it is unusable. To our way of thinking, it is a fundamental point of natural justice that a person should not be set up by the police for an offence. Indeed, even the long title of the bill is offensive: 'A Bill for an Act to amend the Crimes Act 1914 to exempt from criminal liability certain law enforcement officers who engage in unlawful conduct to obtain evidence' et cetera.

The two main concerns we have are that police should not be above the law—the law that they are there to enforce—and they should not be able to engage in criminal activities in the entrapment of people who may also be engaged in criminal activities. The second concern relates to the broader aspects of the culture that is involved in the drug dealing and trafficking scene.

When the Prime Minister (Mr Howard) spoke about the tragedy at Port Arthur and the need to address more broadly the culture of violence in our community I believe that he was referring to the more subtle aspects of our society. One aspect is the culture in drug dealing and trafficking that acknowledges that police engage in activities of drug dealing and trafficking in order to elicit information. As a consequence, the police are frequently tempted into behaviour that leads to corruption. In fact, there have been anecdotal reports of this.

The corruption of law enforcement officials is currently in the spotlight because of the work of the Wood royal commission, and

there have been longstanding concerns about the drug trade and its potential to corrupt those officials. A 1989 report by the Parliamentary Joint Committee on the National Crime Authority explicates some of the reasons why corruption occurs. Enormous profits are available and police corruption can arise because officers are human and the temptation to take money and to be involved becomes very great.

What we are doing is introducing into the culture where the problem already exists an additional power, a power that allows law enforcement officers to hide behind it. As I was pointing out to someone in a briefing earlier today, there is no doubt that the powers that are being considered under this act are limited; however, the very fact that they are being given and exist allows other police officers to use the justification that they thought they were covered by these powers even when they were not. So I have very serious concerns about the bill.

I understand that on 6 August 1995 the *Age* reported, and I quote from the *Bills Digest*:

... it appears that the AFP lost heroin valued at an estimated \$1 million. It was reported that the heroin was part of a 5 kilogram shipment which entered Australia from Thailand in July 1995. The heroin was concealed inside wood-turning machinery. The newspaper reported that about 1 kilogram of heroin was lost after the police decided to conduct a controlled delivery in order to apprehend major traffickers

... ..
 police left 940 grams of the heroin in three cylinders as part of the delivery because the drugs could not be removed without destroying the machines and warning the criminals.

So what we have is the possibility for the actual illegal behaviour of drug trafficking and dealing being enhanced by the involvement of police who are being protected under the components of this legislation.

Since this bill was first mooted by the former government, like many other senators no doubt, I have been strenuously lobbied about its content and implications. In particular, a group calling itself the Ridgeway Coalition was formed to make a concerted effort to head off these changes to the Crimes Act. It is the view of the Ridgeway Coalition

that the legislation is unnecessary as the existing law governing undercover police, as articulated in *Ridgeway*, is workable and satisfactory. This is not the view of disgruntled people who have been subject to police sting operations but the considered response from a group of lawyers and their various associations.

I want to take this opportunity to put some of the views expressed to me on the record, as I believe they provide a suitable caution for the Senate. The Lawyers Reform Association wrote, saying:

In our opinion, *Ridgeway* is a carefully considered and measured decision which balances the public interest in bringing offenders to justice and the necessity of the police resorting to unorthodox methods to do so, against the undesirability of police commissioning criminal activities themselves.

The association also pointed out that an enormous amount of evidence of police corruption, particularly in the area of drug law enforcement, has been provided to the Wood royal commission in New South Wales. It is well worth remembering that the operations which this bill seeks to authorise could well open further avenues for such corruption.

Similarly, the South Australian Bar Association made a submission to the Senate legal and constitutional committee. That submission pointed to a number of cases where the notion that police should be able to act illegally in order to achieve arrests and prosecutions was roundly condemned by the courts. The association states its position thus:

The Association views with scepticism any legislative attempt which has as its objective the sanctioning of criminal conduct on the part of certain sections of the community. It is, in our view, undesirable that Parliament should effectively condone criminal behaviour in any way, shape or form.

The association further argues that, rather than provide for police to act illegally but without attracting criminal sanctions, the bill should declare certain acts not to be offences if done by police officers under certain circumstances.

The matter of the bill's retrospective operation on some existing cases is also a matter of grave concern. Therefore, the Greens (WA) will oppose the bill.

Australia is a party to the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances which provides for controlled operations of the kind envisaged by this legislation. This did raise a matter of concern for us as we do not lightly turn our backs on international obligations. However, the convention as we understand it allows for controlled operations where they are compatible with the law of the country concerned. What we are doing at the moment is making our laws compatible and, therefore, complying with the obligations of international treaties. I am sure that Senator Abetz will be relieved to hear that.

We understand that the bill will be passed by the Senate in spite of our opposition to it. Therefore, we are determined to see that the best possible legislation is put in place which balances the need to protect the rights of individuals in the community with the need to combat large scale drug crime. To that end, we will involve ourselves in the debate on the amendments. We presently support all those amendments that are being put forward by the ALP and the Democrats.

Senator ABETZ (Tasmania) (6.38 p.m.)—I appreciate the fact that I have been given the opportunity to make a few comments in relation to the Crimes Amendment (Controlled Operations) Bill. This bill was before the Senate before the election and was put to the Senate Legal and Constitutional Legislation Committee. We considered it in some detail. Those who are interested in the legislation, some of the public policy grounds behind it and some of the balancing acts that were required to be undertaken to achieve this bill, would do very well to read this report which I note is a unanimous report from the committee.

It is an excellent example of how the Senate and its committee system work, but which hardly gets the sort of media coverage that I believe our committee system deserves. For people who want to know what a controlled operation is and why we need to have such things, the policy standpoint of the bill is that involvement in controlled operations is necessary as an investigatory device in the detection and prosecution of narcotic offences.

The main issue that we as a committee looked at was whether the threat posed by illegal trafficking in drugs such as heroin warrants the response contained in this bill. Therefore, it is a balancing act. It is trite but appropriate to say that testing the integrity of citizens can quickly become a tool of political oppression and an instrument for creating a police state mentality. What I just said are the words of Justice McHugh in his decision in the Ridgeway case. This legislation is a legislative response to the Ridgeway decision.

There are a number of matters of a public policy nature. That is something that we as a committee have grappled with. It should be pointed out that there is nothing exceptional in exempting police officers from certain aspects of the criminal law, as this bill does. Basically, certain police officers will be allowed to undertake activities which would otherwise be unlawful, to assist them in catching and apprehending people who are trading in a commodity which is well known to cause considerable social dislocation and, indeed, death. Most of us would agree that those who peddle drugs are merchants of death. Sometimes we need some very sophisticated methods to deal with and trap those sorts of people.

It is my submission to the Senate and to the Greens that it is a legitimate role of the parliament to make the demarcation of permissible and non-permissible behaviour for particular persons within the community, in this case, the police. In the committee's view there is no fundamental difference between the bill and the long tradition in all common law jurisdictions of defining, by statute and, where appropriate, extending, the powers of the police. It would be agreed, I think, by everybody that the involvement of police in criminal conduct is not a desirable occurrence but the committee agreed that the perceptions that such involvement may create—that is, there are double standards—are destructive of public confidence in the administration of justice.

However, the alternative in the committee's view is more unattractive, being the diminution of the success of law enforcement activity against drug crime and, ultimately,

more illegal drugs being available within the Australian community. They were some of the balancing acts we as a committee undertook when looking at some of the competing arguments that had been put to the committee for and against the proposals that this bill deals with.

The Senate committee made a number of recommendations. I am not sure whether the previous government officially responded to those recommendations but it is pleasing to see that the new Attorney-General, Daryl Williams QC, has incorporated into this new bill all the recommendations of the Senate committee. That I think is testament to the work of the committee. A very important aspect was that the committee recommended that a provision be inserted in the bill clarifying that the bill does not permit entrapment. That is important. There were some other matters which the committee dealt with. I will just read one of the other recommendations, which states:

A provision should be inserted into the bill clarifying that it does not in any way remove from a court its inherent and constitutional power and duty to ensure that justice is done in the conduct of the matter before it, including the power to terminate or stay proceedings.

A suggestion has been put to us that there ought to be some capacity for judicial consideration or judicial authorisation of some of these programs. I think this is the first time ever, and chances are last time ever, that I am going to refer honourable senators to a speech of the former Minister for Justice, the Hon. Duncan Kerr. On 22 August 1995 in addressing this legislation he made some pertinent points about judicial authorisation within the context of controlled operations. On that occasion Mr Kerr stated:

In the case of a controlled operation, there is no civil liberty to import narcotics free of police involvement.

He made that comment to distinguish that aspect from, let us say, having a search warrant to search your house. I think we would all agree there is a civil liberty expected by the community that you can enjoy the privacy of your house without a police officer visiting it at all hours of the night, unless

there is some degree of authorisation for a warrant.

The decision to authorise an operation rests on an assessment of the likely effectiveness and security of the operation and a judgment about whether or not that person would be likely to have pursued that course irrespective of the operation. That is important: whether they would be likely to have pursued that course irrespective of the operation. In my submission that is different to deliberately trying to set up a trap for somebody who might not necessarily have been intending to engage in a particular type of behaviour. Mr Kerr went on to state:

These are essentially operational questions and require judgments addressing the whole issue of what resources are available to law enforcement and the capacity of that operation to protect the community as a whole from any diversion. All those issues are ones which are simply not appropriate to pass from the person who has the correct responsibility of making a judgment to a court official.

He further stated:

It is hardly appropriate to place such law enforcement possibilities into the hands of courts, which are essentially charged with an adjudicative function rather than a function of operating as part of the executive.

In summarising his speech Mr Kerr said:

For that reason and the issue of the separation of powers, there are real constitutional reasons why operations should not be authorised by judges and magistrates. Courts have made it clear that it is contrary to the separation of powers and hence constitutionally invalid for judges and magistrates to perform administrative functions.

I would encourage those thinking of amendments along certain lines to read the House of Representatives *Hansard* of Tuesday, 22 August 1995, especially pages 76 and 77, where Mr Kerr sets out the reasons why judicial involvement in controlled operations would not be desirable and in fact could lead to very real constitutional difficulties.

I think every member of the Senate Legal and Constitutional Legislation Committee when considering this legislation was of the view that in the ideal world there should not be any controlled operations. That would be the ideal world. But, of course, in the ideal world there would not be any crimes of drug

smuggling and drug peddling. Unfortunately, we do not live in an ideal world, and therefore it is a question of balancing competing principles. On balance, I think the committee brought down a unanimous report. I thought there may have been a dissenting judgment by Senator Spindler, but he is shaking his head. I did not want to do him an injustice. My recollection was that it was a unanimous report.

I believe the Senate committee maturely considered all the issues extensively and canvassed the competing principles which I have already mentioned. Those of us on the committee who have a legal background—that includes me, Senator Ellison, and Senator Cooney, though I am not sure whether Senator Cooney ever appeared in the criminal jurisdiction—as defence counsel would not necessarily like this sort of legislation. But when you see the sort of havoc that can be caused within the community by these merchants of death, these peddlers of narcotics, you have to ask, ‘What is the worst evil?’ Unfortunately, that is the basis on which I came down on the side of supporting the necessity of this legislation.

It gave me no joy, and I am sure none of the other committee members, to have to do that, but it is a difficult area. When you talk to parents and families that have lost loved ones because of the black market narcotics industry, you have to agree that there should be a balance. I accept the criticisms that have been made about the police in the past and undoubtedly will continue to do so in the future. Those of us who have been watching with ever increasing horror the day-to-day revelations of the Wood royal commission in New South Wales would be very concerned. I was talking to a constituent in my office on Friday about this very matter. She told me that certain complaints had been made to the police about a drug matter in New South Wales of which she was aware. She then put in a throwaway line, ‘But, of course, chances are it never got anywhere.’

There is a deep distrust at the moment of the police, especially in some areas of Australia. In general terms, I think, it is a well-founded distrust. That is why the mechanisms

within the legislation—certificates being needed to be signed, the minister being made aware and the tabling within the parliament of the previous 12 months activities—will provide that sort of balance I was talking about earlier.

In all these things it has always been a question of balance. I think in the past the police have been able to get away with far too much. That, of course, is no revelation to anybody in this chamber, given the revelations of the Wood royal commission in New South Wales.

As best as both parties could in the Senate Legal and Constitutional Legislation Committee we tried to achieve a balance which would protect the community against excessive police power and prevent narcotics dealers and others from being able to get away without any real likelihood of their being apprehended. It was on undertaking that balancing act that we came to the resolution to support the legislation with a few amendments, all of which have been picked up by the Attorney-General. It is on that basis that I recommend this bill to the Senate.

Senator VANSTONE (South Australia—Minister for Employment, Education, Training and Youth Affairs) (6.54 p.m.)—I want to thank the senators who participated in this debate: Senators Bolkus, Cooney, Chamarette, Spindler and Abetz—I think that is the lot. I am sorry if I have forgotten someone.

Senator Abetz—That is it.

Senator VANSTONE—I have not left anybody out. That is a good thing. I would like to run through a couple of the changes in the Crimes Amendment (Controlled Operations) Bill 1996 as opposed to the previous bill in the last parliament. There are some changes implementing the Senate committee recommendations. I only want to touch briefly on those so people are aware of what they are.

The first change preserves judicial discretions to exclude evidence or to stay proceedings except to the extent that these discretions are expressly restricted by the bill. That is to be found in proposed subsection 15G(2). The second group of amendments provides that

certificates issued under the bill do not authorise entrapment. Conduct constituting entrapment will not be protected by a certificate issued under proposed section 15M of the bill. Senators interested in that matter might like to look to proposed subsections 15I(2) and 15I(5). I will return to the question of entrapment after I have dealt with the third change.

The final group of amendments requires the making of reports to the minister and to parliament detailing the route through which narcotic goods have passed during the course of an operation, the persons or agencies who had control of the goods during and after the operation, and the current status and whereabouts of narcotic goods. That is to be found in proposed section 15S.

They are the three changes reflecting the Senate committee recommendations. It is worth making the point that, as I understand it, the previous government was somewhat disinclined to accept those recommendations. I simply wish to underline that this government through Mr Williams, the Attorney-General, has decided that they have merit and they are being implemented. Having served on that committee, it pleases me to, only slightly, labour that point.

As to the point about entrapment, the bill does expressly prevent the authorisation of operations that would involve entrapment. I did make a note of Senator Chamarette's words, but I seem to have mislaid it. It was to the effect that we do not want to have the police setting people up, which is in effect what entrapment would be. To authorise an operation, an authorising officer must be satisfied that the criminal conduct being investigated would have taken place without police involvement—that is, it would have gone ahead in any event. Thus an operation that was to involve police supplying narcotics to a person who was not the intended recipient of the narcotics could not be authorised.

The government amendments to the bill build in an extra prohibition on entrapment. A certificate issued under section 15M will not protect an officer from liability for conduct involving intentional inducement of a person to commit an offence of a kind that

the person would not otherwise have had intent to commit.

Further, it has been suggested in some quarters that an operation should only be allowed where the specific importation planned by the suspect would have taken place without police involvement. Such an approach would render the ability to conduct controlled operations almost meaningless. All controlled operations involve a situation in which police are aware of a proposed importation.

It is axiomatic, therefore, that a controlled operation involves an importation that could have been prevented by law enforcement officials. They could not possibly decide to be part of something and monitor what was happening if they did not know about it. It follows that, if they knew about it, they may have had the capacity to do something to stop it happening. That is not entrapment. Entrapment is where a person who would otherwise have obeyed the law is induced to commit an offence. That is what proposed section 15M and the amended section 15I of the bill prohibit.

This bill does nothing to interfere with the existing law regarding entrapment. While Ridgeway reaffirmed that there is no substantive defence of entrapment in Australia, the judges also indicated that in a case of serious entrapment a court could permanently stay proceedings. I think it was worth raising that point in response to the debate.

A point has also been raised as to when these matters should come into effect—that is, when a controlled operation should be used. To paraphrase the question, one could say, ‘Shouldn’t a controlled operation be a last resort only, where evidence cannot be obtained in any other way?’ In that respect—and this goes to the point that Senator Chamarette raised—where police intercept a narcotics consignment, a controlled operation will generally be the only way in which it is possible to obtain evidence against the intended recipient. The bill does however require the authorising officer to be satisfied that the operation will make it much easier to obtain evidence leading to the prosecution of a Commonwealth narcotics offence. In other

words, where other methods of obtaining evidence are reasonably available the legislation does not allow a controlled operation to be authorised. Ultimately, operational judgment has a key role to play. Controlled operations are difficult for police to organise, and I do not believe there is any real incentive for them to carry out these operations unnecessarily.

Perhaps one of the most concerning points that Senator Chamarette raised was the question of the bill inviting a further risk of security in relation to drugs. That question was asked frequently when this matter was before the Senate committee. Isn’t this just inviting an opportunity for further corruption in the police force, as highlighted by the Wood royal commission? I think even the specific example that Senator Chamarette raised, or one very similar—Senator Spindler may be able to help me here—was actually raised during the hearings on that matter.

The people who were able to attend the committee hearing are aware of that. It is worth pointing out that if we are to have any hope of bringing narcotics traffickers to justice, we have to give police the adequate powers. The way to prevent corruption is not to deny police these powers; it is to build in effective accountability mechanisms and safeguards against abuse of powers. Nobody who supports this bill could possibly be claimed to be supporting a system that would condone any police officer abusing the powers that they have.

In the report of the Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct, on page 172, Commissioner Fitzgerald concluded that the true choice may be between a society altered by legislative or executive action to the extent which is necessary to hamper the misuse of civic privileges by criminals or a society altered by those criminals and their activities and that it might be preferable to have a limited qualification of rights so that they can be enjoyed in the freer atmosphere of a fairer, more honest and honourable society.

It is important to note that openness and accountability are central to the framework established by this bill. The bill requires a

detailed report to be made to the minister at the time of a decision whether to authorise an operation, and will now also require a detailed report to be made about what happened during and after the operation. In turn, this information will be reported to the parliament and will be subject therefore to public scrutiny.

An officer who sought to deal in narcotics outside the course of duty would face the normal penalties for narcotics trafficking. Federal law enforcement officers are already subject to a strict disciplinary regime. Australian Federal Police officers, who will play the leading role in most operations, are subject to disciplinary and criminal penalties for misconduct under both the AFP Act and the AFP disciplinary regulations. AFP officers are employed on contract and can be summarily dismissed in cases of misconduct. Authorising operations will be the responsibility of the dozen most senior officers in federal law enforcement. If operations are improperly authorised or if narcotics go astray, responsibility will be brought home to these officers at the very highest level of law enforcement. I think that covers the main points that I wanted to refer to, vis-a-vis what Senator Chamarette had to say.

I make the point that I was of the impression a few minutes ago that the previous government had not actively indicated its support with respect to these recommendations. I understand they had decided to accept all of the recommendations made by the Senate Legal and Constitutional Legislation Committee. However those government amendments had not been tabled in the Senate when the bill lapsed due to parliament having been dissolved. It is just worth putting that on the record, because I am informed that the government had made that decision, albeit that amendments had not been actually brought forward with respect to them.

I want to refer to a number of other changes that have been recommended by the Attorney-General, and there are three that I particularly want to refer to. The first is an extension of the definition of narcotics goods offence. This is found in subsection 3(1). It is an amendment that extends the definitions of narcotics

goods offences and associated offences to include offences against the Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Act 1990. The second is in relation to the serious offence provision. That is to be found in subsection 15R(3). It is a requirement that issuing officers give consideration to, and report on, the seriousness of an offence before issuing a certificate authorising a controlled operation. The last change is the extension to state officers. That is found in subsection 15I(3). That provision extends the coverage of the bill to state officers assisting in the investigation of Commonwealth offences from liability for state narcotics offences.

I want to move briefly to the issue of serious criminal activity, which I understand Senator Bolkus raised. He raised the issue of where the government gives effect to the proposal the mechanism of controlled operation should be available only for serious criminal activity. As I have just indicated, that is subsection 15R(3). It is perhaps worth mentioning that subsection 15R(3) of the bill provides that, as soon as practicable after a decision to authorise a controlled operation is made, the authorising officer must inform the minister of that decision and of the reasons for that decision, including:

an indication of the extent to which the authorising officer, in making the decision, took into account the seriousness of the criminal activities of:

- (a) the person targeted by the operation; or
- (b) any other person associating, or acting in concert, with that person. . .

That amendment to the bill is an additional safeguard to those proposed by the Senate Legal and Constitutional Committee. I understand that, because of the difficulty of defining 'serious criminal activity' in a way that would cover all appropriate cases, and to avoid making this requirement a source of challenge to the validity of a certificate during the inevitable test of certificates that would occur during a major narcotics case, it is appropriate that this provision be located in the section of the bill dealing with matters that must be reported to the minister, which is of course after the certificate has been issued.

Senator Chamarette raised the question: why not remove the immunity and instead say

that the conduct of the police officer is not an offence? I want to refer to some notes that highlight how very limited the protection is. It is limited to particular officers. The officers who may be protected from criminal liability under this bill are officers of the Federal Police, National Crime Authority, Australian Customs Service, state and territory police forces and foreign law enforcement agencies. They are the officers that are affected and I suppose that seems fairly broad.

But which offences does it relate to? Exemption from criminal liability would extend to the following offences: firstly, importing or exporting narcotic goods contrary to section 233B of the Customs Act; secondly, state and territory offences, an element of which is the possession of narcotic goods; and, thirdly, being knowingly concerned in aiding, abetting, attempting, inciting or conspiring to commit one of those offences. For constitutional reasons the bill does not protect state and territory police officers from criminal liability for state and territory offences.

In relation to the circumstances covered by the bill, the conduct of a law enforcement officer will not result in criminal liability if it is carried out in the course of duty, is for the purposes of an investigation into a suspected or anticipated Commonwealth narcotics offence, is while a certificate issued under the bill authorising the operation is in force, and, under the amendments to the bill, does not involve the officer inducing a person to commit an offence of a kind that the person would otherwise have lacked intent to commit. A foreign law enforcement officer is to be acting in the course of duty if, and only if, he or she is acting under the directions of an Australian law enforcement officer.

I am informed that your proposal would be simply ineffective. If your suggestion were adopted—that is, provided that the conduct by a police officer would not be an offence—the otherwise illegal importation could be rendered lawful, the police officer would be immune and, unfortunately, therefore so would the criminal conspirators. I think what that means is that the way in which it is envisaged one would design a clause to cater for that which you suggest would have other

consequences that you would not apparently want.

Last but not least I want to come to the most contentious matter—although I do not mean ‘contentious’ in the sense of ‘heated’ in any way whatsoever—and that is the issue of the authorisation of these certificates. There are some good arguments against judicial authorisation. The government thinks the proposal should be rejected for several reasons. Firstly, the decision of the High Court in *Grollo* and the AFP commissioner in the 1995 case subtitled, I understand, *Grollo No. 2* indicates that a law which involves judges in the criminal investigation process could well be invalid. None of us would want to see that. We saw that with the bankruptcy legislation. We saw it with some of the human rights legislation, where parliament did not take enough time to ascertain the constitutionality of what it wanted to do.

I wanted to try to cover this in the few remaining minutes, Senator Spindler. I know you raised this matter and I think you said that you understand the proposition that the government is putting is arguable. All I want to do, to highlight this for you tonight, is to say that, if it is arguable, then you are perhaps conceding that a bill passed in the form you are suggesting is arguably unconstitutional. I ask you to consider overnight whether that is an appropriate course of action for you to really want to proceed with.

I accept that you may not be able to or want to bring yourself to say, ‘Yes, it would be unconstitutional.’ But, even if the risk is there, the issue is whether you want to, in a sense, give it a run and put at risk what would later be put at risk if a bill were passed in the form that you suggest. I perhaps can do no better than refer senators opposite to a speech given in August 1995 by Mr Kerr, the then Minister for Justice. I think it was referred to by my colleague Senator Abetz. It very cogently puts the case that judicial authorisation would be inappropriate.

Senator SPINDLER (Victoria) (7.14 p.m.)—I seek leave to speak again in the second reading debate to foreshadow an

amendment to my amendment that may be useful in the further consideration of the bill.

Leave granted.

Senator SPINDLER—I thank the Senate. In the debate on this amendment two points were made essentially. One was made by Senator Barney Cooney. He said that you cannot cross-examine judges and that it is difficult to test the validity and advisability of granting a certificate if a judge makes the decision.

The other arguments were of the type that Senator Vanstone raised which warned against the involvement of judges in the operational activities of law enforcement agencies. I cannot agree with the arguments put forward. When I dealt with that before, I simply repeated the arguments that were put forward by the opinion that was tabled.

It seems to me that, if you look at even some very basic decisions and provisions which, for instance, deal with search warrants, we do not even have to look at the intercept argument. Section 3E(2), division 2, on search warrants, of the Crimes Act says:

The officer must be satisfied that there are reasonable grounds for suspecting that the person has in his or her possession, or will within the next 72 hours have in his or her possession, any evidentiary material.

It seems to me there is a very strong analogy between that and what I am suggesting. However, in considering both these points there may be some merit in not omitting at the moment the section which lists the authorising officers but simply adding 'judicial officer' to require the authorising officers to seek the certificate from the judge or judicial officer. This would have the effect, first of all, that in subsequent proceedings you would be able to cross-examine the authorising officers and, secondly, of removing the judge considerably further from the operation of considerations.

At the moment my amendment suggests that the law enforcement officer in charge of the operation would approach the judge. I foreshadow an amendment that would leave the authorising officers in place but oblige them to approach the judge for a certificate.

Question resolved in the affirmative.

Bill read a second time.

ADJOURNMENT

The ACTING DEPUTY PRESIDENT (Senator Calvert)—Order! It being almost 7.20 p.m., I propose the question:

That the Senate do now adjourn.

Member for Bass

Senator MURPHY (Tasmania) (7.18 p.m.)—I rise in the adjournment debate tonight to raise a concern about a report in the *Examiner* in Launceston which attributes claims to the federal member for Bass, Mr Warwick Smith, who seems to be making a habit of making very misleading and dishonest claims in his effort to somehow alleviate himself of much of the blame of the federal government not delivering—

Senator Panizza—Mr Acting Deputy President, I raise a point of order. I think Senator Murphy, with the words that he used, made a reflection on a member of the other House. Those words will be on the tape. I think he is out of order and should withdraw the remarks he made about a dishonest member of the House of Representatives—or whatever it was.

The ACTING DEPUTY PRESIDENT—I uphold your point of order. Senator Murphy, you cannot reflect in those terms on a member of the other place.

Senator MURPHY—Mr Acting Deputy President, I withdraw. Can I say that the federal member—

The ACTING DEPUTY PRESIDENT—I am asking you to withdraw those comments.

Senator MURPHY—I withdraw those comments. Can I say that the *Examiner* report will speak for itself with regard to what Mr Smith is doing. This report mentions 'closure claims' and is complete with photograph and all. It relates to the Ravenswood Youth Centre. Mr Smith says that the youth centre is threatened with closure by a trade union endeavouring to represent workers in that industry. He says it is because of a log of claims that has been lodged with the centre. Mr Smith, who is a federal minister and has

been a member of parliament over some time even though he lost his seat in 1993—

Senator Panizza—And won it back.

Senator MURPHY—Yes, and I am sure the people of Bass will reconsider that when it comes to the next federal election. Mr Smith says that somehow this log of claims will lead to the closure of the Ravenswood Youth Centre. He knows full well that that is simply not true. Any action by any other individual carrying out this sort of activity—that is, deliberately quoting in the paper something that is not correct—would be deemed to be dishonest.

Mr Smith would know—or at least if he does not know he should know, but I believe he does know and that is why this is misleading—a log of claims is served for the purpose of creating a dispute. A log of claims usually contains an ambit, and the purpose of the log of claims when it is lodged with an employer is to endeavour to rope employers into awards. Those matters are ultimately decided in the federal Industrial Relations Commission. The commission will determine which award is applicable to the employer and indeed the set of wages that will apply to the particular job at hand.

In this case, not only did Mr Smith not endeavour to check with the union but he did not endeavour to check with even the department. Had he done so, he would have found out that in the case of a community services award, which is more than likely the award that would be applicable to the youth centre, the rate for the person concerned in this job—and there is only one of them—is around the \$20,000 to \$25,000 mark.

I know it is not—and Warwick Smith should know it is not—a question of whether or not a log of claims will force the closure of the Ravenswood Youth Centre. Rather, it is a question of whether or not Mr Smith's government will provide ongoing and recurrent funding for this centre. That is the fundamental question, and Mr Warwick Smith ought to be ashamed of himself for trying to hide behind this very dodgy claim to the media that somehow some log of claims lodged by a trade union will have some impact on the closure. It is another example

of how this government, since it has been in office, has not adhered one iota to the election promises it made, championed by Mr Smith.

To go through the list of Mr Smith's claims again, he said during the election campaign that, should the coalition be elected to government, they would in terms of the Family Court in Launceston guarantee that a judge would be based in Launceston and they would guarantee the future of the Family Court. But where do they stand on that issue? Nowhere.

Then there was the tax office issue. Mr Smith initially said: 'That was a decision under a Labor government'—another very misleading position. We in government never received any report from the Australian Taxation Office with regard to the rationalisation of any regional tax offices—none at all. Then the Industrial Relations Commission intervened and brought a stay of execution for the closure of the Launceston tax office. But Mr Smith endeavoured to turn that into a positive for himself by misrepresenting the situation—again not checking the facts. He chose to say: 'This is under review.' What has Mr Smith done about it? Absolutely nothing.

One of the very important things on which Mr Howard, on 7 February, promised the people of Tasmania was the issue of the Bass Strait passenger subsidy, or the car subsidy, as it is probably more commonly known—\$49.5 million over a three-year period. Just after it was launched by Senator Newman I obtained a copy of the Bass Strait passenger vehicle equalisation scheme from Senator Newman's office. It says under the subheading 'How it works':

The rebate is linked to passenger vehicles. A rebate of up to \$150 one way is payable for fares paid for the driver and the vehicle where the fare exceeds \$150.

Recently I obtained copy of a similar document which says under 'How it works':

The rebate is linked to passenger vehicles. A rebate of up to \$150 one way is payable for fares for the driver and vehicle where the fare exceeds \$150.

Then:

The first \$150 is paid by the driver.

I made some inquiries about that. It would appear that the coalition is now saying that

any person has to pay the first \$150. That is a total contradiction of the election promise, Senator Newman knows it. Warwick Smith knows it. All of the Tasmanian Liberal senators and MHRs know that that is simply not what they promised to the people of Tasmania in the first instance. Moreover, they say: 'This is an equitable process. Bass Strait must be treated as a highway.' And so it should; we agree with that.

But let us look at how the subsidy will work. Despite the first \$150, if you happen to be lucky enough to travel with more than one person—for example, if there are four of you in the car—at the existing off-peak fares it will cost you around \$93 per person to travel with a car across Bass Strait one-way. If there are two people it will cost you about \$86 per person. But if you happen to travel on your own you are up for \$150. I do not know where the equity is in that.

This seems to be a bit of a habit with Liberal members, but the state minister in the Tasmanian parliament somehow seems not to understand the fares that are to be paid across Bass Strait. He has got into the habit of misrepresenting the truth. He is quoted as saying that a one-way fare of \$87 is very good value. In fact, there is no \$87 fare available. The minister should have known that the fare he was referring to is a return fare that costs \$174. It is despicable that these members continue to misrepresent and mislead the people of this state—(*Time expired*)

Higher Education

Senator STOTT DESPOJA (South Australia) (7.28 p.m.)—Over the past few weeks we have seen the higher education sector close to boiling point. It is worth noting that last week over 10,000 university students around the country took to the streets to protest against proposed funding cuts to the higher education sector by this government. Such a proposal lacks vision and also understanding of how our higher education sector works.

This week also marks a national week of action for the National Training and Education Union, which will go on an unprecedented

24-hour nationwide strike on Thursday, 30 May. The reason I raise this tonight is because today was an historic day for the higher education sector, with the launch of the Higher Education Alliance, formed in Canberra and launched today in Parliament House, I believe.

It is worth noting some of the groups that will be a part of that alliance: the National Training and Education Union, the National Union of Students, the Council of Australian Postgraduate Associations, the Australian Vice-Chancellors Committee, the National Academies Forum, the Australian University Alumni Council and the Federation of Australian Science and Technology Societies. I understand that further academic and research bodies are represented—quite an historic coalition of groupings.

On Friday, an historic meeting was held in this place. The Australian Democrats hosted a higher education round table which saw many of those groups that I have just mentioned brought together in the same place at the same time for what was really the first time. That group reached an interesting consensus if you look at the disparate groups involved in that meeting. It is worth noting that we came to a consensus, not just in opposition to some of the proposed attacks on the higher education sector by the new government, but a range of consensus was reached.

I read out a couple of the points that were achieved at that consensus meeting: first of all, the higher education round table agreed that public funding of higher education is in the public good. We also called on the new government to articulate its vision or its higher education policy for the sector. We also called on the new government to recognise the economic benefits, as well as the cultural, political and intellectual benefits that higher education brings to a country. This consensus meeting also pointed out that higher education, in terms of its export earning potential, is even more than that of wheat export for this country.

I reiterate the fact that we reached consensus on the point of opposition to proposed funding cuts to our higher education institu-

tions. Staff, students, academics and vice-chancellors all recognise that public funding of higher education is in the public good. We recognise that there are many benefits for education in this community: not simply social, political and intellectual but economic benefits, which are something that has been lost from the current debate.

The Australian Democrats have looked on over the past 13 years and seen a higher education sector that has been massively underfunded. I am sorry that the coalition government, to this day, has not actually put forward any other proposals to see that our libraries are adequately stocked or that our academics and students receive appropriate resources for the higher education sector. In fact, over 13 years, as the coalition document rightly points out, in real terms education funding has decreased by about 13 per cent. Since World War II, there has never been a government that has cut higher education funding by more than one per cent in one year. This only happened once when Malcolm Fraser's razor gang tried to pursue the path that the current government is now pursuing.

Senator Panizza—What do you want: a \$16 billion black hole?

Senator STOTT DESPOJA—No, what I would like to see, Senator Panizza, is the coalition meeting its promises that are outlined in its higher education document that was launched and taken round the country in the lead-up to and during the election campaign. On that note, the higher education round table, which met in Canberra on Friday, served notice that it would not accept broken promises by the coalition government; it would not accept a higher education system that excluded many people from being a part of this nation's future.

It is interesting to note too, that this question has come up not only in question time today but over the last couple of weeks—including on the *7.30 Report* where the minister, Senator Vanstone, gave an interview on Friday. There are lot of questions surrounding how the 12 per cent proposed funding cut figure has been arrived at. The latest relative funding muddle or model—it is a bit of a muddle—that has been put forward

as a possible way that the 12 per cent figure was arrived has little to do with the relative funding model that applies to the higher education sector generally.

If we are to pursue the model that has been proposed since Saturday's media reports, I ask: will we start seeing cuts to our higher education that revolve around the Hahn ice package, for example, which will constitute the 4.9 per cent cuts, or will we see top of the range cuts such as the South Australian bottle of Henschke, which is around 13 per cent, or perhaps the massive Jack Daniels package of cuts, which is around 43 per cent? Perhaps the minister responsible will go with the parochial package and stick to the South Australian home-grown Coopers Ale package of 4.5 per cent cuts? The reason I bring up this, perhaps more light-hearted approach to this debate, is because it seems that the minister has plucked a figure out of the air; that this figure was presented to the Australian vice-chancellors' committee at a dinner, but we now know that that figure that was proposed, of between five and 12 per cent, is now being strenuously denied.

Senator Conroy—Just teasing.

Senator STOTT DESPOJA—That may be teasing, Senator Conroy, but that light-hearted perspective that the Democrats have just offered in terms of the ambiguous and ambit claim nature of the funding cuts that the minister has put forward underlines quite a serious issue. I have already pointed out in this place, on a number of occasions, that 12 per cent funding cuts are the equivalent of the closure of five to six medium sized university campuses. Today, I pointed out that 48,000 student places could be lost if we cut our university sector by 12 per cent.

Senator Panizza—No.

Senator STOTT DESPOJA—It is true. That is the equivalent of 48,000 student load places. We have done the figures. When it comes to staffing positions, it is equally high, Senator Panizza. Yes, I will get a move on.

Beginning today, we have students who are outside the public entrance of Parliament House. What they will do between now and Thursday night, from nine till five every day,

is read out and hopefully remind the coalition government of its higher education funding commitments and proposals. I think that is probably a good note on which to end.

To conclude, I quote the coalition's higher education policy document, and I pick any page:

Coalition policy seeks to overcome these shortcomings—

in our universities—

by improving rather than substantially restructuring the sector. This policy framework is designed to contribute to more confident and independent institutions (whether they are old or new), greater diversity and choice, and enhanced quality in education and scholarship.

Furthermore, the executive summary states:

A Coalition government will:

... ..

. maintain levels of funding to universities in terms of operating grants—

I hope that those coalition members present in the chamber tonight will take that back to the minister and honour that election promise, so that we do not see a substantial reduction in the quality of research, teaching and, of course, quality, diversity and choice in our higher education sector.

National Reconciliation Week

Senator CHAMARETTE (Western Australia) (7.37 p.m.)—As today marks the beginning of reconciliation week, and a special occasion was held earlier in the day in the Great Hall, it is fitting that the words of an Aboriginal person, who declined the invitation to come, be heard. As I move around the country—and I am sure this is the experience of many other senators—Aboriginal people frequently comment on how little value they see in the reconciliation process as it has been conducted so far.

I refer to a letter from Miss Florence Grant, addressed to the Prime Minister and to other people and officers, which serves as Miss Grant's apology for today's luncheon. I seek leave to incorporate the letter in *Hansard*.

Leave granted.

The letter read as follows—

Miss Florence Grant
2 Snowden Place
Wanniassa ACT 2903
Phone 06 2314504
Fax 06 2315604
The Prime Minister
The Leader of the Opposition
The Leader of the Australian Democrats
The Chairperson of the Council for Aboriginal Reconciliation
Aboriginal Reconciliation Branch
Office of Indigenous Affairs
Prime Minister & Cabinet
Canberra ACT 2600

I would like to say thank you for your invitation to the Luncheon for the launch of National Reconciliation Week on Monday, 27 May 1996. However I feel that I must decline.

I am a great supporter of 'Real Reconciliation' of people coming together as equals with respect for each other in diversity and recognition of each others contribution to this—our great land. But I am not a supporter of 'Government Orchestrated Reconciliation'. While there is no recognition of Aboriginal Australia and no real acknowledgment of the fact that modern Australia is built on the lie of 'Terra Nullius'—the concept that allowed powerful land grabbers to totally dispossess my people and made them beggars in their land—whilst there is no just and proper compensation for this loss there can be no reconciliation.

1901 Federation to 2001.

On the 29th anniversary of the Referendum I, along with many Aboriginal people, feel that we have achieved little in the way of freedom of self determination in this—our country. At the inception of Australia's Federation in 1901 Aboriginal people became Wards of the State and were basically incarcerated in the Aboriginal Reservations and missions that were set up for protection. Under management and police control they were denied the right to the very basic human dignity of self determination, education advancement and economic development through their dispossession.

This imprisonment was based on the grounds that Aboriginal people needed protection; from themselves, from the vices of white civilisation such as alcohol, gambling etc and from the advancing army of settlers and developing new townships. Men and women served in two world wars and other scrapes for this country yet came back to non-citizenship status and a licence, for those who applied, granting them a form of recognition. In fact since 1788 wars and battles were fought throughout this land for recognition as human beings and the right to survive let alone live as equals in this land that was fast being, then almost totally, usurped. Will this be still the case in 2001?

Divide and conquer funding.

What has changed? The Referendum of 1967 passed the Aboriginal people from State Government control to Federal Government control. Government still dictates to the Aboriginal people through their imposed funded bureaucracies and organisations such as ATSIC and Land Councils. We have Government orchestrated Reconciliation—while we, the Aboriginal people, are still denied basic human justice. The present government is barraged by its back benchers to maintain the lie that Modern Australia was built on. Even as you sit at lunch they demand to have the Mabo decision nullified and to be rid of the so called 'Native Title' on behalf of the greedy pastoralist and development usurpers.

Since the Liberal/National coalition came into office all Aboriginal people are being held accountable for the waste of 'Tax Payers Money'. To us this is 'Aboriginal Money' and we want all people to be accountable. Aboriginal people are being told that we must 'Integrate', or whatever word used meaning to blend, into mainstream Australia because: 'We are all Australians' that is of course the 208 year old Australia that totally violated our people and destroyed our sovereign identity. I am Wiradjuri and I have thousands of years of history and heritage. Why should I take on a foreign history that endeavoured to totally annihilate my people.

In regard to the Aboriginal people who have disagreed with the Minister for Aboriginal Affairs Mr Herron; He told Australia, through the media, that they were only 'playing politics'. His attitude showed total disregard for the opinions of the Aboriginal people. Yet he is our Minister.

The few billion dollars that have been thrown at the 'Aboriginal problem' over the past 29 years have given some communities houses and helped in opening doors for Aboriginal people to get a better education. Some have their reserves back. Some have better employment opportunities—mostly in Aboriginal affairs or in training programs. But this is only the tip of the iceberg. Now this funding is under threat as services and education, employment and training programs are being targeted for cuts.

Self determination.

The funding that is given to Aboriginal people is only on a communal basis. Most Aboriginal people believe that they must have 26 people on their committee before they can incorporate an organisation through ATSIC—this is actually stated on the incorporation form. This is discrimination as mainstream organisations only need a small committee and can be a family group. To me 'self determination' means the right of the individual. But in Aboriginal affairs the individual cannot get

a grant of money. If the person has an idea that he/she wants to develop they must go through an incorporated organisation and I have seen many lose their intellectual property as it gets taken and incorporated into the system. Their dream becomes the property of some one else. Through government funding Aboriginal people are controlled by those who make decisions on who is funded and who isn't.

If you want to maintain your dream you can apply for a 'Business Funding Loan' through ATSIC that, in many cases, has taken up to two years to hear about, if ever, because of limited funds available. Furthermore, most Aboriginal people are shut out of this as you need to have a high percentage of your loan requirements in cash deposit or assets before you apply.

This form of assistance is in itself discrimination. Talk back radio and other areas of mainstream Australia tell us that the average Non-Aboriginal person thinks that Aboriginal people are favoured above other Australians. To us refugees have better status and more opportunities and they have very little.

Reconciliation? Are you planning a 'Treaty' by the year 2001? Who is going to sign it on my people's, Wiradjuri, behalf? Who has the authority to sign away any of our land? Put history right and recognise the real Australia. Moral and economic justice must be addressed before the year 2001, with a great deal of discussion with the Elders of all existing Aboriginal nations. If we start now we may celebrate real reconciliation by the year 2001.

A delegation of Wiradjuri Elders will be happy to meet with you for further discussion. Our children are the future of this country and it is very important to be working together toward the 21st century.

Yours sincerely

Flo Grant
Secretary of the
Canberra Aboriginal Church and the
Wiradjuri Christian Development Ministries
Member of the Wiradjuri Council of Elders
Chairperson of the Vice Chancellor Advisory
Committee for the
Ngunnawal Centre, University of Canberra
Committee Member of the Advisory Committee for
the Jabal Centre, ANU
Member of the ACT Aboriginal Education Consultative
Group and
Committee member of the Gudan Gulwin Youth
Organisation.

Senator CHAMARETTE—The letter sums up many of the complaints which are put to me about the reconciliation process, and about indigenous affairs in this country generally. I believe that Miss Grant's letter speaks for

itself. I however did attend today's reconciliation week occasion and found it both moving and disturbing.

It is undeniable that there is an abundance of goodwill and good intentions on the part of many non-Aboriginal members of our community and from many different sectors of this society. Nevertheless, it perturbs me that the word reconciliation can be used without the essential precursors of, for example, repentance, restitution, restoration of historical justice and forgiveness.

As the Chairperson of the Council for Aboriginal Reconciliation, Mr Patrick Dodson, said, Aboriginal people are not asking for guilt. But I do believe that the true meaning of reconciliation involves a much deeper, harder look at the history of this country and the present situation of Aboriginal people today.

There seems to be an interesting counterpoint between this week's focus on reconciliation and last week's release of the government's discussion paper on proposed changes to the Native Title Act. On the one hand, we ask the Aboriginal and Torres Strait Islander people to join us in a process which should be directed to overcoming injustice, while at the same time we signal that we are prepared to add to that injustice and perpetuate it.

The Howard government has shown, very early in its time in office, that it wants to put Aboriginal interests in land at the far end of the queue, after all other interests in land have been satisfied. I do not believe the former government, in its priorities, was very different. It may have been in rhetoric, but I do not think it was in the position it put in place in the Native Title Act. That is the only construction we can put on the discussion, which in truth is primarily coming from other conservative governments, which calls on this government to extinguish native title on pastoral leases.

But the Howard government's motivation in its proposed amendments is to ensure that nothing gets in the way of development interests. Why else would the discussion paper canvass limiting the right to negotiate and increasing the exploration and mining

rights of mining companies? And while this is all happening, the inquiry into the separation of Aboriginal children from their families is making its way around the country. Again, this is an issue which goes to the heart of the unjust relationship between indigenous and non-indigenous people in this country.

Where, then, is the government's statement of commitment to this inquiry? Why have we not heard whether or not the inquiry will receive proper and adequate resources and time to do its job? The former government certainly did not resource the inquiry adequately, as has been demonstrated by the short time the inquiry has been able to spend in each of the places in which it has heard evidence to date. Counselling facilities available to witnesses who are in considerable distress at having to relive their experiences are also barely resourced, if at all. This was put bluntly in a press release by the Indigenous Advisory Council to the inquiry, which said:

... without the full participation of Indigenous people, the inquiry can only tell a small part of the story. Full participation means having resources to prepare submissions, access records, travel to hearings and provide counselling support for the thousands of people being asked to relive the pain and anguish of those years.

Since this government came into office there has been a marked increase in the expression of racism in the community, much of it directed against Aboriginal people. Clearly, this cannot be blamed on the government. However, some of its statements foreshadowing changes to the ATSIC act or the Native Title Act would be seen by some in the community as a form of permission or support.

1996 is the United Nations Year for the Eradication of Poverty. There are no groups in our community who experience poverty of all kinds to a greater degree than our indigenous people. Surely it is an absolute pre-requisite of reconciliation that we deal with this matter. I realise that this is easy to say but hard to achieve. But achieve it we must.

We hear a great deal about self-determination, and coalition policy, I am told, says that Aboriginal and Torres Strait Islander people 'play a pivotal role in the programs and

decisions which affect them'. I wonder how the government intends to put that into practice, as the early signs are not encouraging.

This is a crucial time in the life of our country. There are historical markers at many points of our nation's journey at present: the Mabo decision; the report of the Royal Commission into Aboriginal Deaths in Custody; the reconciliation process; the forthcoming centenary of the Australian constitution and so on. Indigenous people have heard many promises, have read many policies and strategies. They are right to ask why it is that their situation is still a cause of shame to our wealthy nation.

I believe Miss Florence Grant had a point in refusing the invitation to attend today's lunch. I hope that she may witness a time when she feels comfortable in taking her full

and rightful place in the affairs of this parliament and this nation.

Senate adjourned at 7.44 p.m.

DOCUMENTS

Tabling

The following documents were tabled by the Clerk:

Civil Aviation Act—Civil Aviation Regulations—Civil Aviation Orders—Exemption—140/FRS/152/1996.

Native Title Act—Native Title (Notices) Determination No. 1 of 1993 (Amendment) (No. 1).

Remuneration Tribunal Act—Determination No. 3 of 1996.

Public Service Act—Determination—1996/62-1996/64 and 1996/66.

LES 1996/3-LES 1996/8.

QUESTIONS ON NOTICE

The following answers to questions were circulated:

Social Security: Sickness Allowance

(Question No. 11)

Senator Woodley asked the Minister for Social Security, upon notice, on 28 March 1996:

(1)(a) What would be the effect of removing the 'loss of income' provisions which apply to the payment of sickness allowance; and (b) what is the approximate cost of doing this.

(2)(a) What would be the effect of exempting from those provisions people who had, immediately prior to claiming sickness allowance, been in receipt of a payment under the New Enterprise Incentive Scheme; and (b) what would be the approximate cost of this.

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

(1)(a) Removing the 'loss of income' provisions would ensure that the maximum rate of payment would vary only with recipients' age and family status. It might also help to simplify administration but there is a risk that it would put some people in a more advantageous financial position than was the case before they became incapacitated for work.

(b) The latest estimate of the cost of removing the 'loss of income' provisions is in the order of \$2.2M a year. This takes into account the number of people who currently receive other payments when the 'loss of income' provisions prevent receipt of sickness allowance.

(2)(a) The effect of exempting from these provisions people who had been in receipt of a payment under the New Enterprise Incentive Scheme (NEIS) immediately prior to claiming sickness allowance would be to pay sickness allowance at the maximum applicable rate, subject to income and assets tests.

(b) The cost of exempting former recipients of NEIS payments from the 'loss of income' provisions cannot be provided as my Department cannot identify the number of customers in receipt of payments under the NEIS prior to being paid sickness allowance. The cost of exempting these customers from the 'loss of income' provisions is likely to be minimal.

Social Security: Concession Card

(Question No. 12)

Senator Woodley asked the Minister for Social Security, upon notice, on 28 March 1996:

(1) Can a recipient of a social security pension or benefit retain the use of his or her concession card, for example a pensioner concession card or health care card, for a period of time once becoming ineligible for that payment; if so (a) for which particular payments does this apply; and (b) for how long does the recipient retain the use of his or her card.

(2) Is the period of time dependent on the reason for becoming ineligible for the payment; if so, please provide details for the particular payments.

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

(1) Yes, but only where the person leaves pension or allowance to take up a job.

(a) Sole parent pensioners, job search allowees, newstart allowees, special beneficiaries, widow allowees, partner allowees, benefit parenting allowees and youth training allowees in receipt of payment for 12 months or more, and all disability support pensioners.

(b) Disability support pensioners retain the pensioner concession card for 12 months from the date of cancellation of payment of the pension. Beneficiaries and allowees who have been issued a pensioner concession card as older, long term recipients retain that card for 6 months from the date of cancellation of payment of the benefit or allowance. All other payment recipients mentioned in (a) retain the health care card for 6 months from the date of cancellation of payment of the pension, benefit or allowance.

(2) No, but in all the above cases concession cards are continued after cancellation only where the person returns to work.

Social Security: Pensions

(Question No. 16)

Senator Woodley asked the Minister for Social Security, upon notice, on 16 April 1996:

(1) On the latest figures, how many recipients are there of: (a) the parenting allowance; and (b) the sole parent pension.

(2) For each payment, how many recipients have: (a) a child aged 12 or less; and (b) a child aged 14 or less.

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

(1)(a) As at December 1995, there were 647,407 recipients of the parenting allowance.

(1)(b) As at December 1995, there were 331,499 recipients of the sole parent pension.

(2)(a) As at December 1995, 600,383 parenting allowance recipients and 294,373 sole parent pensioners had at least one child aged 12 years or less.

(2)(b) As at December 1995, 632,991 parenting allowance recipients and 320,348 sole parent pensioners had at least one child aged 14 years or less.

Carers Association of Tasmania Inc.

(Question No. 18)

Senator Calvert asked the Minister representing the Minister for Family Services, upon notice, on 17 April 1996:

(1) Is the Carers Association of Tasmania Inc. operating under a proper and correct constitution.

(2) What specific rules or regulations are applied to money provided by the Federal Government to the association.

(3) Have there been any breaches of these rules or regulations by the association; if so, what are they and what action has been taken.

(4) What requirements does the association work under in relation to the Department.

(5) What is the current status of the constitution of the association.

(6) What, if any, inconsistencies have developed within the association since the annual general meeting held in August 1995.

(7) What action has been taken in relation to any inconsistencies within the association.

Senator Newman—The Minister for Family Services has provided the following answer to the honourable senator's question:

(1) The Constitution of the Carers Association of Tasmania Inc. (CAT) was developed by a Constitution Committee, following a statewide meeting of carers in March 1993. The Constitution was registered by the Office of Corporate Affairs on 25 May 1993.

(2) The Commonwealth Department of Health and Family Services does not provide any funding directly to the CAT. However, the CAT does receive Commonwealth funding through:

the Tasmanian Department of Community and Health Services, under the Commonwealth-State Home and Community Care Program (HACC); the 1995-96 approved upper limit for the CAT was \$92,964; and,

the Carers Association of Australia Inc., in relation to Carer Support information kits in English and in ten languages other than English; the 1995-96 allocation to the CAT is \$65,500.

The Commonwealth has an agreement with the Tasmanian Department of Community and Health Services concerning money provided by the Commonwealth under HACC, and an agreement with the Carers Association of Australia regarding Carer Support kit funding.

(3) The Department understands that several complaints were lodged with the State department of Community and Health Services in August 1995, about financial irregularities and unconstitutional activities in relation to the CAT. The State Department advised the Commonwealth of these complaints.

As a result an independent audit of the organisation was undertaken. This audit revealed that the organisation was solvent with no major anomalies in their expenditure. However, one of the complainants expressed dissatisfaction with this outcome. The State Department then conducted their own audit which confirmed the original finding.

The State Department has contacted the Association seeking clarification of some minor anomalies and requested a budget strategy for 1995-96. The State Department together with the State Department auditor are working closely with the Association to implement these recommendations.

(4) The CAT receives funding through the HACC Program, which is a joint Commonwealth-State program. Organisations funded under HACC are responsible to the State for day-to-day operation. The State is responsible to the Commonwealth, under the terms of the Commonwealth-State Agreement on HACC.

The Commonwealth also provides funds to the Carers Association of Australia Inc. to provide

information, counselling and support services for carers. The national Association distributes these funds to State and Territory Carers Associations, and is responsible to the Commonwealth for expenditure of these funds.

(5) The CAT constitution, registered in 1993, remains valid.

(6) As an outcome of the audit process, it was recommended that the Association conduct medi

ation meetings to resolve conflict between its members.

(7) The State Department is working with the Association and have requested copies of resolutions from all mediation meetings to monitor the actions undertaken by the organisation.

The Tasmanian Office of the Commonwealth Department of Health and Family Services is receiving regular progress reports.